MULTINATIONAL ENTERPRISES AND HUMAN RIGHTS: AN ENFORCEMENT DISCUSSION

Abstract

The growing acceptance of Corporate Social Responsibility (CSR) concepts in business is making itself felt in part by the creation of a number of voluntary initiatives to which Multinational Enterprises can subscribe. Two of these initiatives have come from the United Nations. One, the Global Compact, was designed by the Secretary-General to be a partnership between the United Nations and MNEs. The United Nations Norms, which are regarded by some as a restatement of universally accepted human rights concepts, are addressed to both States and MNEs. Neither provide any enforcement mechanisms. This paper argues on the basis that business is now global, that it is time to consider a global framework which contains accountability and enforcement aspects, which can protect those rights that have come to be understood as essential to human well-being. In that way, there will be a true acceptance and integrated understanding of CSR in business.

Keywords

CSR; human rights; accountability; enforcement; global; business; MNEs

Introduction

The "invention" of the corporation as we know it during the course of the 19th century provided a vehicle for business that enabled amazing economic progress for those jurisdictions which embraced the possibilities that the spread of investment in business created. Allowing a large number of small investors to be involved in such enterprises as large scale manufacturing, infrastructure, banking and finance, and service industries has, however, not been without its pitfalls. Larger companies bring agency issues, whereby owners or investors must trust the managers appointed by the elected directors to act in a manner that is consistent with the interests of the owners.

One answer to this conundrum is found in disclosure requirements imposed on companies. As Farrar (2005) notes,

> "Disclosure of information has been part of the scheme of corporate governance from the earliest English legislation of the nineteenth century….The policy behind this is linked originally with the idea of incorporation as a privilege which was granted on certain terms…. The principle concerns were originally business failure and fraud. Later the emphasis was more on directors' stewardship of assets and funds and the protection of investors and creditors. Later still has been the emphasis on the role of information in making investment decisions" (p.215).

This disclosure however was mainly concerned with financial information, aimed at existing and potential investors, compliance with Stock Exchange Rules, and

legislation which prescribed the extent of what information had to be disclosed. There is a globally accepted financial reporting framework that is now embedded in modern business, and harmonisation of that framework through the acceptance of international financial reporting and auditing standards is aimed at helping investors assimilate information that may come from different parts of one large company, operating in more than one jurisdiction.

However the rise of the concept of Corporate Social Responsibility (CSR) in the latter half of the 20th century has created a debate as to what other information might be disclosed concerning the operations of the corporation. Academics and others are questioning the role and position of the company in modern business life, and the impact it may have on those who are now referred to as "stakeholders", defined by Freeman (1984) as "any group or individual who can affect or is affected by the achievement of the organization's objectives" (p. 46). For example, in 1950, Cook stated "In less than three hundred years the social institution connoted by the works 'company' and 'corporation' has undergone mutations in form and application that place it among the most influential of social groupings" (p. 7). More recently, Post, Preston and Sachs (2002) expand on this by asking:

> "For as long as business corporations have existed, their role in the economy and society has been a focus of attention and debate. The power of the corporation to influence the pattern of economic, social, and political development – along with its sometimes negative impact on specific employees, customers, and communities – has regularly been weighted against the

> capacity of the corporation to create wealth… *To whom and for what is the corporation responsible?"* (p. 254, emphasis in original).

The growth of companies in the second half of the 20th century has been greatly enhanced by the ability to move past the borders of the countries in which they are incorporated, which in turn has led to consideration of the impact of corporations on this much more globalised business world. This paper will focus on the area of human rights and Multinational Enterprises (MNEs), and consider a somewhat radical approach to accountability in the area of enforcement of human rights, which is part of the CSR agenda.

