CORPORATE LIABILITY TOWARDS HUMAN RIGHTS VIOLATIONS

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INTRODUCTION

Nothing less than an undeniable reality in today's times, multinational corporations (MNCs) have completely metamorphosed the nature and scope of the world economy. Globalization can seldom be described outside the context of these corporate giants who have paved the way for groundbreaking growth and development as well as evolved into powerful political and economic non-state actors. While the international trade advances and financial benefits of MNCs are not understated, the emergence of new international violations and crimes by these entities should also not be understated. And as the complicity[159] of these 'artificial persons' escalates exponentially, their retributive counterpart in the international legal system remains staunchly underdeveloped.

Over the last sixty years, corporate abuse of and complicity in human rights violations have compounded.[160] These complicit actions include those of finance, equipment, and infrastructure that aid and abet the offences against human rights; for example supplying arms and ammunition to radicalists during civilian crises like genocide. Hence, corporate liability though identified in most domestic jurisdictions, has yet to be inscribed in international law in order to convict trans nationals for their evaded misdeeds. Having identified the contemporary issue pressing the international community today, the more fundamental question arises with regard to whether and how such corporations should be inducted as international legal personalities.

The essay will seek to determine the controversies behind the very definition of international legal personalities and how its definition has evolved over the years; furthermore

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[159] Complicity is defined as: The involvement of a person with an offence committed by another, which renders the person criminally liable for that offence.

<Peter Butt (ed), Butterworths Concise Australian Legal Dictionary (LexisNexis, 3rd ed, 2004).>

[160] International Commission of Jurists, Corporate Complicity in International Crimes (2008) volume 1, 1 <http://www.icj.org>

the essay will outline the challenges and consequences that scholars argue will be faced should corporations be given the right of international subjectivity. All the while an underlying Legal Methods scrutiny of the issue will ensue.

Identifying The Contemporary Issue: Intensifying Complicity Of MNCs In Human Rights Violations

Multinational corporations are transnational companies that operate in multiple regions of the world while organized under one centralized corporate head. Well known examples include: Merrill Lynch, Xerox, WorldCom, Anderson, Qwest Communications, Boeing, Tyco International, Enron, Putnam, and Rite Aid as noted MNCs currently performing in the global economy.[161]

As quoted by the former UN Commissioner: "*…impacts on human rights do not only occur from a state perspective. The role of non-state actors such as multinational corporations has increasingly been acknowledged. The footprint of a multinational company on society can be enormous both in a positive and negative sense."*[162] For the purposes of this essay we shall delve solely into studying the 'negative footprint' or more specifically the massive influx in recent times of human rights crimes by MNCs, exemplified in the African subcontinent, and how these various issues must be addressed.

The African continent is noted for its rich minefield of natural resources and for this reason renders itself a central target for extractive industries to plunge into. Now while these resource deposits are not the source of human rights crisis and conflict the mere presence of such valued commodities in weak governed, developing countries aggravates the risk of conflict, prolonging and complicating it further upon outbreak.[163] The African region has gone to the extent of being called the "*the new frontier for the extractives sector*"[164] like the oil and

[161] Arjoon, Surendra. *Corporate Governance An Ethical Perspective.* Department of Management Studies, The University of West Indies, Trinidad.

[162] Mary Robinson, _Foreword' in Dr. Olga Lenzen and Dr. Marina d'Engelbronner (authors), *Human Rights in Business: Guide to Corporations Human Rights Impact Assessment Tools* (January 2009) <http://www.aimforhumanrights.org>.

[163] World Bank Report, Ian Bannon and Paul Collier (eds), Natural Resources and Violent Conflict: Options and Actions (2003), <www.worldbank.org>.

[164] Alyson Warhurst, _Insight: Human Rights are a Business Issue' (14 December 2007) Businessweek<http://www.businessweek.com>.

mining industries which dominate the private and public sector economies in these countries. "*The most common natural resources which originate from Africa's extreme-risk and high-risk countries are oil, gold, diamonds, iron ore and copper, the relevant countries being Chad, Central Republic of Africa, Democratic Republic of Congo, Nigeria, Sudan, Niger…[etc.].*"[165] This list extends further to the Middle Eastern countries like Saudi Arabia and Iran where there persists the same crisis.

