

**(IR)/RESPONSIBILITY OF TRANSNATIONAL CORPORATIONS
FOR HUMAN RIGHTS:
THE CASE OF BAKU-TBILISI-CEYHAN OIL PIPELINE PROJECT**

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ABSTRACT

**(IR)/RESPONSIBILITY OF TRANSNATIONAL CORPORATIONS
(TNCs) FOR HUMAN RIGHTS:
THE CASE OF BAKU-TBILISI-CEYHAN OIL PIPELINE PROJECT**

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The profound and observable changes in the world, including globalization, in the last decades have weakened the state power vis-à-vis non-state actors. This process naturally, has marked down the state capacity to protect and promote internationally recognized human rights and fundamental freedoms. In this context, TNCs, the principle actors of economic globalization, not only threaten the enjoyment of human rights, but also challenge to the state-centric human rights understanding.

This thesis claims that the state-centric paradigm has got difficulties to locate non-state actors that violate human rights. While this study proceeds from the premise that the state is the primary responsible actor, it cannot certainly be considered as the sole responsible actor for human

rights. Likewise, the thesis suggests that a new international mechanism that holds also non-state actors, particularly TNCs, responsible for human rights needs to be established.

Keywords: Non-state actors, Transnational Corporations, human rights, Baku-Tbilisi-Ceyhan Oil Pipeline Project, human rights violations.

ÖZ

**ÇOK ULUSLU ŞİRKETLERİN İNSAN HAKLARI
SORUM(SUZ-LU)LUĞU:
BAKÜ-TİFLİS-CEYHAN PETROL BORU HATTI ÖRNEĞİ**

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Son çeyrek asırda, dünyada meydana gelen küreselleşme gibi büyük değişiklikler neticesinde devletler güç kaybına uğrarken, devlet dışı aktörlerin gücü artmıştır. Bu sürecin devletin temel insan hak ve özgürlüklerini koruma kapasitesi üzerinde olumsuz bir etkisi olmuştur. Bu çerçevede, ekonomik küreselleşmenin baş aktörü olan çok uluslu şirketler, sadece insan haklarını tehdit etmemiş, aynı zamanda devlet merkezli insan hakları anlayışının sorgulanmasına zemin hazırlamıştır.

Tezin iddiası, devlet merkezli paradigmanın insan haklarını ihlal eden devlet dışı aktörleri kapsamakta zorluk çektiği yönündedir. Bu tez temelinde, devleti birincil aktör olarak kabul etmekle birlikte, insan haklarından tek sorumlu aktör olarak görülmemesi gerektiği düşüncesini savunur. Bu nedenle, tez başta çok uluslu şirketler olmak üzere, devlet

dışı aktörleri insan haklarından sorumlu tutacak yeni bir uluslararası mekanizmanın kurulmasını önermektedir.

Anahtar Kelimeler: Devlet dışı aktörler, çok uluslu şirketler, insan hakları, Bakû-Tiflis-Ceyhan Petrol Boru Hattı Projesi, insan hakları ihlalleri.

To the persons whose human rights are violated

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LIST OF ABBREVIATIONS

- BLIHR:** Business Leaders Initiative for Human Rights
- BP:** British Petroleum
- BTC Co.:** BTC Company
- BTC:** Baku-Tbilisi-Ceyhan oil pipeline project
- CIP:** Community Investment
- EBRD:** the European Bank for Reconstruction and Development
- ECOSOC:** Economic and Social Council
- EIP:** Environment Investment Programme
- EITI:** the Extractive Industries Transparency Initiative
- ESIAs:** Environmental and Social Impact Studies
- EU:** European Union
- FFM:** Fact Finding Mission
- HGA:** The Host Government Agreements
- ICC:** The International Criminal Court
- ICJ:** International Court of Justice
- IFC:** the International Finance Corporation
- IFI:** International Financial Institutions
- IGA:** The Intergovernmental Agreements
- ILO:** International Labour Organization
- IMF:** International Monetary Fund
- INGO:** International Non-Governmental Organizations
- MEP:** Main Export Pipeline
- NGOs:** Non-Governmental Organizations
- NSAs:** Non-state actors
- OECD:** Organization for Economic Cooperation and Development

RAP: the Resettlement Action Plan

SMEs: Small and Medium Enterprises

SP: Socialist Party

SRSG: The Special Representative of Secretary General

TNCs: Transnational corporations

TPAO: Türkiye Petrolleri Anonim Ortaklığı

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNCED: The United Nations Conference on Environment and Development

UNCTAD: the United Nations Conference on Trade and Development

UNDRD: United Nations Declaration on the Right to Development

VPs: the Voluntary Principles on Security and Human Rights

WRAP: Worldwide Responsible Apparel Production

WTO: World Trade Organization

CHAPTER I

I. INTRODUCTION

Modern human rights have developed in conjunction with the rise of the state.¹ Yet, they have been an issue in world politics in last 60 years.² Historically the state has been the only source of rights and obligations. William Meyer stresses this point by saying that the issues involving the promotion of human rights and human rights violations has revolved around nation-states. The politics of rights, legal protection of rights, and most philosophical treatment of human rights all posit nations as the primary actor.³ However, in recent years, there have emerged profound and observable changes in international relations that created new challenges to the state-centric paradigm of human rights. One of the challenges is that actors other than the state can/often do violate human rights. Thus, under the combined pressure of NGOs, governmental authorities, international organizations and engaged corporations, a debate on the human rights responsibilities of transnational corporations (hereinafter TNCs) has started.

¹ Monshipouri, M. Et.al (eds), **Constructing Human Rights in the Age of Globalization**, (New Delhi: Prentice Ltd., 2003), p.43.

² Donnelly, J., **International uman Rights**, (Boulder: Westview Press, 1998), p.32.

³ Meyer, H. W., **Human Rights and International Political Economy in Third World Nations**, (London: Praeger, 1998), p.83.

Within these parameters, the power of computer communications technologies has changed the nature of finance and trade, thus putting an end to geography, creating a borderless world, and signaling the diminishing of sovereignty. In this new phase, nation-states no longer play the monopoly role, which is now challenged by large corporations.⁴ Many theorists on globalization and international relations, such as Scott⁵, Held and McGrew⁶, Steger⁷ and others observe an increasing role of non-state actors (NSAs) in international relations.⁸ As the individual state's authority declines, we must look at those actors that have filled the gap. In this regard, the list of potential violators of all human rights has expanded to include entities capable of causing harm to the enjoyment of human rights.⁹

In the era of globalization, the market-oriented economic policies, privatization, promotion of foreign direct investment and deregulation of the private sector have been given prominence.¹⁰ Key players in the global

⁴ Sigler, J. "A Theory of Globalization" in Rajae, F., **Globalization on Trial**, (Online Book: IDRC and Kumarian Pres, 2000).

⁵ Scott, A.(ed.), **The Limits of Globalization**, (London&New York: Routledge, 1997).

⁶ Held, D. and McGrew, A. **The Global Transformations Reader: An Introduction to the Globalization Debate**, (Oxford&Cambridge: Polity, 2000).

⁷ Steger, M.B., **Globalization: A Very Short Introduction**, (Oxford: Oxford University Pres, 2003).

⁸ Arts, B., "Non-State Actors in Global Environmental Governance: New Arrangements Beyond the State", available at <http://www.unpop.nl/inhoud/artikelen/non-state%20actors%20in%20GG.pdf> (last visit: 12.02.2007).

⁹ Leckie, S., "Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights" **Human Rights Quarterly**, Vol. 20, 1998, p.82.

economy such as TNCs, international financial institutions and multilateral institutions promote these principles.¹¹ NSAs, including TNCs, are today a firmly established part of the international order.

I.1 Two Conflicting Theories on the Responsibility of NSAs

There are two conflicting theories that are going to be discussed in the second chapter of this study on the subject of NSA responsibility for human rights. The first one known as “the new approach” claims for direct responsibility of NSA for human rights while the second approach, state-centric paradigm, stresses the state responsibility for the activities of non-state actors, including TNCs.

The first approach develops its arguments on the premise that globalization has weakened the state power and therefore the state alone is unable to protect human rights properly. Furthermore, this approach also refers to some human rights principles which hold NSAs accountable for human rights. On the other hand, the state centric paradigm of human rights puts forward that all human rights instruments explicitly mention the state as the responsible actor for human rights. The scenarios

¹⁰ Onyango, O. and Udagama, D., **Economic, Social and Cultural Rights: Globalization and Its Impact on the Full Enjoyment of Human Rights**, Progress Report *submitted to* Sub-Commission on the Promotion and Protection of Human Rights, in Accordance with Sub-Commission Resolution 1999/8 and Commission on Human Rights Decision 2000/102, UN ESCOR, 53rd sess, Provisional Agenda Item 4, [4], UN Doc E/CN.4/Sub.2/2001/10 (2001).

¹¹ Ibid.

developed in the conclusion chapter try to illustrate the (ir)relevance and accuracy of each approach.

I.2 New Human Rights Violators: The TNCs

Global markets expanded significantly as a result of bilateral and multilateral trade agreements and liberalization and privatization in recent decades, especially in the 1990s. The activities of transnational corporations, the leading actors of globalization, that influence the political, economic, socio-cultural and ecological environment of the societies, have a profound effect on human rights in the world, particularly in the developing countries. Therefore, along with the rapid expansion of global operations of TNCs there has been emerging international concern over enjoyment of internationally recognized human rights and basic freedoms. However, in the era dominated by free market ideology and deficiency of legal mechanisms, TNCs operate with little accountability for their worldwide activities.

Today, NSAs do have impacts on human rights and fundamental freedoms. These impacts could be positive or negative, but in both cases they undermine the traditional powers of the state. In any case, the expanding role of NSAs in international relations reflects an international paradigm shift in power and influence.¹² These new actors can and do often violate human rights. However, it's claimed that the current international human rights regime provides these new human rights

¹² AIV, **The Role of NGOs and the Private Sector in International Relations**, (The Hague: Advisory Council on International Affairs, 2006), p.7.

violators with immunity for their wrongdoings. The cases analyzed in this context also prove deficiency of state centric paradigm of human rights.

I.3 Aim and the Scope

This study basically aims to address two issues.

Firstly, the study tries to review the dominant approaches to human rights including human rights instruments to investigate the reference points that foresee obligations of non-state actors for human rights. Secondly, the study focuses on newly emerged mechanisms that try to overcome the problem of implementing the accountability of TNCs. Basically, the accountability problem of TNCs for human rights is the central theme of this study. I.e. this thesis searches for the question of *“Do TNCs need to be held responsible for human rights obligations?”* In order to develop a comprehensive answer to the central question of the thesis, the following supplementary questions will be raised and answered.

How do the activities of non-state actors affect human rights? Should non-state actors be directly responsible for human rights violations? What is the impact of globalization process on the international human rights regime? What do international human rights instruments stipulate for the responsibility of human rights responsibility of NSAs, particularly the TNCs? What group of human rights is violated by TNCs? What sort of attempts has been realized at the international level to accommodate TNCs in human rights law? What are the effects of international codes of

conduct on the behaviors of TNCs? What is the role of NGOs in pushing TNCs for taking responsibility of human rights obligations? Which human rights are violated in the context of BTC? What is the contribution of the study case to the discussions on non-state actors and human rights in general?

The human rights obligations of TNCs require a profound analyzes of both the legal and non-legal approaches to the problem. Yet, the study is limited mainly to the non-legal approaches on the subject and thus avoids an otherwise detailed discussion of the legal approaches.

The case study, BTC Project, on the other hand is also limited with the section of Turkey. However, the sections of Georgia and Azerbaijan are referred sometimes for the sake of further analysis.

What makes the BTC pipeline project, important for this study? Firstly, a consortium of TNCs, the main subject of the study, involves the construction of the BTC which makes it an appropriate case. Secondly, the regulatory documents of the project provide some references to the internationally recognized human rights instruments. Thirdly, there are some allegations of human rights violations in the context of the project. And the human rights violations in the context of the Project indicate need for TNCs responsibility. Fourthly, there are some human rights violation cases brought before local and international courts. Lastly, there is adequate documentation on the project.

To sum up, this thesis claims that the state-centric paradigm has got difficulties to locate non-state actors that violate¹³ human rights. While this study proceeds from the premise that the state is the primary actor, it cannot certainly be considered as the sole responsible¹⁴ actor for human rights. This has led in turn to call for TNCs to be held accountable for human rights abuses associated with their operations. A variety of mechanisms have been proposed to realize this objective¹⁵ in recent years. These mechanisms vary from new interpretations of human rights principles to voluntary codes of conduct. The UN Global Compact, the OECD Guidelines on Multinational Enterprises and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy are examples of these voluntary initiatives.

¹³ In literature there was a distinction between human rights abuses and human rights violations until recent years. Human rights violations were claimed to be done only by states. And the violations by non-state actors were named as abuses. But in recent years both concepts are used interchangeably in international human rights documents, although the concept of violation is preferred.

¹⁴ There are several sorts of responsibilities such as moral, legal, administrative, political, market, professional etc. In the context of this thesis moral and legal responsibility are taken into consideration. The moral responsibility covers corporate responsibility through codes of conduct. Yet the legal responsibility is realized through legal norms such as international human rights treaties or other binding regulations.

¹⁵ McLeay, F., "Corporate Codes of Conduct and the Human Rights Accountability of Transnational Corporations- a Small Piece of a Large Puzzle", **Global Law Working Paper 01/05 Symposium- Transnational Corporations and Human Rights**, p.4. available at <http://www.nyulawglobal.org/workingpapers/documents/GLWP0105McLeay.pdf> (Last visit: 10.11.2006).

I.4 Literature review

1.4.1 The Concept of Human Rights: The Origin and Basic Rights

The idea of human rights has increasingly been playing a very important role in our contemporary life, the political in particular, the cultural in general.¹⁶ In order to define human rights it's necessary to discuss the concept of "right(s)". Donnelly claims that the word "right" not only in English but also in several other languages has central moral and political meanings: rectitude and entitlement. The former one of rectitude means something being right, true and correct. The latter one of entitlement means someone having a right.¹⁷ "A right can be defined as a claim on others to a certain kind of treatment."¹⁸

Barbara Jordan defines a right as "due to anyone by tradition, law or nature."¹⁹ Zeisler also defines human right as "something a person may do without incurring any blame, liability, opprobrium, and so on." I.e. "a person's rights are all those acts which he has a right to perform."²⁰ In this sense when we talk about human rights Felice says they are "a group of

¹⁶ Wang, Z., "Towards a Postmodern Notion of Human Rights" in **Educational Philosophy and Theory**, Vol.34, No.2, 2002, p. 171.

¹⁷ Donnelly, J., **Universal Human Rights in Theory and Practice**, (Ithaca and London: Cornell University Pres,1989), p.9.

¹⁸ Felice, W. F., "The Case for Collective Human Rights: The Reality of Group Suffering" in **Ethics and International Affairs**, Vol.10, 1996, pp.47-61.

¹⁹ Ibid.

²⁰ Zeisler, E. B., "Towards a Theory of Human Rights" in **American Journal of Economics and Sociology**, Vol. 11, No.4, 1952, pp-413-426.

rights that one has simply because one is a human being. They are thus moral rights. Human rights are thus claims and demands essential to protect human life and dignity.”²¹ Furthermore, Flynn claims that the concept of human rights represents a powerful discourse, which has capability of uniting people from different cultural and religious traditions through a common claim of universal human values.²²

Asad argues that the root of human rights goes back to the idea of natural law and to the Aristotelian thought.²³ Therefore, although the modern theories’ claims connect notion of rights to the rise of the nation state, it has been argued that “it was the feudal legacy that made it plausible for seventeenth-century theorists such as John Locke to invoke natural rights *against* the ambitions of the early modern state.”²⁴ Thomas Hobbes claimed that “The Right of Nature, which Writers commonly call *Jus Naturle*, is the Liberty each man hath, to use his own power, as he will himself, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing any thing, which in his own Judgment, and Reason...”²⁵

²¹ Felice, W., F.,1996, pp.47-61.

²² Flynn, D, “Wat Wrongs with Rights? Rethinking Human Rights and Responsibilities” in **Australian Social work**, Vol.58, No.3, 2005, pp.244-256.

²³ Asad, T., “What Do Human Rights Do? An Antropological Enquery” in **Theory and Event**, Vol.4, No.4, 2000.

²⁴ Ibid.

²⁵ Hobbes, T., **Leviathen**, Part I, Ch. 17.

The proponents of natural rights theories define human rights as the rights that individuals enjoyed in the state of nature. Therefore, when they enter the state of society, their rights should be protected against the state.²⁶ There are also positivist and utilitarian philosophy of human rights. They are the critics of the natural rights on the ground that the concept of natural rights is uncertain and subject to many different interpretations.

What are the sources of human rights?

Donnelly claims that the term “human” rights depicts to a source humanity, human nature, human being or being a person.²⁷ Felice argues that “the source of human rights has been defined as a socially shared moral conception of both the nature of human beings and the conditions necessary for a life of dignity.”²⁸ There has been a debate about the relationship between human needs and human rights. Some scholars locate human needs inside individual human beings and human rights between them.²⁹ “All human rights derive from the dignity and worth inherent in the human person and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms.”³⁰

²⁶ Arat, Z.F.K, “Forging A Global Culture of Human Rights: Origins and Prospects of International Bill of Rights” in **Human Rights Quarterly**, Vol.28, No.2, 2006, pp.428-429.

²⁷ Donnelly, J., 1989, p.16.

²⁸ Felice, W., F., , 1996, pp.47-61.

²⁹ Ibid.

1.4.1.1 The Arguments on the "Basic" Human Rights

There is an ongoing discussion about classifying human rights into a short core list of "basic" rights from a numerous human rights instruments. Henry Shue's account of basic rights, such as security, subsistence and liberty has been discussed among the scholars. He proposes an original conception of basic rights that illuminates both the nature of moral rights generally and the determination of which specific rights are the basic ones.³¹ However, Shue is not the only one who proposes a list of basic rights. Bedua's list includes life, liberty, property, security, freedom of speech, press and assembly and freedom against arbitrary arrest and detention. Ajami on the other hand, suggests survival, protection against torture, protection against apartheid and food. Matthews and Patt and Reiter, Zunzenegui and Quiroga also put forward similar list.³²

The list of basic rights differs from scholar to scholar based on their world view. Therefore, the discussion brings up not only the superiority of some rights over the others but also it's in a conflict with the idea of the universality of human rights.

Karaosmanoglu claims that the discussion on the "basic" rights stems from the view which does not approach human being, the subject of human rights, as a whole. Because, he claims all human rights are

³⁰ Vienna Declaration and Programme of Action, preamble.

³¹ Shue, H., **Basic Rights: Subsistence, Affluence and U.S. Foreign Policy**, (Princeton: Princeton University Pres,1996).

³² Donnelly, J., 1989,p.39.

derivatives of superior human values which are formulated by him as CANIM that stands for life, reason, parentage, belief and property.³³ Karaosmanoglu claims that his new conceptualization model will leave the discussion of “basic” rights groundless and meaningless.³⁴ He argues that all human rights are equally important and cannot be subjected to a hierarchy.³⁵ Indeed, not only Karaosmanoglu but also Heinisch criticizes arguments on the “basic” human rights on the ground that “if a right is basic, other non-basic rights may be sacrificed if necessary in order to secure basic rights”³⁶

1.4.1.2 Classifying Human Rights

Different historical circumstances, economic and social development in different parts of the world have brought about different perception and conceptions of human rights.³⁷ In literature human rights have been classified into three groups and/or generations. Whelan and Donnelly, claims that “three generations, three worlds form: successive generations of civil and political rights, economic, social, and cultural rights, and

³³ Karaosmanoglu, F., **Tarihin Başlangıcı: Uluslar arası İlişkiler&Haklar ve Güvenlik** (Ankara: Seçkin Yayınevi, 2008), p.71.

³⁴ Ibid.

³⁵ Ibid.p.68.

³⁶ Heinisch, R., “The Economic Nature of Basic Human Rights: Economic Explanations of Gross-National Variations in Governmental Basic Human Rights Performance” in **Peace&Change**, Vol.23, No.3, 1998, p.336.

³⁷ Felice, W. F., 1996, pp.47-61.

solidarity or peoples' rights being championed by the West, the socialist countries, and the Third World respectively."³⁸

Wellman clarifies the development of human rights generations through history as;

*...the creation and maintenance of human rights in international law is a temporal process moving from general declaration through the formulation of specific legal norms to the elaboration of procedures and mechanisms of implementation. Thus, the civil and political rights were first declared in the eighteenth century; the economic, social and cultural rights were not widely proclaimed until early in the twentieth century; and rights such as the right to development and the right to peace only began to emerge in international law late in the twentieth century.*³⁹

1.4.1.2.1 The First-Generation of Rights: Civil and Political Rights

First-generation human rights are fundamentally civil and political in nature, and serve to protect the individual from excesses of the state. They are also called as negative rights ("freedom from"). Negative rights can be interpreted as creating protected domains that not even the state is allowed to trespass.⁴⁰ Wang claims that "The first generation derives primarily from the 17th and 18th century reformist theories which are infused with the political philosophy of liberal individualism and the

³⁸ Whelan, D. and Donnelly, J. "The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight" in **Human Rights Quarterly**, Vol.29, No.4, 2007, pp.908-949.

³⁹ Wellman, C., "Solidarity, Individual and Human Right" in **Human Rights Quarterly**, Vol.22, No.3, 2000, p.640.

⁴⁰ Blume, L. and Voigt, S., "The Economic Effects of Human Rights" in **Kyklos**, Vol.60, No.4, 2007, pp.509-538.

economic and social doctrine of laissez-faire. What is constant in this first-generation conception is the notion of liberty.”⁴¹ The first generation of rights requires the abstention of the state. But in the same way that all the rights embraced by the first generation of civil and political rights cannot properly be designated “negative rights”. Blume and Voigt also stress that “Negative rights can further be delineated into rights establishing freedom from state or third party interference (such as torture, imprisonment without trial etc.) and freedom to do something (assemble with others, criticize the government in public etc.).”⁴²

First-generation rights include, among other things, right to life, right to a fair trial, freedom of speech, freedom of thought, freedom of religion, and voting rights. They were first enshrined at the global level by the 1948 UDHR. The first generation rights are listed from article 3 to 21 of the UDHR and the International Covenant on Civil and Political Rights. It was argued that the UDHR contains primarily civil and political rights and undervalues economic, social, and cultural rights.”⁴³ Flynn also claims that, “in certain situations, individual rights are given greater priority and hence can be understood as more fundamental than collective rights. In other words, rights comprise a hierarchy in which the individual is of greater importance than the collective.”⁴⁴

⁴¹ Wang, Z., , 2002, p. 172.

⁴² Blume, L. and Voigt, S., 2007, pp.509-538.

⁴³ Whelan, D. and Donnelly, J., 2007, pp.908-949.

⁴⁴ Flynn, D, “Wat Wrongs with Rights? Rethinking Human Rights and Responsibilities” in **Australian Social work**, Vol.58, No.3, 2005, pp.244-256.

1.4.1.2.2 The Second-Generation of Rights: Economic, Social and Cultural Rights

Second-generation human rights are fundamentally social, economic, and cultural in nature. They ensure different members of the citizenry equal conditions and treatment. The second generation finds its origins primarily in the socialist tradition. Historically, it is the counterpoint of the first generation, putting much emphasis on 'social equality'.⁴⁵ They conceive human rights more in positive terms ("rights to") and requiring more the intervention of state for the purpose of assuring the equitable production and distribution of the values or capabilities involved. Felice claims that "Economic, social, and cultural rights are collective, based upon the rights of human beings in their various group and social roles. Ensuring these rights often depends upon positive action on the part of the state."⁴⁶

The second generation of rights includes a right to be employed, right to establish and join a trade union, rights to housing and health care, as well as social security and unemployment benefits. They are covered by the UDHR articles 22 to 27 and the International Covenant on Economic, Social, and Cultural Rights cover these rights. Positive rights can include rights to food, housing, paid jobs, etc.⁴⁷

⁴⁵ Wang, Z., 2002, p. 172.

⁴⁶ Felice, W. F., 1996, pp.47-61.

⁴⁷ Blume, L. and Voigt, S., 2007, pp.509-538.

1.4.1.2.3 Third-Generation of Rights: Group Rights or Solidarity Rights

Third-generation human rights are those rights that go beyond the mere civil and social rights. These rights include the right to self-determination; right to economic and social development; right to a healthy environment; right to natural resources; right to communicate; right to participation in cultural heritage and rights to intergenerational equity and sustainability. The third generation is a product of both the rise and the decline of the nation-state in the last half of the 20th century. It stresses the notion of holistic community interests.⁴⁸ These collective human rights, adopted in various United Nations documents. They are primarily group rights.⁴⁹

Starting from 1970s third generation of rights has shown a tremendous development. The documents drafted between 1976 and 1989 the Universal Declaration on the Rights of Peoples, the African Charter on Human and Peoples' Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Declaration on the right to Development provide the most complete elaboration of collective human rights or third generations of rights.⁵⁰ In addition to this, after the Cold War, a number of important documents have stressed the need for collective group minority rights. These include a draft Declaration on the Rights of Minorities (1991); the Copenhagen Document (1990) by the Conference on Security and Cooperation in Europe (CSCE); the Charter of

⁴⁸ Wang, Z., 2002, p. 172.

⁴⁹ Felice, W. F., 1996, pp.47-61.

⁵⁰ Ibid.

Paris for a New Europe, signed by CSCE heads of state and government in November 1990 and the Report of the Geneva CSCE Meeting of Experts on National Minorities in 1991.⁵¹

In literature generally these three generations are highlighted yet the distinction between the generations is not very clear. Sometimes they are intervened and sometime the realization of one right depends on the realization of other rights from another generation. For instance, Felice argues that the generations of rights are interdependent in that certain individual rights cannot be exercised outside the group context. In many instances, he claims “individual rights can be fully realized only through the understanding and protection of group rights. For example, trade union rights must be protected to give the individual the freedom to join a union, and minority culture must be protected if, its individual members are to enjoy it.”⁵²

The question here is which rights are violated through the activities of TNCs? As economic actors do TNCs violate only economic rights or various rights from the three generations? The answer of these questions might be found in the coming sections, particularly in the chapter on the study case of the BTC.

1.4.2 The Indivisibility and Equality of Human Rights

⁵¹ Ibid.

⁵² Felice, W. F.,1996, pp.47-61.

Although human rights are grouped as such in literature, they need to be enjoyed in their entirety as an indivisible and interdependent whole, in order that people may truly live the good life as human beings. Thus, as it is in the language of the Vienna Declaration, all human rights are universal, indivisible, interdependent and interrelated⁵³ and derived from the right of all to live in conditions befitting the dignity of the human person.⁵⁴

The interdependence of human rights may take the form that treaties on civil and political rights and treaties on social and economic rights only together form a basis for a genuine right. This can be seen through the 1948 Universal Declaration of Human Rights that is able to deal with all categories of human rights in one single document. Civil, cultural, economic, political and social rights were proclaimed as universal and inalienable side by side and without any distinctions as to different "generations" or "categories" of rights. Therefore, there is one and only one set of human rights, but that it is one that has several dimensions. The dynamics of the interrelationships of civil, political and economic, social and cultural rights cannot be explained through categorizing human rights because neither by itself will suffice to accomplish the goal of providing an individual with the opportunity to realize his/her potential as human being.⁵⁵ Amartya Sen considers this interdependency in a cycle

⁵³ The Vienna Declaration and Programme of Action (1993), Art. 5.

⁵⁴ Paul, J. Report of the Oslo Symposium, 2-3 October 1998, (Oslo : United Nations Development Office, 1998).

⁵⁵ Nanda, V. P., "Development and Human Rights: The Role of International Law and Organizations" in Shepherd, G. W. and Nanda, V. P., **Human Rights and Third World Development**, (London: Greenwood Press, 1985), p.291.

relationships by arguing, “Economic unfreedom can breed social unfreedom, just as social or political unfreedom can also foster economic unfreedom.”⁵⁶ The interdependence of rights is also clear in the words of a Philippines leader;

*[D]evelopment is not just providing people with adequate food, clothing and shelter; many prisons do as much. Development is also people deciding what food, clothing, and shelter are adequate, and how are they to be provided.*⁵⁷

Thus it seems essential to focus on the indivisibility of human rights and the protection of not only economic, social and cultural rights but also civil and political rights guaranteed in the international instruments.

1.4.3 From State-Centricism to NSA Perspectives

Human rights are a concept that has been constantly evolving throughout human history. Felice argues that “The grievances and intolerabilities of the eighteenth century brought forth the Rights of Man.”⁵⁸ Great Charter states that “all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.” This is worth observing, because it throws a strong light on the article of which our “life, liberty, and property”

⁵⁶ Sen, A., **Development as Freedom**, (New York: Alfred A. Knopf, 2000), p.8.

⁵⁷ *Ibid.*, p.298.

⁵⁸ Felice, W. F., 1996, pp.47-61.

clauses are either copies or slight variations.⁵⁹ Thomas Jefferson's original words for the Declaration of Independence: Life, Liberty, and Property⁶⁰ also depict philosophy of the time. The right to "life, liberty, and property in the Lockean tradition, presumably enjoyed only if the state does not interfere but constrains its domain and power."⁶¹

Gordon and Berkovitch claimed that "The concept of human rights, which was developed during the Enlightenment, re-emerged following the Second World War, and since then has been repeatedly utilized in the international and local realms. Hundreds of dedicated people around the globe have been working incessantly over the last 60 years to formulate human rights protocols, covenants and treaties, and in the process have produced an inspiring discourse."⁶²

Internationally, human rights emerged as a result of the failure of the Westphalia system to protect people from genocide and abuse. In fact, World War II demonstrated the inability of the nation-state system to prevent governments from brutalizing their citizens. In the twentieth century, human rights have assumed a degree of importance similar to that which natural rights claimed in the eighteenth century.⁶³

⁵⁹ Shattuck, C.E., "The True Meaning of the Term 'Liberty' in Those Clauses in the Federal and State Constitutions Which Protect 'Life, Liberty and Property'" in **Harvard Law Review**, 1891, pp.371-372.

⁶⁰ Barone, M., "Life, Liberty and Property" in **National Journal**, Vol.35, No.7, 2003.

⁶¹ Arat, Z.F.K., "Forging A Global Culture of Human Rights: Origins and Prospects of International Bill of Rights" in **Human Rights Quarterly**, Vol.28, No.2, 2006, pp.428-429.

⁶² Gordon, N. and Berkovitch, N., "Human Rights Discourse in Domestic Settings: How Does it Emerge?" in **Political Studies**, Vol.55, No.1, 2007, pp.243-266.

Before mid-20th century, most states violated human rights systematically and human rights were rarely discussed in world politics. The event that made human rights an issue in international politics was the Holocaust, the murder of millions of civilians by Germany.⁶⁴ Donnelly divided the development of human rights from 1940s to 1990s into four periods. The first period is *"from Cold War to Covenants"* during which International Bill of Human Rights, three documents that is UDHR, and the two international covenants were adopted by the UN General Assembly and UN member states. The second period is *"From Standard Setting to Monitoring"* that covers the developments in 1970. Ecosoc Resolution 1235 authorized the Commission on Human Rights to discuss human rights violations in particular countries. Then 1965 Racial Discrimination Convention which requires parties to file periodic reports on implementation. Then in 1970 the Ecosoc Resolution 1503 authorized the Commission on Human Rights to conduct confidential investigations of a complaint in a case of gross human rights violations. In this period the UN started to move from setting standards to monitor how these standards were implemented by states. In 1970s also human rights were inserted in bilateral foreign policies of countries beginning in the US. USA linked foreign aid to human rights practices of the recipient countries. 1970s also witnessed a substantial development in the activities of NGOs in human rights. The third period is *"Further Growth and Institutionalization"* that covers 1980s. The Convention on the Elimination of Discrimination against Women and the Convention against Torture, Inhuman or Degrading

⁶³ Felice, W. F., 1996, pp.47-61.

⁶⁴ Donnelly, J., **International Human Rights**, (Oxford: Westview Pres, 1998), pp.3-4.

Treatment or Punishment were completed. Then Declaration on the Right to Development was adopted by UN General Assembly. The monitoring mechanism developed further. The last period was "*Continuity and Change in the Post- Cold War*" that last up until today. The main characteristic of this period was the spread and deepening of human rights in all over the world. Human rights understanding have been changed dramatically. The indivisibility and interdependence of human rights was focused on rather than splitting them into generations or classifying them.⁶⁵

The literature on human rights has shown a parallel development to the evolution of human rights mentioned below. Before Second World War, human rights literature was focusing on the sources, the concept and the philosophy of rights. At that time because human rights were not given importance in the world politics, the literature was not rich enough. Yet, in last 60 years the literature has shown a tremendous development.

The literature on international human rights law both at the regional as well as global level started to develop starting from 1950s with a robust pace. In 1970s the literature on international organizations and human rights emerged and in 1990s it increased sharply. After 1990s the literature on human rights started to diversify and cover new issues such as environment, development, non-state actors, women rights etc.

Non-state actors, particularly transnational corporations (TNCs) and Human rights are the issues that have been discussed a lot in last decade. Yet the literature on the subject could not follow the discussions.

⁶⁵ Ibid., pp.4-17.

There is an ongoing debate on the accountability of non-state actors for human rights. The debate is between state-centric view and new understandings of human rights. The first approach, considers the international framework of human rights as a means of ensuring protection from the abuses of state power.⁶⁶ This view claims that issues involving the state and its citizens fall within the domestic jurisdiction of each sovereign state.⁶⁷ Therefore, international norms have been centered on the state interests and activities.⁶⁸

On the other hand, there emerged recent trends arguing that there is a need for new ways of looking at human rights issues. It put forward that, “state power seems today to be weakening to the advantage of other sources of authority that have been shown to influence, and sometimes even threaten what we call fundamental human rights.”⁶⁹ The new way of thinking about human rights is primarily motivated by the current circumstances, which see the state's position decline in its ability to ensure respect for human dignity. If some governmental functions are increasingly exercised by other entities, such as TNCs, international non-governmental organizations, intergovernmental organizations etc.,

⁶⁶ Danailov, S., **The Accountability of Non-State Actors for Human Rights Violations: the Special Case of Transnational Corporations**, (Geneva: 1998), p.6.

⁶⁷ Grossman, C. and Bradlow, D., “Are We Being Propelled Towards a People-Centered Transnational Legal Order”, in **American University Journal of International Law and Policy**, Vol. 9, 1993, p.1.

⁶⁸ Ibid., p.770.

⁶⁹ Danailov, S., 1998,p.6.

accountability for human rights protection and promotion should also be addressed directly to these entities.⁷⁰

The subject of the responsibility of non-state actors has been discussed by two recent leading works, one by Clapham and another one is an edited book by Alston. The work of Clapham⁷¹, titled as Human Rights Obligations of Non-State Actors, addresses the question of the application of human rights norms to non-state actors in general. This book presents an approach to human rights that goes beyond state-centric human rights views and outlines the human rights obligations of non-state actors. Furthermore, it addresses some of the ways in which these entities can be held accountable for their actions. The book mainly claims that international human rights obligations can fall on states, individuals and NSAs.

One of the few exceptions in the literature on the human rights obligations of private actors is the edited work by Alston, Non-State actors and Human Rights.⁷² The study focuses on the subject with legal references. Under state-centric approach to human rights, non-state actors are beyond the direct reach of international human rights law. They cannot be parties to the relevant treaties and so they are only bound to the extent that obligations accepted by states can be applied to them by governments. The

⁷⁰Ibid., p.33.

⁷¹ Clapham, A., **Human Rights Obligations of Non-State Actors**, (New York and Oxford: Oxford University Press, 2006).

⁷² Alston, P., (ed.), **Non-State Actors and Human Rights**, (Oxford: Oxford University Press, 2005)

book argues that international law should be reorganized so that it can accommodate NSAs activities as together with the state ones.

To conclude, the literature on non-state actors and human rights is hardly new and to some extent poor but developing with a robust pace.

Unlike the non-state actors in general, the past decade has seen a growing literature on TNCs and human rights. There are several factors leading the emergence of a relatively rich literature for the human rights responsibility of TNCs:

- a) TNCs are very powerful economic actors. They control two-third of world economy.⁷³ There are numerous TNCs which are richer than many states.⁷⁴ This economic power generates political power⁷⁵ over governments, societies as well as individuals. TNCs finance, control and manage large-scale projects that affect big number of population and large geographical areas. For instance, the study case of this thesis BTC,1776 km long, crosses three countries and costs almost 4 billion \$, is one of them.

⁷³ Raghavan, C., "TNCs Control Two-Thirds of World Economy" in **Third world Network Features**, January, 1996. available at <http://www.hartford-hwp.com/archives/25/007.html> (Last visit: 23.01.2004).

⁷⁴ Anderson, S. and Cavanagh, J., "Top 200: The Rise of Global Corporate Power" available at <http://globalpolicy.igc.org/soecon/tncs/top200.htm>. (Last visit: 21.11.2005).

⁷⁵ Shah, A., "Corporations and Human Rights", available at <http://www.globalissues.org/TradeRelated/Corporations/HumanRights.asp> (Last visit: 14.11.2006).

- b) TNCs are relatively neutral actors, comparing to other non-state actors, such as armed groups, NGOs, IMF etc.; in other words, they are less political even if they are not less politicized.
- c) TNCs also have engaged directly or indirectly in many human rights violation e.g. Coup d'état in Chili, Nigeria oil fields, Bhopal, ITT case.
- d) Perhaps since most of the TNCs are originated in Western democratic countries they already have the culture of human rights. And also due to pressure from home-state consumers, they are eager to accept such a trend.

The literature on the human rights obligations of TNCs has developed around two main approaches: One of the approaches claims that the states should be responsible for TNCs activities; yet, the second approach unlike the first one, asserts corporate responsibility through both human rights instruments and global codes of conduct.

One study by Danailov⁷⁶ and the one by Schutter⁷⁷ are the two of the few recent publications on the subject.

The work by Danailov, The Accountability of Non-State Actors for Human Rights Violations: the Special Case of Transnational Corporations, offers an overview of TNCs human rights responsibility in general. The negative

⁷⁶ Danailov, S., 1998.

⁷⁷ Schutter, O., **Transnational Corporations and Human Rights : An Introduction**, (New York: Global Law Working Paper, Symposium- "Transnational Corporations and Human Rights" available at http://www.nyulawglobal.org/workingpapers/GLWP0105DeSchutter_000rtf (last visit: 27.102006).

impact of globalization on the state power and the rise of non-state actors are well framed. Then the state responsibility for the activities of non-state actors, including TNCs is analyzed. It then discusses direct responsibility of TNCs under international law. Lastly the codes of conduct are focused on in detail. The book tries to develop “modestly the attempts of a better defence of human rights with regard to the activities of TNCs”.⁷⁸

Another study of similar detailed approach to the responsibility of TNCs is the work of Schutter, Transnational Corporations and Human Rights : An Introduction. The study first examines the responsibility of states in controlling transnational corporations. It then turns to self-regulation by transnational corporations, through the use of codes of conduct or international framework agreements. It then discusses recent attempts at the global level to improve the human rights accountability of corporations by the direct imposition on corporations of obligations under international law. The main idea of the work is that the states are the primary responsible actors for the human rights activities of the TNCs. Codes of Conduct should not be seen as an alternative way to the state responsibility but as complementary.

The literature on human rights situation in the BTC project has developed on two axes. On one hand, human rights NGOs and environmentalists argued that from the foundation agreements to the construction process in all the stages of the project human rights are given limited importance. On the other hand, BTC consortium, some independent researchers and

⁷⁸ Danilov, S., 1998.

international financial institutions that provided credits for the project have asserted that all the relevant legal, human rights and environmental standards have been carefully implemented throughout the process.

The main arguments focusing on human rights violation in the framework of the BTC are the concerns over the regulatory regime of the project that is governed by an Inter-Governmental Agreement (IGA) between the governments of Azerbaijan, Georgia and Turkey and the Host Government Agreements (HGA) between each of the three countries and the BP-led consortium.⁷⁹ There are some other relevant regulations on the project as well. Hannah claims that the project legal agreements give the consortium an effective governing power over a strip of land 1,750 miles long, where the company will likely override all national environmental, social, human rights laws for the next 40 years.⁸⁰ Therefore, the government has limited its executive and legislative powers to protect its citizens from potential environmental damage, health and safety hazards.⁸¹ Furthermore, the legal agreements “undermined the protection of human rights and created disincentives for the three states to fulfill their current and future human rights obligations.”⁸² It warned that the

⁷⁹ Ellis, H., “The Baku-Ceyhan Pipeline: BP’s Time Bomb”, available at <http://www.gnn.tv/articles/1512/> (Last visit: 19.10.2006).

⁸⁰ Ibid.

⁸¹ Friends of the Earth et. al. **Developmental, Human Rights And Environmental Impact of the BTC Oil Pipeline**, 2002, available at <http://www.ilisu.org.uk/DfIDmemo.doc> (Last visit: 18.11.2006).

⁸² AI, **Human Rights on the Line: the Baku-Tbilisi-Ceyhan Pipeline Project**, 2003, available at http://www.amnesty.org.uk/news_details.asp?NewsID=14542 (Last visit: 20.04.2007).

agreements would “effectively create a ‘rights-free corridor’ where the human rights of thousands of people in the region will not be protected.”⁸³

In this regards there are three important works; one by Amnesty International⁸⁴, another by Green Alternatives⁸⁵ and the third one is the work of BP by Smith.⁸⁶

The study of Amnesty International, titled Human Rights on the Line: the Baku-Tbilisi-Ceyhan Pipeline Project tries to understand, the human rights implications of the commercial agreements between the BTC consortium and the host governments in the countries where the Pipeline is built. After carefully analyzing the legal framework of the project, it focuses on the project’s impact on human rights in detail. The work mainly claims that there are human rights violations in BTC project both in legal regulations and on the ground.

Another exceptional and successful study is Baku-Tbilisi-Ceyhan Oil Pipeline Human Rights, Social and Environmental Impacts Georgia and Turkey Sections: Preliminary Report of FFM, by Green Alternatives. After comparing the developments regarding the project in Turkey and Georgia, it focuses on the major finding in both countries. The work, tries to

⁸³ Ibid.

⁸⁴ Ibid

⁸⁵ Gren Alternatives, et.al, **Baku-Tbilisi-Ceyhan Oil Pipeline Human Rights, Social and Environmental Impacts Georgia and Turkey Sections: Preliminary Report of FFM**,2005.

⁸⁶ Smith, G.A., **The BTC Pipeline Case Study: Following through on Global Compact ommitments**, 2004,available
http://www.unglobalcompact.org/data/ungc_case_story_resources/doc/40331b11-fa00-0010-4ea2-ee6d8df593cc.doc (Last visit: 09.01.2008).

overview the specific developments in Turkey regarding the social and environmental effect in the frame of the project. The work basically claims that in the framework of BTC there are massive human rights violations and the BTC Co. does not apply international human rights and environmental standards throughout the Project.

The last work is one by Smith, The BTC Pipeline Case Study: Following through on Global Compact Commitments . The study successfully presents an overview of the development of human rights policies of the BT Co. It makes an overview of the BTC human rights documents and then replies the concerns raised by NGOs in a well-organized composition. The main argument of the study is claimed to be “break[ing] new ground in transparency, environmental and social safeguards, community consultation and involvement, national and international civil society engagement, and local economic benefit”⁸⁷

Studies in the literature focus on the subject either in a general theoretical context or in a very specific way that is limited to only one case with no references to the theory. This thesis therefore, contributes to the question of TNCs responsibility for human rights in the context of a case study, the BTC which is also supported with a theoretical framework.

⁸⁷ Smith, G.A.2004.

I.5 Data Collection

Transnational Corporation and human rights is a new issue in human rights literature. Thus, the sources are mostly based on articles rather than books. Furthermore, lots of up-to-date reports have been used for the study. These reports provided the study with a rich resource and up-to-date information. Books, articles, official documents, magazines, internet source and interviews were used, apart from the reports published by TNCs, business and relevant financial institutions, academicians, independent researchers and NGOs.

Verbal and written interviews were directed to the representatives of the BTC Co., BTC staff and workers from different ranks, villagers, independent researchers and the NGO representatives who produced reports on the BTC. More than 20 interviews and questionnaires were conducted. Open questions were asked in order to get opportunity for probing and giving the respondents freedom to provide more and more information.

For this study the libraries of METU, Bosphorus University, Bilkent University, Sabancı University, Bilgi University, Leicester University and the University of Essex and the library of the Parliament of Turkey were visited. The electronic sources of MEETU library was also used extensively. The statistics used in this study are also inferred from the sources mentioned above and from the UN agencies databases.

I.6 Chapters in Brief

The introduction chapter, after a short introductory remark highlights the aim and the scope of the thesis. Then it focuses on the literature review which starts with a discussion on the concept of human rights, the “basic rights and human rights generations and then outlines human rights evolution up to responsibility for NSA in promotion and protection of human rights.

