

Contents

<i>Foreword</i>	xi
<i>Table of cases</i>	xiii
<i>Acknowledgements</i>	xx
<i>List of abbreviations</i>	xxi
Introduction	1
1 Multinational corporations, states and international regulation: historical background	6
<i>Introduction</i>	6
<i>What are “multinational corporations”?</i>	6
<i>Multinational corporations and states</i>	8
<i>Explaining the relationship between the states of the North and MNCs: the mercantilist origin of the multinational corporation</i>	8
<i>Corporations and the transatlantic slave trade</i>	10
<i>Corporate colonialism</i>	12
<i>Multinational corporations in the Second World War</i>	17
<i>Multinational corporations and the nascent states of the South after independence: changing roles</i>	20
<i>Summary</i>	22
2 Major attempts at the international level to control multinational corporations	23
<i>MNCs and international law</i>	23
<i>International human rights instruments</i>	25
<i>International institutions</i>	28
<i>The special representative of the secretary general on the issue of human rights and transnational corporations and other business enterprises</i>	44

Developments in international environmental law: a brief discussion 49
Summary 54

3 Corporate social responsibility and its relationship to law

55

Introduction 55
Evolution of the CSR concept 55
The emergence of CSR in the United States 56
CSR in the United Kingdom 61
CSR in Europe 61
CSR in the context of developing countries 66
Defining CSR 67
CSR and the law: how should the law respond to the CSR concept? 70
CSR and the law: perspectives 74
Theoretical justification for CSR 77
Understanding the emerging responsibilities of modern corporations: a social contract approach 80
What questions does CSR raise for law? 81
The shortcomings in the understanding of the nature of the corporation by ethicists and philosophers and the problem of ascribing morality to the corporation 83
The modern corporation and legal theories 87
How are corporations conceived of today? 94
The autonomy of the corporation 95
The social contract as justification for CSR 97
The social contract: Donaldson's approach 98
Criticisms of Donaldson's analysis 100
The social contract, morality and corporations: a different approach 101
The social contract, the law and international human rights law 106
Summary 109

4 Legal and institutional framework and the control of multinationals in developing countries with a focus on Nigeria

110

MNCs and CSR in Nigeria 111
Colonial administration and the oil industry 112
Legal developments after Nigeria's independence and the indigenisation policy: a synopsis 113
The Nigerian context in modern times 116

	<i>Nigerian company law and the control of MNCs</i>	118
	<i>Domestic tort law and MNCs</i>	129
	<i>MNCs and human rights in Nigeria</i>	132
	<i>The criminal liability of corporations under Nigerian law</i>	141
	<i>Workers' protection and MNCs</i>	142
	<i>MNCs and anti-corruption laws</i>	147
	<i>Controlling MNCs under host state law: possibilities in Nigeria</i>	152
	<i>Some suggestions for reform in Nigeria</i>	163
	<i>Other areas</i>	166
	<i>Recent development: the Nigerian Corporate Social Responsibility Bill 2008</i>	167
	<i>Summary</i>	169
5	Regional human rights system and multinational corporations: the case of the African regional human rights system	170
	<i>Introduction</i>	170
	<i>State responsibility in context: state responsibility for human rights violations by private actors under international law</i>	171
	<i>The African regional human rights system</i>	177
	<i>The African Charter on Human and Peoples' Rights and Private Parties/MNCs</i>	179
	<i>The African Commission on Human and Peoples' Rights, the African Charter and multinational corporations</i>	181
	<i>The African Court on Human and Peoples' Rights (ACrtHPR)</i>	195
	<i>The African Court of Justice and Human Rights: potential implications</i>	200
	<i>The African Union Convention on Preventing and Combating Corruption and MNCs</i>	202
	<i>Summary</i>	206
6	The European Union and corporate responsibility in vulnerable states	207
	<i>Introduction</i>	207
	<i>The European Union, human rights and CSR</i>	207
	<i>The EU and developing countries</i>	208
	<i>CSR as a strategy within Europe and its external dimensions</i>	209
	<i>Trade and human rights</i>	215
	<i>Can the EU pursue human rights objectives in its trade arrangements in view of World Trade Organization's rules?</i>	216
	<i>The EU, trade agreements and human rights</i>	225
	<i>The significance of human rights clauses</i>	227

x Contents

Human rights clauses as a strategy in EU External relations 227
EU competence to include human rights clauses in international agreements 228
The example of the ACP–EU agreements: legal issues 231
ACP and the EU 233
The application of the human rights clauses and multinational corporations 240
Economic Partnership Agreements and human rights clauses 242
Summary 248

7 Judicial process as a means of promoting corporate responsibility abroad: extraterritoriality 249

The concept of extraterritoriality 249
The possibility of judicial oversight of MNCs in the EU 259
Summary 273

8 The foundation for a global company law for multinational corporations: the complementary role at the international level 274

MNCs and domestic company law paradigm 274
Delineating regulatory space at the international level 276
Corporate autonomy: Hansmann and Kraakman, and Iwai’s propositions and Backer’s analysis 276
The Norms: a disguise for an “international company law”? 279
The Norms and the regulatory space at the international level 279
An innovative framework for regulating the global corporations: a proposal 282
Summary 285

Conclusions 286

Selected bibliography 288

Index 291