Reporting and Accountability

The concept of financial reporting is well understood by corporations, but CSR is still finding its place in the business world. Consequently, investors and the public have had to rely on individual companies to decide how much, and to whom, they should report under this new paradigm. There is a

> "discourse and a set of policies, practices and institutions associated with corporate social responsibility that gained ground in the1980's and went global in the 1990s. This CSR agenda centred heavily on the promotion of voluntary initiatives to minimize malpractice or improve social, environmental and human rights dimensions of business performance, as well as on the regulatory role of non-state actors in standard –setting and implementation." (Utting, 2005, p.iii).

The consequence of voluntary initiatives is the discourse on whether they are sufficient in a modern world to fulfil their purpose. Owen (2007) carefully analysed the annual reports of 12 United Kingdom corporations in terms of voluntary stakeholder accountability. The companies were chosen as a result of having been short-listed for the social and sustainability categories of the 2003 ACCA Sustainability Reporting Awards Scheme. In other words, as Owen puts it, these companies allegedly produced "leading edge" reports. The results of the analysis are clear. Despite "A notable feature of all the reports" being "the impression conveyed, explicitly or implicitly, that the relationship with stakeholders is one of accountability of the organisation to the latter" (2007, p. 11), his conclusions show that the nature of the disclosures were created as a result of the company agenda, and audited in accordance with that agenda, and were addressed in the main to the company or its shareholders, despite the content of the disclosures being related to stakeholder issues. This continues the well understood concept of the market being asymmetric, something which the rules on financial reporting are designed to minimise. Yet in terms of reporting, Owen's study confirms that the CSR reporting agenda is asymmetric, if left on a voluntary basis.

Likewise, Fortanier and Kolk (2007) analyse the reporting done by Fortune Global 250 firms on their economic impact. Their findings show

> "that firms tend to highlight individual examples and projects rather than giving an overall insight into their impact…This applies not only to size effects, but also to activities related to technology transfer and linkage creation….it also raises questions about the intentions of firms for including such information in their non-financial reports, which

> relate to suspicions about such reports as merely ‘greenwashing’ or ‘bluewashing’…The entire lack of information on potentially negative impacts supports such concerns”(p.18).

If CSR is an attempt at stakeholder inclusiveness and accountability, according to Owen, then a much more fundamental change is required. The United Kingdom Government as part of its reform of company law attempted to include a mandatory reporting regime to incorporate stakeholder issues determined to be “material” to the long term success of the business. This was seen by business respondents to the consultation document as supporting a move towards a “stakeholder” model of business, and away from the primary role of business – in somewhat crude terms, the making of a profit for shareholders. Those in favour of the concept nonetheless drew attention to the lack of “effective compliance and complaint mechanisms” (Owen, 2007, p. 27). The draft regulations issued by the Department of Trade and Industry stated that reporting on human rights issues was important because “…the way a company manages and utilises its workforce can have a significant impact on the performance of the company”(Owen, 2007, p. 28, citing paragraph 3.35 of the draft regulations).

The link to CSR is clear. Campbell defines socially responsible corporate behaviour as requiring two stages. “First, they must not knowingly do anything that could harm their stakeholders. Second, if they do harm to their stakeholders, then they must rectify it whenever it is disclosed and brought to their attention”(2006, p.928). Where stakeholders have difficulties in the current global

business environment is in determining the third stage – what to do if the corporation does not put right what it has done wrong.

Limitations of the stakeholder approach also are clear at this stage. The classification of stakeholders according to Freeman (1984) is a broad brush approach, and in each case, stakeholder identification may be "easier said than done", particularly if there is a conflict between the interests of groups of stakeholders in any given corporation. Once stakeholders are identified, their interests must be aligned if there is to be any realistic resolution to the third stage of holding a company to account.