The study focuses on non-state actors and human rights in the second chapter. Throughout the chapter a working definition for non-state actors is developed, the effects of globalization on the state power and sovereignty is analyzed and the dominant approaches in the subject of responsibility of non-state actors are also focused on.

The third chapter of the study analyzes the particular case of TNCs human rights responsibility. It defines TNCs and explains their power in world politics. Then TNCs impacts on human rights are analyzed and supported by leading cases. Lastly, TNCs corporate responsibility is reviewed through codes of conduct by specific reference to the UN Global Compact.

The fourth chapter is dealing with the BTC, the case study of this work. The first section covers an overview of the project, in general, and the part of Turkey in particular. Then the regulatory structure of the project which consists of founding agreements and other regulations on human rights are analyzed in detail. The BTC’s policies on human rights are given a

special importance in the next section. The last part of the chapter assesses human rights performance of the BTC.

The fifth chapter, conclusion, after a short evaluation of the study, it has developed two scenarios on the NSAs responsibilities for human rights. Then the chapter stresses the importance of a new mechanism for protecting human rights properly. Lastly it focuses on some prospects and proposals in the context of human rights accountability of TNCs.

CHAPTER II

II. NON-STATE ACTORS AND HUMAN RIGHTS: AN ONGOING DEBATE

In the late 20th century, international politics has undergone a major transformation. The end of the Cold War has put new issues, such as ethnic conflicts leading to civil wars, increasing number of migrants and refugees, economic competition, environment, human rights, issues of cultural identity in international relations⁸⁸ the mushrooming of international organizations and the increasing role of non-state actors in the international political arena. Unlike the traditional understanding, multiple issues that are not arranged in a clear hierarchy prove that nation states cannot control any more and cannot be regarded as the only actor in international relations. Furthermore, it has become very difficult to put a clear-cut distinction between domestic and international issues⁸⁹ as classical realists approaches did. Globalization provides a considerable room for the new international actors.

There are two conflicting views on the subject of non-state actors' responsibility for human rights. The state-centric approach of human rights claims the state responsibility for the activities of NSAs concerning

⁸⁸ Katzenstein, P.J., "Why Traditional national Security issues" in P.Z.Katzenstein (ed.), **The Culture of National Security: Norms and Identity in World Politics**, (New York: Colombia University Press, 1996), p.7.

⁸⁹ Keohane, R.O., and Nye, J.S., "Realism and Complex Interdependence" in M. Williams (ed.), **International Relations in the Twentieth Century: a Reader**, (London: MacMillian, 1989), p.243.

human rights violations, while newly emerging approach, on the other hand, claims for the existence of multiple violators of human rights. This paradigm shifts away from what has usually been an exclusively state-centric approach and calls for the accountability of both states and non-state actors for human rights obligations.

II.1 DEFINING NON-STATE ACTORS: NOT-A STATE SYNDROME?

The issue of non-state actors and human rights is a challenging topic. One of the main reasons for this difficulty is the lack of an authoritative definition of non-state actors. Since the term non-state actors may mean different things to different people, it is important to set up a working definition or a conceptual definition on its meaning. Without such a definition we would be unable to discuss properly the accountability of non-state actors in the human rights context.

Philip Alston says that when one of his daughters was eighteen months old she was describing a rabbit, a mouse or a kangaroo as a “not-a-cat”. Alston calls the situation as “not a-cat syndrome”. Similarly, in human rights literature, the idea of the state and the rest - non-state actors - is dominant. Whether the rest is a corporation, an intergovernmental organization, a supranational organization or a paramilitary group the language does not change. Indeed, Alston claims that this negative conception, do not stem from language inadequacies but instead have been intentionally adopted in order to reinforce the assumption that the state is not only the central actor but also the indispensable and pivotal

one around which all other actors revolve. Thus, for the language of human rights and the international relations discourse other actors can only be identified in terms of their relationship to the state.⁹⁰ Just like Alston's daughter's cat, anything that is not a state, whether it is Amnesty International, Al-Qaeda, UN, Greenpeace or BP is conceptualized as "not-a-state". With such a simplistic approach, it's difficult to reach a widely accepted definition. As a result, the accountability problem arises because there is an uncertainty and ambiguity. There are plenty of actors; there are some international as well as national, there are mega powerful as well as powerless and there are profit driven as well as non-profit actors.

The broadest possible definition of non-state actors encompasses all private actors distinct from the state, including private individuals, civil society organizations, private companies, armed groups, *de facto* regimes.⁹¹ According to Arts, non-state actors are all those actors that are not representatives or agents of states, yet that operate at the international level and that are potentially relevant to international relations. In Arts's classification, five groups of NSAs are distinguished in the literature:

1. Intergovernmental Organizations (IGOs),
2. International Non-Governmental Organizations (INGOs),
3. Corporate Interest Groups (CIGs) and Transnational Corporations (TNCs),
4. Epistemic Communities (ECs) and

⁹⁰ Alston, P., "The 'Not-a-Cat' Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?" in Alston, P.(ed.), **Non-State Actors and Human Rights**, (Oxford: Oxford university Pres, 2005), pp.3-4.

⁹¹ Redress, **Not Only the State: Torture by Non-State Actors**, (London: The Redress Trust, 2006), p.14.

5. A remainder category including terrorist networks, professional organizations, scouts, churches, etc.⁹²

The expression “non-state actors” generally apart from the ones mentioned above, includes NGOs, armed groups, educational institutions, religious organizations, private individuals, civil society, media and multi-lateral financial organizations like World Bank and IMF. They have distinct “unofficial” nature as compared to state actors and they enjoy autonomy within the sphere of state.

Today almost all the non-state actors identified above have the capacity to violate human rights. Most of these entities have been actors in world politics for a long time. But in last decades, profound changes, including globalization, have taken place in the world. Consequently these actors’ power increased vis-à-vis the state.

II.2 DEFINING GLOBALIZATION: THE MAJOR FORCE TRANSFORMING THE STATE SOVEREIGNTY AND POWER

Especially beginning from the 1980s, globalization has been one of the most widely used concepts for portraying the contemporary condition of societies both in popular writings and in the social sciences. Yet, there are numerous different ways in which the concept is used and it lacks a

⁹² Arts, B., “Non-State Actors in Global Environmental Governance: New Arrangements Beyond the State”, on <http://www.unpop.nl/inhoud/artikelen/non-state%20actors%20in%20GG.pdf> (last visit: 12.02.2007).

precise definition.⁹³ Albrow defines globalization as all those processes by which the peoples of the world are incorporated into a single world society, a society in which humanity began to emerge for the first time a collective actor. This approach highlights the common concerns of humanity like environment, global pollution, natural resources and human rights.⁹⁴

In terms of political economy, globalization is defined as a process whereby power is located in global social formations and expressed through global networks rather than through territorially based nation states.⁹⁵ Indeed, globalization refers to a new, distinct phase in world politics.⁹⁶ Globalization has generated a proliferation of non-state agents, including business firms, business associations, labor unions, and NGOs, all clamoring to make their voices heard and broadening the agenda of WTO from trade policy . In the last decade of the 20th century, the number of international NGOs grew from 6,000 to 26,000, ranging in size from the Worldwide Fund for Nature with 5 million members to tiny network organizations.⁹⁷ All these actors signal the development of a new world of transnational contention.⁹⁸

⁹³ McCorquodale & FairBrother, **Human Rights Quarterly**, Vol.21, 1999, pp. 735-736.

⁹⁴ Albrow, M. and King, E., (ed.), "Introduction" in **Globalization, Knowledge and Society**, Sage, (London: Sage, 1990), p.8.

⁹⁵ Schwartz, H.M., **States versus Markets: History, Geography and the Development of the International Political Economy**, (New York: St. Martin's Press, 1994), p.4.

⁹⁶ Bretherton, C. and Geoffrey P.(ed.), in **Global Politics: An Introduction**, (Oxford: Blackwell, 1996),p.3.

The central idea behind globalization is that many contemporary problems cannot be solved at the level of nation states; that is in terms of separate countries and their international relations. It is supported that we live in a period in which social life is mostly determined by global processes. According to the strong version of this view, national cultures, economies and borders are dissolving. Economic globalization is said to be emerging, and policies of national economic management are increasingly regarded as outdated.

It is argued that the world economy is shaped by market forces that are uncontrollable and the 'truly' transnational corporations which have no attachment to a particular nation state are the major economic actors.⁹⁹ With the development of global market and global circuits of production, we also see a new form of sovereignty. Together with the processes of globalization, sovereignty of nation states has weakened. Therefore, as "a unit of analysis of history and International Relations (IR), states are becoming unable to manage national economies."¹⁰⁰

⁹⁷Keohane, R. O. and Nye, J. S., "Democracy, Accountability And Global Governance", Harvard Politics Research Group, 2001, pp.21-22.

⁹⁸ Tarrow, S., "The New Transnational Contention: Organizations, Coalitions, Mechanisms," Prepared For Presentation at **The Panel On –Social Movements And Transnational Social Movements- APSA Annual Meeting** August 31, Chicago Sept. 1,2002, p.2, available at [Http://Sociology.Berkeley.Edu/Faculty/Evans/Evans_Pdf/Tarrow-Transnational-Contention7-2002.Pdf](http://Sociology.Berkeley.Edu/Faculty/Evans/Evans_Pdf/Tarrow-Transnational-Contention7-2002.Pdf) (Last Visit: 07.11.2006).

⁹⁹ Held, D. et.al., "Introduction" in **Global Transformations: Politics, Economics and Culture**, (Stanford: Stanford University Press, 1999), pp.3-5.

¹⁰⁰ Amin, S., **Capitalism in the Age of Globalization**, (London: Zed Books, 1997), pp.65-70.

The impact of globalization on the traditional notion of state sovereignty has been recognized by the UN Committee on Economic, Social and Cultural Rights (CESR Committee) in the following terms:

[Globalization] has also come to be closely associated with a variety of specific trends and policies including an increasing reliance upon the free market, a significant growth in the influence of international markets and institutions in determining the viability of national policy priorities, a diminution in the role of the state and the size of its budget, the privatization of various functions previously considered to be the exclusive domain of the state, the deregulation of a range of activities with a view to facilitating investment and rewarding individual initiative, and corresponding increase in the role and even responsibilities attributed to private actors, both in the corporate sector, in particular to the transnational corporations and in civil society.¹⁰¹

A host of outside actors such as transnational corporations (TNCs) over whom states are increasingly losing control therefore besiege today's governments.¹⁰² In this sense, globalization can restrict the choices open to governments and people, particularly in the human rights area, and thus make it more difficult to attribute responsibility for violations of human rights.¹⁰³

The arguments in the context of globalization in general have been developed on the premise that globalization has weakened the state

¹⁰¹ Statement of the Committee on Economic, Social, and Cultural Rights, 18th session, adopted 27 April-15 May, 1998, Geneva, available at <http://www2.ohchr.org/english/bodies/cescr/docs/statements/Globalisation-1998.doc> (last visit: 17.01.2008).

¹⁰² Jochnick, C., "Confronting the Impunity of Non-State Actors: New Fields for the Promotion of Human Rights", **Human Rights Quarterly**, Vol.21, 1999, p.63

¹⁰³ McCorquodale, R. and FairBrother, R., 1999, p.736.

sovereignty. Thus the non-state actors have got chance to get much more control on the market and force the states to serve their interests. Yet Cerny thinks in a different way when he developed the idea of competition state.

II.2.1 Competition State: Reorganizing State Apparatus

The changes in the international market structure that led the growing competition in international markets have given rise to a new type of state behavior, best characterized as the competition state.¹⁰⁴ According to Philip Cerny, “the competition state has pursued increased mercerization in order to make economic activities located within the national territory, or which otherwise contribute to national wealth, more competitive in international and transnational terms”¹⁰⁵ i.e. Cerny states that “The competition state involves both a transformation of the policy roles of the state and a multiplication of specific responses to change.”¹⁰⁶ Under new circumstances the state’s role is restructured. In other words, state is reorganizing itself so that it can compete with other states and survive. Soederberg claims that “Within the context of globalization the policy limitations and pressure have acted as the driving force of the shift from

¹⁰⁴ Levi-Faur, D., “The Competition State as a Neomercantilist State: Understanding the Restructuring of National and Global Telecommunications” in *Journal of Socio-Economics*, Vol.27, No.6, 1998.

¹⁰⁵ Cerny, P. G., “Paradoxes of the Competiton State: Dynamics of Political Globalization” in *Government and Opposition*, Vol.32, No.2, 1997, p.259.

¹⁰⁶ Ibid., p.263.

the Keynesian welfare state towards neoliberal market-oriented form of state intervention or a competition state.”¹⁰⁷ State tries to maintain its control and independence in the changing environment.¹⁰⁸ Because “globalization increasingly constrains policymakers and circumscribes the policy capacity of the state.”¹⁰⁹ Indeed, the conditions under which government could take effective regulation in previous eras no longer exist.”¹¹⁰

Cerny claims that it’s impossible for a country to maintain a welfare state, because the competition is too hard for welfare policies. Therefore, the marketization process of the state or for the state to be a market actor is not only necessary but also inescapable. Since;

The crisis of the welfare states lay in their decreasing capacity to insulate national economies from the global economy, and the combination of stagnation and inflation which resulted when they tried. The world since then has seen the emergence of a quite different beast, the competition state. Rather than attempt to take certain economic activities out of the market, to ‘decommodify’ them as the welfare state was organized to do, the competition state has pursued increased marketization in order to make economic activities located within the national territory, or which

¹⁰⁷ Soederberg, S., “From a Developmental State to a Competition State? Conceptualizing the Mexican Political Economy within Global financial Orthodoxy” in **Competition & Change**, Vol.5, 2001, p. 135.

¹⁰⁸ Lavenex, S. “The Competition State and Multilateral Liberalization of Highly Skilled Migration” in Smith, Michael, P and Fawell, A., (eds) **Human Face of Global Mobility-Comparative Urban and Community Research**, (New Brunswick: Transaction Publishers, 2006), p.50.

¹⁰⁹ Cerny, P. G. “The Dynamics of Financial Globalization : Technology Market Structure and Policy Response” in **Policy Science**, Vol. 27, 1994, pp.319-342.

¹¹⁰ Ibid.

otherwise contribute to national wealth, more competitive in international and transnational terms. The main features of this process have included attempts to reduce government spending in order to minimize the 'crowding out' of private investment by state consumption, and the deregulation of economic activities, especially financial markets.¹¹¹

In this process unlike the arguments of the globalization proponents, Cerny claims that "the nation-state, of course, is not dead, but its role has changed."¹¹² Under new conditions, the society will get less public services. Instead private industry and private services are the main focus. One of the main roles of the state is to minimize inflation, in order to maintain the confidence of the international business and financial community.¹¹³ The development of globalized financial markets raises several key issues for the analysis of politics, public policy, and the national state.¹¹⁴

Cerny argues that since there is no a world government world trade can be organized in three ways "through workable international institutions; through a hegemonic state or group of states working through less formal mechanisms of power and influence; or through the reestablishment of much closer and more direct state control over the markets. Each of these mechanisms, to work effectively, must have sufficient institutional

¹¹¹ Cerny, P. G., 1997,p.259.

¹¹² Ibid, p.270.

¹¹³ Ibid.

¹¹⁴ Cerny, P. G., 1994, pp.319-342.

capacity and autonomy for the task.”¹¹⁵ In the globalization era four specific policy changes have taken place. These are;

*1) a shift from macroeconomic to microeconomic interventionism, as reflected in both deregulation and industrial policy; 2) a shift in the focus of that interventionism from the development and maintenance of a range of ‘strategic’ or ‘basic’ economic activities in order to retain minimal economic self-sufficiency in key sectors to one of flexible response to competitive conditions in a range of diversified and rapidly evolving international marketplaces, i.e. the pursuit of ‘competitive advantage’ as distinct from ‘comparative advantage’; 3) an emphasis on the control of inflation and general neoliberal monetarism-supposedly translating into non-inflationary growth-as the touchstone of state economic management and interventionism; and 4) a shift in the focal point of party and governmental politics away from the general maximization of welfare within a nation (full employment, redistributive transfer payments and social service provision) to the promotion of enterprise, innovation and profitability in both private and public sectors.*¹¹⁶

Levi Faur states that in order to respond to the changes in both global and domestic economy state powers have undergone changes.¹¹⁷ He continues claiming that “The competition state, without transforming the whole apparatus of the state and with an important but limited effect on society, is assuming a very “traditional role,” with a neomercantilist character, which it always had. It is revitalizing and reforming economic sectors in order to promote national competitiveness.”¹¹⁸ The transformation of the nation-state into a ‘competition state’ lies at the heart of globalization. In

¹¹⁵ Ibid..

¹¹⁶ Cerny, P. G., 1997,p.260.

¹¹⁷ Soederberg, S., 2001, p. 139.

¹¹⁸ Levi-Faur, D.,1998.

seeking to adjust “to a range of complex changes in cultural, institutional and market structures, both state and market actors are attempting to reinvent the state as a quasi-‘enterprise association’ in a wider world context, a process which involves three central paradoxes. The first paradox is that this process does not lead to a simple decline of the state but may be seen to necessitate the actual expansion of *de facto* state intervention and regulation in the name of competitiveness and marketization.”¹¹⁹

Furthermore, in a second paradox, when states try to adopt new global realities they also contribute in developing and strengthening globalization itself. And final paradox is that the development of this new political terrain in turn limits “the capacity of state institutions to embody the kind of communal solidarity which gave the modern nation-state its deeper legitimacy, institutionalized power and social embeddedness.”¹²⁰ These three paradoxes of competition state “is itself driving a process of political globalization which is increasingly relativizing the sovereignty of states and, indeed, forcing the pace of globalization in economic, social and cultural spheres too.”¹²¹

According Cerny, globalization process is also a product of both states and market forces. He explains the process as;

¹¹⁹ Cerny, P. G., 1997, p.251.

¹²⁰ Ibid.,pp.251-252.

¹²¹ Ibid.

Globalization as a political phenomenon basically means that the shaping of the playing field of politics itself is increasingly determined not within insulated units, i.e. relatively autonomous and hierarchically organized structures called states; rather it derives from a complex congeries of multilevel games played on multilayered institutional playing fields, above and across, as well as within, state boundaries. These games are played out by state actors, as well as market actors and cultural actors. Thus globalization is a process of political structure and Political globalization involves reshaping political practices and institutional structures in order to adjust and adapt to the growing deficiencies of nation-states as perceived and experienced by such actors.¹²²

The globalization debate is globalization proponents on the one hand, who observe a decline of the state in the face of denationalized economies and the skeptics, on the other, who refute the unprecedented ness of current levels of interdependence and underline the continuity of states' interventionist powers.¹²³ In globalization, the state has been not only an agent of its own transformation but also a major source of the development of globalization itself.¹²⁴Therefore, it's possible to claim that state is still the main actor of the global politics as well as global market.

Although Cerny claims that in the era of globalization state power has not diminished but restructured or reorganized, from the arguments he puts forward even from the idea of competition state, it can be depict that state power has not only restructured but also weakened. In the pre-globalization era the state was the only actor and monopoly of power in international arena. Yet now it is one of the competitors. It's competing

¹²² Ibid.,p.253.

¹²³ Lavenex, S., 2006, p.33.

¹²⁴ Cerny, P. G. 1994, pp.319-342.

not only with other states but also with non-state actors, especially the international market forces, TNCs.

Indeed, Since the Universal Declaration of Human Rights (UDHR) was adopted, the capacities and functions of states have changed as non-state actors have proliferated and become increasingly powerful.¹²⁵ Among the reasons for the transformation of state sovereignty is this era of globalization in which the NSAs' power increased. Thus the question arises: If states are losing power to NSAs, particularly in economic sphere, are states also losing some of their responsibilities and rights, and are NSAs acquiring some or all of these, including responsibilities to respect and secure human rights?

For these reasons it must be borne in mind that the subject of potential violators of human rights has transcended the state-centric paradigm.

II.3 DIRECT RESPONSIBILITY OF NON-STATE ACTORS FOR HUMAN RIGHTS VIOLATIONS

The increasing influence of non-state actors in the international relations has shaken the foundation of the traditional understanding of human rights. Several scholars claim that there is a need to hold NSAs, including TNCs directly accountable if they interfere with enjoyment of human

¹²⁵ Bernstein, A.R. "Human Rights, Global Justice, and Disaggregated States: John Rawls, Onora O'Neill, and Anne-Marie Slaughter" in **American Journal of Economics and Sociology**, Vol. 66, No.1, pp.87-111.

rights.¹²⁶ The new way of thinking about human rights is primarily motivated by the current circumstances, which see the state's position decline in its ability to ensure respect for human dignity. If some governmental functions are increasingly exercised by other entities, such as TNCs, NGOs, Intergovernmental organizations etc., accountability for human rights needs to be addressed directly to these entities.¹²⁷ Otherwise, a deficit may emerge in protecting human dignity.

It's argued that as society and economy have evolved and other actors have more influence and power, states cannot be seen as the sole promoter and protector of human rights.¹²⁸ While not ignoring the fact that states have bear a fundamental responsibility for human rights, there is the emergence of a new paradigm that will include non-state actors in the equation of human rights promotion and protection. This evolution of the norms and policies of human rights is necessary in the era of globalization, particularly, in the case of weak states.¹²⁹

Bernstein argues that, it will not be up to the state to uphold human rights in the future. Instead, it will be up to transgovernmental networks consisting of officials of particular branches of different state governments,

¹²⁶ Gutto O. and Shadrack B., **Human and Peoples Rights For The Oppressed: Critical Essays On Theory and Practice From Sociology of Law Perspectives**, (Lund: Lund University Pres, 1993), p.106.

¹²⁷Danailov, S., 1998, p.33.

¹²⁸ ICHRDD, **Emerging Human Rights Issues**, (Montreal: ICHRDD, 2006), 2006, p.10.

¹²⁹ Ibid., p.11.

as well as broader policy networks, including international organizations, NGOs, corporations, and other interested actors. The members of these networks would be the bearers of the obligations created by treaties and other international agreements.¹³⁰

One of the prominent authorities in this field, Andrew Clapham, also, suggests going beyond the state-centered approach and argues that some of the obligations found in public international law, and traditionally only applied to states, also apply to non-state actors and claims that “There exist some actors besides states that are capable of bearing rights and obligations under general international law. Intergovernmental organizations such as UN, NATO and IMF etc. have the requisite international personality to claim rights and fulfill their duties at the international level.”¹³¹ Bernstein also argues that corporations and other nongovernmental organizations can help secure human rights and should be encouraged, expected, and better enabled to do so when and where states are unable.¹³²

II.3.1 The Responsibility of Non-State Actors in Human Rights Instruments: A Matter of Interpretation

¹³⁰ Bernstein, A.R. “Human Rights, Global Justice, and Disaggregated States: John Rawls, Onora O’Neill, and Anne-Marie Slaughter” in **American Journal of Economics and Sociology**, Vol. 66, No.1,2007,pp.87–111.

¹³¹ Clapham, A., 2006, p.30.

¹³² Bernstein, A.R. 2007,pp.87–111.

A number of human rights instruments, arguably seek to apply to individuals, groups and corporations thus placing direct obligations on non-state actors.

The UN Universal Declaration of Human Rights, as well as the two International Covenants, in their preambular paragraphs recognizes duties on individuals to promote respect for human rights. “Declaration on the Responsibility of Individuals and Other Organs of the Society” and “the Declaration on the Right to Development” are recognizing the direct applicability of international human rights norms on non-state actors. These evidences certainly represent a sign towards a change at the conception of international human rights obligations applying to non-state actors.¹³³ Among these instruments Universal Declaration of Human Rights (UDHR) is accepted as a part of customary international law and the two covenants are legally binding treaties.

It is now acknowledged that although general international law is understood to be based on a mix of customary practice and consent to treaties as binding on the state, human rights law has in large measure defied these narrow categories by suggesting an additional foundation premised on human dignity.¹³⁴ Human dignity makes certain claims on all actors, state and non-state, regardless of the individual State’s consent to custom or treaty.¹³⁵

¹³³ Danailov, S., 1998, p.48.

¹³⁴ Jochnick, C., 1999, p.61.

This coming section focuses on the emerging trends towards asserting direct obligations of non-state actors in the light of a number of human rights instruments.

II.3.1.1 The Universal Declaration on Human Rights (UDHR)

The new trends have led the removal of the filter that only allows international lawyers and scholars to see the world through the rules of state responsibility. It can be suggested that we allow ourselves a wider field of vision that permits us to look at a larger range of actors and a multiplicity of jurisdictions and accountability mechanisms. We should rethink that international law can bind any entity that has the capacity to bear the relevant obligations. Starting with the United Nations and the European Community, it is fairly easy to show that the customary international law of human rights is considered binding on such non-state actors. For instance, it binds other non-state actors in fields such as the prohibition on slavery or genocide.

It has already been pointed out by a number of scholars and international lawyers that there were several explicit indications on obligations of individuals and other private actors under UDHR. The UDHR proclaims in its preamble the pledge by states to achieve, in co-operation with the UN, the promotion of universal respect for human and observance of

¹³⁵ Van Hoof, F., "International Human Rights Obligations for Companies and Domestic Courts: An Unlikely Combination?" in Castermans, M. et al (eds) **The Role of the Nation-State in the 21st Century**, (The Hague: Kluwer Law International, 1998), p.55.

human rights and freedoms. At the same time, the Declaration imposes explicit direct obligations on non-state actors. It provides thus:

every individual and every organ of society [emphasis added by the author), *keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.*¹³⁶

The Declaration recognizes non-state actor duties by affirming that “everyone has duties to the community”.¹³⁷ It further expresses that nothing in it may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth in it.¹³⁸ Louis Henkin also claims that: “Every individual includes juridical persons. Every individual and every organ of society excludes no one, no company, no market, no cyberspace.”¹³⁹

With regard to its legal effect, although it has provided neither legally binding force nor enforcement mechanism, it’s accepted that UDHR has embodied a part of customary international law. For instance, Daes

¹³⁶ UDHR, Preamble available at <http://www.un.org/Overview/rights.html> (Last visit: 4 March 2007).

¹³⁷ Ibid., Art 29.

¹³⁸ Ibid., Art 30. Art 5(1) of the ICCPR and Art 17 of the (European) Convention on Human Rights and Fundamental Freedoms (ECHR),

¹³⁹ HRC, **Implementation of General Resembly Resolution 60/251 Of 15 March 2006 Entitled “Human rights Council”**, A/HRC/4/035, February, 2007. p.12. available at <http://www.ohchr.org/english/bodies/hrcouncil/docs/4session/A-HRC-4-35.doc> (Last visit: 28.03.2007).

explains why the legal effect of UDHR in customary and conventional international law has already been recognized.¹⁴⁰ According to her, the reality that most of the international agreements have referred to the UDHR proves the assumptions that “UDHR is of a quasi-legal significance as distinct from being the source and origin of legal rights and duties.”¹⁴¹ Therefore, there is likelihood that the UDHR provisions including its Preamble could be legally enforceable.

On the basis of the eight paragraph of the Preamble, a number of scholars interpret it as providing substantive obligations for NSAs. On the other hand, some scholars object the content of the assumption on the grounds that the nature of the obligation derived from the paragraph does not have a clear vision. For instance, Rodley argues that it only requires individuals to participate in teaching and civic education to promote respect for human rights as well as to secure their observance.”¹⁴² Then he concludes that the obligations pointed out in the Preamble cannot be interpreted as being imposed either on individuals or on organs of the society directly to respect or observe human rights.¹⁴³

Article 29, paragraph one also refers to the individual duties and obligations. It states as “everyone has duties to the community in which

¹⁴⁰ Daes, E.A., **Freedom of the Individual under Law: Analysis of Article 29 of the Universal Declaration of Human Rights**, (New York: UN, 1990), p.48.

¹⁴¹ Ibid. p.51.

¹⁴² Rodley, N., “Can Armed Opposition Group Violate Human Rights?” in Mahoney, K.E. and Mahoney, P., (ed.), **Human Rights in the Twenty-First Century**, (Luwer Publishers, 1993),p.13.

¹⁴³ Ibid..

alone the free and full development of his personality is possible.”¹⁴⁴ Article 30th of the UDHR also says that “Nothing in this Declaration may be interpreted as implying for any *State, group or person (emphasis added)* any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”¹⁴⁵ However, Rodley again claims that the rights mentioned here are not absolute, but only a language of faith.¹⁴⁶

II.3.1.2 The International Covenants on Human Rights

The second group of human rights instrument to be analyzed include International Covenant on Civil and Political Rights¹⁴⁷ and The International Covenant on Economic, Social and Cultural Rights.¹⁴⁸ Because the Universal Declaration of Human Rights contained both civil and political rights and economic, social, and cultural rights, it could not get the international consensus necessary to become a binding treaty. Particularly, the ideological confrontation in the Cold War years between capitalist nations which favored civil and political rights, and socialist nations which favored economic, social and cultural rights was preventing

¹⁴⁴ UDHR, Article, 29.

¹⁴⁵ UDHR, Article 30.

¹⁴⁶ Rodley, N., 1993, p.15.

¹⁴⁷ International Covenant on Civil and Political Rights, adopted in 1966.

¹⁴⁸ International Covenant on Economic, Social and Cultural Rights, adopted in 1966.

the consensus. In order to solve the problem, the two binding International Covenants were created instead of one.¹⁴⁹

The fifth paragraph of the common Preamble to the International Covenants on Human Rights states: “individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights.”¹⁵⁰ Since the covenants are legally binding treaties there is no doubt about their legal effects. Concerning to the preambular paragraph it seems to create duties for individuals to spend effort for promotion of human rights.

It's claimed that the International Covenant on Economic, Social and Cultural Rights entails duties also on private actors. This view is supported firstly on the premise that many of the rights provided for in the Covenant reflect the provisions in the UDHR which in turn does impose obligations on both state and non-state actors alike. Secondly, the Covenant's monitoring organ, the Committee on Economic, Social and Cultural Rights (CESR), whose general comments are considered to be authoritative under the Covenant, with regard to the right to health states that:

While only state parties are parties to the Covenant and thus ultimately accountable for compliance with it, all members of the society -

¹⁴⁹ The International Covenants can be accessed on <http://www1.umn.edu/humanrts/instree/b3ccpr.htm> and http://www.unhchr.ch/html/menu3/b/a_cesr.htm (Last visit: 4 March 2007).

¹⁵⁰ Two Covenants, preamble, para.5.

*individuals, including health professionals, local communities, inter-governmental and non-governmental organizations, civil society organizations, as well as the private business sector-have responsibilities regarding the realization of the right to health...*¹⁵¹

The International Covenant on Civil and Political Rights, as mentioned above, also provides the obligations for non-state entities.¹⁵² In this regard, Nowak has referred to the “horizontal effects” that human rights produce between private parties as opposed to the vertical relationship, which exists between the individual and the state.¹⁵³ He asserts therefore that it is possible to infer from the Covenant that rights are protected not only from violations by the state but also by other actors. To ensure that any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.¹⁵⁴ Clapham therefore put forward that “Although a suggestion was made that the freedom of assembly should be protected only against ‘governmental interference’, it was generally understood that the individual should be protected against all kinds of interference in the exercise of this right.”¹⁵⁵ However, Rodley here again, has doubt on the text imposing direct obligations on individuals.¹⁵⁶

¹⁵¹ General Comment No. 14,2000. ‘The Right to the highest attainable standard of health’ 11/09/2000, UN. Doc E/C.12/2000/4 para 42. available at [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En) (last visit: 11.08.2008).

¹⁵² ICCPR, preamble and Art 5.

¹⁵³ Nowak, M., **UN Covenant on Civil and Political Rights: CCPR Commentary**, (Strasbourg: N.P. Engel,1993),p. 38.

¹⁵⁴ ICCPR, art.2.

¹⁵⁵ Clapham, A., 1993,p.97.

¹⁵⁶ Rodley, N., 1993, p.13.

II.3.1.3 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of the Society

Apart from the theoretical exploration of the responsibility of individual and other private actors, a practical commitment of the UN to the accountability of non-state actors is a remarkable improvement. Through the open-ended Working Group of the Commission on Human Rights a Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms was adopted by the UN.¹⁵⁷ The open-end Working Group was established in accordance with the decision of the Commission of 1985/112. The effort to draft a declaration has been fully supported by the Commission in its resolution of 1991/63 and ECOSOC resolution 1991/31.

The Working Group held meeting in 1992 and the first reading text was circulated to the states parties. The declaration was adopted by General Assembly resolution 53/144 of 9 December 1998.

The structure of the declaration is composed of six parts: a Preamble and 20 articles. Its Preamble reaffirms that the valuable work of individuals, groups and associations in contributing to, the effective elimination of all

¹⁵⁷ Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms was adopted in 1998, available <http://www.ohchr.org/english/law/freedom.htm> (Last visit: 4 March, 2007).

violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources.¹⁵⁸

The most relevant provision to our discussion is the article 18 which states:

- 1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.*
- 2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.*
- 3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.*¹⁵⁹

It's explicitly stressed in the quotation that not only the individuals but also groups, institutions and non-governmental organizations have responsibility in promoting human rights and fundamental freedoms. Furthermore, they have responsibility in contributing to the promotion of the right of everyone to a social and international order in which the rights

¹⁵⁸ UNDRIIOOS, Preamble, para.4.

¹⁵⁹ Ibid., Article.18.

and freedoms set forth in the UDHR and other human rights instruments can be fully realized.

II.3.1.4 UN Declaration on the Right to Development

One of the newly emerged human right instruments is the UN Declaration on the Right to Development (UNDRD) which was adopted by the UN General Assembly resolution 41/128 of 4 December 1986. Although UNDRD recognizes the primary responsibility of the state¹⁶⁰ it explicitly declares the responsibilities of individual. Its preamble confirms that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative *both of nations and of individuals* (emphasis added) who make up nations.

Some scholars and lawyers claim that certain obligations and responsibilities of individuals and other organs of the society exist at a minimum standard level, “in the sense that a failure to comply with would make the individual a human rights violator.”¹⁶¹

So far, a number of evidence which prove to impose legal obligations on non-state actors for their interference with human rights has been mentioned. The provisions of UDHR and the two Covenants as well as the two declarations provide a fundamental ground for accountability of NSAs. However, there are claims that applying human rights obligations

¹⁶⁰ UNDRD, adopted by the UN General Assembly in 1986, preamble.

¹⁶¹ Rodley, N, 1993, p.15.

to non-state actors trivializes¹⁶² human rights. i.e. this view challenges with the essence of the idea of human rights. Because human rights are related only to the serious abuses of state power and this is what distinguishes human rights from ordinary crime.¹⁶³

Apart from human rights instruments, international law has provided for certain instances where it is directly concerned with acts or commission of individuals. Individuals are held responsible for some acts, such as war crime, crime against peace, crime against humanity genocide etc. expressed in international instruments.¹⁶⁴

Article IV reminds us that persons committing acts of genocide shall be punished “whether they are constitutionally responsible rulers, public officials or private individuals.”¹⁶⁵ If, however, individuals and minority groups possess international rights independently of the state, enforcement of their rights will no longer depend on the interests of the state. It is contended that in the context of human rights the recognition of rights held by the individual independently of the state that are enforceable by either the aggrieved individual or other states is crucial.

¹⁶² It's claimed that human rights violations are different from ordinary crimes. They are not crimes that can be dealt with under the criminal law. Therefore, if they are evaluated as such, then applying human rights obligations to non-state actors trivializes human rights.

¹⁶³ Clapham, A., 2006, p.33.

¹⁶⁴ Rodley, N.,1993, p.303.

¹⁶⁵ Clapham, A., 2006, p.29.

Individual criminal responsibility therefore serves as a necessary addition to the state-centric human rights paradigm with the purpose of ensuring that individual perpetrators of international crimes do not escape personal responsibility under the notion of the state responsibility.¹⁶⁶

The Nuremberg process directly and indirectly affected upon the position of non-state actors in international law. From the standpoint of world order and international relations, Nuremberg does very important things in terms of theory and practice. For example, the Nuremberg process penetrates the veil of the state, and in doing so, radically modifies the traditional understanding of the concept of sovereignty. However the breach in absolute conception of sovereignty, in large measure, is due to the Nuremberg experience; and in this sense, that experience is a very revolutionary one. To extend this analysis further, Nuremberg makes individuals subject to international law. It also gives those individuals rights to adequate representation and fair judicial proceedings, which are rights guaranteed by the international character of the process. That is to say, Nuremberg changes the subject/object dimension of international legal order. The same is true with people's rights, with individual rights, and with the application of humanitarian precepts.¹⁶⁷ This rejection of the

¹⁶⁶ Paraphrasing the Judgment of the International Military Tribunal at Nuremberg, reprinted in **American Journal of International Law**, Vol. 41,1947,pp.172-333.

¹⁶⁷ Nagan, P.W., "Human Rights and Non-State Actors" in **Peace International Law Review**, Vol. 11, No. 209, Spring 1999,p.6.

state-centric theory has marked an important breakthrough for human rights and has been subsequently followed in a series of cases.¹⁶⁸

The examples of human rights instruments and international law referred are accepted by some scholars as the proof of the existence of direct obligations of private actors. It must be pointed out however that although the above human rights instruments seek to establish direct non-state actor responsibility, implementation mechanisms to enforce these obligations remain non-existent because the treaty monitoring procedures put central focus on the state.

II.4 STATE RESPONSIBILITY FOR ACTIVITIES OF NON-STATE ACTORS

Development of a common standard for holding states responsible for human rights has been one of the major achievements of international community in the last decades. All human rights instruments contain explicit obligations for states to take effective measures to prevent violations of human rights.¹⁶⁹ For instance, the sixth preamble paragraph of UDHR states that “Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal

¹⁶⁸ Cassidy, J., Emergence of the Individual as an International Juristic Entity: Enforcement of International Human Rights, available at <http://search.austlii.edu.au/au/journals/DeakinLRev/2004/25.html#fn1#f>(Last visit: 03.03.2007).

¹⁶⁹ For example, ICCPR, Art 2 (3)(a); CEDAW, Art 2(e); CERD, Art 2 (e); ECHR, Art 1; American Convention on Human Rights.

respect for and observance of human rights and fundamental freedoms.”¹⁷⁰ The preamble of the two international Covenants on the other hand, starts by saying that “the states parties to the present covenant...agree upon the following articles”¹⁷¹ Being international agreements, most of the articles of the Covenants start with the phrases such as “states parties to the present covenant...”¹⁷²In addition to these, the article number one of the UN Declaration on the Right to Development (UNDRD) states that “States have the primary responsibility for the creation of national and international conditions favorable to the realization of the right to development.”¹⁷³ There is no doubt that the primary responsible actor for human rights is the state.

The Draft Articles on State Responsibility¹⁷⁴ can be used in this respect as an indication of established and developing customary law.¹⁷⁵ The draft regulates the principles governing when and how a state is held

¹⁷⁰ UDHR, preamble, par.5.

¹⁷¹ Preambles of ICCPR and ICESCR.

¹⁷² Most of the articles of ICCPR and ICESCR start with similar phrases.

¹⁷³ UNDRD, art.1.

¹⁷⁴ Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10)*. Text reproduced as it appears in the annex to General Assembly resolution 56/83 of 12 December 2001, and corrected by document A/56/49(Vol. I)/Corr.4.

¹⁷⁵ Lawson, R., “Out of Control: State Responsibility and Human Rights: Will the ILC’s Definition of the “Act of State” Meet the Challenges of the 21st Century?” in Castermans, M. et al (eds) (1998) **The Role of the Nation-State in the 21st Century** (The Hague: Kluwer Law International,1998),p.91.

responsible for a breach of an international obligation. Breach of an international obligation is defined as “an act ... not in conformity with what is required ... by that obligation.”¹⁷⁶ The obligation may derive from a treaty, from custom, or from a general principle of law. Furthermore, the state cannot avoid responsibility by declaring something legal under its own domestic law.¹⁷⁷ Therefore in relation to human rights issues, state responsibility applies when a state is in breach of the obligation to respect internationally recognized human rights norms that arise from treaties, custom or jus cogens¹⁷⁸. An act of a State that constitutes a breach of an international obligation is an internationally wrongful act, regardless of the subject matter of the obligation breached.¹⁷⁹

The Draft Articles also cover acts of state organs or entities exercising elements of governmental authority, acts carried out under the direction or control of the state, and acts acknowledged by a state as its own.¹⁸⁰ If a non-state actor is in such proximity with the state then the activities of the corporation invites state responsibility. The usage of the general state responsibility doctrine in this sense faces the major constraint that this mechanism cannot be used in situations where there is no connection between the private violation and the state.

¹⁷⁶ Draft Articles, art12.

¹⁷⁷ Ibid., art.3.

¹⁷⁸ Leckie, S., 1998,p.109.

¹⁷⁹ Draft Articles, art 19.

¹⁸⁰ Ibid., art 11.

At another level, state responsibility also implies an obligation on the state to ensure private actors' compliance with international obligations and an obligation to prevent violations by them.¹⁸¹ A number of human rights instruments specifically express the state's responsibility for human rights violations of private actors and this has been principally recognized by voluntary initiatives as well. The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights¹⁸², for instance, states that "states are responsible for violations of economic, social and cultural rights that result from the failure to exercise in controlling the behavior of non-state actors".¹⁸³

Yet, there are counter arguments claiming that state is responsible only for its own wrong doing. Sacharoff, for instance, claims that international law holds a state responsible only for acts of state agents and state officials.

¹⁸¹ Leckie, S.,1998,p.109.

¹⁸² On the occasion of the 10th anniversary of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, a group of more than thirty experts met in Maastricht from 22-26 January 1997 at the invitation of the International Commission of Jurists (Geneva, Switzerland), the Urban Morgan Institute on Human Rights (Cincinnati, Ohio, USA) and the Centre for Human Rights of the Faculty of Law of Maastricht University (the Netherlands). The objective of this meeting was to elaborate on the Limburg Principles as regards the nature and scope of violations of economic, social and cultural rights and appropriate responses and remedies. The participants unanimously agreed on the following guidelines which they understand to reflect the evolution of international law since 1986. These guidelines are designed to be of use to all who are concerned with understanding and determining violations of economic, social and cultural rights and in providing remedies thereto, in particular monitoring and adjudicating bodies at the national, regional and international levels.

¹⁸³ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, in **Human Rights Quarterly**, Vol.20,1998,pp.691-705. also available at http://www1.umn.edu/humanrts/instate/Maastrichtguidelines_.html (la visit: 10.01.2008),par.18.

Furthermore, if only the state is held responsible for the acts for private actors, this may weaken struggle for human rights.¹⁸⁴ Also as it was discussed in section on globalization, the state sometimes may not be able to protect human rights. Two particular arguments that are explained below support this view.

II.4.1 Government and TNCs: Comrades

It's possible and sometimes happen that NSAs particularly, TNCs and states in developing countries, are comrades in violating basic human rights. Even though, their objectives for doing so are different. It's therefore, meaningless to expect most of the developing states to adequately monitor the behavior of NSAs, particularly TNCs. For instance, who is responsible for human rights violations in the case of failed state? Who is going to be responsible for the activities of TNCs in weak and failed states?

In many cases, developing countries are not keen on applying domestic mechanisms to protect and promote human rights. Developing country in which the TNC operate (the host state) may not enforce human rights norms because they are seen as conflicting with a regulatory regime which will attract foreign direct investment. Even a host state which has the desire to implement human rights standards may not have the power and

¹⁸⁴ Sacharoff, A.K., "Multinationals in Host Countries: Can They Be Liable Under the Alien Tort Claims Act for Human Rights Violations?" in **Brukley Journey of International Law**, Vol.23, No.3,1998.

resources necessary to enforce them.¹⁸⁵ Furthermore, TNCs, in many cases, are much more powerful in terms of economy than the countries in which they operate¹⁸⁶ and therefore, it's easy for them to impose their requests violating individual's rights on the states. In most cases the ruling elite in the developing countries collaborate with NSAs in the human rights violation activities either directly or indirectly. For example, reports of TNCs forming alliances with the elite in developing countries and getting directly involved even repressive activities of the said governments are not uncommon.¹⁸⁷

II.4.2 Inadequacy of Domestic Remedies

The use of domestic law to tackle the problem of all NSAs has inherent limitations due to the nature of NSA activities. Focusing on TNCs activities and their operations abroad with subcontractors is an illustrative case. The process of subcontracting, allows TNCs to limit their liability for worker rights violations. This has consequently resulted into the flourishing of the informal labor markets where workers virtually have no rights, particularly in countries where economy depends heavily on

¹⁸⁵ Mcleay, F., "Corporate Codes Of Conduct And The Human Rights Accountability of Transnational Corporations- A Small Piece Of A Large Puzzle", Global Law Working Paper 01/05 Symposium- Transnational Corporations And Human Rights, p.5. Availale At [Http://Www.Nyulawglobal.Org/Workingpapers/Documents/GLWP0105McLeay.Pdf](http://www.nyulawglobal.org/workingpapers/documents/GLWP0105McLeay.pdf) (Last Visit: 10112006).

