

**Janet Dine**

Companies, International Trade  
and Human Rights

Cambridge Studies in Corporate Law

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## Companies, International Trade and Human Rights

The book focuses on the role of corporations within the trading system, and the complex relationships between corporations, nation states and international organisations. The actions and motives that drive corporations are considered as well as the structure of the international trading system. Remedial devices such as codes of conduct and human rights instruments are assessed for effectiveness.

The book seeks reasons for what is a growing understanding that international trading regimes are not meeting objectives found in many international agreements, including both the international trade agreements themselves (WTO, GATT, TRIPS etc.) and human rights instruments. In particular it is clear that the prevalence and severity of poverty is not being adequately addressed. This work sets out to investigate the role played by companies in this failure in the globalisation of trade to realise its aims, in particular the failure to achieve the minimum of basic rights, the right to food.

JANET DINE was, while writing this book, Professor of Law at the University of Essex. She is now Professor of International Economic Law at the Centre for Commercial Law Studies, Queen Mary College, University of London, a Senior Visiting Fellow at the Institute of Advanced Legal Studies, London, and Visiting Professor at Queen's University, Belfast.



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## Preface

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This book is written from a perspective shared with Thomas Pogge:

We, the affluent countries and their citizens, continue to impose a global economic order under which millions avoidably die each year from poverty-related causes. We would regard it as a grave injustice if such an economic order were imposed within a national society. We must regard our imposition of the present global order as a grave injustice unless we have a plausible rationale for a suitable double standard. We do not have such a plausible rationale. (T. Pogge, *World Poverty and Human Rights* (Polity Press, Oxford, 2002))

This book is the result of an investigation into a phenomenon that I found extremely puzzling: the fact that kind-hearted, intelligent, well-informed people could be found taking diametrically opposed views on the issues of international trade and the global economy and the operation of companies within that system. Take just one example: a firm believer in the ‘trickle-down effect’, Moore (in *World Without Walls* (Cambridge University Press, 2002), p. 146) encourages the ‘race to the bottom’ as an instrument for improvement. If jobs are shifted from Korea and Indonesia to China because wages are lower, so much the better – ‘I hope I live long enough to see wages in China rise so high that those jobs go to Ethiopia’. But an opponent of ‘trickle down’ notes that in China ‘at least 30 million city dwellers are jobless, up to 200 million peasants have no real work and up to 200 million more subsist as day labourers . . . Enormous wealth is being created, but too much is being pocketed by too few’ (R. Righter, *The Times*, 30 September 2003). In such a climate, why should wages rise?

In the course of the investigation I have been shocked and angry at the ability of those of us from the rich and powerful nations to ‘turn a blind eye’ to desperate suffering and to construct our thinking and language and develop philosophies which are self-serving. But I have also come to understand how complex the issues are and am now quite sure that any ‘simple answer’ is almost certain to be a wrong answer. It is difficult to carry a protest banner reading ‘It might be a good idea to sequence trade

and capital account liberalisation for small economies so that domestic industries and the financial sector are protected from the worst of the “herd” behaviour of the international financial sector’ – but simplistic ‘wrecking’ answers such as ‘Ban WTO’ or ‘Kill Coke’ are unlikely to achieve justice in the trading system. The book is therefore an attempt to indicate how difficult the issues are. This is done by looking at the debate at a general level and following with a detailed study of a single issue. It is a wide canvas and the detailed studies are intended as a counterbalance to the allegations which are hurled to and fro at the generalised level. On one question, however, I am utterly convinced. We have an international trading and financial system which creates destitution and injustice as well as extreme wealth. It is unjust. And it needs experts of considerable sophistication to try and unpick the injustice. Most of all, it needs the compassion and goodwill of people of the wealthy world to demand the reconstruction of the trading system and the companies operating within it, which provide so much of that wealth.

