

Book Reviews

Beyond Voluntarism: Human rights and the developing legal obligations of companies

International Council on Human Rights
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Reviewed by J. Paul Martin

International rules for the protection of human rights create binding legal obligations on international business corporations. That is the thesis advocated by *Beyond Voluntarism*, a recent publication of the Geneva-based International Council on Human Rights Policy. In other words, quite apart from any commitment by companies to such voluntary principles as the UN Global Compact, they are also bound by international law. *Beyond Voluntarism* goes on to explain how international law originally designed to govern the behavior of states can be applied to non-state actors, including for-profit corporations.

One of the strengths of *Beyond Voluntarism* is the degree to which it has benefited not only from the expertise of its authors, but also from broad consultation through external consultants coming mostly, but not exclusively, from the international law and human rights communities.

Beyond Voluntarism takes issue with those who argue that corporations respond best to voluntary commitment rather than legal obligation. The authors argue that voluntary codes and market forces are important but insufficient both as motives and standards of measurement. The authors hold that historically law has always been needed to balance power by establishing enforceable rights and corresponding duties. They support their argument for strong international legislation by pointing to the de facto absence of corporate accountability following the escape of deadly gas at the Union Carbide plant in Bhopal, India, which killed 2,660 people and physical impaired countless others. In the absence of an effective national or international legal system, the company continues to enjoy almost total immunity. The Union Carbide example suggests that just as human rights treaties have been necessary to curb the power of governments, so today international law provides a regulatory framework necessary to coun-

teract the negative effects of multinationals' dramatic growth in power and their ability to escape national regulation.

Beyond Voluntarism makes a good case for the need for regulation, but the case for the effectiveness of existing international law and institutions is weaker. The volume points out that corporations already benefit from international legal regimes and trade agreements that provide, inter alia, for dispute management, the protection of investment and intellectual property rights. It then argues that "if international law can protect the rights and interests of multinationals, it is reasonable to examine how it might also place duties on them." *Beyond Voluntarism* then advances the thesis that international human rights law is a common, universal and necessary benchmark over and above national and voluntary codes. Existing voluntary codes, for example, cover different issues and set out varied principles and standards. There is little consistency among them. Domestic rights legislation is often non-existent or inapplicable in many of the countries in which multinational operate. Human rights, on the other hand, is "the only internationally-agreed expression of minimum conditions that everyone should enjoy if they are to live with dignity as human beings."

The challenge faced by human rights laws and institutions is that of enforcement. The book gives reasons why corporations ought to see human rights as a good thing but it does not delineate why and to what degree their activities are already subject to international legal obligations. The authors point out that international standard-setting is gaining momentum, noting the regulations being implemented to govern trade in small arms and conflict diamonds, as well as the increasing incorporation of international human rights into domestic law. The European Union is also considering drafting legislation to define the legal obligations of international corporations.

When it comes down to defining the existing laws, the authors acknowledge both indirect and direct obligations. Indirect obligations arise from the duty on host states to prevent abuses by corporations. There is a basic direct obligation by all parties, including corporations, not to commit or assist in human rights violations committed by others. Direct obligations

can arise from treaties and regulations applied by international organizations such as the UN, the ILO and OECD. These provisions cover abuses such as religious, racial, ethnic and other forms of discrimination, slavery, indentured labor, child labor, torture and inhuman prison conditions, as well as inadequate housing, food, healthcare and education. An especially complex form of involvement occurs when, for example, income received from a company is used by a government to suppress or discriminate against a minority within the state. Unfortunately the assessment and enforcement of such obligations through international mechanisms is still in its infancy, and will develop only through more formal legal activity.

The question now is what relevance *Beyond Voluntarism* has for those doing business in China. Essentially it encourages businesses, government officials and all concerned with the in-house and community impact of international and national business corporations operating in China to develop a unified domestic code based on international human rights standards. Such a code would integrate human rights principles into all branches of Chinese law, namely criminal, commercial, tort, employment and even family law. One benefit would be to help factories in China producing for U.S. companies to adopt a standard set of procedures instead of having to know and observe the individual codes of the individual companies with whom they have contracts.

This draws attention to a further important point, namely the role that governments must play in regulating the activities of multinational corporations within their borders. The difficulty is that government officials responsible for enforcement often profit from turning a blind eye to corner-cutting by corporate executives anxious to meet deadlines and ensure that their products reach the market on time. From the human rights point of view, governments like China who sign the International Covenant on Civil and Political Rights become subject to its obligations. The legal obligations of corporations are less explicit and open to debate.

Nevertheless the presence or impending arrival of a corporation provides a government with a new opportunity to meet its own human rights obligations. For example,

as a condition of doing business within its confines, a government might oblige companies to provide services that ameliorate human rights problems, such as providing jobs to segments of the population mired in poverty. While such contractual obligations would not replace those based on international or domestic law, they could make an even more positive contribution to the well-being of the communities in which foreign companies operate.