The Democratic Republic of Congo (DRC), located in central Africa, in particular has been said to portray the highest rate of human rights violations ranking 0.39 on the Maplecroft index of extreme risk countries of violations, 10 being the least risky countries.[166]

A common pattern to be noted here is the dominion of the extractive industries over such countries that are both weakly governed and constant civilian conflict affected areas. These countries are essentially the host countries of MNCs while the home countries are more often than not the developed industrial countries like the US, UK, etc. It is therefore all too easy for the multinational corporations to exploit developing countries' natural and human resources given their feeble legal systems prevent them from truly enforcing international human rights.[167] And hence from this basis, human rights violations have shot up alarmingly in these regions necessitating UN protective measures that are being spearheaded by international groups like, Rights & Democracy[168], and International Alert[169]. A Critical Legal Studies understanding here highlights the repressive and discriminatory nature of corporate entities towards the host countries as opposed to their home countries. Therefore there exists staunch disparity in the functioning of MNCs within these two national spheres, underlining the critical issue of double standard dealings by these corporate tyrants that fosters such human

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[165] Extractives Industries Transparency Initiative Report, Overview of EITI Reports (2010), 3 <http://eiti.org>

[166] Maplecroft, Media Release, Human Rights Risk Extreme throughout much of Asia and Africa', 3 <http://www.maplecroft.net/HR09_Report_Press_release.pdf>.

[167] Ibid.

[168] Rights & Democracy, Getting it Right: A Step by Step Guide to Assess the Impact of Foreign Investments on Human Rights (November 2008) <http://www.dd- rd.ca/site/_PDF/publications/Getting-it-right_HRIA.pdf>

[169] International Alert, Conflict-Sensitive Business Practice: Guidance for Extractive Industries (March2005) <http://www.internationalalert.org/pdf/conflict_sensitive_business_practice_section_1.pdf>.

rights violations in the weaker nations. The issue is undoubtedly a pellucid example of Critical Race Theory question where the dominant class (in this case the developed nations) relishes pristine conformity with basic human rights applications while the developing nations face the brunt of exploitation.

As an attempt to address the issue, international organizations have moved to devise the 'Human Rights Impact Assessment' (HRIA) which codifies a set of guidelines and indicators to keep these MNCs in check in terms of upright functioning in the weak governed, conflict ridden nations.[170] An outline of the HRIA indicators is below[171]:

Table 1 – Risk indicators applied in the HRIAs

Risk Indicators	Prime examples of factors to consider when conducting the Human Rights Impact Assessment
Human Security Risks	Is there: extrajudicial or unlawful killings, disappearances, kidnappings, torture, internal displacement & refugees, child soldiers, security forces & human rights violations?
Labour Rights and Protection Risks	Is there: child labour, forced or involuntary labour, trafficking, absence of freedom of association & collective bargaining, discrimination, poor standards of working conditions?
Civil and Political Rights Risks	Is there: arbitrary arrest & detention, absence of freedom of conscience, expression and religion, absence of freedom of speech & press, evidence of human rights defenders, female rights, indigenous peoples & minority rights?
Risks Associated with Access to Remedies	Is there: business integrity & corruption, judicial independence, judicial effectiveness, judicial monitoring and reporting environment?

[170] Rights & Democracy, Getting it Right: A Step by Step Guide to Assess the Impact of Foreign Investments on Human Rights (November 2008), 2 <http://www.dd- rd.ca/site/_PDF/publications/Getting-it-right_HRIA.pdf>.

[171] Maplecroft, Human Rights Risk Tools (2009) <www.maplecrfot.com>.

