

Behavioral Dynamics and Regulation of Transnational Corporations



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1 Introduction

North et al. (2009, 2013) have developed a conceptual framework in which they describe development as a slow maturation of institutions from limited access social orders (developing countries) to open access social orders (developed countries). In limited access orders (or natural States), access to political and economic activities is reserved for elites and violence is widespread. Institutions and organizations are typically not sophisticated and they perform on a custom basis dependent on the social status of individuals. Stability is ensured by a dominant coalition made of powerful elites who manipulate rents and privileges. In open access orders, access is open to all; the State controls violence through a Weberian monopoly of legitimate force. Institutions and organizations are numerous and sophisticated, and they operate on an impersonal basis. Stability is ensured by the Schumpeterian creative destruction mechanism through free political and economic competition.

North et al.'s framework has provided an outstanding decryption of behavior patterns of parties involved in rent-seeking activities that shape the development path of a social order. How do parties behave and interact in the international scene where there is no global State, and where players come from different social orders? Do transnational corporations (TNCs) behave the same way in any social order? To better inform regulatory choices aimed at mandating global conduct related to the activities of TNCs, it is crucial to understand their behavioral dynamics. In this chapter I develop an analytical framework that reveals the development of

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predator-prey dynamics¹ by TNCs and States in the international social order due to the diversity of national regulations and the limited sophistication of international institutions. I focus on the analysis of institutional environments and not on the content of a global code of conduct per se. Basically, effective regulations depend not only on their intrinsic quality but also on the institutional environment in which they are applied and the behavior of parties involved in their implementation.

The international social order is comprised of States, TNCs, and other actors such as intergovernmental organizations and non-governmental organizations. This work focuses on States and TNCs, as they are pivotal players in the production and redistribution of rents in the international arena. Further, this work explores the specific configuration in which TNCs and States act as predator and prey, respectively. Drawing on North et al.'s terminology and categorization of social orders, this analytical framework explains the behavior of TNCs dependent on the institutional environment (open access or limited access). It appears that free political and economic competition prevailing in the international social order enables what I term an international order of predation.

In the first section of this chapter, the characteristics of this international social order are analyzed and its predatory nature explained: in the search for economic and geostrategic rents, powerful actors of the international social order may dominate the weak and confiscate their rights, due to the insufficient sophistication of international institutions. This sophistication is largely related to the number of organizations and institutions, and also involves their ability to regulate the increasingly complex interactions between actors whose powers are obviously asymmetric. TNCs play a pivotal role in this global trend.

The second, third and fourth sections are dedicated to the actual construction of the framework. This leads to the assessment of the risk of predation; that is, the risk for a TNC to develop predatory behaviors vis-à-vis the host social order. The assessment is based on the 'Predatory Potential' of the TNC (its propensity to behave as a predator) and on the 'Prey Potential' of the host social order (its propensity to behave as prey). A high predatory potential of a TNC and a high prey potential of a social order does not automatically define a predator-prey relationship, although this behavior is likely.

As the sustainable development (SD) and corporate social responsibility (CSR) movements aim at combating predation and promoting more responsible behaviors, I assume that a global code of conduct should be based on well-designed SD and CSR tools. Therefore, in the fifth section, building on Greif and Tadelis (2010)'s concept of crypto-morality, I demonstrate that responsible behaviors based on SD and CSR strategies require an institutional environment where predatory behaviors are highly detectable and heavily sanctioned.

¹My concept of "predator-prey dynamics" does not refer to the equations of Lotka-Volterra, also called "predator-prey models", that model the dynamics of interactions between prey and predators' biological systems.

2 The International Social Order Enables Predation

Veblen (1970) describes predation as a belligerent mindset, and a permanent rivalry between humans in the industrial era. In ordinary animal predation or within the social order of hunter-gatherers, the quest for food is the main driver and rents are collected from the natural environment. Veblen's predation goes beyond a simple quest for food; it is based on other rationalities and entails social costs² on the natural and human environments. The predator generates rents in a context of asymmetric power and domination, and so confiscates the rights of other parties involved in the transaction. Predation is therefore an exploitation of domination rents.

In North et al.'s view, predation thrives in an environment where institutions are simple and weak, and have not reached enough maturity to foster a Weberian monopoly of legitimate violence. Globalization has created an international social order in which actors are States, corporations, intergovernmental organizations, or non-governmental organizations. Since political and economic interactions are ruled through competition among actors without any global State, the international social order legitimizes predation in many areas.