¹⁸⁶ Anderson, S. And Cavanagh, J., "Top 200: The Rise Of Global Corporate Power By Sarah Anderson And John Cavanagh"
[Http://Globalpolicy.Igc.Org/Socecon/Tncs/Top200.Htm](http://globalpolicy.igc.org/socecon/tncs/top200.htm). (21.11.2005).

¹⁸⁷ Mokhiber, R. And Weissman, R., "Beat the Devil" in **Multinational Monitor**, Vol.18, No.12, 1997.

foreign direct investment or export commodity. Similarly, the activities of militia or terrorist organization are uncontrollable by states. Also, states cannot control many international organizations as well as supranational organizations.

However, the reality is that despite the spread of the notion based on the responsibility of private actors, international community is yet to develop mechanisms for enforcing these direct obligations. On the other hand, any discussion on the question of private actor responsibility for human rights eventually fall for consideration within the framework of state responsibility for human rights violations.

CHAPTER III

III. TNCs AND HUMAN RIGHTS: DEVELOPING A NEW DISCOURSE

Global markets expanded significantly as a result of trade agreements, liberalization and privatization in recent decades, especially in the 1990s. This process has contributed to development in major emerging countries and overall welfare in the world. But it also imposes costs on people and communities – including human rights abuses.¹⁸⁸ The issue of TNCs and human rights embraces a number of far-reaching questions which have been left unsolved to date. The issue has become complicated on account of political and economic interest of governments as well as private actors. The underlying point here is not only inadequacy but also the reluctance of the parties concerned to have a binding mechanism.

This chapter looks for evidence of direct corporate responsibilities under the international human rights instruments referred in this debate: the International Bill of Human Rights – the UDHR and the two Covenants – and the other core UN human rights treaties and the ILO core conventions. It also notes major trends within the self-regulations or codes of conduct.¹⁸⁹ After a working definition of TNCs, the impact of the TNC

¹⁸⁸ HRC, 2007a, **Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council”**, A/HRC/4/035, p.3. available at <http://www.ohchr.org/english/bodies/hrcouncil/docs/4session/A-HRC-4-35.doc> (Last visit: 28.03.2007).

¹⁸⁹ HRC, 2007a, p.12.

activities on human rights and voluntary codes of conduct will be analyzed in detail.

III.1 TRANSNATIONAL CORPORATIONS AS GLOBAL ACTOR

The lack of accountability is one of the main characteristics of the TNC rule. Not being constrained by national boundaries, these corporate leviathans are well-organized to escape from national regulations. Despite efforts by some UN agencies to establish international guidelines for TNCs, there is yet no global rule to which these transnational firms are subject.¹⁹⁰ TNCs are not only powerful but also unaccountable.

III.1.1 Defining TNCs: Business without Borders

Establishing a working definition for transnational corporations has been a challenging task. There are several definitions for TNCs.

The definition developed by the United Nations Conference on Trade and Development (UNCTAD) includes a specific requirement regarding the share of assets controlled by the parent enterprise. UNCTAD defines a transnational corporation as “an enterprise, which is irrespective of its country of origin and its ownership, including private, public or mixed, which comprises entities located in two or more countries which are

¹⁹⁰ Leaver, E., “Citizen Strategies in Transnational world” in **Bulletin**, No.44, 1996. available at <http://www.irc-online.org/content/bulletin/bull44.php> (Last visit: 30.03.2007).

linked, by ownership or otherwise, such that one or more of them may be able to exercise significant influence over the activities of others and, in particular, to share knowledge, resources and responsibilities with the others." The UNCTAD considers a "transnational corporation" to be an entity controlling assets abroad.¹⁹¹

According to a study by the United Nations Centre on TNCs, a transnational corporation is defined;

*as a company (or group of companies) composed of a parent company under a country's legislation which starts from its headquarters or decision-making centre and sets itself and its affiliates up in foreign countries by means of direct investments, with a worldwide strategy designed to overcome any obstacle to the expansion and free movement of foreign consortiums and thus allow the implementation of programmes for the liberalization, deregulation and privatization of the national economy of host countries.*¹⁹²

Dicken highlights that TNCs are becoming "global corporations"; "denationalized" and "stateless" and "placeless."¹⁹³ These remarks demonstrate some basic characteristics of TNCs. Such as being global corporations, being stateless and placeless are important concepts that implicitly point out their powerful position in global economy and difficulty for a state to control them.

¹⁹¹ UNCTAD, "Structure of TNCs", available at <http://www.unctad.org/Templates/Page.asp?intItemID=3170&lang=1> (Last visit: 23.03.2007).

¹⁹² UN, "Question of the Realization of the Right to Development", **ECOSOC Commission on Human Rights**, 54th Session, 1998. available at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/8b3a8f07d17f7ddd80256673003934e7/bf21fb0b78eb4a738025666300523365?OpenDocument> (Last visit: 22.03.2007).

¹⁹³ Dickens, P., **Global Shift: Transforming the Global Economy**, (London: Paul Chapman Publishing, 1998), p.193.

One of the common characteristics of the TNCs highlighted in the definitions above focuses on their operations in more than one country. Another common feature is to operate under a system of decision making which permits coherent policies and a common strategy through one or more decision-making centers. The definition of the UN stresses also the impacts of TNCs on the host countries.

III.1.2 Power of TNCs: The Invisible Hand Controlling Globalization

The size and scale of operations and the importance of the TNCs in the global economy are unbalanced in relation to the other international actors, including the states. Democracy is threatened by their lobbying power. It is a public secret that TNCs have power in pushing the governments and affect the national representatives to international organizations, especially in developing countries. It has become increasingly clear that the invisible hand controlling the globalization arena belongs to TNCs.¹⁹⁴ TNCs have power to manipulate legal and regulatory regimes of national systems¹⁹⁵ due to their undisputable economic power.

¹⁹⁴ Makombe, P., "TNCs Must Be Accountable", available at <http://www.seatini.org/bulletins/5.22.php> (Last visit: 30.03.2007).

¹⁹⁵ Lim, M., **Transnational Civil Society and the Internet in an Unregulated Capitalist World System: A Utopian Dream**, (Geneva: SSRIC, 2003), available at http://www.ssrc.org/programs/itic/publications/knowledge_report/memos/lim.pdf (Last visit: 29.03.2007).

The number of transnational corporations, as it shown on the table-III.1, has grown from 35,000 firms and 150,000 foreign affiliates in 1990¹⁹⁶ to 77,000 TNCs with 770,000 foreign affiliates abroad and millions of suppliers in 2006.¹⁹⁷ Together, these globally linked firms make up one-tenth of world GDP and one-third of world exports.¹⁹⁸ Flows of FDI have grown considerably in recent decades. In 1970 the level of FDI inflows stood at US\$9.2 billion, and by 2003 it stood at US\$560 billion (down from the record breaking US\$1.49 trillion in 2000).¹⁹⁹ They have more than doubled in 15 years. The number of employees in foreign affiliates worldwide has grown dramatically: it reached 53 million in 2002, up from 24 million two decades ago.²⁰⁰ Therefore, they are today leading actors in the global economy. To make it more understandable, the TNCs economic power is compared with the one of Turkey. The total trade of TNCs was about 8 trillion dollars while the total export of Turkey was 105 billion dollars in 2007. That means TNCs trading power is more than the sum of total exports of 76 countries in Turkey-size.

¹⁹⁶ Hirshhorn, R., **Industry Canada's Foreign Investment Research: Messages and Policy Implications**, (Ottawa, Industry Canada, 1997), p.3.

¹⁹⁷ HRC, **Implementation of General Resembly Resolution 60/251 of 15 March 2006 Entitled "Human rights Council"**, A/HRC/4/035, February, 2007. p.18. available at <http://www.ohchr.org/english/bodies/hrcouncil/docs/4session/A-HRC-4-35.doc> (Last visit: 28.03.2007).

¹⁹⁸ UNCTAD,2002, **World Investment Report 2002: Transnational Corporations and Export Competitiveness**.(New York and Geneva: UN), p. xv and 272.

¹⁹⁹ UNCTAD,2004, **World Investment Report 2004: The Shift Toward Services**, (New York and Geneva: UN), p.1; and World Bank,**World Development Indicators2003**, available at www.worldbank.org..

²⁰⁰ Schaub, R., **Transnational Corporations and Economic Development in Developing World**, (Zurich: Zurich University, 2004), p.22.

Table-III.1 TNCs Place in the World Economy

Table-III.1

TNCs in The World Economy					
Year	Number of TNCs	Foreign Affiliates	TNCs Trade <i>Trillion \$</i>	World Exports <i>Trillion \$</i>	Employees <i>millions</i>
1990	35,000	150,000	1.7	2.5	24
1995	40,000	270,000	2.7	5.8	
2001	65,000	-	6.6	8	54
2005	77,000	770,000	8	9.8	

Source: UN Comtrade, *World Investment Report (UNCTAD, 1992,1995,1996,1997,2002,2005)*

The table-III.1 shows that the number of TNCs more than doubled and the number of foreign affiliates as well as TNCs' trade more than quadrupled in 15 years.

According to the Corporate Watch statistics, among 100 largest economies in the world, 51 are corporations; only 49 are countries. Wal-Mart-the number 12 corporation-is bigger in terms of economy than 161 countries, including Israel, Poland, and Greece. Mitsubishi is larger than the fourth most populous nation on earth: Indonesia. General Motors is bigger than Denmark. Toyota is bigger than Norway. The combined sales of the world's Top 200 corporations are far greater than a quarter of the world's economic activity. The combined sale of the Top 200 corporations is \$7,1 trillion dollars.²⁰¹

The proliferation of TNCs and their growing strength relative to national governments make it increasingly difficult for societies to chart their own

²⁰¹ Anderson, S. and Cavanagh, J.,2005.

course of development. Rather than regulating TNCs to ensure that their activities serve the common good, national governments have become the instruments of TNC expansion. Governments limit their own regulatory authority through supranational agreements such as the NAFTA, EFTA, and the World Trade Organization (WTO). These global treaties institutionalize the power of TNCs by facilitating economic globalization. These agreements restrict the ability of governments to control capital flows or to impose social standards on TNC operations.²⁰²

TNCs are powerful enough to influence political decision-making process in developing countries. Thus, interference of TNCs with domestic political affairs in host countries has occurred frequently. TNCs sometimes collaborate with host countries through trading, financing, providing loans, selling military equipments to the governments.²⁰³ TNCs interfere with domestic affairs so as to provide favorable conditions for their business and profit maximization.

III.2 ACTIVITIES OF TNCs AND HUMAN RIGHTS

Transnational business operations across the globe are a common phenomenon and are increasingly more so in the age of globalization. While such operations are considered to be blessings for economic growth and development in the host countries, there are frequent allegations

²⁰² Leaver, E., "Citizen Strategies in Transnational World" in **Bulletin**, No.44, 1996.

²⁰³ Lippman, M., "Multinational Corporations and Human Rights" in Shepherd, G.W. and Nanda, V.P. (ed.), **Human Rights and Third World Development**, (London: Greenwood Press, 1985).

against TNCs of violation of human rights, environmental degradation and so on.²⁰⁴

A few cases can be singled out: environmental pollution and inhuman treatment of local population groups, e.g. by Shell in Nigeria; the chemical accident in Bhopal, India; disgraceful working conditions in 'sweatshops' in Asia and Latin America; child labor connected with IKEA and NIKE; claims levied against sports goods manufacturer Adidas of having football materials produced in China by forced labor; the use of highly poisonous pesticides in banana plantations; disappearances of unionized workers; environmental damage arising from big construction projects. The list could easily be extended. At the core is the accusation that transnational corporations do lasting, irrecoverable damage to the environment and to people.²⁰⁵

The unexpected growth in corporate power has come with its own challenges. The increase in the number of corporations has resulted in harsh competition in international trade. Competition has in turn exerted pressure on TNCs to cut production costs for higher profit. As a result of the high capital mobility the corporations tend to establish their production facilities where costs are relatively low. These developments

²⁰⁴ Maniruzzaman, A.F.M, **Global Business And Human Rights**, (Portsmouth: University of Potsmouth, 2006), p.1.

²⁰⁵ Teubner, G. "The Anonymous Matrix: Human Rights Violations by 'Private' Transnational Actors" in **Modern Law Review**, Vol. 69, No.3, 2006, pp. 327-346.

have resulted in undermining human rights including labor rights²⁰⁶ and social concerns in host countries.²⁰⁷

The most frequently discussed issue is also the TNCs' economic impact. TNCs are seen as promoters of economic growth as well as contributors to other objectives of true development. Corporations often make the point that their actions can actually be positive. "There is a universal understanding that market forces are essential for sustainable development."²⁰⁸ And their "constructive engagement" allows the spread of democracy, new technologies, and human rights and so on to those regions, which, over time, would allow more positive benefits to be realized.²⁰⁹

The TNCs impact on socio-cultural structure of society and the life style of citizens in host countries is another important point focused on. The impact of TNCs on consumption and the consumer behaviors²¹⁰, the transferring of home country's culture to the host country and the

²⁰⁶ Banda, C. M. U., **Transnational Corporations and Respect for Fundamental Worker Rights in Developing Countries: Limits of the ILO –WTO Response**, Manuscript, 1998, p.2.

²⁰⁷ Eaton, J.P., "The Nigerian Tragedy, Environmental Regulation of Transnational Corporations and the Human Rights to a Healthy Environment", **Boston Journal of International Law**, Vol. 15, No.26, p.262.

²⁰⁸ "UN, "Free Trade And Transnational Corporations1", available at [Http://Www.Cetim.Ch/En/Interventions_Details.Php?lid=114](http://www.Cetim.Ch/En/Interventions_Details.Php?lid=114) (Last Visit: 03.10.2004).

²⁰⁹ Shah, A., "Corporations and Human Rights" Available at [Http://Www.Globalissues.Org/Traderelated/Corporations/Humanrights.Asp](http://www.Globalissues.Org/Traderelated/Corporations/Humanrights.Asp). (Last Visit: 17.05.2003).

²¹⁰ The UNCTC, **Transnational Corporations in World Development**, 1998, p.223.

technology transfer directly or indirectly affect the social life of the host country.²¹¹

TNCs are powerful enough to influence political decision-making process in host states. One of the most well-known cases of the political intervention in host countries by TNCs is the ITT case in Chile in 1970s which aims to change the government in the country by military take over. As a result of TNCs intervention with domestic political affairs of host states human rights, particularly, civil and political rights are affected.

In addition to these, in the case of hazardous activities of TNCs the right to life²¹² of both employees and people living close to the business is under threat.²¹³ Also freedom from discrimination on ground of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status²¹⁴ is directly associated with the performance of TNCs.

One of the other rights that might be affected by TNCs activities is the right to self-determination.²¹⁵ In this case, the TNCs intervention with

²¹¹ Ibid., p.224.

²¹² UDHR, article 3 and ICCPR, article 6.

²¹³ Kapur, R., "From Human Rights Tragedy to Human Rights: Multinational Corporate Accountability for Human Rights Violations" in **Boston Collage Third World Law Journal**, Vol.10, No.1, 1990, p.16-17.

²¹⁴ UDHR, Article, 2, ICCPR, Article 26.

domestic policies, or the usage of TNCs by home states as a diplomacy instrument against the host state are clear and most frequent patterns appeared. The ECOSOC Commission on Human Rights notes that TNCs can negatively interfere with a number of human rights, including the right to self-determination:

*the right of peoples to self-determination and to permanent sovereignty over their natural wealth and resources; the right to development; the right of everyone to a standard of living adequate for the health and well-being of himself and his family and the continuous improvement of living conditions; the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the right to full and productive employment; the right of everyone to the enjoyment of just and favorable conditions of work; the right to form and join trade unions, the right to strike and the right to bargain collectively; the right of everyone to social security; the right of everyone to enjoy the benefits of scientific progress and its applications ...*²¹⁶

III.2.1 Leading Cases

Transnational corporations are accused of having been involved in many direct or indirect violations of human rights of a political, civil, social, economic or cultural dimension. An example is the serious allegation that Royal Dutch Shell was involved in the repression of the Ogoni people in Nigeria, the ITT case in Chile and Bhopal disaster in India. The fact that thousands of workers, especially children, are exploited, underpaid and often left in terrible living conditions in order to produce clothes and

²¹⁵ Comon Article 1 of ICCPR and ICESCR.

²¹⁶ ECOSOC, **Commission on Human Rights**, 52nd session, E/CN.4/1996/17, available at <http://www.unhchr.ch/huridocda/huridoca.nsf/70ef163b25b2333fc1256991004de370/1dfc3322f4041f09802566a3004c5e90?OpenDocument> (Last visit: 29.03.2007).

commodities that consumers, in their countries or world-wide, are buying everyday, is just an example of the grey areas of the role and influence that TNCs are said to have in the respect or violation of human rights.²¹⁷

III.2.1.1 The Bhopal Case of India

It's appropriate to deal with the Bhopal case of India which demonstrates how a TNC can interfere with human rights in the countries they operate. The Bhopal accident took place in 1984 in the city of Bhopal in the Indian. A-US based chemical and polymers TNC, Union Carbide, pesticide factory released 40 tones of methyl isocyanate gas. There is still no reliable estimate of the total number dead and injured. Yet the death number is estimated to be between 2500-7500, even some claims for 15.000 lives²¹⁸ and injured almost 200.000.²¹⁹ Bhopal is frequently cited as one of the world's worst industrial disasters in history.²²⁰

Union Carbide's Bhopal plant was built in India, not to escape regulations in the United States, but to exploit better the Asian market for pesticides. However, the nature of the 1984 disaster and the utter recklessness that

²¹⁷ Danailov, S., 1998, pp.6-7.

²¹⁸ McPhate, M., "Bhopal Disaster Continues to be a Plague" in **World&I**, Vol.21, No.3, 2006.

²¹⁹ Kapur, R., "From Human Rights Tragedy to Human Rights: Multinational Corporate Accountability for Human Rights Violations" in **Boston College Third World Law Journal**, Vol.10, No.1, 1990, p.4. also see "Bhopal's Search for Justice" in **Ecologist**, Vol.36, No.10, 2006, p.10.

²²⁰ Charles, L. Et.al., "The Public Health Implications of the Bhopal Disaster" in **American Journal of Public Health**, Vol77, No.2, 1987, pp.230.

led to the tragedy suggest a double standard of safety regulation by a multinational corporation.²²¹ In addition to the adverse health effects, corporate disinvestment increases the likelihood of disasters like the Bhopal tragedy. Where production involves hazardous materials, protection of the public health requires stringent regulations to ensure that safety standards are maintained in spite of pressures on management to cut costs.²²²

The world's worst industrial disaster in Bhopal, happened because of inadequate maintenance by Union Carbide and poor monitoring by the Indian authorities. Malfunctioning safety measures, inappropriate location of the plant, and lack of information about the identity and toxicity of the gas worsened the effects of the accident on people and livestock. The Bhopal disaster has raised questions about the implications of the transfer of potentially hazardous technology to the developing countries. Even after decades, Bhopal has not recovered.²²³

Some other factors that seemed to be contributing to this catastrophe according to Bisarya were: the information about the storage and handling of hazardous and dangerous materials was not adequately available; effects of the gas on humans and the treatment were not known; there was a lack of co-ordination between the factory management and the

²²¹ Ibid., pp.230-231.

²²² Ibid., 1987, p.232.

²²³ Varm, R. and Varma, D.R., "The Bhopal Disaster of 1984" in **Bulletin of Science Technology and Society**, Vol.25, No.1,2005,pp.37-45.

emergency services; there was an inadequacy of warning systems and related mock drills for such contingencies; poor communications; lack of effective emergency medical facilities; inadequate transport for emergency evacuation; people sleeping on pavements/railway platforms; along with humans a large number of animals, mostly cattle, perished in the disaster.²²⁴ The lack of community awareness and preparedness in Bhopal, and the trouble physicians had getting information to treat those not already dead, raise again the issues of availability of information and the "right-to-know."²²⁵

More than two decades passed yet the effect of the Bhopal continue. As Gupta claims "The Bhopal tragedy is NOT over. Its effects on people's lives have continued. Bhopal is not an incident; it is a catastrophic and irreversible change to the lives of people, a community, a country, a company and industry, the world."²²⁶

To date, not a single representative of Union Carbide has ever faced trial. In 1989, the Indian government reached a settlement with the company, withdrawing all criminal cases for US\$470 million in compensation. This has meant that, on average, survivors have received only US\$500 each. In 2001, Union Carbide was bought out by Dow Chemical, which denies

²²⁴ Bisarya, R.K. and Puri, S., "The Phopal Gas Tragedy-A Perspective" in **Journal of Loss Prevention in the Process Industry**, Vol.18, No.4-6, 2005, 2009-212.

²²⁵ Charles, L., 1987, p.234.

²²⁶ Gupta, J.P., "Bhopal Gas Tragedy and its effects on process safety" in **Journal of Loss Prevention in the Process Industry**, Vol.18, No.4-6, 2005, 197-199.

bearing any responsibility for Bhopal.²²⁷ The settlement was denounced by the victims.²²⁸ Because, Union Carbide made that settlement with the government, not with the people affected.²²⁹

A number of issues regarding human rights can be derived from the Bhopal. First of all, Bhopal illustrates that TNCs activities sometimes negatively affect human rights, including the right to life; the right to clear environment; the right to participation and the right to know are few of them. Secondly, Bhopal shows that government and Union Carbide had not taken preventive measures and even after the disaster they agree on compensation that was denied by the victims. This is either because the government of India was unable to implement its national laws or it was in collaboration with the company.

III.2.1.2 The ITT Case in Chile

The ITT case is one of the leading cases that involved a US-based TNC, “The International Telephone and Telegraph Corporation (ITT) in Chile. Left-oriented politician Salvador Allende was elected as president in Chile in 1970.²³⁰ ITT was disturbed by this development as Allende had threatened to nationalize proportion of ITT assets in Chile if he won the

²²⁷ Alana, H. And Monideepa, T., “Bhopal Campaigner’s Death Highlights Victims’ Plight” in **World Watch**, Vol.19, No.6, 2006, p.9.

²²⁸ Kumar, S., “Bhopal Disaster Victims’ Cases Reopened” in **Social science and Medicine**, Vol.27, No.10, 1988,pp.113-123.

²²⁹ Mark, H., “Bhopal’s Legacy” in **Nation**, Vol.278, No.20, pp.6-7.

²³⁰ Spooner, M. H., **Soldiers in a narrow land – The Pinochet regime in Chile**, (Los Angeles and California Univeristy of California Press, 1994),p.24.

election. It later emerged that ITT worked with the CIA in the overthrow of Allende. J.A. McCone, former head of CIA and later director of ITT, testifies before Senate Foreign Relations subcommittee which is investigating multinational companies and denied repeatedly that \$1-million offered to US Government by ITT was to be used to create economic chaos in Chile and bring downfall Marxist Government of Allende.²³¹

The goal of CIA and ITT action is political impact. For example, in Chile between 1970 and 1973, CIA and American military attache contacts with the Chilean military for the purpose of gathering intelligence enabled the United States to sustain communication with the group most likely to take power from President Allende.²³² Totally over 13 million dollars spent by the CIA on covert action operations in Chile between 1963 and 1974.²³³

The CIA counseled two ITT Co. executives about their testimony before a Senate subcommittee in which they denied that ITT had any links with the CIA.²³⁴ Also ITT executives Edward Gerrity and Robert Berrellez have been accused of perjury for allegedly lying to the subcommittee about ITT's financial role in the Chilean presidential campaign of 1970.²³⁵

²³¹ NYT, "J A McCone, former head of CIA and now a dir of ITT, testifies before Senate" in **New York Times**, 22 March 1973.

²³² Ibid.

²³³ US Senate, "Covert Action in Chile: 1963-1973" 94th Congress 1st Session, Washigton, 18 December 1975.

²³⁴ "CIA counseled executives of ITT on probe testimony" in **The Globe and Mail**, 9 October, 1978.

ITT made efforts to stop Allende from being elected through cooperation with CIA. Obviously ITT did not see any moral problems doing this. Other American companies also feared a leftist victory in Chile and in 1970 a group of American companies joined together and raised \$700,000 to stop Allende from being elected, much of the money went to other candidates but also to CIA programs to sabotage and spreading anti-Allende propaganda.²³⁶

The settlement process of this case was completely different from the previous cases. The investigation of political partnership of ITT and CIA was investigated by the US Senate Foreign Relation Committee; consequently no legal procedure was processed. The committee, in the first paragraph of its final report states that:

*United States involvement in Chile in the decade between 1963 and 1973 was extensive and continuous.*²³⁷

In this case, there is no settlement, just an investigation by the government of the US. The human rights that violated in this case are basically civil and political rights. The rights that are attached to democracy, such as

²³⁵ "CIA counseled executives of ITT on probe testimony" in **The Globe and Mail**, 9 October, 1978.

²³⁶ Chavkin, S., **Storm Over Chile – The Junta Under Siege**, (Westport, Connecticut: Lawrence & Hill Company, 1985), p.45.

²³⁷ Ibid.

right to participation, right to vote, right to fair elections etc. are violated by CIA and a US-based TNC, the ITT.

III.2.1.3 The Ogoni Case of Nigeria

In 1956, Shell oil Company discovered Nigerian oil field. This discovery marked the beginning of Shell's conflictive relationship with the small region of the Niger delta known as Ogoniland. Oil production followed in 1958, and Shell continued to produce oil in Nigeria after the country gained independence in 1960.²³⁸ Shell has become an essential source of the Nigerian government's income. Oil is estimated to account for 80% of the government's revenue.²³⁹

Nigeria has an estimated population of 88.5 million, comprising several hundred ethnic groups. One such group, the Ogoni, numbering approximately 500,000, is situated in the Niger Delta, in the Southeastern part of the country. Predominantly farmers and fisher folk, their livelihood and welfare is intricately bound to the health of surrounding rivers, streams and soil. Over the past two decades, the environment and welfare of Ogoni communities have been seriously damaged by oil development. The government has contributed to this harm through its dominant role in the oil industry and its violent response to Ogoni protests.²⁴⁰ The extractive activities of Shell, global oil giant which produces slightly over half of Nigeria's oil, have spawned alienation,

²³⁸ Cayford, S., "The Ogoni uprising: Oil, human rights, and a democratic alternative in Nigeria" in **Africa Today**, Vol.43, No.2,1996.

²³⁹ Ibid.

²⁴⁰ Ogoni Case, "Communication" available <http://cesr.org/filestore2/download/578/nigeriapetition.pdf> (last visit:19.01.2008).

protests and resistance across the local communities of the oil-rich Niger delta region.²⁴¹

The effects of this production on the local environment have been dramatic.²⁴² These effects include operational oil spills, gas flaring, acid rain, inappropriate land use and poor waste management practices.²⁴³ Shell has caused massive and systematic environmental and social problems as a result of irresponsible operations and faulty infrastructure.²⁴⁴

Ignoring the environmental and economic needs of the Ogoni was an extension of a Nigerian political system.²⁴⁵ It may be argued that oil development in Ogoni impacted negatively on a range of rights not just rights to development but also human, environmental, civil, political, economic, social and cultural rights. In terms of economic rights, the distribution of oil revenues was significantly skewed. The federal government and the oil companies received vast sums of money from Ogoni oil. In relative terms the oil-bearing communities, such as the Ogoni, became poorer as the oil revenues flowed elsewhere, enhancing the

²⁴¹ Obi, C.I., "Globalisation and Local Resistance: The Case of the Ogoni versus Shell" in **Political economy**, Vol.2, No.1, 1997.

²⁴² Cayford, S., 1996.

²⁴³ Wheeler, D., Fabig H. And Boele, R., " Paradoxes and Dilemmas for Stakeholder Responsive Firms in the Extractive Sector: Lessons from the Case of Shell and the Ogoni" in **Journal of Business Ethics**, Vol.39,2002, pp.297-318.

²⁴⁴ Ogoni Case.

²⁴⁵ Cayford, S., 1996.

wealth of the country's elites and non-oil bearing communities with access to political power.²⁴⁶

Shell's interaction with the Ogoni environment is at the root of the conflict. In order to carry out its extractive role at the behest of global capital, Shell has expropriated peasant land, polluted the ecosystem and virtually destroyed the livelihood of the local Ogoni peasantry, without paying heed to initially peaceful demands for restitution.²⁴⁷

Saro-Wiwa and other Ogoni leaders formed the Movement for the Survival of the Ogoni People (MOSOP) in October of 1990. Once started, the movement found fertile soil in the contemporary national and international background. MOSOP asked for international support to pressure the Nigerian government and the oil companies, particularly Shell, to recognize Ogoni rights. The oil companies increased security and the Nigerian government announced a ban on public demonstrations and decreed that demands for the right to self-determination and disruption of oil production were punishable by death under the laws. On 4 January 1993, an estimated 300,000 people attended the demonstration. The demands expressed at the rally were the right to self-determination, a fair share of oil revenues, and compensation for ecological damage.²⁴⁸

On 21 May 1994 four pro-government Ogoni leaders were attacked by a group of people and beaten to death. Then the state security forces began

²⁴⁶ Boele, R., Fabig H. And Wheeler, D.,2001, pp.121-135.

²⁴⁷ Obi, C.I., 1997.

²⁴⁸ Cayford, S., 1996.

a series of raids on Ogoni villages. Human Rights Watch has described in disturbing detail the horrific abuses of the task force in a case study of the Ogoni crisis.²⁴⁹ Saro-Wiwa, Mitee, and several other MOSOP leaders arrested during this period were held for eight months before being charged. In November 1994, the government appointed a special three-man tribunal to preside at their trial.²⁵⁰ Ken Saro-Wiwa and four others are charged with killing four prominent leaders in volatile Ogoniland. Therefore, there was the hanging by the Nigerian military regime of Ogoni writer and environmental and human rights activist Ken Saro-Wiwa and eight of his colleagues on November 10, 1995.²⁵¹ The trial was politically emotive in Nigeria and has roused the interest of environmental groups around the world. Human rights groups have condemned it as a tactic to remove Saro-Wiwa from the political scene.²⁵²

Ogoniland resists oil production because Shell refused to meet their demands to redistribute wealth and protect the environment.²⁵³ i.e. the struggle of the Movement for the Survival of Ogoni People (MOSOP) was essentially driven by the quest for self-determination, to wrest their

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Wheeler, D., Fabig H. And Boele, R., " Paradoxes and Dilemmas for Stakeholder Responsive Firms in the Extractive Sector: Lessons from the Case of Shell and the Ogoni" in **Journal of Business Ethics**, Vol.39,2002, pp.297-318.

²⁵² RN, "Nigeria Court Debates Own Competence in Ogoni Case" in **Reuters News**, 23 February 1995.

²⁵³ VOA, "Nigeria's Ogoni People Resist Oil Companies" in **US Fed News**, 26 May 2007.

ecology from Shell and force the Nigerian state to accept their right to control their land and the proceeds therefrom.²⁵⁴

The United Nations Declaration on the Right to Development places the human person as the central subject of development. Human beings should be the “active participants and beneficiaries of the right to development” and states should ensure their “active, free and meaningful participation in development and the fair distribution of the benefits resulting thereof.”²⁵⁵ It is arguably this right which has been most constrained by the mode of development experienced by the Ogoni.²⁵⁶ If we start from the premise that the development process must occur in a context where those participating can exercise their rights and in the end development must deliver greater freedom and enjoyment of rights, the Ogoni case represents a classic case of a development process that was ‘rights negating’.²⁵⁷

The settlement of the Ogoni problem has been different from the previous cases. In this case an international legal procedure was applied.

In light of the above-discussed background, two NGOs brought the Ogoni case before the African Commission on Human and Peoples’ Rights. The

²⁵⁴ Obi, C.I., 1997.

²⁵⁵ UNDRD, art.2.

²⁵⁶ Boeiel, R., Fabig H. And Wheeler, D., “Shell, Nigeria And The Ogoni. A Study In Unsustainable Development1: II. Corporate Social Responsibility And ‘Stakeholder Management’ Versus A Rights-Based Approach To Sustainable Development” in **Sustainable Development**, Vol.9,2001,pp.121-135.

²⁵⁷ Boeie, R., Fabig H. And Wheeler, D.,2001, pp.121-135.

communication alleged violations of a range of socio-economic rights: The communication mentions several rights: Such as the right to a clean environment, the right to health, the right to food, the right to housing, right to protection of the family, right to education, right to life, human dignity, right to economic, social and cultural development, right to life and human integrity, right to property.²⁵⁸

The basis of the complaint was that the government had violated Ogoni's rights directly or indirectly by failing to protect members of the Ogoni community from the acts of private actors. Additionally, the petition highlighted the role of private actors in the Ogoni violations.

The Communication alleged that the oil consortium had exploited oil reserves in Ogoniland with no regard for the health or environment of the local communities, disposing toxic wastes into the environment and local waterways in violation of applicable international environmental standards. The consortium had also neglected and/or failed to maintain its facilities causing numerous avoidable spills in the proximity of villages. The resulting contamination of water, soil and air has had serious short and long-term health impacts, including skin infections, gastrointestinal and respiratory ailments, and increased risk of cancers, and neurological and reproductive problems. These had caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni People.

²⁵⁸ Ogoni Case, full text of the case can be found on <http://www1.umn.edu/humanrts/africa/comcases/155-96.html> (last visit: 19.01.2008).

The Communication alleged also that the Nigerian Government had condoned and facilitated these violations by placing the legal and military powers of the State at the disposal of the oil companies.²⁵⁹

The African Commission basing its decision on the state's duties to respect, protect, promote and fulfill all human rights found Nigeria in violation of a number of the above rights. The Commission "Finds the Federal Republic of Nigeria in violation of several articles of the African Charter on Human and Peoples' Rights. Appeals to the government of the Federal Republic of Nigeria to ensure protection of the environment, health and livelihood of the people of Ogoniland"²⁶⁰

It can be inferred from the cases that not only economic, social and cultural rights are violated by companies, but also as it seen in the Bophal case of India the right to life and environment and also in the ITT case of Chile all rights of citizens that are attached to democratic participation can be violated.

As the examination of these cases has shown, human rights obligations are imposed indirectly on the TNC, through the state. The role of the state in controlling powerful private actors such as TNCs is further put in question in the context of state collapse or in the case of failed states. On the other hand the activities of the oil producing TNCs in Nigeria show that greater attention is often paid to how profits can be maximized at the

²⁵⁹ Ibid.

²⁶⁰ Ibid.

expense of the protection of the environment, the safety of lives, the right to property and other human rights. As it's clear from the case, while the inability of the host state is one problem, the unwillingness to control private actors presents another one. In order to see the impact of TNCs on human rights we need more and comprehensive cases. Therefore, the Baku-Tbilisi-Ceyhan (BTC) case will be analyzed in coming chapters in detail.

III.3 TOWARDS A MECHANISM OF CORPORATE RESPONSIBILITY

Free trade agreements, being multilateral or bilateral, are not conditional to any legal obligation to ensure that economic operations would not violate international human rights. Despite the existence of some references to human rights instruments, they are far from being implemented. Thus, there are some voluntary international human rights documents that put a kind of responsibility on companies.²⁶¹ The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy,²⁶² the OECD Guidelines for Multinational Enterprises and the UN Global Compact provide that TNCs should respect the human rights of those affected by their activities.²⁶³

Indeed, even it's weak a trend towards establishing direct obligations on TNCs is emerging. A Working Group of the UN Sub-Commission for the Protection and Promotion of Human Rights has prepared draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. The draft states clearly that: "transnational corporations and other business enterprises, their officers and their workers have human rights obligations and responsibilities".²⁶⁴

²⁶¹ UDHR, Preamble.

²⁶² ILO Tripartite Declaration, Art.8.

²⁶³ OECD Guidelines for MNCs, General principles, art.2.

²⁶⁴ UN Draft Norms on the Responsibilities of TNCs and Other Business Enterprises, Preamble.

Concerning the responsibility of the TNCs, the new trend has been developed on the assumptions of voluntary initiatives. But as it was discussed in the previous chapter, the human rights instruments also provides ground for sort of responsibility for non-state actors, including the TNCs.

III.3.1 Core Human Rights Instruments

The debate at theoretical and practical level focuses on accountability of private agents, including the business sector, for human rights. The attempts look for the possibility of applying international human rights instruments to private agents, as well as to the states.²⁶⁵

The state-centric view claims that international human rights instruments impose only “indirect” responsibilities on TNCs. In contrast, some observers hold that these instruments already impose direct responsibilities on corporations but merely lack enforcement mechanisms. For example, the UN Sub-Commission on the Promotion and Protection of Human Rights, explaining that its proposed Norms “reflect” and “restate” existing international instruments, attributed the entire spectrum of state duties under the treaties – to respect, protect, promote, and fulfill rights – to corporations within their spheres of influence.²⁶⁶

²⁶⁵ Abondo, A. E., 2004, “States And Corporations: Legal Responsibilities To The People”, [Http://Www.Whrnet.Org/Docs/Issue-States_Corporations.Html](http://www.whrnet.org/docs/issue-states_corporations.html) (Last Visit 16.10.2006).

²⁶⁶ HRC, 2007b, **Implementation of General Resembly Resolution 60/251 Of 15 March 2006 Entitled “Human rights Council”**, A/HRC/4/35/Add.1, p.11.

The Universal Declaration of Human Rights, as well as the two International Covenants, in their preamble paragraphs recognizes duties on individuals to promote respect for human rights. Declaration on the responsibility of individuals and other organs of the society and the declaration on the right to development are recognizing the direct applicability of international human rights norms on non-state actors. These evidences certainly represent a sign towards a change at the conception of international human rights obligations.²⁶⁷

The table-IV.2 provides examples of the various types of business enterprises/ sectors referred to in the sub-commission's concluding observations.²⁶⁸ The table illustrates the sectors in the relevant human rights instruments.

²⁶⁷ Danailov, S., 1998, p.48.

²⁶⁸ HRC,2007b, p.18.

Table-III.2 Human Rights in Relevant Sectors

Table-III.2

Sector/industry Referred in Concluding Observations of Treaties	
Treaty	Sector/industries
Civil and Political Rights (ICCPR)	Labour market, commercial and agricultural sectors (including the cotton industry), logging and mining concessions and media.
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Labour market, private prisons, natural resource extracting companies (including transnational companies), "mineral, timber and other commercial interests", development projects, private social security schemes and funds, private health-care system
International Convention on the Elimination of all forms of Racial Discrimination (ICERD)	Extractive and forestry industries, transnational corporations, large business ventures (particularly in indigenous areas), media and communication networks, private employers, private banks, housing agencies, hotels, restaurants and cafés
The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Private companies, public companies, private enterprises, business, labour market, private sector, media and advertising agencies, credit facilities, media, service sector, agricultural sector and informal sector, maquila (textile) industries.
Convention on the Rights of the Child (CRC)	Radio and television broadcasters, educational institutions, childcare professionals, institutions for mental illness, legal persons, Internet service providers, private adoption houses, private institutions, labour market, informal sector.
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	Agricultural sector

Source: HRC, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council"*, A/HRC/4/35/Add.1, February, 2007. p.18.

Human Rights Council in its 4th session in 2007 states that;

... corporations are under growing scrutiny by the international human rights mechanisms. And while states have been unwilling to adopt binding international human rights standards for corporations, together with business and civil society they have drawn on some of these instruments in establishing soft law standards and initiatives. It seems likely, therefore,

*that these instruments will play a key role in any future development of defining corporate responsibility for human rights.*²⁶⁹

III.3.2 Self-Regulations of TNCs: Codes of Conduct

Difficulties in making a case for submitting TNCs to direct obligations under international human rights regulations, as well as a lack of appropriate mechanisms of enforcement in countries where businesses operate, have led multilateral organizations to focus on encouraging companies to commit themselves to voluntary principles. The UN Global Compact (2000), the OECD Guidelines on Multinational Enterprises (1976, revised in 2000) and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977) are examples of this voluntary tendency.

In addition, numerous governments have worked together with representatives from the private sector such as the extractive industry (e.g. Voluntary Principles on Security and Human Rights for the Extractive and Energy Sector, the Kimberley Process Certification Scheme or The Extractive Industry Transparency Initiative) or the apparel industry (e.g. Worldwide Responsible Apparel Production, WRAP) to set up industry-specific codes of conduct. Private efforts include codes developed by corporations themselves, sector-wide business initiatives (e.g. Equator Principles) or cross-sector business initiatives (e.g. Business Leaders Initiative for Human Rights, BLIHR) and those drafted by a wide range of independent NGOs.²⁷⁰

²⁶⁹ HRC,2007a, p.14.

III.3.2.1 What is a Code of Conduct?

Codes of conduct or guidelines for multinational corporations do not have any fixed definition. Codes of conduct for TNCs are concluded between individual companies, trade union organizations and other relevant actors regarding the companies' international activities. Even if the codes have been agreed by a number of sovereign states, or such other entities have been granted international personality by sovereign states, they do not have a status of international law, which would set a binding effect on TNCs operating in those states which have adopted or joined the code.

Hence, codes of conduct for TNCs impose no legal, but only moral, obligations on companies, and they are not capable of enforcement by the application of external sanctions. For companies, the commitment to the codes is voluntary. But some organizations have placed the acceptance of their code as a condition to their membership or licensing agreements.²⁷¹

Besides governments and intergovernmental organizations, codes have been introduced by trade union organizations; employers' organizations; various environmental, consumer, investor, religious, ethical and other organizations; and by various groups protesting certain international phenomena. Some of the codes have been adopted multilaterally and

²⁷⁰ Amalric, F. et.al., **Transnational Corporations and Human rights: The Business Implications**, (Zurich: CCRS Working paper Series, WP No: 03/05, 2005), p.8.

²⁷¹ ILO, "Codes of Conduct for Multinationals" available at <http://www.itcilo.org/actrav/actrav-english/telearn/global/ilo/guide/main.htm> (Last visit: 02.04.2007).

some unilaterally. Codes of conduct for companies may address any issue relevant to their activities. Codes have in fact addressed a wide variety of issues, including: relations between multinationals in world markets; labor matter; environmental standards; health and safety issues related to individual products.²⁷²

The study is going to analyze different international codes of conducts intended to regulate activities of TNCs' regarding human rights.

III.3.2.1.1 the UN Global Compact

In an address to the World Economic Forum on 31 January 1999, the former Secretary-General of the United Nations, Kofi Annan, challenged business leaders to join an international initiative – the Global Compact – that would bring companies together with UN agencies, labor and civil society to support universal environmental and social principles. The Global Compact's operational phase was launched at UN Headquarters in New York on 26 July 2000. Today, thousands of companies from all regions of the world, international labor and civil society organizations are engaged in the Global Compact, working to advance ten universal principles in the areas of human rights, labor, the environment and anti-corruption.²⁷³

Through the power of collective action, the Global Compact seeks to promote responsible corporate citizenship so that business can be part of the solution to the challenges of globalization. In this way, the private

²⁷² Ibid.

²⁷³ UNGC, **What is Global Compact?**, available at <http://www.unglobalcompact.org/AboutTheGC/index.html> (Last visit:02.04.2007).

sector – in partnership with other social actors – can help realize the Secretary-General’s vision: a more sustainable and inclusive global economy.

The members of the Global Compact have made an explicit commitment to the following 10 principles:

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights within their sphere of influence; and

Principle 2: make sure that they are not complicit in human rights abuses.

Labor Standards

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labor;

Principle 5: the effective abolition of child labor; and

Principle 6: eliminate discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies

In June 2004, the UN Global Compact officially adopted Principle 10 on anti- corruption: business should work against corruption in all its forms, including extortion and bribery.

The participants of the UN Global Compact do submit annual (sometimes more than one report in a year) evaluation reports on the progress they have realized in the field of human rights. Monitoring corporate responsibility is based on reporting system. Reports can be general that cover all ten principles or reports can be limited to only one of the principles. The content and the format of the reports is up to the participants. There is no uniformity of reports. There is no any enforcement mechanism, if the participants do not submit any report. I.e. the system is totally voluntary.

III.3.2.1.2 U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights

As new international human rights issues and concerns are continuously emerging, and as TNCs and other business enterprises are increasingly involved, further clarification of the norms for business is required. In this regard, the new “U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights”, adopted by the United Nations Sub-Commission on the

Promotion and Protection of Human Rights in August 2003, can be seen as a major step forward in clarifying the human rights responsibilities of TNCs. "The document has been drafted in consultation with governments, NGOs, the business community and other experts and is based on existing international standards such as UN treaties, the UN Global Compact, the Geneva Conventions, ILO conventions and the OECD Guidelines for Multinational Enterprises"

The UN Norms on the Responsibility of TNCs aims to help companies to identify human rights norms throughout their operations and integrate human rights principles into their decision-making processes.²⁷⁴

The Norms consist of a long preamble referencing numerous UN documents, standards, and empirical trends related to globalization and human rights protection; it then outlines which rights corporations have an obligation to protect. The Norms also contain commentary on each set of human rights, as well as the obligations it intends to create. It includes an impressive array of rights, ranging from environmental and consumer protection to non-discrimination, workers' rights, and national sovereignty.²⁷⁵

²⁷⁴ Amalric, F. et.al., 2005, **Transnational Corporations and Human rights: The Business Implications**, (Zurich: CCRS Working paper Series, WP No: 03/05), p.10.