Hence according to these standards an MNC must operate in the said countries and if not can be stamped as being complicit in human rights violations. In that sense, HRIAs analyze those rights that are not guaranteed by the state by identifying first the contradictions between the duties of the state in protecting these rights and their actual translation into ground practice. There is evidently a Realist study present here where there is a lack of correlation between the responsibility of the state for the security of these fundamental rights and their effective implementation and in fact effective awareness among the people. The inherent disability in these developing countries in upholding their basic rights constructs the foundational weakness of the countries' respective legal systems, further exposing them to the mistreatments of the MNCs. The core of this issue is seen in the outstanding weight of human rights doctrines without which the basic framework of the developing countries governance is deconstructed. "*Under customary international law, emerging practice and expert opinion increasingly do suggest that corporations may be held liable for…complicity in, the most heinous human rights violations amounting to international crimes, including genocide, slavery, human trafficking, forced labor, torture, and some crimes against humanity*."[172]

As a supplementary example, the Ituri District of northeastern DRC, is one such region of extensive corporate abuse and complicity.[173] An armed civilian war has been persistent in the district since 1998 for total control of the abundant trade routes and gold mines of the region. The transnational corporates operating in the district's goldfields have been accused of complicity in supporting the rebel forces financially and logistically.[174] The MNC in particular

[172] The Special Representative of the Secretary-General, Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, delivered to the Commission on Human Rights, U.N. Doc. E/CN.4/2006/97 (Feb. 22, 2006)

[173] Brandon Prosansky, Mining Gold in a Conflict Zone: The Context, Ramifications, and Lessons of AngloGold Ashanti's Activities in the Democratic Republic of the Congo' (Spring 2007) 5(2) Northwestern Journal of International Human Rights 236, 241–242.

[174] Human Rights Watch Report, The Curse of Gold: Democratic Republic of Congo (2005) <http://www.hrw.org>.

contention is AngloGold Ashanti,[175] one of the primary corporate miners in the Ituri District that has been alleged with funding the criminal activities of the rebels.

Challenges To MNC Conviction Within International Law

Human rights obligations of corporations are listed in three different levels of legal sources. They include, primarily from national legal orders such as the respective constitutions, secondly from international treaties and conventions, and lastly unilaterally from the voluntary decisions by the corporations themselves.[176] In terms of the national level however, there is a sparse number of constitutions that explicitly state the provisions of human rights to apply both to natural and legal person and the African countries unfortunately do not find themselves in those few.

Coming back to the initial point of layered legal sources, there is clearly an element of Legal Pluralism when creating laws that govern corporations because they must be subject to the numerous other national provisions that differ from state to state. Thus, when administering such law resistance at first notice stems from states whose national sovereignty is jeopardized by overarching binding international law. On the other hand, another vital issue that arises with corporate regulation is that the current normative, regulatory law is largely regarded as "soft law" or non-binding law causing them to be neglected easily.[177] Again, here we come across a Positivist undertone where given these international regulatory measures are not the black letter law, they are not necessarily obeyed and the complicit criminal activities elongate.

Though the jurisdiction to convict and prosecute international crimes through complicity has been established in a number of international conventions, the ability to prosecute organizational liability however remains amiss. The International Criminal Court, (ICC) as well as the International Court of Justice (ICJ) are the international legal institutions

[175] Brandon Prosansky, Mining Gold in a Conflict Zone: The Context, Ramifications, and Lessons of AngloGold Ashanti's Activities in the Democratic Republic of the Congo' (Spring 2007) 5(2) Northwestern Journal of International Human Rights 236, 241–242.

