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## The Multinational and the "New Stakeholder": Examining the Business Case for Human Rights

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# The Multinational and the “New Stakeholder”: Examining the Business Case for Human Rights

Scott Greathead\*

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## I. INTRODUCTION

There was once a time in the United States when corporate executives were white men in suits, men who had to think of nothing other than maximizing the profits of their companies—companies whose only stakeholders were shareholders.

Some of the realities of doing business in the global economy include the concerns of new stakeholders such as these:

- Soccer moms who refuse to buy a famous line of soccer balls after reading reports that they are hand sewn in Pakistan by children;<sup>1</sup>

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1. S.L. Bachman, *A Stitch in Time?*, L.A. TIMES MAG., Sept. 16, 2001, at 10, available at 2001 WL 2518458 (describing the U.S. reaction to learning that popular soccer balls were products of child labor).

- Talented African-American MBAs who will not interview with a company because it has a poor record of promoting minorities;<sup>2</sup>
- College students who protest their university's licensing agreement with a sportswear manufacturer that uses a Guatemala factory that allegedly abuses workers;<sup>3</sup>
- Money managers with clients who refuse to invest in companies with poor environmental ratings;<sup>4</sup>
- Assertive reporters who will call a CEO at home to ask him if he knows the paper clips sold in his national retail chain were made by prisoners in China;<sup>5</sup>
- Indigenous groups who will no longer passively accept the presence in their ancestral lands of big oil and mining companies that exploit natural resources without coming to terms with local communities.<sup>6</sup>

Business managers who ignore these realities—the concerns of these new corporate stakeholders—do so at the risk of their company's brand and their own careers. These are just a few examples of the new stakeholders of multinational corporations—workers, consumers, investors, indigenous peoples, non-governmental organizations (NGOs), and the media.

## II. GLOBALIZATION AND THE NEW HUMAN RIGHTS AGENDA

The concerns of these new stakeholders embrace human rights. It is a much broader concept of human rights, however, than the civil and political rights that used to dominate the agenda. Former concerns centered on freedom from arbitrary arrest, detentions, and other due process rights, freedom of speech and association, and

2. See generally Willie E. Hopkins et al., *Diversity and Managerial Value Commitment: A Test of Some Proposed Relationships*, 13 J. MANAGERIAL ISSUES 288, 301 (2001), available at 2001 WL 20952286 (concluding that an organization's commitment to diversity is perceived by minorities to be an important positive factor in the workplace).

3. Simon Birch, *Sweat and Tears: A Vast Protest Movement is Sweeping US Campuses*, GUARDIAN (London), July 4, 2000, available at 2000 WL 23928341.

4. See generally Kiergan Poynter, *Rankings Reflect Congruence of Interests: Reputation Capital*, FIN. TIMES (London), Dec. 17, 2001, available at 2001 WL 31431040 (explaining that investors' interests in a company include not only financial reports, but also reputation).

5. See generally Jim Hopkins, *Paper Clip King Uncovers Slave Labor*, USA TODAY, April 18, 2001, at 8B (describing the breaking of the news that paperclips sold in the United States were made by prison labor in China).

6. See, e.g., Graeme St. John, *Earthdreaming: Earthdreamers' Protests Against Mining and Nuclear Industry in Australia*, ARENA MAG., June 1, 2001, at 41 (discussing protests by Aboriginal groups and others in Australia).

governmental abuses such as torture, disappearances, and extrajudicial executions. These new human right concerns focus on social and economic rights—the rights to live and work in a safe and healthy environment, the rights of workers to associate freely and bargain collectively, the cultural rights of indigenous people.

The emergence of these new rights has marked important changes in the human rights agenda. Ten years ago the main players in the human rights drama were governments, the victims of governmental human rights abuses, and human rights NGOs. Now the major players include multinational corporations and a host of advocacy NGOs, representing causes ranging from the environment, labor rights, and women's rights to the cultural rights of indigenous peoples.

During the twenty years that the Author has worked in the human rights movement, the focus of the community has been on traditional political and civil rights—and abuses perpetrated by repressive and abusive governments, both totalitarian governments on the left, and authoritarian regimes on the right. The end of the Cold War and the fall of most Communist governments in the late 1980s and early 1990s coincided with the replacement of many right wing regimes with democratic governments, particularly in the Western Hemisphere and also in parts of Asia. The governments of a host of countries that in 1984 were run by military or authoritarian figures—Chile, Argentina, Paraguay, Uruguay, the Philippines, Korea, to name a few of the major ones—are today relatively democratic.

It is important to examine how and why these changes occurred. These developments coincided with economic changes that newspapers and other commentators call the globalization of the world economy.<sup>7</sup> The term is used to capture a host of changes in transportation and communication—the result of which has been that most of the clothes we wear, the shoes on our feet, and the toys our kids play with are now manufactured in low-wage countries in Asia and Latin America, where there is little or no regulation of workplace health and safety, and where workers' rights to organize often are not respected.

