Globalization and Exploitation: The End of an Era

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Abstract: With globalization and the changing distribution of power in the international system, non-state actors like Multinational Corporations (MNCs) have become very crucial players that need to be regulated by international laws, just as states are. However, the conflicting interests of business and human rights make it hard to regulate human rights violations by MNCs due to inadequate international mechanisms in place, which were not designed to apply to MNCs. This paper examines the inefficiencies of the current international regulatory frameworks and goes on to introduce “naming and shaming” of MNCs as an efficient method of regulation by explaining its impacts. Finally, it facilitates a transition from theory to practice, inspired by a project started by Social Justice Connection, an NGO located in Montreal. This further suggests a new international regulatory framework partnered with the World Trade Organization (WTO).

Introduction

Globalization of the world economy means increasing integration and interdependence of economies throughout the world with the increasing flow of goods, services, and capital across borders. This has rapidly increased the number of Multinational Corporations (MNCs) operating in the developing world. These large, profit-oriented businesses tend to invest in undemocratic countries and regions with less developed social structures, where they can take advantage of corrupt and dictatorial systems. Profitable but unethical benefits from this exploitation range from monopolization of the market to violation of worker and human rights. In fact, as mentioned in the article “Avoiding the Spotlight: Human Rights Shaming and Foreign Direct Investment” by Colin M. Barry, K. Chad Clay, and Michael E. Flynn, in stark contrast to the very definition of globalization, MNC-led foreign production works in lockstep with worker and resource exploitation. This indicates that the freeing of corporations outside national borders is inconsistent with the improvement of global environmental, human, and workers’ rights standards.

The conflicting interests of businesses make it hard to regulate violations of human rights committed by MNCs due to inadequate international mechanisms in place. Also, the existing international mechanisms were not initially designed to accommodate MNCs. As pointed out in the article “Oil and Water: Regulating the
Behavior of Multinational Corporations Through Law” by Simon Chesterman, MNCs have not yet achieved special status in international law, meaning that they are not subject to existing international law.3 Furthermore, international laws apply to natural persons, but not to corporations, due to loopholes in the law. International laws also apply to states, and they are regulated directly by these laws. However, since these laws do not apply to MNCs, states become responsible for the regulation and monitoring of human rights standards, as well as violations by foreign firms operating within their nation’s boundaries. However, according to Salil Tripathi in “International Regulation of Multinational Corporations,” developing states tend to prioritize foreign investment over the costly protection of human rights.4 Compelling MNCs can also manipulate the policies of host countries to diminish their costs. This can occur in the form of lessening labor and environmental standards.5 Despite the fact that corporations are obligated “as an organ of society” under the Universal Declaration of Human Rights to respect human rights regardless of their multinational affiliations6, breaches of human rights continue without retribution. In 2003, reports by UN experts identified 85 MNCs that have failed to abide by the guidelines for MNCs established by the Organization for Economic Co-operation and Development (OECD).78

The following will address the shortcomings of current international regulatory laws and bodies where the protection of human rights are concerned. Secondly, the usefulness of ‘public shaming’ of MNCs as a regulatory technique in pursuit of globalized human rights standards will be explored. Even though, the effectiveness of this method is debatable, it is argued in this paper that it is the strongest method for the recognition of human rights but unfortunately its full potential is not explored by current legal frameworks. Thirdly, I will draw on my internship experience at the Social Justice Connection to illustrate how ‘public shaming’ can be brought to broader public attention and can be employed as a preventative strategy. Finally, I will briefly discuss the role the World Trade Organization plays in global human rights enforcement and accountability.

5 Ibid.
6 Tripathi 120
7 Tripathi 119
8 Detailed information on OECD Guidelines on MNCs can be found at http://www.oecd.org/corporate/mne/48004323.pdf
Assessing the Deficiencies of Current Mechanisms

Domestic and International Jurisdictions

As mentioned above, some shortcomings of the international regulatory mechanism are caused by the ambiguous international legal status of MNCs under international law. A functioning International Criminal Court with jurisdiction over natural persons does exist. However, there is no proportionate regulatory body for corporations.9 Because international law typically does not apply to MNCs, efforts to regulate their conduct through law have occurred in domestic jurisdictions. An attempt to regulate human rights violations can occur through the domestic jurisdiction of a developing country where the breach has been committed. Conversely, the state in which the MNC is based may also attempt to regulate a breach of human rights under that state’s domestic jurisdiction.10 There are, however, challenges with both.

