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Abstract

Transnational corporations have become actors with significant political power and authority which should entail responsibility and liability, specifically direct liability for complicity in human rights violations. Holding TNCs liable for human rights violations is complicated by the discontinuity between the fragmented legal/political structure of the TNC and its integrated strategic reality and the international state system which privileges sovereignty and non-intervention over the protection of individual rights. However, the post-Westphalian transition—the emergence of multiple authorities, increasing ambiguity of borders and jurisdiction and blurring of the line between the public and private spheres—should facilitate imposing direct responsibility on transnational firms. Mechanisms for imposing direct responsibility on TNCs are considered including voluntary agreements and international law. However, I conclude that a hybrid public-private regime which relies on non-hierarchical compliance mechanisms is likely to be both more effective and consistent with the structure of the emerging transnational order.

Disciplines

Business Administration, Management, and Operations | Business Law, Public Responsibility, and Ethics | International Business

PRIVATE POLITICAL AUTHORITY AND PUBLIC RESPONSIBILITY: TRANSNATIONAL POLITICS, TRANSNATIONAL FIRMS AND HUMAN RIGHTS

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Transnational corporations have become actors with significant political power and authority which should entail responsibility and liability, specifically direct liability for complicity in human rights violations. Holding TNCs liable for human rights violations is complicated by the discontinuity between the fragmented legal/political structure of the TNC and its integrated strategic reality and the international state system which privileges sovereignty and non-intervention over the protection of individual rights. However, the post-Westphalian transition – the emergence of multiple authorities, increasing ambiguity of borders and jurisdiction and blurring of the line between the public and private spheres – should facilitate imposing direct responsibility on transnational firms. Mechanisms for imposing direct responsibility on TNCs are considered including voluntary agreements and international law. However, I conclude that a hybrid public-private regime which relies on non-hierarchical compliance mechanisms is likely to be both more effective and consistent with the structure of the emerging transnational order.

Talisman Energy, a Canadian oil company, entered Sudan in October 1998 in the midst of a brutal civil war. While the company's oil production operations were successful, it faced both a sustained campaign by activists to link its operations in Sudan (and its institutional investors) to violations of human rights and a civil suit in Federal District Court in New York under the Alien Torts Claims Act.[1] As a result, the company's stock price plummeted and it left in less than five years, selling its 25% share in the Greater Nile Petroleum Operating Company (GNPOC)[2] to a subsidiary of the Indian national oil company in March 2003 (Kobrin, 2004).

The case was controversial. While the Company admitted to a small number of instances of complicity in violations of human rights by the Sudanese military, it argued that it contributed to the development of Sudan and used its resources to "encourage peace, provide economic opportunities and support the communities" in which it operated (Corporate Social Responsibility Group, 2001, 5 and 16). Its opponents countered that the revenues from oil exploration "fueled the conflict" and that its operations in a war zone led to violations of the rights of civilians in the area including their forcible displacement (Gagnon & Ryle, 2001; Harker, 2000).

In the midst of the dispute, Talisman's CEO noted that, "…Defining what is properly expected of a company needs to be more clearly articulated and rigorously debated" (Corporate Social Responsibility Group, 2001: 5). The Talisman case raises a number of difficult questions that require clear articulation and rigorous debate. Is an investor with operations in an active war zone responsible for human rights violations that occur? Does stating that "oil fueled the conflict" necessarily attribute complicity to Talisman? Who gets to decide? More generally, who should set standards for what constitutes corporate complicity in abuses of human rights? Is a regime or institution necessary to develop norms, monitor violations, judge transgressions and impose sanctions: to define, articulate and rigorously debate "what is properly expected of a company?"

My concern is the responsibility of transnational corporations for complicity in violations of human rights by their operating units. There are two overriding questions here. Should transnational corporations – or any corporation – be held accountable *directly* for human rights violations? If that question is answered affirmatively the positive question of how to hold TNCs responsible for human rights violations remains. The two mechanisms used to attempt to hold Talisman liable – the campaign by civil society groups and the civil suit in an American court – are ad hoc, unsystematic and unsatisfactory solutions to the problem.

I will make a number of arguments in this paper. First, transnational corporations should be held liable directly for human rights violations. TNCs have become actors with significant power and authority in the international political system: they can set standards, supply public goods and participate in negotiations; political authority should imply public responsibility. The "traditional notion that only states and state agents can be held responsible for human rights

violations is being challenged as the economic and social power of MNEs appears to rise in the wake of the increasing integration of the global economy…" (Muchlinski, 2001,31).

Second, many of the problems encountered in holding TNCs responsible for human rights violations result from the discontinuity between the fragmented legal/political structure of the transnational corporation and its integrated strategic and organizational reality. This asymmetry is both related to, and exacerbated by, the traditional Westphalian state system which privileges sovereignty and non-intervention over the protection of individual rights. Third, any regime or institution developed to deal with transnational firms' human rights violations must be consistent with the structure of the emerging post-Westphalian transition world order: the fragmentation of authority; the increasing ambiguity of borders and jurisdiction; and the blurring of the line between the public and private spheres. I will review a range of possible mechanisms for imposing obligations on firms including voluntary agreements and international law, but conclude that a hybrid regime which includes both public and private actors and relies on non-hierarchical, "soft law" mechanisms is likely to be both more effective and consistent with the structure of the emerging post-Westphalian or transnational order.

The Problem

Attempts to hold transnational firms as a whole liable for human rights violations by any of their subsidiaries are complicated by their political and legal structure. TNCs operate globally through a network of affiliates each of which is incorporated locally and thus a "corporate citizen" of its host country. While it may be "beyond dispute" that all states are under an obligation in international law to respect and promote human rights and insure that all entities "within their territory or control" comply with human rights standards (Deva, 2004: 49), in practice only the home and host country have direct jurisdiction over the TNC's headquarters or

a subsidiary. While either can, in theory, hold a company liable for violations of international law, in most instances neither does.

The host country is typically the perpetrator, the primary violator of human rights. It is obvious that the Sudanese government had no interest whatsoever in ascertaining whether Talisman was complicit in its violations of the rights of its citizens. On the other hand, while the Canadian Government objected to the Company's investment in Sudan and threatened sanctions, for a number of reasons the threats came to naught (Drohan, 1999, 2003; Frank, 1999).

A host country that is unwilling and a home country that is "unable" to intervene juridically are far from atypical. As Campbell (2006, 258) observes, "…governments are, on the whole, neither able nor willing to effectively regulate MNCs, particularly when operating outside of their own jurisdiction and even in areas where legal regulation would be appropriate were it feasible…".

Do TNCs Have Human Rights Obligations?

At their core, human rights are moral rights: they flow from the "inherent dignity" and "equal and inalienable rights" of all members of the human family (United Nations General Assembly, 1998 (1948)); they derive from moral imperatives that are not identified with any system of positive law (Campbell, 2006). From a moral standpoint, the answer to the question "do TNCs have human rights obligations?" is unequivocally yes. Firms have an overriding moral obligation to observe basic human rights where ever they operate; respect for the dignity of human beings, is a universal or core value that establishes a "moral compass for business practices" (Donaldson, 1996).