[176] J Letnar Cernic, *Human Rights Law and Business* (Gronige: Europa Law Publishing, 2010)

[177] Patrick Macklem, Corporate Accountability under International Law: The Misguided Quest for Universal Jurisdiction' (2005) 7 International Law Forum du droit international 281, 283.

in operation today and the exacting authorities in these conflicts.[178] In addition to these central institutions there have been instilled several ad hoc institutions appointed to countries where such mass civilian crises have already occurred- such as for example the International Criminal Tribunal for Rwanda in response to the Rwandan genocide of 1994.[179]

However once again these institutions are designated to address the criminal activities of solely 'natural persons' and not 'legal' or 'artificial persons' like these corporate bodies. This unchartered territory proves extensively costly for the nations suffering from non-compliance of ironically their basic, inalienable rights. As argued in the Harvard Law Review 2001, "*It is now generally accepted that individuals have rights under international human rights law and obligations under international criminal law. This redefinition, however, has occurred only partially with respect to legal persons such as corporations: international law views corporations as possessing certain human rights, but it generally does not recognize corporations as bearers of legal obligations under international criminal law."*[180]

International law is now facing intense criticism on the fact that its provisions have been made assuming states to be the only actors and subjects of the law. [181]With the emergence of MNCs as massive corporate entities that govern the lives of thousands around the world, their consequent criminal violations have rendered the international legal system inadequate and in need of immediate reform. Hence the critical question in face of legal academics remains the age-old dispute of whether apart from states, other actors such as in this case multinational corporations, deserve and possess an international legal personality; if so to what extent do they and should they. [182]

Essentials Of An International Legal Personality

[178] Ibid.

[179] Ibid.

[180] Developments In The Law-Corporate Liability For Violations Of International Human Rights Law, 114 Harv. L. Rev. 2025, 2030-31 (2001)

[181] Sigmund Timberg, International Combines and National Sovereigns 95 U. PA. L. REV. 575, 576 n.4 (1947)

[182] James E. Hickey, Jr., The Source Of International Legal Personality In The 21st Century, 2 HOFSTRA L. & POL'Y SYMP. 1, 11-12 (1997)

The fundamental issue of whether MNCs match up under the definition of an international legal personality would have been largely facilitated had there existed some consensus in the legal community towards the constituents of the term. [183] Thus, this issue wades through unclear waters surrounding the core controversy regarding the essential elements of an international legal personality.

Devised by Professor Christian Okeke, the Okeke criteria narrate three essential requirements necessary for a body to be deemed a legal subject. These include:

1. "*possess duties as well as responsibility for violating those duties;*
2. *have the capacity to benefit from legal rights as a direct claimant and not as a mere beneficiary; and*
3. *in some capacity, be able to enter into contractual or other legal relations with other subjects of the system.* "[184]

Should the said body meet these requisites there is evidence to label that body a legitimate subject of international law.

The Orthodox Theory

Under the orthodox theory of international legal personalities it is argued that the only players in international law are nation-states. "*According to that theory, the only subjects of international law are nation-states. All other entities, particularly individuals and business organizations, interact with international law indirectly through their national governments."*[185] This theory allies itself to the greater classical dualist theory of international law that can be categorized as a positivist understanding of the relationship between international law and states that latter of which are seen as the prime subjects instead of

[183] N.D. White, The Law Of International Organizations 27 (1996)

[184] Chris N. Okeke, Controversial Subjects Of Contemporary International Law: An Examination Of The New Entities Of International Law And Their Treaty-Making Capacity 19 (1974)

[185] Daniel C.K. Chow, Limiting Erie In A New Age Of International Law: Toward A Federal Common Law Of International Choice Of Law, 74 Iowa L. Rev. 165, 193 N. 145 (1988)

individuals.[186] Here essentially, the state is supreme authority and actor in law and the individual is but a part of the bigger picture, underlining the positivist idea that only that which passes institutional validity is a considerable source of law.

Yet like the positivist theory, the orthodox theory here is also thoroughly criticized for its inconsistency with the history of international law.[187] Critics contend that this notion of state centered internationality is a timeworn idea of embedded in nineteenth century positivism.[188] A Realist analysis emerges here in that though the law prescribes states to be only actors in international arena, that concept does not follow through in practice. Historian and legal scholar Malcolm Shaw supports this argument by highlighting the fact that "*non state entities like the Holy See, international organizations, chartered companies, and some territorial entities like the League of Cities have at some point gained international recognition."*[189] On the flip side still, critics do not discard the theory in its entirety maintaining that at one point the purpose of international law had indeed been to govern purely the interactions of nation states however over time and the onset of globalization era, the fact can no longer be ignored that individuals, transnational organizations, and MNCs are undoubtedly proponents of international law. The ICJ has further held in *Reparations for Injuries in the UN Service*[190] that entities like the United Nations are indeed subjects of international law capable of retaining international rights and duties and of effectively maintaining and exerting these rights.