The book starts by asking whether there is a global crisis. Chapter 2 puts forward some reasons for the present situation, considering especially the various ways in which global injustice is rationalised in philosophy, economics and language in order to comfort us. Chapter 3 deals with the international institutions, the IMF, World Bank and WTO, together with detailed studies of issues which expose the complexity of what these institutions seek to achieve: banking and financial liberalisation; the construction of a Poverty Reduction Strategy Plan; the EU sugar regime and its proposed reform in line with WTO rules. Chapter 4 considers the moves to control companies and international institutions by imposing human rights norms on them and, in the context of the right not to self-incriminate, discusses the complex arguments about whether companies can or should be able to claim rights. Direct and indirect imposition of human rights responsibilities on the international organisations is also discussed, together with the possibility of a ‘right to trade’ becoming part of WTO jurisprudence. Chapter 5 considers the growing corporate social responsibility debate, calling for careful formulation of the underlying justifications for its imposition on companies, particularly in the light of the corruption of one of its mainstays, the concept of sustainable development. Chapter 6 contains some suggestions for change, including a new conceptualisation of the operation of companies, directors’ duties, the central place of risk analysis and reform of company law remedies. It also calls for a reassessment of our conception of property rights and the consequences this might have for international relations if the concept of international co-operation in the UN Covenant on Economic, Social and Cultural Rights were to be taken seriously. There are suggestions for

further research on a number of reform agendas: state bankruptcy, international free movement of people, changes in understanding sovereignty and banking reform, as well as reform of voting procedures at the WTO, IMF and World Bank. The issues covered mean that a positive deluge of literature is available and it has not been possible to read it all. I hope I have considered a representative sample and I am grateful to everyone who has supplied information. I am especially grateful to the British Academy for funding a trip to Barbados to research the sugar industry, although my colleagues were less than impressed with the absolute *necessity* of travelling to Barbados in January! Many thanks also to Sally Painter who helped with that application and provided valuable information and support throughout the writing of this book. As always, thanks to my family for their support and concern about the injustice of the trading system. Thanks also to the 'starship' colleagues Steve Anderman, Jim Gobert, Sheldon Leader, David Ong and Bob Watt for discussions on corporate governance, to Michael Blecher who provided invaluable help on systems theory (and red wine), Alastair Macauley for assistance with economics, Marios Koutsias for help with research, Stephen Bottomley and members of the Corporate Law Teachers Association of Australia and New Zealand for helpful suggestions, Chris Richards for keeping me fit enough to complete the project and Barry Rider, Finola O'Sullivan and Kim Hughes for agreeing to publish the result.

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## Abbreviations

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ACP	African, Caribbean and Pacific States
BIS	Bank for International Settlements
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEO	chief executive officer
CESCR	UN Committee on Economic, Social and Cultural Rights
CSR	corporate social responsibility
EBA	Everything But Arms Initiative
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECLA	Economic Commission for Latin America
EPZ	Export Processing Zone
FDI	foreign direct investment
FSA	Financial Services Authority
GATT	General Agreement on Tariffs and Trades
GCC	Global Climate Coalition
GDP	gross domestic product
HIPC	Heavily Indebted Poor Countries
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
ICSID	International Centre for the Settlement of Investment Disputes
IDA	International Development Association
IFC	International Finance Corporation
IFI	international financial institution
ILO	International Labour Organization
IMF	International Monetary Fund
IPO	initial public offer
ISO	International Sugar Organisation
LDC	Least Developed Country

MAI	Multilateral Agreement of Investment
MFN	Most Favoured Nation
MIGA	Multilateral Investment Agency
MNE	multinational enterprise
MSN	maximum supposed needs
PFI	private finance initiative
PIG	public interest group
PRGF	Poverty Reduction and Growth Facility
PRSP	Poverty Reduction Strategy Plan
SAP	Structural Adjustment Plan
SDR	Special Drawing Right
SPS	Special Preferential Sugar Scheme
TNC	transnational corporation
TRIMS	Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property
UDHR	Universal Declaration of Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
WHO	World Health Organization
WTO	World Trade Organization