Globalization: Why business has to walk lockstep with human rights

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One way of understanding present global trends is to capture the spirit of globalization in terms of the cyclic nature of the capitalist world-economy, best described in terms of Kondratieff cycles. A typical Kondratieff cycle has two components - the A-phase or the period of economic expansion and the B-phase or the downward swing. Post World War II, the Kondratieff cycle began in 1945 and the A-phase or the period of economic expansion went from 1945 to 1967-73, followed by the B-phase or the downward swing. According to Immanuel Wallerstein, the A-period of the Kondratieff cycle after WW II was a period of U.S. dominance, created by economic institutions (e.g. World Bank, IMF) and the Yalta arrangement with the former USSR, which divided the world into two parts - each under the political and economic influence of a superpower.

The A-phase is the period of equilibrium while the B-phase is a spell of disequilibrium. Once equilibrium is disturbed counter-movements are generated to restore equilibrium. The counter movements travel some distance before a new equilibrium is restored and this equilibrium is different from the earlier one. The moving equilibrium, in turn, generates secular trends. One characteristic of secular trends is that they do not continue forever, but soon hit asymptotes. At this point the system has the potential to create a new structure. Which route the system will take depends on the secular trends and the choices made for getting on top of the asystemic forces.

Post WW II, the first crisis occurred during the 1970s when the economic rise of Western Europe and Japan led to overproduction and decline in profitability of several sectors (e.g. steel, electronics). Importantly, the OPEC led oil price hike triggered the crisis. Some of the outcomes associated with the downward swing were that the “primary locus” shifted from production to speculation in the financial and real estate sectors; and production locations shifted from higher-wage regions to the “peripheral areas” of the world.

**Evolution of the human rights agenda**

Human Rights (HR) are basic rights to secure dignity and equality for all. They have the following characteristics -

- Universal - applied to everyone;
- Inalienable - can neither be taken away or given up;
- Indivisible - there is no hierarchy among rights;
- Interdependent and interrelated - violation of one right affects other rights.

The United Nations General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948 as a common standard for all people of all nations. The UDHR consists of 30 articles and has been elaborated in subsequent international treaties, economic transfers, etc. The UDHR does not
have the force of law, but is codified in international law by two covenants (1966) on civil and political rights; and social and cultural rights. The UDHR and these two covenants form the International Bill of Human Rights and nations have the primary duty to look after human rights.

In 1973, the UN Economic and Social Council (ECOSOC) appointed a Group of Eminent Persons to study the impact of Trans National Corporations (TNC) on economic development and international relations. The group of 20 individuals, after an extensive process of inquiry presented its recommendations in 1974. One of the recommendations was to establish a permanent Commission and a Centre on TNCs (UNCTC) to assist the United Nations and national governments on matters pertaining to TNCs and Foreign Direct Investment (FDI). The UNCTC at its second session held in Lima (Peru) in March 1976 suggested the establishment of a working group to prepare a code for multinationals.

From its initiation in 1974, the UNCTC engaged in three main activities - providing information, analyzing policy and providing advisory services. Global activities of TNCs was documented. With changes in the economic and political climate over the 1980s and 1990s, the UNCTC was abolished in 1993 and its activities were merged with the United Nations Conference on Trade and Development (UNCTAD). The UNCTAD and the UNCTC have together worked for more than thirty years to create knowledge and share best practice experience on ways to balance the profit-seeking objectives of the TNCs and the development needs of the underdeveloped countries. Additionally, several other UN agencies have undertaken activities connected to TNCs, such as the International Labour Organization (ILO), which adopted a Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

Since the 1990s the debate shifted from confrontation to collaboration with TNCs. Increased global flows of capital led to a renewed push for greater corporate social responsibility by the TNCs. The contents of the new paradigm were - shift in approach from designing codes of conduct to curb the influence of transnational corporations to inviting them to join a global compact to further the common good. During the Sixth Special Session of UN General Assembly held in April-May 1994 discussions were held on the NIEO (New International Economic Order) and led to the declaration and adoption of the following principles to increase the social responsibility of TNCs -

