Multinational Cooperation and International Crime

Sara @ The Moral Traveller
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The criminal proceedings of the Nuremburg Trials following the atrocities of the Nazi regime' genocidal violence against humanity strengthened an international understanding of the concept of complicity to violence and soon thereafter developed the international law of human rights. Leaders in the Nazi regime were prosecuted for crimes against humanity in a series of international trials that were divided into two primary groups, namely that of organisations and that of individuals. The tribunal at Nuremberg in addition to charging the defendants with heinous crimes also charged some as conspirators, namely that of *mens rea* or the subjective criminal intention that indicates liability. At the time, the laws of conspiracy were utilised in the United States to tackle the growing trends of organised criminal behaviour, whereby "it is a useful one [the charge of conspiracy] to bring against a gang leader who does not himself blow the safe, kill the bank guard or drive the getaway car." Under the *Control Council Law* of the International Military Tribunal in Nuremburg, conspiracy was considered to be crimes against peace, which is planning in anticipation of committing such violations and remains the most controversial aspect of the proceedings. The question of responsibility and complicity to acts of gross human rights violations was further amplified when tribunals were established for the atrocities committed in Rwanda and the former Yugoslavia. While these cases have charged individuals and organisations for state-led oppression, violence and genocide, the problem with Multinational Enterprises working in foreign countries and their immunity due to limitations in international law has been raised to the fore as an important topic for discussion vis-a-vis international law.

The continuous changes to the expanding economic structure in a globalised world along with the broadening of knowledge viz., the long-term impact environmental and human rights abuses can have, processes that emphasise responsibility by multinational enterprises has gradually started to form in the international arena. This includes the developments of international obligations and processes that assist States – particularly vulnerable countries in the developing world that often experience negligent abuse from Multinational Corporations – to develop legislation that will protect them from potential abuse, along with the willingness of domestic courts to implement domestic laws on crimes committed internationally, such as the United State' District Courts and the *Aliens Tort Claims Act* 1789. The Maastricht Guidelines is another and explains the obligations of the State to adhere to Economic, Social and Cultural Rights as explicated in the international covenant. The growing pressure from NGO's and the poor reputation that multinational companies encounter also work as preventative measures to ensure compliance to international codes of business conduct and corporate behaviour. This includes the supply

chain that multinational enterprises do business with or contractually hire, becoming vicariously liable for any violations of human rights perpetrated by entities with which it does business.

These violations can include poor labour standards, environmental damage and serious harm to the welfare of inhabitants from pollution, and complicity to serious oppression and violence from private contractors, the government or the military. Conversely, a multinational firm can play a vital role in the positive contribution to a State that can include employment and thus improve the capacity for communities to acquire needed services, infrastructure and economic growth. Whilst I will try and attempt to broadly detail several areas of concern when discussing Multinational Enterprises [MNE's], these being a brief analysis of existing laws and international covenants relating to international business and human rights; this is vital as it amplifies an understanding of the second area of concern, namely whether multinational enterprises should be held responsible for violations of human rights perpetrated by entities with which is does business. Delving through particular situations and cases, a brief comparative to existing, domestic tort procedures and laws such as the concept of vicarious liability and contract workers as I have discussed in previous posts, or command responsibility in martial courts, I will attempt to ascertain what corporate responsibility is and how the adoption of human rights principles can ensure sustainability and address the obligations as required by international covenants.

Corporate crime can involve economic, political and industrial failures leading to organisational decisions that can possibly affect not just the individual employee or employees, but also the broader community in general. From well known litigation cases against chemical companies guilty of both environmental and human rights abuses or pharmaceutical companies restricting access to life- saving medications, the topic of human rights and business responsibilities on a global scale is at the forefront of the international economic agenda, particularly since the capacity for multinational entities to commit serious crimes at a large scale can – in reverse – also be capable of effectively promoting and even safeguarding human rights. This is particularly the case for States in post-conflict situations or in a humanitarian emergency or crises that requires immediate assistance and support. It is for this reason the United Nations established the UN Guiding Principles on Business and Human Rights to remedy the abuses and the failure of multinational corporations adhering to the standards as required by international human rights law. The preamble to the Universal Declaration of Human Rights, which was established following the atrocities committed during World War Two and that illustrates a global commitment to the inalienable rights of humankind, states that, "[w]hereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms."[5] All state actors and by extension multinational firms that agree to support the integrity and dignity of the human person as espoused in the UNDHR are prohibited to breach the obligations articulated within the body of international human rights laws.

