NGO expectations of companies and human rights

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Abstract. Factors such as ‘globalisation’, the perceived growth in the power and influence of transnational corporations (TNCs), media coverage of company involvement in human rights violations and perceived weaknesses in international regulatory frameworks have raised public concerns about corporate responsibility for the protection of human rights. Human rights non-governmental organisations (NGOs) such as Amnesty International have invested significant effort in campaigning against companies, lobbying for binding regulation and defining their expectations of companies.

This article provides an overview of the business and human rights debate, and assesses the manner in which NGO campaigning activity is starting to create soft law obligations, with the emergence of some consensus around the norms or standards against which companies should be judged, a growing acceptance on the part of companies that they do have responsibility for the protection and promotion of human rights and the growing involvement of government in voluntary initiatives relating to human rights. The debate on business on human rights also has broader implications as it sees one set of non-state actors (i.e. NGOs) working to define norms and legal obligations for another set of non-state actors (i.e. companies), with limited involvement of government. This contest of influences, which is duplicated in many other corporate social responsibility debates, is likely to be an ever more common approach to the development of soft, and probably hard, international law obligations.

Keywords: business, human rights, international law, non-governmental organisations (NGOs)

1. Introduction

Factors such as ‘globalisation’, the perceived growth in the power and influence of transnational corporations (TNCs), and media coverage of company

1 Globalisation is used in this article as a loose term to describe a process of economic integration, a consequence of which is the possible move away from the state as the exclusive focus of analysis in international affairs (see, further, R. McQuordale and R. Fairbrother, “Globalization and Human Rights”, Human Rights Quarterly 21 (1999), pp. 735–766 at pp. 736–739).

2 For the purposes of this discussion, the term TNC refers to an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries (Sub-Commission on the Promotion and Protection of Human Rights, Sessional Working Group on the Working Methods and Activities of Transnational Corporations, Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, UN Doc E/CN.4/Sub.2/2002/13). Although this article refers to TNCs, a range of other
involvement in human rights violations have raised public concerns about corporate responsibility for the protection of human rights. These concerns have been further exacerbated by the perceived weaknesses in regulatory frameworks, at the international level and in developing countries, to ensure the human rights performance of companies. One of the consequences has been that human rights non-governmental organisations (NGOs) have moved to occupy some of the regulatory space that is not presently occupied by government. NGO activities have had the consequence of stimulating moves towards the ‘regulation’ of companies, through encouraging the development of corporate self-regulatory regimes as well as increasing the pressure on governments to take action to complement or supplement these self-regulatory initiatives. The result is that the early signs of customary international law are starting to emerge. These activities are also of interest as it sees two distinct sets of non-state actors (i.e. NGOs and TNCs) engaging in a process of dialogue and engagement that mimics yet differs substantially from traditional legal approaches.

The article begins with an overview of the reasons why company human rights performance is the subject of NGO interest. The second part of the article then looks at the NGO expectations of companies and how these have been derived, at least in rhetoric, from international human rights law. The third part of the article looks at the responses on the part of companies and of government to NGO campaigning activities, and canvasses the question of whether we are seeing the emergence of soft law.

terms are also used in the literature such as ‘multinational corporation’ (MNC), ‘multinational enterprise’ (MNE), ‘global corporation’ and ‘multinational’ (see, generally, See T. Voon, “Multinational Enterprises and State Sovereignty under International Law”, Adelaide Law Review 21 (1999), pp. 219–252 at p. 220).

3 For the purposes of this article, NGOs will be defined as those ‘... groupings of individuals and associations formal and informal, that belong neither to government nor to the profit-making private sector’ (United Nations Research Institute for Social Development [UNRISD], Visible Hands – Taking Responsibility for Social Development (Geneva: UNRISD, 2000), as quoted in J. Richter, Holding Corporations Accountable (London: Zed Books, 2001) at p. 35). This term encompasses international NGOs such as Amnesty International, Human Rights Watch and Oxfam, as well as local civil society organisations. The term NGO is not intended, in the context of this discussion, to encompass business organisations such as the International Chamber of Commerce, the World Business Council for Sustainable Development or international or national industry or trade associations. A further discussion of the definition of NGO is provided in J. Gamble and C. Ku, “International Law – New Actors and New Technologies: Centre Stage for NGOs?”, Law and Policy in International Business 31 (2000), pp. 221–262 at pp. 227–229.