Internationalizing China:

Domestic Interests and Global Linkages

by David Zweig

Cornell University Press 2002, 320 pp.
\$45.00.

Reviewed by Frank Ching

One of the world's most exciting developments over the last quarter century has been the transformation of China.

"China in 1978 was an authoritarian, autarkic, highly regulated economy firmly in the clutches of bureaucrats and the party," observes David Zweig in his book.

"International markets had little impact as tight regulations prevented potential beneficiaries of internationalization from knowing that they could benefit from transnational exchanges," he elaborates. "State bureaucrats protected state firms from international threats. Tariffs and quotas misdirected entrepreneurship into 'rent-seeking' activity, generating inefficiency."

In these circumstances, Zweig says, "international transactions should have stagnated." Yet, "between 1978 and 1999, trans-national exchanges boomed. How is one to explain this phenomenon?" David Zweig sets out in this book to answer that question.

Zweig's explanation includes elite politics, the regulatory system established to control transnational exchanges, the relative value of goods and services inside and outside China, and the policy process in China.

One example of relative value in the academic field should suffice. While a professor in China earned 6,000 RMB (or \$1,500) a year in 1991, remuneration at an American university might be \$40,000 for teaching the same courses. This meant that a visiting professor to the US could

earn 30 years of his teaching salary in two years abroad.

According to Zweig, "China's opening was not driven solely by the free market. China's leaders, hoping to mirror the success of other Asian tigers and Japan, moved from a planned autarkic economy to a mercantilist strategy, where economic decisions about the transactions with the outside world were to remain controlled by central leaders and the state's bureaucratic agents."

"Factories wanting linkages had to establish equity joint ventures which needed government approval," he says. "Academic exchanges were monitored by a university's foreign affairs office; localities wanting global ties had to become Special Economic Zones, or establish nationally recognized economic and technical development zones or high-tech zones."

As a result, millions of new "gatekeepers" emerged throughout the bureaucracy, vested with the authority to manage China's external relations.

Initially the bureaucrats blocked exchanges, but they soon realized—"no flow, no dough" – that there were no benefits from controlling a channel through which no one was passing. In fact, the more exchanges there were, the more these gatekeepers stood to gain. Soon, instead of blocking exchanges, they were actively encouraging them.

The first areas opened up for foreign investment were four special economic zones (SEZs), namely Shenzhen, across from Hong Kong, Zhuhai, adjacent to Macau, and Shantou and Xiamen across from Taiwan. From these first special economic zones Beijing later moved to open the coastal areas to foreign investment.

Zweig points out an interesting development: special policy dispensations for these regions attracted not just foreign investment but investment from inland cities and regions as well.

This is because the special zones offered domestic as well as foreign companies an opportunity to cut transaction costs through special privileges such as lower taxes for investors, free labor markets and higher wages, export-import powers, and freedom to raise capital.

It was not surprising, therefore, that regulated localities in China moved resources to the open areas in order to participate in

the deregulated market environment and to make global contacts. Deregulated spaces became like magnets attracting investment, resources, technology and human capital from inside and outside China.

As a result, total investment in fixed assets in the open coastal areas grew dramatically through the 1980s. In 1983-85, total investment in fixed assets in the four SEZs as a percentage of nationwide investment doubled from 1.2% to 2.4%.

Zweig points out that constant lobbying of the central government by provinces and cities to extend preferential policies to other localities propelled the pace of deregulation and internationalization. Ultimately this lobbying by localities for individual concessions and open status accelerated the opening up of China.

Predictably, the gap between the coastal regions and the interior widened. While the GVIO (gross value of industrial output) in the coastal regions comprised 60% of the national total in 1984, by 1994 it had reached 70% of the national total. According to the United Nations Development Programme, the difference between China's most developed and least developed provinces is now comparable to that between the developed nations of the OECD and the world's poorest countries.

Although China's original intention was to have joint ventures (JVs) produce only for export, rural leaders eventually gave JVs access to China's domestic market, and on easier terms than the central government would have preferred. If they didn't, other localities would, and the joint ventures would move elsewhere.

University administrators, too, were pressured to establish more transnational channels by students who insisted on the opportunity to get overseas through a university exchange program.

In short, the real story in the book is how domestic actors played a role in deregulation. By direct lobbying and by circumventing regulations, beneficiaries of transnational linkages were able to push the central government to decentralize control and to allow the opening up of China to develop at a faster pace and over a wider sphere than it wanted to.

In this way, the Chinese economic system gradually responded not to bureaucratic interests but to domestic demands and global markets.