Book Review


The main concern for many of the contributors to this volume is with the corporate impact on human rights and environment in the developing world. The editorial focus is clear: human rights violations committed either directly by multinationals or in collusion with abusive host governments need to be addressed by binding regulation. The book is therefore clearly structured into sections allocated to respectively international and domestic regulatory approaches, and maintains a sceptical tone in regard of corporate voluntarism.

The Narrow and the Broader Human Rights Case to Business

The understanding of what business has to do with human rights is amenable to two approaches. One is narrowly ‘legalistic’ and looks to ensure that transnational corporations (TNCs) do not violate human rights. Indeed, the seminar on which the book is based looked into ‘the possible role of international law in controlling and limiting the abuse of human rights by the global operations of such private entities [TNCs]’ (p. vi). The other approach is more ‘developmental’ in nature, probably less precise conceptually and more inclusive in terms of the stakeholders involved. In this case the focus is broader than strict corporate compliance with human rights standards and is akin toward the full realization of human rights by coopting TNCs into a set of social arrangements, the so-called partnerships for development. The UN’s Global Compact initiative responds to widespread expectations by prompting business not only to refrain from committing violations, but also to support human rights and has set its operational focus on joint developmental programs.

The United Nations pursues both tracks simultaneously: the Sub-Commission on the Promotion and Protection of Human Rights has a Working Group on transnational corporations and human rights aims at a binding code of conduct for TNCs (see Weissbrodt’s contribution and the recent UN resolution E/CN./SUB.2/RES/2001/3) while the Global Compact attempts to engage business together with the civil society organisations in partnerships for development (see the book The United Nations and Business – A Partnership Recovered, by Sandrine Tesner, 2000). The volume’s introduction mistakenly sees the Global Compact as a voluntary code of conduct and tends to dismiss it by entertaining ‘the possibility of a more serious approach’ (p. 10).

The two perspectives are by no means mutually exclusive but based on the understanding that while grave corporate abuses require a legal sanction, the human rights case against corporations is still necessarily broader. As Weissbrodt notes,
'In view of the incipient “partnership for development” proposed in the Secretary-General’s new engagement with TNC representatives, the Sub-Commission should consider the subject matter within a framework common to both TNCs practices and to the means for implementing the “partnership for development” (p. 129).'

The increased cooperation between corporations, non-governmental and international organisations in developmental projects, as well as the commonality of goals of the human rights and developmental agendas (see the Human Development Report 2000 Human Rights and Human Development by the UN Development Programme, Chapter 1), would render a narrow use of the concept of human rights insufficiently attuned to some positive corporate developments and may lessen its relevance outside the courts of law and governmental bodies.

The Regulatory Efforts of International Organizations

Reading Professor Kamminga’s introduction one could wonder if international law has encountered a legitimacy crisis in dealing with TNC activities and whether states have been myopic to the virtues of international law in creating a level playing field for commercial activities. This strong emphasis on the role of international law becomes meaningful as a counterargument to a perceived political reluctance among sovereign states to move private sector entities closer to acquiring international legal personality by attributing them international duties.

Sarah Joseph investigates possible regulative responses to corporate abuses and often escapes the legal camp to restore the complexity of the debate. The focus on immediate legal redresses manifested throughout the volume prevents her from expanding the analysis toward possible regulative solutions based on mandatory disclosure and verification justified along ‘reflexive law’ lines. The same attempt at placing the debate in perspective can be attributed to Avery’s compilation. Though informative and accounting for developments in the business circles, his description seems to loose its clarifying potential to succumb under an overwhelming amount of interpretable facts and statements, hiding more than revealing the tensions of making companies works along human rights goals. The many connections made therein (also available in the impressive database compiled by the author available at http://www.business-humanrights.orf) encourage the reader to take interest not merely in placing constraints on the market mechanism, but also in attempts to creatively exploit the competitive forces present therein.

In his contribution regarding the jurisdiction over artificial persons under international criminal law, Professor Clapham concludes:

‘[t]he lack of international jurisdiction is no bar to the enforcement of the substantive obligations that international criminal law places on MNCs (p. 195).’

The binding nature of such international standards in respect of TNCs is not dependent on the jurisdictional reach of international organisations (such as the International Criminal Court), but revolves around national laws allowing courts to exercise universal jurisdiction. Even more, in view of fresh developments, Clapham asserts that

‘[even though] corporate manslaughter or negligent homicide cases have only been rarely prosecuted, this is due to prosecutorial restraint rather than any sense of legal impossibility (p. 194).’

On a more advocating tone, the author considers that