

POWER IMBALANCES IN MEDIATIONS BETWEEN TRANSNATIONAL CORPORATIONS AND HOST STATES

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INTRODUCTION

Alternative Dispute Resolution, or ADR, which has become exceedingly popular over the past few years, “refers to a large variety of dispute resolution mechanisms or techniques”¹ that allow parties to “resolve their differences without resorting to litigation.”² Over the past few decades, ADR has become so popular that beyond a globally acceptable acronym, it has also resulted in the emergence of numerous journals and legal organizations dedicated to its existence. There are three primary forms of ADR – negotiation, mediation, and arbitration. Negotiation is a process used by lawyers to “create legal relationships,” “effect transactions” and “resolve legal disputes” for their clients.³ Mediation could essentially be described as a facilitation of negotiation by a neutral, third party.⁴ “In arbitration, disputants submit their disagreement to an impartial third party and agree to be bound by the arbitrator's decision, a decision that a court may enforce.”⁵ What differentiates arbitration from mediation is that “arbitration is held before . . . neutrals who sit as private judges and render an award that is binding, whereas mediation is held before . . . mediators who cannot bind the parties in any way, but simply facilitate negotiations between the parties in an attempt to reach a settlement.”⁶ “[T]he mediator has no power to impose a settlement on the parties.”⁷ “The mediator only encourages settlement; the parties retain ultimate decision making authority.”⁸

The global expansion of transnational corporations (“TNC”) has occurred so rapidly that “[i]n less than 20 years, the number of globe-spanning corporations has

jumped from seven to over 45,000, a 650 per cent increase.”⁹ This expansion has generated a need for timely and cost-effective dispute resolution mechanisms, not only for general commercial dispute resolution, but also for the resolution of disputes that are bound to arise between TNCs and their host state. Corporations no longer function merely as large enterprises working to garner high profits. Cite Instead, they further embrace their social responsibilities by actively engaging in political and social activities within their host state. For instance, “The Body Shop’s Easterhouse programme provid[es] work for the unemployed in a deprived area of Glasgow, United Kingdom.”¹⁰ Programs such as these only serve to strengthen the brand recognition enjoyed by so many TNCs.

But many scholars do not discount the power held by the state itself. The power of states, or more specifically, the state government’s power, tends to rest in the public opinion of its politicians. In terms of public sentiment, corporations are judged almost daily by their consumers whereas politicians only need to be concerned about public appearance nearing elections.¹¹ The enormous political clout of states has also been emphasized in their unique ability to “command the allegiance of a people inhabiting a certain territory [where] only they possess the capability to wage war. Moreover, unlike most transnational organizations, governments are responsible for a population’s welfare and security;” a task which enables them to make numerous decisions which may affect the ability of TNCs to effectively operate their businesses.¹² “Finally, . . . [n]onstate actors exist and operate only with the consent of national governments.”¹³ Without the consent of the host state, or with increased imposition of regulations, TNCs are limited in the scope of their operations and potential local expansion.

The innate power struggle between a nation-state and the multinational corporations within its borders creates a tension that exists partly because “[t]he nation-state can exercise its sovereign rights only within national borders [whereas] [t]he multinational corporation . . . pursues its goals by cross-border activities.”¹⁴ “Preprogrammed” conflicts result “since a multinational corporation operates simultaneously in a number of political systems that differ in objectives and orientation.”¹⁵ Furthermore, the vast financial clout of corporations can serve as a source of economic tension. “Fifty-two of the top 100 economies around the world [today] are transnational corporations rather than nation-states.”¹⁶ The ability of TNCs to influence the socio-economic conditions of its host state may theoretically pose substantial threats to the host state. Therefore, the resolution of any dispute between a host state and a transnational corporation would always present a constant power struggle.

With the increased use of mediation as a tool to facilitate corporate dispute resolution, it is a natural progression for mediation to also become commonplace in TNC-state and investor-state disputes. However, the mediation of such conflicts can involve substantial barriers to reaching an agreeable solution. Mediation at any level may face obstacles such as high levels of conflict between the parties, low motivation to reach an agreement, low commitment to mediation, limited range and possibility of mutually acceptable solutions, and power imbalances.¹⁷ This article considers whether transnational corporations experience advantages in mediations with host states because of their substantial political and economic power.

