

## CHAPTER 26

# Global corporations

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This chapter does not discuss how various corporations have influenced global governance, nor how (global) governance institutions have sought to regulate corporations. These two common approaches might be best regarded as seeing the relationship

between corporations and global governance as either an input (helping shape the agendas of global governance institutions) or as an output (corporations impacted by institutional decisions). On the input side, there is significant evidence of corporations having successfully lobbied and shaped the agenda of various global governance institutions and other globally focussed organizations.<sup>1</sup> Likewise, most analyses of global governance discuss the varying levels of regulation and (lack of) compliance by corporations across a range of issue areas, from environmental protection to labour rights. Both of these aspects of the relationship between global governance and corporations are important, but they also are clearly visible in the debates about global governance.

Here, however, I propose a third and additional perspective: the global corporation itself has a significant governance role within its own international networks, and as such, it is an institution of global governance in its own right. Given that “governance” is often presented as the importation of business values and processes into politics,<sup>2</sup> it is perhaps surprising that corporations’ (extra-economic) governance of their own networks has remained under-remarked. This chapter is there-

fore concerned with the wider realm of relations on which global governance analyses should focus—specifically including but not limited to, the supply chain assembled and governed by contemporary globally active corporations.

Patterns of organization vary widely between corporations,<sup>3</sup> but limitations of space mean the focus here is on the question of governance in general rather than looking at actual corporate networks (as would be required to further develop this approach through specific cases). Thus, while recognizing that not all major global enterprises are corporations (Ikea and Zara, for instance, are privately owned and not therefore incorporated), organizational practices are not so varied by this (different) legal character as to suggest that the approach here does not apply. The challenges and practices of governance of supply chains do not likely differ significantly depending on the ownership structure of the enterprise, although further research is required to test such a proposition.

Therefore, this chapter, rather than adopting an analytical perspective that focusses on the process of management, instead employs the lens of a *governance* function undertaken by corporations, which is characterized by explicit and implicit

power relations. It is thus concerned with more than the technical management of efficiency in network interactions. Hence, our understanding both of global governance and the political economy of the global corporate sector can be enhanced by adding this third, complementary view.

The next section briefly sets out what the global corporation is, highlighting some important legal and political issues. Thereafter, it explores the forms of power that it can deploy across its production and supply networks before examining some current debates about the impact of the corporation's governance of its network. This approach underpins the argument that we can gain extra traction on the political economy of the global corporation by understanding it as an institution of global governance itself. The conclusion highlights some key issues that this approach helps illuminate.

## **The political economy of the global corporation**

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There is a wide and distinguished literature looking at the role of corporations in the global system. Here they are referred to as “global” corporations, but they have also been called “multinational” and “transnational” corporations or enterprises. These accounts are often broadly focussed on the relations between relatively independent corporations operating across a (sometimes a large) number of state jurisdictions, and their varying relations with these states.<sup>4</sup> There are various ways these relations are conceptualized, but the key point is that they treat the corporation (or enterprise) as a singular unit (or often a black box). Although there are other forms of a company or private commercial enterprise, it is almost always the case that those active at the global level are incorporated in a national jurisdiction (or constituted through parallel legal forms). Thus, while accepting differences, the similarities are more important.

Although corporations are organizations made up of groups of people, various social and internal institutions with capital and other assets mobilized toward a set of economic (and sometime extra-economic) ends, they are usually treated as having a single personality for legal purposes. This legal fiction pays clear organizational dividends within

contract law—for instance, the corporation can be dealt with as an effective signatory to agreements and undertakings. Although there are other modes of corporate organization, the central aspects of the Anglo-Saxon legal form—corporate personality; limited liability; specified modes of corporate governance—have become increasingly influential and widespread in the new millennium, especially as regards the corporation's legal personality.

Moreover, for many corporations, the desire or need to compete to raise capital in London or New York, and thus seek stock market listings in the United Kingdom or the United States, has driven the adoption of the legal arrangements to deliver specified accounting and financial reporting requirements required in these jurisdictions. Through compliance with such regulations, a particular legal form has been exported to countries with differing legal traditions and practices.