The Duguit-Scelle Theory

The opposing theory to the orthodox ideal is one, which is inherently antithetical, by proposing the individual not the state to be the center of international law. [191]According to this

[186] J. G. Collier, Is International Law Really Part of the Law of England?, 38 INT'L & COMP. L.Q. 924, 925 (1989).

[187] Jonathan I. Charney, Transnational Corporations and Developing Public International Law, 1983 DUKE L. J. 748, 764

[188] Ibid.

[189] Malcolm N. Shaw, International Law 177 (5th Ed. 2003).

[190] Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949 I.C.J. P. 179

[191] Carl A. Norgaard, The Position Of The Individual In International Law 11 (1962).

theory the state is but an artificial creation and not an organic being in itself, and therefore could not be a subject of international law. Advocated for by French scholars Leon Duguit and George Scelle, this theory will thus solely for the purpose of convenience be termed hereafter as the Duguit-Scelle theory. Critics however equally attacked this theory as a moralistic philosophy as opposed to legal evaluation, and on this note we can perhaps find comparative roots to concept of natural and higher law in this theory. This draw can be validated given the historical background of this theory having emerged around the time of the Third French Republic in 1870 at which time there was furtive movement for enforcement individual liberties over state abuse and evolvement of the enlightenment idea of civilian justice to be above the law.[192]

However, despite the heavy scrutiny of the Duguit-Scelle theory, the individual's role in the international community has unquestionably rocketed over the years. The individual has transmuted from an "*object of international compassion to a subject of international right.*"[193] World-renowned scholar and jurist, Sir Hersch Lauterpart argues the orthodox theory to have become dilapidated, "*The various developments since the two World Wars no longer countenance the view that, as a matter of positive law, States are the only subjects of International Law. In proportion as the realisation of that fact gains ground, there must be an increasing disposition to treat individuals, within a limited sphere, as subjects of International Law… international law is flexible enough to allow for the admission of new entities into the revered club of subjects of international law*"[194]

An apropos example for this perception can be the instance of the Nuremberg Trials following the Second World War at which time the Nuremberg Tribunal held that the international law imposes duties and holds accountable not only the actions of the state but of the individual as well. It is therefore befitting that the Trials had prosecuted not only the German state but the individual Nazi perpetrators of the war.

[192] Janne Elisabeth Nijman, The Concept Of International Legal Personality: An Inquiry Into The History And Theory Of International Law 192 – 243 (2004)

[193] Hersch Lauterpacht, International Law And Human Rights 4 (1950); Christopher C. Joyner, International Law In The 21st Century: Rules For Global Governance 28 (2005).

[194] H. Lauterpacht, Private Law Sources And Analogies Of International Law 79 (1927).

Having been privy to the foundational theories behind the concept of an international legal personality, there is considerable ground to move towards a consequent analysis of whether corporations have met the standards of this concept.

World-renowned legal scholar and jurist, Phillip Jessup had noted in the 1940s that individuals had assumed subjectivity under international law and within this definition of individual there included corporations and partnerships.[195]

