

## HUMAN RIGHTS IN THE CONTEXT OF INTERNATIONAL ECONOMIC ACTIVITY

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The UN defines TNCs as companies that have assets in two or more states. In particular, after World War II, a large number of big companies took advantage of the improvement and emergence of new

*The article examines the regulation of international economic activity in the context of human rights. The activity of transnational corporations as one of the major actors of international economic relations is studied from the point of view of their observance of international law on protection and promotion of human rights and national law acts concerning different aspects of human rights including labor law. This research is aimed at pointing out the difficulties caused by the activity of transnational corporations due to their ability to have economic subjectivity in different countries. The national law of the USA is examined as an example of regulation of their activities from the point of view of providing human rights.*

transport technologies in order to bring their products to foreign markets. According to the United Nations Conference on Trade and Development (UNCTAD), about 40,000 TNCs and their foreign affiliates control two-thirds of the world's trade in goods and services. At the same time, the majority of world trade investments are in the hands of several hundred largest

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TNCs play an important role in our life: they produce a large amount of daily consumed products, participate in financial transactions, in the sphere of culture and in other fields. The ability of transnational corporations to avoid state legal regulation by doing business in foreign countries remains a cause of concern for the world community due to the lack of a unified approach to this issue.

corporations, whose economies even surpass those of some countries in the world. For example, in 1995, General Motors' sales surpassed the gross national product of 169 countries, including Saudi Arabia, South Africa, Malaysia and Norway.

Transnational corporations successfully use their position to avoid responsibility for various kinds of violations, including harm to the environment, violation of human rights, labor laws and others. Of course, the economic power of transnational corporations is colossal in itself, but very often this power increases even more when TNCs begin to use the governments of their country of



origin as leverage. An example is the case when a US pharmaceutical company put pressure on the country's government in order to force other states to revise the rules for issuing appropriate licenses in this area, even though this issue is being resolved within the WTO. Many developing countries can do nothing to oppose this kind of pressure, since they need help from developed countries and are forced to succumb to such pressure under the threat of a reduction in material assistance. Moreover, TNCs can influence their governments when concluding agreements that can provide favorable conditions for economic activity to other business entities. At times, such an impact can even be corrupt.

Transnational corporations in their activities on the territory of a developing state take advantage of the lack of proper administrative and legal regulation, whereby they very often violate obligations under concluded contracts, extracting the maximum possible profit. Such action is usually not possible in developing countries. Of course, such actions are sometimes allowed when doing business in developed countries. For example, some oil companies engaged in embezzlement in economic activities in Alaska, but after relevant investigations they were forced to pay massive compensation.

In addition, transnational corporations can take advantage of the weakness of the administrative and legal regulation of the state accepting investments in order to hold states accountable for some restrictions imposed by the state in the presence of provisions on "fair and equal treatment" in the BIT, even if the TNCs knew in advance

about the possibility such restrictions in this state. Such actions very often lead to the fact that TNCs seek large compensation payments from these states, which, of course, is in no way a positive impact on the economic development of the state.

Human rights are one of the main areas that are often touched upon in the course of the activities of transnational corporations. In this regard, a broad role in the legal regulation of the activities of transnational corporations is assigned to the relationship between business and human rights. This can be clearly seen, first of all, in the international legal acts adopted in this area. In particular, in 2011, the Human Rights Council decided at the 17th Session to establish a Working Group on the issue of human rights and transnational corporations and other business enterprises [7]. As part of the work of this group, the Guiding Principles on Business and Human Rights were adopted. The document itself is of a recommendatory nature, however, the participating countries generally take the necessary domestic measures to implement these Principles. The United States is no exception in this regard and has become one of the leading countries that imposes on its transnational corporations the obligatory leadership of this document in the process of its activities to generate economic profits anywhere in the world.

From 22 April to 1 May 2013, the Working Group visited the United States. During the visit, attention was paid to the implementation by the federal government of appropriate measures to ensure the implementation of the Guiding Principles. The report of this Working Group on the results of the visit to



the USA was presented to the Human Rights Council at the 26th session [8].