The legal protections required to enforce UN conventions remain dependent on domestic legal systems, and notwithstanding the many member states that have effectively implemented human rights law into domestic legislature, there remains many States that have failed to comply with the required obligations of international law. This collision between international and domestic human rights laws can be comparatively identified in Islamic countries that expose the inconsistencies between Sharia laws and the requisite universality of human rights and the sovereign equality of State actors. "The contentious nature of Sharia's interpretation of individual rights and its arguable incompatibilities with modern paradigms of human rights law nevertheless have to take into account the historic inequities with which Islamic societies have operated."[6] Accordingly, the foundational principles and obligations in the Guiding Principles on

Business and Human Rights purports that States themselves must take appropriate steps to prevent abuse through the implementation of domestic legislation and policies.[7] While a plethora of resources have become available to promote such domestic changes, the protections afforded by legal rights is wholly reliant on their implementation into domestic law that adequately remedies the cooperation between state and non-state actors within the international arena *opinio juris sive necessitatis*.[8] Regarding the latter, relations at transnational level can be exemplified through mutual collaboration on the enforcement of anti-terrorism activities, further still and equally as intricate is state immunity and human rights.[9]

Nevertheless, the Organisation for Economic Co-operation and Development (OECD) have established guidelines specific to multinational enterprises[10] that promote responsible business conduct through appropriate stakeholder engagement models that heighten transparency of the activities of multinational organisations. Followed by the Declaration on International Investment and Multinational Enterprises, the recommendations themselves, whilst voluntary, attempt to ensure that companies adhere to human rights standards and combat fraudulent and criminal behaviour. The benefits that it can have on the economy of the State encourage social progress and thus contribute to positive domestic development. And what exactly is a multinational organisation? The OECD Guidelines does not contain a precise definition of a multinational enterprise and states that multinational companies may be private, state or both that coordinate and operate in more than one country.[11] In addition to the OECD, UN documents such as the Declaration on the Establishment of a New International Economic Order,[12] the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy[13] along with United Nations Set of Principles on Competition[14] each attempt to regulate and supervise the activities of transnational corporations. An 'enterprise' has been defined as "firms, partnerships, corporations, companies, other associations, natural or juridical persons, or any combination thereof, irrespective of the mode of creation or control or ownership, private or State, which are engaged in commercial activities, and includes their branches, subsidiaries, affiliates, or other entities directly or indirectly controlled by them."[15] The purpose and incentive of the guidelines is to entice States regulate the behaviour of multinational entities with accountability mechanisms that legislate protections particularly through tort law that will safeguard against any potential abuses. For instance, the Australian government recently reached a compromise and passed a new Multinational Anti-Avoidance Law (MAAL) that requires multi-national companies in Australia to practice efficient financial and tax reporting publications to ensure better transparency in the prevention of tax fraud.[16]

Contracted to protect? DynCorp instead trafficked young girls in the Balkans.

