

---

# UNIT 25 HUMAN RIGHTS AND INTERNATIONAL TRADE

---

## Structure

- 25.1 Introduction
- 25.2 Internationalisation of Human Rights
- 25.3 The Growth of World Trade: An Overview
- 25.4 The Role of World Trade Organisation
- 25.5 Transnational Corporation's Accountability of Human Rights
- 25.6 Rights of Indigenous People
- 25.7 Trade Related Aspects of Intellectual Property Rights
- 25.8 Marginalisation of Poor Countries
- 25.9 Regulating International Trade: Code of Conduct for TNCs
- 25.10 Summary
- 25.11 Exercises

---

## 25.1 INTRODUCTION

---

Contemporary International Relations has been witnessing two significant developments. One, since the establishment of the United Nations in 1945 a huge corpus of human rights law has been evolved under its aegis. As a result, the term 'human rights' has become a "catch word" in contemporary discourses. In fact, human rights can be said to have become, as the former Secretary General of the U.N., Boutros Boutros-Ghali, said in his opening statement to the World Conference on Human Rights (14-25 June 1993) in Vienna, Austria, "the common language of humanity and the ultimate norm of all politics". Second, we are witnessing the globalisation of the world economy. There has been a rapid transformation of the world economy: the reduction of national barriers to trade and investment, the expansion of telecommunications and information systems, the introduction of e-commerce, the increasing role of multinational enterprises, global inter-firm networking arrangements and alliances, regional economic integration and the development of a single unified world market. Under such a milieu, there has been a consistent and faster growth of international trade which has been institutionalised and regulated with the creation of the World Trade Organisation (WTO) in 1995. The collapse of communist regimes in Eastern Europe, which had, for long, controlled economies and markets, has contributed further to this process of globalisation of the world economy and trade.

Many scholars and nations assert and believe that the participation of developing/poor countries in international trade will contribute greatly to their economic prosperity and industrial growth and this will consequently help in raising the standard of life of their people. Further, it is assumed that this prosperity might ultimately improve human conditions and the prospects of human rights of everyone. Contrary to such assertions and beliefs of the protagonists of free trade, human rights are at great risk as international trade primarily works on the principle of profit making rather than promoting and respecting them. Professor Upendra Baxi critically

remarks that the paradigm of human rights of all human beings is steadily, but surely, subverted by trade-related practices. The main focus of this unit is to explain how human rights of the people, specially the workers, are violated by profit making Transnational Corporations (TNCs) and industrialised states that are under their tremendous influence.

---

## **25.2 INTERNATIONALISATION OF HUMAN RIGHTS**

---

One of the greatest, in fact, revolutionary, developments in the annals of human history is that for the first time in international relations a comprehensive list of “human rights” has been recognised which every individual, irrespective of his/her origin, religion, race, colour, sex, nationality, etc. can claim as a member of human society. Since 1948 the United Nations has adopted nearly 100 human rights instruments (such as declarations, conventions, covenants, protocols, and resolutions) on various facets of human rights, covering the entire gamut of human relationship. However, it must be noted that the most important among all these instruments are the Universal Declaration of Human Rights (UDHR), 1948, the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, and the International Covenant on Civil and Political Rights (ICCPR), 1966, which together form the parts of the International Bill of Rights. This Bill, the first ever adopted in the history of the world, has brought the matter of promoting human rights on the agenda of international relations.

Let us briefly discuss the rights that are mentioned in the International Bill. The UDHR, which was Magna Carta of mankind, proclaims civil-political and economic, social and cultural rights. The two Covenants of 1966 further elaborate these two sets of rights mentioned in the UDHR. The Covenants are legally binding on ratifying states unlike the provisions of the UDHR. It may be noted that the right to property included in UDHR (Art.17) is missing in the two Covenants.

