How to Fight TNCs

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SINCE, THE 1980S, A NUM-ber of popular campaigns rais-ing questions about international investment issues and the activities of TNCs have been launched globally by social activists, community organizations, labor unions, NGOs, consumer groups, human rights groups, and political movements. Some prominent campaigns include international consumer boycotts against food company Nestle because of its unethical marketing of baby food formula, the community struggle for justice against Union Carbide in Bhopal (India), workers' resistance against Coca-Cola in Guatemala, the NGO campaign against the proposed MAI, the anti-incinerator movement in the US, and the global struggle by AIDS patients against "Big Pharma" because of its high drug prices.

It is true that not all popular campaigns against TNCs have been successful. It is also true that many victories are defensive in nature. Nevertheless, one cannot deny their influence in revitalizing the agenda of regulating TNCs at both national and global levels. The achievements of campaigns against TNCs are all the more striking because they went against the global tide that was rushing towards deregulation and market economy.

Such campaigns also reaffirm the hope that popular movements can weaken and, on occasion, render powerless the mightiest of transnatio-nal corporations. The prospects of regulating the behavior of TNCs are not as gloomy as often perceived by the proponents of corporate power. In addition, it is true that not all campaigns directed at TNCs can be clubbed together because they vary in terms of their strategies, worldview, and ideology. Despite these important variations, most corporate campaigns have a common understanding that TNCs should be made accountable and subservient to the needs of society.

Diverse popular campaigns directed at TNCs offer a number of valuable lessons that could be put effectively to use in the formulation of strategies.

First and fundamentally, there is no "one-size-fits-all" approach to campaigning. Different strategic goals have been used by campaigners to suit their particular circumstances. Even within a national context, corporate campaigns have followed different objectives. For instance, in the case of India, the popular campaigns against Cargill's salt manufacturing plant, DuPont's nylon tire project and Enron's power project were primarily aimed at stopping these projects from going ahead, whereas activists focusing on Nestle and on deep sea fishing aimed at bringing legislative measures to regulate the activities of TNCs.

Second, since their strategic goals are different, many corporate campaigns highlight the need for using diverse tools and points of leverage. For instance, legal action (both at the national and international level) has been used as an important strategic tool by the gas victims of the Union Carbide plant in India. On the other hand, the campaign against DuPont centered on local level mobilization.

Third, in specific sectors where brand image is important, such as apparel, toys, and retailing, TNCs are vulnerable to bad publicity and therefore are willing to change their behavior. But there are several limitations to this strategy as it is not feasible to target each and every corporation involved in such businesses. Nonetheless, the spillover effects of this strategy cannot be denied. The brand attack strategy may also prove futile in sectors such as forestry, power generation, and mining where brand image is irrelevant.

Fourth, there are several inherent limitations to voluntary approaches, as discussed in the previous chapter. Left to themselves, TNCs would not carry out their social and environmental responsibilities in any meaningful manner. It is largely pressure generated by an enhanced state regulatory framework that would bring about the necessary changes. Even while targeting a campaign at a particular TNC, efforts should be made to strengthen regulatory standards.

Fifth, any campaign should not be exclusively focused on TNCs alone. There are a large number of domestic interest groups supporting the influx of foreign capital. These include big business, the upper and middle classes, domestic industry and trade lobby bodies, technocrats, politicians and business media. While strategizing, campaign groups should be aware of the influence of such domestic players. This involves targeting players other than the TNCs.

Sixth, any campaign that is backed by strong domestic public mobilization can have a long-lasting impact. It adds to the political will in a government to tame TNCs. It has been found that even supporting activities (such as lobbying and advocacy) yield better results if they are backed by public mobilization.

Last, cross-sectional solidarity, both at the national and the international level, is essential to support local campaigns, particularly in the present context of increased capital mobility. The experience of almost all campaigns indicates how beneficial it can be to broaden the base of support and to include groups and individuals from different socio-economic, cultural, and political backgrounds. The collective learning of diverse strategic goals and campaign tools further strengthens the political processes of building a wider movement.

An attempt has been made here to list a set of working instruments for launching a campaign on international investment issues. The main purpose behind this exercise is to enhance debate and discussion as part of collective learning and it should not, therefore, be considered prescriptive. The actual use of these instruments would vary from campaign to campaign and from country to country, depending on particular circumstances.