However, as there remains no internationally enforceable remedy against potential multinational corruption and when considering the power of multinational enterprises' particularly in the developing world or even failed States, national sovereignty becomes questionable and criminal acts such as bribery of public officials and human rights abuses become increasingly possible.[17] In Bosnia and Herzegovina, for instance, following the tragedy of war and violence in the region, Dyncorp Enterprise – private security contractors – had staff responsible for the rape and trafficking of girls as young as twelve years of age.[18] Whistleblower Kathryn Bolkovac, who was deployed on a peacekeeping mission and who uncovered the scandal was instead threatened and finally dismissed, a case of unfair dismissal confirmed by the employment tribunal in the

United Kingdom.[19] The staff responsible for committing the criminal act of human trafficking in the region were merely moved and have yet to be charged since any remedy to such crime is based on the State' duty to protect, evidently an issue when considering failed states, along with little explanation on what the State – being the United States in the case of Dyncorp Enterpise – has in regulating such criminal behaviour. Pressuring states is not uncommon even in developed countries, with international tobacco corporations pursuing action against Australia in *Philip Morris v Australia*. Whilst it is clear Australia' aim is to protect human health and safety through plain packaging as an investment procedure toward the reduction of preventable deaths,[20] Philip Morris Asia disputed the change by claiming breaches to provisions in trade agreements with Hong Kong. "The Australian Government rejects PM Asia's claim that it has breached the obligation under Article 6 not to deprive investors of their investments or subject investors to measures having effect equivalent to such deprivation."[21]

Accordingly, along with the International Court of Justice and the World Trade Organisation' Dispute Settlement function, to place pressure to legislate domestic human rights avenues such as sanctions and – certainly dependent on the circumstances of the State in question – military force are used as coercive methods to prompt pressure on the countries in question. The economic opportunity that multinational entities bring to States can be employed as part of this method to endorse sustainable development, defined as: "[d]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs."[22] If one considers the responsibility that MNC's have as inadvertently contributing to human rights violations by supporting third-party organizations that commit such crimes, their capacity to ensure that their supply chain remains free from any such abuse would conversely promote human rights obligations. The reliance that some States have on MNC's can opportune legal and procedural changes for the better. The attention to the global failures from MNC's in developed countries have led to valuable growth in the dedication for goods and services that promote fair and equitable conditions. For instance, foods including coffee, chocolate and other produce that contain the Fairtrade logo are steadily being promoted as a method to advocate proper labour conditions in developing countries. This can be similarly seen in Fair Wear ensuring the apparel industry adopts similar trademark assurances for consumers who desire to purchase items of clothing in confidence that workers are not exploited along with ethical diamonds and gemstones purchased as a preventative measure against the violence and slavery in mines. After extensive campaigning and lobbying by Greenpeace and other environmental activists against tissue paper company Kimberly-Clark for clear cutting endangered forests,[23] the company has agreed to approach the acquisition of required materials utilising an environmentally sustainable approach. Inter-organisational empowerment programs where negotiations between NGOs and MNCs is developing significant changes to the not only the exploitative practices of the latter, but also develop sustainable standards that promote a commitment to human rights and environmental protection.[24]

However, as goods and services are becoming regulated, reliance on petroleum in the developed world and access to lifesaving medications through the pharmaceutical industry in the developing world still remains difficult to challenge with jurisdictional restrictions failing to impose accountability laws for any violations that may be perpetrated. However, domestic courts in the Australia, the UK and the USA have developed processes that allow them to accept international cases and in turn impose penalties and responsibilities for violations for acts committed on foreign soil.[25] *The Aliens Tort Claims Act* 1789 (ACTA) was established in the late eighteenth century to tackle the problem of pirates and granted non-US citizens the capability to bring a law suit to the US District courts for civil cases that may have occurred anywhere in the world by individuals or organisations that contravenes treaties the United States is a signatory of.[26] Dormant for over a century, *Filártiga v. Peña-*