Corporations, however, are rarely accused of direct violations of human rights, of removing populations, mounting attacks against civilians or enslavement. The vast majority of

corporate rights violations involve complicity, aiding or abetting violations by another actor, most often the host government. A TNC can directly or indirectly assist in human rights violations, it can partner with the government or other firms under situations when it should reasonably be able to foresee that violations are likely to occur and it can be "silently" complicit, benefiting from the acts of others (Sub-Commission on the Promotion and Protection of Human Rights, 2005).

As the Talisman case demonstrates, how one translates the moral obligation of firms to observe human rights into specific norms defining complicity is far from obvious. While the moral responsibilities of firms underlie any discussion of human rights, my concerns here are narrower and more specific: the legal-political obligations of TNCs to avoid complicity in human rights abuses and whether and how they can be held accountable directly for violations.

The Westphalian Context

Each unit of a transnational corporation is incorporated in a single national jurisdiction; its existence as a legal entity – its legal personality -- as well as its legal rights and duties flow from that fact. The TNC as a whole is an "apparition…its actuality shifted through the grid of state sovereignty into an assortment of secondary rights and contingent liabilities" (Johns, 1994: 141) cited in (Cutler, 2001). Legally and politically the TNC is a group of national corporations subject to the laws of different states (Kinley & Tadaki, 2003-04; Vagts, 1970: 739).

That being the case, it would not be unreasonable to argue that the obligation of any unit of a TNC is to obey the law of the jurisdiction in which it is incorporated and conversely, that it should not be subject to the law of any other jurisdiction. Legally, the human rights obligations of any unit of a TNC would be limited, correspondingly, to those imposed upon it by the state in which it operates.

Cutler (2001: 135) notes that after Westphalia the "entire edifice of modern international law came to be crafted on the foundation of positive acts of sovereign consent, evidenced explicitly in treaty law and implicitly in customary international law." In the orthodox or traditional view, states are the only subjects of international law, the only entities which possess international legal personality and the capacity to have duties and rights (Ruggie, 2004; Wawryk, 2003). Corporations are seen as objects whose legal rights and duties are "derivative of, and enforceable only by, states who as 'subjects' conferred those rights and duties upon them" (Cutler, 2001: 13).

Westphalian orthodoxy suggests that corporations could not have any direct obligations under international law and thus any positive duty to observe human rights (Muchlinski, 2001). Treaties are signed by states and international law imposes obligations only on states and not on non-state actors. (Pegg, 2003; Vazquez, 2005). Thus, one could argue that "it is for the state to regulate on matters of social importance and for MNE's to observe the law," that it is states who are responsible for controlling the activities of non-state actors which may have led to human rights violations (Muchlinski, 2001: 35).

The idea of imposing direct obligations on TNCs for human rights has been seen as interventionist, as a neo-colonial extension of power in conflict with the sovereign rights of the host state. The problem is of particular concern to the developing and transitional countries where the vast majority of accusations of TNC violations of human rights arise. This was reflected in the last draft of the United Nations Code of Conduct for Transnational Corporations code which called for TNCs to "respect the national sovereignty of the countries in which they operate" and noted that an "entity of a transnational corporation is subject to the laws,

regulations and established administrative practices of the country in which it operates" (United Nations Centre on Transnational Corporations, 1990,35).

Additionally, a number of authors have expressed concern that imposing obligations on transnational firms raises the risk of relieving states of at least some of the responsibility for the protection of human rights. Treating corporations as quasi-public institutions raises "a risk that the continuing responsibility of states, as the prime movers behind violations of human rights, will be downplayed" (Muchlinski, 2001: 44). In a similar vein, Vazquez is concerned that the imposition of direct obligations on private corporations "would result in a significant disempowering of states" (2005: 950).

More generally, the transnational firm is a product of the Westphalian international system (Kobrin, 2001) which rests on the principles of geographic sovereignty, mutually exclusive territorial jurisdiction and non-intervention and is thus "fundamentally inhospitable to the promotion by states of both human rights and political democracy" (Hurrell, 1999: 277). Strict Westphalian notions of sovereignty are incompatible with the idea that a government's actions towards its own citizens within its borders are an appropriate topic for international concern. Conversely, the idea of territoriality limits a state's authority (and obligations) to acts that take place within its borders or the activities of its nationals abroad: there is little incentive to intervene to protect human rights abroad, either directly or through the network of a transnational firm.

While these objections are certainly non-trivial, two related developments provide strong arguments for imposing direct public liability for human rights violations on transnational corporations. First, the shift from a state-centric to multi-actor system associated with the emergence of a transnational world order has fragmented political authority and blurred the once

distinct line between the public and private spheres: both have led to an expanded conception of the rights and duties of non-state actors**.**

Second, international law in general and human rights law in particular have evolved in the six decades since the Nuremberg trials and the Universal Declaration of Human Rights. The subject-object distinction is not as clear cut as it once was and the scope of international human rights law has expanded to the point where a number of authors argue that *both* individuals and corporations have duties as well as rights.

Private Political Authority

Under the Westphalian system, states were the only actors in international politics and the only subjects of international law: "the public domain, the interstate sphere, and the realm of governance were largely coterminous" (Ruggie, 2004: 505). Furthermore, during the 19th and 20th centuries the liberal ideal of a relatively sharp distinction between constitutionally sanctioned public power and a private self-regulating market (Collingwood, 2006; Palazzo & Scherer, 2006), of the separation of the public and private spheres, was a reasonable reflection of reality.

The context of the corporation is considerably more complex in a post-Westphalian world order. The fragmentation of authority and the conflation of the public and private spheres have led to the politicization of the corporation: "the changing interplay of economy, government and civil society in a globalizing world…cast doubt on the validity of the established interpretation of the corporation of an extension of the private self" (Palazzo et al., 2006, 76).

In a path-breaking article over thirty years ago Nye and Keohane (1971: xxi) argued that *transnational organizations* had become autonomous or quasi-autonomous actors in world politics. They defined world politics as "all political interactions between significant actors in a

world system in which a significant actor is any somewhat autonomous individual or organization that controls substantial resources and participates in political relationships with other actors across state lines."

More recently, Rosenau (1992) has written of a complex multi-centric world comprised of diverse actors, both sovereignty bound and sovereignty free operating in parallel. What is important here, however, is not simply the emergence of significant transnational or sovereignty free actors in international politics, but private actors exercising power that is perceived as *legitimate,* actors who are engaged in authoritative decision-making in areas of governance that were traditionally the domain of sovereign states (Clougherty & Grajek, 2006; Cutler, 1999, 16; Neumayer & Perkins, 2004). Private political authority exists when non-governmental entities are able to exert *legitimate* authority in the international system (Hall & Biersteker, 2002) and effect political outcomes directly rather than through the mediation of states.

