Introduction: understanding transnational corporations in the 21st century

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The past few decades have seen an acceleration in the globalisation of the international economy. This process has been assisted by advances in communications technology and reductions in transportation costs for globally oriented actors. Many actors have played a part in this process, among which Transnational Corporations (TNCs) have come to reflect the changes associated with globalisation more than ever before in view of their growing power, size and number.

This deepening global process has not developed without some perceived problems calling for global solutions. These include global climate change, population movements and environmental disasters. A further problem that affects TNCs relates to the regulation of the global economy and the fashioning of appropriate rules and institutions to further this goal. In an era of legal or regulatory pluralism, we have seen many new norms and institutions emerge to deal with ‘market failures’.

Global corporations operate both within and between nation states. This can lead to major regulatory problems, as was seen during and following the Global Financial Crisis when large international financial institutions, such as Lehman Brothers, collapsed; creating problems for national legal systems. As Mervyn King, the former governor of the Bank of England, reminded us, many large corporate groups, such as global banks, are ‘global in life, but national in death’ as the world searched for appropriate insolvency and corporate rescue mechanisms. Creating and maintaining regulatory structures and rules to deal with the problems created by TNC remains a major challenge.

In this book, global corporate concerns are called ‘Transnational Corporations’ because their operations are not only *multi*-national – spanning and impacting on *multiple* states – but also affect the *relations between* and across those states, as well as impacting on global phenomena *transcending* state boundaries.

The lives of 21st century citizens are often more influenced by the activities of, and decisions made by, TNCs than they are by national governments. Yet TNCs are not exposed to the same democratic controls that seek to align governments with the wishes of national populations.

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This is hardly surprising as corporations are artificial legal persons where control lies in the hands of narrower groups of persons. Despite the advances in accounting practices and market disclosure requirements imposed upon listed companies, it is also the case that TNC decision-making is rarely exposed to the same standards of transparency and public scrutiny that often apply to government decision-making.

There is therefore a greater need than ever before to understand the nature of the modern TNC, its operations and its influence; and to understand the different ways in which TNCs are being rendered more responsive. The ultimate question, of course, is the extent to which, when dealing with global problems, TNCs can be relied upon to solve problems, rather than merely being seen as part of the problem. Understanding TNCs in their interactions with other global actors on the global stage is therefore an important aim for 21st century researchers, and one which this volume is aimed at facilitating.

In line with these aims, the first and longest Part of this volume features seven chapters exploring global aspects of the TNC. Chapter 1 begins by outlining the changing nature of the TNC – including how globalisation has changed the traditional corporation and how the TNC has helped to shape patterns of globalisation. In Chapter 2, Rachel Anderson provides a clear-headed analysis of the different theoretical approaches that have been developed by scholars writing about the modern TNC. It is an important chapter that provides a systematic theoretical framework for understanding other chapters in this volume.

In Chapter 3, Larry Catá Backer takes us back again to the inevitably political nature of the modern TNC. The fact that TNCs are forced to negotiate with national, and often sub-national, governments within the local territory of the relevant host state is only one part of this inevitability. The ways in which TNCs are politically active in international forums is another part. At both national and international levels, TNCs are forced to encounter, and engage with, other political actors – most notably the NGOs that seek to influence national and international policy agendas but also including international organisations, including UN, multinational and regional organisations such as the various development banks, trade-agreement groupings, aid agencies and regional organisations. Catá Backer's chapter provides a sophisticated understanding of the evolving ecologies of relationship among TNCs, governments, other political actors and civil society groups. He paints a complex picture of overlapping relationships of shared and conflicting interests. He also takes an important step forward towards developing a new meta-theory for future analyses of these relationships.

Chapters 4 and 5 provide case studies of two global regulatory systems formed through the coming together of TNCs, governments, international organisations and NGOs. Maria Alejandra Gonzalez-Perez and Liam Leonard examine the history, evolution and current operation of the Global Compact's governance structures – beginning as an initiative launched by UN Secretary-General Kofi Annan in 2000. Manuel Wörsdörfer then takes us into the world of an important private sector initiative – the finance industry's Equator Principles for project financing. In both cases, UN and other multinational organisations have played an important part in influencing the eventual shape of governance structures, and in both cases the involvement of the private sector was – and remains – crucial to its viability and successful operation.