²⁷⁵ Weiler, J.H.H., "The Lack Of Enforcement In The UN Draft Norms: Benefit Or Disadvantage?" In **Global Law Working Paper 01/05 Symposium-** Transnational Corporations And Human Rights, P.6. Availale At [Http://www.nyulawglobal.org/Workingpapers/GLWP0105Gelfand_000.Rtf](http://www.nyulawglobal.org/Workingpapers/GLWP0105Gelfand_000.Rtf) (Last Visit: 04.12.2006).

Similarly, the meeting of the UN Commission on Human Rights on April 20, 2004 – which had the issue of corporate responsibilities in relation to human rights on its agenda for the first time – commissioned a report on the human rights responsibilities of transnational corporations and related business enterprises. The report aims to set out the “scope and legal status of existing initiatives and standards relating to the responsibility of transnational corporations and related business enterprises with regard to human rights, and aims to identify outstanding issues.” Although neither a legally binding document, the report and the U.N. draft norms both serve as useful indicators of the growing expectations of stakeholders such as consumer groups, investors, employees and civil society organizations with regard to human rights responsibility of TNCs.²⁷⁶

III.3.2.1.3 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, endorsed not only by states but also global employers’ and workers’ organizations. It proclaims that all parties, including multinational enterprises, “should respect the Universal Declaration of Human Rights and the corresponding international Covenants.”²⁷⁷

²⁷⁶ Amalric, F. Et.al., 2005, pp.10-11.

²⁷⁷ HRC,2007a, p.14.

The principles laid down in this universal instrument offer guidelines to TNCs, governments, and employers' and workers' organizations in such areas as employment, training, conditions of work and life, and industrial relations. Its provisions are reinforced by certain international labor Conventions and Recommendations which the social partners are urged to bear in mind and apply, to the greatest extent possible.

This instrument provides social policy guidelines in a sensitive and highly complex area of activities. Adherence to the Declaration contributes to a climate more conducive to economic growth and social development.

III.3.2.1.4 OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises provide voluntary principles and standards for responsible business behavior in a variety of areas, consistent with applicable domestic laws. They are addressed and approved by governments to *from* the 30 OECD member countries and non-member adhering countries such as Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania and Slovenia.²⁷⁸ The Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises. The Declaration is a balanced framework of OECD instruments designed to improve the international investment climate and

²⁷⁸ ANCP, 2007, **Introduction to the Guidelines**, available at <http://www.ausncp.gov.au/content/default.asp?areaid=8> (Last visit: 02.04.2007).

to strengthen the basis of mutual confidence between TNCs and the societies in which they operate.²⁷⁹

The Guidelines are a set of recommendations for responsible business conduct in a number of areas including employment, industrial relations, human rights, environment, information disclosure, competition, taxation, science and technology.²⁸⁰ They consist of a set of voluntary principles and standards for responsible business conduct. By adhering to the Guidelines, governments signal their commitment to ensure that companies operating from their territories apply them in their operations. The Guidelines have a high degree of legitimacy and represent shared expectations for business conduct.²⁸¹

The task of promoting and implementing the Guidelines is the responsibility of the National Contact Points (NCPs) located within government ministries in each OECD state. OECD governments are required to examine all allegations of company misconduct and NCPs are obliged to implement the Guidelines in 'specific instances' whenever they receive complaints from trade unions, NGOs or other interested groups.²⁸²

²⁷⁹ OECD, **The OECD Guidelines for Multinational Enterprises: Text, Commentary and Clarifications**, DAFE/IME/WPG(200)/15FINAL, p.2.

²⁸⁰ ANCP, 2007.

²⁸¹ APPG, 2005, **The OECD Guidelines for Multinational Enterprises and the DRC**, p.9, available at <http://www.appggreatlakes.org/content/word/TheOECDGuidelinesandtheDRCcases.doc> (Last visit: 02.04.2007).

²⁸² NCPs are also expected to examine 'specific instances' in non-adhering countries and to develop an understanding of the issues involved. (Procedural Guidance: I.C.5.)

On receipt of a complaint, it is expected that an NCP will consult with business, employee representatives, NGOs, experts and NCPs from other countries. Furthermore, the NCP might seek the guidance of the Investment Committee, the body whose responsibility it is, amongst other things, to clarify and interpret the Guidelines.²⁸³

The OECD Guidelines have several distinguishing features from the other codes:

Firstly, they are the only international corporate accountability instrument which has adopted a complaints procedure which is capable of issuing guidance as to implementation in specific cases. Secondly, the Guidelines cannot be described as 'global' because they do not apply to the companies of non-adhering states, including those operating out of a number of large economies such as China, Malaysia, Russia and India. However, taken together, the thirty countries of the OECD and eight non-members²⁸⁴²⁸⁵ that adhere to the Guidelines are a major source of foreign direct investment, and home to the majority of privately-owned multinational companies, including major extractive industries.²⁸⁶ Thirdly, although many business codes of conduct are now publicly available, the Guidelines are the only multilaterally endorsed and comprehensive code that Governments are committed to promoting. Finally, Guidelines approach is balanced. The assumption is not that enterprises need to be 'controlled' but that internationally agreed guidelines can help prevent

²⁸³ APPG, 2005, p.10.

²⁸⁴ Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, and Slovenia.

²⁸⁶ APPG,2005, p.9.

misunderstandings and build an atmosphere of mutual confidence and predictability between business, labor and Governments.²⁸⁷

III.3.2.1.5 Other Codes of Conduct

In May 2001 the OECD published a review of 246 codes of conduct, noting that this did not cover all codes in existence. A more recent World Bank estimate put the number of company codes at around 1,000. Codes have become an increasingly visible part of the activity of TNCs. They often feature on websites and in annual reports which include assessments of social and environmental performance alongside financial measures.²⁸⁸

For its part, the International Finance Corporation (IFC) now has performance standards that companies are required to meet in return for IFC investment funds. They include several human rights elements. Depending on the project, the IFC may require impact assessments that include human rights elements, and community consultation. Client compliance is subject to review by an Ombudsman, who may hear complaints from anyone adversely affected by an IFC-funded project's social or environmental consequences. The IFC standards also have accountability spillover effects, as they are tracked by banks adhering to the Equator Principles, which are responsible for some Two-thirds of global commercial project lending.²⁸⁹

²⁸⁷ ANCP, 2007.

²⁸⁸ McLeay, F., 2005, p.7.

²⁸⁹ HRC, 2007a, pp.15-16.

Beyond the intergovernmental system, a new multi-stakeholder form voluntary initiative is emerging. Most prominent among them are the Voluntary Principles on Security and Human Rights (VPs), promoting corporate human rights risk assessments and training of security providers in the extractive sector; the Kimberley Process Certification Scheme (Kimberley); and the Extractive Industries Transparency Initiative (EITI), establishing a degree of revenue transparency in the taxes, royalties and fees companies pay to host governments.²⁹⁰

Finally, the last decade or so has seen the rise of individual company codes of conduct. Levi- Strauss is usually credited as the first TNC to establish a code with comprehensive principles regarding its global sourcing and operations, in 1991. Nike followed later the same year. Since then, company codes of conduct have become more common.

III.3.2.2 Development of Codes of Conduct

The idea of a code of conduct to guide companies is not new. The 1977 Sullivan Principles offered guidelines for companies wishing to do business in South Africa during the apartheid regime, and in 1981 the World Health Organization developed the International Code of Marketing of Breast-milk Substitutes. The 1984 MacBride Principles outlined voluntary standards for businesses operating in Northern Ireland

²⁹⁰ HRC,2007a, p.16.

during “the Troubles”.. Still others were developed by multilateral institutions.²⁹¹

Many of these initiatives vary considerably in scope and lack specificity with regards to the human rights norms under consideration: The ILO Tripartite Declaration specifically includes workers’ human rights, but not the others, while the Global Compact refers to human rights generally without going into any specificity of which human rights are relevant. Similarly, the voluntary Guidelines for Multinational Enterprises drafted by the OECD calls on corporations to “respect the human rights of those affected by their activities” and to “contribute to the effective elimination of child labor” and “forced and compulsory labor in their operations”, without indicating the relevant norms in more detail.²⁹²

III.3.2.3 Why TNCs Apply Codes of Conduct?

There are a number of reasons for the rise of codes. The implementation of a code can confer a competitive benefit on a TNC. The 2001 OECD survey noted “the protection or enhancement of an organization’s reputation and stronger customer loyalty” were often cited as contributing to a decision to implement a code. Although a direct link between “good corporate citizenship” and “applying codes” is difficult, there is some evidence to support the view that the implementation of a code which includes

²⁹¹ McLeay, F., 2005, pp.6-7.

²⁹² Amalric, F. et.al., **Transnational Corporations and Human rights: The Business Implications**, (Zurich: CCRS Working paper Series, WP No: 03/05, 2005), pp.8-9.

provision for higher labor standards can in turn produce a more stable and productive workforce and assist a company increase production, quality and reliability and ultimately profits.²⁹³

In addition codes are applied sometimes by a company's assessment of human rights-related risks and opportunities, often under pressure from civil society and local communities.²⁹⁴

Similarly, some TNCs find their conduct is becoming increasingly visible to a wide range of actors, including consumers, investors, employees, competitors and NGOs. For such TNCs, implementation of a code can help establish "social legitimacy" and convey a positive global corporate citizenship image.

In addition; being a voluntary initiative, a code is flexible and readily adaptable to the operating and industry conditions of a particular company. A company which wishes to take human rights norms into account may therefore turn first to a code, instead of the law, in order to address the specific employee rights.²⁹⁵

Driven by social pressure, these initiatives seek to close regulatory gaps that contribute to human rights abuses. But they do so in specific

²⁹³ McLeay, F., 2005, p.7.

²⁹⁴ Ibid., p.17.

²⁹⁵ Ibid.,7-8.

operational contexts, not in any overarching manner. Moreover, recognizing that some business and human rights challenges require multi-stakeholder responses, they allocate shared responsibilities and establish mutual accountability mechanisms within complex collaborative networks that can include any combination of host and home states, corporations, civil society actors, industry associations, international institutions and investors groups.²⁹⁶

The following internal mechanisms, in addition to external ones may favor the adoption of Codes.²⁹⁷

- *Values*: Organizations generate their own values; they are also influenced by their members' values. Corporations' decision procedures delineate not only rules but also basic sets of beliefs.
- *Reputation*: The desire to protect both their company's reputation and their own may drive managers to adopt CSR Codes. MNCs consider damage to the reputation the most important risk they face. But personal and not only corporate reputation may be at stakes.
- *Isomorphism and peer/partner pressure*: Mimesis, or more precisely isomorphism, explains how the adoption of CSR Codes by a number of MNCs sends a signal to others that they should act

²⁹⁶ HRC, 2007a, p.16.

²⁹⁷ Levis, J. "Adoption of Corporate Social Responsibility Codes By Multinational Companies" in *Journal of Asian Economics*, Vol.17, No.1, 2006, pp.50-55.

similarly. Additionally, companies may also be subject to pressure by their peers or by their partners.

Leading companies have worked to reflect their human rights commitments in corporate practices. In some industries, particularly clothing, companies have agreed to not only codes of conduct, but also independent monitoring to decrease the mistakes that they and their suppliers will live up to their word.²⁹⁸ Codes are applied for several reasons: to chart possible future directions for, and fill gaps in the international legal order when they are not yet able or willing to take firmer measures; where they conclude that legally binding mechanisms are not the best tool to address a particular issue; or in some instances to avoid having more binding measures.²⁹⁹

It seems then, that codes of conduct can be useful:

- *to promote and protect human rights which are directly in the sphere of influence of the TNC, in particular, as we have seen, employee or labor rights such as collective bargaining and working conditions like overtime;*
- *to bring about cultural change within companies and promote an environment where human rights begin to form part of the business plan and everyday operations of TNCs; and*
- *as role models or examples for host states and workers in the developing world of the way in which human rights can be incorporated into business enterprises.*³⁰⁰

²⁹⁸ Misol, L., "Private Companies and the Public Interest: Why Corporations Should Welcome Global Human Rights Rules" In **World Report 2006**, (New York: HRW, 2006), p.46. Available at <http://www.hrw.org/wr2k6/wr2006.pdf> (Last Visit: 12.12.2006).

²⁹⁹ HRC,2007a, p.14.

³⁰⁰ Mcaley, 2005, p.27.

In sum, the standard-setting role of codes remains as important as ever to crystallize emerging norms in the international community. The increased focus on accountability in some intergovernmental arrangements, coupled with the innovations in codes mechanisms that involve corporations directly in regulatory rule-making and implementation, suggests increased state and corporate acknowledgment of evolving social expectations and recognition of the need to exercise shared responsibility.³⁰¹ The continuous debate on the binding nature of human rights norms for TNCs and the vast proliferation of codes developed by governmental and multilateral authorities, civil society groups and by companies themselves make it difficult for companies to determine which norms regulation and society regard as being relevant to them.³⁰²

III.3.2.4 Limitations of Codes of Conducts

Almost everybody, including business representatives, favors adoption of some code though there are great differences of opinion over just how effective an instrument it can be. Peterson, who represents the International Organization of Consumers Unions at the UN, is very optimistic about what results it might achieve. “Even though the Code will be voluntary,” she says, “it will have great credibility and moral authority because it will be based on international consensus.”³⁰³

³⁰¹ Ibid., p.18.

³⁰² Amalric, F. et.al., 2005, pp.9-10.

Being voluntary and lack of enforcement mechanism raised some concerns among stakeholders. Companies argue that their voluntary initiatives are sufficient to protect human rights. Yet the record shows that we cannot rely on corporate ethics and commitments alone. Codes of conduct, the UN Global Compact and other initiatives have not been unanimously successful precisely, because of the lack of legal mechanisms of accountability and monitoring and the non-obligatory nature of the codes. The effectiveness of voluntary codes depends entirely on business opportunism and on the good faith of a company. However, legal systems emphasize principles of accountability and compensation when a violation of rights exists.³⁰⁴

Codes typically provide that companies will monitor themselves and enforce the code's provisions and; this confusion of the powers to both draft regulations and to implement them is problematic. It conflicts with classical theories of separation of power in the political field. In general, organizations tend to escape monitoring. Without external checks and balances, self-monitored rules are bound to remain inefficient.³⁰⁵ Codes can integrate social demand as far as it remains beneficial to companies. This theory is compatible with the "theory of the firm" approach that aims at finding how much CSR is beneficial rather than whether CSR is, in itself, beneficial.³⁰⁶ Many firms have adopted voluntary regulatory

³⁰³ Caplan, R., "Tracking Transnationals," Available At [Http://Multinationalmonitor.Org/Hyper/Issues/1989/07/Caplan.Html](http://Multinationalmonitor.Org/Hyper/Issues/1989/07/Caplan.Html)

³⁰⁴ Abondo, A. E., 2004.

³⁰⁵ Levis, J., 2006, pp.50-55.

standards to avoid additional regulation and/or to protect their reputations and brands. TNCs have presented codes as binding instruments that reduced the need for other forms of regulation of corporate activity. However, as developed further, uncertainty about the enforcement of CSR weakens this claim.³⁰⁷

In sum, on one hand, there are signs that corporate citizenship is becoming a global phenomenon. The Global Compact – through its participants and local networks – can be found in approximately 120 countries, a majority of them in the developing world. From Chile to China and South Africa to Sri Lanka, corporate responsibility seminars and summits are teeming with local participants wanting to learn about the value of implementing universal principles into business practices. On the other hand, new examples of human rights violations, worker exploitation and corruption being carried out by TNCs are frequently revealed. It is not secret that companies devoid of responsible practices are winning contracts and making profits in developing countries despite their unsavory behavior.³⁰⁸

³⁰⁶ Ibid.

³⁰⁷ Ibid.

³⁰⁸ Hall, C., "Are Emerging market TNCs Sensitive to Corporate Responsibility Issues?" in **Compact Quarterly**, Vol. 2006, Issue, 4, November 2006. available at http://www.enebuilder.net/globalcompact/e_article000688480.cfm?x=b11,0,w (Last visit: 27.03.2007).

III.3.2.5 Corporate Social Responsibility through Codes

Not only large companies but also small and medium-sized ones increasingly conduct business in an international context. Through the globalization of the economy, companies are increasingly involved in a complex network of international chains of suppliers and customers. Many companies have taken initiatives to make the international chains in which they operate more sustainable. They aim to promote corporate social responsibility through cooperation with supply chain partners.³⁰⁹

Corporate Social Responsibility (CSR) is a concept that has attracted worldwide attention and acquired a new resonance in the global economy. Heightened interest in CSR in recent years has stemmed from the advent of globalization and international trade, which have reflected in increased business complexity and new demands for enhanced transparency and corporate citizenship.³¹⁰

The World Business Council for Sustainable Development (WBCSD) defines CSR as “the commitment of business to contribute to sustainable economic development, working with employees, their families and the local communities”. Hence the fundamental idea of CSR is that business corporations have an obligation to work towards meeting the needs of a wider array of stakeholders. More generally, CSR is a set of management

³⁰⁹ Cramer, J.M., “Organising corporate social responsibility in international product chains” in **Journal of Cleaner Production**, Vol, 16, No.3, 2008, pp.395-400.

³¹⁰ World Business Council for Sustainable Development (WBCSD)
http://www.wbcsd.org/projects/pr_csr.htm

practices that ensures the company maximizes the positive impacts of its operations on society or “operating in a manner that meets and even exceeds the legal, ethical, commercial and public expectations that society has of business”³¹¹

There is a consensus among large corporations that corporate responsibility should be defined in three dimensions: the financial, social and the environmental. This is consistent with Elkington’s thinking on the ‘triple bottom line’, which calls for firms to achieve balanced progress on economic development, environmental quality and social justice.³¹²

Stakeholder engagement gives the impression of corporate responsibility. It appears evident that if an organization shows commitment, through policy and practice, to stakeholder involvement it is acting responsibly towards these stakeholders: the more an organization engages with its stakeholders, the more accountable and responsible that organization is towards these stakeholders. The very notions of corporate responsibility and the responsible organization are built upon this belief.³¹³

³¹¹ Mirshak, R. And Jamali, D. “Corporate Social Responsibility (CSR): Theory and Practice in a Developing Country Context “ in **Journal of Business Ethics**, Vol. 72, No.3, 2007, pp.243-262.

³¹² Boelex, R., Fabig H. And Wheeler, D., “Shell, Nigeria And The Ogoni. A Study In Unsustainable Development1: II. Corporate Social Responsibility And ‘Stakeholder Management’ Versus A Rights-Based Approach To Sustainable Development” in **Sustainable Development**, Vol.9,2001, pp.121-135.

³¹³ Greenwood, M. “Stakeholder Engagement: Beyond the Myth of Corporate Responsibility” in **Journal of Business Ethics**, Vol. 74, 2007, p.315.

Over the past several decades, corporate social responsibility (CSR) has grown from a narrow and often marginalized notion into a complex and multifaceted concept, one which is increasingly central to much of today's corporate decision making.³¹⁴

Regulations that govern the social and environmental impacts of global firms and markets without state enforcement are a relatively new dimension of global business regulation. The growth of such voluntary "civil regulations" reflects both the expansion of legitimate authority in the global economy outside the state and the increasing use of alternative regulatory instruments to govern firms, including self-regulation, market-based instruments.

It has been noticed by many analysts that focusing only on profit maximization was not necessarily correlated with other society objectives, such as rapid employment creation, the reduction of poverty and inequalities, and the provision of basic needs. The new approaches based on corporate responsibility are not to consider only economic dimensions, but also to other people criteria, such as the universal provision of basic needs, the promotion of social equity, the enhancement of human productive and creative capabilities, the capacity of communities to set and meet their own human rights objectives,³¹⁵ participation, non-discrimination, and

³¹⁴ Cochran, P.L. "The evolution of corporate social responsibility" in **Business Horizons**, Vol.50, No.6, 2007, pp. 449-454.

³¹⁵ Brohman, J., **Popular Development: Rethinking the Theory and practice of Development**, (Oxford: Blackwell Publishers, 1996), pp.201-3.

realization of all internationally recognized human rights and fundamental freedoms.

Following are some of the international human rights instruments upon which the principles of corporate responsibility are based: the Universal Declaration of Human Rights (UDHR), Conventions of the International Labor Organization (ILO), the United Nations (UN) Basic Principles on the Use of Force and Firearms, the UN Code of Conduct for Law Enforcement Officials and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. Other international human rights standards are also essential sources for the development of respect for human rights by companies, the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises. Treaties which should be promoted include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Cultural and Social Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Convention on the Rights of All Migrant Workers and Members of Their Families.³¹⁶

Global Compact principle one states as “Businesses should support and respect the protection of internationally proclaimed human rights; and

³¹⁶ “Human Rights Principles For Companies”, Available At [Http://Web.Amnesty.Org/Library/Index/ENGACT700011998](http://Web.Amnesty.Org/Library/Index/ENGACT700011998)

make sure that they are not complicit in human rights abuses.”³¹⁷ ILO Tripartite Declaration also argues that in developing countries, TNC’s should provide the best possible wages, conditions of work (including health and safety), and benefits, adequate to satisfy basic needs and within the framework of government policies. Governments should adopt policies ensuring that lower income groups and less developed areas benefit as much as possible from TNC activities. TNC’s should provide upon request information concerning health and safety standards observed in other countries which are relevant to local operations.³¹⁸ Hence, ILO Convention 87: on the Freedom of Association and Protection of the Right to Organize³¹⁹ focuses on the right to form or join a trade union.

III.3.2.5.1 The Special Case of the UN Global Compact

It’s presented in the table-III.8 that TNCs consider the UN Global Compact as the number one of the human rights sources, i.e. they think that the Global Compact is the best document that fits the business related human rights.

³¹⁷ UN Global Compact, Principles, 1 and 2.

³¹⁸ ILO Tripartite Declaration.

³¹⁹ ILO Convention 87. **Article 2**, Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. **Article 3**, 1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

The Global Compact involves all relevant social actors: companies, whose actions it seeks to influence; governments, labor, civil society organizations, and the United Nations. Since its official launch on 26 July 2000, the initiative has grown to almost 5, 000 participants, including over 3, 700 businesses in 120 countries around the world.³²⁰

Among the participants five leading companies were selected from five different sectors: BP (oil and gas); Achilles (internet and e-commerce); NIKE (textiles, apparel and luxury goods); HSBS (finance and insurance); Lufthansa (aerospace and aviation). All the selected companies are the participants of the UN Global Compact and have submitted corporate responsibility reports to the Global Compact.

The reports submitted to the UN Global Compact do not have a formal structure, instead the companies put down the reports as they wish. Basically the reports submitted to the Global Compact are annual but sometimes case stories which focus on special issues are also submitted by companies.

The reports that are submitted to the Global Compact aim to demonstrate a company's commitment to the global ethical principles, particularly the principles of the Global Compact. Yet, reporting system seems to weaken this argument. Because, the companies themselves prepare the report, and explain what activities they realized and how they succeeded. i.e. they prepare the reports that show how their activities are compatible with the

³²⁰ UN Global Compact Participants available at <http://www.unglobalcompact.org/ParticipantsAndStakeholders/index.html> (18.01.2008).

required principles. However, reporting to an independent organ is still an important way of demonstrating a company's commitment to corporate social responsibility and global ethical principles.

The leading cases show how companies try to show their commitment to human rights.

III.3.2.5.1.1 BP

Operating in oil and gas sector, BP is a UK based TNC. It joined the UN Global Compact in 2007. BP is one of the world's largest petroleum and petrochemical groups. Its main activities include the exploration and production of crude oil and natural gas; the refining, marketing, supply, and transportation of those products; and the manufacturing and marketing of petrochemicals. BP is also active in exploring renewable sources of energy generation, including solar power. It has operations in over 100 countries in Europe, North and South America, Asia, and Africa.³²¹

BP is one of the three largest integrated energy companies and has one of the top three reserves in the global oil and gas industry. Each day BP generates approximately three million barrels of oil equivalent production.

³²¹ The BTC Pipeline Case Study: Following through on Global Compact Commitments, 2004, available at http://www.unglobalcompact.org/data/ungc_case_story_resources/doc/40331b11-fa00-0010-4ea2-ee6d8df593cc.doc (Last visit: 09.01.2008).

With revenues of \$179 billion, market capitalization of \$152 billion, and over 115,000 employees, BP is among the world's most significant TNCs.³²²

The company has provided seven reports³²³ to Global Compact. The reports provided by BP composed of annual sustainability reports and some study cases. The sustainability reports try to illustrate how BP's activities are coherent with the principles of Global Compact in general while the study cases focus on specific operations of the company.

The BP is not only participant of the UN Global Compact but also it is a member of "Global Reporting Initiative Guideline" based on reporting sustainability and "AA1000 Assurance Standard" which focuses on accountability for sustainable development. Therefore, although BP participated to the UN Global Compact in 2007, it has submitted seven reports, some of which had been submitted to the other organization of codes of conduct before.

The BTC Pipeline Case Study focuses on the Baku-Tbilisi-Ceyhan (BTC) oil pipeline Project, the case study of this thesis. It analyzes the compatibility of the BTC Project with internationally recognized human rights standards and the relevant principles of the UN Global Compact.³²⁴

³²² Ibid.

³²³ Sustainability reports in(2003,2004,2005,2006), BP's Performance in Relation to the Global Compact and three case stories: Right to Development; BP Facilitates Black Economic Empowerment, The BTC Pipeline Case Study: Following through on Global Compact Commitments and the last one is Greenhouse Gas Reduction (pilot phase).

³²⁴ Smith, G.A., 2004.

BP Sustainability Report 2003 is a key part of BP's contribution to the UN Global Compact and includes references on how BP is living up to the principles. This report has been prepared in accordance with the 2002 Global Reporting Initiative Guidelines. The report describes how BP's thinking developed in 2003 on long-term measures to tackle climate change and outlines actions taken to minimize greenhouse gas emissions. The report also addresses human rights as well as other environmental issues such as sustainable transport and renewable energy.³²⁵

BP claims that doing business is the best means for support and respect for the protection of human rights within its sphere of influence. Doing good business promotes the creation of the conditions for societies to thrive and human rights enjoyed and protected.

In South Africa, where BP operates in the downstream market, the Government had an aspiration that within ten years, ownership, presence, management and/or control of oil companies operating in the country would reflect a 25% representation of those who had been disadvantaged by apartheid. BP's Economic Empowerment strategy was to develop empowerment opportunities at all levels of the organization. Both business and society benefited. Development and human rights were mutually supported and reinforced. It contributed to the eradication of racial discrimination and poverty, to the promotion of full and productive

³²⁵ SustainabilityReport 2003, available at http://www.unglobalcompact.org/data/ungc_cops_resources/44422661-0001-0010-3a8a-dcbb1a2b1257/BP%20Sustainability%20Report%202003.pdf (Last visit:09.01.2008).

employment, and to the fostering of social integration in order to achieve a stable, safe and just society for all in South Africa.³²⁶

III.3.2.5.1.2 Achilles Group Limited

Operating in internet and e-commerce sector, Achilles Group Limited is a UK based TNC. It participated to the UN Global Compact in 2005. The company has provided two annual performances, in 2006 and 2007, compatible with the principles of Global Compact with the title of “UN Global Compact Communication on Progress”.

It's stated in the annual report of 2006 that:

*Achilles signed up to the UN Global Compact because we firmly believe we all – as individuals and as organizations – have responsibilities when it comes to our social, ethical and environmental practices. Much of the work Achilles does as a company now focuses on encouraging all those in the supply chain, from the largest buyer through to the smallest of suppliers, to work towards improving and sustaining corporate responsibility standards in whichever way is most appropriate to them.*³²⁷

Achilles Group Limited, including all its business units internationally, fully subscribes to the UN Global Compact principles and aspirations.³²⁸ In annual report of 2007 it's stated that the Achilles as an organization is

³²⁶ BP, **Right to Development; BP Facilitates Black Economic Empowerment** available at <http://www.bp.com/errorpage.jsp?categoryId=1> (last visit: 09.01.2008).

³²⁷ Achilles, **United Nations Global Compact: Communication in Progress, 2006.** available at http://www.unglobalcompact.org/data/ungc_cops_resources/4E413B88-8BD7-4D8D-8902-695B58294E0F/COP.pdf (Last visit: 10.01.2008).

³²⁸ Ibid.

committed to promoting the ten Global Compact principles and has ensured that they are embedded within their business with the full support of the board and employees across the regions in which it operates.³²⁹ In both the reports Achilles put down the ten principles of the Global Compact, and explains how it tries to make its works compatible with the said principles.

Principle 1: Business should support and respect the protection of internationally proclaimed human rights.

Achilles argues that it tries to help promote human rights issues not only in the supply chains but also in their suppliers. It stresses that during the last year Achilles has begun to work with five different industry sectors to enable them to start incorporating human rights criteria, including labor standards, health and safety and environmental considerations, into their contracting and procurement practices.³³⁰

Principle 2: Business should ensure that they are not complicit in human rights abuses.

The company claims that it delivers information services via the internet, and as such we believe the potential to become inadvertently complicit in human rights abuses is limited. However, Achilles supports this second

³²⁹ Achilles, **United Nations Global Compact: Communication in Progress**, 2007. available at http://www.unglobalcompact.org/data/ungc_cops_resources/C37D9B1D-0C81-4212-B2C2-D0F4495C81DF/COP.pdf (Last visit: 10.01.2008).

³³⁰ Achilles, **Communication in Progress**, 2006.

Principle and is developing its services to better enable our customers to support it wherever appropriate.³³¹

Principle 3: Business should uphold the freedom of association and the effective recognition of the right to collective bargaining.

Achilles claims that it upholds the rights of all its employees, worldwide, to freedom of association and collective bargaining. It's also pointed out that all its employees are free to join and participate with trade unions should they so wish.³³²

Principle 4: Business should support the elimination of all forms of forced and compulsory labor.

Achilles says that "no individual will be employed by the company under anything other than free and fair contract terms, which all staff members choose to enter into and may terminate of their own volition." And also the issue of compulsory or forced labor is one that many of their customers seek to clarify within their own supply chains.³³³

Principle 5: Business should support the effective abolition of child labor. Achilles firmly supports the effective abolition of child labor.

³³¹ Achilles, Communication in Progress, 2006&2007.

³³² Ibid.

³³³ Ibid.

The reports say that “While Achilles is not involved directly in manufacturing or production activities which are most frequently associated with child labor, we will continue to ensure that we do not employ child workers.”³³⁴ Achilles is not only refraining employing child labor, but also tries to persuade other companies not to employ children. It claims that many of their services now aim to support other businesses in identifying and encouraging the abolition of child labor within their own supply chains, and promoting both best practice and the raising of standards in this area.³³⁵

Principle 6: Business should support the elimination of discrimination in respect of employment and occupation.

The report of 2006 states that Achilles employs workers from more than 20 different nationalities and as such, has a number of policies in place that support the sixth Principle. The company claims that it is committed to equal opportunities and takes full account of both legal requirements and best practice to ensure that it does not discriminate on grounds of race, sex, disability, sexual orientation, religion, belief or age.³³⁶

Principle 7 : Business should support a precautionary approach to environmental challenges.

³³⁴ Achilles, Communication in Progress, 2006.

³³⁵ Achilles, Communication in Progress, 2006&2007.

³³⁶ Achilles, Communication in Progress, 2006.

Achilles is stated to be committed to a policy of sound and responsible environmental management, leading to a sustainable use of resources and optimal management of waste. The company's policy emphasizes that Achilles will comply with all appropriate environmental legislation, statutory guidance and codes of practice, and will seek to minimize its production of waste and use of energy and resources.³³⁷

Principle 8: Business should undertake initiatives to promote greater environmental responsibility.

The report of 2006 claims that:

Achilles is a believer in continuous improvement across all areas of its business, and the area of environmental responsibility is no different. Achilles employees have a strong commitment to this principle and many of the environmental initiatives in place throughout our offices originate from employee proposals.³³⁸

Principle 9: Business should encourage the development and diffusion of environmentally friendly technologies.

The company's policy is based on the notion of how environmentally-friendly technologies could be utilized more effectively within the company.³³⁹

³³⁷ Ibid.

³³⁸ Ibid.

³³⁹ Achilles, Communication in Progress, 2006&2007.

Principle 10: Business should work against corruption in all its forms, including extortion and bribery.

It's stated that Achilles always tries to adhere to high standards of ethical business practice and would not enter into any agreements or negotiations where bribery or corrupt standards were applied.³⁴⁰

III.3.2.5.1.3 NIKE

Operating in the sector of textiles, apparel and luxury goods, NIKE Inc. is a US based TNC. It joined the UN Global Compact in 2000. With more than 24.000 employees around the world and \$12 billion in 2004 NIKE is one of the world leading textile and Apparel Company.³⁴¹

The company has provided three annual corporate responsibility reports and one case story. In addition to the Global Compact, Nike serves as a board member of Business for Social Responsibility, the Fair Labor Association and the Global Alliance for Workers and Communities and GRI's Sustainability Reporting Guidelines.

Nike addresses issues and initiatives related to workers and contract factories making Nike-branded products; environmental sustainability;

³⁴⁰ Achilles, Communication in Progress, 2006.

³⁴¹ Nike, FY04 Corporate Responsibility Report, available at http://www.unglobalcompact.org/data/ungc_cops_resources/3ea12548-0301-0010-569d-99e3936e140d/Nike%20CR%20Report%202004.pdf (09.01.2008).

partnerships with the Fair Labor Association and the Global Alliance for Workers and Communities; commitment to increasing youth physical activity; community investments to increase the participation of young people in physical activity to improve their lives and to develop innovative solutions that address the challenges of globalization faced by women and girls; and Nike's work toward internal and supplier diversity.³⁴²

Nike also submitted to the Global Compact a case story report titled "Global Alliance for Workers and Communities" which is based on the ten principles of the Compact. It's a report explaining a program initiated by NIKE to workers' life and work opportunities. Lowering barriers to private/NGO cooperation; and demonstrating how a partnership approach can change the culture, perspectives and practice of key stakeholders, generating mutual benefits for workers and supervisors, global brands and local factories. The program aims to:

- *Assess employee concerns, interests, and needs*
- *Develop appropriate programs for employee involvement, training and development*
- *Demonstrate commitment to host communities*
- *Invest in the human capital of both the business and host community.*³⁴³

³⁴² Nike, Corporate Responsibility Communication 2003, available at http://www.unglobalcompact.org/data/ungc_cops_resources/ff1c2048-0301-0010-f9bd-db6ac7d1d428/Nike%20CSR%20Report%202001%20-%20Stakeholders%20section.pdf (09.01.2008).

³⁴³ Nike, Global Alliance for Workers and Communities (Pilot case) available at http://www.unglobalcompact.org/ParticipantsAndStakeholders/search_participant.html?detail=Nike%2C+Inc.&case=73c3c247-f700-0010-0080-d75e54f851fd (09.01.2008).

The corporate responsibility report 2004, highlights that NIKE believe that a strong corporate responsibility effort will be good for business. It helps the company deliver value to five core stakeholder groups: consumers, shareholders, business partners, employees and the community..³⁴⁴ The strategies of the company are set up as:

- To effect positive, systemic change in working conditions within the footwear, apparel and equipment industries;
- To create innovative and sustainable products; and
- To use sport as a tool for positive social change and campaign to turn sport and physical activity into a fundamental right for every young person.³⁴⁵

The corporate responsibility report 2003, mentions what NIKE has done regarding social responsibility:

**Nike was the first U.S. collegiate licensee to begin listing the names and addresses of contract factories producing certain college licensed product on its website.*

**Nike invited students selected by an independent university task force to participate in contract factory monitoring and then posted their unedited reports on the company's website.*

**Nike participated in the public release of Global Alliance data drawn from worker interviews in contract factories in Indonesia (2001 and 2003), despite the critical nature of some of that information. That information can be found at www.theglobalalliance.org*

**Nike was part of the public release of the Fair Labor Association's first monitoring report, and the FLA annual report. Additional summaries of FLA audits are posted on the FLA website on an ongoing basis. Nike has supported the FLA since its founding in August 1999. That information can be found at www.fairlabor.org*

**Nike released its first Corporate Responsibility Report on October 9, 2001 in conjunction with GRI guidelines and has a comprehensive corporate responsibility website.*

**Nike has allowed hundreds of people from the media, labor, government, multilateral institutions, academia, private and non-profit sectors to visit*

³⁴⁴ Nike, FY04 Corporate Responsibility Report.

³⁴⁵ Ibid.

*selected Nike contract factories each year. In 2002, in Vietnam alone, Nike hosted more than 1,000 visitors in selected contract factories.*³⁴⁶

The reports claim that NIKE is committed to the global environmental standards and help to promote them via the following strategies: to ensure that our tool, the Restricted Substances List, is used and implemented across all our apparel, footwear and equipment products; to build the infrastructure for managing environment, safety and health in our owned operations; Complete our program to eliminate all remaining greenhouse gases from our footwear; Reduce the use of water and improve wastewater management standards across our supply base; Commercialize affordable non-PVC alternatives for screenprint inks, heat transfers and dimension welds.³⁴⁷

III.3.2.5.1.4 HSBC Holdings

Operating in finance and insurance sector, HSBC Holdings is a UK based TNC. It joined the UN Global Compact in 2007. HSBC is one of the largest banking and financial services organizations in the world, serving 125 million customers through its operations in Europe, Asia, North America and Latin America. Its total asset is \$547 billion and 2005 profit before tax is \$9,5 billion.³⁴⁸ The company is committed to the principles of corporate social responsibility.³⁴⁹

³⁴⁶ Nike, Corporate Responsibility Communication 2003.

³⁴⁷ Nike, FY04 Corporate Responsibility Report.

HSBC has provided four annual corporate responsibility reports. The company's Corporate Social Responsibility Report 2003 provides detailed information on the various initiatives undertaken by HSBC which relate to the principles of the Global Compact. The CSR Report, renamed "HSBC and Society" and provides detailed information on environmental policies and procedures, employee safety and security, labor relations issues, human rights and a range of community involvements.

It's argued that HSBC's dedication to environmental policies is exhibited in its lending and investing policies, which avoid involvement in projects and businesses where impacts on the environment have not be addressed properly. HSBC has also set up an environmental management system to devise more efficient and reduced use of natural resources. The Group has established the Investing in Nature program in partnership with WWF, Earth-Watch and Botanic Gardens Conservation International. Page seven of the report details HSBC's policies to maintain and improve employee relations and working conditions through constant feedback, grievance reporting and extensive two-way communication.³⁵⁰ HSBC's investing in Nature program is helping to restore three of the world's major rivers - the Yangtze, the Amazon and the Rio Grande. Good progress is being made in

³⁴⁸ HSBC, Corporate Social Responsibility 2006, p.6, available at http://www.unglobalcompact.org/data/ungc_cops_resources/E83751DC-061B-4686-909C-C6F963248EA0/COP.pdf (last visit: 09.01.2008).

³⁴⁹ Ibid. p.11.

³⁵⁰ HSBC, Corporate Social Responsibility 2003, available at http://www.unglobalcompact.org/data/ungc_cops_resources/bf4cff60-0001-0010-839f-b5b64ce372a3/hsbc%20Corporate%20Social%20Responsibility%20Report%202003.pdf (last visit: 09.01.2008).

re-linking lakes that had become separated, promoting sustainable fishing and reducing water pollution.³⁵¹

Corporate Social Responsibility 2004 states that HSBC adopted Principle 10 of the United Nations Global Compact on combating corruption in 2004. The reports say the bank worked with Transparency International (UK), the anti-corruption pressure group, in developing a Group-wide policy for countering bribery and corruption. The policy reflects their support for other recent initiatives such as the Organization for Economic Co-operation and Development (OECD) 'Convention on Combating Bribery of Foreign Public Officials in International Business Transactions', the International Chamber of Commerce 'Rules of Conduct to Combat Extortion and Bribery', and relevant provisions of the revised OECD 'Guidelines for Multinationals'.³⁵²

In September 2003, HSBC adopted the Equator Principles, a set of voluntary guidelines developed to address the environmental and social issues that arise in financing projects. Although the financial sector is criticized for its involvement in certain large-scale projects, such as transport or energy infrastructure, the Equator Principles have provided a de facto global standard that places sustainability at the core of economic development.³⁵³

³⁵¹ Ibid.

³⁵² HSBC, Corporate Social Responsibility 2004, p.7 available at http://www.unglobalcompact.org/ParticipantsAndStakeholders/search_participant.html?detail=HSBC+Holdings+plc.&cop=4f43eccc-0401-0010-0ab2-b55edd0d3712 (last visit: 09.01.2008).

According to HSBS climate change represents the largest single environmental challenge this century. It will have an impact on all aspects of modern life. It is therefore a major issue for every organization on the planet, no matter how large or how small.³⁵⁴

The report argues that HSBC's definition of sustainable development is based on the principles of the 1987 Bruntland Commission – that development should meet the needs of the present without compromising the ability of future generations to meet their own needs.³⁵⁵

In the Corporate Social Responsibility report of 2005, the company's policy on human rights is explained as follow:

HSBC operates in 76 countries and territories, some of which are the subject of human rights concerns. We consider ourselves as guests, respecting the local cultures and traditions, and we understand that reform, where needed, takes time. We strive to conduct our business in an ethical way and consistently uphold global standards, such as the UN Universal Declaration of Human Rights, the UN Global Compact and other human rights instruments including the codes of conduct. We believe that personal freedom is best nurtured in an environment of economic growth and economic freedom. Economic development has improved the lives of millions of people around the world, whereas restricting trade or other economic ties can slow a country's progress to the detriment of its people. Our observation is that oppressive regimes, for example, are more susceptible to change through interaction with the rest of the world – through trade, finance, politics and the media – than from

³⁵³ Ibid., pp.9-10.

³⁵⁴ Ibid.,p.16.

³⁵⁵ HSBC, Corporate Social Responsibility 2006, p.11.

*within. As a peaceful means of influence, interdependence will often exert more pressure for change than isolation.*³⁵⁶

III.3.2.5.1.5 The Lufthansa

Operating in aerospace and aviation sector, Lufthansa is a Germany based TNC. It joined the UN Global Compact in 2002. The company also is a supporter of Transparency International and Deutsches Netzwerk Wirtschaftsethik. The Lufthansa Aviation Group is one of the world's leading air transport corporations. It comprises more than 400 independent group and affiliated companies, which are active in six strategic business segments. The Lufthansa Passenger Airline is an independent unit within the Lufthansa Group. It is the world's number one in cross-border scheduled air transport.³⁵⁷

The company has provided three annual sustainability reports and two study cases. The annual sustainability reports basically consist of four chapters; introduction consists of information on the company; social responsibility; environment and corporate citizenship. 2007 reports explain the Lufthansa's corporate culture as "its commitment to ecological, social and ethical goals."³⁵⁸

³⁵⁶ HSBC, Corporate Social Responsibility 2005, p.5, available at http://www.unglobalcompact.org/data/ungc_cops_resources/411E2CD5-6DBF-421A-90C9-75E2A2CB808E/COP.pdf (last visit: 09.01.2008).

³⁵⁷ Lufthansa, Balance-Key Data on Environmental Care and Sustainability at Lufthansa 2004, p.1. http://www.unglobalcompact.org/data/ungc_cops_resources/a27bed11-0601-0010-089f-94587031950a/Lufthansa_BALANCE_Facts_2004.pdf (08.01.2008).

The report of 2004 is prepared on sustainability and the relevant chapter highlights the position of the company regarding sustainability as:

Thanks to our continuous modernization program, the average age of the Lufthansa Group's fleet declined from 8.4 to 8.1 years in 2004. With regard to modernity and environmental compatibility, the Lufthansa fleet holds a leading position worldwide, one that will be strengthened further by the operation of the Airbus A380-800 from 2007. The most fuel-efficient aircraft in the Lufthansa fleet is the A330-200 at Thomas Cook UK, with a fuel consumption of 2.67 liters per 100 passenger kilometers.³⁵⁹

The report of 2004 says that Lufthansa do support ten principles the UN Global Compact. Concerning responsibility it argues that “pursuing economic goals while acting responsibly toward people and the environment is not a contradiction, but rather an obligation and a commitment.”³⁶⁰ It claims that “Even during times of economic crises, the Company has always placed great importance on giving its employees reliable perspectives and avoiding operations-related layoffs as far as possible. All parties benefit from maintaining social harmony – employees and management alike.”³⁶¹

³⁵⁸ Lufthansa, Balance 2007, available at http://www.unglobalcompact.org/data/ungc_cops_resources/1D2C2756-52EC-4BFD-8821-A810E78345B3/COP.pdf (08.01.2008).