Under international law, states must regulate human rights violations by MNCs operating within their territory. However, states do not necessarily have an incentive to do so, as this raises costs for corporations. This can, in turn, cause reduction in investment or complete cessation of operations.11 Thus, developing states might be reluctant to pursue legal action against MNCs and may even be keen to collaborate with MNCs. Further exacerbating the likelihood of disregarded human rights is the fact that the workforce in developing countries is, in general, unaware of their rights or lack the means with which to protect them.12 This limits the likelihood of domestic claims being filed according to the article “Human Rights Violations by Multinational Corporations and International Law: Where From Here?” by Surya Deva.13 In situations like this, it would be more rational to turn to the state where the MNC and its resources are based. However, there are barriers to this second form of domestic jurisdiction. For example, forum non conveniens addresses the situation wherein a court assigned to an issue abstains due to collision of laws and existence of another court, which could exercise jurisdiction more conveniently.14

There are many examples of this, especially in the United States of America (USA) and Australia, where the courts decide that human rights issues should be addressed by the domestic jurisdiction of the state where they were committed. The most effective way to get around these procedural obstacles is to get actions brought

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9 Chesterman 308
10 Chesterman 314
11 Chesterman 310-311
13 Deva 4
14 Chesterman 315
under the US Alien Tort Claims Act of 1789\textsuperscript{15}. This act grants jurisdiction to US Federal Courts over torts committed by aliens “in violation of the law of nations or a treaty of the United States.”\textsuperscript{16} Although unique to the USA, this act has become pivotal in proceedings against MNCs in recent years.\textsuperscript{17} In most cases the defendant is not represented and the court proceeds on the basis that the plaintiffs’ allegations are true.\textsuperscript{18} However, the use of this act rarely serves as a solution. Instead it is used for the purpose of ‘shaming’ and has been used strategically by labor and human rights organizations to put public pressure on unruly MNCs\textsuperscript{19}. Chesterman further argues that the US Alien Tort Claims Act can become a more crucial apprehension for the MNCs in the future.

If brought under international jurisdiction instead of domestic jurisdiction, human rights abuses would cause other technical complications. For instance, the Nuremberg Tribunals on war crimes, held after WWII, found that “Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can be the provisions of international law be enforced.”\textsuperscript{20} If the executives of corporations were able to shift their liability onto a corporation, this would abate the deterrent effects of punishment and burden those who may be completely virtuous.\textsuperscript{21} Thus, both domestic and international jurisdictions either lack the appropriate regulation mechanisms or do not work efficiently due to loopholes and/or the ambiguous status of MNCs in international law.

Current Regulatory Bodies

**OECD Guidelines**

Under the OECD, ten countries recognized the Declaration on International Investment and Multinational Enterprises in 1976, including the OECD Guidelines for MNCs. These guidelines comprise recommendations and expectations about environment, transparency in operation, employment and industrial relations, combating bribery, consumer interests and competition for businesses with multinational operations.\textsuperscript{22} These guidelines fall short in implementation and enforcement because they are based on voluntary action not legal obligation.\textsuperscript{23} One major flaw is the OECD’s unwillingness to publicize the names of corporations that do

\textsuperscript{15} Ibid.
\textsuperscript{16} qtd. in Chesterman 318
\textsuperscript{17} Chesterman 319
\textsuperscript{18} Chesterman 318
\textsuperscript{19} Chesterman 319-320
\textsuperscript{20} qtd. In Chesterman 325
\textsuperscript{21} Chesterman 326-327
\textsuperscript{22} Deva 5
\textsuperscript{23} Ibid.
not abide by the guidelines, rendering the process of establishing globally recognized human rights practices more difficult.\textsuperscript{24}

**International Labor Organization (ILO)**

In 1977 the ILO published the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.\textsuperscript{25} These principles suggested socially conscious guidelines for MNCs, governments, employers’ organizations, and workers’ organizations to follow.\textsuperscript{26} The ILO also suggested a ‘global social label’ to be rewarded to states that extensively complied with worker rights. However, lack of consensus on universal labor standards impeded implementation of this idea.\textsuperscript{27} It is my opinion that establishing universal labor standards held the potential to make a positive change in international regulatory mechanisms towards the enforcement of human rights standards by MNCs. Regardless, due to the lack of sturdy enforcement mechanisms, the ILO’s efforts were futile.

**The United Nations**

The International Bill of Human Rights is directed towards states but can be extended to include MNCs as well. However, let alone addressing to the human rights crimes committed by MNCs, the UN human rights treaty system failed to address human rights violations committed even by states.\textsuperscript{28} In 1999, the UN Secretary General Kofi Annan laid down principles to be followed by business enterprises under the name of the Global Compact that targeted a more sustainable global economy. The Global Compact is not a regulatory mechanism; it does not prosecute or assess behavior of corporations.\textsuperscript{29} Rather, it aims to fill the gap between regulatory regimes and voluntary codes of conduct.\textsuperscript{30} Many states prefer to have voluntary codes of conduct rather than legal methods of enforcement to encourage MNCs to abide by the principles of the Global Compact.\textsuperscript{31} As a result, the Global Compact lacks the authority to legally enforce human rights.