In the end, the reporting framework was abandoned as requiring too much of companies. It is much easier to report to shareholders and prospective investors about the financials of the company; "social" reporting requires the company to be absolutely clear on its role in the society or societies in which it operates, which is requiring of a much greater investment from those in charge of the governance of the corporation. Such was not the fate of financial reporting in the United States after the corporate collapses of the early 21st century, with the imposition of quite prescriptive requirements in the Sarbanes-Oxley Act. The self-regulatory regime has given way to a strictly regulated, State-sponsored framework which at the same time is funded by the subjects of the framework. Although this regime is specific to the United States, the impact of the legislation has been felt world-wide. It is suggested that if it is possible to have globally accepted financial reporting frameworks, which include processes for enforcing accountability for mistake and fraud, it must be possible to create a globally sanctioned framework

for requiring accountability for breaches of human rights, and for enforcing any breaches of the framework, given the reach of many corporations in the world today. This paper proposes the United Nations as the most appropriate body to provide a forum to pursue accountability in this area.

Due to the scope of the paper however, precursor issues such as the development of free trade agreements and foreign direct investment will not be canvassed, as these are beyond the scope of this paper. The paper will concentrate on MNEs which are already using the human capital of jurisdictions other than those of their home country and the problems that can arise from so doing.

Multinational Companies, Multinational Enterprises, or Transnational Corporations

The OECD Guidelines for Multinational Enterprises (2000) do not provide a definition of a MNE, stating:

> 3. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, state or mixed. The *Guidelines* are addressed to all the entities within the multinational enterprise (parent companies and/or local entitities). (2000, pp 17-18).

The UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights (the UN Norms) take a similar line in terms of defining MNEs or as they are referred to in the Norms, Transnational Corporations. "The term 'transnational corporation refers to an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries – whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively" (United Nations, 2003, p.7).

For the purposes of this paper, a determination as to whether a corporation is a multinational enterprise is made on the basis of fact rather than definition. However Harzing (2000) identifies three categories of multinational enterprises based on variables such as organisational design, interdependence and local responsiveness. The categories are: multi-domestic companies which are federations of autonomous subsidiaries that operate in different countries – a "decentralized network" (2000, p.115); global companies where subsidiaries operate as "pipelines" of product to the centralised head office and are less likely to be locally responsive; and transnational companies which are described as interdependent networks where subsidiaries are more dependant on other subsidiaries than on head office for direction, raw supplies and research and development.

Nonetheless, the defining characteristic is that of a State registered entity moving beyond the borders of the home State to expand production, sales, or research and development, whether by itself, or in partnership or a joint venture situation with a company of the host State, or the host State itself. Taking up residence through a subsidiary or contracting for operations in another State opens the MNE to the

need to consider not only the home State's requirements, but those of the host State, and to take into account international obligations, particularly where the host State is an emerging economy which may not yet have developed human rights regulatory frameworks itself.

Outsourcing a corporation's own services or production to contractors elsewhere also fits the paradigm of a MNE. Such an approach may allow the corporation to take a "hands off" approach to any problems that arise (Della Mattera and Gaudet, 2002), yet the final consumers of the corporation append the corporation's name to the product or service, not that of the outsourcer.

Why is there a need to consider accountability and enforcement mechanisms for such enterprises? Part of the answer lies in the debate concerning power. Is there a correlation between size, economic success and ability to exploit the conditions prevailing in other jurisdictions to the benefit of the enterprise, regardless of the detriment to the host State? Elkington notes "On the use of market mechanisms…to deliver improved performance against environmental and broader sustainability targets...the center of gravity [is shifting] from the world of government to the world of business..." (1998, p.100).

The amount of power possessed by a modern MNC is evident in the GDP figures of many large companies rivalling those of small states. In a study by Anderson and Cavanagh (2000), their findings indicated that of the 100 largest economies in the world, 51 are corporations; only 49 are countries. Their argument is that the largest MNE's do have power to influence the ability of a host State to mitigate any "shortcuts" a MNE may take in order to improve its bottom line. Wolf (2002) takes issue with the manner in which the calculations were made by Anderson and

Cavanagh stating that it is not possible to compare companies on the basis of sales, and countries on the basis of Gross Domestic Product, which is "a measure of value added, not sales. If one were to compute total sales in a country one would end up with a number bugger than GDP" (2002, p.17).