Part I of this Article gives an overview of mediation and its significance as an alternative dispute resolution mechanism. Part II advances theories of bias and power

imbalances in mediation between TNCs and host states. Part III reviews the power of TNCs, both globally and within the host state. Part IV similarly reviews the power of the state. Part V analyzes the current trends in mediations between states and TNCs. Finally, the article balances the benefits and costs of mediation and weighs the importance of lessening the danger of prejudice without sacrificing the advantages offered by mediation.

I. AN OVERVIEW OF MEDIATION

Mediation has been hailed as an excellent alternative to litigation because it is generally a cost effective means of dispute resolution.¹⁸ Even between the choice of mediation and arbitration, mediation tends to be much more cost effective. For instance, the cost of mediation in the United States can range from \$1,500 to \$2,000 per day while legal expenses for arbitration or for a trial can cost tens of thousands of dollars.¹⁹ Most judicial systems now encourage the use of court-appointed mediators. In Canada, the Attorney General of Ontario has initiated a mandatory mediation program in Toronto, Ottawa and Windsor for civil, non-family, case managed actions.²⁰ Similar programs have been initiated in other countries.²¹ “Since 2001, section 278 (2) of the German Code of Civil Procedure applies a mandatory mediation procedure on parties in a civil dispute.”²² In Japan, “[m]ediation is mandatory for all family cases.”²³

Notably, not all countries support mandatory mediation or even consistently recommend mediation over litigation. “The idea of mediation is very new to France and is seldom ever applied. The French Ministry of Justice has however granted financial aid for research to be carried out on the matter.”²⁴ Even in Japan, “[m]utual concession’ is a central feature of judicial court-connected mediation . . . , be it civil or family.”²⁵ The

Parliamentary Assembly called on the Council of Europe Member and Observer States to rule out mandatory referral to mediation, claiming that “[t]he primary aim of mediation is not to reduce congestion of the courts but to repair a breakdown in communication between the parties, with the help of a professional trained in mediation.”²⁶ Therefore, because freedom of choice is key to successful mediation, “mandatory referral to mediation must be prohibited.”²⁷

Domestic and transnational corporations have followed suit and have turned to mediation as an alternative to costly and time-consuming litigation. In 2004, Intel became “the first Silicon Valley company to form a mediation partnership with the U.S. Equal Employment Opportunity Commission” in an effort to resolve employment disputes.²⁸ “The EEOC began its nationwide corporate mediation program in 1999 and has mediated more than 50,000 cases” of which “approximately 70 percent . . . reach[ed] a successful resolution.”²⁹ In a survey conducted in 1997, comprising 1,000 phone and mail surveyants and 606 interviewees, respondents “overwhelmingly reported having used mediation (88%) and arbitration (80%) at least once in the past three years.”³⁰ Furthermore, “[w]hen asked to name their preferred form of ADR process, counsel overwhelmingly reported mediation (63%); arbitration was a distant second (18%).”³¹ More than 50% of corporations surveyed selected other reasons, besides saving time and money for using mediation., Some of these reasons include using expertise of neutrals, preserving good relationships, reaching more satisfactory settlements, experiencing a more satisfactory process, and obtaining a court mandate.³²

Although mediation has only recently become increasingly popular as an alternative means of dispute resolution, historically, it was more commonplace than the use of

litigation.