1) To prevent interference in the internal affairs of the countries where they operate and their collaboration with racist regimes and colonial administrations;
2) To regulate their activities in host countries, to eliminate restrictive business practices and to conform to the national development plans and objectives of developing countries, and in this context facilitate review and revision of previously concluded arrangements;
3) To bring about assistance, transfer of technology and management skills to developing countries on equitable and favourable terms;
4) To regulate the repatriation of the profits accruing from their operations, taking into account the legitimate interests of all parties concerned; and
5) To promote reinvestment of their profits in developing countries.
However, the power of the TNCs to influence the development pattern of a country continued to be a cause of concern and in August 1998, the UN Sub-Commission on the Promotion and Protection of Human Rights established a Working Group on Transnational Corporations. The Working Group was tasked with the responsibility to create standards for human rights obligations of the TNCs. The final draft of the “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” was developed in 2003 and received wide support from civil organizations. However, as the norms could not obtain the support of the business sector the Commission in 2004 resolved that the norms had no legal standing.

At the same time (1999), the UN Secretary-General Kofi Annan launched a UN partnership mission called the Global Compact. This was a voluntary compact that embraces ten principles of good international corporate practice, covering human rights, labour standards, the environment, and anti-corruption. The compact aimed at promoting responsible business practices among companies, through a collaborative approach. In 2005, Kofi Anan initiated the development of Principles of Responsible Investment (PRI) with a group of world’s largest institutional investors. The idea was economic, social and governance (ESG) factors were also connected to investment, therefore, should be considered alongside with conventional financial factors. These principles were launched in the New York Stock Exchange in 2006.

United Nations Guiding Principles (UNGPs)

In 2005, Kofi Anan appointed Prof. John Ruggie as a UN Special Representative (UNSG) who followed an approach of “principled pragmatism” and presented the “Protect, Respect and Remedy” (PRR) framework to the UN Human Rights Council. This framework provides a conceptual architecture and outlined the roles of the businesses and governments for human rights. These became the UNGP in 2011. These are a set of 31 principles directed at nations and companies and describe their roles and responsibilities. These principles form the first globally accepted human rights framework for preventing and addressing adverse human rights impacts linked to business activities. The PRR conceptual framework is given below –

- Protect - nations should protect human right abuses by third parties, including businesses through appropriate policies, regulation and adjudication.
- Respect - corporates should act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur.
- Remedy - greater access to effective remedy, both judicial and non-judicial.

Some key features of UNGPs are described below -

- Develop National Action Plans (NAP) to implement the UNGPs by articulating priorities and actions to be taken by nations to support commitments of business and human rights at multiple levels.
- How to respect HRs and conduct HR due diligence.
• Nations to take additional steps to prevent HR abuses by state owned enterprises or firms that receive substantial support from the state.
• The duty to protect HRs remains with the state even after it privatizes service with enabling legislation or adequate service contracts.
• Have policy coherence with respect to HR commitments at two levels, (1) international HR obligations and policy, law and practices, and (2) horizontal coherence meaning consistency with HR across functional units of central and state governments.
• Promote HRs in companies supplying goods and service through public procurement.

Changing nature of trade

In the present version of globalization, the way nations trade with one another has changed. Trade between nations happens in two ways - inter-industry and intra-industry. Inter industry trade takes place between dissimilar economies, is based on the Ricardo’s theory of comparative advantage, and is skewed in its outcomes, that is, advantageous to one partner. On the other hand, intra-industry trade occurs between similar economies, is based on Krugman’s model of competitive advantage of nations, and leads to convergence of incomes. In intra-industry domestic and international firms compete to manufacture similar products to sell in the local market. For example, rising wages in Japan and Europe led to expansion of domestic market, which increased demand for goods and services, similar to the U.S. In turn, this led to increased intra-industry trade among U.S., Europe, and Japan.

A major part of the Indian and Chinese growth story is also explained by increased access to intra-industry trade. Modernization of production technology permitted production processes to be split to be located in different parts of the world, and China benefited. On the other hand, advances in information technology, led to outsourcing of services benefiting India mainly because service outsourcing, unlike free trade earlier, has the potential to equalize “non-tradables” (e.g. wages). Services in the developed nations command high wages, and the advantage of high wages could only be enjoyed by physical migration to the high-income countries, which was available to a few only. Now, software professionals produce services in India and are paid high wages without actually shifting to high-income countries. In turn, high wages earned by software professionals has led to market demand for products, similar to the products consumed in developed nations, thus, accelerating intra-industry trade with multiplier effects on job creation and income enhancement.