It is very important for corporate activists and movements to demarcate the various spaces in which investment issues could be addressed. This exercise would help immensely not only in terms of analyzing the ‘big picture’, but also of identifying potential allies, opponents, leverage points, and campaign targets operating within various spaces. Broadly speaking, investment issues operate at three main levels : local, national, and international. It is important to stress here that none of the players operate in a vacuum. Several complex systems interlink these players in addition to numerous areas of agreement and of conflict. The players are also not politically neutral, as their activities are greatly influenced by pressures generated by power relationships at local, national, and international levels.

At each of these three levels, a diverse set of players are involved, depending on the issue. For instance, key players to be targeted in a campaign directed at the behavior of pharmaceutical TNCs would be notably different from one focusing on transnational banks.

Amongst the key players, the role of the state in the governance of international investment remains paramount at all levels. At the local level, sub-state authorities still have some powers to regulate TNCs operating within their territories. At the national level, the regulation of international investments is carried out by diverse ministries, such as trade, finance, company affairs, and industry. Other ministries, such as those of agriculture, environment, health, labor, social welfare, and law, play an important role in formulating rules and policies concerning international investments. Central banks also play a major role in managing inward and outward investment flows. Independent regulatory authorities are meant to enforce rules to curb monopolistic tendencies and to ensure that corporations should not exploit consumers. At the international level, several inter-state organizations such as the G-7, World Bank, IMF, WTO, OECD, APEC, EU, and MERCOSUR are concerned with the governance of investment issues.

In addition, there are non-state players in the form of business lobby organizations, NGOs, labor unions, media, universities, and self-regulatory bodies (such as the Global Reporting Initiative that develops global standards in sustainability reporting frameworks) influencing the governance of investment issues.

However, it needs to be pointed out that the power to govern international investments is not always democratically exercised. The growing democratic deficit is deeply manifest at all levels: local, national, and international. Local state authorities have often been lax in enforcing rules and standards, even though much is expected from them to protect local communities and environment. Investment policies are usually designed by a handful of bureaucrats without any semblance of public debate and discussion. There is very little direct public participation in the working of ministries, central banks and independent regulatory authorities operating at the national level. Many inter-state regional and international bodies, such as the OECD, IMF, World Bank, and WTO, lack democratic accountability mechanisms to hold them responsible for their actions.

In the case of non-state players (such as the International Accounting Standards Board), democratic accountability is arguably worse. The structures of such private regulatory bodies do not usually provide mechanisms for public consultation. Partly due to their invisibility, there is hardly any public participation in the working of such bodies. Recent evidence also suggests that there is nothing inherently democratic about NGOs and civil society players as stories related to incompetence, class bias, and mismanagement of funds illustrate.

What is the right level to regulate the activities of TNCs? Some analysts argue that TNC corporate behavior should be preferably regulated by local state authorities because of their proximity to affected communities and workers. There is no denying that local authorities are more proximate to deal with such issues, and there have been instances where local state authorities took strict action against TNCs for violating rules. Nonetheless, there are several limitations to this approach. For instance, important policy decisions related to limits on foreign investment, performance requirements, technology transfer, export obligations, taxation, outflows of dividends, and several other matters are beyond the jurisdiction of local authorities.

In some civil society circles, there is a tendency to over-emphasize the importance of international level. Although there is nothing *per se* wrong in internationalizing investment issues, every issue cannot be resolved at the international level. The process for creating an international regulatory framework could also be time-consuming, given the strong opposition of some countries, such as US. At best, international efforts could provide the overall framework and guiding principles on regulating global corporations. These efforts should not be seen as a substitute for national regulatory measures. National governments should retain the right and power to regulate global corporations operating in their territories.

An important point sorely overlooked in such debates is that the different spaces and levels are interlinked and therefore should not be viewed as either/or options or avenues. Rather a combination of local, national, and international levels is needed to discipline international investments.