2.1 *Institutions of the International Order Lack Sophistication*

In the international order, there is no global State endowed with the monopoly of legitimate force that might ensure stability and prosperity for all. It is not even certain that a global State would be the most suitable model of international cooperation, given the risk of totalitarianism. With the move from a bipolar towards a multipolar world, there is much evidence that all configurations (uni/bi or multipolar) can produce abuse. Each country abides to its own laws, although international law is still being developed. The sophistication of the international social order's institutional network always lags behind the continuing complexification of transactions between international players.

Moreover, all States are not party to all international agreements, and international law covers only a limited field of international relations and global commons. For example, the international community is still looking for an effective international mechanism against tax avoidance and against global warming, while these global phenomena have long been identified as predatory practices. International law often lacks effectiveness in its application because control mechanisms are slow by nature and might be too expensive to activate. The United Nations (UN) system

²Pigou (1932) introduced the concepts of social costs and private costs. Social costs are all costs borne by society (including private costs) due to the existence of the business, while private costs are all costs incurred or considered by the author of the activity.

emerged as a means to organize international cooperation and to reduce the risk of predation. However, the UN does not enjoy the sovereign power of a State, and this severely limits its ability to thwart violence.

The international social order has neither police nor an army. The UN “Blue Helmets” are only peacekeepers; they cannot compete with organizations such as NATO (North Atlantic Treaty Organization) that enjoy more power and proven autonomy. The intervention of the United States in 1999 in Kosovo without a UN mandate and its entry into the war in Iraq in 2003 without any resolution of the UN Security Council have shown that the UN lacks political and military power and must deal with parallel initiatives from powerful States. In addition, the International Criminal Court is only qualified to judge mass crimes and human rights violations, and based on its present operation, it is possible for powerful States to avoid their international responsibilities.³

The international social order has no government, to speak of. The UN Security Council consists of five permanent members who have the power of veto—USA, Russia, France, the United Kingdom, and China—and ten non-permanent members who sit a two-year term. It is possible for powerful States to instrument this international body for their strategic interests under the guise of defending the public interest or human rights.⁴ Through various means, powerful States can direct the operation of the United Nations and its specialized agencies. For example, in 2012, the United States stood against the entry of the Palestinian State to UNESCO by removing its significant funding to the organization.

The international order has certainly found some stability with the advent of the UN, which so far has served as a space for dialogue, and has helped avoid further world wars and reduced transactions costs for States. However, with the prevailing lack of sophistication, it is possible for powerful States to dominate.

2.2 *Powerful Actors Dominate the International Order*

For North et al. (2009: 131), the domination by powerful States is the condition of their survival: *“To survive, open access orders must have the ability to succeed, not only in economic competition but also in violent competition. Without this ability, they risk succumbing to the ambitions of authoritarian states. (...) This risk remains today, as international terrorism and the events of 9/11 emphasize.”*

Within the international social order, powerful States may manipulate rents and privileges through aid and multidimensional cooperation, or through the expansion

³For example, for various reasons including refusal to sign or ratify the Rome Statute, the United States and the United Kingdom have been able to evade their responsibilities in the war and chaos in Iraq since 2003.

⁴The UN Resolution 1973 in 2011 which enabled the international military intervention in Libya was diverted by leading powerful States, including France, and this led to the killing of Muammar Gaddafi and destabilization of the whole Sahel.

of their TNCs. As North et al. (2009: 132) explains in terms of the Cold War: “*US aid often depended on market reform; for example, the famous Marshall Plan after World War II required as a condition that the countries of Western Europe lower tariff barriers to one another, create a realistic plan for macroeconomic management, and join a new organization for economic cooperation called the Organization for Economic Co-operation and Development (OECD). Aid focused on market economies for providing prosperity in part as a means of making socialism a less attractive alternative.*” The array of sanctions against an uncooperative State range from the withdrawal of funding to banishment in terms of embargo, civil war or targeted killings. For example, in 2013, the United States issued reports showing how and why, in recent history, the US government inspired, supported, or sponsored various coups.⁵ Powerful countries make use of secret services, armies, and diplomacy as weapons for their geostrategic interests, including their TNCs’ expansion.