This partial convergence of corporate forms has not necessarily been beneficial for the accountability of business; for instance, the increasing adoption of Anglo-Saxon modes of limited liability within the governance of subsidiaries has shielded companies and their shareholders from accountability across their international networks. In the

Anglo-Saxon corporate legal form, corporations have the ability to hold stock or own other companies as they are treated as single legal persons with similar rights to ownership to “natural persons” (i.e., people). This allows the corporation itself to benefit from the protection of limited liability (originally formulated to protect individuals from excessive risk not to safeguard corporations themselves), in its role as a holding company. Possibly the most important aspect of legal personality is the extension of the benefits of limited liability. This is the formal limitation of the investor’s exposure to loss to the amount of the original investment; once the shares have been purchased, their value may plunge to zero, but there can be no further demands on the investor for funds whatever the plight of the (failing) corporation.

Originally, the extension of legal personality through incorporation to business enterprises was a grant of authority by the state to carry out certain purposes for the public good. One of the key shifts in the modern political characterization of incorporation has been a move from a conception of delegation of certain powers from the state, to seeing incorporation as a mode of protection *from* the state. Thus, now the global (multinational)

corporation occupies a social space where its supporters argue that its forms and practices are not political but merely technical. Nevertheless, we are still confronted with the question of how far such corporations fulfil their side of any (now largely forgotten) bargain.<sup>5</sup>

While corporations remain outside the scope of international law (like other persons, they are subjects only to national law), corporations' recourse to legalized personality is a relatively internationalized legal norm even if it remains a national jurisdictional matter. While corporations may be influenced by international "soft law" (regulations that have the appearance of law but not the capacity to sanction non-compliance), little regulation at the international level has been solidified into hard, positive law to hold them firmly to account outside national jurisdictions. This has the advantage of offering corporations opportunities for organizational convergence with its posited associated efficiency benefits, but with few of the accountability costs of formal legislative development.

This legal situation *does* mean that global corporations are exposed to a significant legal tension; they are constituted under the laws of their home country, and as such this has some impact on their

character and practices. However, equally, most countries require the local subsidiary operation of any corporation to be incorporated or registered under national law, and as such frequently a global multinational's legal form is highly diversified. Sometimes, governments of corporations' home/headquarters seek to extend their legal reach through the extraterritoriality of their regulatory focus to demand that subsidiaries should be governed by the regulations of the home country even if they conflict with those of the subsidiary's host jurisdiction. Conversely, host states may also seek to hold global corporations accountable through national legal mechanisms that may be in tension with how a corporation expects to manage its affairs in its headquarters country. Where bilateral investment treaties (BITs) have been negotiated, the host state may end up constricting its own ability to so regulate as a way of "encouraging" inward investment as well as subjecting itself to often potentially contentious international investor-state dispute settlement or arbitration.<sup>6</sup>

Corporations seek to navigate this international legal terrain with its variable rules by establishing an inner governance function that builds on these legal requirements, but that establishes network-

wide norms and rules to enable the network to function as a single (albeit complex) organization. This practice of governance is the subject of the rest of this chapter.

## Supply chains and governance

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The complexity of the organization of supply chains has become an ever more serious issue for globally active corporations as their networks have become more internationalized—amply illustrated by the blockages in and disruptions to supply chains during the COVID-19 pandemic. These extended networks have been developed to gain cost and functional advantages for the overall production of goods and services across a global market, but corporations not only need to utilize these networks, but they also need to govern them as well.<sup>7</sup> Indeed, among institutions and global policy organizations, we might identify as producing global governance outputs, such as the United Nations Global Compact (UNGC) or the Extractive Industries Transparency Initiative (EITI), there is a growing recognition that improving the governance function of corporations can have beneficial

effects. However, there has been much less discussion of how this governance function might be best understood as a political-economic issue.

Neil Coe and Henry Yeung's work on global production networks maps out much of this space and offers a dynamic account of supply/value chain development.<sup>8</sup> The realm of interactions where corporations seek to achieve their ends through forms of governance can be described across four dimensions: intra-firm coordination, inter-firm control, inter-firm partnership, and extra-firm bargaining. In each case, corporations' strategies are likely to be dynamic and responsive to both internal shifts but also external factors that have an impact and shape the micro-context of the relations between the core corporation and its connected entities, whether they are contractors or subsidiaries. Extending and developing that approach requires that a governance analysis moves beyond seeing immediate profit maximization and efficiency gains as the only explanations for the specifics of these dynamic actions and decisions about the manner in which the global production network is organized.