Irala[27] raised the statute to the fore; the landmark case found the Filártiga family suing former state official Américo Peña for the torture and violent death of Joelito Filártiga by Peña while they both lived in Paraguay.[28] The Filártiga family won the suit and found Peña had violated international human rights laws. The question of whether multinational enterprises should be held responsible for violations of human rights perpetrated by entities with which is does business may appear clear, however the circumstances and the scope of responsibilities in the international arena still remain convoluted. Whilst accountability mechanisms and guidelines as mentioned earlier do exist, depending on the State in question, enforceability is often reliant on existing domestic laws and agreements particularly relating to labour rights, environmental protection and other safety legislation. While the United States established the Aliens Torts Claim Act 1789 that allows domestic laws to be used as a remedy for extraterritorial abuses, including the recent tort case against Chocolate company Nestle. Global Exchange and several former child slaves brought a class action suit against Nestlé, Archer Daniels Midland and Cargill who sourced cocoa from the Ivory Coast in Africa where children who had been captured from Mali were enslaved on the plantation farms. It is alleged they had breached the *Aliens Torts Claim Act* 1789 with the United States Supreme Court confirming that the case had justifiable merit.[29] This comes after a report from Save the Children in Canada that purports that over 15,000 children from Mali were sold into slavery in the Ivory Coast,[30] in addition to UNICEF' study that almost 200,000 children are trafficked yearly along the West Coast of Africa.[31] Accordingly, the company was aware of the use of children and instead offered financial assistance so as to source the cheapest cocoa and thus, by extension, should be held accountable for the slavery. This comes after the company itself agreed that forced labour was being used in Thailand with supply chain company Thai Union with which it does business for its Fancy Feast cat food product.[32] "A report commissioned by Nestle SA found that impoverished migrant workers in Thailand are sold or lured by false promises and forced to catch and process fish that ends up in the global food giant's supply chain."[33]

While Nestle had in fact admitted to their failure following the report they commission with company Verité – a business that attempt to ensure transparency in supply chain processes – which exposes the developments for MNC' to internally become more behaviorally responsible, nevertheless the company itself is tainted with a history of human rights abuses being one of the most boycotted companies in the world.[34] During the 1980's, Nestle was found to have promoted the use of baby formula in Africa over breastfeeding, the latter of which civil society groups encouraged due to evidence of better nutrition and antibodies present in the milk.[35] As a consequence, the socioeconomic conditions of mothers in developing countries who, being impoverished and thus the costs associated with purchasing the baby formula taking a large portion of the family' income, mothers began to dilute the powder in order to stretch the use.[36] With no other information supplied to them other than the marketing that baby formula was better than breast milk, infant mortality in the region was exasperated particularly due to the poor sanitary conditions of the water used in the formula. This resulted in the World Health Organisation developing a Marketing Code,[37] whereby, "[r]ecognizing further that inappropriate feeding practices lead to infant malnutrition, morbidity and mortality in all countries, and that improper practices in the marketing of breast-milk substitutes and related products can contribute to these major public health problems."[38] Sporting giant Nike, with an annual turnover of more than $US27 billion, became well known for being linked to deplorable labour conditions or 'sweatshops' throughout South East Asia and Latin America. Business magnate Phil Knight outsourcing the manufacturing of the apparel to countries that offered cheap labour and instead poured much of its financial resources toward the adoption of a strong marketing strategy.[39]

Thus the success of the business has been built on abysmal working conditions for many

labourers in developing countries, earning notoriously low salaries [at about 20 cents per hour][40] where such transnational sourcing of cheap labour supplanting the opportunity for human rights abuses. While *Filártiga v. Peña-Irala* certainly paved the way for justice against human rights abuses, the problem of jurisdiction and the examination of liability is central to the problem of multinational enterprise' and gross negligence. One of the primary issues being whether a multinational enterprise can be held responsible for private non-state perpetrators. In *Kadic v. Karadžić*[41] where Ms. Kadic filed a suit against Radovan Karadžić for rape camps in Bosnia, it was confirmed the district courts were willing vis-à-vis the *Aliens Torts Claims Act* 1789 to cover private, non-state actors.[42]