\textsuperscript{24} Ibid.
\textsuperscript{25} Deva 6
\textsuperscript{26} Ibid.
\textsuperscript{27} Ibid.
\textsuperscript{28} Ibid.
\textsuperscript{29} Chesterman 328
\textsuperscript{30} Deva 7
\textsuperscript{31} Chesterman 328
Flaws of the Existing System

This analysis points not to the lack of consensus on regulatory mechanisms, but to the lack of *effectiveness* of such mechanisms. As voluntary mechanisms, they lack enforcement for a couple of reasons: first, a universal standard of human rights is lacking. Though some MNCs volunteer to adopt human rights in their overseas business, there is no particular framework for them to follow. Second, the language used by the existing frameworks implies that respect for human rights depends on negotiation and bargaining between businesses and states, as opposed to intrinsic and continuous respect. Third, this indirect strategy puts undue faith in MNCs’ ability to independently address and resolve issues relating to human rights, as opposed to being held accountable by an external agency or organization. Fourth, a failure to adopt standards in respect of human rights does not result in any consequences for the MNCs. Thus, it can be seen that these frameworks are not making full use of the power and potential of ‘naming and shaming’.

International law should be more direct in its method by including MNCs as independent actors under its jurisdiction. As explained above, states do not always have the desire, let alone the legal or economic capacity to prevent human rights abuses by MNCs. There has been an undeniable shift in power from states to non-state actors. International law should address these changes in order to properly address the human rights issues associated with the global activity of MNCs. After all, the violator of the human rights—be it the state or non-state actor—should not make a difference in the eyes of international law. Instead, violators should be addressed thoroughly and directly. Even though MNCs cannot have all the attributes of states, states are still hesitant to include non-state actors under international law, due to the fear that international legal recognition will grant MNCs more formalized power. There has been an increasing trend towards in-company corporate social responsibility initiatives as a response to bad corporate practices that were not legally prevented. This recent turn to voluntary codes of conduct further indicates an admission that efforts to regulate MNCs through legal channels are ineffective. Therefore, methods like ‘naming and shaming’ should be explored and used at their full potential in order to help prevent MNCs from committing human rights abuses.

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32 Deva 8-9
33 Deva 9-10
34 Deva 10
35 Ibid.
36 Deva 27
37 Ibid.
38 Deva 30
39 Chesterman 308
Naming and Shaming

The shortcomings of the available legal frameworks have led human rights activists and NGOs to turn to ‘public shaming’ as a means of forcing MNCs to comply with higher caliber human rights standards. The effectiveness of the ‘naming and shaming’ method is questionable, however, I argue that it is the strongest way to encourage respect and recognition of human rights among MNCs, specifically in context of the global scale at which they operate. My argument is based on three crucial outcomes of this strategy: public shaming of MNCs leads to boycotts, reputational risks, and reductions in foreign direct investment (FDI). All of these outcomes are promising as preventative strategies to eliminate human rights abuse by MNCs while simultaneously nurturing a more responsible consumer. Generally, MNCs’ products are sold in the domestic markets of developed countries, which gives ‘naming and shaming’ a better chance of success. This is due to greater public accountability in developed states where access to forums with broad audiences, such as social media, television, etc. cultivates greater social awareness civility, as well as a knowledge of one’s individual rights.

Boycotts

Public shaming of MNCs can cause boycotts by encouraging civil society to refrain from using products or services brought by MNCs that are not respectful of human rights. Boycotts can have negative financial and reputational effects on MNCs and their extensity has increased with rising consumer awareness of foreign-made goods. According to George Balabanis, author of “Surrogate Boycotts against Multinational Corporations: Consumers’ Choice of Boycott Targets”, during the past 20 years the prevalence of boycotts has escalated sharply. Global Market Insite Inc. (2005) found that 36% of consumers from 17 countries have boycotted at least one brand, and the most commonly boycotted firms across the board are MNCs. Boycotting can have disastrous impacts on demand, corporate image and stock prices. Most of these boycotts are surrogate boycotts, where the boycotts generally harm cities, states or foreign nations whose public policies dissatisfy the public. To address the issues at hand, the public chooses to boycott the firms operating within the affected

40 Ibid.
42 Ibid.
43 Ibid.
geographic area.\textsuperscript{44} This is because the targeted firms are seen as accomplices to the injustices carried out by the state.\textsuperscript{45}