The US Council on International Business has expressed its support for the UN Working Group in creating the Guidelines. Several US multinationals have recognized the importance of early implementation of the Guiding Principles. However, some US TNCs remain taciturn about the application of these Principles. This position can be explained by the fact that the Guiding Principles were adopted relatively recently - in 2011, however, nevertheless, such nihilism in relation to an international document, the purpose of which is the protection of human rights (primarily with regard to labor legislation) is not acceptable.

The civil society in the United States is quite active, as evidenced by the large number of non-governmental organizations, trade associations and professional associations, for example, the American Bar Association, which is active in the field of human rights protection in relation to business organizations, including those who conduct their economic activities abroad, that is, TNCs. Many of these organizations work closely with the Working Group, providing it with the necessary information about US transnational corporations and other economic entities.

Many stakeholders and organizations, including the US government, are concerned about the proper legal regulation of TNCs, but often their positions on the relationship between business and human rights differ. The question of the most appropriate internal and universal legal regulation of the activities

of transnational corporations remains open to discussion and is the subject of discussion both in state bodies and in legal doctrine.

In April 2013, the US government published a document titled Government Attitude Towards Business and Human Rights. This document demonstrates the commitment of the United States to the application of the above-mentioned Guiding Principles, which have become an important universal document in the regulation of the activities of transnational corporations [9].

The document states that the US government intends to regulate the legal aspects of the activities of economic entities of the country that conduct their activities abroad, and also expressed support in promoting such goals as strict observance of labor laws and human rights. In addition, the government announced its readiness to support any projects of TNCs regarding the proper legal regulation of their activities. Such an approach of the government to urge TNCs to comply with domestic legislation and international law in their economic activities can serve as an example for other states of the nationality of transnational corporations.

However, it is worth noting that the scope of regulation of the above document is rather limited. There is a need for the government to revisit the political and legal framework for regulating TNCs, for example, in the area of labor law and access to legal remedies, in order to fully apply international law as well as the Guiding Principles.

According to the Guiding Principles, the state must ensure that all state bodies and agencies are required to respect human rights in business activities of economic entities.



Various federal bodies and agencies initiate the proper provision of information to all business entities about international legal norms for conducting business.

The US government is implementing measures to coordinate the activities of federal and state institutions in order to facilitate the legal regulation of the activities of transnational corporations based in the United States.

US law, in accordance with the Guiding Principles, endeavors to ensure the necessary flow of information from transnational corporations, in particular those whose activities may pose a threat to human rights [10].

The US government has implemented the necessary regulatory measures requiring TNCs to provide information about their possible impact on human rights. For example, some oil and gas companies operating in Myanmar are required to report on the amounts and methods of payments made to foreign countries as part of their natural resource extraction and processing activities. This has been enshrined in the Guiding Principles as well as in the US Consumer Protection Act. The government also expressed its support for the implementation of industrial transparency standards, enshrined as a separate document.

Such a government policy indicates a firm intention to control the activities of US transnational corporations that operate far outside the country. Nevertheless, it is necessary to develop mechanisms of pressure on those corporations that avoid submitting such reports, which may violate labor, tax laws, as well as human rights. Detailed information should be provided on the human rights situation that could be threatened by

the activities of the transnational corporation.

The Guidelines provide States with the opportunity to implement the necessary measures to respect human rights in the activities of TNCs. For example, guided by the provisions of the US Consumer Protection Act, the government takes an interest in the activities of multinational corporations for the extraction and processing of mineral resources in the Democratic Republic of the Congo. In this context, TNCs are obliged to provide information that the company prevents the receipt of proceeds from activities in this state into the budget of armed formations involved in criminal activities in the territory of the Democratic Republic of the Congo. Such an approach can have the necessary influence to ensure that the aforementioned armed groups are not financed by US multinationals, which can prevent some illegal actions that violate the rule of law and human rights. Also, it is worth noting that some US transnational corporations have become participants in the Conflict-Free Smelter program, which allows you to determine the belonging of the extracted mineral resources in economic activities to conflict zones.