Investment issues cannot be analyzed and addressed in isolation from other policy issues such as trade, technology transfer, competition policy, and finance. Although the relationship between investment and trade issues has been strengthened by the present WTO regime, efforts were already made back in the 1940s to link trade and investment issues, as illustrated by the discussions on creating an International Trade Organization. It was only in the 1980s and 1990s when trade and investment became intertwined in the global production processes of TNCs that pressures for creating an investment-trade regime gained momentum. Investment-trade linkages received a major fillip under the TRIMs and GATS agreements of the WTO and under NAFTA, which is essentially a trade-investment regional agreement. Trade-investment relationships have also been institutionalized in several bilateral trade agreements. As FDI-trade relationships are becoming more intense under such institutionalized frameworks, any campaign strategy that treats them in isolation is likely to remain ineffective.

Technology transfer is one of the key determinants guiding the location policies of TNCs. Given the control over technology by TNCs, investment and technology transfer are increasingly seen as complimentary. The TRIPs Agreement builds links between intellectual property, technology transfer, and investment issues within the overall framework of WTO.

Competition policy also becomes very important to ensure that the liberalization of trade and investment rules is not used to curb competition. However, except for the EU, there are no other institutionalized frameworks on investment-competition policy at the international level. Aimed at creating a common market as well as ensuring that consumers are not exploited, the EU competition policy has both harmful and beneficial aspects. However, issues concerning competition policy have not been adequately addressed by activists and NGOs. This is an important issue that requires a variety of interventions such as monitoring restrictive business practices of TNCs and enhancing pro-competition policy tools and strong competition institutions.

The much-touted claim that states have become powerless and obsolete in the wake of globalization is grounded in *false assumptions*. First, not all states have become powerless under the influence of transnational capital as there are significant variations across countries. As noted by Ha-Joon Chang, the influence of transnational capital on individual states is highly uneven and varies from issue to issue. The degree of influence is largely dependent on the size, military strength, and power of states. Powerful states (for instance, the US) still retain considerable clout to pursue domestic and international investment policies suiting their national interests.

It is not always that foreign investors enjoy an upper hand in bargaining. If TNCs can play countries off against each other, countries can also play TNCs off against each other to maximize benefits. Countries with a large domestic market (for instance, China and India) can bargain for better terms and conditions from TNCs than those with small domestic markets (for instance, Bangladesh and Ethiopia). To illustrate, China has demonstrated greater bargaining power over TNCs by providing market access to France's Alcatel in exchange for compulsory technology commitments. Under the agreement signed in 2002, Alcatel agreed to provide full access to its worldwide technology base and resources in the areas of communications, computer networking, and multimedia solutions to a Chinese company not wholly owned by Alcatel. Another recent example is Bolivia which successfully renegotiated existing contracts with ten foreign energy companies in 2006 in order to get a fair deal.

Further, bargaining power is determined by the nature of industries. Unlike mining and forestry where production sites are very limited, transnational capital holds greater bargaining power in industries such as garments and toys due to an abundance of alternative sites.

The national policy response to investment flows also varies across countries. For instance, some governments have allowed a complete take over of domestic assets by foreign firms while other governments have forced mergers and acquisitions among domestic entities to ensure that they can effectively compete with transnational corporations. There are also several instances where governments, particularly those belonging to the developed world, have resorted to protectionist measures to safeguard domestic economic sectors.

However, it is also true that states have become an important instrument in the advancement and sustenance of transnational capital on a global scale. Instead of upholding popular sovereignty, states are increasingly becoming subservient to the interests of foreign capital. Therefore, any demand for re-establishing and strengthening the regulatory powers of nation-states must be accompanied by strengthening democratic accountability of the decision-making processes.

As mentioned earlier, there are multiple players influencing investment issues at different levels, though some are more powerful than others. By not focusing campaigns on key players at the appropriate space or level, the entire intervention could be a time-consuming and frustrating process. Since the capacities of campaign activists and groups are often limited, it makes sense to identify key campaign targets, which could be institutions, investment agreements, TNCs, states, or lobby groups. This process would also help activists to develop understanding on where to intervene and which players to target. □□□

[Excerpted from 'Why Investment Matters : The Political Economy of International Investments' by Kavaljit Singh, Madhyam Books, 148, Maitri Apartments, Delhi 110 092, Price : Rs. 250]