As discussed above, many of the problems motivating boycotts cannot be resolved through law. This dilemma adds to consumer resentment and escalates their aspiration to sanction the offenders.\textsuperscript{46} The likelihood of boycotting depends on the trade-off between three factors: the ethical commitment to punish a deceitful party; the need to contribute to the accomplishment of the boycott’s aims; and the individual sacrifices and costs of boycotting.\textsuperscript{47} If these are taken to be the independent variables, then the likelihood of a boycott would be the dependent variable. The costs associated with boycotting are consumer preferences of the boycotted product and cost of its substitutes. If the costs are low the consumers are more likely to boycott the product. However, they are less likely to do so if only more expensive alternatives are available.\textsuperscript{48} For example, when the US refused to sign the Kyoto Protocol, a UK-based NGO called ‘Ethical Consumer’ decided to boycott the MNCs that publicly opposed the Kyoto Protocol and encouraged the US administration not to ratify it.\textsuperscript{49} The study found that some MNCs experienced low boycott rates, while others experienced high boycott rates, despite the fact that they were boycotted for the same reason. This difference can be attributed to the varying degrees of product substitutability: a software company with an 88.4% global market share reflected a low boycott rate and low substitutability, while an American oil giant was boycotted heavily due to its high substitutability.\textsuperscript{50} Therefore, the substitutability of products can play a crucial role in boycott patterns by the consumers.

The egregiousness associated with the action is also a determinant for boycotting behavior; the magnitude and austerity of human rights violations in the affected geographic region are the measures of how egregious the targeted firms’ engagement is perceived to be by consumers.\textsuperscript{51} Corporations can only avoid boycotts by creating substitution barriers or building a customer franchise, as long as their human rights violations are not too harsh. However, consumer costs and preferences operate fairly independently from the severity of the human rights violations committed by MNCs.\textsuperscript{52} Studies show that regardless of the attainability of the objectives of a boycott, the consumers would still boycott the culpable firms to punish them out of a sense

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\textsuperscript{44} Balabanis 516
\textsuperscript{45} Balabanis 517
\textsuperscript{46} Balabanis 516
\textsuperscript{47} Ib id.
\textsuperscript{48} Balabanis 517
\textsuperscript{49} Balabanis 521
\textsuperscript{50} Balabanis 522
\textsuperscript{51} Balabanis 517-518
\textsuperscript{52} Balabanis 528
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of fairness and justice.\textsuperscript{53} This validates the idea that the will to penalize unethical MNCs is stronger than rational choice considerations of the chance to attain boycotts’ aims.\textsuperscript{54}

In sum, boycotts have the capacity to draw public attention to the matters that can damage an MNC’s image, beyond the direct effects on demand.\textsuperscript{55} The shaming of MNCs by international non-governmental organizations (INGOs), along with boycotts, may lead to both violent and non-violent protests within the target states. Thus, naming and shaming by INGOs has tangible effects on public opinion on a global scale, both where the goods are made and where they are sold.\textsuperscript{56}

**Reputational Risk**

The method of ‘naming and shaming’ can also lead to reputational risks without the added pressure of a boycott. MNCs strive to preserve their brand image, which can be drastically tarnished once associated with human rights abuses. With the advancement of telecommunications and information technology, INGOs have developed their ability to assemble and circulate information about human rights violations. This advancement has notably amplified the reach of their global activism. Most of the literature asserts that shaming by INGOs improves human rights conditions in the targeted states.\textsuperscript{57} This can be described as the ‘spotlight phenomenon’, meaning that corporations respond directly to public displeasure over immoral company practices\textsuperscript{58}. They do so by adopting more socially responsible reforms in the pursuit of reputation and image preservation, or restoration.

The relationship between INGO activism and reputational to MNCs demonstrates a direct way in which INGOs affect human rights abusers through shaming.\textsuperscript{59} Some scholars argue that MNCs would prefer long-term guarantees over short-term profitability, and one of their long-term considerations is their reputation, which greatly affects their future profitability. Thus, shaming by INGOs has expanded the scope and intensity of the global ‘spotlight’ on MNCs.\textsuperscript{60} Even though the spotlight does not change MNCs ethics, it changes their bottom-line interests by making reputational risks relevant costs that they cannot ignore.\textsuperscript{61}
All in all, it has been proven that civil society in the developed world contributes to the naming and shaming of MNCs. There have been many companies that have been criticized in the national news media, which has led to their defamation. For now, this method serves to halt the human rights abuses in which MNCs are engaged. However, when this strategy becomes so effective that it discourages MNCs from engaging in human rights violations in the first place, it will be a truly preventative strategy.