The response of the legal community towards endowing MNCs with legal subjectivity is multi-pronged with an equally strong opposition as well as proposition. The opposition to the subjectivity finds MNCs to not appropriate into the definition and requisites for international legal personality. This view is based in the orthodox school holding corporations to be sub standard to the ultimate supremacy and priority of the state. Ian Brownlie forefronts the claim, *"[i]n principle, corporations of municipal law do not have international legal personality. Thus, a concession or contract between a state and a foreign corporation is not governed by the law of treaties…",* and that multinationals in particular had, "*controversial candidatures*"[196] that debars them from legal personality. This thesis is moreover validated in case law, in the *Anglo Iranian Oil Company Case*[197] between the Iranian government and British oil industry, where the ICJ judged that an oil company was not a subject of international legality and because contracts between non legal subjects did not legalize the intervention of the Court. [198] A Critical Legal study of this theory would evidently point out the importance given to the sustenance of the State hierarchy in international power relations. Because a number of these MNCs possess economic power that surpass even countries the threat of loss of supreme authority is lost and control would no longer be concentrated in the nation states but dispersed throughout the international community making domination by the powerful few a difficulty.

The contrasting response, of the scholars who propagate the need for corporate recognition in the international legal system begin by admonishing the orthodox theory to be outdated and then

[195] Philip C. Jessup, A Modern Law Of Nations P. 15-16 (1948).

[196] I. Brownlie, Principles of Public International Law, 1999, P. 57-68

[197] Rudolf Dolzer, Anglo-Iranian Oil Company Case, In 1 Encyclopedia Of Public International Law 167-68 (Rudolph Bernhardt Et Al. Eds., 1992).

[198] Ibid.

move to establish that MNCs already possess the rights and duties integral to international legal personalities as enumerated in the Okeke principles.

The proponents of corporate accession into the legal universe dismiss altogether the orthodox ideology and its positivist foundation that argues everything outside the official state accepted treaties, doctrines, and laws to not be legitimate international law. By deconstructing this basic framework, these scholars illustrate the natural law obligations present in international law that address the individual, international organizations, and corporations to be of equal value, right, and legitimacy. As a contrary model to the opposition, David Ijalaye[199] provides proof of corporate subjectivity in international arbitration, essentially the *Libya-Oil Companies Arbitration*[200]. In this judgment it was held that international law was the governing law between the state and a private law company, hence holding both parties to be equal international legal subjects. The core contention of these scholars ultimately being the modern trend of international law towards accepting new legal subjects and the dethronement of states as the sole players[201] in the field as well as the realist practice of corporations already in exercising certain rights and duties though not formally codified in international law.

A third more central argument regarding the subjectivity of corporations deals with again the basic terms of legal personalities and the unique nature of international law. This debate revolves around the idea that because international law is a decentralized system of law devoid of a fundamentally sourced law making and enforcing body, the mere instillation of rights and duties is insignificant until the said international person is able to make and enforce international law. In that sense, corporations in order to fulfill this role must transcend private interests/profits to assume a more public oriented character.

The Developing Status Of MNCs: A Critique of the SRSG Analysis

[199]David Adedayo Ijalaye, The Extension Of Corporate Personality In International Law 221-23 (1978)

[200]Rudolf Dolzer, Libya Oil Companies Arbitration, in 3 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 215, 216 (Rudolph Berhardt et al. eds., 1997).

[201] Jonathan Fried, Globalization and International Law – Some Thoughts for States and Citizens, 23 QUEEN'S L.J. 259, 266 (1997)

Founded by the UN in 2005, as a continuation of the 2003 UN Commission- Protection and Promotion of Human Rights[202], which had proven futile, was the Secretary General's Special Representative Commission on the specified issue of Multinational Corporations and Human Rights Obligations (SRSG)[203]. The said directive was a result of growing demand for legal corporate accountability given the augmenting influence of MNCs as major international actors and in complicit international human rights violations. The SRSG dictate was two fold, one to identify the relevant obligations and standards set for corporations towards human rights protection, and two to narrate the effective with which to accomplish those standards. The purpose of these guidelines further had a positive and negative implication in that, as a negative obligation the corporations will be controlled and prevented from human rights abuses and moreover will be made positively responsible for ensuring stronger conservation and confirmation of these rights in the weak governance developing nations. Though this notion of corporate responsibility of human rights presses a stronger that will be discussed more thoroughly later on of the invasion of private sector into national sovereignty of countries furthermore. It questions the basic principle of fundamental rights being an essential balancing component in state and individual relationships. Not to mention the legal plurality issues that would explode from such a quest.