When is a TNC not a TNC? When it's a global supply chain? For there are now many different types of global supply chains – some clearly identifiable as corporate groups, others less easily identified with a single corporate name. In his 1988 book *The Rise of the Network Society*, Manuel Castels pointed to the rise of the network society and the network enterprise. Since that time, the complexity of global supply chain arrangements has only increased. In this context, the chapters by Jodie Kirshner and Andreas Rühmkorf examining different forms of corporate globalisation are both timely and relevant in the 21st century. Kirshner examines both the motives and the means of corporate global expansion. She notes that limited liability has made expansion through separately incorporated subsidiaries attractive for companies, such that many have developed into vast corporate groups with multiple layers of subsidiaries under the control of holding companies. Such structures, however, form only part, albeit an important part, of the sophisticated global sourcing strategies developed by TNCs, usually aimed at minimising production costs. The many different types of relationships that now exist between TNCs and their many foreign suppliers present major challenges for attributing accountability, responsibility and liability when human rights violations occur. It is these challenges, and the various strategies designed to address them, that form the focus of Rühmkorf's chapter on global supply chains.

Part II of this volume then takes the reader into the practical realities of the theoretical constructs outlined in Part I. In particular, it contains two detailed industry case studies examining the political and economic motivations of corporate decision-making and behaviour. The first of these explores strategies used by pharmaceutical industry TNCs and their industry associations to advance their economic interests through trade and investment agreements, with a particular focus on the proposed Trans Pacific Partnership (TPP) Agreement. As the implications of how TPP terms are implemented gradually become clearer, the chapter

by Deborah Gleeson et al. provides valuable background material and insights for those seeking to safeguard equitable access to medicines for all.

In a somewhat more optimistic vein, Anna Chou's chapter examines initiatives in the consumer electronics industry aimed at building human rights due diligence into the minerals sourcing supply-chain. Case studies such as these serve to ignite a conversation and provoke further critical thinking. Chou's evaluation of the ways in which CSR theory has been applied in practice through Samsung's business strategy introduces readers to the tradeoffs involved in CSR strategies. It demonstrates that key values can conflict with each other, inviting readers to contemplate different facets of the decision-making and judgement process. Chou's chapter neatly illustrates the daily realities of the theoretical dilemmas discussed by Kirshner and Rühmkorf in Part I of this volume.

The country studies in Part III of this volume examine different aspects of the fluid and complex relationships formed between TNCs and nation states. China is, perhaps, the country where such relationships have been formed on the greatest scale, and with the greatest degree of fluidity and complexity. While there already exists an extensive literature examining the foreign TNC experience in its engagement with China as a host country, Megan Bowman et al. provide a new perspective on China and the modern TNC by tracing the history and current experience of Chinese outward direct investment using state-controlled TNCs as tools for achieving strategic purposes beyond short-term business profits.

The growing influence of Chinese TNCs in the global economy makes the question of accountability when it comes to state-controlled corporate vehicles of particular importance. Virginia Harper Ho's chapter on the role of disclosure obligations as a source of accountability for Chinese TNCs is therefore both timely and relevant. In particular, Harper Ho's exploration of the Chinese experience demonstrates the advantages of disclosure-based regimes as a source of accountability for TNCs even in institutional contexts that limit the effectiveness of external monitoring and traditional regulatory tools.

TNC accountability also features as a theme in Roman Tomasic's chapter examining negotiations between government and TNCs in relation to Australia's proposed minerals resource rent tax. That chapter returns to an emerging 21st century theme highlighted in de Jonge's chapter on the changing nature of the TNC – the desire and the need of governments worldwide to improve transparency, monitoring and accountability of TNCs in regards to their financial transactions and the fulfilment of taxation obligations and undertakings. Not surprisingly, TNCs have pushed back against state-led initiatives to combat tax base erosion and profit shifting, and this pushback has had – and continues to

have – significant political and economic implications, both nationally and internationally. Tomasic's chapter brings to life the nature of the politics involved in state–TNC interactions when it comes to major policy changes affecting, or potentially affecting, TNC profits. The final chapter, by Diane Kraal, also illustrates starkly the real-life, long-term and historical implications of TNC power and influence when it comes to national policy decision-making. Important questions raised by both chapters include whether, when and how it is possible to ensure that TNCs involvement in national and international policy debates works to further the public good, rather than simply private gain.