The ICCPR sets out the following rights (under Articles 6-27): right to life; freedom from torture and inhuman treatment; freedom from slavery and forced labour; the right to liberty and security; the right of detained persons to be treated with humanity; freedom from imprisonment for debt; freedom of movement and of choice of residence; freedom of aliens from arbitrary expulsion; the right to a fair trial; protection against retroactivity of the criminal law; the right to recognition as a person before law; the right to privacy; freedom of thought, conscience and religion; freedom of opinion and expression; prohibition of propaganda for war and of incitement to national, racial or religious hatred; the right of peaceful assembly; freedom of association; the right to marry and found a family; the rights of the child; political rights; equality before the law and rights of minorities. Thus, this is an exhaustive list, and there are more rights in ICCPR than in the UDHR or the European Convention on Human Rights.

Similarly, the ICESCR also provides a detailed list of rights (under Articles 6-15) to be protected by State Parties. These include: the right to work; the right to just and favourable conditions of work including fair wages, equal pay for equal work and holidays with pay; the right to form and join trade unions, including the right to strike; the right to social security; protection of the family, including special assistance for mothers and children; the right to an adequate standard of living, including adequate food, clothing and housing and the continuous improvement of living conditions; the right to the highest attainable standard of physical and mental health; the right to education, primary education being compulsory and free for all, and secondary and higher education generally accessible to all and the right to participate in cultural life and enjoy the benefits of scientific progress.

Thus, these two Covenants provide the most basic human rights. Besides these two UN instruments, there are two other sets of human rights norms which conflict with international

trade practices. They are rights of the workers and the environmental rights. The International Labour Organisation (ILO) has adopted around 150 Conventions, dealing with, among others, conditions of work, remuneration, child and forced labour, the provision of holidays and social security, prevention of discrimination in employment and trade union rights. There are some 200 multilateral environmental agreements in existence today containing some form of trade measures.

---

## **25.3 THE GROWTH OF WORLD TRADE: AN OVERVIEW**

---

Let us briefly look at the phenomenal growth of world trade in contemporary world. During the last five decades the world exports have increased ten fold, even after adjusting for inflation, consistently growing faster than world Gross Domestic Product (GDP). Foreign investment has risen more rapidly; sales by TNCs exceed world exports by a growing margin, and transactions among TNCs are a rapidly expanding segment of world trade. Foreign exchange flows have soared to more than \$1.5 trillion daily, up from \$15 billion in 1973. According to 1996 annual report of the WTO, there was a strong growth in both merchandise and service trade in 1995. The value of total cross-border trade in goods and services exceeded \$6,000 billion for the first time. Kofi Annan, the UN Secretary General, disclosed in his millennium address to the UN that the market for e-commerce was \$2.6 billion in 1996; it is expected to grow to \$300 billion by year 2002. Another study had estimated that the growth of world trade would exceed \$8 trillion annually by the year 2000.

---

## **25.4 THE ROLE OF WORLD TRADE ORGANISATION**

---

The WTO was established on 1 January 1995 replacing the General Agreement on Tariffs and Trade (GATT). The WTO is the result of many rounds of multilateral trade negotiations. The Marrakesh agreement was negotiated as a climax of the Uruguay round of trade negotiations under the umbrella of GATT. The last round of negotiations was concluded on 15 December 1993 and the participating governments signed the Final Act, which included over 22,000 pages, at a meeting in Marrakesh, Morocco, on 15 April 1994. The “Marrakesh Declaration” affirmed that the new trade law would “strengthen the world economy and lead to more trade, investment, employment and income growth throughout the world.” The Marrakesh agreement was the most comprehensive trade deal in world history, covering everything from paper clips to jet aircraft. The bulk of the document symbolised its breadth.

The WTO has a much broader scope in terms of the commercial activity and trade policies to which it applies. GATT applied only to trade in merchandise goods; the WTO covers trade in goods, services and “trade in ideas” or intellectual property (innovations, inventions etc.). The functions of the WTO include: (i) monitoring the implementation of multilateral trade agreements, which together make up the WTO; (ii) acting as a forum for multilateral trade negotiations; (iii) seeking to resolve trade disputes among trading partners. (The findings of its arbitration panels are binding); (iv) overseeing national trade policies; and (v) co-operating with other international institutions involved in global economic policy making.