Ruggie (2004: 502) discusses "private authority" and "private governance" in terms of the "apparent assumption by TNCs and global business associations of roles traditionally associated with public authorities, sometimes in conjunction with CSOs [Civil Society Organizations], but more widely on their own…" Similarly, Vogel (2006) argues that in many developing countries companies have taken on responsibilities that were previously held by international development agencies or even states and Palazzo and Scherer (2006) observe that corporations have assumed social responsibilities that were formally regarded as activities of the political system.

For example, in 2002 the United Nations announced that it had "abandoned" its policy of relying on governments to deal with HIV/AIDs in developing countries and that it would now help fund corporate efforts to provide anti-retroviral drugs. The change in policy was seen as

"an acknowledgement that companies have the resources to find health solutions where governments and NGOs are overstretched or failing" (Lamont, 2002). The battle against AIDS is but one example of transnational firms being asked to take on duties that were historically the responsibilities of governments, to supply public goods.

Private governance efforts and the exercise of private political authority are increasingly seen as legitimate, as "desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions" (Suchman, 1995, 574). TNCs have the resources and capabilities necessary to supply public goods in the absence of effective international alternatives and the ability to provide private governance where public regimes are lacking. To the extent a TNC assuming the role of a quasi-public actor (Palazzo et al., 2006) is perceived as authoritative and thus legitimate, that legitimacy reflects judgments about whether the activity is 'the right thing to do,' whether it effectively promotes social welfare (Palazzo et al., 2006; Suchman, 1995, 579).

That is not to say that every exercise of power by a TNC in the international system is seen as legitimate and authoritative. Defining who are legitimate members of the emerging world order and which rules and norms determine their legitimacy remains an unanswered question (Collingwood, 2006).

Authoritatively or not, transnational firms operate directly as powerful autonomous actors in international politics. The development of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) provision of the World Trade Organization in 1994 provides an example. As Sell (2003: 1) notes, the "central player in this drama was…the *ad hoc* US-based twelve member Intellectual Property Committee (IPC)." The IPC, which began as an initiative of Pfizer and IBM, put the item on the agenda, developed the standards to be negotiated, determined that the

best course of action would be to set minimum standards rather than try to harmonize intellectual property rules and was instrumental in reaching the eventual TRIPS agreement (Santoro, 1995; Sell, 2003). "What is new in this case is that industry identified a trade problem, devised a solution, and reduced it to a concrete proposal that it then advanced to governments…In effect, twelve corporations made public law for the world" (Sell, 2003: 96). The IPC functioned as a private actor in international politics, achieving its objectives directly rather than through the mediation of states.

As TNCs have emerged as significant actors in international politics there has been a corresponding tendency to provide them with direct rights under international law (Ruggie, 2004). International treaties, multilateral trade agreements, regional pacts such as NAFTA and bilateral treaties all provide significant legal rights for TNCs including the right to resort to international law to challenge governmental actions by claiming de facto discrimination or the infringement of property rights (International Council on Human Rights Policy, 2002; Picciotto, 2003: 138) and the right to submit disputes to binding arbitration under the International Center for the Settlement of Investment Disputes (Kinley et al., 2003-04). The fact that TNCs have been granted rights under international law is evidence of a systemic evolution in their role from that of objects to subjects, which should make the imposition of direct obligations feasible.

In summary, transnational firms function as significant actors with private political authority in international politics and have been granted significant rights under international law; they are "increasingly functioning as participants in the direct creation, application and enforcement of transnational law" (Cutler, 2001: 144). It would seem more than reasonable to argue for symmetry, that power, authority and rights should imply duties, obligations and

liabilities. More specifically, that TNCs should be held responsible directly for complicity in violations of human rights law.

The Evolution of Human Rights Law

Arguing that power and rights *should* imply duties and liabilities, however, begs the question as to whether duties *can* be imposed on corporations. The idea of human rights involves both an identifiable subject who has rights and "the existence of a duty-bearer against whom those rights can be claimed…" (Pegg, 2003: 16). The idea that individuals have rights under international law underlies the entire human rights project since the Nuremberg trials, the signing of the UN Charter, the UN human rights treaties and the emergence of what can be called a human rights regime (Donnelly, 2007; Paul, 2001; Vazquez, 2005).

Perhaps more important here, Nuremberg established individual responsibility for human rights violations under international law, that *individuals* may be held liable for acts of genocide, war crimes or torture (2003 (March 19): 34). The question is whether one can argue as well that *corporations* have duties and obligations with regard to human rights.

The Preamble to the Universal Declaration of Human Rights imposes obligations to promote human rights on "every individual and every organ of society…" (United Nations General Assembly, 1998 (1948)). As Henkin (1999: 25) has argued forcibly, "(E)very individual includes juridical persons. Every individual and every organ of society excludes no one, no company, no market, no cyberspace. The Universal Declaration applies to them all."

International law has imposed human rights obligations on entities other than states such as rebel groups, individuals accused of war crimes or human rights atrocities and others (Ratner, 2001). Judicial decisions in countries other than the United States have recognized obligations for human rights on the part of private individuals and corporations (Paust, 2002). Attempts to

hold corporations liable for violations of human rights law reflect the erosion of the border between the public and private spheres and the privatization of international law as individuals become both subjects and agents (Paul, 2001). A number of authors argue that corporations can be held liable for violations of customary international law, either directly or through national courts (International Council on Human Rights Policy, 2002; Paust, 2002; Ratner, 2001; Wells & Elias, 2003).

That proposition, however, is not universally accepted. For example, Vazquez (2005: 123) argues that "the fact that corporations are powerful and that their behavior is sometimes detrimental to human rights are necessary but not sufficient conditions for concluding that international law should directly impose human rights obligations on private corporations." He reiterates the traditional view that while the conduct of non-state actors can certainly give rise to a violation of human rights law, it is states and only states that are responsible for those violations.

The most sensible conclusion seems to be Clapham's (2006: 71) who argues that the questions of subjectivity and personality in international law tend towards circularity and suggests that we instead consider whether non-state actors "…have the requisite legal capacity directly to acquire rights and obligations under international law?… in what circumstances do these actors have the capacity to be party to a claim (either as claimant or defendant) at the international level." He goes on to note that lack of international jurisdiction to try a corporation does not mean that it does not have international legal obligations: "it makes sense to speak of the separation between the obligation under international law and the international jurisdiction to try the alleged offender" (2006: 27).

Structural Issues

There is an obvious asymmetry between the legal/political construction of a transnational firm as "stringing together corporations created by the laws of different states" (Vagts, 1970: 739) and strategic or managerial constructions which emphasize control exercised by the center over the enterprise as a whole. Thus Vernon (1971: 4) defines a multinational firm as a "parent company that *controls* a large cluster of corporations of various nationalities" (emphasis added) which have "access to a common pool of human and financial resources and seem responsive the elements of a common strategy."