Taking a comparative approach to the question of who should bear the responsibility for violations of human rights perpetrated by entities with which it does business, the concept of vicarious liability – a common law principle that purports liability by an employer for the tortious acts of an employee delegated duties to act on their behalf that I have previously discussed in a post here – can insist the responsibility of MNC' supply chain management. As a legal term, vicarious liability ensures that employers are responsible for any negligible behaviour that occur within the workplace and not just by employees, but also agencies and contract workers. "A person who employs others to advance his own economic interest should in fairness be placed under a corresponding liability for losses incurred in the course of the enterprise."[43] It was generally viewed that independent contractors who are assigned specific duties for a company were in principle in business for themselves and thus responsible for any incident or damages that may occur during the contract, however the growth and ultimately changes to employment structures and processes prove employers are responsible for the negligent acts by independent contactors.[44] In *Doe v Unicol Corp* [45] it was confirmed that corporations can be held responsible for working in concert with state officials, whereby companies are not necessarily immune from the scope of international law.[46] The pipeline project in Burma under the management of Unicol Corp [Union Oil Company of California], where the plaintiffs whilst building off-shore drilling stations in the Andaman Sea intended to build a pipeline through the Tenasserim region of Burma into Thailand found the Myanmar military units or State Law and Order Restoration Council (SLORC) – hired to manage security during the project – for committing gross human rights violations against villagers in the region.[47] This included torture, rape, forced labour and forced relocation[48] where it was alleged that Unicol was aware of these acts of human rights violations and had the capacity to prevent or stop the atrocities.[49]

"According to plaintiffs, when Unocal and Total entered into the agreement by which SLORC undertook to clear the pipeline route and provide security for the pipeline, defendants knew or should have known that SLORC had a history of human rights abuses violative of customary international law, including the use of forced relocation and forced labor… [p]laintiffs assert, on information and belief, that defendants Unocal and Total were aware of and benefitted from, and continue to be aware of and benefit from, the use of forced labor to support the Yadana gas pipeline project."[50]

This reasoning is similarly seen in cases for alleged criminal behaviour by individuals in military courts vis-à-vis the doctrine of command responsibility, particularly the case of U.S Army Captain Ernest Medina in Vietnam. What has become notoriously known as the Mai Lai Massacre,[51] taking place in a hamlet in Southern Vietnam where over five hundred unarmed civilians – including women and children – were brutally murdered, raped and mutilated by US soldiers in one day of carnage,[52] only one court-martial conviction against Second Lieutenant William Laws Calley Jr. for ordering the murders of the civilians was made and even so, through a presidential pardon his life imprisonment was overturned to several years of house arrest.[53] Accordingly, Calley claimed that he was acting on orders given to him by Medina, who during the massacre chose not to intervene and was nevertheless acquitted of any crime during

his trial.[54] While it is clear that the case of Mai Lai is violations of the laws and customs of war and can be constituted as war crimes and devastation not justifiable as necessary, the question of who is responsible for preventing, repressing or failing to take reasonable measures to prevent crimes against humanity, as is applicable in Rule 153 of Customary International Humanitarian Law: "Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible."[55] In the case of *Doe v Unicol Corp*, holding corporations liable for aiding and abetting crimes by applying international law, the courts utilised two 'tests' that attempted to ascertain liability, namely that of *actus reus* and *mens rea*,[56] whereby, "accountability for a certain harm because of objective (*actus reus*) and subjective (*mens rea*) criteria"[57] and to thus identify criminal responsibility. Whilst the scarcity of sources relating to the liability of aiding and abetting in international law, both *actus reus* defined as "the wrong act"[58] in Latin and is the actual physical act, along with *mens rea* or "a guilty mind" and the subjective mental state of mind have been utilised at the Nuremburg Trials and the International Criminal Tribunals for both the Former Yugoslavia (ICTY) and Rwanada (ICTR). Accordingly, the judgement of *Prosecutor v. Anto Furundžija*, it was stated that to establish *actus reus*, "the cases which follow indicate that in certain circumstances, aiding and abetting need not be tangible, but may consist of moral support or encouragement of the principles in their commission of the crime."[59] That is, that the likelihood and extent of the crime indirectly increases in effect of their behaviour.