The decisions made by a corporation within its supply chain or production network are not necessarily directly concerned with efficiency or

profits but rather with the perpetuation of control and the values stressed by the central management groups.<sup>9</sup> Moreover, these values are likely to vary from sector to sector: corporations in the pharmaceutical or high-technology sectors, for instance, will undoubtedly have considerably more interest in the manner in which their networks treat, use, and protect intellectual property rights (IPRs) than a corporation in the food sector.<sup>10</sup> Likewise, corporations in capital-intensive industries such as energy generation will confront different governance issues from clothing retailers with extensive and complex buyer-led supply chains. Thus, a high-technology corporation will be concerned not just with the way partners use specific IPRs but also with the national legal context, such as a state's government's willingness to enforce such rights. Of note is that Chinese unwillingness to enforce IPRs has been identified as an issue for the development of some supply chain relations. However, for clothing and assembling networks, brand impact of labour relations will be a larger concern for contractors seeking to either distance themselves from unwelcome developments (such as the Rana Plaza fatal building collapse) or by seeking more direct

control of labour standards in the supply chain through forms of relational contracting.

As these examples begin to suggest it is likely that the corporation may be effectively managed by a coalition of stake-holding groups focussed on a myriad range of outcomes including immediate profitability but by no means limited to it. As corporations have become embedded in more fragmented supply chains, so too these coalitions have often needed to resolve internal conflicts over various competing outcomes.<sup>[11](#)</sup> Thus, we immediately should differentiate between the politics of control across the corporation's network and a focus just on its beneficial ownership structures; perhaps more importantly this points towards the centrality of governance in these networks.

When we think of global corporations' governance function, the key issue is not necessarily the ownership of assets and resources but rather the ability and abiding interest in controlling access to those resources.<sup>[12](#)</sup> While significant parts of the supply chain network are usually outside the ownership structures of any particular global corporation, the ability to control access to the central resources of the network, and also—for instance, through non-competition clauses in contracts

—an ability to constrain access by competitors to key “independent” elements of the network is an important part of corporations’ governance function.<sup>13</sup> Although the ownership structures of global corporate networks are often complex, the management and control of these networks produce identifiable governance effects.

This management interest is not limited to the issue of prices or market conditions. It is also (and crucially) an issue of managing time and space as a global corporation’s managers seek to control its own political geography to maximize returns and remain a going concern.<sup>14</sup> As Lynne Dallas contends, the chief and perhaps only really effective lever of corporations is their ability to mobilize and allocate resources across the space that they seek to control. Here we should understand “resources” widely to include “social products” including influence, legitimacy, and preferences that the central managerial coalition governing the supply chain can deploy to shape more micro-level decision-making.<sup>15</sup> This can also be seen as the institutionalization of specific network-specific relations, habits, and socialized knowledge about what would be regarded as normal activity. Furthermore, a key outcome of corporations’ governance of their

networks is the ability to transfer risk away from the central corporation and onto other stakeholders and partners in the supply chain. Seeing corporations as governance institutions requires a focus on ongoing relations within these networks and not merely on a series of periodic intra-network transactions.

For example, global corporations set standards and rules in many market sectors directly via the contracts that are used to pattern the supply chain. As Katharina Pistor points out, corporations “have increasingly assumed a role as regulators of their suppliers and producers. The latter have little choice but to tailor their production to [these] demands.”<sup>16</sup> Moreover, as many global sectors actually function as effective oligopolies,<sup>17</sup> and as such are controlled by a small group of corporations whose managers even if not colluding with each other share a broad set of interests, the acceptable and normal practices in these often quite closely bounded market segments are set by a small number of corporations. The corporations at the centre of these supply chains seek to perpetuate their position by re-creating this environment, as changes and innovations are required, to maximize their capture of any associated advantages or benefits.<sup>18</sup>

At the same time, they shift the risks associated with such changes into the supply chain—costs of transition are often borne by contracting partners, not the core corporation itself.