How one views the legal nature or conception of the corporation is critical in determining whether human rights obligations can be imposed on the TNC as an entity and in evaluating two additional barriers to imposing direct human rights obligations on transnational firms: extraterritoriality and limited liability. While the corporation can be seen as an *aggregate* of its members or shareholders, an *artificial entity* created by the state or a *real entity* which is neither the aggregate of its owners or a creation of the state, but an entity controlled by its managers, Avi-Yonah (2005, 811) argues that after every significant change in the role of the corporation, the real entity theory ultimately prevailed. This is true as well for the latest transformation from the uninational to the multinational firm as he notes that the "only thing that ties a modern multinational to its home country is the location of its management." How the corporation is conceived and how one views the autonomy and control of its managers has implications for both extraterritoriality and limited liability as barriers to holding the TNC as an entity responsible for complicity in human rights violations.

Extraterritoriality is inherent in any attempt to impose human rights obligations on a multinational enterprise through its home country headquarters. While the successful regulation of domestic firms may require the "utilization of enterprise principles," such extraterritorial application of the law of the regulating nation runs the risk of clashing with conflicting government policies of every nation in which the constituent companies of the multinational group are conducting business" (Blumberg, 1993: 168).

From the home country's point of view a subsidiary of one of its transnational firms abroad is an alien, a national of the country in which it is incorporated; imposing its law on the subsidiary involves sanctioning an act committed outside of its jurisdiction by a foreigner. Donnelly (2004) argues that states generally have neither the obligation nor the right to enforce human rights obligations on foreigners in foreign territory.

While home countries have been reluctant to sanction parent corporations for human rights violations of their subsidiaries (UNCTAD, 2007), they have proven more than ready to use control as a lever to extend their reach extraterritorially in a number of other issue areas, especially those relating to national security. The United States Government used the Trading With the Enemy Act to sanction subsidiaries *controlled* by American parents for engaging in commercial relations with the Peoples Republic of China which was both legal and encouraged in their host countries at the time (Kobrin, 1989). More recently, under the Helms-Burton act non-American companies have been sanctioned for trading with or investing in Cuba (Haas, 1997).

The U.S. Foreign Corrupt Practices Act (Jadwin & Shilling, 1994) holds executives and parent corporations responsible for illicit payments to public officials in foreign countries and the OECD Convention on Combating Bribery of Foreign Officials, which has been ratified by 34

countries, requires domestic legislation to criminalize payments to public officials abroad, regardless of whether or not there is a physical connection to the act (Corr & Lawler, 1999).

In practice, home countries – especially the United States – have been able to exercise control over subsidiaries of their transnational firms through their jurisdiction over the headquarters when they so desire. "Obligations that extend to the world wide activities of the firm can be placed on the parent company and its directors, to the extent that these activities are under the parent company's de facto control" (Picciotto, 2003: 148). The real entity theory of the corporation appears to prevail here. Managerial control is of the essence and that control extends across borders.

Given the changes in the meaning of geographic jurisdiction associated with the emergence of a post-Westphalian order, the very selective use of extraterritoriality, and the actuality of the TNC as an entity under managerial control, the principle of territoriality should be not be a barrier to holding transnational firms as a whole responsible for human rights violations by any of their units.

A second question is whether the doctrine of limited liability protects the parent from being held responsible for violations of human rights by its subsidiaries: whether "the parent company of a wholly owned subsidiary is, on the face of it, no more responsible, legally, for the unlawful behavior of the subsidiary, than would be, for example a member of the public for the negligence of a company in which he owns a single share" (Meeran, 1999: 161).

The concept has been questioned in a number of countries, particularly in the Alien Torts Claims Act cases in the United States (Pegg, 2003). This is a complex issue which I will not pursue here other than to agree with Blumberg (1993: vii) that transnational corporations are "challenging the traditional concepts of corporations law and international law;" that legal

concepts fashioned to serve a society in which the role of business was limited and local "have become archaic in a world where business is conducted worldwide by giant corporate groups, comprised of affiliated companies organized in dozens of countries."

The question, however, is whether and how home states can be *required* to impose human rights obligations on their transnational firms: the distinction is between states' freedom to regulate the overseas activities of their TNCs and an obligation to do so. As an expert working group on the topic concluded, neither treaties nor customary international law impose an obligation on States to regulate the overseas activities of its TNCs (Human Rights Council, 2007). That question leads directly to the primary question raised in this paper: what sort of regime or institution is both necessary and desirable to impose human rights obligations on transnational firms?

Holding Transnationals Accountable

I will define public responsibility for human rights violations in terms of formalized, external, and international accountability: an institution beyond the boundaries of the firm that defines complicity, sets standards or norms, develops procedures for monitoring behavior, judges potential transgressions and provides for compliance. A number of other criteria are important if it is to be effective. First, it should be consistent with the evolving parameters of the post-Westphalian system. Second, it cannot rely entirely on voluntary enforcement; it has to have some means of "compelling" firms to comply with norms. Third, it must be perceived as both legitimate and authoritative. Last, at least initially the scope of its coverage must be limited to the more universally accepted human rights, perhaps in Donaldson's (1989) terms to those that would deprive the transnational firm of its moral right to exist.

Figure 1 categorizes possible modes of imposing human rights obligations on transnational firms in terms of two dimensions: the structure of the political-economic system and the nature of compliance mechanisms.[3] The structure of the system is characterized as either international or transnational (vertical axis) and the nature of compliance mechanisms in terms of hierarchical or non-hierarchical (horizontal axis).

The Westphalian international system comprises a state-centric world of meaningful borders and mutually exclusive territorial jurisdiction. Economic activity consists of traditional cross-border flows of trade and investment. International politics involves interactions among sovereign states either bilaterally or in organizations such as the United Nations or OECD. While norms at the international level are "weaker, less widely shared, and less taken for granted" than they are within states (March & Olsen, 1998,945), they none-the-less exist. An element of international society – of common interests, rules and institutions – has always been present in the Westphalian international order (Bull, 1977).

A transnational system is definitionally multi-actor where private political authority is a reality: states are embedded in a broader and deeper transnational arena. Borders are "transcended" rather than crossed, relations become increasingly "supraterritorial" as distance, borders and geographic space itself lose economic and political significance (Scholte, 1997). It is a system in the throes of evolution where uncertainty about structures, relationships, norms and institutions abounds.

The horizontal dimension specifies the nature of compliance mechanisms which can be thought of in terms of two related constructs. First, "steering modes" can be hierarchical relying on the threat of legally enforceable sanctions or non-hierarchical relying on non-state mechanisms ranging from incentives and sanctions to moral legitimacy (March et al., 1998;

Risse, 2004). While hierarchical "steering" typically refers to the power of the sovereign state, I expand it here to include international law.