Wolf goes further to say,

> "But the flaw in such claims is not just factual, but also conceptual, since countries and companies are radically different. A country has coercive control over its people and its territory. Even the weakest state can force millions of people to do things most of them would far rather not d: pay taxes, for example, or do military service. Companies are quite another matter. They are civilian organisations that must win the resources they need in free markets. They rely not on coercion, but on competitiveness" (p.17)

That would seem to be the point the proponents of CSR are focusing on. The success of a corporation's competitiveness comes at a cost, and the cost in a world where globalisation appears to be an accepted fact, is one where there is arguably a "race to the bottom" in terms of production or provision of services. It is argued that if it were not so, then there would be no need for corporations to "go global" – they would compete with each other on a level playing field, under the same conditions, and the voluntary initiatives discussed later in this paper would only apply on a jurisdictional basis, rather than a global basis.

To come back to the question posed by Post et al, "To whom and for what is the corporation responsible?" (2002, p. 254). If the answer is framed in terms of the

owners of the company, then Freidman (1970) was correct when he said: …there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud" (p.125). MNEs do not, however, operate in isolation, and do not confine themselves to home States where well developed systems and frameworks to protect human rights may exist, along with access to systems of accountability. "Globalisation describes the growing movement of capital, people, goods and services across national borders" (Della Mattera and Gaudet, 2002, p.196). This, it is argued, requires a global approach to questions of the application and enforcement of human rights.

Voluntary Initiatives

According to a report by the United Nations High Commissioner on Human Rights (2005) which focused on the scope and legal status of existing initiatives and standards on the responsibilities of transnational corporations and related business enterprises with regard to human rights, there are 23 initiatives in existence at present. A majority of these initiatives are non –binding. Amongst those are the Global Compact and UN Human Rights Norms for Business, the OECD Guidelines for Multinational Enterprises, the International Labour Office Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the Global Reporting Initiative and AA Assurance Standard 1000. In addition, some MNEs have created Codes of Conduct applicable to their operations in host States, and others have entered into International Framework Agreements with international Union bodies. The report also identified that there was a gap between

understanding human rights issues and the extent of the responsibility of companies regarding human rights.

With some 23 initiatives already in existence, it is not surprising that confusion abounds as to each corporation's human rights responsibilities, particularly if this confusion is compounded by regulatory laws of host States within which a corporation is incorporated. Participation in some or all of these initiatives provides companies with the ability to demonstrate a degree of attendance to CSR principles, yet because they are voluntary, corporations have the ability to "cherry-pick" to choose the parts that are most amenable to their business operations.

For example, Owen (2007) quotes from the 2002 Sustainability Performance Report of Premier Oil, which states:

> "…the interests of shareholders will not necessarily take precedence over the interests of other stakeholder groups and our business strategy is designed to promote social justice in the workplace and in our external relationships in the countries where we operate" (p.15).

Yet as Owen discovers from his analysis of the report,

> "no specific instances in which shareholder interests have taken second place, with the financial ramifications clearly spelt out, are subsequently offered to substantiate this particular claim. In the absence of such information one can perhaps be forgiven for being somewhat sceptical, and rather believing that, in situations of distributional conflict, the standard 'capitalist rules of the game' are more likely to apply"(p.16).

Global Compact

This is perhaps the most interesting of the voluntary initiatives available to corporations, given that its inception was intended as a partnership between the United Nations and individual MNEs, with the United Nations Universal Declaration of Human Rights, the Rio Declaration on Environment and Development, the International Labour Organization's Fundamental Principles and Rights as Work, and the UN Convention Against Corruption at its core. From these documents 10 principles have been distilled. Fisher and Lovell (2006) explain the Compact as

> "more like a learning network in which understanding and learning about the problems of behaving in a socially and environmentally responsible way are discussed and explored. Those who have signed up to the Compact are encouraged to take part in seminars, act as mentors, join networks and enter into partnerships to carry out projects….The Global Compact also undertakes outreach activities and tries to involve small and medium-sized enterprises as well as city governments" (p.495).