The US government is a party to the Voluntary Principles on Security and Human Rights [11] and is taking the necessary steps to properly implement these principles in relation to its own transnational corporations.

The US government provides the necessary financial support to its multinational corporations. The policy of US TNCs in relation to the environment and the public in the country of its main activities is carried



out on the basis of the principles developed by the International Finance Corporation (IFC). For example, many multinational corporations have established grievance offices for social and environmental impacts. In addition, the necessary mechanisms were developed to ensure the receipt of complaints on labor issues from employees of the corporation.

The US government is taking the necessary steps to extend such mechanisms to all economic entities in the country - both local legal entities and TNCs.

The US Congress plays an important role in ensuring the legal regulation of the activities of transnational corporations. In particular, in 1977 the Anti-Corruption Act [12] was passed, and the Dodd-Frank Act [13] was passed. Congress and the Senate can play an important role in ensuring legal regulation in the future, as well as in the proper implementation of international legal acts regarding the activities of TNCs. The country's legislative body plays a decisive role in bringing the necessary information about the position of international law in regulating the activities of TNCs, as well as the progressive development of domestic legislation in this area.

With regard to labor law, it is worth noting, first of all, that the United States has not yet ratified the fundamental conventions of the ILO, however, nevertheless, it is a member of the organization and has obligations to respect, promote and implement the principles of labor law, in particular, the prohibition of forced and child labor and the inadmissibility of discrimination at work. The US government implements the necessary legal measures at the federal level as well

as in the legislation of individual states and regularly submits relevant reports on the state of national legislation in this area to the International Labor Organization.

During the visit of the UN Working Group to the United States, information was provided on the temporary placement of workers exercising the right to strike, on the provision of access by trade union organizations to workplaces for necessary investigations, on the provision of necessary legal remedies for migrant workers, as well as on the provision of other collective rights of workers and dignitaries of transnational corporations. In addition, information was provided on the presence of persons who are migrants without proper paperwork for work, which is a violation of US labor law, as well as the fundamental principles of the ILO. In the United States, the necessary mechanisms are being developed to legalize such an attitude on the part of transnational corporations, which often look for cheap labor when carrying out their activities.

The United States, through relevant legislation, is fighting against the illegal movement of persons both within the country and abroad by transnational corporations. In particular, in September 2012, US President Decree 13627 was issued to strengthen legal protection for persons working under an employment contract against unwanted displacement, which obliges transnational corporations to include special provisions regulating this issue in employment contracts. The legislation also provides for mechanisms to control the practical implementation of such contractual provisions. Also, this issue is regulated by the relevant federal law of the country [14].



The United States has ratified ILO Convention No. 182 of 1999 "On the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor [15]." In addition, the United States has a number of federal [19, 20, 21, 22, 23] and state laws that prevent child labor.

The most common way to restore violated rights as a result of activities in the United States is through the use of appropriate legal remedies arising from civil law, in particular, property and tort law, as well as specific laws of individual states. There is no single ombudsman in the United States, but various government agencies such as the Internal Revenue Service, the Department of Homeland Security, the Department of Education, the Environmental Protection Agency, and the Food and Drug Administration have ombudsmen specialized in various industries, and serving as a liaison between citizens and multinational corporations in the event of misconduct.

In 2010, the United States declared its support for the UN Declaration on the Rights of Indigenous Peoples [16]. In 2012, the United States was visited by the Special Rapporteur and members of the Committee on the Elimination of Racial Discrimination, who made recommendations on measures to protect indigenous populations from possible negative consequences of the activities of transnational corporations. In the United States, there is the National Congress of American Indians, the International Treaty Council of Indians, and the Navaja Peoples' Commission on Human Rights, which deal with the issues of the indigenous population in the country. The US government consults with these organizations in mandatory form

when passing legislation on indigenous peoples in the United States.