Second, compliance mechanisms can be "hard" and binding or "soft" and non-binding. Traditional international public law is generally thought of in terms of treaties that bind states to precisely defined obligations. It is a model of "hard" international law based on the rights and binding obligations of states (Roht-Arriaza, 1995).

As Dupuy (1990: 420) so aptly observes "soft' law is a paradoxical term for defining an ambiguous phenomenon." Its primary characteristic is that it is non-binding: soft law instruments include treaties with non-binding obligations, resolutions and codes formulated and accepted by international or regional organizations and statements by private actors which purport to formulate international principles (Roht-Arriaza, 1995). Abbott and Snidal (2000) distinguish between hard and soft law in terms of three characteristics: the degree to which rules are obligatory or legally binding; the precision of the rules; and the delegation of functions such as monitoring and implementation to third parties. Hard law then refers to legally binding, precise obligations that delegate authority for interpreting and implementing the law. Soft law results from relaxing each of these criteria, particularly the first.

Several points are important. First, the hard-soft law distinction is continuous rather than binary. Second, the lack of legally binding obligations does not mean that adherence to soft law is completely voluntary: agreements may be enforced through a variety of non-hierarchical compliance mechanisms such as political pressure or public opinion. Third, there are numerous instances of soft law commitments evolving over time into hard international law: the soft law of today can become the hard law of tomorrow (Dupuy, 1990; Hillgenberg, 1999).

Let me return to figure 1 which serves to categorize a number of possibilities for imposing human rights obligations on transnational firms which will be discussed in more detail below. The lower left quadrant – non-hierarchical compliance mechanisms under the current international system – includes "voluntary" agreements such as the OECD Code for Multinational Firms or the U.N. Compact. (As I am concerned only with institutions beyond the boundaries of the firm, I will not consider firm or industry codes of conduct such as the Textile Industry's Fair Labor Association.) The lower right quadrant comprises hierarchical or hard compliance mechanisms under international law such as treaty or convention agreed to by states that imposes direct or indirect obligations on TNCs. The International Criminal Court established by treaty in 1998 "to promote the rule of law and insure that the gravest international crimes do not go unpunished"(http://www.icc-cpi.int/about.html) is an analog here.

The top two quadrants describe outcomes consistent with the evolving transnational order which puts us into the realm of speculation. That said, there is no reason conceptually that multiple actors -- including states, TNCs and NGOs -- could not reach an agreement on human rights norms or standards and then establish a supranational international institution with formal, hierarchical authority to monitor, judge and sanction behavior. The outcomes would be precise and obligatory with monitoring and enforcement delegated to a third party -- it would be a transnational equivalent of hard international law.

It is extremely unlikely, however, that this form of global governance will materialize in the foreseeable future. While the system is no longer state centric, states remain the most important and powerful actors and are not likely to cede sovereignty to an international institution to impose human rights obligations on TNCs. The refusal of the United States to participate in the International Criminal Court is instructive here.

That leaves us with the fourth quadrant: non-hierarchical compliance mechanisms that are consistent with the evolving transnational order; it is here that one has to sketch the outlines of a feasible solution. That is a difficult task given that the process of systemic change has just begun to unfold and that only dim outlines of its eventual endpoint are visible. I now turn to a more detailed discussion of three of the four possibilities, under the assumption that a hierarchical or "hard" transnational solution is not feasible at this time.

Codes of Conduct

Both the OECD's "Guidelines for Multinational Enterprises"[4] and the United Nations' "Global Compact"[5] are examples of voluntary codes promulgated under the auspices of international organizations. The OECD Guidelines are "recommendations addressed by governments to multinational corporations. They provide non-binding principles and standards for responsible business conduct consistent with applicable laws" (OECD, 2000: 15). Each of the thirty-nine signatory countries pledges, at least in theory, to hold their TNCs accountable. While the number of allegations of non-compliance submitted through national contact points has risen since the 2000 revision of the code, there have been only very few instances of effective government responses (BNA Monitoring Service, 2005).

The Guidelines reflect the Westphalian principle of non-intervention: the statement of principles notes that the subsidiaries of TNCs are subject to the laws of the countries in which they operate and that governments "have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions…" (OECD, 2000: 18). The provision relating to human rights is general and non-specific. MNEs are to "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments" (OECD, 2000: 19). At least one NGO has argued that there "is no conclusive

evidence that the Guidelines have had a positive, comprehensive impact on multinational enterprises," that without effective sanctions there is little incentive for MNCs to comply (OECD Watch, 2005: 5).

The United Nations' Global Compact is a voluntary enterprise initiated by Secretary General Annan at the World Economic Forum's annual meeting in 1999. As of early 2006 it involved nearly 3000 participants including 2500 business firms from 90 countries.[6] However, only 88 of those firms are from the United States and just 103 of those listed in the Financial Times' Global 500 participate. The Compact does not monitor the behavior of signatory companies, rather it "relies on public accountability, transparency and the enlightened self-interest of companies, labour and civil society to initiate and share substantive action in pursuing the principles upon which the Global Compact is based."[7]

Two of the ten principles deal with human rights in general terms: the first requires businesses to support and respect the promotion of internationally proclaimed human rights and the second to make sure that they are not complicit in human rights abuses.[8] While the Compact is voluntary and lacks substantial membership among large American transnationals, it does comprise a network of firms, NGOs and academic institutions that facilitate both the dissemination of best practices and a policy dialog. Its actual effectiveness, however, has been widely questioned as has the accountability of the firms that participate; it is criticized by activists for "blue washing" corporative activities, for lending the legitimacy of the United Nations to what may be no more than public relations efforts (Picciotto, 2003).

Codes of conduct have a number of advantages. As they are generally non-binding and not legal instruments, they can be negotiated relatively quickly and do not threaten the sovereignty of states. They provide a vehicle for discussion of the issues at hand and a forum for

building a consensus around an agreed upon set of standards for behavior (International Council on Human Rights Policy, 2002). They can level the playing field, providing a means to hold all firms to the same set of benchmarks and correspondingly, provide a consistent framework for NGOs and other civil society groups to judge firm conduct.

The non-binding nature of codes, the fact that they are typically not legally enforceable, does not mean that they are entirely voluntary, that compliance mechanisms do not exist. "Consequences" can certainly result from their violation including damage to firms' brands and consumer boycotts. Perhaps more important, they can establish the moral legitimacy of norms and rules and help shape identities, increasing compliance through what March and Olsen (March et al., 1998) call the "logic of appropriateness," a rule-based logic of action. The Global Compact, for example, is designed to work through both consequences resulting from "naming and shaming" and argument, persuasion and deliberation which might increase the both the moral legitimacy of its norms and group identity (Risse, 2004).

That said, the voluntary and non-binding nature of codes makes systematic and rigorous monitoring by non-participants and enforcement problematic. As Picciotto (2003: 135) observes, " Too often the fact that these codes were not legally binding was used to justify failure or even refusal to back them up with adequate procedures for monitoring compliance or dealing with alleged violations. Thus, 'non-binding' was assumed to mean 'aspirational,' which is not at all the same thing."