Exxon Mobil hired security forces that committed acts of torture and murder. Does that make them responsible?

In *Doe v Exxon Mobil*, a group of Indonesian villagers from Aceh filed a lawsuit against oil company Exxon Mobil Corporation where the plaintiffs held that the company had hired security forces that committed human rights abuses against members of the village including torture, kidnapping, arbitrary arrests and murder.[60] It is thus alleged that the company' negligent hiring and supervising of the security forces carries responsibility since they indirectly facilitated the violence. A multinational enterprise' purpose is to 'advance their own economic interest' and doing so with entities that perpetrate human rights violations expose their indirect contribution to negligence and thus by extension contributory to the harm suffered. Thus, the question is, how far does the scope of responsibility extends? As instantiated at the beginning, whilst we are aware of the rights of the human person, corresponding and equally as significant are our obligations.

It cannot be denied that particular MNC's certainly have an influential capacity over governments, policies and politics in general. Fox News' Rupert Murdoch, despite the notorious international phone hacking privacy breaches by News Corp, is an example of the power and influence an MNC can have with governments. The media mogul recently tweeted a series of comments regarding the

Turkish elections, his controversial relationship with the Erdogan government along with his acquired television and media rights in the country have raised concerns about his capacity to have an influence on social decision- making in the country. "Almost everywhere in the world, most of the media is still politically differentiated along with general political orientations."[61] Whilst it is clear that media liberalisation is essential for democracy and thus by extension human rights, suspicions that the Turkish press had been infiltrated by centre- right political influence was solidified with the recent Gezi Park Protests in Istanbul, a story rarely mentioned on popular television broadcasters owned by Murdoch in Turkey during the tumult. The AKP in addition has attempted to strengthen legitimacy by showcasing popular domestic support and falsely representing themselves as significant actors of democracy, it is evident that media representation of the party is one-sided with Turkey becoming notorious for arresting journalists and restricting the independence of journalism and the media, social media becoming an expressive platform to expose the discontent displayed by the population. Notwithstanding the case against Nestlé, Archer Daniels Midland and Cargill, a plethora of other tort litigations have nevertheless been rejected under the *Aliens Torts Claim Act* 1789 due to *forum non conveniens,* whereby the legal system of the country in question is adequate to pursue the case independent of the United States. Yet, often the laws particularly of developing countries remain deficient particularly if the sovereignty or governance of the State remain dependent on the investment and thus coverage of the areas of potential abuse by MNC's is often insufficient to merit legal action. With a yearly revenue of more than $US120Billion, petrochemical company Chevron Corporation is an example of how a multinational organisation plays an instrumental role in environmental destruction and human rights abuses. Their notoriety is perhaps more prominent in Ecuador, whereby the subsidiary Texaco had dumped millions of gallons of toxic bi-products over several decades causing not only serious environmental contamination that has resulted in ocean acidification and producing the drastic global changes with global warming and other effects.[62] In addition, the indigenous communities were struck with terminal illness and death due to the poisonous corruption of the local water system. "The company dumped untreated crude oil into open and unlined pits, from which toxic chemicals then leached into water system and through the soil of village lands."[63]

Litigation against the multinational company by a group of Ecuadorian citizens in 1993[64] and was later dismissed by the Federal Court almost a decade later due to *forum non conveniens* whereby the complaint could be adequately served in Ecuador.[65] A similar case against Union Carbide Corporation in India that found thousands killed or seriously injured for the leak of methyl isocyanate gas,[66] whereby the State District Court of New York dismissed the case purporting that India had an adequate forum to launch legal proceedings against the disreputable company. This raises the question of extra-territorial tort proceedings. In 2006, Chevron filed for an international arbitration claim at the Hague claiming that the Government of Ecuador violated a bilateral investment treaty with the United States,[67] purporting that the 2003 class action against the multinational in Ecuador had been corrupted by influencing the judiciary, with the arbitration panel ruling in favour of Chevron that requested the suspension any enforcement until compliance with an Interim Measures Order had been met.[68] Criminal proceedings are still underway at the International Criminal Court against CEO of Chevron[69] for ignoring the requirement to clean the toxic waste in the Amazon and while a tumultuous case at the Ecuadorian Supreme Court that imposed damages of almost $US10 Billion[70] against the company, blatant disregard of their responsibilities is clearly manifest even on their website that states: "Chevron is defending itself against false allegations that it is responsible for alleged environmental and social harms in the Amazon region of Ecuador."[71]