So, for instance, growing concerns around environmental impact (driven by good faith concern, or attention to brand profile) have refracted across global supply chains. On the one hand, lead corporations have sought to ensure suppliers adopt quasi-sustainable practices in production and service delivery. On the other hand, they have used the perception of sub-contracting at distance, to allow for a partial reputational “firewall” to be built around brands. What we have then seen is an attempt by critics to argue such distancing does not reflect the real governance regimes in supply chains (that lead corporations are very much in control), while the corporations themselves sacrifice (sometimes only temporarily) contractors by publicly cancelling contracts, on the basis that contractors have failed to fulfil their contracted commitments. Here, environmental sustainability has become a reputational asset that corporations wish to protect/value rather than a necessary driver to extensively reform business practices.[19](#)

As this suggests, within these networks, corporations effectively construct regimes of private law to govern the relations between the various elements, while also seeking to influence public law. Private law can be manifest through standard-setting as well as through contract law more generally. The use of private law—that is, contract provisions and arbitration agreements—often utilizes public international law as a background justification but equally is crafted to serve the needs of the particular corporate network in which it is deployed.[20](#) This approach becomes an important part of that corporation's governance functionality as Dan Danielsen has pointed out:

the decisions and actions of corporations have social consequences largely indistinguishable from those created by public regulators, but... corporate decision-making [i]s largely insulated from public participation, engagement or scrutiny ... If corporations are significant institutions in the transnational governance regime, then policymakers and activists will need to find ways to affect the decision-making of these corporate institutions.[21](#)

The democratic deficit often identified as compromising the legitimacy of global governance is likely more serious when corporations by their very actions are regulating economic interactions, even if these are also shaped by various other regulatory regimes and to a large extent internal to contracted networks across their global supply chains. The choice between competing standards, differential corporate governance regimes, and the incorporation of national rules into standard corporate practices opens a number of options. Corporations can decide which regimes they might use, how they interpret them, and if, as in the face of no acceptable standards or rules, they can and need to set their own for their network's internal relations.

A further challenge for governance for many corporations is that theirs may only be one among a number of supply chains serviced by a particular supplier, and their ability to govern the actors involved is therefore incomplete. Moreover, there is much less clarity than for states, for instance, about the legitimate reach of corporations' jurisdiction as regards the other organizations in the supply chain, and hence their need to work to maintain legitimacy within the network. One might expect that the more any sub-contracting network partner

was dependent on the core corporation, the more compliant it would be, although there is also an issue of specificity of their own technology and other assets that might mitigate the asymmetry of power prompted by a narrow range of network engagements. For complex supply-chain relations for which considerable (if different) points of leverage exist on both sides, the establishment and maintenance of legitimacy of core corporation regulatory and practical requests is key to holding the network together.

This leads Kate Macdonald to characterize the governance of supply chains as exhibiting “decentralised, non-hierarchical dynamics, without established deliberative processes or other norm- or procedure-governed mechanisms to determine outcomes or resolve conflict.”<sup>22</sup> Thus for instance, where the governance of labour standards has become an issue for the core corporation, there may be a political need for the governance function, and the regulations to which it is applied, to become a more collective or “democratic” endeavour among a number (sometimes quite a large number) of corporations, contractors, and civil society actors. Here the internal governance function of the corporation and the realm of private authority, as

exemplified by civil society organizations and civil regulation interact.

Governance from this central point is seldom entirely hierarchical but is more often a process of negotiation and engagement. The central corporation may have distinct advantages; but subsidiaries, contractors, and others may also have forms of leverage that can be deployed within supply-chain decision-making. Thus, where the core corporation is contracting with partners to access particular technologies, or localized resources or knowledge, the contractor may have significant opportunities to shape the contractual relation. The central corporation may also seek to benefit from “reverse diffusion” of practices and innovations for which they have been developed in one part of the network; here governance is concerned with how to establish the new practice/approach around the network.

Additionally, the corporation at the centre of the network may have multiple interests and thus present competing positions to partners, shifting and changing the focus of potential leverage. For instance, particular sub-contracting partners in the network may get a very different steer from the Corporate Social Responsibility (CSR) team that

visits their plant to ascertain their compliance with various standards and requirements, than they will from the buying team, whose emphasis is likely to be on price and quality. Focusing on corporations as institutions of global governance suggests the reasons for differences between high-level commitments and what happens within the supply chain itself. Like other governance institutions, global corporations have complex bureaucratic managerial arrangements, which produce difficulties in coordination between policy and practice. This is to say, like all complex organizations, there is an element of bureaucratic politics that analysis needs to locate and recognize.