China likely has the longest history of mediation use. Reports of mediation use in China date back to over 4,000 years. Much of the Chinese use of mediation is traced to religious and cultural philosophies. Historically, the Chinese have rejected legal remedies, instead placing emphasis on mediation and maintaining relationships based upon moral edicts. Even with legal reforms taking place, mediation remains a primary form of dispute resolution. For example, there are nearly ten million mediators in China, while there are only approximately 110,000 lawyers.³³

Historical use of mediation in China is said to have arisen out of Confucian ethics.³⁴ In fact, even though the use of arbitration in China has increased due to western influences, “the principles and goals of Chinese arbitration are similar to those in mediation and negotiation, that is, concord, promoting Chinese interests and long-term right relations.”³⁵

“China codified the informal mediation system in its 1954 Provisional General Rules for the Organization of People's Mediation Committees.”³⁶ In 2004, the U.S.-China Business Mediation Center was established “as a joint project of the Conciliation Center of the China Council for Promotion of International Trade (CCPIT), / China Chamber of International Commerce (CCOIC) and the CPR Institute for Dispute Resolution (CPR).”³⁷ The U.S. China Business Mediation Center provides alternative dispute resolution for commercial disputes arising between American and Chinese businesses.³⁸ The CPR Institute is a nonprofit institution comprised of “global corporations, law firms, scholars, and public institutions.”³⁹ The CCPIT is “the largest institution for the promotion of foreign trade in China.”⁴⁰

Unlike the Chinese view of mediation as a “primary dispute resolution process,” in the West, mediation is considered a form of ‘alternative dispute resolution.’⁴¹

Nonetheless, numerous institutions have emerged worldwide, categorically providing

procedures for selecting mediators and carrying out mediations. These include the CAMCA, which provides procedures for dispute resolution in Canada, Mexico, and the United States. “The private ADR movement in England has been led by the Center for Dispute Resolution, which was founded in 1990.”⁴² Other institutions . . . include the International Chamber of Commerce, the International Center for Settlement of Investment Disputes, the China International Economic and Trade Arbitration Commission, and the World Intellectual Property Organization.”⁴²

II. THEORIES OF BIAS AND MEDIATION

“[C]orporations . . . are some of the most powerful of international actors.”⁴³ In discussing international relations and customary international law, Michael Byers expanded the term ‘power’ to “include all non-legal forms of power,” which “outside the process of customary international law . . . is virtually the only kind of power available to most non-State actors, such as transnational corporations”⁴⁴ The constant power struggle between corporations and their host states gives rise to significant theories of prejudice or bias in their mediations. “While some of the mediation literature discusses methods that a mediator may utilize to equalize such imbalances, he may not always be able to do so. Moreover, once a mediator attempts to rectify an imbalance, often it results in a loss of neutrality.”⁴⁵ Some authors have gone so far as to state that less powerful parties such as the poor and the disadvantaged should instead pursue litigation, therefore reserving ADR “for cases in which parties of comparable power and status confront each other.”⁴⁶ However, still others suggest a strong commitment to the actual process of mediation might help overcome such power imbalances, and therefore, use of the process should not be eliminated altogether.⁴⁷

Cultural barriers impede mediation in the international arena. Individualism and collectivism are often considered to be at the root of cultural differences between individuals' attitudes and perspectives.⁴⁸ "Individualism is a social pattern that places the highest value on the interests of the individual [whereas] [c]ollectivism is a social pattern that places the highest value on the interests of the group."⁴⁹ Individualists are predominant in most western societies including the United States, Canada, Australia, New Zealand and South Africa. Collectivists are predominant in most African and Asian societies. However, it is important not to presume an individual's attitudes based on his or her location as examples of both types may be found within any given state. Individualist attitudes differ from collectivists as they tend to place a high value on "[p]ersonal preferences, needs, rights and goals."⁵⁰ Collectivists tend to instead place a high value on "[n]orms, obligations and duties to groups."⁵¹ The difference between individualists and collectivists translates into TNC-state or investor-state dispute resolution as both parties are typically from societies which have such cultural differences. Therefore, these differences may tend to affect their mediation style.