Until recently, the main TNCs were from the western world or Russia. Now they also come from emerging countries (see Nurdin and Djermoun 2015), like ArcelorMittal in India, Petronas in Brazil, MTN in South Africa, ONA in Morocco, Dangote in Nigeria, or Huawei in China. These companies are involved in the defense of their home State’s economic and geostrategic interests. TNCs forge political alliances and shape institutions to maintain their competitiveness and ensure their domination over national and international competitors. Robert Reich (2011: 120) illustrates these alliances in the United States: “*In recent years, Wall Street has shown extraordinary generosity to the two major US political parties; it is even one of the greatest donors of the Democratic Party. Overall in 2009, the financial world has spent more than \$300 M in lobbying to influence the representatives and senators. During the 2008 election, Wall Street donated more than \$88 M to Democratic candidates and more than \$67 M to Republican candidates, placing the world of finance at the forefront of generous donors.*”

Because of these interdependent relationships between TNCs and home States, it is common to see the image and reputation of a TNC associated with that of its home country and vice versa. It is also common for States to equate national economic interests to those of their TNCs in international competition. Heads of States and Governments mobilize to promote their corporations, for example, by bringing delegations of TNC representatives during official travels abroad. Globalization has increased the geostrategic role of TNCs by aligning their objectives to the interests of States, thereby strengthening TNCs’ predatory potential.

⁵For example, in Guatemala in 1954 against Jacobo Arbenz (who had openly questioned the land interests of the US TNC United Fruit Company), or in Iran in 1953 against Mohammed Mossadegh (who had decided upon the nationalization of oil, then controlled by the British company Anglo-Iranian Oil Company, when oil was essential to the recovery of England after World War II) (Le Monde 2013; NSA 2013).

3 The Predatory Potential of a TNC

The predatory potential of an actor refers to its propensity to develop predatory behaviors. To move and settle in another social order, various motivations guide a TNC, including the existence of business opportunities, the ability to mobilize resources for this development, and incentives offered by the host social order. From an institutional perspective, a corporation based in only one country is mainly subject to national regulation. Once settled in an additional country, a TNC is subject to three regulatory systems: (i) its home social order (which is an open access order or a limited access order); (ii) the host social order (which is an open access order or a limited access order); and (iii) the international social order (which is an international order of predation as demonstrated above).

Concerning the international social order, a mix of national and international regulations governs the operations of TNCs (including between its subsidiaries and headquarters, or among its subsidiaries, or with other partners). These regulations stem from central banks, regional organizations like the European Union, or international organizations like the World Trade Organization (WTO). There is often a lack of consistency between various regulations, yet international transactions continue to increase in sophistication.


Let's analyze in this section the predatory potential of a TNC by observing its behavior when it moves from one social order to another. This will enable the identification of the determinants that will foster predatory tendencies of a TNC: some of these determinants are intrinsic while others are related to its home social order. This section will conclude with the presentation of some predatory behavior commonly observed in the activities of TNCs.

3.1 Behavioral Adjustment in Different Social Orders

Does a TNC behave in the same manner when it moves into another social order? To support their commitment to ethical behavior, TNCs usually claim that they implement the same rules in every location. However, they behave differently in different social orders, as "*the same institutions work differently in different circumstances, particularly in the absence or presence of open access.*" (North et al. 2009: 256). So how do TNCs adapt their behavior to their institutional environment?

When a TNC settles in a new social order, it may keep the same behavior if the host social order is comparable to the home social order. If the social order differs, it may also experience a transition to become compatible with the host social order's institutions. Table 1 specifies four cases (a, b, c and d):

Table 1 TNCs’ behavioral dynamics from one social order to another



		<i>HOST Social Order</i>	
		Open Access Order	Limited Access Order
<i>HOME Social Order</i>	Open Access Order	a. Actor of an Open Access Order	d. MUTATION Into an Actor of a Limited Access Order or of an Order of Predation
	Limited Access Order	b. MUTATION Into an Actor of an Open Access Order	c. Actor of a Limited Access Order or of an Order of Predation