The principles governing international trade system outlined in the WTO Agreements are worth noting. There are four significant principles: (i) Trade should be conducted without discrimination among members and between imported and domestically produced merchandise. (ii) The WTO agreements seek to ensure that conditions of investment and trade are more predictable by making it difficult for member governments to change the rules of the game at will. The key to predictable trading conditions is often the transparency of domestic laws, regulations and practices. WTO agreements contain transparency provisions, which require disclosure of these

rules at the national level or at the multilateral level through formal notifications to the WTO. (iii) The WTO promotes open and fair competition in international trade. It is not the “free trade” institution as it permits tariffs and limited forms of protection. (iv) The WTO agreements encourage development and economic reform. Many of the underdeveloped countries have been following the policies of economic reforms or liberalisation during the last one decade.

---

## **25.5 TRANSNATIONAL CORPORATIONS’ ACCOUNTABILITY OF HUMAN RIGHTS**

---

It has long been recognised that the TNCs that operate across national boundaries have enormous impact on the modern world. If we compare the revenues of the twenty-five largest MNCs with revenues of states, we learn that only six states-USA (\$ 1,248 billion), Germany (\$ 690 billion), Japan (\$ 595 billion), UK (\$ 389 billion), Italy (\$ 339 billion) and France (\$ 221 billion)-have revenues larger than the nine largest MNCs Mitsubishi (\$ 184 billion), Mitsui (\$ 182 billion), Sumitomo (\$ 168 billion), Marubeni— (\$ 161 billion), Ford Motor (\$ 137 billion), Toyota Motor (\$ 111 billion) and Exxon (\$ 110 billion). Because of their enormous economic power, TNCs are often beyond the effective control of national governments, including those, which are within their own jurisdictions. Moreover, TNCs normally have considerable influence in national political systems, especially through pro-business political parties and personalities. This makes regulation of business difficult to achieve.

Today there are more than 38,500 transnational parent companies with their more than 250,000 foreign affiliates. These TNCs and their foreign affiliates produced 25 per cent of global output in 1998, and the top 100 (ranked by foreign assets) had sales totaling \$ 4 trillion. Between 1980 and 1992 the annual sales of TNCs doubled (\$ 2.4 to \$ 5.5 trillion), and the annual sales of many are now greater than the GDP of some states. For example, in 1997, General Motor’s worldwide sales (\$ 168 billion) exceeded the combined GDP of Indonesia and Pakistan. (Indonesia: \$115 billion; Pakistan: \$ 45 billion). Again, the combined revenue of two US-based business corporates - General Motors (\$ 168 billion) and Ford Motors (\$ 147 billion) is nearly equal to India’s GDP (\$ 324 billion).

The primary objective and concern of TNCs is profit making. In order to make profits TNCs often move their capital and production units to those places where they attract cheap labour. There is a global competition to attract TNC investment both among developing and developed countries. In the hope of attracting TNC investment, nations bid against each other to offer the lowest levels of environmental, labour and human rights regulation. This competitiveness is directly contributing towards fewer social benefits, lower salaries of workers and violation of many social, political and trade union rights. One may find many horror stories of unprincipled TNCs making handsome profits at the expense of clearly exploited employees. Various TNCs, from United Fruit to Coca-Cola, actively opposed progressive governments and laws designed to advance labour rights and other human rights. In fact, United Fruit in Guatemala (1954) and ITT in Chile (1973) actively cooperated with the US government in helping to overthrow politicians (Arbenz in Guatemala and Allende in Chile) who were champions especially of labour rights for their nationals.

What follows here and in the next two sections is a selection of examples where contemporary trade practices lead to human rights violations. Both the TNCs and the elite of national governments demonstrate their intolerance to any alternative world-view expressed by individuals and groups in defence of their economic, social, civil and political rights. When alternatives are expressed, they routinely engage in violating human rights. The statement of former president

of Ecuador, Abdala Bacaram, is case in point: he had asserted that “if oil workers seek to halt the production of basic and strategic services such as oil, I will personally witness the police and the armed forces giving them a thrashing to make them return to work.” Though this statement is perhaps more blunt than most, the attitude of many corporations and governments is similar. Following select examples testify this.