One of the main catalysts for business and investment activity is the financial sector. It is the financial sector that plays a decisive role in the relationship between human rights and business. The adopted Guiding Principles urge transnational corporations to be guided by the legal mechanisms of financial institutions in their activities. Business entities are obliged to take into account those spheres of influence that relate to legal issues as a result of the direct and indirect influence of their activities. Of course, such financial institutions as banks are also interested in this process. For example, during the visit of the Working Group to the United States, meetings were held with representatives of local banks, who expressed their concern that, in some cases, the activities of large multinational corporations in various countries may cause various kinds of social problems that negatively affect the economic situation. It is worth extending a legal mechanism to such results of economic activity, which will consist of both domestic legal regulation and international, in order to avoid illegal actions and violations of human rights. However, bank representatives express their regret that their ability to influence appropriately to avoid negative consequences is rather limited and often depends on the financial situation of other countries. The working group also had the opportunity to meet with representatives of investors and civil society. In particular, American investors are committed to complying with the Guiding Principles and the domestic laws of the United States and the country in which they do business. It is this behavior of transnational corporations that is the only favorable op-



portunity to facilitate the legal regulation of their activities. However, there may be cases of conflict of norms (clash of the law of the country of nationality of the company and the law of the host country), but these issues are governed by international private law.

Investors informed the representatives of the Working Group that often transnational corporations do not prioritize the observance of human rights in the course of their activities (since the main purpose of their creation is to make a profit), and that they have already encountered this in their own practice in the course of implementation investments in various multinational corporations.

The impact of the financial crisis on human rights has been extensively studied by human rights organizations [17].

Information and communication technologies in the United States play an important role in the activities of multinational corporations. This area is the main activity of some large companies that are active abroad. This sector is also regulated by both US domestic law and international legal documents. In particular, with regard to human rights, there is the issue of observance of the right to inviolability of private life, property rights, freedom of speech, freedom of the press, the right to information and so on. In addition, issues of national and international security, as well as the fight against terrorism (and the corresponding acts of domestic legislation adopted in this area) are also involved here.

The United States demonstrates high concern in ensuring the legal regulation of the activities of the country's transnational corporations. In the United States, special attention is paid to the implementation of international law in this area, as well as the

improvement of domestic legislation in all areas that may be affected by the activities of TNCs. The priority area of the country's activity in this matter is ensuring the receipt of relevant information from the country's economic entities, the transparency of this information, the identification of possible gaps in legislation and the subsequent improvement of legal regulation. Nevertheless, the United States has to overcome the difficulties that are associated primarily with issues of labor law. It is this area that is most susceptible to illegal violations by transnational corporations.

The United States should pay attention to the adoption of appropriate domestic legislation to implement the Guiding Principles, which affect the protection of human rights in the activities of transnational corporations. It is necessary to ensure that information is received in such a way as to contain provisions regarding a complete report on compliance with US domestic law, the domestic law of the country in which we do business, and international laws that are also part of US law. Steps should be taken to sanction corporations that do not fully comply with their reporting obligations to US government agencies. In the field of protecting human rights from the negative consequences of the activities of TNCs, legal regulation should be coordinated with human rights organizations and their reports should be taken into account. The government must ensure that employees of transnational corporations, without exception, in all activities, so that they can defend their rights in accordance with the ILO Declaration on Fundamental Principles and the Right to Work [18].



The US government should support the initiatives of the ILO and other specialized UN agencies to improve the protection of international labor rights and the creation of codes of conduct for business entities. Effective international standards will depend primarily on strong domestic regulatory measures for legal entities, both local and domestic.

In the legal regulation of the activities of TNCs, public, government and international regulation should be taken into account.

The United States should be more vigorous in incorporating provisions to protect workers' rights, human rights from misconduct and similar provisions in international trade agreements. In particular, such initiatives should be shown within the framework of the WTO and the UN. At the regional and bilateral level, the United States should push for the inclusion of social charters in future trade agreements.

However, in this case, special attention should be paid to the strengthening of domestic regulation. International standards will not be truly effective if they are not based on relevant domestic acts.

Boycotts, public outcry and the application of labels to the products of certain corporations are different forms of public influence on their activities. Consumer support, boycotts or boycott threats have been used against companies such as The Gap, Starbucks, Levi-Strauss, and have allowed these companies to take civil and social rights into account in their operations. Organizations such as the World Exchange and the State Labor Commission play an important role in the compliance of TNCs with established codes

of conduct. As a result of several such campaigns, for example against the Gap Corporation in 1995, TNCs were forced to allow independent monitoring groups on production plants operating abroad.