Besides power imbalances and cultural differences, potential obstacles to successful mediation include those described above: high levels of conflict between the parties, low motivation of the parties to reach an agreement, low commitment to mediation (particularly when a settlement is not reached rapidly), limited range of mutually acceptable solutions, and parties believing that their fundamental principles are at risk.⁵² Nevertheless, mediation, or even a mediation-arbitration hybrid, as suggested by Goldberg,⁵³ offers significant advantages that are not readily available through litigation, which encourages its use despite these barriers. "One advantage of mediation

in the international commercial context is that the parties have an opportunity to develop a creative outcome.”⁵⁴ As mediation is an informal proceeding, “parties may use it to resolve disputes that involve not only questions of law and fact, but also “non--arbitrable” or “non-justiciable” issues . . . [such as] intangible feelings, personal interests, and emotional concerns.”⁵⁵ Another advantage of mediation, and arguably one of the greatest advantages, is that mediation provides a forum where the parties discuss the issues confidentially.⁵⁶ Furthermore, “[m]ediation is generally informal, much quicker, far less costly, and, since it is a voluntary process, gives the parties control over the outcome.”⁵⁷ International mediations tend to run no longer than three or four days and cost no more than \$100,000 to 200,000.⁵⁸ International litigation, on the other hand, besides being time consuming and costly, “is fraught with uncertainties about all sorts of other legal problems, of substantive law, forum shopping and other procedural complexities and evidentiary law.”⁵⁹

III. POWER OF TRANSNATIONAL CORPORATIONS

A. As International Citizens

Transnational corporations today not only have vast economic clout, but also penetrate and control the social, cultural and political lives of people in nation-states.⁶⁰

This article uses the following definition of a transnational corporation:

[An] enterprise (a) comprising entities in two or more countries, regardless of legal form and fields of those entities; (b) which operates under a system of decision-making permitting coherent policies and a common strategy through one or more decision-making centres; (c) in which the entities are so linked by ownership or otherwise, that one or more of them may be able to exercise a significant influence over the activities of others and, in particular, to share knowledge, resources and responsibilities with others.⁶¹

The contributions of transnational corporations to host states have raised them to the level of international citizens. And as international citizens, transnational corporations enjoy equality, if not superiority, in all forms of dispute resolution with host states.

A transnational corporation implants itself into the economy of the host state by contributing to a global market system. Transnational corporations are able to “manufacture products for export, extract valuable natural resources, obtain generous investment incentives, take advantage of cheap labour conditions, redirect local production priorities, and endlessly repatriate profits, unfettered by government intervention or regulation.”⁶² As transnational corporations have the ability to easily move their operations to another country in search of more profitable investment opportunities, states tend to make a dedicated effort to be more receptive to foreign direct investment. Some scholars claim that the social welfare state has been gradually replaced by the ‘security state’ where “the prime role of governments is to provide a secure place and climate for profitable transnational investment and competition” as opposed to security for its citizens.⁶³

With the increased power and influence of transnational corporations, there is a strong sense of “corporate citizenship,” which some argue also results in an increased political influence over the sovereign state.⁶⁴ Corporate citizenship has been defined as “those activities that ensure compliance with laws and regulations, maintain ethical behavior, contribute to the social and economic welfare, and generate profits that provide a fair return to investors.”⁶⁵ Arguably, as corporate citizens, TNCs experience a greater sense of responsibility while attempting to influence the politics of the home state.⁶⁶ Even though corporations legitimately carry out their operations within the host state,

they have limited influence over the legal persona of the state.⁶⁷ “This absence, or near absence, of international legal personality renders them largely incapable of participating in the process of customary international law, at least in terms of being able to represent themselves directly – and even though some corporations are able to exert considerable influence on States.”⁶⁸ Transnational corporations, nevertheless, wield a great deal of non-legal power, which is also an important factor in customary international law.⁶⁹ “TNCs increasingly take part in government trade negotiations, in the development of bilateral and multilateral trade relationships, and in international forums on policy questions.”⁷⁰

In some situations, transnational corporations “have entered into agreements with governments under which the parties have agreed that principles of public international law, rather than national law, will govern the transaction or investment.”⁷¹ Corporations typically rely on their national governments to engage in legal proceedings on their behalf. For example, a TNC might lobby a United States Trade Representative “to bring a claim against another country allegedly engaging in GATT violations.” In other cases, private enterprises, such as those under the law of the European Union, “are accorded legal standing to participate in EU procedures.”⁷² In fact, in Europe, the heads of transnational corporations Fiat and Philips had actually “drafted the original proposal for the European Single Market.”⁷³ And during GATT talks in the United States, “representatives from the TNCs chaired and staffed all of the 15 advisory groups set up by the Reagan administration to draw up the US negotiating position.”⁷⁴