Mexico’s *maquiladora* sector provides a further example. The *maquiladora* produces \$29 billion in export earnings and offers employment for more than 500,000 people from the poorest, least experienced and least educated groups in society. Human rights violations are reported in many parts of the sector, particularly in relation to attempts by workers to establish free trade unions. Where possible, the corporations operating in the *maquiladora* prefer to employ women, because they are more committed to the job and are less informed about their rights, less radical than men, more tolerant of substandard working conditions and less likely to engage in politics or trade union activism.

Moreover, women employees have faced discrimination during pregnancy. Applicants for jobs are routinely subjected to pregnancy tests before being hired. In some cases employees questioned women about their sexual activities, when they last menstruated and whether they used contraceptions. If women do become pregnant, managers attempt to create such conditions, which may compel them to resign. Managers use several methods intended to intimidate, including picking on every conceivable error in the quality of work, no matter how insignificant it is; they provide substandard machines so that their poor performance will not attract bonus payment; refuse to allow time off to attend the doctor, and transfer them to heavier, more physically demanding work usually not suitable for pregnant women. Since women are desperate to keep jobs, they tolerate discriminatory treatment.

Although Mexican labour law forbids such discrimination, the government frequently tolerates such practices. It is regrettable that neither the corporations nor the government seem interested in responding to internationally recognised prohibitions on pregnancy-based discrimination. Under Article 26 of the ICCPR, all people are entitled to equal treatment before the law regardless of sex. Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) condemns all forms of discrimination against women, particularly in the field of employment (Article 11:1). Discriminatory pregnancy-based practices are also a violation of the right to privacy (ICCPR Article 17, UDHR Article 12) and the right to decide freely the number and spacing of children (CEDAW Article 16:1). It may be recalled that Mexico has ratified ICCPR and CEDAW in March 1981.\

There is more to it. Trade union rights were suppressed, when *maquiladora* workers struggled to establish free trade unions, independent of the government-backed Confederation of Mexican Workers (CMW). For example, in 1989, workers at the Ford plant in Hermoville organised a hunger strike in support of their demand for democratic elections to the CMW. In response, Ford began to dismiss workers and blacklist those involved in the action, but protests continued. Of a total of 3,800 workers, Ford dismissed 3,050 before the organisers called off the action.

Let us look at another example of the activities of Royal Dutch Shell Oil in the Ogoni region of Nigeria. Human Rights Watch (a NGO) reports (in 1995) that at the end of October 1990, Shell requested police assistance at a peaceful demonstration against the continued destruction of tribal lands as a direct result of oil operations. Due to beatings, teargas attacks and indiscriminate shootings 80 people died. On another occasion, one of Shells’ contractors, Willbros, bulldozed crops in preparation for construction work. When local people protested, Willbros called in government troops who opened fire to disperse the demonstrators. Willbros defended its right



to proceed with the construction, on the grounds that all the necessary formal procedures were adhered to, although the popular Movement for the Protection of the Ogoni People was not invited to take part in the negotiations that sanctioned the contract.

Although Shell has claimed that its contact with Nigerian Security Forces was minimal, a government official admitted to Human Rights Watch that regular contact with Lt. Col. Paul Okuntimo, the Director of Rivers State Security, was made. According to one company official, Okuntimo was a “savage soldier”, known for his brutality, who saw his role as making “the area safe for” the oil companies.

It is instructive to note that these incidents of violation of human rights led to a stormy meeting of the shareholders in 1997, which called for greater openness and social responsibility. Shell has recently announced its intention to publish an annual audit of social accountability. It remains to be seen whether this approach to taking human rights seriously proves beneficial.