Globalization has also involved improvements in communication, by satellite and the Internet, so that the actions of multinational corporations in remote places can be known and disseminated throughout the world in a matter of minutes or hours. Any multinational oil executive will admit that no confrontation between security forces defending a remote jungle oil production site and a

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7. Rosemary J. Coombe, *The Cultural Life of Things: Anthropological Approaches to Law and Society in Conditions of Globalization*, 10 AM. U. J. INT'L L. & POLY 791 (1995).

tribal group protesting an incursion into their ancestral lands will go unnoticed for very long these days.

These developments have meant big changes for the human rights community—and even bigger changes for business. The emerging importance of the business community for the human rights agenda has now been recognized by virtually every major human rights organization. For example, in a recent speech, the Secretary General of Amnesty International, Pierre Sané, told a gathering of multinational oil company executives that while governments “are still the primary bodies accountable for upholding human rights every where[,] the responsibility of the business community is inescapable.”<sup>8</sup>

In the same vein, the Human Rights Watch World Report places particular emphasis on “the enforcement gap for issues of human rights in the global economy” and argues that while “[i]n recent years, progress has been made in increasing corporate attention to human rights[,] . . . more is needed.”<sup>9</sup>

As the human rights community has come to recognize, the globalization of the world economy has made the role of the multinational business community in the human rights arena—as violators of internationally recognized rights as well as instruments to advance the human rights agenda—as important as that played by national governments. Ten CEOs of multinational corporations, which collectively employ several hundreds of thousands of workers to manufacture their products in China, arguably have more leverage with leaders of the People’s Republic of China (PRC), who are dependent on keeping those workers employed, than the President of the United States, who has little to offer the PRC politically or practically. It is the challenge facing the human rights community in this new era to devise strategies to address the human rights conduct of business in the global economy and to harness the leverage MNCs can exercise to further the mission of promoting and protecting basic rights.

The business case for human rights is written into the preamble of the United Nations Universal Declaration of Human Rights, which states: “Every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms.”<sup>10</sup>

The key words are “every organ of society.” According to Mary Robinson, the United Nations High Commissioner for Human Rights,

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8. Pierre Sané, Remarks at the Launch of Global Sullivan Principles (Nov. 2, 1999) (transcript available at <http://www.un.org/partners/business/sullivan.htm>).

9. Human Rights Watch World Report 2001, Introduction, at <http://www.hrw.org/wr2k1/intro/intro04.html>.

10. United Nations Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948).

this phrase means "[b]usiness corporations included."<sup>11</sup> This is how Mary Robinson defines the issue of business and human rights: "It is not a question of asking business to fulfill the role of government, but of asking business to promote human rights in its own sphere of influence."<sup>12</sup>

Amnesty International, which has worked closely with companies like Royal Dutch/Shell, BP/Amoco, and Rio Tinto on corporate human rights policies, concurs in this view of the responsibility of businesses under the Universal Declaration: "This declaration, the bedrock of contemporary human rights standards, obligates financial institutions and corporations, as organs of society, to uphold international human rights standards."<sup>13</sup> Amnesty International encourages companies to promote human rights in their enlightened self-interest: "The structures that protect human rights protect your business as well. Corporation which use their influence to promote human rights, promote a better climate for investment."<sup>14</sup> As Amnesty International also observes, "Systematic human rights violations may lead to conditions of social unrest, political instability, and armed conflict—conditions which do not favor long-term business investment."<sup>15</sup>

### III. MAKING HUMAN RIGHTS PART OF BUSINESS

A few forward-looking corporations have risen to the challenge to incorporate human rights into their business operations. As far back as 1992, Reebok International adopted a code of conduct requiring that the factories of their global suppliers comply with internationally recognized human rights standards.<sup>16</sup> Now virtually every maker of apparel, footwear, and toy products has a code of conduct governing how their products are supposed to be made, and a few are wrestling with the harder task of ensuring that those standards are met through projects like the White House-sponsored Fair Labor Association.<sup>17</sup>

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11. Mary Robinson, *The Business Case for Human Rights*, quoted in VISIONS OF ETHICAL BUSINESS, available at <http://www.unhchr.ch/hurricane/hurricane.nsf/45ee90b46a08ca5a802565fd004e2473/e47d352dedc39697802566de0043b28e?OpenDocument>.