Source Author

- a. When a TNC moves from an open access order into another, it finds organizations and norms of the same level of sophistication. It also finds the same operating mode (free political and economic competition), though differences may still exist. The host social order will then compel the TNC to remain compliant to these open access institutions, as they easily detect predatory behaviors and apply dissuasive sanctions. Consequently, the TNC will keep behaving like an actor of an open access order.
- b. When the TNC moves from a limited access order into an open access order, it finds organizations and institutions of a higher level of sophistication. The host social order will appear more demanding in the fight against predation because of high detectability and heavy sanctions. The TNC must transition into an actor of the open access order or experience risk of penalties or expulsion. The violent turmoil faced by Arcelor-Mittal in France in 2012–2013 due to the closing of a production site⁶ showcases the level of vigilance that institutions and organizations (government, trade unions, media, etc.) in an open access order (France) can develop in order to force an actor of a limited access order (India), however it is economically powerful, to comply with open access host institutions.
- c. When the TNC moves from a limited access order into a limited access order, it finds organizations and institutions of the same operating mode (manipulation of rents and privileges). Differences in rules and enforcement may be notable, especially between primary natural States and mature ones, but in any natural State, personalized interactions remain. Thus, the TNC will remain an actor of

⁶See L’Humanite.fr (2012) and the outcome with Lang-Roth (2013).

limited access orders. It may also develop predatory practices if its bargaining power is much higher than the host social order's. Thus, the risk of predation between a TNC from China (mature natural State) and an African country (fragile or primary natural States) is high because of the huge bargaining power of the Chinese TNC, especially when it is sponsored or owned by the government.

- d. When the TNC moves from an open access order into a limited access order, it finds organizations and institutions of a lower level of sophistication. The host social order will appear alien to the TNC because of the local tendency to personalize relationships and manipulate rents and privileges. Used to impersonalized relationships and free political and economic competition, the TNC will need to adapt to local customs. The more it will need to interact with local organizations and population, the more it will be required to adapt to their manner of functioning. This adaptation consists of a moral transition that transforms the TNC into an actor of the limited access order. The TNC may also develop predatory practices if its bargaining power is much higher than the host social order's. This is the case of western TNCs, like the French Bolloré, Areva, or Total, or the American ExxonMobil when they settled in Africa.

Ultimately, a TNC is likely to sustainably develop predatory behaviors when it moves into a limited access order, be it from an open or a limited access order (cases c and d). The greater the TNC's predatory potential, the higher the probability it will develop predatory behaviors.

3.2 Characteristics of the TNC and Its Home Social Order

Now let's define some characteristics of the TNC's predatory potential. There are four: two intrinsic to the TNC (economic weight, and predatory nature of the products or services), one related to the unique relationship between the TNC and its home social order, and the last one related to the home social order itself. All four are specified below, but for simplicity, this work will focus on three.

3.2.1 The Predatory Nature of Products and Services of the TNC

Some products and services have predatory attributes, in that the production process or their use generates high social costs. One of the most obvious predatory attributes is pollution. Such products include oil and gas, uranium, phytosanitary products, etc. Among the most iconic illustrations of the predatory nature of a product or a production process, let's cite the case of the US TNC Union Carbide and Carbon Corporation (UCC) that caused the Bhopal disaster in India in 1984, which affected almost 600,000 people, including 20,000 killed (Amnesty International [2014](#)).

Other predatory characteristics are less obvious as they affect lifestyles and institutions within a host social order. As Ozawa (2016: 6) states regarding TNCs: *“They are innovators, disseminators of commercial knowledge, and prompters of structural change in home and host countries alike. [...] TNCs are a puissant agent of structural change and growth across the global landscape.”* In their tendency to innovate, multinationals may prove predatory. This is the case, for example in developing countries, where some luxury goods that are not manufactured locally (champagne, luxury vehicles, jewelry, etc.) are highly consumed, thus generating an exsanguination of local purchasing power which would have better served to develop local economies. As another predatory attribute, one can evoke the propensity of some natural resources, such as wood, oil or minerals, to foster social tensions and even fuel civil wars.

The clear majority of TNCs handling these predatory products (oil, mining, pharmaceuticals, energy, chemicals, etc.) also display significant economic power. Therefore, to simplify this framework, let's assimilate them with companies that have significant economic power (see 3.2.2 below). This limits the characteristics defining a TNC's predatory potential to the following three.

3.2.2 The Economic Power of the TNC

When the economic power of a TNC is important, the TNC is likely to build strong impersonal and personalized relationships with its home social order. For example, given their economic weight in France, Total and Alstom groups are close to French public officials, and have built privileged relationships with MPs and government representatives. Similarly, ArcelorMittal maintains privileged relationships with Indian authorities.