Reduction of FDI

Naming and shaming can also lead to reduction of FDI in areas that MNCs with poor brand images are operating. Naming and shaming by INGOs causes something called the ‘spotlight phenomenon’, by which corporations that regard highly of their brand image respond to consumer resentments over bad business manners by embracing more socially responsible practices. It is derived from the psychological term ‘spotlight effect’ coined first by Thomas Gilovich and Kenneth Savitsky in 1999. In psychology it refers to the phenomenon in which people think they are observed more than they are in reality most of the time. The spotlight phenomenon refers to the same kind of effect on MNCs and it shows a direct link between INGO activism and FDI patterns. The research has proven that MNCs are vulnerable to reputational costs by showing that naming and shaming by INGOs have strong negative impacts on foreign investment flows into the shamed states. MNCs would prefer not to invest in areas that were recently publicly denounced by INGOs so as to reduce the risk of being targeted themselves.

Through hypothesis testing and statistical data, Barry et al. proves that countries that have been subject to greater rates of INGO shaming receive lower FDI inflows. Further, the substantive impact of shaming on FDI flows should be greater for developing states than for developed states. The article also proves that higher levels of instability are negatively associated with FDI inflows and that greater respect for property rights is positively associated with FDI inflows. Barry et al. take the measure of human rights shaming by INGOs as the independent variable in their study. The dependent variable is the measure of investment flows by the major brand-name MNCs. Carrying out the same experiment across two separate boycotts confirm the findings and both studies confirm each others’ findings.

62 Barry et al. 533
63 Ibid.
64 Ibid.
65 Barry et al. 535
66 Barry et al. 533
67 Barry et al. 536
68 Ibid.
69 Ibid.
They use several different models and each of them suggest that with every publication related to human rights violations, the future FDI drops between 4.4% and 5.2%. This shows a relevant correlation between future FDI and human rights standards. So, the more a state is shamed, the less FDI it will receive the following year. Furthermore, the models suggest that developing countries are more vulnerable to public shaming. Developing countries receive 9% less FDI with each publicized event, while it seems like shaming has no statistically significant impact on FDI inflows to the developed countries.

All in all, if brought to the attention of the developing states that heavily depend on FDI inflows, this could influence their tendencies regarding human rights violations by the MNCs operating in their countries. The knowledge that both current and future FDI could be lost and that such losses are greater than the cost of enforcing human rights standards in MNC work zones leads host countries to opt for the latter. After all, the current law is insufficient. It cannot be properly enforced, because of loopholes that allow a mutually beneficial relationship between developing countries and MNCs. This agreement allows developing countries to receive more FDI, and MNCs to profit more. If naming and shaming could reach broader spheres this would discourage both governments in developing countries and MNCS from avoiding the value of human right. This could, in the long term, lead to improvements in legal frameworks.

Shaming in Action

As a Preventative Strategy

As I mentioned earlier, naming and shaming is a good method to enforce human rights and has a great impact on stopping MNC practices that abuse human rights. However, it only can be put in action after human rights are already violated. What is needed is a preventative strategy that would block human rights violations before they even take place. A certification program would be a good way for consumers to spot responsible MNCs while shopping. This way, the consumers would have the option of identifying and buying products from responsible corporations and this would be a big step towards prevention of human rights abuses. Throughout my internship at the Social Justice Connection, I helped in the creation of a certification program with the goal of championing the financial and reputational gains of ethical human rights practices to both the MNC and the host nation. However, there are some necessary pre-conditional considerations to be made in order for a program like this to work.

70 Barry et al. 538
71 Barry et al. 541
One of the major problems with the existing domestic and international legal frameworks is that they lack a basis of agreed universal standards of human rights to be enforced on MNCs. This certification program that is currently being developed by Social Justice Connection, a Montreal based NGO, should globalize a set of norms surrounding human rights which, in turn, would create a normative basis for identification and control of abusive forms of trade.\textsuperscript{72} Publicity also plays a big role here. Even though civil society is likely to boycott companies without a good certification, people may not be aware of the ongoing boycotts because of lack of media attention. In these cases, the success of the obstruction would be compromised. For example, in his research on the likelihood of boycotts, Balabanis, notes that only 32.1% of the respondents in one of his studies were aware of the boycott taking place, even though it was covered by the media.\textsuperscript{73} If the process of globalization of norms regarding human rights is achieved, then the corporations that go against them can be identified and publicized easily which in turn would create a wider awareness of ongoing boycotts.