The Global Compact is not designed to be enforced, even though it "is supported by the International Labour Office (ILO), The Office of the UN Commissioner for Human Rights (OHCHR), the United Nations Environment Programme (UNEP), the UN Industrial Development Organisation (UNIDO) and others (Fisher and Lovell, 2006, pp 494-5), hence its position as a voluntary initiative. Each enterprise has decided for its own reasons to join, something that is surprisingly simple to do – it "involves a letter of commitment from the CEO. Companies are then asked to describe in their annual financial reports or other prominent

corporate reports the actions they are undertaking in support of the Global Compact's principles through the engagement mechanisms of Learning, Dialogue, Local Networks and Projects" (Travis, 2004, p.736). In addition, a report must be made to the Global Compact Website. Membership is determined in part by compliance with this requirement – failure to do so within two years of becoming a signatory to the Compact, and continuing to do so every two years will result in being removed from the list of participants (Williams, 2004).

Then, says Williams (2004) "The intention is that, through leading by the power of good example, member companies will set a high moral tone operating throughout the world. The overall thrust of the Global Compact is to accent the moral purpose of business (p.756). So the theory is that a participant can lead by example, showing through its bi-annual report just how far it has come in terms of acting on the principles. The Secretary-General, speaking at the opening of the 2007 Global Compact Leaders Summit noted that the list of participants has grown from 47 in 2000 to "what is today the world's largest corporate citizenship initiative, counting 4,000 stakeholders in 116 countries." (UN News Centre, 2007).

Yet questions are being asked about the value of the voluntary nature of the Compact. Bernard Koucher, the French Foreign Minister asked at the opening session "Given that countries are increasing the number of constraints in the aim of making environmental responsibility a legal imperative, can corporate and social responsibility be limited to a self-defined code of good conduct? (http://nz.news.yahoo.com//070705/8/suu.html). His question was in response to the findings of the United Nations' first survey on the Global Compact which found "major shortcomings" particularly with respect to human rights and

corruption issues in the sample of approximately 400 participants.(http://nz.news.yahoo.com//070705/8/suu.html).

Others have made the same call, particularly from the Non-governmental Organisation sector, which has tasked itself to monitor and report on breaches of human rights. Irene Kahn (2007) of Amnesty International states,

> "Corporations have long resisted binding international standards. The United Nations must confront the challenge, and develop standards and promote mechanisms that hold big business accountable for its impact on human rights. The need for global standards and effective accountability becomes even more urgent as multinational corporations from diverse legal and cultural systems emerge in a global market".

ActionAid (2007) notes that the number of participants is "a tiny proportion of the world's 77,000 multinational…pointing to the real need for universally binding standards for all companies" (http://southasia.oneworld.net/article/view/151007/1/1893).

Williams (2004) suggests the possibility of the Global Reporting Initiative (GRI) as "perhaps the best hope for transparency and accounting standards" (p.763) and notes the encouragement in the Global Compact for Participants to make use of the GRI, it is not compulsory. His conclusion on the Global Compact in terms of accountability is that "for the Compact to be a significant force, either the Global Reporting Initiative or something similar to it will be a necessary complement" (p.764). This paper argues that a more focused, less voluntary framework is needed to ensure that breaches of human rights can be dealt with in a more

transparent manner. Corporations, as Owen (2007) noted, are able to choose what they report in matters other than financial ones, and if a company has been expelled from the Global Compact, there are still more than sufficient other voluntary initiatives to participate in and report on. Of itself, the consensus building, self-managed approach is likely to be little comfort for those suffering from the adverse effects of globalisation, and recompense is generally a long time coming, as occurred in the Bhopal, India disaster. Some 20 years after the event, and 15 years after Union Carbide settled with the Indian Government, it took an order of the Indian Supreme Court to ensure distribution of a major part of the settlement package which remained in the fund (Fisher and Lovell, 2006). Many of those who suffered were dead, and their families had been left to fend for themselves. It is this sort of outcome that a global accountability framework may help to avoid, "since it is obviously doubtful that self-reporting reflects actual behaviour"(Fortanier and Kolk, 2007, p.18).