Another example concerns the sports goods industry. Indian companies produce many sports goods such as baseballs, footballs, cricket equipment, volleyballs and boxing gloves. Although no official data exist, one NGO (i.e. Christian Aid) estimates that of the 300,000 workers engaged in the industry, some 25,000 to 30,000 are children, either working with their families or in small stitching centres. Some children, aged between 10 and 11 years, work five to six hours a day for as little as Rs.10 or even less than that per football. In addition, tanneries supplying leather to the industry’s main exporters employ children, exposing them to hazardous chemicals. Children and teenage apprentices working in factories or small workshops are routinely paid fraction of the adult minimum wage. Besides poor pay, some adult workers are denied union rights, sick pay and access to provident funds and insurance schemes. It is a common practice to deny continuous appointments to workers so as to deprive them of these rights. Despite the constitutional and statutory ban on employing children in hazardous industries, child labour in leather tanning, carpet industry, bangle-manufacturing units, matches and crackers factories continue till this day.

TNCs also have the potential to do great damage by destroying the livelihoods of people through environmental practices that lay forests bare, deplete fishing stocks, dump hazardous materials and pollute rivers and lakes that were once a source of water and fish. The example of commercial prawn farming reveals the extent of damaging effects of trade on civil and political rights. Many underdeveloped countries have encouraged commercial prawn farming ventures without regard for social and environmental consequences. The World Bank and IMF have supported such ventures to help improve the debt-ridden Third World countries’ balance of payments by increasing exports. Commercial prawn farming has the added advantage that it brings high returns on low levels of investment and technology. This is particularly attractive to private investors who wish to make huge profits in the shortest time, as there is a great demand of prawns in Western countries. Moreover, prawn farming is an important source of foreign exchange for underdeveloped Asian and Latin American states.

The farming method involves the construction of saline ponds, ranging in size from a half hectare to five hectares. The optimum conditions for prawn cultivation are maintained in a number of ways: continuously pumping water, and adding chemicals to control acidity and alkalinity, fertilisers for growth, antibiotics to control disease and other chemicals to combat parasites. The timescale from stocking the ponds with seedling prawns to harvest is usually four months, allowing companies to take three crops a year. In fact, one crop is often sufficient to cover investment costs.

Many governments consider such ventures as contributing to their economic growth and development. Therefore, they often give government land to prawn producers. This practice leads to many human rights violations. The sites of prawn farming represent a valuable resource for local communities providing them the only available access to pasture fuel-wood and other necessities to sustain life. In some cases prawn farming has taken over land previously used for producing locally marketed foods. Moreover, it affects the local fishing communities. Also, the construction of ponds can obstruct the natural flow of water and cause flooding in villages, soil erosion and the salination of soil. Producers often pump wastewater containing cocktail additives (used for prawn production) onto adjacent lands, which pollute the soil. Although many of these practices are illegal, governments generally ignore the violations of laws in their enthusiasm for promoting prawn farming. The result is that people are forced from the land that provides subsistence and their traditional way of life disintegrates, violating economic and cultural rights that are protected under international law of human rights.

---

## **25.6 RIGHTS OF INDIGENOUS PEOPLE**

---

The international community has become concerned over violations of the rights of indigenous peoples in recent years, after many years of neglect. The United Nations has drafted a declaration on the subject in 1994. The decade 1994-2003 has been declared the UN Decade for Indigenous Peoples. There is also a 1989 ILO Convention on their rights.

Oil, uranium, minerals and timber are found throughout the world on indigenous lands, and TNCs have been permitted to encroach on them in the name of economic development. Indigenous lands in many parts of the world have been trespassed upon in pursuit of traditional medicines, which are then brought onto international pharmaceutical markets.

There are many cases concerning the violations of the rights of the indigenous people. We are discussing here only two cases. (In the preceding section we have already discussed the example of Shell Oil in Nigeria's Ogoni region, which violated the rights of tribals). First, in 1985 a complaint against Brazil was brought to the Inter-American Commission on Human Rights by the Yanomami Indians of Brazil alleging that many of their rights have been violated due to the activities of independent prospectors and companies engaged in exploiting the mineral and timber resources of the Amazon regions inhabited by them. It was alleged that the so-called economic development has resulted in serious violations of their right to health, clean environment, the right to life and the cultural rights. The Inter-American Commission found that the incursions, which included the construction of a highway through Yanomami lands, caused disruption of the social life of the Yanomami and introduced a number of diseases, which decimated the population. The Commission also found that, in licensing and permitting these activities, Brazil violated the right to life and the right to protection of health provided in the American Declaration of the Rights of Man.