³⁵⁹ Ibid.,p.5.

³⁶⁰ Ibid.p.8.

³⁶¹ Ibid.

The 2005 focuses on environment and claims that in order to protect the Earth's climate, emissions of "greenhouses gases" must be limited. One possible path in this direction could be the trading of emissions certificates. To ensure that this approach can take root in aviation as well, it should be tied into a global concept – together with other measures to cut emissions.³⁶²

The report's target for protecting climate change is based on four pillars: Technologies progress, improved infrastructure, operational measures and economic measures.

1: *Technological progress* : Innovations in aviation and engine technologies; Alternative fuels

2: *Improved infrastructure* : More efficient use of air space; Needs-adapted airport infrastructures; No subsidies for micro-airports

3: *Operational measures* : More efficiently-sized aircraft; Optimized flight routes and speeds; Optimized processes on the ground

4: *Economic measures*: Globally designed trade of emissions rights to complement the other three pillars, which have priority in any case.³⁶³

It's important to see the impact of moral responsibility on the behaviors of the corporations. Despite the existence of negative approaches towards the effect of codes based on their lack of enforcement, it is clear from the

³⁶² Lufthansa, Sustainability Report Balance, p.42.
http://www.unglobalcompact.org/data/ungc_cops_resources/52563FCE-5C8A-406A-8944-854A84519CB1/COP.pdf (08.01.2008).

³⁶³ Ibid.

company cases above that the codes do force corporations for some sort of responsibility.

Indeed, the company's effort to implement codes of conduct might lead a stronger social responsibility mechanism in the future. Reporting voluntarily to an independent organization is still an important indicator of responsibility. Yet if the reporting procedure is extended to include an independent rapporteur, the system might be more reliable.

III.4 TNCs' HUMAN RIGHTS COMMITMENT: A SURVEY

This section presents human rights commitment and performance of TNCs via a survey conducted by The Special Representative of Secretary General (SRSG) of the UN. The SRSG conducted studies of a group of TNCs to determine how they perceive corporate responsibility and accountability regarding human rights. The sample companies for this survey was drawn from a list of 500 firms that include: a) 103 companies from Global Fortune 500; b) nearly 100 companies listed on the Business and Human Rights Resource Center's website as having human rights policies; c) the 512 Global Compact companies.

This section focuses on the combination of TNCs in the Survey, including their origin and sectors they operate. Then it analyzes the rights prioritized by companies and the methods they prevail for accountability and participation. Lastly, the sources that guide TNCs regarding human rights are referred.

The survey illustrates where the corporations stand concerning human rights commitment. It also shows which human rights are given priorities by corporations.

III.4.1 Nationality of TNCs in the Survey

The sample as seen from the table-III.3 consists of 314 companies from five regions: Europe, North America, Latin America, Africa and Asia& Pacific. The regions of the companies are carefully selected, though the distribution to the regions does not corresponds to the real TNCs' global map. Because, most of the companies are chosen from the Europe where human rights is much more respected and civic culture widely dispersed. Therefore, it's likely for the European TNCs much more to have human rights commitment and policies as compare to other regions, including North America.

Table-III.3 Regional Distribution of TNCs in the Sample

Table-III.3

Regional Distribution of TNCs in the Sample		
Regions	Number of Company	Percentage %
Europe	161	51
North America	56	18
Latin America	28	9
Africa	7	2
Asia&Pacific	62	20
Total Company	314	100

Source: Implementation of General assembly Resolution 60/251 of March 15 2006 Entiteled "Human Rights Council" A/HRC/4/35/add.4 February, 2007

The sample as seen from the table-III.3 consists of 314 companies from five regions: Europe, North America, Latin America, Africa and Asia& Pacific.

Although the sample most probably does not illustrate the real picture of TNCs human rights performance and commitment, it definitely gives us some clues about the global trend.

III.4.2 Sectors of the TNCs in the Survey

The chosen of TNCs from different sector is extremely important for reaching healthy conclusions. The more you have reliable data in a survey, the more correct conclusions you may get. The differentiation of sectors and also an equitable distribution of TNCs to the sectors seems serving the objectives. As it's seen from the table-III.4 the percentage of the sectors change between 6%-16%.

The retail&consumer products and extraction sectors are given more importance in the sample. This is quite understandable because extraction sector and also TNCs has much more impacts on human rights than the other sectors. And also the retail and consumer products are much more consumer oriented sectors. Therefore, giving more importance to these sectors is more likely to reach better and reliable conclusions.

Table-III.4 Sectoral Distribution of TNCs in the Sample

Table-III.4

Sectoral Distribution of TNCs in the Sample		
Region	Number of Company	Percentage %
Extractive	44	14
Financial Services	38	12
Food & Beverage	25	8
Heavy manufacturing	19	6
Infrastructure & Utilities	35	11
IT, Electronics & Telecommunications	41	13
Pharmaceutical & Chemical	22	7
Retail & Consumer Products	50	16
Other	41	13
Total Company	314	100

Source: Implementation of General assembly Resolution 60/251 of March 15 2006 Entitled "Human Rights Council" A/HRC/4/35/add.4 February, 2007

Table-III.4 illustrates the number of TNCs from each sector and the proportion of the sectors in the survey

III.4.3 Labor- Right Recognized By TNCs

Table-III.5 presents so-called labor rights and their ratio of recognition by the TNCs in the sample. Companies recognize labor rights with greater frequency than any other human rights.

Table-III.5 Labor Rights Recognized by Companies

Table-III.5

Labor Rights Which are Recognized By Companies	
Rights	Preference Percentage %
Right to Non-Discrimination	87
Right to a Safe Work Environment	75
Freedom of Association, Right to Collective Bargaining	66
Abolition of Forced and Child Labor	60
Right to Minimum Wage, Including Decent Living	36
Right to Rest and Leisure, Including Holidays With Pay	30
Right to Family Life, Including Maternity Leave	24

Source: *Implementation of General assembly Resolution 60/251 of March 15 2006 Entitled "Human Rights Council" A/HRC/4/35/add.4 February, 2007*

Table-III.5 presents so-called labor rights and their ratio of recognition by the TNCs in the sample. i.e. the table presents rights that are supported or accepted as more legitimate by TNCs. The right to non-discriminations gets the highest rate while the right to family life gets the lowest.

The highest rate of recognition is for non-discrimination, by 87 percent of all companies in the sample, and the lowest, for the right to family life, at just below 25 percent. As shown in table-III.5 and figure-III.2, there is also strong recognition of the right to a safe work environment(75%), followed by freedom of association and the right to collective bargaining(66%), the

elimination of forced or compulsory labor, and the abolition of child labor(60%).³⁶⁴ Minimum wages and leisure follows them.

Policies include commitments not to discriminate among labors on the basis of: gender; disability; ethnic or racial status; age; religion; caste; sexual orientation; union membership; political affiliation; HIV/aids status and parental status³⁶⁵ all of which have been referred in numerous human rights documents.

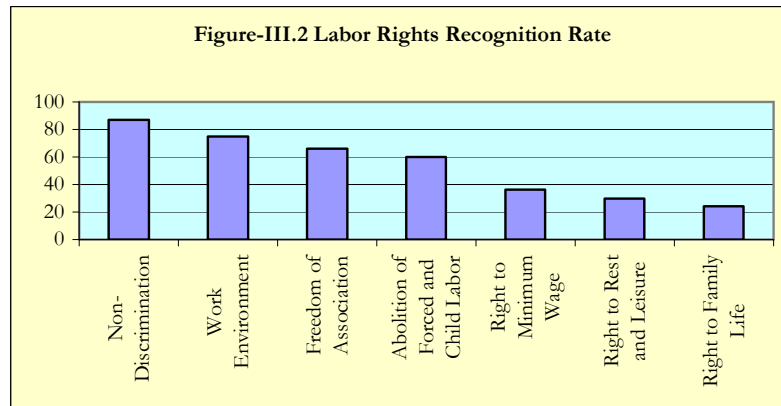


Figure-III. 1 Labor Rights Recognition Rates

³⁶⁴ HRC, **Implementation of General Resembly Resolution 60/251 Of 15 March 2006 Entitled "Human rights Council"**, A/HRC/4/035/Add.4, February, 2007. p.13. available at <http://www.ohchr.org/english/bodies/hrcouncil/docs/4session/A-HRC-4-35.doc> (Last visit: 28.03.2007).

³⁶⁵ HRC,2007c, **Implementation of General Resembly Resolution 60/251 Of 15 March 2006 Entitled "Human rights Council"**, A/HRC/4/035/Add.4, February, 2007. p.14. available at <http://www.ohchr.org/english/bodies/hrcouncil/docs/4session/A-HRC-4-35.doc> (Last visit: 28.03.2007).

III.4.4 Non-Labor-Rights Recognized by TNCs

Recognition of non-labor human rights is far less common in company policies (see table-III.6), with the highest rate of recognition in this grouping at roughly 19% for the right to privacy. All non-labor rights appearing in the UDHR, ICCPR, ICESCR, and Declaration on the Right to Development are considered in the sample, yet here only those with greater than 4% recognition by companies are illustrated. Because of the already low levels of recognition, sectoral and regional variations became statistically less meaningful but are addressed where interesting differences occur.³⁶⁶

³⁶⁶ Ibid. p.19.

Table-III.6 Non-Labor Rights Recognized by Companies

Table-III.6

Non-Labor Rights Which are Recognized By Companies		
Groups of Rights	Rights	Preference Percentage %
Security of the Person	Right to Life, Liberty and Security of Person	16
	Freedom from Torture and Cruel, Inhumane or Degrading Treatment	13
Other Civil & Political Rights*	Right to privacy	19
	Right to Hold Opinions, Freedom of Information and Expression	8
	Right to Self-Determination, Including Indogenous Peoples, Right to Informed Consent	6
Economic and Social Rights*	Right to Development	11
	Right to social security	9
	right to Physical and Mental Health	7
	Right to education	5
	Right to participate in Cultural Life and the Benefit of Scvientific Progress and Protection of Authorial Interest	5
	Right to Adequate Food, Clothing and Housing	4

* Drawn from the ICCPR, ICESCR, UDHR and Declaration on the Right to Development

Source: *Implementation of General assembly Resolution 60/251 of March 15 2006 Entiteled "Human Rights Council" A/HRC/4/35/add.4 February, 2007*

III.4.5 Accountability and Participation

Table-III.7 shows how companies hold themselves and their suppliers accountable to their human rights standards, by looking at reporting practices as well as supply chain management policies.

To better understand how companies account for the above mentioned human rights commitments, it's looked at: 1) how they report on their human rights standards and performance and 2) the degree to which they hold supply chains accountable to human rights standards. In addition, it's examined how companies address the human rights of communities through a review of community consultation practices, impact assessments.³⁶⁷ The table III.7 presents the percentage of companies that report on human rights, have supply chain management policies addressing human rights, and engage in community consultations to address the rights of affected communities.

Measuring accountability is important here. Nearly all companies (90%) report on their human rights performance in some form. Reporting is the weakest form of participations it will be discussed in the fifth chapter of this study. That is why community consultation, which is a stronger form of participation, is done by only 25% of the companies. Supply chain management policy is pursued by more than half of the companies because monitoring companies also serves the interests of the TNCs as well.

³⁶⁷ Ibid., p.24.

Table-III.7 Accountability and Participation

Table-III.7

Accountability and External Participation	
Method of Engagement	Percentage
Reporting	90
Supply Chain Management Policy	54
Community Consultation, Including Impact assessment	25

Source: *Implementation of General assembly Resolution 60/251 of March 15 2006 Entitled "Human Rights*

Supply chain assurance faces the greatest credibility challenges. Global brands and retailers, among others, have developed supplier codes to compensate for weak or no enforcement standards in some countries – because global social expectations require them to demonstrate adherence to minimum standards. But without independent external assurance of some sort these systems lack credibility, especially for companies with questionable performance records. Standards for supply chain auditing are highly variable. Among the most trusted are the FLA’s brand certification and SA8000 factory certification systems, both of which involve multi-stakeholder governance structures. Similar to the hybrid initiatives discussed in the previous section, the credibility of voluntary accountability mechanisms is enhanced by processes involving participation, transparency, and review – which these two systems embody.³⁶⁸

³⁶⁸ HRC, 2007a, p.22.

III.4.6 TNCs Human Rights Sources

Table-III.8 sets out the instruments that companies accept as the source of human rights.

Global compact: 67% of companies in the sample mentioned the UN Global Compact (GC), a voluntary initiative based on ten principles covering human rights, labor, environment, and anticorruption. Although the Global Compact was established in 2000, it was referred the most. I.e. it's the last initiative founded among the instruments listed in the table-IV.8.

Table-III.8 Human Rights Source of Companies

Table-III.8

Human Right Instruments that Inform Companies	
Method of Engagement	Percentage
Global Compact	67
Other Voluntary Initiatives	38
UDHR	35
ILO	28
OECD Guidelines	11
ICCPR/ICESCR & Other UN Documents	3

of March 15 2006 Entitled "Human Rights Council"

Table-III.8 sets out the instruments that companies accept as sources of human rights.

Other Voluntary Initiatives (38%): A range of other voluntary initiatives are cited by companies: SA8000, Transparency International, the Ethical Trading Initiative, the Business Social Compliance Initiative, the Sullivan Principles, Fair Labor Association (FLA), the Extractive Industries Transparency Initiative

(EITI), the Electronics Industry Code of Conduct (EICC), the International Council on Mining and Metals (ICMM), and the Kimberley Process.³⁶⁹

The instruments that known most internationally such as the International Bill of Human Rights (UDHR (35%), ICCPR/ICESCR (3%)), ILO(28%) and OECD Guidelines(11%) are mentioned less.

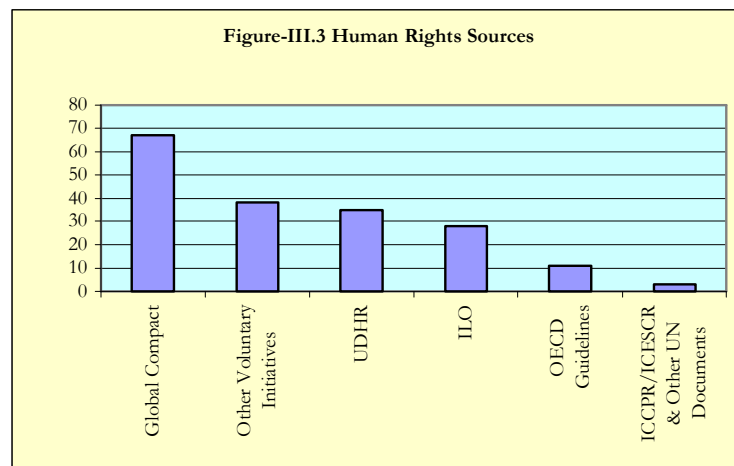


Figure-III. 2 Human Rights Sources

To sum up, the TNCs in the sample are likely to respect for labor-related human rights, but are unwilling for participation and accountability. They are keen on reporting but not that much for consultation or participation.

It's widely accepted that transnational corporations (TNCs) have a massive economic impact on the world trade relationships. Yet international documents on human rights rarely mention TNCs in any specific way.³⁷⁰ The evolving nature of the international politico-economic system also indicates a need for

³⁶⁹ HRC, 2007c, p.31.

³⁷⁰ Meyer, H.W., 1998, p.83.

new research into rights and TNCs. As the world becomes more interdependent; as the low politics of transnational issues displace the high politics of war and security; as non-state actors eclipse the income and power of states and as these entire international transformations advance, TNCs move to center stage in international arena.³⁷¹

³⁷¹ Ibid., p.87.

CHAPTER IV

IV BAKU-TBILISI-CEYHAN OIL PIPELINE PROJECT: AN OVERVIEW AND HUMAN RIGHTS

Baku-Tbilisi-Ceyhan (BTC) Oil Pipeline Project has been the subject of international concern not only with its capacity but also with its social, economic and environmental impacts in the region. There are conflicting approaches regarding the impacts of the Project on the life of people living alongside the pipeline.

For those who support the pipeline, the project has the potential to bring substantial economic, environmental and developmental benefits to the relevant countries. World Bank claims that these benefits will derive not only from the revenues generated for the host countries but also through additional development activities undertaken by the sponsors and the Bank.³⁷² The benefits are not exhausted; Cove argued that the pipeline is widely seen as having considerable economic, geographic and strategic importance because of its potential to reduce the West's dependence on Middle Eastern oil. In addition, it could spur economic development and foreign investment in the countries along its route.³⁷³

³⁷² EBRD, "The Baku Tbilisi Ceyhan Pipeline Project",
p.1.<http://www.ebrd.com/projects/eias/regional/18806ngo.pdf> (Last visit: 19.10.2006).

³⁷³ Cove, A., "BTC Pipeline Project Becomes a Reality" in **SouthEast European Times**,
07/06/2005, available at
http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2005/06/07/feature-03 (Last visit: 20.04.2007).

The positive developments coming up with the project is not the whole picture. The other part of the picture shows a different scene with full of negative impacts on the people as well as the environment. Nwete argues that the sensitive nature of the project concerning human rights, the environmental and social risks associated with it, stems not only from its size but also from pipeline routing near critical natural habitats and areas of particular environmental sensitivity, its impact on native communities, seismic activities and potential impact of oil spills and pollution along the route, and the attendant wide spread human, economic and social disruptions.³⁷⁴

There are allegedly numerous human rights violations taken place in the BTC. The violations are the result of either the ineffective legal regulations, the asymmetric relationship between the consortium and the relevant states and unwilling of the parties to link the project with human rights, including the labor rights. The cooperation between the states and the consortium also paved the way for human rights violations.

The main legal regulations of the BTC, namely the Intergovernmental Agreements (IGA) and the Host Government Agreements (HGA), at the beginning did not refer to any human rights. Therefore, construction and financing of the BTC pipeline has provoked major concerns of the international human rights and environmentalist movements.³⁷⁵ As a

³⁷⁴ Nwete, B.O.N., "Human Rights and the International Natural Resources Industry: Multinational Corporations and the BTC Pipelinme Projrect: Any Hope for Human Rights and Sustainable Development?" in OGEL, Vol. 2, No.4, 2004. p.9.

result, NGOs and public pressure forced decision-makers to issue new regulations on human rights such as BTC Human Rights Undertaking and Joint Statement.

IV.1 AN OVERVIEW OF THE BTC

The Baku-Tbilisi-Ceyhan pipeline project (BTC pipeline project) involves the development, financing, construction, and operation of a dedicated 1776 kilometer crude oil pipeline system to transport oil from the Caspian Sea to the Mediterranean Sea. The BTC will be delivering volumes equivalent to 10% of European oil imports.³⁷⁶ The pipeline crosses through the land of three countries, namely Azerbaijan, Georgia and Turkey. It is the second longest³⁷⁷ oil pipeline in the world. The project has been a matter of controversial debates in the relevant countries and in international arena due to its social, economic, environmental and human rights impacts on the local communities.

The longest part of the pipeline is constructed in Turkey. The total length of the pipeline in Azerbaijan is 440 km, in Georgia it is 260 km and in Turkey is 1076 km long. It passes through Baku, the capital of Azerbaijan; Tbilisi, the capital of Georgia; and Ceyhan, a port on the south-eastern

³⁷⁵ Green Alternatives and et.al, "Baku-Tbilisi-Ceyhan Oil Pipeline: Human Rights, Social and Environmental Impacts: Georgia and Turkey Sections- Preliminary Report of Fact Finding Mission, 16-21 September 2005" p.1. available at http://www.bakuceyhan.org.uk/publications/FFM_sep_05.pdf (Last visit: 10.10.2006).

³⁷⁶ EBRD, "The Baku Tbilisi Ceyhan Pipeline Project", p.1. <http://www.ebrd.com/projects/eias/regional/18806ngo.pdf> (Last visit: 19.10.2006).

³⁷⁷ The longest being the Druzhba pipeline from Russia to central Europe.

Mediterranean coast of Turkey (see figure-IV.1). It is being developed by an international consortium, which is led by British Petroleum (BP).³⁷⁸ Except from a few state-owned companies, most of the consortium partners are TNCs, the main subject of this study.



Source: <http://www.combat-diaries.co.uk/diary30/oil%20map.gif>

Figure-IV. 1 The Route of the BTC Pipeline Project

The BTC pipeline is being developed by an international consortium of 11 partners, known as the Baku-Tbilisi-Ceyhan Pipeline Company (BTC Co). BP holds the largest ownership share in BTC Co, and acts as the operator of the Project.³⁷⁹ BP holds 30.1 percent in the BTC Consortium.³⁸⁰ The rest shareholders of the consortium are, State Oil Company of Azerbaijan

³⁷⁸ Mansley, M., *Building Tomorrow's Crisis*, (London: Platform, 2003), p.6.

³⁷⁹ Remer, T.E.L., "A Role for the IFC in Integrating Environmental and Human Rights Standards into Core Project Covenants: Case Study of Baku-Tbilisi Ceyhan Pipeline Project", in Global Law Working Paper 01/05 *Symposium- Transnational Corporations And Human Rights*, p.10.

³⁸⁰ UKCP, "Applicability of OECD Guidelines to BP and BTC Consortium" available at http://www.bakuceyhan.org.uk/publications/oecd_complaint_final_uk.doc (Last visit: 11.04.2007).

(SOCAR, Azerbaijan): 25% ; Unocol (USA): 8,9% ; Stoil (Norway): 8,71% ; Türkiye Petrolleri Anonim Ortaklığı (TPAO, Turkey): 6,53% ; Eni/Agip (Italy): 5% ; Total (France): 5% ; Itochu (Japan): 3,4% ; Inpex (Japan): 2,5% ; ConocoPhillips (USA): 2,5% ; Amerada Hess (USA): 2,36%. Construction began in September 2002. The Pipeline was officially inaugurated July 13, 2006. Except for TPAO of Turkey and SOCAR of Azerbaijan which are state-owned companies, the rest partners in the consortium are private TNCs.

Table -IV.1The Consortium Partners

Table-IV.1

The Companies in the Consortium, their home country and proportion.		
Consortium Partners	Home State	Share %
BP	UK	30.1
Socar	Azerbaijan	25.0
Unocal	USA	8.9
Statoil	Norway	8.7
TPAO	Turkey	6.5
Eni	Italy	5.0
Total Fina Elf	France	5.0
Itochu	Japan	3.4
Inpex	Japan	2.5
Conoco Phillips	USA	2.5
Amerada Hess	USA	2.4

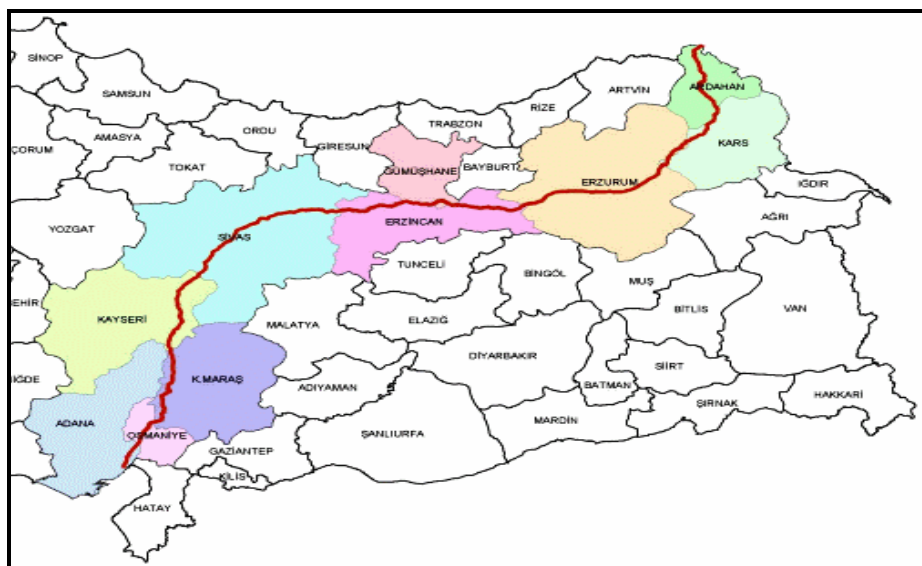
Source: Wikipedia

IV.1.1 BTC Turkey Section

The BTC pipeline is approximately 1776 km and the Turkey section of the BTC pipeline is 1076 km long. Turkey section passes through nine

provinces. It starts from Ardahan, adjacent to Georgia, goes through northwest of Kars, dividing Erzurum, north of Erzincan, crossing Sivas, west of Kayseri, north of Maraş, west Osmaniye and finally finishes in Ceyhan, a district of Adana (see figure-V.2). This route is neither physically nor economically the best available route. Yet for the security, particularly for the PKK threat, it was preferred.

It's argued by experts that the project constituted an important leg of the East-West energy corridor, gaining Turkey greater geopolitical importance. Ceyhan will be an important international oil market and the reduction of oil tanker traffic on the Bosphorus will contribute to greater security for Istanbul.³⁸¹



Source:

<http://www.rsdpinfo.com/trciptr/images/stories/wsimages/ciphomemap.gif>

Figure-IV. 2 the BTC Route in Turkey

³⁸¹ Today's Zaman, June 3, 2006.

IV.1.2 Financing the BTC and Human Rights Concerns

The BTC pipeline project, as was mentioned before, is very huge and costs billions of dollars. The estimated aggregate cost of the BTC project is US\$ 3,7 billion, with 70% of that, around \$2.6 billion, coming loans from public and private loans. The Export Credit Agencies financing the project are: USExim and OPIC (US), JBIC and NEXI (Japan), ECGD (UK), Hermes (Germany), COFACE (France) and SACE (Italy). The International Finance Institutions (IFI) such as World Bank, IMF and EBRD has also provided loans to finance the project. Finalization of the financing agreements came in February 2004 after more than two years of far-reaching monitoring and scrutiny of the project's environmental and social impact.³⁸² Yet, international financial agencies request the project consortium to fulfill some criteria in terms of social, environmental and human rights.

These requirements are sets of principles developed by the international financial institutions and other private credit agencies. Basically such principles focus on similar issues.

The policies of the IFIs policies are designed to ensure that they are economically, financially, socially and environmentally sound. Some of them as Griffiths formulated are as follows:³⁸³

³⁸² BP, "Overview", available at <http://www.bp.com/genericarticle.do?categoryId=9006669&contentId=7014358> (Last visit: 18.04.2007).

³⁸³ Griffiths, T., "Making The Grade: A Survey Of IFI Social Policies And The Policies of The European Investment Bank (EIB)" available at

- *Address specific social issues,*
- *Establish objective and obligatory operational requirements on IFI staff, borrowers and clients,*
- *Set benchmarks for project approval,*
- *Integrated with project management, procedures and oversight,*
- *Complemented by Implementation Guidelines ,*
- *Tied to accountability mechanisms,*
- *Starting to reference standards to international law,*

Although social, environmental and legal issues are addressed by the principles, somehow human rights issues are excluded. The reason is because the international economic institutions are uncomfortable with the language of human rights.³⁸⁴ They prefer to address specific “social issues” rather than open themselves to the far broader and more substantive area of human rights. To illustrate this, in 2000 the IMF, together with the United Nations, the World Bank, and ECOSOC, published *A Better World for All*, which stated the joint commitment of these organizations to alleviate poverty and consider development-related issues.³⁸⁵ Though the subject is a human rights-based one, the mentioned institutions refrained to use the concept “of human rights”. This is a problem of discourse rather than the content. Because these institutions consider human rights as a political issue, they refrain to take them directly in their policies. Here the content of “A Better world for all” is fully compatible with human rights but the discourse is developed on poverty and development.

http://www.bankwatch.org/right_to_appeal/presentations/eibaccountabilitynov302006final.ppt#7 (Last visit: 26.04.2007).

³⁸⁴ Ochoa, C., “Advancing The Language Of Human Rights In A Global Economic Order: An Analysis ff A Discourse” available at http://bc.edu/schools/law/lawreviews/meta-elements/journals/bctwj/23_1/02_TXT.htm (Last visit: 25.04.2007).

³⁸⁵ Ibid.

International Financial Institutions (IFI) such as the World Bank (WB) and the International Monetary Fund (IMF) continue to consider that they do not have to take human rights considerations into account in the elaboration and implementation of their policies and programmes. Yet it's argued that if IFIs want to promote sustainable development, economic and financial stability and reduce poverty and widespread inequalities, the compatibility of their policies with the human rights system needs to be addressed.³⁸⁶ WB and IMF still deny application of human rights in their activities on the basis of their 50-year old foundation treaties which prevent them to interfere with political issues of their member countries. However, since then, international law as well as the concerns of international society has changed considerably.

Despite unwillingness of IFIs to refer human rights in their policies and programs, the idea of the rights-based approach is emerging in some of their activities. For example, the World Bank's 1996 Environmental Policy and Procedures and Public Information Policy have been applied to this project, requiring the application of pertinent EU environmental standards.³⁸⁷ Furthermore, international, public concern, environmentalists and the NGOs scrutiny, forces IFIs to insert human rights into some of their policies and programs.

³⁸⁶ OMCT, "Human Rights As An Essential Element For Guaranteeing The Eradication Of Poverty And A Fully Inclusive And Equitable Global Economic System: Implications For The International Conference On Financing For Development" **the International Conference on Financing for Development Resumed** 4th Session, New York, January 2005. available at <http://www.omct.org/index.php?id=SCR&lang=eng&articleSet=Events&articleId=1414> (Last visit: 25.04.2007).

³⁸⁷ EBRD, 2003,p.2.

IV.1.3 The Impacts of the BTC on the Affected Communities

The BTC pipeline means different things to different people: for some it's a disaster in terms of environment, human rights and social impacts but for some it means economic development, strategic importance and international prestige.

For those who support the pipeline, for instance the World Bank, the construction of the BTC Pipeline will have substantial transition impact on the region. According to EBRD, hence;

- 1. The application of the highest international environmental and technical standards, highest health and safety standards, international principles of good corporate governance and the respect for human rights.*
- 2. The Project sets new standards of transparency through the disclosure of: (a) all payments made to the relevant Governments; (b) of project documents such as the Host Government Agreements, and (c) by engaging independent review panels.*
- 3. The project will significantly boost economic cooperation between Azerbaijan, Georgia and Turkey. It will help to strengthen the economic ties between the Caspian region and its main markets in Europe.*
- 4. To further enhance the sustainability of the economic benefits conferred by the Project, the Bank is working with the Sponsors to develop financing instruments in place for the duration of the project to support small and medium sized enterprises and local private investment.*
- 5. Increased backward linkages through the inclusion of local suppliers and transfer of skills through the employment of local labor.*
- 6. The Project will open an alternative export route for Caspian oil producers and will help to reduce transportation costs from the region*

*through increased competition, while at the same time avoiding the Turkish Straits.*³⁸⁸

In theory, the development of oil for export brings other benefits in addition to the generation of government revenue. The object of this case study, the Baku-Tbilisi-Ceyhan Oil Pipeline, is predicted to generate between \$500 million and \$1 billion in government revenue for each of the host states over the life of the project.³⁸⁹ The IFC and the BTC Consortium predict that the BTC will produce economic spillover effects by providing employment in the region, supporting the emergence of sub-sectors businesses that supply inputs to the pipeline, creating a “multiplier effect” as initial expenditures circulate and are re-spent in the local economy, and establishing the host governments as “safe bets” in the eyes of the global investment community, thereby generating further foreign direct investment (FDI) in a virtuous cycle.³⁹⁰ Also International financial institutions demonstrate BTC as a model of development and poverty alleviation. They claim that it will help to protect human rights in the region, that the public participation in the decision-making process broke new ground in its transparency and inclusiveness, and have sought to

³⁸⁸ EBRD, **Project Summary Documents**, available at <http://www.ebrd.com/projects/psd/psd2003/18806.htm> (Last visit: 20.04.2007).

³⁸⁹ Remer, T.E.L., “A Role for the IFC in Integrating Environmental and Human Rights Standards into Core Project Covenants: Case Study of Baku-Tbilisi Ceyhan Pipeline Project”, in Global Law Working Paper 01/05 **Symposium- Transnational Corporations And Human Rights**, p.5. Availale At

³⁹⁰ Ibid.

assure us that “the involvement of the public sector provided the highest social and environmental standards”³⁹¹

However, the approaches that evaluate the BTC project in a different way claim that, while this project has been promoted as a way to eradicate poverty and provide welfare and human rights standards, reality is far from those promises. Kochladze claims that this is nothing unusual for the countries of the region, which have poor human rights records, and where torture and death in custody, the repression of ethnic and religious minorities, and the suppression of free unions, media and public interest groups is common practice rather than the exception.³⁹² Among the unresolved issues are questions of transparency, corruption, the uncertain impact of the HGAs on the affected countries’ further development, and the pipeline’s environmental, health and social impacts. In the meantime, the relevant governments and project sponsor continue with securing their interests at the expense of the political and socio-economic rights of ordinary citizens.³⁹³

The movements and NGOs intervening in the process have different but overlapping objectives. The objections of environmental groups were based on the evidence of widespread corrosion and cracking of pipelines.

³⁹¹ Bankwatch, available at <http://www.bankwatch.org/issues/oilclima/baku-ceyhan/mbaku.html> (Last visit: 11.04.2005).

³⁹² Kochladze, M., **Baku-Tbilisi-Ceyhan Oil Pipeline - Ordinary citizens do not count**, 2003, available at http://www.bankwatch.org/publications/issue_papers/2003/ebrd_may/ebrd_btc.html (Last visit: 17.06.2006).

³⁹³ Ibid.

Environmental groups have said that the pipeline poses a danger as large sections of it pass under water. BP had admitted in November 2003 that 23% of the joints of the pipeline in the Georgian sector were faulty. Yet, human rights activists claimed that the pipeline goes through the politically volatile Kurdish areas of eastern Turkey where the people were not consulted about the project. Furthermore, state authorities in Turkey and Azerbaijan have dealt with protesters harshly.³⁹⁴ The land acquisition and compensation issues are other hot issues heavily debated on the line.

IV.1.4 Risk Factors of the BTC

It is worth identifying some of the risks the BTC project could face. A number of specific risk factors can be identified, all of which could have a material impact on the project.³⁹⁵ The BTC pipeline project is widely recognized as more of a political than a commercial project and without political backing it would never have been pursued, with far cheaper routes through Armenia and South East Anatolia developed instead. Such an alternative route could shorten the route about 20%. As the political

³⁹⁴ Charian, j., " The Politics of Pipelines" in **Frontline**, Vol.22, No.13, 2005. available at <http://www.hinduonnet.com/fline/fl2213/stories/20050701000805900.htm> (Last visit: 20.04.2007).

³⁹⁵ "Managing Environmental Land, Community and Social Issues", http://www.bp.com/liveassets/bp_internet/bp_caspian/bp_caspian_en/STAGING/local_assets/downloads_pdfs/xyz/BTC_English_Environmental_and_Social_Overview_Content_BTC_Environment-and_Process.pdf (last visit: 07.11.2005).

context has change, so too has the commercial viability of this largely political project.³⁹⁶

IV.1.4.1 Political Risks

There are several political risks for the BTC, each of which is a great threat to the project.³⁹⁷ Political relations between Armenia and Azerbaijan remain tense, with the Nagorno Karabakh area of Azerbaijan under de facto Armenian control. Tensions are likely to remain. There is a real risk that these tensions could erupt again into war at some stage. Clearly the BTC pipeline, which will run just 15 km from Armenian-controlled areas of occupied Nagorno Karabakh, is likely to form a direct target in such conflict. The conflict between Russia and Georgias adds an extra risk. There is widespread corruption and the security situation is very poor.

Significant risks to the pipeline could arise from tensions in Turkey, arising from Kurdish claims for independence. If conflict in some form occurs, the BTC pipeline is likely to be a target – especially as the PKK has frequently targeted oil infrastructure in the past. This could disrupt operations and increase costs.

³⁹⁶ Mansley, M., 2003, p.14.

³⁹⁷ Timeline,
http://66.102.9.104/search?q=cache:BCrmVE29fHUI:www.foe.co.uk/resource/reports/common_concerns_timeline.pdf+%22risks+of+BTC%22&hl=tr&ct=clnk&cd=3&gl=tr (Last visit: 07.11.2007).

IV.1.4.2 Economic Risks

Economic risks of BTC are another concern on the line.³⁹⁸ Given that many people in both Azerbaijan and Georgia feel they got a poor deal from the pipeline tariffs, the change of government in both countries may bring pressure to revise the fiscal structure upwards. A potential risk is that the oil price could collapse, possibly as a result of political unrest of the region. Caspian oil is relatively high cost source of oil once transportation costs are included and a lower price would make it far less profitable.

IV.1.4.3 Legal Risks

Legal risks do not end once the pipeline is completed. There is a real risk that if operational incidents affect people along the route they could take action to seek redress. While the legal regulations seek to limit the risks of this to the consortium, there is a significant risk they could be challenged in the courts – in Britain or in host countries.

IV.1.4.4 Seismic Risk

The pipeline runs through an area of substantial seismic activity.³⁹⁹ Major earthquakes in the region include the two earthquakes in Erzincan right

³⁹⁸ Elkind, J., "Economic Implications of the Baku-Tbilisi-Ceyhan Pipeline" , http://www.silkroadstudies.org/BTC_3.pdf (last visit: 07.11.2007).

³⁹⁹ BP, "Managing Environmental Land, Community and Social Issues", http://www.bp.com/liveassets/bp_internet/bp_caspian/bp_caspian_en/STAGING/local_assets/downloads_pdfs/xyz/BTC_English_Environmental_and_Social_Overview_Content_BTC_Environment-and_Process.pdf (last visit: 07.11.2005).

on the pipeline route, one in 1992 which killed 653 people and measured 6.3 on the Richter Scale, and the even more devastating 1939 event – the eighth biggest earthquake in the twentieth century, which killed 33,000 and measured 7.9. There have been at least 17 major earthquakes directly on the pipeline route since 1924, measuring from 5.5 to 7.9. The highly destructive 1988 Armenian earthquake was also not far from the pipeline route. The Baku-Ceyhan pipeline runs the length of a major fault, and would be at permanent risk of serious spills due to earthquakes. In Georgia, and to some extent in Azerbaijan, the construction work has already led to local roads, drainage and irrigation systems being damaged, affecting the ability of local people to go about their daily lives.⁴⁰⁰

IV.2 THE REGULATORY FRAMEWORK

The pipeline is governed by two major types of agreements: the Inter-Governmental Agreement (IGA) between the governments of Azerbaijan, Georgia and Turkey, and by individual Host Government Agreements (HGA) between each of the three countries and the BP-led consortium.⁴⁰¹ Together these agreements constitute the regulatory framework that governs any issue related to the pipeline for the next forty years, with the possibility of extension for twenty additional years.

⁴⁰⁰ Hannah, E., "The Baku-Ceyhan Pipeline: BP's Time Bomb", 2005, <http://www.gnn.tv/articles/1512/> (Last visit: 19.10.2006).

⁴⁰¹ Ibid.

The Inter-Governmental Agreement (IGA) was signed by Turkey, Georgia, and Azerbaijan in Istanbul on November 18, 1999. BTC Company and the three host governments executed the Host Government Agreements (HGAs) between November 1999 and October 2000. After the regulatory framework was substantially established, in November 2000, anthropologists, ecologists, and other specialists began conducting extensive Environmental and Social Impact Studies (ESIAs), while engineers worked on pipeline design.

Two years later, with the ESIAs well under way, the consortium formally approached the IFC for financing. The Environmental and Social Impact Assessments were concluded in May of 2003 and made public on June 11th, pursuant to the IFC's requirement of a 120 day formal disclosure period. On 4 Nov 2003, shortly after the end of the 120 day disclosure period, the IFC approved the project loans.⁴⁰²

Three additional documents were issued in 2003 seeking to respond to criticisms directed at the HGA-IGA structure by the NGO community. These regulations, namely the Human Rights Undertaking, the Joint Statement, and the Security Protocol⁴⁰³ directly address most – but not all – of the primary problems that were mentioned in various NGO reports regarding the social and environmental implications of the agreements. According to the Consortium, the three Project Agreements are integral

⁴⁰² Remer, T.E.L., 2005, p.11.

⁴⁰³ BP, 2003, *Citizen's Guide to the BTC Project Agreement: Environmental, Social and Human rights Standards*, p.6.

part of the prevailing regulatory regime governing the BTC project and are binding on the parties.⁴⁰⁴

For the relevant governments their role in the project is dictated by the IGA, HGAs and the additional documents as;

1. Provision of access to land - compulsory acquisition of land for the project.⁴⁰⁵
2. Obligations to refrain from applying new laws.⁴⁰⁶
3. Turkey is to build the Turkish section under a lump sum turnkey agreement.
4. Providing security for the pipeline.⁴⁰⁷
5. Security of property rights and payment of compensation in the event that the property rights of BTC.Co are affected or nationalized.
6. Resettlement of people affected by the project.⁴⁰⁸

⁴⁰⁴ Remer, T.E.L., 2005, pp.22-23.

⁴⁰⁵ IGA,art.11 (8).

⁴⁰⁶ The Economic Equilibrium clause (stabilisation clauses) makes the government liable for compensation in the event that it enacts a new law that negatively impacts on the project.

⁴⁰⁷ IGA, art. 111(2) which provides that "Each State shall ensure the safety and security of all personnel within its Territory associated with the MEP Project, the Facilities, all other assets of Project Investors within its Territory associated with the MEP Project, and all Petroleum in transit within its Territory with respect to the MEP Project; and, without limiting the foregoing, each State shall use the security forces of that State, and/or make provision for such security personnel and services, as may be necessary to satisfy this obligation, to ensure the safety and security of all personnel within its Territory associated with the MEP Project, the Facilities, all other assets of Project Investors within its Territory associated with the MEP Project, and all Petroleum in transit within its Territory with respect to the MEP Project. The extent of any liability arising under this Section (2) of Article III with respect to Georgia shall be reflected in the applicable Host Government Agreement.

7. Obligation to make the IGA the prevailing legal regime in each State in respect of the BTC project.
8. Submission of disputes to international arbitration thereby limiting the State's use of local laws to improve human rights and social standards.
9. Guarantee to honor all the contents of the IGA and HGA.
10. Monitoring the project in line with their policies and guidelines and subject to invitation n on periodic lender monitoring visits.

It's obvious from the points above that the Consortium imposes its own interests on the states which are in need of foreign direct investment.

IV.2.1 The Intergovernmental Agreements (IGA) Among the Three Relevant States

The Intergovernmental Agreement (IGA), signed in 1999, is an international agreement signed by the three relevant countries and thus is binding only on these three countries. It's related to the transportation of petroleum via the territories of the Azerbaijan Republic, Georgia and the Republic of Turkey through the BTC main export pipeline.

The IGA covers the following issues:

- Rights and guaranties from the relevant governments to the BTC Co. on technical, fiscal and legal regime of the project.
- Identifies technical, safety and environmental standards.
- Regulates security and tax issues.

⁴⁰⁸ IGA, art.11 (1).

- Lastly, it clarifies the dispute settlement procedure.

IV.2.2 The Host Government Agreement (HGA) Between the Consortium and Turkey

The three host governments executed the Host Government Agreements (HGAs) between November 1999 and October 2000. Upon publication in Turkey's Official Gazette on 10th September 2000, the IGA and HGA for Turkey constitute binding international law and are part of the legal system of Turkey; they constitute the prevailing domestic law of Turkey governing the BTC project. The Agreement defines the capital and resources that Turkey is to provide to the project, the timetable by which it would be developed and the standards that it must meet.

The HGAs set out legally binding rights and obligations for BTC and the relevant countries. The HGAs provide project participants greater certainty to support their investment and let the relevant states the benefit of investment.⁴⁰⁹ The HGAs set out the rights and guarantees granted by the states, including the following:

Rights to land; rights to import and export goods, services and materials necessary to construct and operate the BTC facilities exempt from import and export duties except to the extent specific; the right to transfer, convert and repatriate currency; a guarantee of security; a guarantee of compensation in accordance with prevailing international standards in the event of expropriation.⁴¹⁰

⁴⁰⁹ BP, 2003, p.10.

⁴¹⁰ Ibid. pp.10-11.

The HGA requires BTC to create certain social and environmental documents, including an environmental impact assessment, risk assessment and baseline study. HGA also sets out a process for land acquisition and compensation according to the legal requirements of Turkey. Finally, it sets out the terms of the direct financial compensation for Turkey.⁴¹¹

Under the HGA, the Government of Turkey has also effectively granted BP exemption from the financial impacts of any new environmental, social or any other laws affecting the pipeline that Turkey may introduce in the next forty years, the lifetime of the Agreement. In addition, it has undertaken to compensate the BTC consortium if new taxes or health or safety or environment laws adversely affect the finances of the project. The pipeline legal agreements also give BP effective governing power over a strip of land 1,776 km long, where the company will likely override all national environmental, social, human rights laws for the next 40 years.⁴¹² Therefore, it' clear from the points stressed that human rights violations may arise due to the inclusion of stabilization clauses in these agreements. Stabilization clauses are designed to create a more predictable investment climate in countries with high political risk. However, these agreements seriously undermine the ability of host states to enact legislation necessary to protect the human rights of host state citizens.⁴¹³ In doing so, the Fact-

⁴¹¹ Ibid.,p.11.