The increased rights and privileges afforded to TNCs may raise concerns considering their motivations,⁷⁵ which stem from high dependence on the community

involvement for financial and competitive benefits. “The NGO Business for Social Responsibility points out that global community involvement by TNCs can help them expand in new markets, retain valued employees, enhance their images, attain brand recognition, and gain access to a broader and more skilled labor force.”⁷⁶ Moreover, private enterprises are often allowed to “self-police,” that is voluntarily monitor their own conduct, resulting in standards which “are not enforceable by signatories or third parties.”⁷⁷ “[S]ome critics conclude that growing corporate involvement in foreign aid, social policies, and quasi-regulatory activities undermines the sovereign functions of national governments or at least displaces legitimate government regulatory responsibilities.”⁷⁸

B. As New Sovereigns

“[E]conomic power has become increasingly concentrated in those companies and institutions . . . which has [sic] global reach. Multinational corporations in particular have strengthened their dominance not only over production and markets . . . but also over political institutions.”⁷⁹ Furthermore, transnational corporations make significant contributions for social, economic, and political causes in the host state.⁸⁰ In 2001, “private flows of capital accounted for 87 percent of the nearly \$296 billion transferred from richer to poorer countries while official development assistance comprised less than 13 percent.”⁸¹ “Developing countries in desperate need for increased revenues and foreign exchange at times agree to contracts that would be unacceptable elsewhere.”⁸² This can sometimes have negative effects on the host state. “Reports of pollution, negative impact on the local population and their way of living, unproportionate repatriation of revenues leaving the host country with minimal resources for

reinvestment, and unacceptable working conditions for local employees have been and continue to be reported, leading some to conclude that the net benefit (socially and economically) of foreign investment (especially with regards to direct investment) is minimal to the host country.”⁸³ “In 1997, workers at the Nike shoe company in Vietnam were paid \$1.60 a day, when a modest meal of vegetables, rice, and tofu cost 70 cents, so they didn’t have enough money to eat three times a day.”⁸⁴

“Multinational corporations [can also] have a cultural impact through their very presence in the host country: production methods, work habits, the way of life of corporate executives, and marketing and advertising methods cannot fail to influence local society and culture.”⁸⁵ They tend to use socially targeted advertising campaigns to increase their public influence through brand recognition. “Corporations and industry groups increasingly use social advertising to make issues that they favor or oppose more visible, shape public opinion, influence key policymakers, and help set the agenda on policy proposals affecting their industry.”⁸⁶ Ralph Nader, a consumer advocate and former United States presidential candidate once stated: “The corporations have in the last 20 years in the [United] States tightened their grip on the political system by virtue of the surrender of the Democratic Party and a weakening of the trade unions.”⁸⁷ Those views are shared by many, some of whom say that countries risk “barter[ing] away [a country’s] social safety net and culture” if government policies addressing social, human rights, and environmental issues are developed.⁸⁸

Critics of transnational corporations argue that although corporations may be self-serving in their activities, they still have responsibilities, as corporate citizens, to contribute to the economic and social well-being of the local citizens.⁸⁹ Over the past

few decades, transnational corporations have become major sources of foreign aid and have even used their influence to address social and environmental issues.⁹⁰

Even though transnational corporations have considerable power and resources, they still have significant beneficial impacts on the host state:

First, the financial resources and business expertise that TNCs bring to these efforts can significantly leverage the financial and human resources of governments, international organizations, and NGOs in addressing important policy problems. . . . Second, these activities also respond to the growing demands of NGOs and activist groups (who are often critical of globalization) that TNCs return to society a portion of the profits they earn from using the natural, human, and other resources of the countries in which the companies operate. . . . Third, TNC involvement in development activities often enables and empowers community and social groups to solve problems they might not otherwise be able to tackle without additional resources. . . . Fourth, the use of private resources by corporations and NGOs can often address problems faster, and sometimes more efficiently and effectively, than government programs. . . . Fifth, corporate participation in international standard-setting creates voluntary guidelines for social responsibility in the private sector that often cannot be easily imposed by governments. . . . Sixth, TNCs can often act in concert to improve their behavior more expeditiously than governments or international organizations can negotiate and implement formal regulations. . . . Seventh, corporate participation also brings managerial expertise and perspectives to social problem-solving not normally found in government. . . . Lastly, corporate philanthropy and social initiatives and the privatization of "public services" save poor governments money that can be used to solve problems with which the private sector may not be able to assist.⁹¹