A second example concerns the controversy surrounding the proposed construction of a new port by P & O, the developers, in Dahanu in the state of Maharashtra, which placed it conspicuously at the centre of all trade issues. Dahanu is the home of India's few remaining tribal peoples, the Warlis. The proposed port is reportedly eight times the size of Liverpool and will not only bring much needed jobs to the area and regenerate the economy but will also relieve the congestion at Bombay port.

An unpublished report commissioned by P & O, however, concludes, "the port will destroy the Warlis way of life. Moreover, 70 per cent of the Warlis were opposed to the port, with only

11 per cent in favour. Contrary to the government of Maharashtra's claim that the port will bring lasting economic benefits, the report concludes that there is little evidence of this. Indeed, the sustainable use of natural resources has created a flourishing economy, which is self-sufficient and rooted in the natural wealth of the region. If P & O is allowed to go ahead with the construction, the local economy will be destroyed and it will have extensive impact on human rights.

---

## **25.7 TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS**

---

The agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is one of the pillars of the Uruguay Round agreement, and also one of the most contentious. It tightens intellectual property rights for the creator. It introduces an enforceable global standard by linking intellectual property rights with trade, making them binding and enforceable through the WTO mechanism.

TRIPS agreement fails to protect adequately the rights to health, and the rights of indigenous people among others. Its provisions restrain many public policies that promote wider access to health care. National laws of many developing countries have intentionally excluded pharmaceuticals from product patent protection (allowing only process patents) to promote local manufacturing capacity for generic drugs and to make drugs available at lower prices. The move from process to product patents introduced under the TRIPS agreement dramatically reduces the possibilities for local companies to produce cheaper versions of important life saving drug, such as those for cancer and HIV/AIDS. Local production of anti-AIDS drugs flucanazole in India had kept the prices reasonable (costing \$55 for 100 tablets) whereas its prices in the other developed and the same under the developed countries ranges between \$ 700 - \$ 1000.

Traditional knowledge and resource rights of indigenous people have been greatly affected under the TRIPS agreement. Traditionally life forms, plants and animals-were

exempted from patents. But now it is going to change. TRIPS agreement requires all WTO member countries to permit patents on microorganisms and microbiological and non-biological processes. So "bioprospecting" has mushroomed-with scientists "reinventing" and patenting products and processes using traditional knowledge that communities have held for centuries. Patents have been awarded for using the healing properties of turmeric, for the pesticide properties of the neem tree and other plant properties-all part of traditional knowledge. In a number of such cases the patents were challenged and reversed.

The TRIPS agreement mostly benefits technologically advanced countries. It is estimated that industrialised states hold 97 per cent of all patents, and TNCs 90 per cent of all technology and product patents. Developing countries have little to gain from the stronger patent protection from the TRIPS agreement because they have little research and development capacity.

The TRIPS agreement also appears to be incompatible with human rights law and environmental agreements. The International Bill of Rights recognises the human right to share in scientific progress. It may be recalled that India had invented zero but we have not patented its use, rather the entire world is benefited by its use. The Convention on Biodiversity requires states to protect and promote the rights of communities, farmers and indigenous people in their use of biological resources and knowledge systems. It also requires equitable sharing of the benefits arising from the commercial use of communities' biological resources and local knowledge.



There is need to build human rights safeguards into the TRIPS agreement. The African Group of WTO Members has proposed a review of the agreement, particularly for provisions to protect indigenous knowledge. And India has suggested amendment to promote transfer of environmentally sound technology.

---

## **25.8 MARGINALISATION OF POOR COUNTRIES**

---

It is true that global economic integration is creating opportunities for people around the world, but it is also leading to widening the gaps between the poorest and richest countries. Many of the poorest countries are marginalised from the growing opportunities of expanding international trade, investment and in the use of new technologies.

