Global business and human rights

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Plan of the presentation

• 1. Economic globalisation
• 2. Globalisation and HR
• 3. Existing mechanisms
• 4. Perspectives for the future
• 1. Globalisation
Economic globalization

• From national economies to a global borderless global economic system
• Liberalization of capital movements, international trade and foreign investment
  • The long wave of international economic liberalization since 1945: from GATT (1947) to the “mega trade and investment agreements” (TTIP, TPP, etc.)
  • The neoliberal movement (1980s onward) and the demise of the communist alternative (1989)
  • Continuing removal / reduction of tariff barriers and other barriers to trade and foreign investment
• National competition for trade and foreign investment
  • The role of trade and FDI as drivers of growth and job creation
  • Proliferation of regional, bilateral and plurilateral trade agreements
• Globalization of consumer preferences (clothing, food and beverages, cars, watches, cellulars, etc.)
Major actors of globalisation

• FDI and MNC/TNC
  • Definition of MNC
  • Growth of FDI in mining and agriculture, in manufacture and in services
  • Increasing weight of MNC in domestic economies

• Global value chains
  • International segmentation of the production of goods and services
  • From “made in” a certain country to “made in the world” (P. Lamy)
  • Key global supply chains: clothing, footwear, sports articles, processed food, electronics, paper, etc.
Regulation of economic globalisation

• International rules
  • International financial rules (G20, FSB, Basel Committee)
  • International trade rules (GATT, WTO agreements)
  • Lack of international rules on foreign investment (failure of PIA, 1994)

• Institutions of global economic governance
  • Post WW II “Bretton Woods institutions” (WB and IMF)
  • GATT (1947) and WTO (1995)
  • Other institutions of international economic governance
    • UN agencies (UNCTAD, etc.)
    • OECD

• International dispute-settlement mechanisms of business-related disputes
  • WTO DSM
  • International arbitration of state-to-state disputes in bilateral trade and investment agreements
  • International arbitration of investor-to-state disputes (ISDS) in investment protection agreements
• 2. Globalisation and HR
The relevant international HR norms

• The HR standards to be respected by global business should be universal and equal for everybody

• They should comprise the following instruments
  • The UDHR, 1948
  • The CCPR, 1966
  • The CESC, 1966
  • The ILO conventions on the four “core labour standards” (1998)
Impact of economic globalisation on HR

• The positive side
  • The potential benefits of economic growth and employment on HR
  • Impact of economic globalisation upon democratic transitions world-wide ("democratic globalisation")

• Negative implications
  • In developing countries: appalling working conditions (child labour, forced labour, unsafe working conditions, miserable wages, etc.), massive land eviction, breach of the rights of indigenous communities, etc.
  • In developed countries: risk of “race to the bottom” (labour rights)

• General duty of the states to protect HR against third parties; however, powerlessness or unwillingness of host countries to face MNCs’ power
The traditional state-bound nature of HR

• HR were born to protect individuals against state power
• National remit of HR protection
• International HR protection schemes still aimed at guaranteeing HR at national level
• The challenges of globalisation to HR:
  • Non-state actors as HR addressees?
  • HR protection in trans-national relations?
The lack of specific HR obligations in relation to global business

- Traditional lack of HR commitments and obligations in the multilateral trade regime (WTO) and in the regulation of international financial institutions (IFIs)

- The absence HR rights obligations in the action of transnational/multinational corporations
  - Lack of international rules on FDI
  - BITs protecting only investors’ rights vis a vis the host state, not their obligations

- The traditional resistance of developing countries to HR clauses in international trade
  - The sovereignty argument
  - The competitiveness argument
• 4. Existing mechanisms
The changing situation

• The global rise of HR awareness related global business
  • Public opinion pressure: campaigns, protests, boycotts
  • Advocacy of HR NGOs (HR Watch, etc.)
  • External political pressure from international organizations and foreign governments
    • UN and ILO awareness-raising initiatives

• Emerging HR clauses in international trade and foreign investment instruments

• Developments regarding multinationals’ HR obligations
Groups Accuse Apple Supplier in China of Labor Violations

By NEIL COUGH and BRIAN X. CHEN  SEPT. 4, 2014

An Apple store in Beijing. Apple is facing new claims of violations of labor rights and workplace safety at a supplier in China. Wang Zhao/Agence France-Presse — Getty Images

HONG KONG — With its stock near a high and its latest iPhone expected to be introduced on Tuesday, Apple is facing new accusations of violations of labor rights and workplace safety at a supplier in China.
Emerging HR protection mechanisms

• Two objectives:
  • Prevent negative impacts on HR
  • Promote positive impacts on HR

• International organizations’ soft law codes of conduct and recommendations
• Corporative self-regulation (“responsible business”, CSR, self-impose codes of conduct)
• Ad hoc compacts (for example, Bangladesh textile compact)
• Legal obligations out of investment contracts and international binding rules (for example, EU HR clause)
• HR impact assessments (HRIAs) of international trade and foreign investment agreements
• Responsibility of states for the HR violations committed abroad by their companies or subsidiaries?
UN initiatives (1)

“Advancing business and human rights globally: alignment, adherence and accountability”

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UN initiatives (2)

- UN instruments to promote HR in the activities of global business
  - Resolutions and declarations
    - UNHRC - *Guiding Principles on Business and Human Rights, 2011*
  - Special Representative of the Secretary-General on human rights and business
  - Working Group on human rights and business
The Ten Principles

The UN Global Compact’s ten principles in the areas of human rights, labour, the environment and anti-corruption enjoy universal consensus and are derived from:

- The Universal Declaration of Human Rights
- The International Labour Organization’s Declaration on Fundamental Principles and Rights at Work
- The Rio Declaration on Environment and Development
- The United Nations Convention Against Corruption

The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption.