However, host states are "concerned about the ownership and control of key economic sectors by foreign enterprises, the excessive cost to the domestic economy which their operations may entail, the extent to which they may encroach upon political

sovereignty and their possible adverse influence on sociocultural values.”⁹² Critics of transnational corporations claim that their social activities actually benefit them indirectly by “help[ing] them expand in new markets, retain valued employees, enhance their images, attain brand recognition, and gain access to a broader and more skilled labor force.”⁹³ Furthermore, corporate funding encourages host states to weaken government regulation, thereby reducing corporate accountability to private citizens.

The transnational corporations “themselves are concerned about the possible nationalization and expropriation of their assets without adequate compensation and about restrictive, unclear and frequently changing government policies.”⁹⁴ Over time, countries have begun imposing stricter regulations on the activities of TNCs, particularly after receiving pressure from institutions such as non-governmental organizations. “The unwillingness or inability of governments in some developing countries to address issues of worker mistreatment by TNCs has led NGO and human rights groups such as the Worker Rights Consortium, the Fair Labor Association, and Social Accountability International to demand the right to carry out audits and inspections of factories to ensure the safety and wellbeing of employees.”⁹⁵ Overall, “[a] more effective system of countervailing forces . . . depends on a better understanding of the types of public roles that TNCs are playing and the scope and magnitude of their impacts.”⁹⁶

IV. POWER OF THE STATE

When the Summit of the Americas was held in Quebec City in April 2001, demonstrators gathered to protest the proposed “free trade agreement” because they believed it only benefited transnational corporations.⁹⁷ Philippe Duhamel, a planner of the summit protests, took offense to the corporate sponsorship of events.⁹⁸ “Some were

paying up to \$500,000 in exchange for such benefits as preferred seating at dinners with world leaders and invitations to social gatherings.”⁹⁹ It appeared that transnational corporations were now openly exerting their influence over states, availing every potential opportunity to sway political opinions in their favor. Although TNCs may be able to influence state regulations over their behavior within the host state, the state still commands sovereign power within its borders. State governments “are responsible for a population’s welfare and security” and “[n]onstate actors exist and operate only with the consent of national governments.”¹⁰⁰ The growth and power of TNCs are also regulated by non-governmental organizations, which encourage “[s]hareholder activism, consumer boycotts and the range of other confrontations” to influence corporate behavior.¹⁰¹

“States may be concerned about the activities or effects of activities of, or strategies adopted by, TNCs.”¹⁰² Host states often attempt to offer protection of local industries, a policy to which TNCs sometimes object. Nonetheless, states tend to demand protection for ‘infant industries,’ as TNCs pose a high risk of market competition.¹⁰³ Some scholars argue that states essentially lose control of the outcome of a case by relying on ADR. “[I]nternational arbitration generally deprives host nations of the application of their own laws through their own courts; thereby it denies those nations the right to assert their political agendas for the benefit of the local populace.¹⁰⁴ However, some countries such as China have been encouraging the use of ADR procedures such as mediation even in lieu of litigation.”¹⁰⁵ “According to the Civil Procedure Law, a judge or a collegial panel assigned to try the civil case shall conduct mediation first if the parties concerned so require or do not object.”¹⁰⁶ Such a procedure has been extremely

successful in China, resulting in about one million cases having been solved through mediation as early as 1986.¹⁰⁷

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⁵ *Id.* at 1363.