United Nations Norms

After many years of consultation with multiple stakeholder groups the Sub-Commission for the Promotion and Protection of Human Rights published the draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights in August 2003. The Norms were

> "a new, comprehensive list of norms geared at improving the compliance of transnational corporations (TNCs) with human rights….The Norms consist of a long preamble referencing numerous UN documents, standards and empirical trends related to globalization

> and human rights protection; they then outline which rights corporations have an obligation to protect…They include an impressive array of rights, ranging from environmental and consumer protection to non –discrimination, workers' rights and national sovereignty" (Gelfand, in de Shutter, 2006, pp313-314).

They have been met with resistance by some MNEs and criticised for attempting to bind corporations which is felt by some to be working against the aims of the Global Compact. Yet as Rule (2004, p.325) states, "The document is not directly binding against corporations and has been described by some to its drafters as a mere restatement of existing international human rights laws". On this basis, it is argued that the Norms present an excellent framework to implement the aims of the Global Compact and to give clarity as to how to follow the principles. Gelfind (in de Shutter, 2006) suggests this could be done by accepting that the Norms represent and restate customary international law, so could in turn mean that they form the basis of international treaties, moving customary international law into customary State law upon ratification of such treaties. This would require MNEs operating within that State to abide by the provisions of the treaty, as a precursor to doing business in that host State.

The difficulty with such an approach is again the time issue –the emphasis would be on negotiation and consensus, and agreement on accountability mechanisms is unlikely in the short term if the parties to the negotiations included "affected" stakeholders, such as MNEs, NGO's, and individual States even through the oversight of the United Nations.

However as the UN Norms attempt to impose direct responsibilities on business entities as a means of achieving comprehensive protection of all human rights-civil, cultural, economic, political and social – relevant to the activities of business, they may prove to be the beginnings of a universally accepted framework. The Norms are more specific than the Global Compact as they identify specific human rights relevant to the activities of business, such as the right to equal opportunity and non discrimination, the right to security of persons, the rights of workers and refer to the rights of particular groups such as indigenous peoples.

To do so would require resolving the tension between State and private actors that is inherent in the fact that the Norms are addressed to both. Under the heading **A. General Obligations**, the Norms state:

> 1. States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including ensuring that transnational corporations and other business enterprises respect human rights. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups (United Nations, 2003).

The question of immediate concern is that of “spheres of influence”. The larger a corporation grows, and the longer its supply chain, the harder it is, it is claimed, to exert influence. The same point could be made in situations where there is a large degree of outsourcing. If human rights are global, however, and there are a number of States within which MNE’s operate which do not provide a State-sanctioned framework for protecting human rights, it is iniquitous that corporations should be able to take advantage of that situation to their benefit. Campbell’s definition of socially responsible behaviour necessitates transference of responsibility to the MNE. The transactional costs of so doing may well be a disincentive to the corporation, but the transactional costs of human rights are always a balancing exercise. If production is moved to a host State which can provide, for example, infrastructure or human capital in such a way as to result in an economic benefit to the corporation’s shareholders, but the costs of complying with the Norms are high, then it is necessary to determine strategically which would be the better option for the corporation. If the environment of the host State is one where there are no settled regulatory frameworks, and the concept of “government” is a shifting one, the decision-making should be simpler. Compliance with the Norms may result in reputational gains in such circumstances, but the Global Compact is about recognising good as well as bad, which may be to the advantage of the company. The point is that having an international structure, which is monitored and enforced, should make the strategic decision-making of MNEs easier – proper due diligence prior to engaging in operations will make the options, and likely consequences clear.