In continuation, an excerpt from the SRSG analysis stated:

> "Long-standing doctrinal arguments over whether corporations could be "subjects" of international law… are yielding to new realities. Corporations increasingly are recognized as "participants" at the international level, with the capacity to bear some rights and duties under international law…have certain rights under bilateral investment treaties; they are also subject to duties under several civil liability conventions dealing with environmental pollution. Although this has no direct bearing on corporate responsibility for international crimes, it makes it more difficult to maintain that corporations should be entirely exempt from responsibility in… areas

[202] U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm'n on Promotion and Protection of Hum. Rts, Economic, Social and Cultural Rights: Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, 55th Sess., Agenda Item 4, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (Aug. 26, 2003)

[203] Karsten Nowrot, The 2006 Interim Report of the UN Special Representative on Human Rights and Transnational Corporations: Breakthrough or Further Polarization? Pol'y Papers On Transnat'l Econ. Law No. 20, 1, 3 (2006)

of international law."[204]

The excerpt exhibits certain key issues such as the fact that MNCs do already pre possess legally binding rights and duties through national and non-governmental contracts, because of which they bear the capacity to exert international law functions. And it is for this reason unreasonable to remain ignorant of their mammoth role in the international political economy and by extension vital that they are bestowed responsibility and accountability so as to channel and keep in-check their influence and action. Still the concern that continues to press scholars and critics is of course the fear that the monetary imperialism that these corporate giants wield in the international economy isn't supplemented by legal imperialism as well. Another crucial point to be noted, is the use of word 'participants' instead of the long debated term 'subjects' for describing corporations. The SRSG clearly tends towards the state centric theory of international legal personality being primarily the right of nation states and all others relevant actors. The report essentially wishes to steer the direction of the controversy towards creating a legal identity for corporations in a way that does not equate to or compromise pedestal of states.

A strong yet debated proposal put forth by the SRSG is the idea of extraterritorial jurisdiction directed to address the disparity in MNC functions between home and host countries.[205] Such jurisdiction employs home countries to administer and monitor the activities of its MNCs in foreign countries to ensure equal implementation in terms of human rights. Criticism towards this provision however revolves around once again the infringement of host country national sovereignty,[206] as well as the probable non-compliance of home countries in administration without

[204] The Special Representative of the Secretary-General, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie: Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts, delivered to the Human Rights Council, U.N. Doc. A/HRC/4/35 (Feb. 9, 2007)

[205] The Special Representative of the Secretary-General, Addendum, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, P. 81-92, General Assembly, A/HRC/4/35/Add.1 (Feb. 13, 2007)

[206] Rory Sullivan, Legislating For Responsible Corporate Behavior: Domestic Law Approaches To An International Issue, In Global Governance And The Quest For Justice, Vol. 2: Corporate Governance, 183, 195 (Sorcha Macleod Ed., 2006).

a binding international law requiring them to do so.[207] From a Critical Legal Studies perspective, extraterritorial jurisdiction tackles the crisis not through the affected developing nations who realize first hand the extent of human rights violations occurring in their nations; rather the power to amend the crisis has been allocated to the developed home countries whose administration would not possess the urgency or locus standi of the host countries. The proposal is fundamentally flawed in leaving corrective policies to the detached, developed countries over the implicated developing countries who would essentially take the most care in regulating MNC operation so that it does infringe national sovereignty as well as guarantees an address of the violated issues.

Given this is the only proposition of the SRSG Report the counter alternative remains waiting until corporate complicity reaches the pinnacle of tolerance at which point international subjectivity and regulation is inevitable.

Practical Challenges Towards Corporate Legal Subjectivity

This final section is an endeavored compilation of the numerous philosophical and practical issues that are debated to surface should corporation be given direct legal rights and international subjectivity, alongside a critical legal study of the legitimacy of each issue.