International Law

Both proponents and opponents of the idea agree that there is no conceptual impediment in international law to an agreement among states imposing obligations on private parties such as business firms (Ratner, 2001; Vazquez, 2005). A treaty or convention, for example, could

establish legally binding standards which could be enforced either directly on transnational firms or indirectly by obliging states to ensure that companies respect human rights (International Council on Human Rights Policy, 2002; Muchlinski, 2001). The question is whether doing so is feasible or desirable. These issues generate considerable debate in the literature which can only be touched upon here.

Ratner (2001: 448) believes that the international legal process should place direct human rights obligations on corporations; "International law offers a process for appraising, and in the end resolving, the demands that governments, international organizations, and nongovernmental organizations are now making of private enterprises." He argues that international law has already recognized human rights obligations on entities other than states and that the same arguments apply to corporations: "the question is not whether nonstate actors have rights and duties, but what those rights and duties are" (Ratner, 2001: 476).

Ratner argues that corporations should have duties to avoid both direct infringement of human rights and complicity in illegal conduct by a government. He suggests the possibility of a treaty resulting in a binding code of conduct, with enforcement mechanisms which could include a monitoring body which could hear complaints from a variety of sources, domestic enforcement through national authorities, and "a free-standing body" authorized to determine if corporations have violated their human rights duties and impose sanctions.

In "Beyond Voluntarism" the International Council on Human Rights Policy (2002: 7) concludes that "international law has a role to play in ensuring that companies respect human rights" including clear international rules to strengthen states' obligations and direct legal obligations on companies, where appropriate. Their argument is based on the limits of voluntarism, the impact of globalization on the efficacy of national regulation, the increased

power of TNCs, the existence of rights of private companies in international law and an analysis of the evolution of human rights law since the founding of the United Nations.

The most notable attempt to impose direct human rights obligations on transnational firms is the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights which were approved by the Sub-Commission on the Promotion of Human Rights of the United Nations Commission on Human Rights in 2003. The Norms state that while states have the primary responsibility to protect and promote human rights, "Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to respect, ensure respect for, prevent abuses of, and promote human rights recognized in international as well as national law" (United Nations Social and Economic Council, 2003).

Three points are important here. First, the Norms reaffirm that it is states that have the primary responsibility for human rights. Second, they appear to go beyond negative obligations to avoid abuse and impose a positive duty on transnational firms to promote human rights. Last, and perhaps most important, the draft Norms "attempt to impose direct responsibilities on business entities as a means of achieving comprehensive protection of all human rights…" (Sub-Commission on the Promotion and Protection of Human Rights, 2005: 9). In doing so, they would go beyond international human rights law as it currently exists. The Norms, if adopted, would be neither a convention nor a treaty: their legal authority would derive from their sources in treaties and customary international law and from their restatement of international law applicable to companies (Weissbrodt & Kruger, 2003).

There has been considerable opposition to the Norms from the corporate community (and others) including concerns that the Norms dilute the responsibility of states for human rights, that

they are a misstatement of international law and that they are unduly negative towards business. The Commission on Human Rights declined to adopt the Norms in 2004, arguing that while they "contain useful elements and ideas" they have no legal standing (Sub-Commission on the Promotion and Protection of Human Rights, 2005; Vazquez, 2005).

There are a number of advantages to imposing human rights obligations on transnational firms through international law. As noted above, there are serious limitations to voluntary standards: duties imposed through the force of law would be obligatory. Second, implementing obligations through international law would require that applicable standards be thought through and negotiated by the international community. A clear set of internationally agreed upon standards that are transparent and broadly applicable would benefit of transnational firms by removing uncertainty and leveling the playing field. Third, a convention or treaty could establish mechanisms for monitoring behavior, judging possible violations and imposing sanctions, either indirectly through states or directly through an international institution.

That said, imposing human rights obligations on transnational firms entails a number of potentially serious problems. It is difficult to extend hierarchical "hard law" compliance mechanisms beyond the borders of the state given the lack of an ultimate authority in the international political system. It is far from clear that the "international community" could agree on a meaningful set of standards for behavior even if its writ were limited to the most serious violations of human rights. Doing so would involve both agreeing on the norms of behavior themselves and the responsibilities of private actors. The problem here is exacerbated by the emergence of significant new actors in the world economy such as China and India who do not appear to be overly concerned with the human rights implications of their firms' investments abroad and have a reluctance to "interfere" in the domestic affairs of others.

Even if the international community could agree on a set of standards through a treaty or convention enforcement is likely to remain a serious problem. At this point, it appears that the most likely outcome would be to establish indirect obligations on companies by holding states responsible for the behavior of "their" TNCs. That would be problematic to say the least: **st**ates that are reluctant to intervene across borders to protect human rights directly may be less than likely to do so through the network of their transnational firms. There are marked differences across states – even among the industrialized countries – in terms of beliefs about the market versus regulation, the relationship between corporations and government, and the power of the corporate community. It would be unreasonable to expect uniform enforcement of any international norms.

While these problems could be resolved by agreement to impose direct obligations on TNCs under the aegis of an international institution, that outcome is not likely in the foreseeable future. "(T)he imposition of direct obligations on private corporations, backed by an effective international mechanism to enforce those obligations, would represent a significant disempowering of states." States are likely to resist that sort of change strongly and obligations without an effective enforcement mechanism are likely to fail (Vazquez, 2005: 150).

Last, imposing human rights obligations on transnational firms – directly or indirectly – through "hard" international law is anachronistic (Roht-Arriaza, 1995). It is an attempt to impose a solution derived from the Westphalian international system on a post-Westphalian order. While recognizing that private actors such as transnational firms could be subjects of international law may accept the reality of the early twenty-first century, it is still an attempt to force a square peg into a round hole, an attempt to adapt state-centric international law to a multi-actor environment.

A Transnational Solution

Regimes have been defined as "sets of implicit or explicit principles, norms, rules, and decision making procedures around which actors' expectations converge" (Krasner, 1982). While regime theory was developed to explain the ability of states to sustain cooperative efforts over time, hybrid or mixed regimes are now emerging which involve states, international organizations, NGOs and the private sector in establishing principles, norms, rules and decision making procedures (Clapp, 1998; Livermore, 2006; Risse, 2004). To some extent hybrid regimes reflect an absence of public governance in the global arena; as Haufler (2001: 29) notes in a different context, "…when governments are unwilling or unable to govern effectively, political leaders may see private governance as a valuable tool to achieve public ends"

One example of a non-governmental institution which can "be an authoritative source of rules to which states or firms commit" is the International Organization for Standardization or ISO (Bernstein & Cashore, 2000). ISO, founded in 1946, is a network of the national standards institutes of 156 countries with a central secretariat in Geneva. It has been called an "informal-decentralized international institution" (Clougherty et al., 2006: 4). "ISO occupies a special position between the public and private sectors. On the one hand, many of its member institutes are part of the governmental structure of their countries, or are mandated by their government; on the other hand, other members have their roots uniquely in the private sector, having been set up by national partnerships of industry associations."[9]

ISO's standards are "voluntary." However, as Roht-Arriaza (1995: 487) observes, the process is neither fully private nor fully voluntary. "The standards may affect the public regulatory process in a number of ways: global and regional trade agreements may explicitly recognize them; government regulations may refer to them for definition of terms; and

government procurement rules may adopt them. Further, market pressure from consumers, financiers, insurers, and competitors may convert them to prerequisites for companies wanting to do business in large markets".