Today, social media acts as one of the most important communication and information channels. Shaming through media outlets such as Facebook and Twitter has a great potential to inform society of corporations abusing human rights or environment, once they are identified through global norms, in the way of creating responsible consumers. This way, corporations going against these norms would be identified and exposed before they commit human rights violations and would be discriminated by responsible consumers. This method would eventually give abusive corporations incentives to fix their wrongful practices not to be discriminated since their revenue would be harmed otherwise. The Social Justice Connection is currently developing a project called \textit{Participation-Transition} to achieve these objectives.

A Project by the Social Justice Connection: Participation-Transition

\textbf{Certification Program}

\textit{Participation-Transition}, the focus throughout my internship, aims to form a guide of principles inspired by globalized norms to assess corporate social responsibility and eventually create a certification program for MNCs. It also includes simulations based on real case studies of human rights abuses in developing countries committed by MNCs. These simulations would be applied in MNCs as the first step of the certification program to find out how responsibly they would handle the issues presented in the simulations. The certification program, \textit{Participation-Transition} is based on twelve principles, which would serve as universal standards of

\textsuperscript{72} Tripathi 128
\textsuperscript{73} Balabanis 525
human rights or the kind of norms mentioned above. These would function to incentivize MNCs to move towards greater corporate and social responsibility. The core aspects of the twelve principles are: respect for human rights; conduction of a preliminary ‘impact study’; respect for identity; checklist; free and informed consent; preliminary organization of consultations; natural resource and territorial management; royalties and indemnification; cooperation and training of local workforce; creation of permanent institutions; respect regarding the legitimacy of these institutions, and creation of private modes of dispute resolution; and prior notice before modification or termination of, or departure from, the pre-established agreements, rules, and institutions. Each principle details the practices laid out in order respect human rights while maintaining corporate efficiencies and profitability. These include the identification of both good and bad practices ‘within the international body of law, jurisprudence, and practice community’ as well as case studies to illustrate the real-world applicability of such principles and behaviors. The certification program overall is based on the notion that almost all MNCs violate human rights for the benefit of profit-maximization. In fact, taking operations abroad is the first step to the same objective. Because this is generally done for diminishing costs through cheap labor and tax breaks found in developing countries that need investment. Taking this into consideration, the certification program tries to reach its aims of protecting human rights and preventing their abuse by drawing from the evidence that better corporate behavior can be lucrative. Furthermore, it can prevent the unforeseen financial costs of bad reputation and costly litigation.

My supervisor for my internship asserted that naming and shaming, as a technique, is only a partial solution to changing the behavior of global business giants. Instead, his idea in initiating this program is grounded in the belief that the most convincing way to persuade corporations to change their behavior is to relate the costs of their bad behavior to their bottom line. This real numerical evidence shows that profit need not be traded for ethical behavior, and that the two can positively feed off of each other. My contribution to this initiative involved finding and assembling real case studies that document the higher costs of failing to respect human rights. These tend to be greater than the possible savings on subpar or non-existent human rights standards. The biggest task throughout my internship was to find such incidents, analyze them, and then create a standardized case study based on the given MNCs success or failure with regards to the previously stated twelve principles. The case studies tell the story of what happened, which principles were violated and/or respected, the company’s rationale for the actions they took (if found), the costs of violating these principles – such as lawsuits, operation bans or restrictions, etc. –, and the effect on demand and revenues associated with these violations. Though still in its upstart phase, the ultimate goal of the certification program is to have a

74 To access the detailed content of the twelve principles one can contact the Social Justice Connection office.
75 Tripathi 118
76 Barry et al. 534
large database of real cases relating to each principle. Through this data collection, and combinations therein, Social Justice Connection hopes to back the mandate that socially responsible business are profitable business.

The reach of this certification program depends on the creation of responsible consumers. This cultivation is largely due to coverage by the mass media of human rights violations committed by MNCs. In order to encourage consumer and, subsequently, corporate responsibility, this certification program should also target MNCs that are not engaged in human rights abuses and that are inspected on a regular basis. If marketed correctly and effectively, this certification program would have the potential of accelerating enough to be a global norm for all operations and locations in an MNCs' supply chain, not only for their operations at home. This would encourage all MNCs to get certified in order to be able to sell their products regardless of their level of corporate social responsibility. Ideally, if this program grew to its full capacity, companies that are not certified could be hurt by this fact alone, even if they are not in fact violating human rights. Further, if this certification program were to become a universal symbol of corporate social responsibility, then it would also bring about better accountability arrangements and pressure for transparency. As previously mentioned, the existing international legal framework lacks both, especially the latter, making the need for and practical use of such an evident program.