Whilst I have tried to elucidate in different sections of this blog post relating to what type

of enforcement mechanisms could be used for human rights violations, including domestic laws and better approaches between MNCs and NGOs that negotiate sustainable frameworks that safeguard human rights principles as applicable in international law, therein nevertheless exists obstacles to these enforcements. It is clear that the United Nations and other national and international bodies are focusing on more effective methods to reduce MNC crime, whereby in 2003 the U.N Sub-Commission on the Promotion and Protection of Human Rights implemented the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights that detailed business obligations and to a degree ensured clarity that businesses must ensure their obligations to human rights has been met. Prior to that, Kofi Annan whilst addressing the World Economic Forum proclaimed the Global Compact initiative that encouraged businesses to ensure the adoption of internal policies and procedures that ensured a sustainable approach to human rights. Combined efforts developed the draft norms that attempts to solidify business compliance in a legally binding set of principles and avoid MNCs from being complicit to human rights violations. Nevertheless, whilst these norms begin the process of developing into a binding treaty, organisations such as the International Organization of Employers opposed the draft norms.[72] In fact, hostilities to the framework as a remedy were rejected even by States including Australia, UK and the United States.[73] The guidelines themselves, as stated in the preface, "encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise." Whilst voluntary in character, the general principles and policies with a context of their global application, ensure not just sustainable development and supply chain responsibility, but also calls for the establishment of local capacity building procedures. Such encouragement could certainly have a long-term, normative impact particularly as a preventative measure against any social or environmental risks via the encouragement of ensuring they are combating any adverse practices that motivate corruption, violence and other abuses that impact on society and the environment. It is therefore foreseeable that the guiding principles may have a normative effect in resulting behavioural changes. This is followed with the recent adoption of resolution 26/9 on the 26th of June, 2014 that sought to develop working group on MNEs and other businesses to mandate internationally legally binding instrument that will officially regulate corporations inclusive of States and non- State and private actors. These negotiations are underway and it is clear that internationally enforceable mechanisms to ensure compliance to human rights norms – whilst yet to be achieved – nevertheless is certainly developing toward processes that places duties directly on not only States but also private, non- State entities and multinational corporations.

There are also other tactical advantages that can be utilised against MNC's to place pressure for the adoption of internal policies and procedures that will result in an overall behavioural change that safeguards rights. The demands of consumers themselves are changing, with companies adopting the purchase of ethically sourced products, for instance the multinational company Starbucks who has adopted a sustainable strategy known as C.A.F.E [coffee and farmer equity] for ethically sourced coffee, tea and cocoa.[74] Additionally, the company also has ensured that farming communities linked in any way to their supply chain are managed by working closely with Conservation International, in addition to re-forestation projects.[75] Organisations like Conservation International and Amnesty International are adopting preventative strategies that build or strengthen relationships with MNC's as well as developing frameworks76 that supplant compliance through collaboration. In addition, the implementation of sanctions to pressure States to ensure compliance to human rights has also been an effective method that promotes change.

"Sanctions imposed in the past, such as those imposed during WWII, the trade and financial sanctions against China, the Iran hostage

sanctions, and the ongoing Iraqi sanctions, have been very effective means of achieving well- defined foreign policy objectives. Whether imposed for such broad policy reasons or in response to specific human rights concerns, sanctions usually, and perhaps inevitably, involve an immediate human cost within the target state. Short of abandoning sanctions as foreign policy tools, however, there is probably no practical way to ensure that sanctions both narrowly affect only the targeted state actors and still remain effective."