ISO has broadened its reach considerably with its 9000 quality control standards (1987) and is blurring the line between the private and public spheres with its 14000 environmental standards which have been adopted by standard-setting bodies in some states and are recognized by the World Trade Organization (Clapp, 1998). Increasingly, ISO sets industry standards in conjunction with or in addition to those set by domestic regulators (Spiro, 1996: 967).

ISO provides an example of an issue specific hybrid regime where non-hierarchical compliance mechanisms relying on soft law morphed, in part, into hierarchical compliance enforced through hard law as the standards were incorporated in states' regulatory frameworks. A second example of soft law standards emerging as hard law over time is the Codex Alimentarius which provided voluntary standards for food quality until 1995 when it was incorporated into the then new World Trade Organization (Livermore, 2006).

Windsor (2004) envisions the establishment of international business norms through the evolution of multiple policy regimes fragmented by both issue area and region. One possibility could be a transnational regime comprised of all of the relevant actors (states, firms, NGOs and international organizations) which would serve as a focal point for developing norms and rules regarding corporate complicity in human rights violations. It could later develop into an institution engaged in monitoring violations, judging transgressions and enforcing compliance.

While TNCs (and all firms) have unequivocal moral obligations to respect human rights, norms and rules regarding what constitutes corporate complicity in violations by others are far from clear. Given the public pressures on transnational firms for "socially responsible behavior"

and the increasing abilities of NGOs and other private actors to impose meaningful sanctions on perceived miscreants, it should be in the interest of TNCs, NGOs, states (with the exception of those who are the "perpetrators") and international organizations to develop clear, transparent and widely accepted standards for the responsibilities of transnationals vis-à-vis human rights violations.

There has been some degree of convergence among states, TNCs and NGOs on human rights norms, at least among North American and European firms and governments. The extractive industry's Voluntary Principles on Security and Human Rights (Voluntary Principles on Security and Human Rights, 2006) and the OECD's Guidelines for Multinational Enterprises (OECD, 2001) have had relatively wide acceptance even if compliance is an issue.

Establishing norms and setting standards, however, is necessary but not sufficient. "One of the main problems of contemporary global governance is to decrease the growing gap between international norm acceptance, on the one hand, and rule compliance, on the other" (Risse, 2004, 305). If an institution charged with imposing direct obligations on TNCs for complicity in human rights violations is to be effective it must also provide mechanisms for monitoring behavior, judging transgressions and ensuring compliance. That is where the analogy with ISO breaks down. While there are provisions for audits of firms seeking certification, the ISO 9000 quality standards are, to some extent, self-monitoring and self-enforcing through the market.

A supranational institution with the ability to enforce compliance through "hard" transnational law is not feasible at this point and, given the very rudimentary state of global governance, may not even be desirable. Thus, for the foreseeable future, compliance with norms establishing rules for avoiding complicity in human rights violations by TNCs will have to

be obtained through non-hierarchical steering mechanisms (Risse, 2004), though soft law solutions.

To the extent that norms or standards for TNCs with regard to human rights result from a transparent, inclusive process involving multiple actors, they should be perceived as legitimate and authoritative. Clear and authoritative standards defining what constitutes complicity in human rights violations should increase the efficacy of compliance driven by "expected consequences," by some combination of "positive incentives and negative sanctions" (March et al., 1998; Risse, 2004), such as civil society campaigns, consumer boycotts and the like. That is, authoritative norms should both increase the rewards to companies for compliance and the impact of penalties imposed for their violation.

March and Olsen (1998,946, 963) suggest that international identities may evolve through expert cooperation around specific tasks as problems are defined as international in scope and meaning as transcending borders. They note that while actors may enter into new relationships for instrumental reasons, the development of identities which result from their engagement can shift the bases for action from expected consequences toward rules: "political actors acting in accordance with rules and practices that are socially constructed, publically known, anticipated and accepted."

Compliance could then result from a "logic of appropriateness," from constructing an identity and "matching the obligations of that identity or role to a specific situation" (March et al., 1998, 951-52). Acceptance of a logic of appropriateness involves acceptance of the moral legitimacy of the norms and rules in question. As Palazzo and Scherer note (2006), moral legitimacy becomes critically important in the global sphere where normative standards are not yet broadly accepted and governance mechanisms are weak or non-existent. A transnational

institution focused on the human rights obligations of TNCs would provide the opportunity for learning, persuasion and deliberation which would be critical to acceptance of the moral legitimacy or authoritativeness of the norms, standards and rules which evolve (Palazzo et al., 2006; Risse, 2004).

It might also provide an opportunity for democratic governance in this area. While I can only touch on the topic here, a number of authors consider open and sustained deliberation as a means of providing a form of democracy in a transnational sphere comprised of overlapping communities which no longer coincide with national borders (Held, 2006; McGrew, 1997, 2003).

Norms or standards must accept both the reality of the post-Westphalian transition and the fact that the TNC functions globally under the control of its management (Avi-Yonah, 2005) if they are to be effective. In a transnational world order, the idea of extraterritoriality is less and less relevant, especially in the context of the obligations of, or control over, the transnational corporation. The TNCs as an entity is, and should be, held responsible for violations of norms by any of its units, and home countries should be responsible" for holding TNCs as a whole liable for any violations of the agreed upon norms by *any* of their units, regardless of where they are located. A hybrid transnational institution which brought together the relevant actors to agree on a set of authoritative human rights standards for TNCs and established the principle of an enterprise's responsibility for the actions of all of its component parts would represent a major step forward that is consistent with the emerging post-Westphalian system.

At this point it is difficult to envision the outlines of a hybrid public-private institution that would have the power, authority, and resources to monitor, judge and effectively sanction violations. However, some means of systematic monitoring of behavior and judging transgressions is necessary if the norms are to achieve moral legitimacy. It is critically important

that all involved believe that the probability of being "caught" is not simply a function of chance or visibility and that the playing field is level, that all those accused of transgressions are judged fairly. Thus, in addition to setting standards, a putative multi-actor institution would have to have the authority and resources to set up some sort of monitoring mechanism and "tribunal."