The UNDP's Human Development Report 2000, which focuses on human rights, provides arresting evidence of how the pursuit of free trade and the systematic violation of human rights go hand in hand besides marginalising poor countries from the bounty of world economy. Let us look at the statistics provided in the report. World exports of goods and services expanded rapidly between 1990 and 1998, from \$ 4.7 trillion to \$ 7.5 trillion. And 25 countries had export growth averaging more than 10 per cent a year (including Bangladesh, Mexico, Mozambique, Turkey and Vietnam), but exports declined in Cameroon, Jamaica and Ukraine. In 1998 least developed countries, with 10 per cent of the world population, accounted for only 0.4 per cent of global exports, down from 0.6 per cent in 1980 and 0.5 per cent in 1990. Sub-Saharan Africa's share declined to 1.4 per cent, down from 2.3 per cent in 1980 and 1.6 per cent in 1990. Although average tariffs are higher in developing than in developed countries, many poor nations still face tariff peaks and tariff escalation in such key sectors as agriculture, footwear and leather goods.

The marginalisation of poor can further be discerned from the data on foreign direct investment (FDI). FDI flows have boomed, reaching more than \$ 600 billion in 1998. But these flows are highly concentrated, with just 20 countries receiving 83 per cent of the \$177 billion going to developing and transition economies, mainly China, Brazil, Mexico and Singapore. The 48 least developing countries attracted less than \$ 3 billion in 1998, a mere 0.4 per cent of the total.

Of course, not everybody is suffering in the global economy. In 1998, the UNDP said the assets of the world's 358 billionaires exceeded the combined annual incomes of countries with 45 per cent of the world's population. In 1999, we learn that the sales of the world's top six firms, at \$ 716 billion, exceed the combined GDP of South Asia and sub-Saharan Africa. The UNDP's report for 2000 disclosed that the super rich get richer. The combined wealth of the top 200 billionaires hit \$ 1,135 billion in 1999, up from \$ 1.042 billion in 1998. This is in comparison with the combined incomes of \$ 146 billion for the 582 million people in all the least developed countries.

---

## **25.9 REGULATING INTERNATIONAL TRADE: NEED TO EVOLVE CODE OF CONDUCT FOR TNCs**

---

In the preceding pages we have seen how TNCs are conducting their business and often pursue their interests of profit making, often disregarding and violating internationally agreed norms of human rights. Unless an internationally accepted "code of conduct" for TNC operations is evolved and enforced through the United Nations or some multilateral forum, it is extremely difficult to make them socially responsible. Such a code may promote human rights accountability

and social auditing of TNCs. While the industrialised countries of the North where TNCs have their base have laid down rules and regulations and parametres within which TNCs and private entrepreneurs could operate, they never supported for such rules and regulations at the international level.

Due to demands from the developing countries of South, supported by the communist states, the United Nations attempted to do its part of monitoring the activities of TNCs and preventing their misuse of power. For several years the United Nations also tried to evolve a binding code of conduct for TNCs, which never came to fruition due to blocking action by the capital exporting states whose primary concern was to protect the freedom of “their” corporations to make profits. After more than two decades of negotiations and drafting of the code, the attempt was abandoned in the late 1980s. The United Nations department concerned with TNCs was abolished under the US pressure in January 1992.

In 1996 the WTO did adopt a declaration, sponsored by the USA, pledging members to respect labour rights. The declaration was non-binding and vague. But some observers were fearful that just as the WTO had struck down some US decisions-based on its environmental regulations-as restraints on free trade, so the WTO might prove equally hostile to human rights regulations.