⁴¹² Hannah, E.,2005.

⁴¹³ AI,2003.

Finding Mission (FFM) finds that Turkey has effectively abrogated its executive and legislative powers to protect its citizens from potential environmental damage and associated health and safety hazards or to improve the regulatory regime should changes in our understanding of the risks require it.

Other human rights concerns arise from the implications of the security arrangements laid down in the Intergovernmental Agreement for the project. Under Article II (7) of the agreement, the host states agree to ensure the safety and security of all project personnel, project facilities and all other project assets, as well as the petroleum in transit. In the case of Turkey, this could mean that pipeline security would be the responsibility of the Gendarmerie. Significantly, the Council of Europe passed a resolution in July 2002 highly critical of the Gendarmerie, condemning the severe and ongoing human rights abuses committed by security forces of Turkey and naming the Gendarmerie as one of the forces in urgent need of reform. BP itself has acknowledged that the Gendarmeries human rights record "is not good."⁴¹⁴

Other concerns on human rights in the context of the Project's agreements are numerous. First of all, it was commented that the HGAs are incompatible with OECD Guidelines for Multinational Enterprises.⁴¹⁵ Furthermore, a group of NGOs commented that the HGA for Turkey could potentially affect Turkey's accession to the European Union.⁴¹⁶

⁴¹⁴ Kochladze, M., 2003.

⁴¹⁵ EBRD, 2003,p.25.

⁴¹⁶Ibid.

Indeed, concerns were raised that the Host Government Agreements (HGAs) may exempt BTC from compliance with national and international environmental standards foster abuses of principles of human rights.⁴¹⁷ In other words, NGOs commented that the HGAs and the Sponsors are violating Human Rights through the implementation of the regime set out in the HGAs.⁴¹⁸ Georgia's president, Mikheil Saakashvili, has described the situation when he claimed that the Georgian agreement for BTC is "a horrible contract, really horrible". These agreements have largely exempted BP and its partners from local laws – and allow BP to demand compensation from the governments should any law (including environmental, social or human rights law) make the pipeline less profitable.⁴¹⁹

IV.2.3 Analyzing the Agreements in the Context of Human Rights

In this section some agreements clauses are interpreted and their implications are analyzed. Especially, the terms and conditions set out in the IGA and HGAs are claimed to be incompatible with the universally recognized human rights principles.

⁴¹⁷ Ibid.p.24.

⁴¹⁸ Ibid.,p.26.

⁴¹⁹ Hannah, E., 2003.

IV.2.3.1 Limit the State Sovereignty

The preamble HGA with Turkey claims that the Government Guaranty and the Turnkey Agreement shall become effective and shall be binding and enforceable in accordance with their terms; and any other Project Agreements shall be binding instruments, enforceable in accordance with their respective terms.⁴²⁰

The interpretation of this paragraph is that once the project started; only BP and its partners have the power to terminate the HGA, except for the extraordinary circumstances. The Government of Turkey is thus not in a position to regulate or ensure de facto oversight of the operation or construction of the pipeline.

Furthermore, even a future Government of Turkey would not have the ability to invoke its executive powers to amend the agreement so as to afford its citizens greater protection. i.e. the agreement seeks to establish a legal regime that prevails over all other current or future domestic law that may conflict with the Project Agreement or otherwise prejudice the economic interests of the consortium. All these do limit the state's legislation power. Such a situation is completely incompatible with human rights law which is very dynamic in its nature.

⁴²⁰ HGA of Turkey , preamble.

IV.2.3.2 Grant Much Power to the Consortium

In general, the parties to a contract should be accepted equal on the basis of the contract. Yet, the articles 3.2 and 3.4 of the HGA of Turkey states that “Notwithstanding the foregoing Section 3.1, this Agreement may be terminated at any time by the MEP [Main Export Pipeline] Participants giving their written notice of termination to the Government and shall be of no further force or effect for any purpose as of the date specified by the MEP Participants in said notice.”⁴²¹ Also “the MEP Participants may, but shall have no obligation to, undertake to address and/or cure the alleged breach...”⁴²²

The mentioned articles are openly stressing the unilateral rights of the consortium to change the agreement and also immunity from being held responsible for the breach of the agreement. i.e. the articles claim that the consortium has the power to terminate the contract at any time. In the case of a material breach of contract by the consortium, the consortium has no obligation to address and/or cure that breach unless and until the time the Government has proven knowing and persistent failure or frustration of contract.

⁴²¹ Ibid., article, 3.2.

⁴²² Ibid., article, 3.4.

IV.2.3.3 Accord Unlimited Rights for the Consortium over the Land

The right to property has been one of the fundamental and traditional human rights throughout the history. It's even claimed by experts that the right to property is precondition for the realization of all other human rights and basic freedoms. However, the state authorities have granted the consortium "... the exclusive and unrestricted property right (other than ownership) to use, possess, control and construct upon and/or under the Permanent Land, and to restrict or allow (at the MEP Participants' sole discretion) the use, occupation, possession and control of, and construction upon and/or under, the Permanent Land by any other Persons."⁴²³

This article provides the consortium with an unlimited right to use, control and construct on or under the permanent land. It would be the consortium to decide whether it can build structures over the buried pipeline regardless of how severely those structures interfere with the use of the adjacent land. In the case of Turkey thousand kilometers long is transferred to the effective control of BTC partner companies.

IV.2.3.4 No Guaranty for Anyone but "the Consortium"

The agreement is very careful in terms of the rights of the consortium. However, the rights of the rest stem to be disregarded. For instance, the article 6.2(v) stated that "the State Authorities have not granted and are

⁴²³ Ibid., article, 4.1.

not obligated to grant to any Person any rights or privileges that are inconsistent or conflict, or that may limit or interfere, with the exercise and enjoyment of the rights and privileges held by any Project Participant under any Project Agreement.”⁴²⁴

Turkey guarantees that the stability of the project prevails over any other considerations. That means any person, being natural or legal, adversely affected by the activities of the Project will not be granted of any rights or privileges that the consortium considers as against the project and the rights of any project participant.

IV.2.3.5 HGA is at the Top of the Legal Hierarchy?

It can be inferred from the language of regulatory documents that the stability of the Project, not human rights, is the central issue of the HGA. The article 7.2(vi) is formulated as “if any domestic or international agreement or treaty; any legislation, promulgation, enactment, decree, accession or allowance; any other form of commitment, policy or pronouncement or permission, has the effect of impairing, conflicting or interfering with the implementation of the Project, or limiting, abridging or adversely affecting the value of the Project or any of the rights, privileges, exemptions, waivers, indemnifications or protections granted or arising under this Agreement or any other Project Agreement it shall be deemed a Change in Law under Article 7.2(xi).”⁴²⁵

⁴²⁴ Ibid., article, 6.2(v).

The article 7.2(xi) states that "the State Authorities shall take all actions available to them to restore the Economic Equilibrium established under the Project Agreements if and to the extent the Economic Equilibrium is disrupted or negatively affected, directly or indirectly, as a result of any change (whether the change is specific to the Project or of general application) in Turkish Law (including any Turkish Laws regarding Taxes, health, safety and the environment)."⁴²⁶

It's obvious from the above mentioned article that issuing new laws or regulations that conflict with the HGA is reason for Government of Turkey to compensate the consortium (including changes aimed at improving protection of human rights or the environment). Such an article may prevent Turkey from enacting or acceding to such laws or from implementing them in the pipeline corridor.

Indeed, Amnesty report claims that "The HGA negotiated with Turkey for the BTC project sets disturbing political and legal precedents. The requirement for Turkey to pay compensation to the consortium for any 'disruption to the economic equilibrium of the project' means that Turkey is caught between the obligation to protect human rights and a disincentive to do so when rights conflict with business imperatives."⁴²⁷ Such regulation put the government in a position where in practice it is

⁴²⁵ Ibid., article, 7.2(vi).

⁴²⁶ Ibid., article, 7.2(xi).

⁴²⁷ AI, 2003.

not able to regulate or control the construction and operation of the pipeline.

To sum up, the central theme of the HGA and other regulations is the stability of the Project and ensuring the realization of maximum profit to the consortium. Therefore, the rights of the consortium are given the utmost importance while the rights of the persons are either given less importance or disregarded. The general outlook of the regulations seems to be in conflict with international human rights principles and environmental protection regulations.

IV.3 BTC Consortium Policy on Human Rights: Guidance or Attachment?

The BTC project is subject to an exclusively negotiated regulatory regime, set out in an international agreement (the IGA) and a private contract between the BTC Consortium and the Government of Turkey (the HGA).⁴²⁸ There was lack of human rights policies in the preliminary regulatory framework that was composed of IGA and HGAs. Human rights are not mentioned in any article of these two agreements. For this reason Amnesty International argued that the legal agreements signed by the government of Turkey and the pipeline consortium effectively create a

⁴²⁸ EIA, "Issues Arising from Legal Regime for BTC Project- Turkey Section", in BTC Pipeline, *EIA Review*, 2003, p.2.

“rights-free corridor” for the pipeline, disregarding the human rights of thousands of people in the region.⁴²⁹

Civil society opposition to the BTC Pipeline Project reached a noticeable pitch in the summer of 2002. In August of that year, an international coalition of NGOs issued a press release charging the IGA-HGA framework for paving the way for human rights abuses and environmental disasters in the pipeline corridor. Given Turkey’s long history of human rights abuses in its ongoing battle with Kurdish secessionists, the NGO community focused initially on the potential impact of the agreements on the Turkey’s treatment of Kurds.

At the same time, the coalition of NGOs released a series of fact-finding reports, based on investigative missions sent to Turkey, harshly criticized the project for the threat that pipeline construction and operation posed to human rights and environment.⁴³⁰

The activities of international organizations regarding the pipeline could lead the development of consciousness in the world. Lending decisions of international credit provider institutions are assessed, if they would have negative human rights impact. TNCs are protested by their consumers because they do not comply with basic labor and environmental rights in the developing countries.

⁴²⁹ Amnesty International, 2003.

⁴³⁰ Remer, T.E.L., 2005, p.11.

Being aware of the situation, environmentalist movements and human rights activists created forums to increase public participation awareness. The aim of NGO monitoring process is “to increase public awareness about BTC project development, about challenges and concerns raised during construction period and also serve for the establishment of healthy cooperation between all stakeholders to develop a good practice of civic involvement.”⁴³¹ As a result of the pressure from the NGOs, three additional documents were issued in 2003 seeking to respond to criticisms directed to the HGA-IGA structure by the NGO community. These new Project Agreements are the Human Rights Undertaking, the Joint Statement, and the Security Protocol⁴³² directly address most of the concerns spelled out in various NGO reports regarding social, human rights and environmental implications of the project.⁴³³ In this section the mentioned documents will be analyzed in detail.

IV.3.1 BTC Human Rights Undertaking

The BTC Human Rights Undertaking was issued on 22 September 2003 by the BTC Company. Because, the BTC pipeline project has been the subject of an extensive and long-running NGO campaign with particular areas of concern, including human rights, environment, health and security and financial compensation to the BTC.

⁴³¹ Open Society Institute, **Baku-Tbilisi-Ceyhan Oil Pipeline Monitoring Project 2004-2005**, (Baku: OSIAF, 2005), p.2.

⁴³² BP, 2003, p.6.

⁴³³ Remer, T.E.L., 2005, pp.22-23.

The BTC Human Rights Undertaking confirms the Host Government's ability to regulate the human rights, health, safety and environmental aspects of the project in the territory of the Host Government in accordance with Project Agreement standards and the dynamic nature of project standards, which will evolve in accordance with the highest of the international standards specified in the Project Agreements. Also BTC undertook not to seek financial compensation in the event that the governments acted to fulfill their obligations under any international treaty relating to human rights, the environment or health and safety.⁴³⁴

The Human Rights Undertaking seems to answer many concerns raised by NGOs. Yet there are some criticisms towards the Human Rights Undertaking for being ambiguous, unilaterally made by the BTC and also not be able to cover all the issues concerned. And also no enforcement mechanism.

NGOs claimed that it "is only signed by the BTC Co. It is not therefore binding on Turkey, which, if it so chose, could still invoke the HGA's "stabilization" clauses to override existing environmental and social legislation that conflicts with the commercial imperatives driving BOTAS or which the government simply finds inconvenient. Given the invocation

⁴³⁴ Knoedel, p., **Moving Forward From Cancun: Global Governance from Tare, Environments and Sustainable Development: Balancing Stakeholder Interest When Investing for the Long Term**, (Berlin: BP Germany, 2003), p.4.

of emergency powers by Turkey to leapfrog resettlement procedures and curtail consultation on the EIA, this is a far from abstract concern.”⁴³⁵

In addition, it leaves unaddressed the concerns expressed by NGOs over the wording of the security clauses in the HGA. Again, this is of even greater concern given that the huge fines to which both BOTAS and Turkey are potentially subject gives both bodies strong commercial imperatives not to apply necessary human rights protections.⁴³⁶ However, the initiatives to insert human rights and other concerns into the legal system of the BTC pipeline were not limited to the BTC Human Rights Undertaking. Joint Statement, another important step in this direction, was made by the relevant three host governments and the representatives of the BTC Co.

IV.3.2 Joint Statement

The members of the Implementation Commission established pursuant to Article VI of the IGA convened a meeting in Baku on 16 May 2003 together with representatives of the BTC Company have made the Joint Statement in which they stated that “We note concerns expressed by various non-governmental organizations about the BTC Project. We take these concerns seriously. We are determined to make the BTC Project a model project in all respects, and the environmental, social, and human rights aspects of the project are of fundamental importance. We are committed to

⁴³⁵ Platform, **Statement in Response to the BTC Human Rights Undertaking**, 2003.

⁴³⁶ Ibid.

BTC Company's objective of, "No accidents, no harm, to people, and no damage to the environment."⁴³⁷

In response to the claims that the IGA and HGAs are superior than the national laws of the host states, the joint statement replied that "we have ensured that the process followed for the review and approval of Environmental and Social Impact Assessments complied fully with each State's national laws, and with international standards for public consultation. We have taken care to engage with affected communities and interested stakeholders, and have chosen standards and guidelines that apply to projects obtaining financing from the International Finance Corporation. In adhering to those guidelines, we have developed Public Consultation and Disclosure Plans for each of the host States. We have in fact moved ahead with extensive public consultation and disclosure in accordance with those plans. We are proud of our record in this regard."⁴³⁸ After mentioning this point the document focuses on human rights, environment and labor issues.

First of all, the Joint statement confirms the application of OECD Guidelines on Multinational Enterprises in the BTC agreement structure. And it's also confirmed that "...all activities undertaken and contemplated to be undertaken with regard to the IGA, the HGAs and the other BTC

⁴³⁷ **Joint Statement**, Para.1.

⁴³⁸ *Ibid.*, para.2.

Project Agreements have been and shall be consistent with the Guidelines in all material respects.”⁴³⁹

Secondly, for human rights and security issues the Joint Statement assessed and referred to leading international human rights instruments such as the Universal Declaration of Human Rights, the United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials, United Nations Code of Conduct for Law Enforcement Officials, the European Convention on Human Rights and, the Voluntary Principles on Security and Human Rights. Moreover, all pipeline security operations must be conducted in accordance with the international norms, and set forth specific requirements and limitations in respect thereof.⁴⁴⁰ Yet, in terms of the security concern, the response of the Joint Statement does not refer to the actual problem. Since, the IGA and HGAs required the state to provide security for the pipeline and this was criticized by the NGOs. Yet the Joint Statement refers to international norms which does not answer the question in this respect.

For the environmental issue the Joint Statement refers to the commitment of the parties to the EU standards and World Bank Group policies and guidelines in the processes.⁴⁴¹ In labor case, it confirms the parties understanding that “International Labor Organization conventions on Forced Labor, Freedom of Association and Right to Organize, Collective

⁴³⁹Ibid., para.5.

⁴⁴⁰Ibid., para.6.

⁴⁴¹Ibid., para.7.

Bargaining, Discrimination, Equal Remuneration and Minimum Age, all as in effect from time to time, will apply to the development and operation of the Project, and that the Project is and will remain subject to the standards set forth in any and all other international labor and human rights treaties to which any host State is a party from time to time."⁴⁴²

The Joint Statement comparing to the BTC Human Rights Undertaking is more comprehensive and touching to the claims posed by NGOs. Furthermore, being issued among the host states together with the representatives of the BTC Company makes it more powerful and legally much more effective for the parties. However, in Joint Statement, as it was the case for the BTC Human Rights Undertaking, still there is lack of the reference to the rights for the third parties.

IV.3.3 Other Regulations

The other regulations concerning human rights and environmental issues can be found in the Security Protocol, Environmental and Social Impact Assessments, the host countries constitutions, other national law, human rights, ILO Standards, UN Code of Conduct, OECD Guidelines, BP and BOTAS Policies, IFI Policies and World Bank Standards and Policies. Although these instruments are referred in the legal system of the BTC, their application is difficult to be realized. Because, most of them only set out the broad and uncertain principles rather than referring to concrete issues.

⁴⁴² Ibid., para.8.

IV.4 ASSESSING HUMAN RIGHTS PERFORMANCE OF THE BTC

Adverse impact of TNCs on economic, social and cultural rights in host states seemed considerably serious. A range of rights relevant to employment comprising from the right to work⁴⁴³, the right to form and join the trade unions⁴⁴⁴, and the right to enjoy favorable conditions⁴⁴⁵ are directly affected. In addition, the right to food and the right to minimum standard of living⁴⁴⁶, the right to freedom from hunger⁴⁴⁷ should also be taken into consideration. Furthermore the impact of TNCs upon the socio-cultural practice in the society is directly associated with the enjoyment of the right to culture⁴⁴⁸ and the right to education.⁴⁴⁹

The BTC pipeline arguably poses a major social, economic and human rights security risks with international implications. The vulnerability of the region regarding the existing and potential conflicts between countries, as well as within the countries, due to ethnic and religion clashes, is one of the most acute issues. The Project has the implications for

⁴⁴³ UDHR, Article 23, and ICESCR, Article 6.

⁴⁴⁴ Ibid., Article 23, and ICESCR, Article 8.

⁴⁴⁵ Ibid., Article 23, and ICESCR, Article 7.

⁴⁴⁶ UDHR, Article 25, and ICESCR, Article 11.

⁴⁴⁷ ICESCR, Article 11

⁴⁴⁸ UDHR, Article 27, and ICESCR, Article 15.

⁴⁴⁹ Ibid., Article 26, and ICESCR, Article 13.

exacerbating the conflict in the region, such as the Armenia and Azerbaijan conflict over Nagorno- Karabakh. Further, BP has said that the pipelines will benefit from the military presence. However it is of grave concern that the Turkish section of the route passes through Kurdish areas where the creation of a 'militarized corridor' along the pipeline route could worsen the conflict between the Kurdistan Workers' Party (PKK) and the security forces of Turkey.⁴⁵⁰

Among the human rights claimed to be violated in the project are land acquisition and compensation, access to means of subsistence and interference with family and private life. Hence the rights of ethnic minorities, discriminatory labor practices in recruitment of pipeline staff are issues that impact negatively on the rights of the people. The provision of security by the HGAs in areas of regional and national conflicts without binding obligations to observe international human rights standards especially where they have had poor human rights records in the past and with the militarization of the pipeline corridor, have negative impact on the abilities of the states to protect and promote internationally recognized human rights standards.⁴⁵¹

⁴⁵⁰ Kochladze, M., 2002, "Azerbaijan-Georgia-Turkey Pipelines" in **World Bank Extractive Industry Review**, (CEE: Budapest).

⁴⁵¹Nwete, B.O.N., 2004, pp.18-19.

IV.4.1 Major Finding in Turkey Section in 2003

The construction of the pipeline has been monitored by the Baku-Ceyhan Campaign, a consortium of NGOs including the Kurdish Human Rights Project, The Corner House, Friends of the Earth and Environmental Defense. The campaign has uncovered 173 violations of World Bank environmental and social standards in the Turkey section of the project during the design stage alone.⁴⁵² Two Missions to Turkey, in July / August 2002 and in March 2003 has stressed the following points:

- *A pattern of serious and ongoing human rights abuses and violations along important sections of the pipeline, including a marked rise in detentions, arbitrary arrests, surveillance and harassment by state and military officials. There is a strong likelihood that the human rights situation in the region would be worsened by the introduction of the pipeline, particularly due to militarization via the use of the gendarmerie as the main security force;*
- *A pervasive atmosphere of repression and lack of freedom of speech in these regions which precluded dissent about the BTC project and thus rendered invalid the processes of consultation which BTC Co. have undertaken;*
- *Fundamental flaws in both the design and the implementation of crucial project documents like the Environmental Impact Assessment (EIA) and the RAP, including widespread inadequacies in consultation of appropriate NGOs and social groups;*
- *Information disseminated on the project to communities was insufficient for respondents to evolve an informed view on the project. The wording of the community questionnaires discouraged frank expression of concerns about the pipeline's impact. Up to half of the communities listed as consulted in the project documents had in fact, not been consulted. Even where consultation had taken place, villagers remained full of questions that had not been answered.*

⁴⁵² Hannah, E., 2003.

- *Repeated suggestions that BOTAS, the pipeline contractor, is not carrying out the process of compensation in the manner claimed by BTC Co. These included allegations of paying well below a fair market value for land, imposing rather than negotiating prices, failing to compensate certain groups of landowners and users, misleading affected people about their rights and failing to inform them of the many potential negative impacts of the project failures which are producing growing anger among affected people;*
- *The failure of the project to take sufficient account of the differential impacts of the pipeline on vulnerable groups, including ethnic minorities, women and the poor, or to mitigate those problems appropriately.*⁴⁵³

IV.4.2 Major Findings in Turkey Section in 2005

The human rights picture in 2005 seems not to be different from the one in 2003. For instance in 2005, the FFM was followed to five out of six villages by plainclothes Gendarmes, the police forces responsible for several atrocities and numerous abuses.⁴⁵⁴ Despite the formulation of Human Rights Undertaking and Joint Statement, the human rights violations referred to in the report of the NGO Mission in 2002 and 2003 had remained almost unchanged in 2005. They are;

- *Freedom of speech in the region remains restricted. Those criticizing BTC risk harassment and repression.*
- *Landowners in Turkey received significantly lower levels of compensation than in Georgia and Azerbaijan.*
- *Villagers reported that compensation for lost crops was paid for one year only, yet their land has not been reinstated yet as promised and they have not been able to use their land for a second year. The resulting loss of income has not been compensated.*

⁴⁵³ Mansley, M., 2003, pp.28-29.

⁴⁵⁴ Green Alternatives and et.al, 2005,p.6.

- *The levels of compensation for acquired land in the 8m corridor continue to be disputed.*
- *Users of community lands were not compensated for expropriation, as payments went to state agencies.*
- *Many village residents complained that damage caused through construction was neither compensated nor repaired.*
- *Promises made under the Community Investment Programme have not materialized.*
- *Where community investments have been undertaken, they have often proven ineffective or damaging to local incomes.*
- *In many villages the community investment programme does not accord with the priorities of the villagers.*
- *Promises to employ local people have not materialized in villages visited. Religious and ethnic minority discrimination issues were also raised.*
- *There are a number of applications before the European Court of Human Rights regarding violations of villagers' rights by the project developers. These centre on lack of consultation, failure to provide adequate compensation and inadequate or misleading legal advice.*⁴⁵⁵

Yet, despite these claims BTC Co commits to ensuring that “respect for culture, individual dignity and human rights,” will “dominate all interactions.” And according to BTC Co, the Project was designed to demonstrate that business can be conducted in a way that makes a positive commitment to human rights. It was also intended to be a model for good corporate governance. As BP states that it is committed to “ensuring that the project results in real benefits for the countries through which the pipeline passes - from the seats of government, to local villages and farmers living along the pipeline route.”⁴⁵⁶

⁴⁵⁵ Ibid.,p.4.

⁴⁵⁶ Smith, G.A.,2004.

IV.4.3 The Relevant Human Rights

The three HGAs, IGA, Human Rights Undertaking and Joint Statement have committed to take a number of positive actions that could pose a threat to human rights and environmental sustainability. Yet, there are various claims on human rights violations taken place in the context of the BTC Project. Some of them, such as compensation, resettlement, environmental degradation, labor rights and freedom of associations, are directly relevant to the nature of the oil sector investments.

IV.4.3.1 The Right to Participation

What do we mean by participation? Who should participate and how this is to be achieved in practice? In the Project context participation means the involvement of the people in the construction, in decision-making, in benefits and in evolution of both successes and failures.

Four methods of participation are identified; information sharing, consultation, decision-making and initiating action. *Information sharing* participation refers to a process when the agency informs intended beneficiaries about the project and so flows of information and control are both in a top-down direction. In a process involving *consultation* information flows are more equal with the agency often making use of local knowledge, but control is still top-down. In *decision-making* participation beneficiaries have some control over the process. Finally where participation has advanced to the stage of the beneficiaries *initiating*

action, both information and control flows are primarily bottom-up from the beneficiary group to the agency.⁴⁵⁷

In the context of business the term “participation” is often used loosely to refer to a person’s involvement in the running of the business; yet degrees of participation can vary, from input regarding employee hours and codes of conduct to decision-making about the developmental strategy of the business.⁴⁵⁸ ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, introduction: “TNCs.....can help develop countries both economically and socially. They can also abuse this power by operating in a way that conflicts with the workers' and country's best interests.”⁴⁵⁹ That adhering governments will Endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available.⁴⁶⁰

There are three ways in which participation is used for; first it is used as cosmetic label, to make whatever is proposed appears good. In other words, it is just used as rhetoric. Second, it aims to mobilize local labor

⁴⁵⁷ Lane, J., “ Non-governmental organizations and participatory development: the concept in theory versus the concept in practice” in Nelson, N. and Wright, S., **Power and Participatory Development: Theory and Practice**, (London: Intermediate Technology Publications, 1997), p.183; see also **UDHR**. arts. 19-22; ICESCR, art. 1(1), 8(1); Vienna Declaration, art. I(10); Rio Declaration, , princ. 20 & 22.

⁴⁵⁸ Toronto Enterprise Fund, **Employee Ownership and Participation in Decision-Making**, (Toronto: Toronto Enterprise Fund, 2003), p.2.

⁴⁵⁹ ILO Tripartit Declaration, introduction.

⁴⁶⁰ OECD Guidelines, Point, IV.3.

and reduce costs. Third it is used to describe an empowering process, which enables local people to do their own analysis, to take command, to gain in confidence.⁴⁶¹

In the BTC project participation is realized at some level, partly at the level of information sharing and consultation level for instance, while at the decision-making and initiating action level, participation is at either lowest level or does not exist at all. For instance, in the case of information sharing, in an early effort to implement that commitment, BP undertook steps to ensure that the more than 450 communities and 30,000 landowners and land users affected by the pipeline were consulted over a 20-month period. BP publicly emphasized that it was critical to the Project's success that communities along the pipeline route and those directly affected by construction were actively involved in project planning. The objective behind such extensive consultation was to secure significant community involvement and support at the outset of the Project by dealing with concerns proactively and supporting sustainable community development.⁴⁶²

BTC's consultation process was based on the IFC's policy on Disclosure of Information. The consultation process carried out for the BTC Project was designed to comply with international best practices and was unprecedented in scope. BP based this process on the IFC's guidelines for

⁴⁶¹ Chambers, R., "Paradigm shifts and the practice of participatory research and development" in Nelson, N. and Wright, S., **Power and Participatory Development: Theory and Practice**, (London: Intermediate Technology Publications, 1997), p.30.

⁴⁶² Smith, G.A. 2004.

managing a public consultation process: plan ahead; test the program; invest time and money; involve operations managers directly; hire and train the right people; coordinate all consultation; build dialogue and trust; manage expectations; work with governments; and work with NGOs and community-based organizations. Key stakeholders for the Project were identified at an early stage: local authorities; national and local NGOs with an interest in the project and useful data or insight into local and national challenges; broad-based interest groups, such as the media, academics, foundations, and community organizations; residents of communities adjacent to the pipeline corridor and above-ground installations; landowners and land users, including migratory herders who would be affected by the Project and fishermen near the marine terminal; international financial institutions, including the IFC and the EBRD; and BTC partner organizations.⁴⁶³

Perhaps most important with respect to community engagement, the most detailed consultation regarding the pipeline route was done as part of the integrated Environmental and Social Impact Assessments (ESIAs). The ESIAs examined the potential environmental and social impacts of the projects on the biological, physical, and human environment. The ESIA process culminated in the production of a draft ESIA report for each country, which was followed by a 60-day public consultation, disclosure, and review period. Comments received during the review stage were

⁴⁶³ Ibid.

incorporated into a final ESIA report, which was submitted to the host government for review and approval.⁴⁶⁴

During the preparation of the ESIA's, a range of participatory consultation mechanisms were employed, including one-on-one interviews with members of the local communities along the pipeline corridor, workshops with local and international NGOs, workshops and meetings with regulatory authorities, meetings with scientists and experts, feedback questionnaires, and project information leaflets. In keeping with the HGAs and IFIs requirements, part of the consultation process with the local communities also included developing a comprehensive Public Consultation and Disclosure Plan (PCDP) for each of the three countries.⁴⁶⁵

Despite these, it's claimed that the companies and the governments are trying to prevent meaningful public participation in the project. Production Sharing Agreements, basic documents according to which the companies get the right to the oil resources, are not publicly available, despite the fact that they were ratified by Azerbaijanian Parliament. It should not be surprising that the project sponsors are keeping confidential key documents such as the macro-level impact studies which address comparative pipeline costs, issues of redistribution of oil revenues, cumulative environmental, social and economic project impacts and the economic and political assessment of regional alternatives.⁴⁶⁶

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid.

⁴⁶⁶ Kochladze, M., 2002.

There are some claims that a preliminary contract (not binding or known as Preliminary Memorandum of Understanding) was signed with the local communities in the course of the land inventory and registration of plants and facilities on land plots within 100 meter corridor. One of the person interviewed said that 8 m corridor of land was hired. However, some people became dissatisfied when they received no additional information.⁴⁶⁷ At this stage the lack of participation even at the minimum level was verified by the BP/BTC. They accepted that information provided was insufficient.⁴⁶⁸ Some groups felt that there was insufficient access provided to information.⁴⁶⁹ Some comments related to an allegation that the consultation process was started too late and was carried out insufficiently.⁴⁷⁰

Regarding participation it was also claimed that NGOs were not appropriately involved in the monitoring process at a crucial stage of Final land Acquisition Programme and major shortcoming in the process were not brought to the attention of the public. And also landowners were not informed about land acquisition in a timely manner.⁴⁷¹ Yet BP/BTC

⁴⁶⁷ NGO Monitoring programme, **Workshop of Human Rights Group**, 2005, p.2., available at http://subsites.bp.com/caspian/BTC/Eng/NGO/Aze/Human%20Rights/NGO%20Monitoring%20Workshop_Human%20Rights.pdf (Last visit: 19.04.2007).

⁴⁶⁸ Ibid.

⁴⁶⁹ EBRD, 2003,p.6.

⁴⁷⁰ Ibid.,p.5.

⁴⁷¹ Ibid.,p.4

responded to these arguments by saying that it's welcoming the partnerships with national NGOs in pursuit of mutual interests. BTC also denied the claims of major shortcomings regarding land acquisition efforts.⁴⁷²

It's claimed that no one in the area along the route of the pipeline had comprehensive information on BTC safety measures. There are no boards illustrating safety information in these regions. People do not know how they will use their land after BTC pipeline construction.⁴⁷³ This position was also accepted by BTC management.⁴⁷⁴ Furthermore, a number of NGOs claimed that not enough emphasis was placed on the effective consultation with minorities and vulnerable groups (women, elderly, indigenous population).⁴⁷⁵

Regarding consultation with those affected by the pipeline, the IFC stated that it was "gratifying to hear directly from local NGOs and local communities. It is clear that local people want the pipeline to be built -- but they want it built in a safe, sustainable, and environmentally sound way." The IFC also noted that the compensation packages for land, "which are consistently above market rates, have been set and are independently monitored."⁴⁷⁶

The following claims show that there is misinformation or lack of information. There were high expectations regarding budgetary income,

⁴⁷² Ibid.

⁴⁷³ Ibid., p.11

⁴⁷⁴ Ibid.

⁴⁷⁵ Ibid.,p.6.

⁴⁷⁶ Smith, G.A., 2004.

increased employment opportunity and access to energy carriers from oil and gas pipelines in both Azerbaijan and in Georgia, the situation already seems to be rather different. The oil sector itself provides only a restricted amount of employment and income opportunities, particularly for the poor.⁴⁷⁷ Ed Johnson, BP's former project manager in Georgia told the St. Petersburg Times, "People were told that there would be 70,000 Georgians that were going to be employed because of this pipeline. The (Georgian) government needed to sell the project to its own people so some of the benefits were overblown."⁴⁷⁸

Yet, the IFC argued that the project is "break[ing] new ground in transparency, environmental and social safeguards, community consultation and involvement, national and international civil society engagement, and local economic benefit."⁴⁷⁹

In Turkey also it was argued by the Project administration that around 1,500 unskilled people would be hired during the construction phase. During the operations phase, when construction ended, the employment requirement would decrease and would be localized (in Turkey mainly at the Ceyhan Terminal, pump stations and a pressure reduction station). There would also be other employment opportunities, such as logistical services. The BTC Co. representative added that while 10,000 skilled and unskilled jobs over the entire pipeline project will be created during

⁴⁷⁷ Kochladze, M., 2002.

⁴⁷⁸ Hannah, E., 2003.

⁴⁷⁹ Smith, G.A., 2004.

construction, after construction the jobs will be greatly reduced and would be mainly at the Sangachal and Ceyhan terminals and the four pump stations.⁴⁸⁰ However, the people living along the pipeline in Turkey got disappointed like their counterparts in Azerbaijan and Georgia.

Indeed, the people with whom the interviews are conducted were satisfied with the amount of information provided by the BTC Company both at the early phase and later during the construction stage. The interviewed persons claimed that they have participated into the project. They claimed that they were consulted and the decisions on many points were given together with the villagers. They also said they the villagers were given training not only about the project but also about the rural development. Yet, many other needs of the villagers completely irrelevant to the project were met. Such as sometimes their roads were repaired, the schools were constructed and society development project were conducted.

IV.4.3.2 Accountability

With respect to the business, accountability is an important means that holds TNCs accountable in the context of human rights. Accountability limits the power of the TNCs while strengthening the stakeholders. Accountability and participation, among others, are also indicators for the democratic degree of a system.⁴⁸¹ Since full respect for human rights also

⁴⁸⁰ CDR, **Multistakeholder Forum (MSF) Meeting**, (Colorado: CDR Associate, 2003), p.11.

requires a number of democratic principles to be respected for instance participatory rights.⁴⁸²

The World Business Council for Sustainable Development used the following definition of accountability and business responsibility. "Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large"⁴⁸³ The codes of conducts mechanism entails social responsibility. Such as the UN Global Compact states in its principle number one as "Businesses should support and respect the protection of internationally proclaimed human rights"⁴⁸⁴

In BTC, the ESIA's can be accepted as a kind of social accountability while the Project's regulatory documents including, Human Rights Undertaking and Joint Statement, includes also some elements of accountability. Thus, a partial accountability can be easily observed in the project. The Consortium is accountable to the relevant states and to some extends the credit provider institutions and other stakeholders. The states, on the other hand, are accountable to each other and to the international

⁴⁸¹ Lijphart, A., "Constitutional Choices for New Democracies" in Diamond, L., and Plattner, F., (eds.), **The Global Resurgence of Democracy**, second edition, (Baltimore and London: The Johns Hopkins University Press, 1996), p.165.

⁴⁸² Arts, K., **Integrating Human Rights into Development Cooperation: The Case of the Lome Convention**, (the Hague, London and Boston: Kluwer Law International, 2000), p.25.

⁴⁸³ Mallenbaker, "Corporate Social Responsibility - What does it mean?" available at <http://www.mallenbaker.net/csr/CSRfiles/definition.html> (Last visit: 10.04.2007).

⁴⁸⁴ Global Compact, Principle 1.

community either through international law or international public pressure.

IV.4.3.3 Non-Discrimination

Non-discrimination is one of the main human rights principles in all internationally recognized human rights instruments. The human rights regulations are significant in ensuring against discrimination of any form. ILO Tripartite Declaration all governments should promote equality of opportunity in employment.⁴⁸⁵ Other regulations are ILO Convention on Equal Remuneration for Men and Women Workers for Work of Equal Value⁴⁸⁶ and ILO Convention 111: on Discrimination in respect of employment and occupation.⁴⁸⁷

⁴⁸⁵ ILO Tripartite Declaration.

⁴⁸⁶ ILO Convention 100: **Article 2**

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.
2. This principle may be applied by means of--
 - (a) national laws or regulations;
 - (b) legally established or recognised machinery for wage determination;
 - (c) collective agreements between employers and workers; or
 - (d) a combination of these various means.
3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

⁴⁸⁷ ILO Convention 111: **Article 1**

1. For the purpose of this Convention the term *discrimination* includes--
 - (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

The UDHR reiterates that, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."⁴⁸⁸

UDHR Article 2: "1. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. 2. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."⁴⁸⁹

There are some allegations that there are some discriminatory applications in the BTC pipeline construction. These discriminations are not done only between local workers and foreigners but also between citizens of the host

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

⁴⁸⁸ UDHR, Article 2.

⁴⁸⁹ Ibid., Article 2.

states. Minorities and dissident groups are claimed to be subject of discrimination. For instance, NGOs claimed that there are discrepancies between the food and living conditions of expats (foreign staff) and local employees. There also significant differences between the salaries paid to expats and nationals working the same regime. Furthermore, expats are involved in activities which do not require high qualifications.⁴⁹⁰ The people, basically workers, who participated in the interviews, accepted that during the construction phase there was discrimination between skilled and unskilled workers in terms of living conditions. For instance, their restaurants and living rooms were separate and the skilled staff was living in better conditions. They also claimed that now, in Ceyhan there is no such discrimination.

Furthermore, most promises made under the Community Investment Programme (CIP) operated by the NGO Blue Crescent have not materialized and there were allegations of discrimination against Kurdish and Alewite communities.⁴⁹¹ Some NGOs asserted that in the context of the Resettlement Action Plan an inadequate identification of ethnic minorities and vulnerable groups was provided.⁴⁹²

Against these allegations BTC recognized that there were some differences but these are not based on country of origin. They are based on company seniority, but absolutely no differences in the quality of food. BTC said

⁴⁹⁰ NGO Monitoring programme, 2005, p.9.

⁴⁹¹ Green Alternatives and et.al, 2005,p.7.

⁴⁹² EBRD, 2003,p.23.

that differences in salaries are market driven not discriminatory. And also all expatriates employed by the project perform tasks requiring skill and experience.⁴⁹³ The persons who were interviewed accepted that the majority of expatriates are skilled persons.

Yet, there are not responses of BTC against discrimination claims against minority and vulnerable groups.

IV.4.3.4 Land Compensation

Land compensation is one of the leading human rights issues discussed in the context of the Project. Compensation is important issue because approximately 30,000 owners or sharecroppers were affected by the land acquisition process in Turkey alone. The process of acquiring land for the pipeline raises a number of human rights concerns. Because the IGA declared that the pipeline project is not in the public interest in order to ensure that the signatory states could not violate the terms of the HGAs unilaterally the states lack the legal right to purchase the land or resettle users compulsorily. According to Amnesty International, “The majority of the people in the pipeline zone is rural and would have practically no experience in a court of law... In these circumstances, the provision of legal aid is fundamental to a fair hearing.” Remer claims that presently there is nothing in the IGA, HGA, or any other project documentation

⁴⁹³ Ibid.

guaranteeing legal aid to landowners or those displaced (even temporarily) by the project.⁴⁹⁴ These issues are regulated by national laws.

The Resettlement Action Plan of Turkey includes two elements of compensation. One payment is for the land, the second for lost crops. The latter was paid out for one year only. Yet in all villages visited, the land was not yet ready for agriculture, as construction was still in progress or the land had yet to be reinstated. In Türkgözü, Çobanlı and Otağlı, land users specifically complained of not receiving compensation for crops lost since the first year. In Çobanlı, the loss of communal production from pastures totaled \$12,000. The 30 individually affected farmers were estimated to lose a yearly crop value of around \$333 each – adding up to an additional total of \$10,000. One villager from Çobanlı has applied to court demanding this year's compensation.⁴⁹⁵

The main problems regarding compensation are low paying for lands and crops, no compensation for possible damage in the future; the 8 m corridor cannot be used for planting trees or building any kind of construction. The said corridor can only be used for raising crops. In general 8-meter corridor was hired but in the case of archeological pieces was found then 28-meter corridor was hired and paid for. The hiring period was limited with the time of construction on the pipeline on a specific land. NGO monitoring programme claimed that prices approved for compensation were much lower than the actual prices.⁴⁹⁶ Sometimes, due to legal uncertainties the landowners were paid for neither their land nor crops.

⁴⁹⁴ Remer, T.E.L., "2005, pp.27-28.

⁴⁹⁵ Green Alternatives and et.al, 2005,p.7.

⁴⁹⁶ NGO Monitoring Programme, 2005, p.6.

It's argued that the value of customary lands that have been used for 20 years were fully compensated to the land users in line with the Expropriation Law of Turkey.⁴⁹⁷ However, this is not a straightforward compensation but requires court decisions on customary lands and their value. This whole process is facilitated and paid for by the BTC project. Yet, customary land held for less than twenty years is not compensated, though the value of any crops or pasture on the land is compensated regardless of land tenure.

Although the law does not provide for compensation for land held under customary ownership for less than 20 years, in practice, ownership is determined by local experts assigned by the court from the project affected settlements. These experts (often village leaders or elder committee members) have commonly held that lands have been used more than 20 years when there has been doubt about the current user's length of time on the land.⁴⁹⁸

IV.4.3.4.1 Inadequate Compensation Mechanism

In the context of land acquisition it was questioned whether the compensation mechanisms for land were adequate in Turkey.⁴⁹⁹ Making

⁴⁹⁷ The expropriation law of Turkey can be reached on [http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/Tur+-+AnX+3.1/\\$FILE/RAP+-+Annex+3.1+-+Turkish+Expropriation+Law.pdf](http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/Tur+-+AnX+3.1/$FILE/RAP+-+Annex+3.1+-+Turkish+Expropriation+Law.pdf) (Last visit: 06.06.2007).

⁴⁹⁸ CDR, 2003, p.10.

⁴⁹⁹ EBRD, 2003, p.23.

comparison with the other relevant states is enough to understand the situation. The figures provided by the Green Alternatives are stated as;

Landowners and land users in Turkey received significantly lower levels of compensation than the already inadequate payments made in Azerbaijan and Georgia. In Turkey, average compensation within the 8m corridor is under \$1 per square meter, in Azerbaijan it is \$1.5 and in Georgia \$3.⁵⁰⁰

It's seen from the quotation above that there is an inadequate compensation mechanism in Turkey. Although the income per capita is higher in Turkey, the prices paid for lands are much lower than the other countries on the route, namely Georgia and Azerbaijan. It's claimed that not only prices paid for lands but also, there was insufficient information provided to the affected communities with regards to resettlement and compensation issues.⁵⁰¹

Green Alternatives argued that the IFIs and BTC Company have shown themselves unwilling to adequately address their failures. Therefore, ministries and parliamentarians need to investigate. They must ensure that:

Villagers are adequately compensated for damages incurred due to construction of BTC; Villagers are compensated for loss of income due to construction work; Land disputes are resolved equitably; Communities are not discriminated against according to ethnicity or religion; Safety issues of the pipeline are investigated independently, particularly the ongoing coating problems; Consortium members and supporting IFIs are held to

⁵⁰⁰ Green Alternatives and et.al, 2005,p.6.

⁵⁰¹ EBRD,2003,p.21.

*account for failing to adequately address problems previously reported to them.*⁵⁰²

Yet, it's claimed that there are also some positive developments. For instance, BTC claimed that in the previous natural gas pipeline project, neither pastures nor crops were compensated due to current legislation of Turkey. However, in the BTC project, crops are being compensated to land users based on valuations made by the Atatürk University Faculty of Agriculture.⁵⁰³ It's argued that the real problem here is not only inadequacy of national laws but also the lack of regulations for compensation exclusive to the BTC project. Because, it's a special Project and such major issues should have been regulated by agreements between the relevant states and the Consortium.