12. *Id.*

13. AMNESTY INTERNATIONAL USA, HUMAN RIGHTS PRINCIPLES FOR COMPANIES (1998).

14. *Id.*

15. *Id.*

16. Reebok Human Rights Production Standards, at <http://www.codagroup.net/rhr/standards.htm>.

17. See generally Welcome to the Fair Labor Association, at <http://www.fairlabor.org> (defining the mission and objectives of the Fair Labor

Leading oil and mining companies are also getting the message. In 1999, five years after a spokesman for Royal Dutch/Shell refused to comment on the Nigerian government's hanging of the Ogoni Nine<sup>18</sup> because it was not an appropriate subject "for private companies . . . to comment on[.]"<sup>19</sup> Shell's Chairman, Mark Moody-Stuart, had these words: "The demands of economics, of the environment and of contributing to a just society are all important for a global commercial enterprise to flourish."<sup>20</sup> Had Shell recognized these responsibilities earlier, Ken Saro Wiwa and his Ogoni colleagues might well be alive today, and Nigeria would be a better place for it.

In short, it is beyond debate that business and human rights issues have moved to the forefront of international human rights activism and advocacy. Addressing these issues is particularly important in the United States, where most of the world's multinational corporations have their headquarters.

While a few corporations recognize the growing significance of human rights to their operations, others continue to ignore these developments—arguably at their own peril. There is little question that increased transparency due to improved global communications, the proliferation of mass media vehicles, and the expansion of corporate reach via multinational consolidation and disappearing trade barriers will only increase critical scrutiny of corporate activity. Added to this is the lure of new business in developing markets, which will find even more companies investing in areas of political and cultural conflict. As Mary Robinson has noted, "[P]eople are increasingly concerned about what they perceive to be the negative effects of globalisation on the enjoyment of human rights and they are prepared to act to defend the human rights of themselves and others."<sup>21</sup>

#### IV. CONCERNS OF THE NEW STAKEHOLDERS

Five of the most important new corporate stakeholders and their principal concerns are a fitting conclusion to this discussion.

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Association); Company Codes of Conduct, at <http://www.codesofconduct.org/company.htm> (providing examples of the codes of conduct some notable companies have adopted).

18. *Shell-Ogoni Meeting Set Up*, OIL DAILY, July 27, 2001, available at 2001 WL 14945987.

19. Mark Moody-Stuart, *The Values of Sustainable Business in the Next Century*, Lecture at St. Paul's Cathedral, London (July 12, 1999), at <http://www.wbcsd.ch/newscenter/speeches/sdvalues.pdf>.

20. *Id.*

21. Robinson, *supra* note 11.

### A. NGOs

NGOs like Amnesty International and Human Rights Watch have begun campaigns that focus on the operations of oil and mining companies operating in conflicted regions of the world. Other groups, like the National Labor Committee and United Students Against Sweatshops have targeted apparel and footwear companies for the abusive conditions in off-shore factories where their products are made.<sup>22</sup>

Some NGOs have focused on the cultural rights of indigenous peoples. The operations of the U.S.-based oil, gas, and chemical company Occidental Petroleum Corporation have come under attack by the Rainforest Action Network, which has conducted a seven-year campaign against oil development in a remote area of Colombia, the tribal homeland of the U'wa tribe.<sup>23</sup>

While studies show that NGOs are considered more trustworthy in Europe than in the United States, even in the United States NGOs are now considered the most reliable source worldwide for credible information on the environment, human rights, and health issues.<sup>24</sup>

### B. Consumers

Consumers play an increasingly important role in creating incentives for corporations to improve the social impact of their operations. According to a recent Cone/Roper Research Report:

Americans, in their roles as consumers, employees, customers, and community members are consistent in their expectation that companies must help solve social issues. More than eight in ten American consumers report having a more positive image of companies who support a cause they care about, and 94% of Influential Americans report having a more positive image of such companies.<sup>25</sup>

A recent study by the Conference Board asserts that "[l]ike citizens worldwide, American consumers say the role of business is to

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22. See generally National Labor Committee, at <http://www.nlcnet.org> (describing various active campaigns of the National Labor Committee); United Students Against Sweatshops, at <http://www.usanet.org> (outlining the mission and providing information about how to get involved).

23. Occidental Petroleum Drills on U'wa Land, at [http://www.ran.org/info\\_center/aa/uwa\\_oxy.html](http://www.ran.org/info_center/aa/uwa_oxy.html) (describing the Rainforest Action Network's campaign to protect the U'wa land).

24. Guy Jonquière, *NGOs in Winning Battle to Sway Opinion*, FIN. TIMES (London), Dec. 6, 2000, at 14.

25. 1999 Cone/Roper Cause Related Trends Report: The Evolution of Cause Branding® (on file with author).



make profits and create jobs, but far more important over the next decade will be helping build a better society[.]”<sup>26</sup>

### C. *Socially Responsible Investors*

As more investors vote with their pensions and savings, companies will have to answer to an increasing number of fund managers on concerns such as the environment, community development, working conditions, and human rights. The social investment forum asserts that over three trillion dollars last year was invested in socially responsible funds, up eighty-two percent in the past two years. This trend shows no sign of abating. Bloomberg has even released a new book called “Investing with Your Values.”<sup>27</sup>

### D. *The Student Movement*

In only a few years of existence, the United Students Against Sweatshops, a national coalition of college undergraduates, has become a major force in the anti-sweatshop movement. Student activists will continue to rock campuses around the country demanding a living wage, freedom of association, and other economic and social rights.

