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A Critique of Recognizing Corporate Rights Under Public International Law

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Lecture Topic: Corporate Rights and Public International Law

- ◆ Why the Question of Corporate Rights Under Public International Law Matters
- ◆ The Origins of Corporate Rights Under Public International Law
- ◆ The Modern Conception of Corporate Rights
- ◆ A Functional Critique of “Corporate Human Rights”



Why Should We Care About Corporate Status Under International Law?



Apple Computer

- Corporations often subjects of int'l regulation
- Corporations may be subject to liability for violations of international human rights law

The Status of Corporations Under Public International Law

The Traditional View

- ◆ “an international agreement, cannot, ...create direct rights and obligations for private individuals.”
 - ◆ *PCIJ*, 1928.

- ◆ The ICJ rejects U.S. assertion that treaty only confers rights on states, not individuals.
 - ◆ *ICJ*, 2001



The Status of Corporations – Corporations as Subjects of Public International Law



- ◆ “[C]orporations have rights, therefore they should have duties” under international law.
 - ◆ Harold Koh, former Dean of the Yale Law School and Legal Advisor, U.S. Department of State

The Origins of Corporate Rights Under Public International Law

- “The High Contracting Parties agree that all claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of her Britannic Majesty..., which may have been presented to either government ... shall be referred to two commissioners....”
 - U.S. Treaty with Great Britain, 1853

The Origins of Corporate Rights Under Public International Law

- “Company” includes any association of natural or juridical persons, whether or not such association is recognized by the domestic law of the Contracting State concerned as having juridical personality.
 - Preliminary Draft (Doc. 24), Article X, 2 History of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1968).



The Modern Conception: Corporations Enjoy Rights Under International Human Rights Law

- “...[N]either Autronic AG’s legal status as a limited company nor the fact that its activities were commercial nor the intrinsic nature of freedom of expression can deprive Autronic AG of the protection of Article 10 (art. 10). The Article (art. 10) applies to ‘everyone’, whether natural or legal persons.”
 - Autronic v. Switzerland, ECtHRts, para. 47.

A Critique of Corporate “Human” Rights

- ◆ Public international law has only recognized corporate rights in particular contexts pursuant to explicit treaty language
- ◆ Corporations are creatures of national law – there is no international definition of a “corporation”
- ◆ Legal persons include a wide diversity of entities. In the U.S. alone, this might include partnerships, LLCs, P.C.s, etc.
- ◆ Who may invoke the “Corporate” Right?



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Questions???