IV.4.3.5 Resettlement

In general resettlement means "relocation or the transportation of people as a family or colony to a new settlement"⁵⁰⁴ In this context, it means to change the place of villages or hamlets. However, in the context of the BTC Project and in the RAP, resettlement is defined as economic displacement.

Resettlement is another major human rights issue discussed in the frame of the Project. Resettlement has also links with compensation problems

⁵⁰² Green Alternatives and et.al, 2005,p.7.
http://www.bakuceyhan.org.uk/publications/FFM_sep_05.pdf (Last visit: 10.10.2006).

⁵⁰³ CDR, 2003, p.10.

⁵⁰⁴ <http://wordnet.princeton.edu/perl/webwn?s=resettlement> (Last visit: 07.06.2007).

mentioned above. In this context several human rights are alleged to be violated by the state and BTC Co. For instance, the Kurdish Human Rights Project has filed cases in the European Court of Human Rights on behalf of 38 affected villagers along the route, alleging multiple violations of the European Convention on Human Rights including the illegal use of land without payment of compensation or expropriation, underpayment for land, intimidation, lack of public consultation, and damage to land and property.⁵⁰⁵

For the purpose of resettlement, the Resettlement Action Plan(RAP) was prepared. The aim of RAP was to go beyond national regulations and make the compensation and resettlement procedures easier. However, in some cases it made the procedure more complicated and stayed behind the national regulations.

IV.4.3.5.1 Resettlement Framework

BTC claims that there would be no physical resettlement at any place along the pipeline — in any of the three countries. The Resettlement action plan aims to ensure that all affected parties are compensated and assisted in restoring their livelihoods. In accordance with the national legislation of Turkey compensation payments will be made to only register land owners and tenants.⁵⁰⁶

⁵⁰⁵ Hannah, E., "2003.

⁵⁰⁶ BTC Project: Resettlement Action Plan .

Actually, the RAP only covers economic displacement, mainly related to acquisition of crop and pasture land.⁵⁰⁷ It was stressed again that, although the pipeline passes near 293 villages in Turkey, there has been no need for physical resettlement in Turkey or at any point on the pipeline route. Land acquisition and compensation procedures ensure compliance with IFC/World Bank standards on these issues. As was noted in Erzurum, a Resettlement Action Plan (RAP) Fund has been established by BTC Co. to provide for compensation to informal users of state lands, including common land users, tenants without tenancy agreements and fishermen.⁵⁰⁸

IV.4.3.5.2 Resettlement Action Plan(RAP) and Expropriation Law

A comparison of the provisions of the Resettlement Action Plan (RAP) with the legally binding requirements of Turkey's Expropriation Law⁵⁰⁹ reveals the RAP's provisions for negotiating land values would appear to be in direct conflict with Law of Turkey on two specific counts:

- negotiation and bargaining, and
- valuation procedures.

⁵⁰⁷ BTC Project: Resettlement Action Plan on http://www.bp.com/liveassets/bp_internet/bp_caspian/bp_caspian_en/STAGING/local_assets/downloads_pdfs/xyz/BTC_English_RAPs_RAP_Part_D__Turkey__Content_BTC_RAP_Annex_5.1.pdf (Last visit: 06.06.2007).

⁵⁰⁸ CDR, 2003, pp.14-15.

⁵⁰⁹ Law No. 2942, ratified 4 November 1983, published in Official Gazette 8 November 1983, amended 2001.

The Expropriation Law of Turkey⁵¹⁰ states that “the administration shall assign one or more than one reconciliation commission ... for the purpose of executing and completing the purchasing works through *bargaining* over the estimated cost and through barter.”⁵¹¹

By contrast, the RAP explicitly rules out any bargaining or bartering in the negotiation process. In its clearest explanation of the procedure that has been adopted, it states:

*“The Negotiations Commission begins discussions with landowners based on the range of land values established by the Valuation Commission. The “negotiation” process does not consist of bargaining. Indeed, the negotiation commission has no room for bargaining. Rather, this commission explains the basis of valuation to affected communities and each of the affected titled deed owners. It provides detailed information obtained from each source specified under the Law and shows how valuation decisions have been reached.”*⁵¹²

As seen from the quotation, the RAP imposes land values rather than negotiate with the land owners. In this regard, RP seems backward comparing to the expropriation law of Turkey which also foresees bargaining process as well.

⁵¹⁰ Law No. 2942, ratified 4/11/83, published in Official Gazette 8/11/83, amended 2001, reproduced in RAP Turkey Final Report, Annex 3.1: Expropriation Law

⁵¹¹ The document of the law can be found on [http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/Tur+-+AnX+3.1/\\$FILE/RAP+-+Annex+3.1+-+Turkish+Expropriation+Law.pdf](http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/Tur+-+AnX+3.1/$FILE/RAP+-+Annex+3.1+-+Turkish+Expropriation+Law.pdf)

⁵¹² **RAP Turkey Final Report**, Chapter 5: Land Acquisition Procedures, 5.2.2, p. 5-12, November 2002

BTC claims that it was able to design a pipeline route that avoided the permanent dislocation of any people and the destruction of any buildings. Further, economically displaced landowners and users are to be compensated using a transparent and consultative process that provides opportunities for economic enhancement.⁵¹³

IV.4.3.6 Employment and Labor Rights

In the context of the TNCs, labor rights are one of the leading issues not only in the oil sector and the BTC pipeline case, but also in all over the world and in all the sectors. The problem has also some historical and ideological roots. Being non-civil and political rights, labor rights during the Cold War, particularly in the Western world, were not recognized as proper human rights. Despite the ILO principles, they were accepted by many theorists and activists as wishes. Yet, with the end of the Cold War, the ideological mindset has transformed and like other social, economic and cultural rights, labor rights were also taken into consideration by human rights theorists. Thus, as it is in the language of the Vienna Declaration, all human rights are universal, indivisible, interdependent and interrelated⁵¹⁴ and derived from the right of all to live in conditions befitting the dignity of the human person.⁵¹⁵

⁵¹³ Smith, G.A., 2004.

⁵¹⁴ The Vienna Declaration and Programme of Action, 1993, art. 5.

⁵¹⁵ Paul, J. Report of the Oslo Symposium, 2-3 October 1998, (Oslo : United Nations Development Office, 1998)..

Labor rights as human rights⁵¹⁶ have been commonly claimed by trade unions, labors, politicians and human rights activists in the post Cold-War era. The core labor standards of the International Labor Organization (ILO) include:

*1) No labor market discrimination including discrimination by race, religion, ethnicity, gender, or political opinion. 2) No forced or compulsory labor, with limited exceptions for military service and national emergencies. 3) No exploitive child labor – the baseline minimum working age is set at fifteen, although if a country is insufficiently developed or only light work is involved, the age can be lower. For hazardous occupations the minimum working age is raised to eighteen 4) The right of freedom of association, which gives workers the right to form and join organizations choosing on their own, including unions. Governments may not dictate the form, affiliations, or internal operations of these organizations. 5) The right of workers to engage in collective bargaining with employers who cannot discriminate against workers who join trade unions. Governments must encourage voluntary collective bargaining.*⁵¹⁷

In addition to the ILO principles, the UDHR Article 20 says that “ (1) Everyone has the right to freedom of peaceful assembly and association.(2) No one may be compelled to belong to an association.”⁵¹⁸ Article 23: “ (4) Everyone has the right to form and to join trade unions for the protection of his interests.”⁵¹⁹

⁵¹⁶ Alston, F. (ed.), **Labor Rights as Human Rights**, (Oxford: Oxford, 2005).

⁵¹⁷ for details see <http://www.ilo.org/ilolex/english/subjectE.htm> (Last visit: 25.04.2007).

⁵¹⁸ UDHR, Article 20.

⁵¹⁹ Ibid., Article 23.

It is a highly sensitive issue to analyze the compatibility of the BTC regulations with the UDHR articles, ILO principles as well as with the other labor rights. It's argued that BTC sought to establish a new benchmark for a major infrastructure project with respect to the promotion of internationally recognized human rights and environmental standards. For this effect, BP incorporated into core Project documents a commitment to respect applicable standards articulated in the UDHR, the Tripartite Declaration of Principles established by the ILO, and the Guidelines for Multinational Enterprises promulgated by the OECD. Early initiatives to implement such standards included efforts to avoid a significant environmental and safety hazard, adopt a precedent-setting level of transparency, and comprehensively engage local populations.⁵²⁰

The Joint Statement also claims also that;

*We confirm our understanding that International Labor Organization conventions on Forced Labor, Freedom of Association and Right to Organize, Collective Bargaining, Discrimination, Equal Remuneration and Minimum Age, all as in effect from time to time, will apply to the development and operation of the Project, and that the Project is and will remain subject to the standards set forth in any and all other international labor and human rights treaties to which any host State is a party from time to time.*⁵²¹

Yet, there are some counter arguments claiming that there are some incompatibilities in the practices. Human Rights Monitoring Programme observed and insisted that, "in some cases, workers involved in BTC constructions are not able to demand compensation for damage to their

⁵²⁰ Smith, G.A., 2004.

⁵²¹ Joint Statement, principle 8.

health and also employees have no insurance.”⁵²² However, the workers with whom interviews are conducted said that the BTC is very sensitive about the labor issues. They insist that the insurance and health are given very importance by the company. What they have seen and believed is that in the BTC is a human-centered company.

NGO Monitoring Programme, on the other hand, said claims are not limited only with health care and insurance. As it was claimed before, employees of the BTC are not allowed to establish trade unions.⁵²³ Yet, the BTC denied and claimed that BTC and associated companies have recognized the right of employees to establish trade unions.⁵²⁴ This question was asked to all employees participated in interviews. They said that “yes there is not a trade union. But no one also so far has attempted to establish or join a trade union.” Because, they say “we got high salary and this might be a reason for non-existence of a trade union”. However, some of the workers – a small segment- also stressed that if they form or join a trade union they might lose their job. Particularly, unskilled workers are very afraid of this.

IV.4.3.7 Environmental Degradation and Related Effects

The increasing emphasis on environmental protection and ecological preservation makes it eminently desirable to analyze the conceptual

⁵²² NGO Monitoring programme, 2005, pp.7-8.

⁵²³ NGO Monitoring programme, 2005, p.8.

⁵²⁴ Ibid.

values in which environmental rights is based. The fundamental significance of environmental protection in shaping the quality of life of a people was reflected, from the commencement of the second half of 20th century, in the constitution of many countries, which include both developed and developing nations. There is a growing volume of environmental legislation and an increasing number of environmental protection agencies.⁵²⁵

Human rights and environmental protection are now increasingly viewed as complementary rather than as unrelated or opposing phenomena. Previous approaches in each of these disciplines tended to view each category as separate, and at times even anti-thetical, to realization of the objectives of the others. For example, until very recently, human rights instruments in general accorded minimal attention to the environmental aspects of their subject matter. The current evolving consensus is that achievement of the objectives in each area is linked to achievements in the other areas. This realization results from a growing awareness of the inadequacies of previous efforts to deal with them separately.⁵²⁶

⁵²⁵ Pathak, R., "The human rights system as a conceptual framework for environmental law" available at <http://www.unu.edu/unupress/unupbooks/uu25ee/uu25ee0k.htm> (Last visit 16.07.2007).

⁵²⁶ Lynch, O., " Human Rights, Environment, and Economic Development: Existing and Emerging Standards in International Law and Global Society", available at <http://www.ciel.org/Publications/olp3vi.html> (Last visit: 16.07.2007).

IV.4.3.7.1 Defining the Rights to Environment

The right to environment is derived from human rights. The right to life lies in the central core of human rights. Without a sound environment it would not be possible to sustain an acceptable quality of life or even life itself. The right to environment therefore originated in the right to life, but transcends life. Thus it is a new human right of modern times. The right to environment arises on the basis of the common interests of humankind. With the environment deteriorating, people have begun to realize the consequences and cry for the right to live in a sound environment, hence the idea of a healthful environment. This has alerted the people to the notion that they are not only obliged to protect and improve the environment but also must leave a better environment for the future generations. This is something new in the concept of human rights.⁵²⁷ The Stockholm Declaration (1972) states about the right to environments: "Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations."⁵²⁸ It warns that everybody has a responsibility for the protection and the improvement of the environment. Finally- and this is new in the human rights language - it also opens a time perspective by speaking of future generations.⁵²⁹

⁵²⁷ Min, L., "Right to Environment: A New Human Right Of Modern Times" available at <http://www.humanrights.cn/zt/magazine/20040200485103254.htm> (last visit: 16.07.2007).

⁵²⁸ Stocholm Declaration, principle 1,

IV.4.3.7.2 The Right to Environment

Sustainable development as one of the alternative development tradition has prompted a rethinking of development agenda linking issue of sustainability to concern for growth and equity.⁵³⁰ The earliest concept emphasized the need for economic development to be compatible with constraints set by the natural environment, one that satisfies the needs of the present generations without putting in jeopardy the satisfaction of needs of the future.⁵³¹ More recently, it has also been stressed that economic development should be compatible with political and social institutions. So a holistic concept of sustainable development has emerged in which economic, ecological, social and political factors need to be simultaneously considered.

Participation by individuals, particularly at the community level, is seen as an essential means for achieving sustainable development and formulating development goals. In the language of the Declaration on Human Rights and environment “human rights, an ecologically sound environment, sustainable development and peace are interdependent and

⁵²⁹ Kiss, A., “An introductory note on a human right to environment” available at <http://www.unu.edu/unupress/unupbooks/uu25ee/uu25ee0k.htm> (Last visit 16.07.2007).

⁵³⁰ Brohman, J., 1996, p.305.

⁵³¹ Declaration of Principles on Human Rights and the Environment, Geneva, 16 May 1994, principle 4.

indivisible.”⁵³² The interdependency is also strengthened by the preamble of the Draft Principles on Human Rights and the Environment, annexed to the report of the United Nations Special Rapporteur on Human Rights and Environment, which states that "human rights violations lead to environment degradation and environmental degradation leads to human rights violations.”⁵³³

At the end of the World Summit for Social Development, the participating States issued the Copenhagen Declaration on Social Development and Programme of Action.⁵³⁴ In this Declaration, they stated that sustainable and equitable development must incorporate democracy; social justice; economic development; environmental protection; transparent and accountable governance; and universal respect for, and observance of, all human rights.⁵³⁵ Moreover, the Copenhagen Declaration on Social Development endorses “democracy and transparent and accountable governance and administration in all sectors of society” as “indispensable foundations for the realization of social and people-centered sustainable development.”⁵³⁶

⁵³² Id. Principle. 1.

⁵³³ The 1994 Draft Declaration of Principles on Human Rights and the Environment, preamble.

⁵³⁴ Copenhagen Declaration on Social Development in Report of the U.N. World Summit for Social Development, U.N. Doc. A/CONF.166/9 (1995), full text is available gopher://gopher.undp.org/00/unconfs/wssd/summit/off/a--9.en

⁵³⁵ Ibid., para. 26.

⁵³⁶ Ibid., par.4.

In terms of aims and objectives the sustainable development has common rationale with sustainable human development, which is defined by UNDP as follows;

[It]doesn't merely generate growth, but distributes its benefits equitably; it regenerates the environment rather than destroying it; it empowers people rather than marginalizing them; it enlarges their choices and opportunities and provides for peoples' participation in decisions affecting their lives. Sustainable human development is development that is pro-poor, pro-nature, pro-jobs and pro-women. It stresses growth but growth with employment, growth with environment, and growth with equity.⁵³⁷

The United Nations Conference on Environment and Development (UNCED) recognized the need for the integration of economic and environmental aspects of international law. This interdependence is reflected in Principle 4 of the Rio Declaration on Development and Environment, which provides that "in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."⁵³⁸

IV.4.3.7.3 Rights to Environment in the BTC

The BTC's approach to environment is to apply key international principles to its activities. They are assessment of environment and social impact, minimizing potential impacts through design and other mitigation

⁵³⁷ Sagasti, F.R. **Development Cooperation in A Fractured Global Order**, (Peru: IDRC,1999), available at http://www.idrc.ca/en/ev-28591-201-1-DO_TOPIC.html (last visit: 24.01.2008).

⁵³⁸ Rio Declaration on Development and Environment, principle 4, (visited July 19, 2001) <http://www.unep.org/Documents/Default.asp?DocumentID=78&ArticleID=1163> .

control and monitoring performance.⁵³⁹ Yet, the reports and analysis on the BTC's effects on the environment stress related human rights violations and some dangers to take place in the future. For instance, the BTC pipelines crosses 700 watercourses in Azerbaijan, 200 in Georgia and 600 in Turkey. Aside six main waterways and several ground water basins as well as other environmental sensitive and nature protected areas. These, added to crosses of over 3000 roads, railways and utility lines both over ground and underground, including crosses through seismic active fault areas. The combined effect of these on the marine and aquatic life, the biodiversity and the ecosystem in general, if not properly handled, makes it a time bomb waiting to detonate.⁵⁴⁰ It's claimed that the high potentials of oil pipeline for environmental degradation and social dislocation is legendary.

Nwete counts also other specific issues include pollution of air, land and water, bio-diversity, destruction of wetlands, rainforest, generally the ecosystem, forestry, and other foreseeable environmental hazards arising from oil spills; and from the generation, transportation and disposal of wastes, from project site. The social issues bothers on the manner of land acquisition and resettlement, the influx of work force and their needs, the use of child and forced labor, and destruction of archaeological, religious and cultural sites.⁵⁴¹

⁵³⁹ BTC Project Asia Georgia, **Management and Monitoring**,

⁵⁴⁰ Nwete, B.O.N., 2004, pp.19-20.

⁵⁴¹ Ibid., p.20.

The other claims are about the doubts on a *fait accompli* for project design and consequent environmental effects.⁵⁴² Hence, it is stressed that the project does not promote sustainable development in the region.⁵⁴³ Moreover, concerns were raised because of the failure to address indirect impacts on climate change or global warming in the environmental and social impact assessment.⁵⁴⁴

Some NGOs claimed that the ESIA's do not provide a sufficiently detailed review of all routing options for the pipeline corridor resulting in a failure to document that unjustified risks have been avoided and that the modified central corridor is the only justifiable route for BTC.⁵⁴⁵ Also it's claimed that the environmental management systems do not enforce environmental accountability.⁵⁴⁶ And lastly, analysts claim that the project will pose unacceptable risks to important elements of the natural resource base of the region.⁵⁴⁷

One of the important developments regarding the environment was a case brought in front of the court by fishers. 80 fishers, in Ceyhan, brought a case against BTC claiming that their water is polluted due the waste of BTC and also the places for fishing is not only damaged, but also

⁵⁴² EBRD, 2003,p.7.

⁵⁴³ Ibid., p.10.

⁵⁴⁴ Ibid.

⁵⁴⁵ Ibid.,p.15.

⁵⁴⁶ Ibid.,p.16.

⁵⁴⁷ Ibid.,p.20.

restricted⁵⁴⁸ Yet the case was denied by the local court of Armutlu. The fishers decided to take the case to the European Court of Human Rights.⁵⁴⁹

IV.4.3.7.4 Responses to Allegations

This issue has been addressed by BTC Co. in the Environmental and Social Impact Assessment (ESIA) that is available publicly and mitigation measures have been included in the design, to achieve best practice according to international criteria and to ensure compliance with IFC guidelines. The BTC claims that the risks involved in production and transportation of crude oil are known and appreciated by the project sponsor, as well as the EBRD and IFC.⁵⁵⁰ Also, BP/BTC claims that they have made extensive, demonstrable efforts to understand, anticipate, avoid and correct potential environmental damage. They also publicized that they recognize the need to counsel local communities regarding hazards, and benefits, in short, all aspects of pipeline presence.⁵⁵¹ The persons joined the interview from workers and villagers also verify the claim of the BTC Company that the local people were informed and consulted about all the effects of the Project.

⁵⁴⁸ Yeni Adana Daily, Martch 31, 2006.

⁵⁴⁹ Ibid.

⁵⁵⁰ CDR, 2003, pp.16-18.

⁵⁵¹ NGO Monitoring programme, 2005, p.5.

However, the opponents argued that the project sponsor has tried to represent environmental impacts of BTC that technically apply only to construction and maintenance of pipelines. And try to hide or ignore the wider effects of the project. The company is presenting only national EIAs country by country, to reduce concerns regarding the overall cumulative environmental impacts of enhanced oil drilling on Caspian's Fragile environment, the negative influence on the fragile biodiversity of South Caucasus, not to mention the enormous potential of greenhouse gas emission and its impact on Climate Change.⁵⁵²

BTC says that they are not indifferent to the environmental effects of the Project; indeed they are very sensitive to it. For instance, "In Turkey, BTC Co has been supporting a \$3,3 million Environment Investment Programme (EIP). It is aimed at minimizing the potential environmental impact of pipeline construction, and also at having a measurable and positive impact on the variety of plant and animal species in habitats close to the pipeline route."⁵⁵³ Furthermore, BTC representatives say that they take these concerns seriously and aim to make the BTC Project a model project in all respects, and the environmental, social, and human rights aspects of the project are of fundamental importance. They stress that "We are committed to BTC Co's objective of, "No accidents, no harm to people, and no damage to the environment."⁵⁵⁴

⁵⁵² Kochladze, M., 2002.

⁵⁵³ BP, "Supporting The Conservation of Rare Species And Ecologically Important Areas" available at <http://www.bp.com/subsection.do?categoryId=9006585&contentId=7013915> (last visit: 13.07.2007).

BTC and the Consortium also argue that all the aspects of the Projects, including the environment, are designed carefully by the legal regulations. And the environment aspect is given the priority over the others. For instance, the flow of the petroleum can only be interrupted under limited conditions, one of which is the immanent danger to the environment. In the HGA Appendix-2 it states that:

*that the State Authorities shall not act or fail to act in any manner that could hinder or delay any Project Activity or otherwise negatively affect the Project or impair any rights granted under any Project Agreement (including any such action or inaction predicated on security, health, environmental or safety considerations that, directly or indirectly, could interrupt, impede or limit the flow of Petroleum in or through the Facilities, except under circumstances in which continued operation of the Facilities without immediate corrective action creates an imminent, material threat to public security, health, safety or the environment that renders it reasonable to take or fail to take, as the case may be, such action and, then, only to the extent and for the period of time necessary to remove that threat).*⁵⁵⁵

The related paragraph of the Joint Statement is more straightforward. It states that “The IGA commits each State to the application of environmental standards and practices that are “no less stringent” than those generally applied within member states of the European Union from time to time. The HGAs and other BTC Project Agreements give effect to this commitment, and provide a dynamic benchmark that will evolve as

⁵⁵⁴ Joint Statement, principle 1.

⁵⁵⁵ HGA, Appendix-2, article 5.2(iii).

EU standards evolve, and as international standards and practices within the petroleum pipeline industry also evolve.”⁵⁵⁶

In addition, Joint Statement requires the application of additional standards to avoid the negative effects of the possible environmental degradation. It goes on by saying “We also note that the ESIA’s approved in each State reflect the continuing requirement to operate in compliance with these dynamic standards, as well as an additional commitment to the environmental and social policies and guidelines of the World Bank Group.”⁵⁵⁷

BTC claims that environmental concerns were fundamental in the design of the pipeline. Oil spills from onshore and offshore exploration, production, and transportation represent potentially significant environmental hazards. Yet, the independent Environmental Risk Assessment concluded that the pipeline presented the lowest risk of an oil spill and, therefore, was the environmentally optimal mode of transporting oil from the Caspian region to world markets.⁵⁵⁸ Furthermore, BTC claims that the creation of a pipeline avoids additional tanker traffic in the already congested and narrow Turkish Straits. Construction of the BTC pipeline eliminates approximately 29,000 ship

⁵⁵⁶ Joint Statement, principle 7.

⁵⁵⁷ Ibid., principle 7.

⁵⁵⁸ Smith, G.A., 2004.

movements through the Turkish Straits over the course of the 40-year lifetime of the Project.⁵⁵⁹

IV.4.3.8 Other Human Rights

Apart from the specific rights discussed in detail above, there are also some other rights claimed to be violated.

It's claiming that local authorities and law-enforcement agencies have created a certain sense of fear among people in order to prevent differences of opinion among the local communities and discouraging them from actively engaging in pipeline-related discussion.⁵⁶⁰ Regarding to this point the person answered the interview from Friend of the Earth argued that;

Probably the most important thing for you to bear in mind in terms of your feedback from local people is that many communities feel at risk if they do not state overwhelming support for the project and so may not feel safe to give honest responses to questions in relation to the impacts the project has had on their lives.⁵⁶¹

⁵⁵⁹ Ibid.

⁵⁶⁰ NGO Monitoring programme, 2005, p.11.

⁵⁶¹ Greig, S., a participant of the interview, Corporates and Trade Campaign Assistant, Friend of the Earth.

Furthermore, right to a fair hearing, right to home and family life, freedom of expression, right to an effective remedy, freedom from discrimination and right to peaceful enjoyment of possessions are among the rights violated.⁵⁶²

It's claimed that in the context of freedom of expression human rights cases have been the subjects of national as well as international courts. The most important case is the one brought to the European Court of Human Rights. In January 2004, a Fact-Finding Mission (FFM) took statements from affected villagers in the Ardahan region which resulted in an application to the European Court of Human Rights being made by 38 persons alleging multiple violations of the European Convention on Human Rights including Article 1 of Protocol 1 (the right to peaceful enjoyment of property), Article 14 (convention rights to be secured without discrimination), Article 13 (the right to an effective remedy) and Article 8 (the right to respect for private and family life).

Specific problems that were documented by the FFM included:

(i) Minimal or no consultation prior to BTC commencing; (ii) Documents being circulated in English, despite villagers being Kurdish or Turkish speakers; (iii) Failure to inform landowners and communities of the dangers of the pipeline; (iv) Landowners being misinformed about their legal rights – for example, many were told that if they went to court they would receive no compensation or reduced compensation or that they had no right to challenge the compensation paid; (v) Meetings being held in Turkish when the landowners spoke Kurdish as their first language; (vi) Cases of landowners only being told of the amount they would receive in

⁵⁶² NGO Monitoring programme, 2005, p.107.

*compensation after they had signed over their land; (vii) Cases of compensation being far less than landowners were originally promised; (viii) Generalized failure of compensation to reflect the true value of the land expropriated and the losses incurred; (ix) Cases of landowners being threatened where they refused to accept the compensation on offer; (x) Cases of the pipeline route being altered without compensation being paid for the affected land; (xi) Cases of villagers – particularly poorer tenants – fearing that they would have to leave their villages in search of employment because the compensation they received was too low to allow them to continue farming; (xii) Concerns regarding the environmental hazards inherent in living or working on land in such close proximity to the pipeline.*⁵⁶³

Freedom of association is one of the other rights that is claimed to be violated. In the previous chapters it was mentioned that TNCs are not keen on to let their employees establishing trade unions. The same arguments are also valid for BTC.⁵⁶⁴ The interviews also proved this claim. BTC denied this claim and argued that BTC and associated companies have recognized the right of employees to establish trade unions.⁵⁶⁵ But in reality they cannot explain why there is no trade union of the employees working for the project. The only answer they supply is the high wages. But only high salary is not enough to explain the lack of trade union. Since trade unions are not the instruments only for keeping the wages high.

Human rights are one of the issues that have been discussed a lot. As an economic investment project BTC, encompasses not only economic rights but also civil, political and social ones as well. The right to participation,

⁵⁶³ Friend of the Earth, **The Trial of Ferhat Kaya**, (London: KHRP, 2005), pp.15-16.

⁵⁶⁴ NGO Monitoring programme, 2005, p.8.

⁵⁶⁵ Ibid.

non-discrimination, resettlement, compensation, labor rights and the right to environment are considered to be the most relevant rights. To conclude with first paragraph of the Joint Statement which notes that the BTC and the states parties “take the concerns seriously” and are “determined to make the BTC Project a model project in all respects,” and that “the environmental, social, and human rights aspects of the project are of fundamental importance.”⁵⁶⁶

⁵⁶⁶ Joint Statement.

CHAPTER V

V CONCLUSIONS

The titanic developments at the global level in last decades have weakened the state power which created a vacuum in international arena. Thus new potent private actors have charged the vacuum. Consequently, the state's ability to ensure and protect human rights domestically and internationally has declined. Therefore, it is necessary to answer the new needs faced by the human rights system, stemming from the increased demand for protection against non-state actors. In this context, the activities of TNCs that influence the politics, economics, socio-culture and environment of the societies have a profound effect on human rights, particularly in developing countries.

TNCs have been implicated in violations of human rights such as the right to association, international labor standards, environmental rights, the right to development, and civil and political rights.⁵⁶⁷ Therefore, along with the rapid expansion of global activities of TNCs there has been emerging international concern over enjoyment of human rights. However, in the era dominated by free market ideology TNCs operate with little responsibility for their worldwide activities. Yet, as discussed in this research, there are new developments that push companies to take responsibility for human right.

⁵⁶⁷ Orentlicher, D. and Gelatt, T., 1983, p.66.

Although, there are some references in human rights instrument that foresee direct human rights responsibility of non-state actors, it seems far from being a global application, with the exception of a few local cases. Yet, there is a newly emerging mechanism of codes of conduct targeting corporate responsibility through voluntary initiatives. The problem here is the lack of enforcement that is an essential factor for an effective mechanism to ensure the protection of human rights. Indeed, “even if it can be shown that States are losing power and that they are unable to control new entities influencing people’s lives, human rights protection is still predominantly based on a state-centered approach.”⁵⁶⁸ The arguments on the responsibility of NSAs, particularly the TNCs have been developed on two different approaches.

V.1 NSAs (Ir)responsibility for Human Rights: Two Scenarios

The second chapter has focused on theoretical discussion concerning NSAs and human rights. Two conflicting approaches have been discussed and analyzed: The first approach - the newly emerging one - has called for direct responsibility of non-state actors for human rights while the second one – the state-centric approach - on the other hand has proposed the state responsibility for the activities of TNCs.

The first approach has grounded its arguments basically on both the impacts of globalization on the power of the state and to some references in the internationally recognized human rights instruments. It has been

⁵⁶⁸ Danailov, S., 1998, pp.7-8.

claimed that the world economy is shaped by market forces that are uncontrollable and the 'truly' transnational corporations which have no attachment to a particular nation state are the major economic actors.⁵⁶⁹ With the development of global market and global circuits of production, we also see a new form of sovereignty. Together with the processes of globalization, sovereignty of nation states has weakened. Furthermore, TNCs over whom states are increasingly losing control therefore besiege today's governments.⁵⁷⁰ In this sense, globalization can restrict the choices open to governments and people, particularly in the human rights area, and thus make it more difficult to attribute responsibility for violations of human rights.⁵⁷¹

Yet Cerny thinks in a different way when he developed the idea of competition state. The changes in the international market structure that led to growing competition in international markets have given rise to a new type of state behavior, best characterized as the competition state.⁵⁷² In this process unlike the arguments of the globalization proponents, Cerny claims that "the nation-state, of course, is not dead, but its role has changed."⁵⁷³

⁵⁶⁹ Held, D. et.al., 1999), pp.3-5.

⁵⁷⁰ Jochnick, C., 1999,p.63

⁵⁷¹ McCorquodale, R. and FairBrother, R.,1999, p.736.

⁵⁷² Levi-Faur, D., 1998.

⁵⁷³ Ibid, p.270.

The arguments in the context of globalization in general have been developed on the premise that globalization has weakened the state sovereignty. Therefore, the increasing influence of non-state actors in the international relations has shaken the foundation of the traditional understanding of human rights. Several scholars claim that there is a need to hold NSAs, including TNCs directly accountable if they interfere with enjoyment of human rights.⁵⁷⁴

The other theoretical pillar of the newly emerging approach is based on the references in the international human rights instruments that hold NSAs responsible for human rights. It was claimed that a number of human rights instruments, arguably seek to apply to individuals, groups and corporations thus placing direct obligations on non-state actors. For instance, the UN Universal Declaration of Human Rights, as well as the two International Covenants, in their preambular paragraphs recognizes duties on individuals to promote respect for human rights. “Declaration on the Responsibility of Individuals and Other Organs of the Society” and “the Declaration on the Right to Development” are recognizing the direct applicability of international human rights norms on NSAs. These evidences certainly represent a sign towards a change at the conception of international human rights obligations applying to non-state actors.⁵⁷⁵

It’s argued that as society and economy have evolved and other actors have more influence and power, states cannot be seen as the sole promoter

⁵⁷⁴ Gutto O. and Shadrack B., 1993, p.106.

⁵⁷⁵ Danailov, S., 1998, p.48.

and protector of human rights.⁵⁷⁶ While not ignoring the fact that states have bear a fundamental responsibility for human rights, there is the emergence of a new paradigm that will include non-state actors in the equation of human rights promotion and protection. This evolution of the norms and policies of human rights is necessary in the era of globalization.

The second approach on the NSAs responsibility was the state-centric paradigm of human rights. This approach claimed that the states are the only actors that should be responsible for human rights. They are not only accountable for the wrongdoing by the state organs, but also the one done by the private actors under their jurisdiction. Because the states are the only actors with sovereignty and that can be a party to international treaties.

The proponents of this approach argue that all human rights instruments contain explicit obligations for states to take effective measures to prevent violations of human rights. State responsibility also implies an obligation on the state to ensure private actors' compliance with international obligations and an obligation to prevent violations by them.⁵⁷⁷ A number of human rights instruments specifically express the state's responsibility for human rights violations of private actors and this has been principally recognized by voluntary initiatives as well. The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, for instance, state that "states are responsible for violations of economic, social and cultural

⁵⁷⁶ ICHRDD, 2006, 2006, p.10.

⁵⁷⁷ Leckie, S.,1998,p.109.

rights that result from the failure to exercise in controlling the behavior of non-state actors".⁵⁷⁸

There is no doubt that in all human rights instrument the state is the primary responsible actor for both human rights protection and violations. Yet human rights instruments are not clear whether, states are responsible for the activities of NCs abroad or not. There is no an explicit reference in any instrument except for the Maastricht Guidelines, a voluntary initiative. There are also practical cases that illustrate this ambiguity. These are the Bhopal case of India, the ITT case of Chile and the Ogoni case of Nigeria, which have been discussed in chapter three. For each case, there are different attitudes developed by the relevant states. In Bhopal case the company and Indian government got an agreement that has been denied by the victims. In ITT case there is no settlement at all. In the Ogoni case there is a legal mechanism applied for settlement, not by the states but by an international human rights organization, the African Commission on Human and Peoples' Rights.

The scenarios below contribute to the discussions and make the theoretical arguments much more clear and understandable.

⁵⁷⁸ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, in **Human Rights Quarterly**, Vol.20,1998,pp.691-705.

V.1.1 Scenario – 1: Direct NSAs Responsibility

As it was discussed above if direct responsibility of NSAs for human rights is realized, it will have dramatic effects on human rights, the state and TNCs as well. In such a case, there are two options. One is to develop a mechanism on moral responsibility that is based on the emergence of codes of conduct. This option seems ineffective due to its lack of enforcement. The second option is based on legal responsibility which is considered much more effective. In such a case an independent international body that has the ability and authority to monitor TNCs needs to be created. The task of such an authority will be protecting of human rights in the context of business all over the world.

Under this scenario human rights will be protected much more effectively. The Ogoni case settlement procedure has proved this reality. Because a body with a global authority that can initiate action any time against any TNC in any place will be a watchdog for human rights.

The impact on the states will vary from state to state. In states that do ignore human rights for the sake of investment or for the collaboration between state elites and TNCs the investment might decrease while the public benefit paradoxically might increase. In the failed and weak states human rights at least in the context of international business will be protected. In overall, the states will be sharing their jurisdiction power with an international body but provide their citizens with protection against the TNCs abuses. Sharing sovereignty is a fact in international relations. There are many international courts that hold jurisdiction power

together with states today. In the case of TNCs on the other hand, they will not be irresponsible anymore for their activities abroad. These limitations will force them to take human rights into consideration while doing business in developing countries.

The effectiveness of this scenario depends on the will and contribution of the states, particularly the support of big powers is vital for an applicable mechanism.

V.1.2 Scenario – 2: State Responsibility for NSAs Activities

The general perception is that in reality the states are responsible for the activities of private actors, including the TNCs. Yet the reality shows that the states are not able to control all the activities of NSAs, basically the TNCs due to several reasons; the weakening of state power as a result of globalization process; the difficulty of controlling TNC activities abroad; collaboration of TNCs and state elites in developing world; the inability of weak states to force TNCs to respect human rights; the legal deficiencies in international law are some reasons to count. In short, TNCs are “global corporations”; “denationalized”; “stateless” and “placeless.”⁵⁷⁹ That is why the states cannot control them easily. The three cases mentioned above have illustrated the inefficiency of the current system. If the current system is state-centric why the relevant states for instance in the Bhopal case the US or India and in the ITT case the US or Chile are not held

⁵⁷⁹ Dickens, P.,1998, p.193.

accountable for human rights violations taken place? Who is responsible for these violations?

All these barriers make it difficult to apply the second scenario. For instance, even if the state is held accountable for TNCs activities, then the question of “which state; home or host state?” comes. Even if there is an agreement on one of the state, then how far the state holding responsibility can make investigation in another state territory? Not only the question of sovereignty and intervention but also the problem of national security will be put forward at some level in order to hinder the investigation and monitoring.

In general, in international relations it has been the case for the state to share their sovereignty with an international or a supranational body rather than with another state, except for the period of colonization. The former has been done voluntarily but the latter had been done by force. Therefore, the first scenario seems much more effective and applicable.

V.2 TNCs’ Human Rights Assessment: The BTC Case

The size and scale of operations and the importance of the TNCs in the global economy are unbalanced in relation to the other international actors, including the states. According to the Corporate Watch statistics, among 100 largest economies in the world, 51 are corporations; only 49 are countries. Indeed, they are today leading actors in the global economy.

Transnational business operations across the globe are common phenomenon and are increasingly more so in the age of globalization. While such operations are considered to be blessings for economic growth and development in the host countries, there are frequent allegations against TNCs of violating human rights, environmental degradation and so on.⁵⁸⁰

Transnational corporations are accused of having been involved in many direct or indirect violations of human rights of a political, civil, social, economic or cultural dimension. An example is the serious allegation that Royal Dutch Shell was involved in the repression of the Ogoni people in Nigeria, the ITT case in Chile and Bhopal disaster in India. The fact that thousands of workers, especially children, are exploited, underpaid and often left in terrible living conditions in order to produce clothes and commodities that consumers, in their countries or world-wide, are buying everyday, is just an example of the grey areas of the role and influence that TNCs are said to have in the respect or violation of human rights.⁵⁸¹ In addition to these, in the case of hazardous activities of TNCs the right to life⁵⁸² of both employees and people living close to the business is under threat.⁵⁸³

⁵⁸⁰ Maniruzzaman, A.F.M, , 2006, p.1.

⁵⁸¹ Danailov, S., 1998, pp.6-7.

⁵⁸² UDHR, article 3 and ICCPR, article 6.

⁵⁸³ Kapur, R., 1990, p.16-17.

It can be inferred from these cases that not only economic, social and cultural rights are violated by companies, but also other rights are also violated. For instance, it has seen in the Bhopal case of India that the right to life and environment and also in the ITT case of Chile all the rights of citizens that are attached to democratic participation were violated. The leading cases discussed in the chapter III, namely Bhopal, the ITT and Ogoni, each shows violations of a specific rights or one side of the case has been the subject of discussion. Therefore, it is difficult to understand the impact of TNCs on human rights adequately only through these leading cases. Therefore, the case of BTC has been analyzed in this thesis.

Baku-Tbilisi-Ceyhan (BTC) Oil Pipeline Project has been the subject of international concern not only with its capacity but also with its social, economic and environmental impacts in the region. Human rights are one of the issues that have been discussed a lot in the context of the BTC. As an economic investment project BTC, encompasses not only economic rights but also civil, political and social ones as well. The right to participation, non-discrimination, resettlement, compensation, labor rights and the right to environment are considered to be the most relevant rights.

The BTC project is subject to an exclusively negotiated legal regime, set out in an international agreement (the IGA) and a private contract between the BTC Consortium and the Government of Turkey (the HGA).⁵⁸⁴ There was lack of human rights policies in the preliminary regulatory framework that composed of IGA and HGAs. Human rights

⁵⁸⁴ EIA, 2003, p.2.

are not mentioned in any article of these two agreements. For this reason Amnesty International argued that the legal agreements signed by the government of Turkey and the pipeline consortium effectively create a “rights-free corridor” for the pipeline, disregarding the human rights of thousands of people in the region.⁵⁸⁵

BTC case is an important case that has shown how the public pressure can force TNCs to respect human rights as well. Civil society opposition to the BTC Pipeline Project reached a noticeable pitch in the summer of 2002. In August of that year, an international coalition of NGOs issued a press release charging the IGA-HGA framework for paving the way for human rights abuses and environmental disasters in the pipeline corridor. At the same time, the coalition of NGOs released a series of fact-finding reports, based on investigative missions sent to Turkey, harshly criticized the project for the threat that pipeline construction and operation posed to human rights and environment.⁵⁸⁶ Meanwhile, environmentalist movements and human rights activists created forums to increase public participation awareness. As a result of the pressure from the NGOs, three additional documents were issued in 2003 seeking to respond to criticisms directed to the HGA-IGA structure by the NGO community. These new Project Agreements are the Human Rights Undertaking, the Joint Statement, and the Security Protocol⁵⁸⁷ directly address most of the

⁵⁸⁵ Amnesty International, 2003.

⁵⁸⁶ Remer, T.E.L., 2005, p.11.

⁵⁸⁷ BP, 2003, p.6.

concerns spelled out in various NGO reports regarding social, human rights and environmental implications of the project.⁵⁸⁸

Apart from the specific rights discussed in detail above, there are also some other rights claimed to be violated.

It's claiming that local authorities and law-enforcement agencies have created a certain sense of fear among people in order to prevent differences of opinion among the local communities and discouraging them from actively engaging in pipeline-related discussion.⁵⁸⁹ Furthermore, right to a fair hearing, right to home and family life, freedom of expression, right to an effective remedy, freedom from discrimination and right to peaceful enjoyment of possessions are among the rights violated.⁵⁹⁰

The BTC case has illustrated that TNCs violate not only economic, social and cultural rights but also civil, political and even third generation of rights, particularly the right to self-determination and the right to a clear environment.

⁵⁸⁸ Remer, T.E.L., 2005, pp.22-23.

⁵⁸⁹ NGO Monitoring programme, 2005, p.11.

⁵⁹⁰ NGO Monitoring programme, 2005, p.107.

V.3 Why a New Mechanism?

The discussions so far depict that there is a deficiency in protecting human rights. As we have seen from the scenarios above, the states alone are unable to protect human rights. The three leading cases, namely Bhopal of India, the ITT of Chile and the Ogoni of Nigeria, that have been analyzed in the thesis also showed clearly the deficiency in protection human rights. Although there were human rights violations in the three cases, in the Bhopal case there was a political settlement, in the ITT case there was no even attempts for settlement and in Ogoni of Nigeria a legal mechanism was applied.

The first two cases also shows that human rights as a legal issue has been the subject of political realm and a means of real politic. When the politics dominate human rights issues then human rights violations cannot be stopped and respect for human rights cannot be realized at the global level.

If a new mechanism preferably based on the Scenario number one is not realized, then human rights violations by TNCs will continue. Therefore, in order to protect human rights effectively, a new mechanism that holds not only the states but also non-state actors, particularly TNCs responsible for human rights is needed.

However, today's international environment particularly the states and TNCs are not ready to accept such a system. 60 years ago, even the states were not accepting responsibility for human rights. But today no one

denies such a responsibility. Therefore, emerging awareness among people about the subject, NGO pressure and development of codes of conduct today might lead a legal and effective mechanism for holding TNCs responsible for human rights in 60 years. I.e. if the suggestions below are taken into consideration by the world community, today's moral responsibility might give birth to a legal responsibility in a few decades.

V.4 Prospects for the Future

It is obvious that possible ways to hold these new human rights violators directly accountable are thus needed. The threat posed by TNCs to human rights is a reality that not only theoretical analysts but also the international community has to address.⁵⁹¹ In this regard, development of codes should be encouraged to maximize their beneficial impacts. The chapter three of this thesis has shown through Global Compact case studies, namely BP, NIKE, HSBS, Achilles and Lufthansa, how codes can contribute to the effort of TNCs concerning human rights.

Secondly, TNCs should be encouraged to draft codes of conduct which are based on international human rights instruments. Governments could assist in this by establishing criteria for codes, publicly acknowledging and rewarding companies who develop and implement such codes and requiring companies tendering for government contracts to implement codes both domestically and abroad.

⁵⁹¹ Ibid., p.9.

The lack of will to remedy to TNCs' escape from international human rights obligations is balanced by the increased awareness, especially within international civil society. Sensibility towards the issue is a first step that will have to be followed by efforts, at all levels and from various approaches in order to ensure that human rights are not just ideals but also a reality.⁵⁹²

Concerning the prospects for the BTC, we need to focus on the operation stage of the Project. I.e. our suggestions should focus on the current state of the project. All the human rights violations discussed in the context of the BTC in the fourth chapter have taken place at the construction phase of the project. But the construction phase has been finished in 2006. Therefore, the suggestions need to be developed for operation stage.