It is intriguing that instead of laying down a code of conduct for TNCs, the industrialised states, as represented in OECD (the Organisation for Economic Cooperation and Development), are preparing drafts for Multilateral Agreement on Investment (MAI). In February 1997, a 147-page negotiating text was leaked and is now available on Public citizen’s Trade watch web page of the Internet. Although the process to get agreement on the MAI is currently stalled, the OECD continues to argue that its acceptance would make a significant contribution towards completing the global programme of deregulation. In fact, the first draft of the MAI was completed in secret. According to critics, if accepted, the MAI would constitute a significant step towards creating a “constitution of a single global economy” or a “bill of rights and freedoms for TNCs”. This constitution would further restrict state powers to formulate independent policy and curtail the rights of people to enjoy the benefits of their natural resources. The practice of imposing human rights-related investment conditions, such as employing local labour, providing education and training and making a contribution to the local economy, would be outlawed under the MAI. Moreover, MAI draft bans any restriction on “repatriation of profits” and the movement of capital. It also bans “performance requirement” and prohibits governments (of developing countries) from treating foreign investors differently from domestic investors and authorises TNCs to sue national government for failure to meet the MAI’s terms. In short, critics argue that the MAI represents a major step in the attempt to promote free trade that serves the interests of international investors and corporations, without regard for the rights of workers, communities and the environment.

However, it is encouraging to note that a number of corporations have adopted corporate codes of conduct dealing with labour and human rights. The most frequently cited example of company guidelines in this regard are the *Levi Strauss and Co. Business Partner Terms of Engagement and Guidelines for Country Selection*, which are directed to the company’s contractors and suppliers. They cover, *inter alia*, occupational safety and health, freedom of association, wages and benefits, working time, child labour, forced labour and non-discriminatory hiring practices. Also, the OECD has adopted a non-binding code, but it generated little influence.

The Reebok Corporation, the New York Skirt, is making similar efforts and Sports wear Association, the National Association of Blouse Manufacturers Inc., the Industrial Association of Juvenile Apparel Manufacturers and the Timberland Corporation. These efforts, if they

become sufficiently widespread, will have a positive effect on social situations, but they frequently lack effective monitoring systems and need to be more widely adopted and enforced.

Thus, voluntary codes of corporate conduct have proliferated-but they tend to be weak on two fronts. First, they rarely refer to internationally agreed human rights standards. For example, most apparel industry codes refer to national standards rather than the higher ILO standards. Second they lack mechanisms for implementation and external monitoring and audit.

---

## **25.10 SUMMARY**

---

As the international trade is growing phenomenally in contemporary world and the TNCs share of it is strengthening day by day, the state of many internationally recognised human rights is getting diluted. This unit reveals that many human rights are violated in the cause of trade. With the study of many examples of TNCs' accountability of human rights in the unit we learn that people who stand in the way of trade-related business "routinely" lose the right to self-determination and to freely pursue their economic, social and cultural development (ICESCR, Article 1:1). In some cases, local resistance to trade-related development projects lead to the isolation of the right to life, liberty and the security of persons (UDHR, Article 3). The right to form and join trade unions for the promotion and protection of economic and social interests (UDHR, Article 23:4; ICESCR, Article 8), is also a target for oppressive measures. The right to subsistence is violated when people are excluded from their traditional means of feeding, clothing and housing themselves (ICESCR, Article 11). The special protection afforded to women under CEDAW seems to attract little respect when there is a need for low-paid obedient workers engaged in the production of export goods. Also, the right to enjoy and share scientific progress (UDHR, Article 27:2 and ICESCR, Article 15:6) is greatly restricted with the coming into force of TRIPS agreement.

The trade related practices also lead to violations of the rights of indigenous people besides causing significant damages to environment and natural habitat. Moreover, the pursuit of free trade is benefiting rich countries more and the gap between rich and poor nations is growing further. This is leading to the marginalisation of poor nations. Unless the TNCs are made to follow internationally recognised code of conduct, in which human rights dimensions can be built, human rights of people cannot remain secure as the contemporary trade practices at international level reveal.

---

## **25.11 EXERCISES**

---

1. What do you understand by the term "International Bill of Rights"? List the rights catalogued in it.
2. "Some of the TNCs have larger revenues than some nations." Discuss the
3. TNCs' economic power in the light of this statement.
4. Give examples of violations of women's rights by certain TNCs.
5. In what way are the environmental rights violated by TNC practices?
6. In which sector is child labour exploited in India by some TNCs?
7. Briefly discuss the violation of the rights of indigenous people by TNCs.
8. Do you think TNCs should be governed by a Code of Conduct?