Therefore it makes some sense to follow David Ciepley and posit that “within its jurisdiction, the business corporation exercises powers analogous to those of government, if more limited, including the right to command, regulate, adjudicate, set rules of cooperation, allocate collective resources, educate, discipline and punish.”<sup>23</sup> Indeed, as Florian Wettstein argues, corporations “are now perpetuating competitive advantage not through superior efficiency or their innovative strength but first and foremost through their use of political power.”<sup>24</sup> Global markets are largely governed by

corporations that are able to exercise power over the character of, access to, and reach of markets that are largely encompassed by their networks. As such these “markets” are essentially planned and mostly unlike spot markets with issues of supply and demand not settled via the price mechanism,<sup>[25](#)</sup> but rather by the priorities of the main corporation enacted via its governance function. These priorities cannot merely be determined by an account of efficiency or profitability, but they need to be understood as the results of political deliberation within the governance function.

When compared to the sovereign state, there may be a considerable difference in the scope and range of such legitimate capabilities.<sup>[26](#)</sup> When a global corporation is compared to the typical institution of global governance, however, these differences are considerably less significant. The corporation can actually be in a stronger position as regards its network than a globally focussed institution in relation to its issue area or constituent state members. Corporations may well be able to more effectively sanction and govern network members than some international organizations can govern state members.

Moreover, global corporations have developed processes that often mimic legal structures. This situation negates many unwelcome consequences of globalization. In the absence of the supranational laws of property or contract, the global corporation's network of subsidiaries and affiliates respond to the internalized, law-like rules and regulations that the core corporation puts in place<sup>27</sup> and less to differences in national legislation. Within its own network or effective jurisdiction, the corporation is a form of governing body. It adopts, as Ciepley suggests, many of the attributes of government. The authority that it mobilizes, however, is not entirely separate from government, but rather flows from the legal mechanisms (such as incorporation and property law) that facilitate corporations' operational modes in specific jurisdictions. The corporation's governance function is not against the state, but rather it is partly facilitated by the state.<sup>28</sup> Where differences in national legislation are to the corporation's advantage, the relationship between globalized internal rules and national laws is finessed to ensure that both serve the corporation's needs. A governance analysis is useful because it points to the need to develop and maintain legitimacy in relations between govern-

ing and governed, and it also points to its micro-political relations.

## Conclusion

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Although global corporations certainly interact with the other institutions of global governance, they also govern significant realms of the global political economy themselves, sometimes in conjunction with the regulations and guidelines of other institutions, sometimes as single governing authorities. While using forms related to, and indeed constituted by states, their character and effect within the corporation's "internal" relations—that is within its networked supply chain not only within its incorporated core—are defined by the corporation, not the state.<sup>29</sup> Where corporations are constituted differently from the dominant Western model, perhaps incorporated in states across the Global South or are state-owned, the formal, legal issues may vary considerably. In some cases, considerably different governing principles may arise, but the underlying requirements for efficacy are likely to lead to similar practices. To be effective, even if state-sanctioned forms of the

supply chain or network governance should be regarded as legitimate by network partners, contractors, and participants.

Accepting this analysis suggests that rather than seeking to understand supply chains primarily on the basis of profit maximization, cost reduction, or resource acquisition, analysing the processes and practices of governance—most importantly around the issue of the establishment of legitimate authority within corporate networks—allows for a hitherto under-recognized realm of global governance to be illuminated. It highlights the supply chain network as a terrain of global politics, which in turn allows researchers to deploy a rich and well-established set of conceptual tools developed to understand global governance. The express intent of appreciating how these networks are governed and the opportunities and impediments that such practices imply permits defining better strategies for CSR.

## **Additional reading**

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5. Christopher May, *A Research Agenda for Corporations* (Cheltenham: Edward Elgar, 2020).

Also

1. Centre for Research on Multinational Corporations (SOMO) – <https://www.somo.nl>.
2. CorpWatch – <http://www.corpwatch.org/index.php>.
3. World Economic Forum – <https://www.weforum.org>.

## Notes

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