However, sanctions can also work in reverse. In 2011, France began a process of approving of a Bill that would recognise the acts committed during the last phase of the Ottoman Empire prior to its dissolution against the ethnic Armenians as 'genocide' where more than 1.5 million died during a process of ethnic cleansing, an accusation the Turkish government staunchly opposes.[77] In response to the potential legislation, Turkey applied numerous sanctions particularly relating to trade agreements and reprisals against multinational entities located in Turkey from France that it is assumed the potential law was struck down due to the dwindling relationship between both States.[78] Whatever the case is, it appears that at this very moment, international law is ineffective in controlling the free-reign that multinational corporations enjoy and the only real preventative measure is the effects civil society can employ through boycotting sales of the products that they make or purchase through the international supply chain. This would mean that "hippies" who care about our environment and human rights activists that have fought corrupt companies by exposing such atrocities are in effect the champions of change as in doing so, Fair Trade products have come to fruition among many more. Thus the biggest change possible is by stopping the use of products that are damaging communities and the environment in developing countries by the people spending the money in countries like mine; we all have the blood on our hands and thus it is all our responsibility.

1 George Ginsburgs and Vladimir Nikolaevich Kudriavtsev, The Nuremberg Trial and International Law, Martinus Nijhoff Publishers (1990) 62
2 Ibid., 64
3 Nuremberg Trials Final Report Appendix D, Article II of the Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity
4 Juliet Okoth, The Crime of Conspiracy in International Criminal Law, Springer (2014) 94
5 Universal Declaration of Human Rights (1948). Also see Vienna Declaration and Programme of Action (1993).
6 Javaid Rehman and Susan Breau, Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices, Brill (2007) 14. In Article 5 of the Vienna Declaration, it states: "While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."
7 §1(1) UN Guiding Principles on Business and Human Rights (2011)
8 Benedetto Conforti and Angelo Labella, Introduction to International Law, Martinus Nijhoff Publishers (2012) 33
9 See GFCC, Judgment of the Second Senate of 18 July 2005 - 2 BvR 2236/04 -paras. (1-203)
10 Organisation For Economic Co-operation and Development, Multinational Enterprises of the Organization for Economic Co-operation and Development (2008)
11 Ibid., 12
12 A/RES/S-6/3201 Declaration on the Establishment of a New International Economic Order. Also see 3202 (S-VI) Programme of Action on the Establishment of a New International Economic Order (1974)
13 International Labour Organisation, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (2014)
14 United Nations Set of Principles and Rules on Competition: The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices TD/RBP/CONF/10/Rev.2 (2000)
15 Ibid.
16 Tax Laws Amendment (Tax Integrity Multinational Anti-Avoidance Law) Bill 2015, Exposure Draft Explanatory Materia.
17 It is for this reason that legislation such as Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999 (Cth) was developed.
18 Carissa A. Rarick, "Fighting War and Furthering Slavery: The Alarming Truth About Private Military Firms and the Solution to End Their Involvement in Human Sex Trafficking," Journal of Global Justice and Public Policy [Vol. 2/65]
19 Human Rights Watch, 'Bosnia and Herzegovina Hopes Betrayed: Trafficking of Woman and Girls to Bosnia and Herzegovina for Forced Prostitution' [Vol 14:9] 55
20 In addition, the WTO Dispute Settlement Body received five primary complaints from Honduras, Indonesia, Cuba, Ukraine and the Dominican Republic with an excess of 40 third-party complaints, the ruling expected to be finalized later this year.
21 §44 Australia's Response to the Notice of Arbitration, Under the 2010 Arbitration Rules of the United Nations Commission on International Trade Law
22 Report of the World Commission on Environment and Development: Our Common Future. Document A/42/427
23 Mandy Haggith, Paper Trails: From Trees to Trash: The True Cost of Paper, Random House (2008) 46
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