As noted above, the establishment of an authoritative, multiactor, transnational regime should increase the probability of effectiveness of the non-hierarchical compliance mechanisms discussed here. That said, I would hope that over time a regime would develop into an autonomous transnational institution and non-hierarchical, soft law norms would evolve into hard, enforceable human rights obligations imposed directly on the TNC as an entity. In the longer run, global governance cannot rely entirely on soft law and non-hierarchical compliance mechanisms if it is to be effective. The problem here, which I cannot resolve in this paper, is what hard "transnational law" will mean in the context of a more fully evolved post-Westphalian world order.

While the evolution of a transnational institution dealing with the human rights obligations of TNCs has the advantages discussed above, there are a number of very real problems associated with it. First, it is based on assumption that is far from universally accepted: the reality of the transition to a transnational world order. It is far from clear whether the trends discussed here represent only minor modifications in the international state system or "a major transformation of the constitutive principles and practices of international political life" (March et al., 1998, 947).

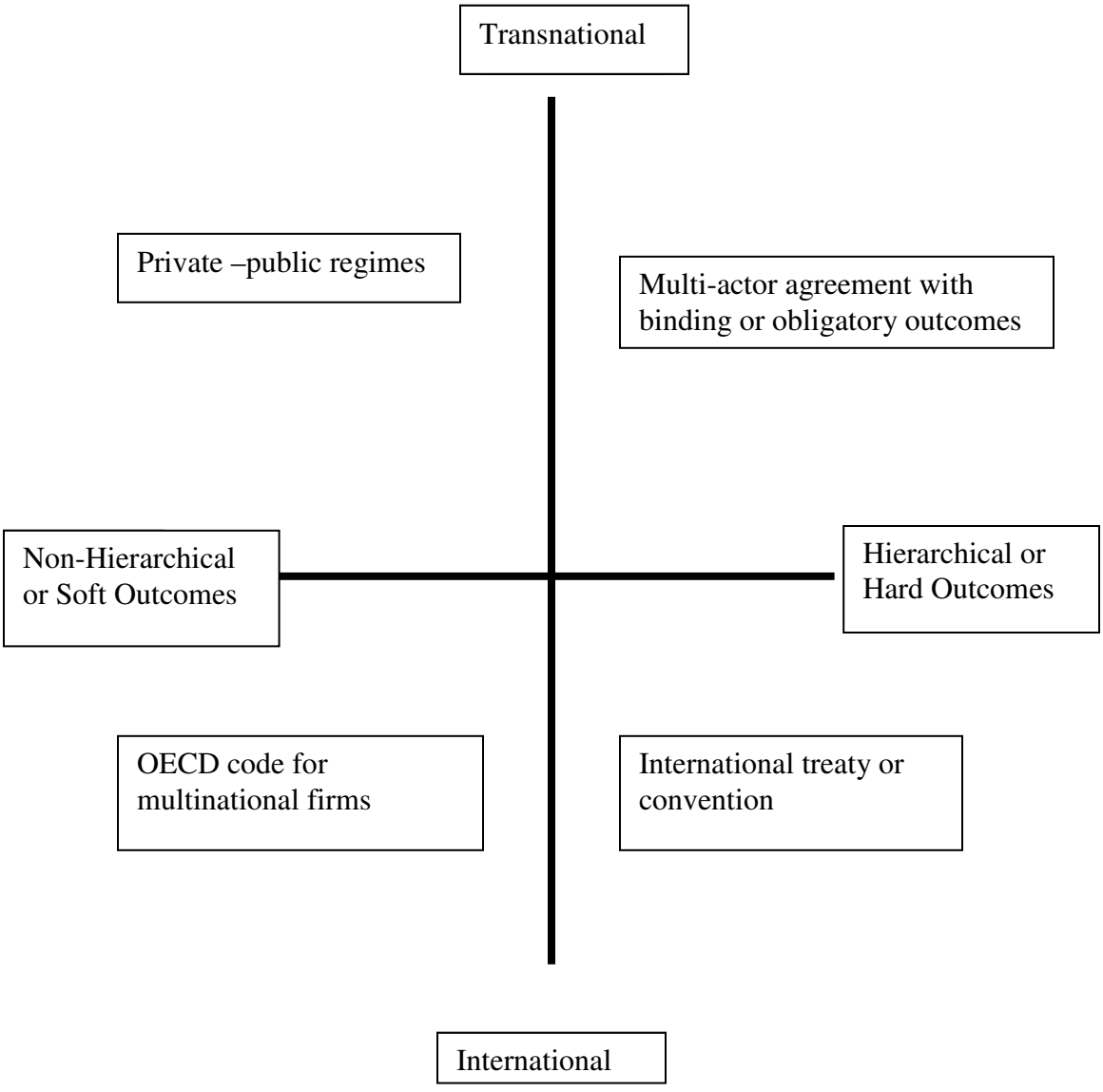
Second, states are still the most important actors in world politics and an effective, autonomous transnational institution would require a consensual relinquishment of sovereign authority that has yet to occur. This is particularly relevant here given the reluctance of

emerging powers such as China and India to accept intervention to protect human rights. Third, non-state actors such as NGOs and TNCs have a long way to go before they are fully accepted as legitimate and authoritative. Last, there are very serious questions about whether any relatively autonomous transnational institution would be perceived as democratic: at this point deliberative democracy is an unproven concept.

Thus, a preference for a putative transnational regime versus codes or international law as a solution to the problem of imposing obligations on TNCs for complicity in violations of human can be seen as a preference for the ephemeral rather than the existing. However, to the extent one believes that we are in the midst of a major systemic transformation of world politics, it is also can also be seen as a preference for the future rather than the past.

I believe that over time new transnational governance institutions will evolve which are not public in the sense of solely state-based, but which will have the authority and power to judge violations and impose sanctions. At that point, the distinction between public and private authority may have lost meaning.

Figure 1
Multinational Firms and Human Rights Obligations



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[1] The Alien Tort Claims Act permits aliens to sue in a US court for torts committed abroad in violation of "the law of nations" or a treaty of the United States. Courts have held that gross violations of human rights violate the law of nations and are thus actionable under the law (Blumberg, 2002; Bridgeford, 2003; Olsen, 2002). The Talisman case was dismissed in 2006 due to a lack of admissible evidence (2006 (December 1): 5).
[2] The other participants in GNOPC were The China National Petroleum Company holding 40%, Petronas of Malaysia 30% and the Sudanese national company 5% (Sudan Update, 1999). Talisman was the primary operating company.
[3] Esty (2006) suggests that the "thickness" of supranational governance can be portrayed in terms of who holds decision-making authority and whether the results of the decision process are formal and binding.
[4] http://www.oecd.org/dataoecd/56/36/1922428.pdf
[5] http://www.unglobalcompact.org/
[6] http://www.unglobalcompact.org/ParticipantsAndStakeholders/index.html
[7] http://www.unglobalcompact.org/AboutTheGC/index.html. It should be noted that when the Compact discusses human rights, it refers to moral obligations under the Universal Declaration and the specific obligations undertaken when enrolling.
[8] http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html
[9] http://www.iso.org/iso/en/aboutiso/introduction/index.html.