Trans National Corporations have played an important role in promoting intra-industry trade, operating as “globally integrated enterprises”, in which “work flows to the places where it will be done best” and putting jobs and people anywhere in the world “based on the right cost, the right skills, and the right business environment”. Intra-industry trade creates global supply (value) chains, which are “complex, diverse and fragmented” and are also constantly changing in response to economic factors and market conditions. Global supply chains have had a huge positive impact on social development. Cross-border supply chains have been ladders of development and instrumental in bringing economic and social
growth and creates jobs including by lifting people’s chances of getting a foothold in the world of formal work. It promotes technological progress, enhances productivity, stimulates innovation that leads to upgradation of skills and also contributes to the reduction of poverty.

**Current trends to make business walk lockstep with human rights**

We notice that one key feature of the present version of globalization is increase in intra-industry trade, powered by TNCs. One of the advantages of increased intra-industry trade is simultaneous increase in consumption in nearly all parts of the world. In order to satisfy the increasing consumption, TNCs are putting more pressure on enterprises in the value chains to produce more and more at a lesser cost. This has generated systemic forces in the form of calls to make TNCs directly responsible for securing the HRs of labour working in the enterprises in the value chains as well as of the stakeholders residing in the local areas where the enterprises are located.

For this a stronger legally binding treaty is being advocated. In 2013, some governments led by Ecuador issued a statement in 2013 in favour of a legally binding international instrument on business and human rights. The proposed treaty “would clarify the obligations of transnational corporations in the field of human rights” and “provide for the establishment of effective remedies for victims in cases where domestic jurisdiction is clearly unable to” provide them. In accordance with this, at its 26th session held on 26 June 2014 the Human Rights Council adopted resolution 26/9 by which it decided “to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.”

The resolution received support primarily from countries in the Global South, including Algeria, Pakistan, Indonesia, Cuba and Venezuela. In addition, four of the five major ‘emerging’ economies - Russia, India, China and South Africa - also supported the resolution. Nations home to the world’s largest TNCs, including the USA, UK, Canada and a number of European countries had opposed the treaty’s development.

The intergovernmental working group conducted two sessions in July 2015 and October 2016, dedicated to constructive deliberations on the content, scope, nature and form of the future international instrument. The third session was intended to allow substantive negotiations on the basis of ‘Elements’ to be prepared by the chair of the working group taking into consideration the input received from stakeholders in the framework of the first two sessions. After three sessions, Ecuador’s Ambassador to the UN released the “Zero Draft” (July 2018). There are 10 main features of the Legally Binding Instrument (LBI):

1. The Convention underlines the importance of civil and criminal liability provisions for natural and legal person liable for violations of human rights undertaken in the context of business activities of transnational character.
2. Emphasizes States roles as primary duty bearers, and reinforces their main obligations to regulate, prevent, sanction and prosecute business activities which result in human rights abuses.

3. Recognizes the primacy of HRs over all trade agreements.

4. Includes the liability for violation of HRs in its supply chain.

5. Recognizes that all businesses enterprises, regardless of their size, sector, operational context, ownership and structure shall respect all HRs, while focusing in other provisions on the specific challenges of transnational activities.

6. The Convention stresses on the States duty to strengthen and establish legislations to ensure, companies of transnational character comply with and conduct due diligence procedures, comprising but not limited to, identifying, assessing, monitoring and reporting on HRs issues across it value chain.

7. Includes a comprehensive definition of remedies, which specifically mentions environmental remediation and ecological restoration.

8. Emphasis on the reversal of burden of proof for the purpose of fulfilling the victim’s access to justice.

9. Defines jurisdiction as where violation committed, or where the company has headquarters, substantial operations, has subsidiary, agency, instrumentality, branch, representative office or the like.

10. Emphasizes international cooperation for fulfilment of treaty obligation, including mutual assistance in initiating and carrying out investigations, prosecutions and judicial proceedings.

The demand to make TNCs walk lockstep with Human Rights, even in the “periphery” is generating asystemic forces and leading to disequilibrium (crisis). As the present version of globalization is itself implicated in the crisis, greater globalization is not a possible solution. Restoring equilibrium will depend on the extent to which TNCs are able to willing to take on the responsibility of HRs of workers employed by firms in their value chains as well as the local residents where these firms are located. This will also reduce the growing angst against the present form of globalization.

(Views are author’s and not of IICA or the Government)