**Simulations**

Creating responsible consumers and eventually convincing MNCs to join the certification program are the first steps that bring about other aspects of this certification program. The tests of eligibility to obtain a certificate require methods to assess corporate social responsibility. The Social Justice Connection developed a system of simulations for staff and managers of MNCs, in order to fully grasp the importance and practicality of each principle, instead of merely inspecting their activities abroad. The simulations are divided by industry, and two are currently in the process of development: agriculture and mining. Most of my work focused on the former, but the structure of each simulation is pretty similar. Both simulations consist of real life situations that caused problems through other MNCs’ business processes and diminishing returns. The situations are derived from the case studies.

The simulations start with a presentation of the background and history of the business site and relevant information, then each participant is given a character to portray, and specific instructions and documents that character would have access to. The characters are generally inspired by actors involved in the real-life situations like local villagers, business owners, farmers, and MNC managers or employers. Understanding the dynamics between characters is integral to a successful completion of the simulations because local people with lower statuses may not speak truly of their working standards when their employers are present. Similarly, women may be reluctant to reveal conditions in their community when their husbands are
present. The simulation, therefore, demonstrates the social possible dynamics in an operation area and the impacted parties aiming the participants to come up with solutions without disregarding the local population and environment. It assesses the abilities of participants to approach local people in a proper way that would lead them to collect the most information and generate their project integrating the interests and needs of the local people in the operation area. The final step of the simulations is for the participants to identify and solve the existing problems by simulating the real-life situation and honoring their role. The results of the simulation would give a sense of the corporation’s level of corporate social responsibility and, if successful, show that the staff are able to carry out their business when they encounter obstacles similar to other MNCs. This would be a first step in the assessing corporate social responsibility and then field inspections of the MNCs would follow.

The simulation would ensure that the companies take into account all parties involved, and it would allow them to conduct their business without making the same costly mistakes that other companies have. The field inspection, on the other hand, would assess the level of corporate social responsibility of the ongoing business practices at the overseas branches of corporations. If this new Social Justice Connection project comes to fruition and achieves its objectives, it can pave the way for global international economic agreements to include this certification or at least something similar to it, in their legal framework. This is because, even if this system were to work perfectly, it would just be a global norm based on profit-maximization and corporate image. Still, the success of this certification program would encourage new and improved institutions as well as ways to legally enforce human rights.

The New International Framework

The primary reason MNCs were created in the first place was to improve trade. So, one must ask: why has the only organization dealing with the international rules of trade, the WTO, failed to address the enforcement of human rights in the context of MNCs overseas business ventures? An international organization in such a position should not stay aloof from human rights responsibilities. The involvement of the WTO would not imply a transfer of obligations but rather an enlargement of the number of actors with acknowledged human rights responsibilities.\footnote{Deva 11} The use of trade sanctions to implement human rights along with other rules would be an appropriate way to regulate MNCs.

The liberalization of trade under the WTO has diminished the role of states as regulators of MNCs.\footnote{Ibid.} The WTO regime has somewhat modulated the restrictions on corporations regarding their human rights responsibilities by not discriminating between similar products on the basis of how they are produced. As
a result of this rule, countries may not be able to ban the products of an MNC based only on an MNC’s violation of particular human rights in the process of making the product.\textsuperscript{79} Member states are also required to match their national laws in accordance with the WTO. Because of these intricacies of this legal framework, and the subsequent loopholes, MNCs’ abuses of human rights are regulated neither by national nor international instrument. This contributes greatly to states inability to intervene when human rights violations take place on their soil at the hands of MNCs. The WTO must fill this jurisdictional gap if it truly wishes to protect international human rights.

The urgent need of a program like Participation-Transition can be further emphasized by the emergence of a new agreement the USA has been formulating, the Trans-Pacific Partnership (TPP). In his article, “What is the Trans-Pacific Partnership and Why Are Critics Upset by It?” Taylor Wofford defines TPP as a colossal trade agreement between the USA, Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, Canada, Mexico, and Japan, which reached a conclusion in negotiation on October 5\textsuperscript{th}, 2015.\textsuperscript{80} Wofford argues that TPP is basically designed to develop advantageous operating conditions for MNCs based in the USA, however the secretive nature of the agreement leaves its objectives ambiguous.\textsuperscript{81} Other sources confirm that the IP chapter of the agreement make it a necessary condition to adopt “many of the most controversial aspects US copy right law in their entirety.”\textsuperscript{82}

Two chapters and some related documents covering intellectual property and environmental regulations have leaked online by WikiLeaks, which concerned the public.\textsuperscript{83} The chapter on intellectual property goes too far in limiting internet privacy, and the chapter on environmental regulations asserts that this legislation is a regression from a 2007 agreement devised by the George W. Bush administration.\textsuperscript{84} Last November, the governments of US and New-Zealand have released the full text of the agreement.\textsuperscript{85} It is unclear how disrespectful the agreement will be of human rights but the critics are certain that inclusion of countries like Peru and Vietnam will lead to exportation of well-paying jobs to economies with lower wage standards that will make the exploitation of workers easier and more likely.\textsuperscript{86} In addition, it is certain that this kind of agreement will empower corporations as non-state actors. Since this kind of agreements hold the potential to increase the prevalence of labor exploitation and human rights abuses, especially in developing countries, it is