Labeling (for example, the special dolphin symbol used on canned fish) is another way to influence corporate behavior. The application of food safety labels has been adopted as one of the international standards under the GATT.

Thus, the regulation of TNC operations requires a combination of local, domestic and international measures. Global corporations are increasingly beginning to control the global economy, not allowing domestic legislation to exert the proper influence on their economic activities, including with regard to violations of human rights committed in the process of striving for maximum profit.

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### BEYNƏLXALQ İQTİSADI FƏALİYYƏT KONTEKSTİNDƏ İNSAN HÜQUQLARI

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Məqalədə xarici iqtisadi fəaliyyətin insan hüquqları kontekstində tənzimlənməsinə dair məsələ elmi cəhətdən araşdırılır. Transmilli şirkətlərin beynəlxalq iqtisadi münasibətlərin əsas iştirakçılarından biri kimi fəaliyyəti, insan hüquqlarının qorunması və təşviqinə dair beynəlxalq hüquqa və insan hüquqlarının, o cümlədən əmək hüquqlarının müxtəlif aspektləri ilə bağlı milli qanunvericiliyə əməl etmələri baxımından öyrənilir. Bu tədqiqat işi transmilli şirkətlərin müxtəlif ölkələrdə iqtisadi hüquq subyektliliyinə malikolma potensialına görə öz fəaliyyətləri zamanı yarada biləcəyi çətinliklərin müəyyənləşdirilməsini hədəfləyir. ABŞ-ın milli qanunvericiliyinin insan haqlarının təmin edilməsi baxımından, transmilli şirkətlərin fəaliyyətlərinin tənzimlənməsi təcrübəsi öyrənilir.

**Açar sözlər:** *hüquq, beynəlxalq hüquq, transmilli şirkətlər, əmək hüququ, insan hüquqları.*



## ПРАВА ЧЕЛОВЕКА В КОНТЕКСТЕ МЕЖДУНАРОДНОЙ ЭКОНОМИЧЕСКОЙ ДЕЯТЕЛЬНОСТИ

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В статье исследуется регулирование международной экономической деятельности в контексте прав человека. Деятельность транснациональных корпораций как одного из основных участников международных экономических отношений изучается с точки зрения соблюдения ими международного права о защите и поощрении прав человека и национальных законодательных актов, касающихся различных аспектов прав человека, включая трудовое право. Данное исследование направлено на выявление трудностей, вызванных деятельностью транснациональных корпораций из-за их способности иметь экономический субъективизм в разных странах. Рассматривается национальное законодательство регулирования их деятельности с точки зрения обеспечения прав человека на примере США.

**Ключевые слова:** *право, международное право, транснациональные корпорации, трудовое право, права человека.*

## ULUSLARARASI EKONOMİK FAALİYET BAĞLAMINDA İNSAN HAKLARI

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Makale, insan hakları bağlamında yabancı ekonomik faaliyetin düzenlenmesi konusunu bilimsel olarak incelemektedir. Uluslararası ekonomik ilişkilerin ana katılımcılarından biri olan ulusötesi şirketlerin faaliyetleri, insan haklarının korunması ve geliştirilmesine ilişkin uluslararası hukuka ve işçi hakları da dahil olmak üzere insan haklarının çeşitli yönlerine ilişkin ulusal mevzuata uygunluk açısından incelenmektedir. Bu çalışma, çok uluslu şirketlerin farklı ülkelerde ekonomik varlık olma potansiyelleri nedeniyle faaliyetlerinde karşılaşılabilecekleri zorlukları belirlemeyi amaçlamaktadır. Çokuluslu şirketlerin faaliyetlerini insan hakları açısından Amerika Birleşik Devletleri ulusal mevzuatında düzenleme deneyimi incelenmiştir.

**Anahtar kelimeler:** *hukuk, uluslararası hukuk, ulusötesi şirketler, iş hukuku, insan hakları.*