### E. *Plaintiffs’ Lawyers*

A growing number of companies are being sued under the Alien Tort Claims Act<sup>28</sup>—a U.S. law that allows aliens to sue in U.S. courts for torts inflicted outside U.S. borders—including those resulting from human rights abuses. A recent example is Unocal, which was sued in federal district court in California for claims arising out of its involvement in a gas pipeline project in Burma.<sup>29</sup> While the case against Unocal was dismissed by the trial judge, the opinion acknowledged that “[t]he evidence does suggest that Unocal knew that forced labor was being utilized and that the Joint Venturers benefited from the practice.”<sup>30</sup> Plaintiffs are currently appealing the decision to the Ninth Circuit Court of Appeals.

Other examples of lawsuits against corporations alleging violations of human rights include:

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26. Consumers Worldwide Expect Business to Achieve Social as Well as Economic Goals: New Study Pinpoints What Consumers Want from Corporations, at <http://www.iblf.org/csr/csrwebassist.nsf/content/f1e2d3j4.html>.

27. See HAL BRILL ET AL., *INVESTING WITH YOUR VALUES: MAKING MONEY & MAKING A DIFFERENCE* (1999).

28. 28 U.S.C. § 1350 (2001).

29. *John Doe I v. Unocal Corp.*, 110 F. Supp. 2d 1294 (C.D. Cal. 2000).

30. *Id.* at 1310.

- Cutter & Buck, J. Crew, Gymboree, The Gap, Tommy Hilfiger, Wal-Mart and others were sued by a coalition of human rights groups for allegedly violating the rights of Chinese workers imported into Saipan to work in their suppliers' factories;<sup>31</sup>
- Citizens of Nigeria sued Chevron for the deaths of peaceful protestors on an oil platform in Nigeria;<sup>32</sup>
- Cases are also pending against Union Carbide,<sup>33</sup> Unocal,<sup>34</sup> Dow Chemical,<sup>35</sup> Texaco,<sup>36</sup> and Freeport-McMoRan<sup>37</sup> in U.S. courts for various alleged violations.

## V. CONCLUSION

Like all worthy challenges, incorporating human rights concerns into the operations of multinational corporations also brings with it rewards. Leading CEOs, like Reebok International's Paul Fireman and Royal Dutch/Shell's Mark Moody-Stuart, have persuasively argued that doing so is not just the right thing to do but good for business as well. It is also a subject that merits the time and attention of America's leading business schools.

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31. *Saipan Lawsuits Allege US Firms are Tied to 'Sweatshops'*, BOSTON GLOBE, Jan. 14, 1999, at A10.

32. Patti Waldmeir & David Buchan, *Shell Fails to Prevent Trial on Abuses in Nigeria*, FIN. TIMES (London), March 27, 2001, at 16 (discussing the case against Chevron and a similar case against Royal Dutch/Shell).

33. See generally Tom McNamara, *Plaintiff's Diplomacy: Are There Any Limits on American Supercourts?*, available at <http://www/dgslaw.com/articles/111134.pdf> (discussing the effect of the Alien Tort Claims Act on international lawsuits, including those against large American corporations alleging overseas human rights violations).

34. These cases allege complicity in human rights violations perpetrated by the Burmese government in connection with the extradition of oil and natural gas. See generally *id.*

35. Robert P. Lewis, *Employers Compelled to Recognize Human Rights*, N.Y. L.J., June 19, 2001, at 7 (describing the suit against Dow Chemical and other companies by workers in several countries injured by exposure to chemicals used on banana farms).

36. Kim Segupta, *Atlas maps investment in a world of abuses*, INDEP. (London), Feb. 13, 2002, at P11, available at 2002 WL 13876945 (noting that a lawsuit has been filed against Texaco by Amazonian communities for environmental and human rights violations); see also Danielle Knight, *Amazon Communities to Appeal U.S. Court Ruling*, INTER PRESS SERVICE, June 1, 2001, available at 2001 WL 4804120 (describing allegations that Texaco deliberately polluted the environment).

37. The allegations involve environmental and human rights violations in connection with mining in the Irian Jaya province of Indonesia. See generally *A Chronology of Controversy*, AUSTIN AMERICAN-STATESMAN, Feb. 13, 2000, at H6, available at 2000 WL 7329345.

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