The difficulty would lie in the ability of the United Nations to enforce any such regime, yet,

> "As the only credible global political body, it could offer a strategic bargain to corporations – a bargain that individual governments had offered at an earlier moment in history. Corporate capital would agree to curb its appetite for accumulation, and agree to some regulation and social protection, in exchange for which the UN would help mobilize public support and legitimacy to defend the corporations against their most critical opponents. Annan warned the business leaders that they must "heed the lessons of history" and beware of the critical social movements now gathering momentum. Concessions would have to be made, he warned, otherwise a "protectionist" and "isolationist" backlash would set in"(Paine, 2000).

It is a moot point whether the UN has the power to set and enforce binding corporate regulations – this is evidenced by the resistance to the Norms by powerful corporations. Yet it is still argued that it is the one body that has the global network and the Global Compact is the largest voluntary group in existence with corporations, NGO's and trade unions as members. It is a good starting point.

Conclusion

Although there are a growing number of voluntary reporting and compliance initiatives for MNEs regarding human rights, these are not adequate to ensure protection of these rights. Nor are they sufficient to enable accountability in terms of reporting, given that the reporting process is determined by the corporation itself, as shown by Owen (2007) and Fortanier and Kolk (2007). In Western

economies, very many, sometimes very hard won, changes have been made in areas that encapsulate human rights. Examples include minimum wage regulation, health and safety in employment regulation, working hours and working ages, freedom of association, unionisation rights, environmental protections, and so on. These protections are reflected in a legislative framework which allows for enforcement actions against corporations who break these laws in their home States. Many of these laws arose from situations where self-regulation did not provide sufficient protection.

There is also now a well recognised regime for financial reporting. The question is whether social reporting and consequential accountability are more important than financial reporting and accountability. In a business environment where stakeholders are becoming as important as shareholders, it is argued not. Therefore it is important that consideration be given to the processes by which social reporting can attain the same level as financial reporting, and as a necessary adjunct, monitoring and enforcement regimes can fit that framework.

It is argued that the United Nations as a global institution with many of its instruments ratified by governments around the world is the correct body to use. An internationally accepted, monitored and enforceable framework based on the Global Compact and the UN Norms is what is required. The Global Compact principles and Norms are also historically significant because they are based upon international public law instruments, including the Universal Declaration of Human Rights (UDHR) that has been ratified by over 100 countries.

A regulatory approach in the area of human rights reporting is increasingly necessary with the enormous power and influence MNEs wield in world affairs and the globalised economy. Voluntary reporting on human rights is not a means to an accurate reporting framework. Some inaccurate reports serve to cover the true extent of the human rights issues and some States, themselves, lack the power to take action. A regulatory approach would ensure that better information is provided and help prevent human rights abuse by raising awareness of human rights issues. This would also lead to consistency in reporting and a level playing field for all MNEs. As Wilson (in de Shutter, 2006) states, " 'Globalisation', broadly speaking, involves two worldwide social processes: *internationalization* and *privatization*. What this means is that power is increasingly concentrated in the hands of international business. In this climate – from which, after all, they are able to extract substantial benefit – corporations must expect their protective duties to develop accordingly" (p.63, emphasis in original). Society must require a global approach to this development.

Reference List

Anon, (2007, July 6), *Corruption fight 'matter of life and death', UN Business Summit Told.* Retrieved July 9, 2007, from http://nz.news.yahoo.com//070705/8/suu.html.

ActionAid (2007, 6 July), *Stop Human Rights Violations states ActionAid.* Retrieved July 9, 2007, from http://southasia.oneworld.net/article/view/151007/1/1893

Anderson, S. and Cavanagh, J (2000, December) *The Top 200: The Rise of Corporate Global Power.* Washington D.C.:The Institute for Policy Studies.

Campbell, J. L. (2006) Institutional Analysis and the Paradox of Corporate Social Responsibility. *American Behavioural Scientist,* 49**,** 925-938.

Cooke, C. A. (1950) *Corporation, Trust and Company - An Essay in Legal History,* Manchester: Manchester University Press.

Della Mattera, N. and Gaudet, J. (2002) Coming to a Town Near You: Corporate Globalization and its Impact on Massachusetts Workers. *New Solutions,* 12/2**,** 195-211.