Starting on a philosophical note, legal commentators have contended that the penetrating significance of fundamental rights would be belittled if brought down from governing state and individual relationship to individual and individual relationship. Accordingly, scholars argue that reconstructing the scope of human rights would contrarily deconstruct their foundational purpose and protection. [208] In simpler terms, it is perceived that the fragility of human rights doctrines

[207] Carlos M. Vazquez, Direct Vs. Indirect Obligations Of Corporations Under International Law, 43 Colum. J. Transnat'l L. 927, 931 N.14 (2005).

[208] Christine Chinkin, International Law And Human Rights, In Human Rights Fifty Years On: A Reappraisal 105, 115 (Tony Evans Ed., 1998).

would not survive the reconceptualization through international regulation.[209] The additional practical argument highlighting the tremendous difficulty in ensuring the implementation of narrowed, state centered fundamental rights alone, expansion to an international scale would prove utterly impossible. [210]

On the contrary however the justification for the need for such corporate legal recognition has been thoroughly validated throughout, yet the controversies that arise from this delegation of legal personality cannot merely be overlooked.

A major problem that surmises should corporations gain international legality is the prospective formation of a proportional disparity in the weakening of state power that isn't covered by a strengthening in international power. In other words, till date states have been the most effective agency to control and resolve international conflict, therefore by granting legal personality to MNCs some of this regulatory power of states is mitigated while the ineptness of the international legal system does not make up for it. [211]Hence, there impresses upon MNCs a more liberal setting where there actions will be less restricted by state control and more opened through international right. The disaster that would erupt here would essentially be an unfavorable shift in world power from states to private corporations.[212] This dilemma illustrated here is obviously one regarding the balance of power and the vitality of maintaining this equilibrium even while allowing for new legal personalities. Also the entrance of numerous key players into the international community creates multiple power struggles and opens wider scope for national dissent and non-cooperation. [213]This result owes itself to the very nature of international law that is otherwise the voluntary law of the nations where nations themselves choose to collaborate and cooperate and the supreme law is decided by the most dominant powers.

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[209]Ibid.

[210] Hurst Hannum, Book Review, 101 Am. J. Int'l L. 514, 519 (2007) (Reviewing Andrew Clapham, Human Rights Obligations Of Non-State Actors (2006))

[211] Jonathan I. Charney, Transnational Corporations and Developing Public International Law, 1983 DUKE L. J. 770-780

[212] Ibid P. 773

[213] Ibid P. 772

Yet, in light of these challenges it cannot be undermined that in the current globalized world setting, upholding civil rights like public health, property and poverty, and national security cannot be displaced from international association and integration and the national platform is no longer suitable to achieve this.

CONCLUSION

Multinational corporations over the past century have grown gargantuan proportions with their imprint on the international community only deepening further with time. With the rampant globalization movement, the key role of MNCs in international law foreshadows their inevitable legitimate role in the future. One this note MNCs have long been disputed over whether they merit and deserve the status of an international legal personality, and within the last five decades the rapid increase in percentage of corporate complicity in human rights violations has necessitated a real answer to this controversy. Present subjects of international law being nation states are guarded by the orthodox theory that maintains only nation states to be sole subjects of international law and all others mere participants.

However, like the contested status of MNCs so too did the orthodox theory develop strong opposition through the Duguit-Scelle theory that takes into account the modern developments of international law necessitating the individual and international organizations to also receive the designation of international legal subjectivity. Further international directives and initiatives, like the SRSG report shed greater light on the true status of MNCs within home and host countries, while simultaneously providing solutions and propositions towards granting MNCs with the legal rights and duties under international law. There remains still diverse criticism of the philosophical morality and general practicality of this step in the international arena validating the need for immediate and meticulous scrutiny into the outcome of this issue. Otherwise, should the matter be left unsettled the international community and all its constituents must wait until the point of no return where human rights abuses by MNCs reaches its apex and then regulation will be an unquestionable consequence.