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- ⁶³ *Id.*
- ⁶⁴ Dennis A. Rondinelli, *Transnational Corporations: International Citizens or New Sovereigns*, *BUS. & SOC'Y REV.*, Winter 2002, at 392 (citing DAVID KORTEN, *WHEN CORPORATIONS RULE THE WORLD* (1996)).
- ⁶⁵ *Id.* at 392.
- ⁶⁶ *Id.*
- ⁶⁷ Byers, *supra* note 44, at 78-79.
- ⁶⁸ *Id.* at 78-79.

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- ⁶⁹ *Id.* at 79.
- ⁷⁰ Rondinelli, *supra* note 62, at 399.
- ⁷¹ DAMROSCH ET AL, INTERNATIONAL LAW: CASES AND MATERIALS 421 (4th ed., West Group 2001).
- ⁷² *Id.* at 421.
- ⁷³ The Editors, *Denying the Global a Home*, 26 THE ECOLOGIST 123-4 (1996).
- ⁷⁴ *Id.*, at 123-4 (citing Kevin Watkins, *Global Market Myths*, in RED PEPPER, at 14 (June 1996)).
- ⁷⁵ *See generally*, Dennis A. Rondinelli, *supra* note 64.
- ⁷⁶ *Id.* at 404.
- ⁷⁷ *Id.* at 405.
- ⁷⁸ *Id.* at 406.
- ⁷⁹ *Id.* at 123-124.
- ⁸⁰ *Id.* at 394.
- ⁸¹ *Id.* at 394.
- ⁸² Ellen Olafsen & Filippo Nardin, *The Political Economy of Oil in Angola*, Aug. 1998,, <http://www.aeaf.org/papers/1998-08-ellen-olafsen.htm>.
- ⁸³ *Id.*
- ⁸⁴ *Where has all the power gone?*, Canada and the World Backgrounder, vol 67, no. 1, at 17 (2001) [hereinafter World Backgrounder].
- ⁸⁵ HELLMANN, *supra* note 13, at 36.
- ⁸⁶ Rondinelli, *supra* note 64, at 391-413 (citing Ira Tienowitz, *Ad Campaigns Take Hold in Public-Policy Lobbying*, Advertising Age 68 (51), at 28 (1997)).
- ⁸⁷ World Backgrounder, *supra* note 84.
- ⁸⁸ Rondinelli, *supra* note 64, at 391-413.
- ⁸⁹ *Id.*
- ⁹⁰ *Id.*
- ⁹¹ *Id.* at 401-04.
- ⁹² Report of the "Group of Eminent Persons," *The Impact of Multinational Corporations on the Development Process and on International Relations*, U.N.Doc. E/5500/Add 1 (1974), in LORI F. DAMROSCH ET AL, INTERNATIONAL LAW: CASES AND MATERIALS 422 (4th ed., 2001) [hereinafter Group of Eminent Persons].
- ⁹³ Rondinelli, *supra* note 64, at 404(citing Business for Social Responsibility, "Global Community Involvement" 2001).
- ⁹⁴ Group of Eminent Persons, *supra* note 92, at 422.
- ⁹⁵ Rondinelli, *supra* note 64, at 406.
- ⁹⁶ *Id.* at 410.
- ⁹⁷ World Backgrounder, *supra* note 84, at 16.
- ⁹⁸ *Id.*
- ⁹⁹ *Id.*
- ¹⁰⁰ KLEIBOER, *supra* note 12, at 40.
- ¹⁰¹ Peter Newell, *Globalisation and the New Politics of Sustainable Development*, in TERMS FOR ENDEARMENT: BUSINESS, NGOS AND SUSTAINABLE DEVELOPMENT 32 (Jem Bendell, ed., 2000).
- ¹⁰² BONDZI-SIMPSON, *supra* note 59, at 28.
- ¹⁰³ *Id.* at 28-29.
- ¹⁰⁴ Lawrence W. Newman, *Disputes with Foreign Studies*, 10/30/2000 N.Y.L.J. 3, (col. 1), vol. 224, No. 83 (2000).
- ¹⁰⁵ *See Jun Ge*, *supra* note 34, at 127.
- ¹⁰⁶ *Id.* at 127.
- ¹⁰⁷ *Id.* at 128.