\textsuperscript{79} Ibid.
\textsuperscript{80} Taylor Wofford. “What Is the Trans-Pacific Partnership and Why Are Critics Upset by It?” Newsweek. [Newsweek, 12 June 2015]: par. 1
\textsuperscript{81} Wofford pars. 2-4
\textsuperscript{82} “Trans-Pacific Partnership Agreement.” Electronic Frontier Foundation. [Electronic Frontier Foundation]: par. 13
\textsuperscript{83} Wofford par. 6
\textsuperscript{84} Wofford pars. 7-9
\textsuperscript{86} Curry par. 12
very important to adopt a mechanism like *Participation-Transition* program that will expose MNCs’ bad practices but also force them to comply to better standards in the near future.

These mechanisms are a logical proposition, because “the legal framework of the WTO is compromised of trade, trade-related and non-trade norms.” Trade and human rights are associated so there is no reason why the WTO’s scope should not include human rights. It is argued by Deva that if its mandate includes barriers to conserve intellectual property rights, then it should also include barriers to enforce human rights. Indeed, the first paragraph of the Preamble of the WTO Agreement, as quoted in Deva (12), states:

Recognizing that [state parties’] relations in the field of trade and economic endeavor should be conducted with a view of raising standards of living, ensuring full employment expanding the production of and trade in goods and services, while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance means for doing so.

Although this sounds like a progressive policy, it is not very logical or promising for the WTO to claim its trade policies have goals like “full employment” or raised living standards without including human rights in its directive. Therefore, the WTO, as the only global international organization on trade, must be obligated to enforce human rights in the context of multi-national business practices. It is undoubtedly the most relevant international body to do so, and it has abundant power to implement sanctions to support its enforcement mechanism.

Conclusion

In conclusion, this essay proves that current legal frameworks and regulatory bodies fail to address the violations of human rights by states as well as by MNCs. Three arguments have been formulated as to why the method of naming and shaming would be successful at halting the human rights abuses by MNCs. At the international level, research has demonstrated that INGO initiatives of naming and shaming are correlated with enhanced human rights, especially when combined with foreign third party support or local INGO presence. When local NGOs fail to address human rights violations, they tend to turn to international networks of
INGOs that publicize the target state’s abuses of human rights internationally. This strategy is called the boomerang effect and increases the cost of repression by the target government.\textsuperscript{90}

It has also been proven that human rights shaming by INGOs has a strong correlation with the FDI inflows. Moreover, shaming proves the strongest deterrent effect on future investment in developing countries.\textsuperscript{91} Publicity seems to have a much stronger effect on investment patterns than the real human rights standards themselves. This shows that globalization has enhanced actors other than states that can also cause serious consequences. INGO activities may be considered among the most compelling methods for human rights enforcement available in the international arena.\textsuperscript{92} This way INGOs serve not only to regulate human rights violations by MNCs, they help developing countries where MNCs do business that are more prone to shaming-caused variations of FDI compared to developed states.\textsuperscript{93}

Furthermore, I have discussed how to use the method of naming and shaming more effectively as a preventative strategy. This is supported through an analysis of the project I worked on throughout my internship at Social Justice Connection, the Participation-Transition Project. The certifications laid out in this progress takes the power of naming and shaming to an entirely new level, and have shown its great potential to create a set of global norms of corporate social responsibility and human rights. It also has an appropriate mechanism to examine corporations through simulations, which can be constantly upgraded and improved upon. Nevertheless, these norms will only work through social pressure and will depend heavily on media sources unless they are plugged into a legal framework with a real enforcement mechanism. My concluding argument, inspired by Surya Deva’s article “Human Rights Violations by Multinational Corporations and International Law: Where from Here?” Posits that the WTO is the most suitable international body to enforce human rights on MNCs. The method of ‘naming and shaming’ holds a lot of promise in being a preventative strategy, especially if combined with legal enforcement mechanisms. In the face of such an urgent need of better regulating MNCs from violating human rights and having a more relevant legal framework that is up to date, it is worthwhile effort of INGOs and other actors to create a system that will address both issues will pay off in the future.

\textsuperscript{90} Barry et al. 533
\textsuperscript{91} Barry et al. 542
\textsuperscript{92} Barry et al. 543
\textsuperscript{93} Barry et al. 542
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