Elkington, J. (1998) *Cannibals with Forks: The Triple Bottom Line of 21st century Business.* Gabriola Island, British Columbia: New Society Publishers

Farrar, J. (2005) *Corporate Governance: Theories, Principles and Practice* (2nd ed). Melbourne: Oxford University Press.

Fisher, C. and Lovell, A. (2006) *Business Ethics and Values: Individual, Corporate and International Perspective.* Harlow, England: Pearson Education.

Fortanier, F. and Kolk, A. (2007) On the Economic Dimensions of Corporate Social Responsibility: Exploring Fortune Global 250 Reports. *Business and Society,* (Forthcoming).

Freeman, R. E. (1984) *Strategic Management: A Stakeholder Approach.* Boston: Pitman.

Friedman, M. (1970) The Social Responsibility of Business is to Increase its Profits. *New York Times Magazine,* Vol. 33, pp. 122-125.

Gelfind, J. (2006). The lack of enforcement in the United Nations Draft Norms. In O. de Shutter (ed). *Transnational Corporations and Human Rights.* Oxford and Portland, Oregon: Hart Publishing, pp. 313-333.

Harzing, A.-W. (2000) An Empirical Analysis and Extension of the Bartlett and Ghoshal typology of Multinational Companies. *Journal of International Business Studies,* 31/1**,** 101-120.

Kahn, I. (2007) *Freedom from Fear.* Retrieved July 6, 2007 from http//:thereport.amnesty.org/eng/Freedom-from-fear

Organisation of Economic Development. (2000) *The OECD Guidelines for Multinational Enterprises* Author, Paris, France.

Owen, D. (2007, July). *Corporate Social Reporting and Stakeholder Accountability: The Missing Link.* Seminar Paper, Waikato Management School Department of Accounting Seminar Series, pp. 40.

Paine, E. (2000). *The Road to the Global Compact: Corporate Power and the Battle over Global Public Policy at the United Nations*. Retrieved July 5, 2007, from http://www.globalpolicy.org/reform.papers/2000/road.htm.

Post, J. E., Preston, L. E. & Sachs, S. (2002) *Redefining the Corporation.* Stanford University Press.

Rule, T. (2004) Developments: Using "Norms" to Change International Law: UN Human Rights Laws Sneaking in Through the Back Door? *Chicago Journal of International Law,* 5**,** 325-334.

Travis, L. A. (2003). Novartis and the U.N. Global Compact Initiative. *Vanderbilt Journal of Transnational Law,* 36/2**,** 735-763.

United Nations Sub-Commission for the Promotion and Protection of Human Rights (2003). *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights.* Report Number E/CN.4/Sub.2/2003/12/Rev.2

United Nations High Commissioner on Human Rights (2005). *Report of the United Nations High Commissioner on Human Rights on the Responsibilities of Transnational Corporations and Related Business Enterprises with Regard to Human Rights.* Report Number E/CN.4/2005/91

UN News Centre (2007, July 5) *Ban Ki-moon calls on Global Compact Leaders Summit to chart future course.* Retrieved July 9, 2007, from http://www.un.org/apps/news/printnews.asp?nid=23140.

Utting, P. (2005, September) Rethinking Business Regulation - from Self-regulation to Social Control. *Programme on Technology, Business and Society,* UNRISD. Retrieved July 4, 2007, from http://www.unrisd.org.

Williams, O. F. (2004) The UN Global Compact: The Challenge and the Promise. *Business Ethics Quarterly,* 14/4**,** 755-774.

Wilson, A. J. (2006) Beyond Unocal. In de Shutter, O. (ed),*Transnational Corporations and Human Rights*(Ed, de Shutter, O.) Oxford and Portland, Oregon: Hart Publishing, pp. 44-72.

Wolf, M. (2002, February 6) *Countries still rule the world: the notion that corporations weild more power rests on flawed calculations and conceptual confusion*. Financial Times (London), p. 17.