Human Rights

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
- Principle 2: make sure that they are not complicit in human rights abuses.

Labour

- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4: the elimination of all forms of forced and compulsory labour;
- Principle 5: the effective abolition of child labour; and
- Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
- Principle 8: undertake initiatives to promote greater environmental responsibility; and
- Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.
WTO and HR

• The principle of non-discrimination of foreign countries (MFN rule) and imported goods (national treatment)

• The explicit rejection of a labour clause (Singapore Declaration, 1998)

• Attempts to read HR protection into art. XX GATT exceptions
  • Prison labour
  • Slave and forced labour?
  • Health protection?

• One major exception: the derogation of TRIPS in order to ensure the access to essential medicines in developing countries
ILO initiatives

• ILO mandate
  • Adoption of international labour conventions
  • Review of member-states’ compliance with ILO’s conventions

• Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration) 1976

• Declaration on the Core Labour Standards, 1998
  • History of the Declaration
  • Content of the Declaration
OECD initiatives

• OECD as a club of developed and advanced developing countries
• The OECD mandate and instruments
  • To foster cooperation between the State parties in the field of economic and social development
  • Research, review of national economic, social and cultural policies, recommendations, policy guidelines
• Major OECD guidelines on the relation between business and HR
  • Guidelines for Multinational Enterprises
  • Guidelines on corporate social responsibility
  • Guidelines on FDI
World Bank, IMF and other international financial institutions (IFIs)

- The absence of HR in the charter of these international final institutions (IFIs)
  - Limited economic and development mandate
  - Prohibition of political interference
- The “Washington consensus” about *Structural Adjustment Programmes* (SAPs) aimed at addressing severe external and internal accounts unbalances
- The possible impacts of WB and FMI programmes upon HR in the affected countries
- The progressive development of a limited “HR conditionality” (child labour and gender equality) in the programmes financed by them
- The case of regional development/investment banks
EU initiatives (1)

• Art. 21º TEU and art. 205º TFEU
• The “HR clause” and the “labour clause” in the international trade policy of the EU
  • International trade agreements
  • Unilateral trade preferences provided to developing countries
• “HR conditionality” in the economic and financial assistance policies of the Union
EU initiatives (2)

- Effectiveness of the EU HR policy in connection with the international economic policy of the EU
- Enforcement mechanisms
  - HR clause in international agréments as an “essencial clause”
  - HR clause and labour rights clause in trade preference schemes
  - Labour clause in bilateral trade and investment agreements
  - HR conditionality in the development and financial assistance policies of the EU
- Some recent cases
  - Labour rights in Colombia
  - Child labour in Uzbekistan
  - Labour safety in the textile/clothing sector in Bangladesh (*Rana Plaza* case)
4. Perspectives for the future
Principles that should govern the compliance of global business with HR norms

1. HR should be explicitly binding not only on the states and public authorities but also on private parties, particularly on MNCs (“horizontal effect” of HR)

2. In order to comply with their duty to protect HR against MNCs, host States should have appropriate mechanisms to enforce them (inspectorates, ombudsmen, national HR commissions, judicial mechanisms, etc.)

3. Home States should not back their MNCs when they breach HR abroad; on the contrary, they should adopt or even binding rules or at least guide guidelines and recomendaions aimed at preventing or punishing those violations

4. MNCs should abide by internatioli agreed codes of conduct issued by interantional organiziations when dealing with host countries

5. As a matter of self-regulation, MNCs should adopt themselves codes of conduct and should require that the same code of conduct be respected by the foreign enterprises belonging to their produt chains
Further principles to ensure the compliance of global business with HR norms

• 1. Trade and investment agreements should be preceded by a HR impact assessment
• 2. Trade and investment agreements should include a HR and a labour rights conditionality clause and provide for appropriate and sanctions in case of any serious breach of that conditionality
• 3. Trade and investment agreements should establish permanent monitoring bodies, with the participation of civil society organizations
• 4. Trade and investment agreements should provide for complaint mechanisms by interested parties and HR organizations
• 5. Trade and investment agreements should allow the submission of HR violations to appropriate dispute settlement mechanisms
• 6. Trade and investment agreements should provide for the periodical independent review of the compliance by the parties with the HR and labour rights clauses
Towards a binding international instrument?

• HRC’s resolution 2014 “Elaboration of an international legally binding instrument on Transnational Corporations and other Business Enterprises with respect to Human Rights”

• The objectives of the Resolution

• Creation of a working group

• Next steps and perspectives
Globalisation, HR and “global constitutionalism”

• “Third wave of democratisation”: towards the universalisation of democracy, rule of law and HR?
• Economic globalisation as a leverage to promote HR abroad
• Non-state actors, namely MNC, as addressees of HR obligations
• The “new global constitutionalism” in the field of HR
  • International enforcement of states’ HR obligations at home (international HR courts and other review procedures)
  • HR obligations of transnational organizations themselves (EU, UN)
  • HR obligations of international non-state actors
  • States’ extraterritorial obligations (ETOs) in the field of HR
• Business globalisation requires constitutional globalisation?
Sources and references

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- Olivier de Schutter, *Global economy, global rights: The advance of ETOs in international law – A silent revolution or a return to the original promise?* [http://www.etoconsortium.org/en/library/documents/?tx_drblob_pi1%5bdownloadUid%5d=115](http://www.etoconsortium.org/en/library/documents/?tx_drblob_pi1%5bdownloadUid%5d=115)