In this regard, the maintenance and renovation of the pipeline is vital for protecting human rights along the pipeline. Oil leakage can cause not only environmental disaster but also threaten human life. By the time, it is possible for the water resources to be polluted or the eco-system around the pipeline to be damaged, if the pipes are not well-handled. Thus, the administration of the BTC Co. needs to be very careful for the maintenance of the pipeline.

The relevant states also need to monitor the BTC's effort for preventing a human disaster in the future. BTC Co. is going to operate the pipeline for

⁵⁹² Danailov, S., 1998, p.60.

40 years with possible extension of extra 20 years. If the BTC Co. aims to keep the pipes only for its own term and escape investing to keep it for longer term, then the relevant states might get a pipeline that is not generating oil but disasters after 40 or 60 years. Therefore, they have to monitor seriously the pipeline operator, the BTC Co.

The NSAs, particularly the TNCs are violators of human rights and today they are not held responsible for their wrongdoings. In order to protect human rights properly new policies must be developed, the international human rights regulations need to be re-conceptualized⁵⁹³ and a new human rights regime that holds NSAs accountable needs to be established. Otherwise, it might be too late as Alston claimed “While non-state actors were building the Global Village, we were busy with yesterday’s issues and concepts.”⁵⁹⁴ Therefore, updating the international human rights understanding and regulations is not only necessary but also inescapable.

⁵⁹³ ICHRDD, 2006, pp.5-6.

⁵⁹⁴ Alston, P., “The Myopia of the Handmaidens: International Lawyers and Globalization” in **European Journal of International Law**, Vol. 8, No.3, 1997, p.447.

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APPENDIX-I: CURRICULUM VITAE

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EDUCATION

Degree	Institution	Year of Graduation
MA	Essex Uni, Human Rights Centre	2002
B.Sc.	METU International Relations	1999

WORK EXPERIENCE

Year	Place	Enrollment
2003- Present	Prime Ministry, Undersecretariat For Foreign Trade, ITKIB; Istanbul	Rapporteur
2001-2003	Parliament of Turkey; Ankara	MP Advisor

FOREIGN LANGUAGES

Advanced English, Intermediate Arabic

PUBLICATIONS

1- Akyesilmen, N., "Islam and Human Rights: Some Reflections on a Controversial Debate" in **The International Politic Journal**, No.153, January, 2003.

2- Akyesilmen, N., "Realism and Human Rights in International Relations: A Possible partnership in the Future?" in EUROPA, Vol. 15, January 2004, (In Russian)

ACTIVITIES

2007-... Ankara representative of Young Civillians

2002-2004 Member of Amnesty International

2000-2001 Chairperson of Amnesty International in University of Essex

1998-2000 Chairperson of METU International Free Thinking Association (IFTA)

HOBBIES

Tennis, documentary films and spending time in a natural environment.

APPENDIX-II: TURKISH SUMMARY

ÇOK ULUSLU ŞİRKETLERİN İNSAN HAKLARI

SORUM(SUZ-LU)LUĞU:

BAKÜ-TİFLİS-CEYHAN PETROL BORU HATTI ÖRNEĞİ

ÖZET

Özetle, Son çeyrek asırda, dünyada meydana gelen küreselleşme gibi büyük değişiklikler neticesinde devletler güç kaybına uğrarken, devlet dışı aktörlerin gücü artmıştır. Bu sürecin devletin temel insan hak ve özgürlüklerini koruma kapasitesi üzerinde olumsuz bir etkisi olmuştur. Bu çerçevede, ekonomik küreselleşmenin baş aktörü olan çok uluslu şirketler, sadece insan haklarını tehdit etmemiş, aynı zamanda devlet merkezli insan hakları anlayışının sorgulanmasına zemin hazırlamıştır.

Tezin iddiası, devlet merkezli paradigmanın insan haklarını ihlal eden devlet dışı aktörleri kapsamakta zorluk çektiği yönündedir. Bu tez temelinde, devleti birincil aktör olarak kabul etmekle birlikte, insan haklarından tek sorumlu aktör olarak görülmemesi gerektiği düşüncesini savunur. Bu nedenle, tez başta çok uluslu şirketler olmak üzere, devlet dışı aktörleri insan haklarından sorumlu tutacak yeni bir uluslararası mekanizmanın kurulmasını önermektedir.

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ÖZ GEÇMİŞ

GİRİŞ

Modern insan hakları anlayışı ulus devlete paralel bir gelişme göstermiştir. Fakat son 60 yılda dünya politikasında önemli bir yer tutmaya başlamıştır. Tarihsel olarak devlet hak ve ödevlerin tek kaynağı olarak kabul edilmektedir. William Meyer bu gerçeği ifade ederken insan haklarına ilişkin her şeyin devletin etrafında döndüğünü iddia eder. İnsan hakları politikası, hakların korunması ve hakların felsefesi devleti temel aktör olarak görmektedir. Fakat son yıllarda uluslararası düzlemde meydana gelen büyük değişiklikler, bu devlet-merkezli insan hakları anlayışı için birtakım zorluklar doğurdu. Bu zorluklardan birisi şudur; devlet dışı aktörler de insan haklarını ihlal edebilir veya sık sık ihlal etmektedir. Yani insan hakları alanına devlet dışında yeni aktörler de rol almaya başlamıştır. Bu aktörlerin ortaya çıkmasıyla birlikte, bu aktörlerin eylemlerinden kimin sorumlu tutulması gerektiği sorusu sorulmaya başlandı.

Küreselleşme çağında piyasa merkezli ekonomi politikaları, özelleştirmeler, dış yatırımlar ve özel sektörün serbestliği öncelik verilen konular haline geldi. Çok uluslu şirketler, uluslar arası finans kuruluşları ve uluslar arası örgütler gibi küresel ekonominin kilit oyuncularını da bu gelişmeleri desteklemektedir. Çok uluslu şirketler başta olmak üzere devletdışı aktörler bugün uluslararası düzenin önemli birer parçalarıdır.

Devletdışı aktörlerin insan hakları sorumluluğu hususunda iki farklı kuramdan bahsetmek mümkün. Birincisi, "yeni bakış" denen kuram

devletdışı aktörlerin eylemlerinden direk olarak sorumlu tutulması gerektiğini ileri sürer. Fakat “devlet-merkezli” ikinci kuram çok uluslu şirketler ve devletdışı aktörlerin eylemlerinden devletin sorumlu tutulması gerektiğini iddia eder.

Birinci kurama göre kürselleşme ile birlikte devletlerin gücü zayıfladığı için insan haklarını koruyamamaktadır. Buna ek olarak bazı insan hakları dokümanları da devletdışı aktörlerin sorumlu tutulması gerektiğini ileri sürerler. Diğer tarafta, devlet-merkezli kuram ise bütün insan hakları dokümanlarının insan hakları konusunda devleti birinci sorumlu kabul ettiğini iddia etmektedir.

Tezin ana teması çok uluslu şirketlerin insan hakları konusundaki sorumluluğudur. Tez temelde şu soruya cevap aramaktadır: *Çok uluslu şirketler insan haklarından sorumlu tutulmalı mıdır?*

Bu soruya cevap vermek için derin hukuki ve hukuk dışı görüşlerin analizlerine gerek vardır. Fakat bu tezde analizler daha çok hukuk dışı görüşler ışığında geliştirilmektedir. Tezde çalışılan BTC projesi ise Türkiye bölümü ile sınırlandırılmıştır. Fakat gerektiğinde Gürcistan ve Azerbaycan örneklerine de işaret edilmiştir.

Özetle, devlet merkezli paradigmanın insan haklarını ihlal eden devlet dışı aktörleri kapsamakta zorluk çektiği yönündedir. Bu tez temelde, devleti birincil aktör olarak kabul etmekle birlikte, insan haklarından tek sorumlu aktör olarak görülmemesi gerektiği düşüncesini savunur. Bu nedenle, tez başta çok uluslu şirketler olmak üzere, devlet dışı aktörleri

insan haklarından sorumlu tutacak yeni bir uluslararası mekanizmanın kurulmasını önermektedir.

Tezin bölümleri tek tek incelendiğinde, birinci bölüm, kısa bir girişten sonra tezin amaç ve kapsamından bahseder. Sonra literatür taraması ve ardından insan hakları kavramını

Tartıştıktan sonra temel haklar, insan hakları kuşakları ve son olarak da insan haklarının gösterdiği tarihsel gelişimi incelenir.

İkinci bölüm ise, devlet dışı aktörler ve insan haklarını inceler. Bölüm boyunca devlet dışı aktörlerin ve küreselleşmenin bir tanımı yapıldıktan sonra küreselleşmenin devletin gücü ve egemenliği üzerindeki etkileri incelenir. Bu kapsamda, devlet dışı aktörlerin insan hakları alanındaki ödevlerinden bahseden hakim görüşler incelenmiştir.

Üçüncü bölüm çok uluslu şirketlerin insan hakları alanındaki sorumluluğundan bahseder. Bölüm çok uluslu şirketleri tanımladıktan sonra dünya politikasındaki güçlerini açıklamaya çalışır. Çok uluslu şirketlerin insan haklarına olan etkileri başat örnekler bağlamında gösterilmiştir. Son olarak çok uluslu şirketlerin sorumluluğu BM'nin küresel kodlar özelinde gözden geçirilmiştir.

Dördüncü bölüm ise tezin çalışma örneği olan BTC projesi hakkındadır. Bu bölümün ilk kısmı BTC projesini genel bir bakış ile anlattıktan sonra BTC Türkiye bölümünü inceler. Sonra projenin hukuki düzenlemesi olan anlaşmalar ve insan hakları düzenlemeleri üzerinde durulmuştur.

BTC'nin insan hakları politikaları sonraki kısımda detaylıca anlatılır. Son olarak bu bölüm BTC'nin insan hakları performansı üzerinde durur.

Son bölüm, sonuç bölümüm, kısa bir değerlendirmeden sonra devlet dışı aktörlerin sorumluluğu konusunda ikinci bölümde anlatılan kuramlara dayanarak iki senaryo geliştirir. Sonra insan haklarının daha etkili bir şekilde korunabilmesi için neden yeni bir mekanizmaya ihtiyaç duyulduğunu açıklamaya çalışır. Son olarak ileriye dönük bazı öneriler geliştirir.

Devlet Dışı Aktörler ve İnsan Hakları: Devam eden Bir Tartışma

20. yüzyıl sonlarında dünya politikası büyük bir değişim içine girdi. Soğuk Savaşın son bulması iç savaşlara neden olan etnik çatışmalar, artan göçler, ekonomik rekabet, çevre, insan hakları ve kültürel kimlikler gibi yeni konular, çoğalan uluslararası örgütler ve artan devlet dışı aktörlerin rolü uluslararası politikada hissedilir şekilde ortaya çıktılar. Bütün bu değişim devletin uluslararası ilişkilerde tek aktör olduğu savını çürüttüğü tezi birçok kuramcı tarafından ileri sürülmüştür. Küreselleşme uluslararası düzeyde devlet dışı aktörlere ciddi bir alan açtı.

Bu aktörler devlet kontrolünün dışına çıkarak, hatta bazen devleti istediklere yöne iterek güçlerini artırdılar. Faaliyetleri gittikçe kontrol edilemez ve giderek insan hakları ihlalleri işlemeye başladılar. Fakat onları sorumlu tutacak herhangi bir uluslararası mekanizma olmadığı için ihlallerini sürdürdüler. Fakat bugün bu konuda artık kuramsal düzeyde ve uluslararası ticaret aktörleri ile uluslararası örgütler düzeyinde durum

sorgulanır hale geldi. Bu anlamda iki kuramsal çerçeveden bahsetmek mümkündür. Birincisi yeni görüş denilen ve devlet dışı aktörlerin doğrudan faaliyetlerinden sorumlu tutulması gerektiğini ileri süren kuramdır. Bu kurama göre, küreselleşme devletleri zayıflatmış ve devlet dışı aktörleri güçlendirmiştir. Devletler artık süreci tek başına kontrol edemez durumdadır. Bazı kuramcılar “devlet öldü” diyecek kadar ileri yorumlarda bulunmuştur. Fakat Cerney devletin zayıflamadığı aslında sadece değişim geçirdiğini ileri sürer. Cerney’in geliştirdiği rekabetçi ülke anlayışına göre, devlet varlığını sürdürmek ve gücünü korumak için yapısal değişimler geçirmiş ve bu sayede uluslar arası düzeyde diğer devletler ve diğer aktörlerle, özellikle çok uluslu şirketlerle rekabet etmektedir. Rekabetçi ülke anlayışı bile zaten devletin zayıfladığını göstermektedir. Zira devlet klasik anlamda uluslar arası düzeyde tek aktörken, bu anlayışta birkaç aktörden biridir.

Birinci kuram iddiasını sadece küreselleşme olgusuna dayandırmayıp aynı zamanda temel insan hakları dokümanlarına da işaret ederek iddiasını güçlenme çabası içindedir. Bunların başında Evrensel İnsan Hakları Beyannamesi (EİHB) gelmektedir. Beyannamenin giriş paragrafında “*her kişi ve toplumun her organı insan haklarını...*” diye devam etmektedir. Bazı kuramcılar burada kullanılan her kişi ve organdan yola çıkarak Beyannamenin devlet dışında birey ve diğer aktörlere de sorumluluk yüklediğini ileri sürerler. Rodley bu görüşe karşı çıkarak, bu paragrafın sorumluluk yüklediğini iddia eder. Sadece söz konusu aktörlerin insan hakları eğitimi ve geliştirilmesinde rol alması gerektiğini ileri sürer. Buna paralel olarak 1966 BM İnsan Hakları Anlaşmaları – Sivil ve Siyasal Haklar Anlaşması ile Ekonomik, Sosyal ve

Kültürel Haklar Anlaşması- da bireysel sorumluluklara işaret etmektedir. Kişiler, Gruplar ve Toplum Organlarının Hak ve Sorumlulukları BM Deklarasyonu ile BM Kalkınma Deklarasyonu daha açık ve net olarak devlet dışı aktörlere sorumluluklar yüklemektedirler.

İkincisi ise devlet-merkezli kuramdır. Bu kurama göre sadece devlet ve devlet kurumları insan haklarını ihlal edebilir. Devlet dışı aktörlerin yapmış olduğu ihlaller adi suçlar kapsamındadır ve devletler tarafından gerektiğinde failler cezalandırılır. Bu kurama göre, devletler uluslararası ilişkilerin tek meşru aktörüdür. Uluslar arası hukukun tek öznesi ve egemenlik hakkına sahip olan tek aktördür. Dolayısıyla haklar söz konusu olduğunda tabi ki etek sorumlu ve onları ihlal edecek tek aktör de devlettir. Devletin insan haklarından sorumlu olduğu gerçeği bütün insan hakları anlaşmaları, deklarasyonları ve diğer dokümanları açıkça devletin sorumluluğundan bahsetmektedir.

Fakat burada bir kaç sorun var. Gücü çok uluslu şirketlere yetmeyen veya yatırımı kaçırmamak için ihlallere göz yuman devletler veya bu şirketlerle işbirliği yapan devlet elitleri olduğunda kim ihlallerin hesabını soracak? Devletlerin özellikleri ekonomik gücü bu şirketlerle kıyaslanmayacak kadar zayıflamıştır. Küreselleşen ve finansa ihtiyaç duyan kalkınmakta olan ülkeler yatırımı çekebilmek için her türlü tavizi vermeye razılar. İnsan hakları onlar için çok daha tali bir konudur. Bu nedenle şirketlerin yaptıkları ihlallere göz yumabilmektedirler. Ayrıca, uluslararası hukukun boşluklarını iyi bilen şirketler devletlerin kontrolünden rahatlıkla kaçabilmektedirler.

Bu sorunların üstesinden gelebilmek için nasıl bir mekanizma geliştirilmelidir? Kim hangi durumlarda ihlallerden sorumlu olacak? Sadece devletler mi, devlet dışı aktörler sürece dahil edilecek mi? Nasıl ve kimin gücüyle?

Çok Uluslu Şirketler ve İnsan Hakları: Yeni Bir Söylem

Ticari anlaşmalar, liberalleşme ve özelleştirme sonucu 1990'lı yıllarda kürese pazarlar büyümüştür. Bu süreç, gelişmekte olan ülkeler olmak üzere bütün dünyada refah düzeyi artmıştır. Fakat bu olumlu gelişme ile birlikte insan hakları ihlalleri gibi insanlığa bazı maliyetler de yüklemiştir.

Bu süreçte baktığımızda çok uluslu şirketler güçlü bir aktör olarak karşımıza çıkmaktadır. Bu şirketler güçleri itibariyle ve faaliyetleri göz önüne alındığında küresel şirketler, milliyetsiz şirketler, devletsiz aktörler ve yersiz yurtsuz varlıklar olarak bilinirler. Mevcut uluslar arası sisteme aykırılık gösteren ve mevcut sistemle çatışan aktörler, aynı zamanda çok güçlü konumdadırlar.

Bu küresel şirketlerin ekonomik gücüne bakıldığında küreselleşmenin asıl aktörleri konumunda oldukları rahatlıkla görülecektir. Bazı istatistiklere bakıldığında durum daha net görülmektedir. 1990'da dünya çapında 77.000 şirket ve 770.000 bin yerel ofisleri vardır. Bu şirketler dünya ihracatının üçte birini gerçekleştirirken, 53 milyon üzerinde kişiye iş imkanı sağlamaktadırlar. Bir karşılaştırmalı örnekle açıklayacak olursak. Bu şirketlerin 2007 yılı ticaretleri 8 trilyon dolar dolayındadır. Türkiye'nin ihracatı ise 105 milyar dolar olmuştur. Yani bu şirketler toplamda

dünyanın en büyük 16. ekonomisi olan Türkiye ayarında 76 ülke kadar ihracat yapmışlardır. Başka bir istatistik durumu çok daha net göstermektedir. Dünyada bulunan ilk 100 ekonomiden 51'i şirket iken, sadece 49'u ülkedir. Başka bir örnek, Wal-Mart dünyanın 12. büyük şirketi durumundadır. Ekonomi büyüklük anlamında 161 ülkeden daha büyüktür. Bunlar arasında İsrail, Polonya ve Yunanistan gibi ülkeler de vardır.

Bu küresel şirketlerin en büyük özelliği insan hakları alanında sorumsuz olmalarıdır. Ve bu büyük güçleri nedeniyle insan haklarını da rahatlıkla ihlal etme yetisine sahiptirler. Bu şirketler siyasal, sivil haklardan ekonomik, sosyal ve kültürel haklara, bağımsızlıktan çevre hakkına çok fazla insan hakları ihlallerine neden olabiliyorlar. Şirketler deyince sadece işçi hakları ve ekonomik haklar akla gelmemelidir. Bağımsızlıktan, doğal kaynakları kontrol etmeye, sağlıktan işçi haklarına, sendikal haklardan yaşama hakkına, demokratik haklardan, kalkınma haklarına bir dizi hakkı ihlal edebiliyorlar. Burada birkaç başat örnek üzerinde durmakta yarar var. Bunlar Hindistan Bhopal, Şili'de ITT ve Nijerya'da Ogoni örneğidir.

Hindistan'da 1984 yılında Union Carbide adlı Amerika merkezli bir şirketin Hindistan'ın Bhopal kentindeki tesislerinde kimyasal bir patlama meydana geldi. Patlama sonucu 40 ton metil isocyanate gazı ortaya çıkmış ve hesaplara göre 2500 ile 15000 arasında insanın ölümüne neden olurken, 200.000 kişi de yaralanmıştır. Bu olayın etkileri hala bölge halkı üzerinde devam etmektedir. En basitinden u olayda temel bir insan hakkı olan yaşama hakkında ve çevre hakkında büyük bir ihlal vardır. Bu olaydan ne Hindistan hükümeti ne de Union Carbide adlı şirketler sorumlu

tutulmamıştır. Aksine ikisi bir araya gelmişler 470 milyon dolara anlaşmışlardır. Sorumlu olması gerekenlerden biri diğerinden resmen rüşvet alıp sorumluluktan kaçmaya çalışmıştır. Bu çözümü olayın kurbanları kabul etmemiş ve hala hukuki mücadelesini vermeye devam etmektedirler.

İkinci önemli bir örnek ise Şili’de 1970’lerin ortasında ITT isimli Amerika şirketi’nin CIA ile ortaklaşa seçimleri kazanan ve Devlet başkanı olan sol lider Salvador Allende’ye karşı ülkede karışıklık çıkarmak için faaliyet yapmak ve darbeye zemin hazırlama girişimidir. ITT ve CIA ortaklaşa 13 milyon dolar harcamış ve bir milyon doların ITT tarafından temin edildiği iddia edilmektedir. Bu olayın çözümü ise hala bulunamamıştır. ABD Senatosu dış işleri komitesinin yapmış olduğu bir araştırma ve araştırma sonucu yayımlanan bir rapor dışında elimizde bir şey yoktur. Şili halkının bütün demokratik haklarını ihlal eden bu girişimden kimin sorumlu olduğu sorusu cevapsız kalmıştır. Senato komitesinin çıkardığı rapor suçlamaları dahi kabul etmiş değildir. Sadece işin iddia olduğu noktasındadır.

Üçüncü önemli örnek ise, Shell’in Nijerya’da Nijer deltasında petrol çıkarması sonucu, deltada yaşayan yerli halk olan Ogonilerin bu petrol gelirlerinden yeteri kadar pay alamaması, tarlalarının sızmalar sonucu verimsiz hale gelmesi, havalarının kirletilmesi sonucu başlatılan hak arayışıdır. Nijerya devleti Shell’in yatırımlarını korumak için Ogonilerle kavga etti, birçoğunu öldürdü ve hapse attı. Ogoniler mücadelesini sürdürdü ve olayı Afrika İnsan Hakları ve Halklar Komisyonuna taşıdı. Komisyon ortada birçok insan hakları ihlallerinin olduğu sonucuna vardı

ve hem Nijerya hükümetini em de Shell'i sorumlu tuttu. Bu karar aslında bu anlamda bir milattır. Çünkü ilk defa bir uluslararası mahkeme bir şirketi insan hakları ihlallerinden sorumlu tutmuştur.

Çok uluslu şirketlerin hukuki sorumsuzluğunun doğurduğu boşluğu kısmen doldurabilmek için gönüllü bir takım inisiyatifler geliştirmiştir. Bu inisiyatiflerden başlıcaları ILO Sosyal Politikalar ve Çok Uluslu Girişimler İlkeleri, OECD Çok Uluslu Şirketler Rehberinin yanında BM Küresel Davranış Kodları veya ilkelerini sayabiliriz. Bu gönüllü inisiyatifler adından da anlaşıldığı gibi gönüllü olup bağlayıcılıkları yoktur. Tamamen şirketlerin iradesine kalmış düzenlemelerdir. Yüzlerle ifade edilen bu tür düzenlemeler mevcuttur. Kimisi bir uluslararası örgüt tarafından, kimisi birkaç şirketlerin bir araya gelmesiyle yapmış olduğu düzenleme, kimisi sektörel düzenleme ve kimisi de tek bir şirketin yapmış olduğu düzenlemedir. Bunlar neden yapılır? Bu gönüllü düzenlemelerin yapılmasının en temel nedenlerinden biri tüketicilerden gelen tepkilerdir. Örneğin, tedarikçi ülkelerde çocuk işçi çalıştırdığı iddia edilen NIKE, iddianın ortaya atıldığı yıl milyonlarca dolar zarar etmiştir. Bu nedenle NIKE bu alanda büyük atılım içine girmiş ve insan hakları alanında büyük faaliyetler yapmıştır. Şirketlerin ve özellikle küresel markalar için imaj çok önemlidir. Bu nedenle, çoğu zaman bu düzenlemeler birer kamuflaj araçlarıdır.

Bu tür gönüllü inisiyatifler tabi ki tümüyle etkisiz ve verimsiz değildir. BM Küresel Davranış Kodlarını(Global Compact) incelediğimizde üye olan bazı firmalar sürekli düzenli raporlar üretmektedirler. Global Compact 10 prensipten oluşur. İlk iki prensip insan hakları, sonraki dört

prensip işçi standartlarıyla, sonraki üç prensip çevre hakları ve son madde rüşvetle mücadele ile ilgilidir. Bu kapsamda BP, NIKE, Achilles Group, HSBC ve Lufsthansa'dır.

BM Genel sekreteri Özel Temsilciliği şirketlerin insan haklarına bakışı üzerine bir araştırma yapmıştır. Bu araştırma kapsamında yer alan şirketlerin %87'si ayrımcılık yapmama hakkını, %75'i güvenli bir çalışma ortamını, %66'sı örgütlenme hakkını veya sendika haklarını, %60'ı çocuk işçiliğinin ortadan kaldırılması gibi hakları sıralamaktadır. Sorumluluk noktasına gelince şirketler katı bir kontrol veya sorumluluktan kaçmak istemektedir. Örneğin şirketlerin %90'ı raporlamayı tercih etmektedir. Yani periyodik olarak bazı kurumlara rapor sunmayı tercih etmektedir. Hukuki bir sorumluluğu tercih etmemektedir. Şirketlerin insan hakları kaynağı olarak görmek istedikleri insan hakları dokümanlar ise sırasıyla BM Global Compact, diğer gönüllü inisiyatifler, Evrensel İnsan Hakları Beyannamesi, ILO, OECD Rehberi ve BM insan Hakları anlaşmalarıdır.

Bakü-Tiflis-Ceyhan Petrol Boru Hattı Projesi(BTC): Genel Bir Bakış ve İnsan Hakları

BTC Petrol Boru Hattı Projesi sadece kapasitesinden dolayı değil bölgedeki sosyal, ekonomik ve çevreye olan etkilerinden dolayı uluslararası arenada büyük bir ilgi odağı haline gelmiştir. Projenin bölgeye etkileri konusunda iki farklı görüş vardır.

Destekleyenler Projenin bölgeye sosyal, ekonomik ve çevre açısından büyük bir kalkınmaya neden olacağını ileri sürerler. Dünya Bankası

örneğin, Projenin sadece ekonomik değil, diğer alanlarda da büyük kalkınmaya neden olacağını söyleyen aktörlerdendir. Proje aynı zamanda ilgili ülkelere coğrafik ve stratejik bir önem de sağlayacaktır. Çünkü Batı pazarlarının Ortadoğu petrollerine olan bağımlılığını azaltacaktır. Fakat şu bilinmelidir ki olumlu etkiler resmin bütünü oluşturmamaktadır. Bu Projenin bölge ve insanlar üzerinde bir de olumsuz etkileri olacaktır. Projenin insan hakları, sosyal ve çevre alanında oluşturduğu riskler, sismik etkileri, petrolün sızma olasılığı ve çevre kirliliğinin neden olacağı sosyal ve etkiler de çok tartışılmaktadır. Projenin neden olduğu ve bu bölümün ilerleyen kısımlarında anlatacağım siyasi, ekonomik, çevre ve sismik riskler vardır.

BTC'nin inşası ve sonrası düzeylerinde meydana gelen insan hakları ihlalleri hem çeşitlidir hem de çeşitli nedenleri vardır. BTC'yi inşa eden şirketlerin oluşturduğu konsorsiyum çok güçlü bir konsorsiyumdur. BP'nin öndeliğinde 7 farklı ülkenin 11 dev petrol şirketinden oluşmaktadır.

BTC Projesi finansman, yapılış ve işletmesiyle 1776 km'den oluşan ve Hazar'dan Akdeniz'e petrol taşıyan dev bir projedir. Bu projenin en uzun bölümü 1076 km ile Türkiye'dedir, Azerbaycan topraklarında 440 km ve Gürcistan'da ise 260 km bulunmaktadır. Batı pazarlarının tükettiği petrolün %10'unu taşıması beklenmektedir. Günlük olarak bir milyon varil petrol taşıması planlanan Proje, bugünlerde yapılan denemelerde bu kapasitesini aşabileceği tahminleri yapılmaktadır.

BTC kapsamında daha önce de ifade edildiği gibi insan hakları ihlallerinin çeşitli nedenleri vardır. Bunların başında konsorsiyum ile ilgili devlet arasında yapılan anlaşmalardan kaynaklanmaktadır. En önemlisi devletler arasında yalpan IGA ve konsoryium ile devlerler arasında yapılan HGA anlaşmaları olup, bunlara kurucu anlaşmalar da denebilir. Bu hukuki metinlerin 1000 sayfayı aşmasına rağmen hiçbir yerlerinde “insan hakları” kavramı geçmemektedir. Bu anlaşmalar knsorsiyuma her türlü garantiyi verirken, 40 yıllık normal süre ve 20 yıllık bir opsiyonlu ek süre zarfında devletler hat üzerinde bu anlaşmalar ile çelişen herhangi bir düzenleme yapamayacaktı. Bu şu demektir. Önümüzdeki 60 yıl boyunca dünyada meydana gelecek büyük değişimler, değişimlerin getireceği yeni insan hakları düzenlemeleri ve çevre düzenlemeleri bu hat üzerinde uygulanmayacaktır ki bu tamamen insan haklarına aykırı bir düzenlemedir. Bu anlaşmaların başlıca özelliği konsorsiyuma haddinden fazla garantiler ve haklar vermesi ve ilgili ülkelerin elini bağlamasıdır. Bu anlaşmalar belli zamanlarda topraklarının bir kısmında düzenleme yapamama gibi bir düzenleme ile ilgili devletlerin egemenlik haklarını kısıtlamaktadır. Birçok anlamda konsorsiyuma çok güç ver vermektedir. Hat üzerinde yer alan arazilerde sınırsız bir kullanım hakkı tanımaktadır.

Hem bu anlaşmalar hem de sahada meydana gelen insan hakları ihlalleri çevre ve insan hakları STK'larını harekete geçirdi. STK'ların eleştirileri ve baskıları 2003 yılı başlarında iyice konsorsiyum, ilgili ülkeler ve projeye finansman sağlayan uluslararası finans kuruluşları tarafından hissedilmeye başlandı. Uluslar arası Af Örgütü bu dura “haklardan yoksun bir hat” olarak tanımlamış ve 2003 yılında durumu özetleyen bir rapor yayınlamıştır. 2003 yılında konsoryium tek taraflı olarak insan

haklarına saygı duyacağını ilan eden Human Rights Undertaking denen bir doküman üretti. Fakat bu dokümanın tek taraflı olması hasebiyle ve bağlayıcı bir anlaşma olmaması nedeniyle çeşitli eleştirilere hedef oldu. Aynı yıla konsoryium ve ilgili devletler ortaklaşa Joint Statemet denen ve insan hakları, çevre ve işçi haklarını vurgulayan bir belge ortaya koydular. Daha sonra bu dokümanların tıpkı IGA ve HGA anlaşmaları gibi bağlayıcı ve hukuki düzenlemenin birer parçası olacağını ilan ettiler.

BTC'nin İnsan Hakları Performansının Değerlendirilmesi

BTC kapsamında bir dizi insan hakları ihlallerinin meydana geldiği çeşitli yerel ve uluslararası STK raporlarında belirtilmiştir. Bu insan hakları ekonomik, sosyal ve kültürel haklardan sivil ve siyasal haklara, çevre ve kalkınma hakkından egemenlik hakkından geniş bir yerpayezi kapsamaktadır. Bir STK konsorsiyumu tarafından 2003 yılında yayımlanan raporda 173 insan hakları ihlallerinden bahsedilmektedir. 2005 yılında aynı konsorsiyum tarafında yayımlanan rapor, iki yıllık süre zarfında fazla bir şeyin değişmediğini ortaya koyuyordu. 2005 yılında ifade edilen bazı ihlaller şunlardır: projeye karşı görüş bildirmenin riskli olmasıyla ifade özgürlüğünün kısıtlanması, tazminatların rayiç bedellerinin çok altında olması, inşaat süresince tahrip edilen ekinler için düşük fiyat ödenmesi, Toplumsal Yatırım Programı kapsamında verilen sözlerin yerine getirilmemesi, bu program kapsamında yapılan bazı projelerin köylülerin önceliklerine göre belirlenmemesi, din ve etnik temele dayalı ayrımcılığın yapılması gibi bazı ihlaller sayılmıştır.

Tez kapsamında detaylı olarak incelenen haklardan ilki projeye katılım hakkıdır. Buna göre bilgi paylaşımından, karar alma mekanizmasına kadar uzanan bir süreçtir katılım hakkı. Katılımcılık bilgi paylaşımı, danışma, karar alma mekanizmasında yer almak ve eylem geliştirme safhalarından oluşmaktadır. BTC bu anlamda incelendiğinde bilgi paylaşımı ve danışma kısmen gerçekleştirilmiş, fakat karar alma mekanizmasında yerel halkların katılımı ve eylem düzeyinde bir eksiklik göze çarpmaktadır.

Sorumluluk incelenen diğer bir kriteridir. İnsan hakları alanında sorumluluk şirketlerin insan haklarına saygınlığı, eylemleri nedenden sorumlu tutulmasıdır. Proje genelinde insan hakları başta fazla dikkate alınmamış, fakat STKların baskısıyla birtakım politikalar geliştirilmiştir.

Proje kapsamında incelenen diğer bir hak ise ayrımcılık yapmamadır. Proje kapsamında çeşitli düzeylerde ayrımcılık yapıldığı iddiası dile getirilmiştir. Örneğin, yerelde işçi - uzman bulma imkanı bulunurken, yabancı işçilerin ve uzmanların çalıştırılması, yerli ve yabancı çalışanlara farklı ücretler ödenmesi, yemeklerinin bile farklı olması, etnik ve dini temelli ayrımcılığın yapıldığı bu anlamda Kürt ve Alevilerin ayrımcılığa tabi tutulduğu iddiaları da raporlarda ileri sürülmüştür. Fakat BTC ise, bu iddiaları reddetmiş ve yabancılar tamamen uzmanlık gerektiren işlerde, yerel düzeyde nitelikli elemanın olmadığı durumlarda çalıştırılmıştır. Ücret farkları da sadece uzmanlık ve yeteneğe dayanarak farklılık göstermiştir.

Arsa Tazminatları diğer bir alan olarak incelenmiş ve bu alandan da gerçek bedellerin altında ödemeler, tazminatlandırmada belli bir

standardın olmaması ve mevcut sistemin çoğu yönüyle ulusal düzenlemelerin bile altında kalması başlıca şikayet konuları olmuştur. Türkiye’de 30.000 arsa sahibinin hattan etkilendiği ve bunlardan önemli bir kısmının yapılan ölçüm ve ödemelerden memnun kalmadığı ifade edilmektedir. BTC ise bu iddiaları kesin bir dille reddetmekte ve hakkaniyete, yerel bedellere dikkat ettiklerini belirtmişlerdir.

İşçi hakları bu kapsamda incelenen diğer haklardır. Burada fazla çalıştırma, az ücret ödeme, ücret adaletsizliği, sendikal hakların ihlalleri gibi bir takım ihlaller belirtilmiştir. BTC de sendika kurmanın önünde herhangi bir engelin olmadığını ilan etmesine rağmen, bu yöndeki girişimleri tasvip etmediği elde edilen bilgiler arasındadır.

Çevre hakkı da incelenen bir hak olup oldukça detaylı bir şekilde incelenmiştir. Zira uzun vadede ciddi bir tehdit oluşturabilecek bir alandır çevre hakkı. Borular yaşlandıkça hat üzerinde bulunan köylerin suları, tarlaları ve genelde çevreleri zarar görebilecek ve insanların hayatları tehlikeye girebilecektir.

Bunların dışında da bir takım hak ihlallerinin mevcut olduğu ileri sürülmektedir. Öncelikle proje insanlara milli bir mesele gibi sunulmuş ve aleyhindeki görüşlerin cezalandırılacağı anlayışı halk arasında yayılmıştır. Ceyhan’da balıkçılar yerel düzeyde kaybettikleri davalarını Avrupa İnsan Hakları Mahkemesi’ne taşırken, yine mahkemeye Iğdır’dan birkaç köylü projeyi taşımış ve ayrımcılığa tabi olmama, mülkiyet hakkı ve özel yaşama saygı haklarının ihlal edildiğini ifade etmişlerdir.

Projenin insan hakları karnesi genel anlamda benzer ulusal projelerle kıyaslandığında çok daha iyi düzeyde olmasına karşın, uluslararası standartlarla değerlendirildiğinde pek de iyi durumda olmadığı görülmektedir. Projenin inşası tamamlanmış ve işletilmeye başlanmıştır. Bu tezde üzerinde durulan hakların neredeyse tamamı inşa safhasına denk gelmektedir. Fakat işletme sürecinde de başta çevre hakkı olmak üzere, yeni düzenlemelerin bölgeye yansıtılması, hattın bakımı gibi gelecekte hak ihlallerine neden olacak hassasiyetler de dikkate alınmış ve sonuç kısmında bu alanlar için bir takım önerilerde bulunulmuştur.

SONUÇ

Son yıllarda küresel düzeyde meydana gelen muazzam gelişmeler sonucu devletlerin gücü zayıflamış ve uluslararası arenada bir boşluk meydana gelmiştir. Bu boşluk doğal olarak yeni aktörler tarafından doldurulmuştur. Bunun sonucunda, devletin insan haklarını koruma gücü zayıflamıştır. Bu nedenle, yeni aktörlere karşı insan haklarını kimin, nasıl koruyacağı sorunu ortaya çıkmıştır.

Bu yeni aktörler arasında en çok dikkat çeken ve en çok insan hakları ihlallerine neden olan aktörler çok uluslu şirketlerdir. Bu şirketlerin ekonomik gücü ve onunla birlikte gelen diğer güç unsurları sayesinde bu aktörler ile ilgili ciddi kaygılar ortaya çıkmıştır. Fakat bu aktörler uluslararası düzeyde yapmış oldukları insan hakları ihlallerinden dolayı sorumsuzdurlar. Daha doğrusu onları sorumlu tutacak bir mekanizma yoktur. Kimisine göre de böyle bir mekanizmaya gerek de yoktur. Hukuki bir düzenlemenin olmayışı ve bu yönde bir iradenin ortaya çıkmaması

neticesinde, son yıllarda yeni arayışlar başlamıştır. Bu arayışlardan bazıları insan hakları dokümanlarına referansta bulunarak çok uluslu şirketlerin sorumlu tutulması gerektiğini ileri sürerken, bazıları daha çok şirketlerin gönüllü sorumluluğunun daha verimli ve gerçekleştirilmesinin daha kolay olacağını iddia etmektedir. Aslında hukuksal düzeyde kimi yerel ve kimi uluslar arası mahkemelerin kararları bu alanda yol gösterici mahiyettedir. Burada temel sorun, küresel ölçekte kabul görmüş, yaygın ve içselleştirilmiş bir mekanizmanın olmayışıdır. İstisna mahiyetindeki örnekler de maalesef sorunu çözmekten uzaktır.

Bu tezin ikinci bölümünde tartışılan kuramsal çerçeveler ışığında, insan haklarının daha etkin ve verimli korunabilmesi için iki senaryo geliştirilebilir. Teorileri hatırlayacak olursak. Birincisi yeni görüş denilen ve devlet dışı aktörlerin doğrudan faaliyetlerinden sorumlu tutulması gerektiğini ileri süren kuramdır. Bu kurama göre, küreselleşme devletleri zayıflatmış ve devlet dışı aktörleri güçlendirmiştir. Devletler artık süreci tek başına kontrol edemez durumdadır. Bu kuram iddiasını sadece küreselleşme olgusuna dayandırmayıp aynı zamanda temel insan hakları dokümanlarına da işaret ederek iddiasını güçlenme çabası içindedir. Bunların başında Evrensel İnsan Hakları Beyannamesi (EİHB) gelmektedir. Beyannamenin giriş paragrafında *“her kişi ve toplumun her organı insan haklarını...”* diye devam etmektedir. Bazı kuramcılar burada kullanılan her kişi ve organdan yola çıkarak Beyannamenin devlet dışında birey ve diğer aktörlere de sorumluluk yüklediğini ileri sürerler. Buna paralel olarak 1966 BM İnsan Hakları Anlaşmaları – Sivil ve Siyasal Haklar Anlaşması ile Ekonomik, Sosyal ve Kültürel Haklar Anlaşması- da bireysel sorumluluklara işaret etmektedir. Kişiler, Gruplar ve Toplum

Organlarının Hak ve Sorumlulukları BM Deklarasyonu ile BM Kalkınma Deklarasyonu daha açık ve net olarak devlet dışı aktörlere sorumluluklar yüklemektedirler.

İkincisi ise devlet-merkezli kuramdır. Bu kurama göre sadece devlet ve devlet kurumları insan haklarını ihlal edebilir. Devlet dışı aktörlerin yapmış olduğu ihlaller adi suçlar kapsamındadır ve devletler tarafından gerektiğinde failler cezalandırılır. Bu kurama göre, devletler uluslararası ilişkilerin tek meşru aktörüdür. Uluslar arası hukukun tek öznesi ve egemenlik hakkına sahip olan tek aktördür. Dolayısıyla haklar söz konusu olduğunda tabi ki etek sorumlu ve onları ihlal edecek tek aktör de devlettir. Devletin insan haklarından sorumlu olduğu gerçeği bütün insan hakları anlaşmaları, deklarasyonları ve diğer dokümanları açıkça devletin sorumluluğundan bahsetmektedir.

Bu iki kuramsal çerçeveye dayanarak iki senaryo geliştirilebilir. Birinci kurama dayanarak bir mekanizma geliştirildiğinde, yani devletdışı aktörlerin doğrudan eylemlerinden sorumlu tutulması insan hakları, devletler ve şirketler üzerinde çeşitli etkileri olacaktır. İnsan hakları daha etkin korunurken, devletler egemenlik paylaşımına girecek ve şirketler de daha fazla denetime tabi tutulacaktır. Bu senaryo çerçevesinde uluslararası bağımsız bir organın kurulması ve bu organın şirketleri denetleme ve yargılama yetkisine sahip olması öngörülebilir. Uluslararası arenada AB gibi, AİHM, Amerika insan hakları mahkemesi ve Afrika Halklar ve İnsan Hakları Mahkemesi gibi uluslararası veya devletlerüstü yargı organları vardır. İnsan hakları alanında oluşturulacak bu tarz bir bağımsız ve yetkili kurum şikayet üzerine veya istediği zamanda herhangi

bir şirketi denetleyebilecek ve insan haklarının korunması yönünde olumlu bir rol oynayacaktı. Böyle bir kurumun varlığı aynı zamanda şirketlerin insan hakları konularına daha dikkat etmelerini de sağlayacaktır. Tabii böyle bir kurumun verimli olabilmesi tamamen büyük ülkelerin istekliliğine ve etkili rol almasına bağlıdır.

İkinci kurama, yani devlet-merkezli kurama dayalı senaryo ise daha çok bugünkü insan hakları rejimini ifade ediyor. Bugünkü sistemin verimsiz ve etkisiz olduğu ortadadır. En azından bu tezde tartışılan çok uluslu şirketlerin ihlal ettiği hakların korunması yönünde bir mekanizması yoktur. Tezce incelenen Union Carbide, Shell ve ITT örneklerinde görüldüğü gibi bugün şirketlerin ihlal ettiği hakların tazmini veya hakların korunması sorun teşkil etmektedir. Bu örneklerle baktığımızda sadece Shell örneğinde hukuki çözüm var oda bizim birinci senaryomuzu destekler mahiyettedir. Yani bu karar bir uluslararası mahkeme tarafından verildi. Üç örnekte farklı üç yaklaşım var. Yani devlet-merkezli mevcut sistem bir standart oluşturamamaktadır. Dolayısıyla insan haklarını korumaktan acizdir. Bu nedenle, yeni bir insan hakları mekanizmasına ihtiyaç vardır. Bu mekanizma da bizim bu tezde geliştirdiğimiz birinci senaryo veya o tarzda bir kurumun kurulması ile mümkündür.

Bu bağlamda açıkça görülüyor ki uluslararası ilişkilerde ortaya çıkan bu yeni insan hakları ihlalcilerini doğrudan sorumlu tutacak bir mekanizmaya ihtiyaç vardır. Bu bağlamda yeni mekanizmanın temelleri bugün yüzlerce örneği olan küresel gönüllü davranış kodlarıyla atılmış gibi görünüyor. Bu kodlar geliştirildikçe şirketler insan haklarını içselleştirecek ve zamanla bu kodlar belki de hukuki düzenlemelere

dönüşecektir. Bu kodların geliştirilmesi için şirketlerin teşvik edilmesi gerekmektedir. Bu anlamda hem tüketiciler hem de hükümetler düzeyinde kodları uygulayan şirketler ödüllendirilmelidir. Tüketicilerde bu bilinç geliştikçe şirketler kendilerine daha fazla çekidüzen vermek zorunda kalacaktır.