The economic power of a TNC is appreciated here in absolute terms with respect to other actors in the international scene. It is also perceived in relative terms with respect to the home or host social orders. Economic power may refer to the sales of the company, its market capitalization, and its brand reputation. It may also refer to the TNC's ability to mobilize resources in financial markets, or from its home social order (including subsidies, exemptions, and public support for international development). For example, as Total Group is one of the most powerful corporations in the world, it is obvious that in Nigeria its economic power is also seen as significant in absolute terms. Moreover, in that country, Total represents approximately 15% of oil production, and is thus among the top four producers, so even its relative economic weight is significant. Therefore, in an analysis of Total in Nigeria, its economic power will be important. The French group *Boissons et Glacières Internationales (BGI)* has negligible absolute economic power, but it has important relative power in a limited access order like Cameroon, with its subsidiary *Brasseries du Cameroon*, which is a top five company; therefore, BGI will be important in Cameroon due to its relative economic power. A significant absolute economic power often implies a significant relative weight, but not vice versa.

Economic power is dynamic and changes dependent on the economic and financial situation of the company. An important economic power is based on the existence of substantial financial resources that enhance and sustain the bargaining power of the TNC, as well as its corruptive power. Because of its economic power, the TNC can build predatory alliances with local actors to secure its rents. It can also mobilize savvy and costly legal advice to protect these rents. For example, it is now established (see Le Floch-Prigent and Decouty 2001) that the defunct French company Elf forged predatory alliances with some African governments partly because it could generate almost limitless financial resources for African leaders, and thus fund their armies or militias. Such economic power also allowed Goldman Sachs in 2014 to spend up to 800,000 EUR in lobbying the European Commission and 3.4 M USD in the US to influence political decisions in its favor (David and Lefèvre 2015). TNCs that enjoy such economic power are able to develop their rents, to endorse high penalties when their predatory behaviors are sanctioned, and to render these behaviors less detectable.

3.2.3 The Strategic Importance of the TNC for the Home Social Order

Strategic importance refers to the importance of the company's business to the home social order: either the State is the owner of the company, or the business is important for the survival of the State, or the TNC's economic power is so important that the home social order considers it as one of its flagship businesses. For example, Areva Group is highly strategic to the French State because of its key role in the energy independence of the country. To some extent, Alstom, Air France, or Total groups are also strategic. Regarding US companies, and according to Gilpin (1987: 241), *"American corporate and political leaders have in general believed that the foreign expansion of American corporations serves important national interests in the United States. American policies have encouraged corporate expansion abroad and have tended to protect them."*

Powerful States mobilize whenever they are requested by their TNCs within the country or abroad to support their expansion through economic diplomacy mechanisms. For Stopford and Strange (1991), whatever the internationalization of its operations, a TNC maintains an interdependent relationship with its home State, and the TNC psychologically and sociologically belongs to its home country. Even when the TNC's economic power is not important, should it prove strategic to its home country, the TNC is likely to develop predatory behaviors when operating abroad.

3.2.4 The Power of the Home Social Order

For Keohane and Nye (2012: 10), *"Power can be thought of as the ability of an actor to get others to do something they otherwise would not do—and accept at an acceptable cost to the actor. Power can be conceived in terms of control over*

outcomes.” Gilpin (1987) and Keohane (1984) consider the power of a social order in terms of the effective control it exerts on wealth creation, including raw materials, sources of capital and markets, or the manufacture of high added value products. Power relates to a proven ability derived from low vulnerability to internal and external shocks and from real influence through demonstrated military capabilities.

Strange (1988, 1996: 70) attributes the current hegemony of world powers to the mastering of four factors of power related to international political economy (security, finance, production, and knowledge). Strange (1988, 1996) highlights the importance of structural power that confers the capacity to dominate without that intention. To describe a country’s power and influence, Knorr (1975: 6) distinguishes military power, economic power, and what he calls political penetrative power, which is a “*variety of overt or clandestine activities*” like “*propaganda, fomenting of political unrest and strikes, support of opposition parties or revolutionary groups, bribing of officials or political leaders.*”

To summarize, the power of a social order refers to its actual ability to defend its national interests in the international scene by mobilizing required economic and political resources. Power depends on a social order’s technological prowess and the effectiveness of its governance system.⁷ This enables a social order to withstand internal and external shocks, generates multifaceted resources (financial, military, technological, diplomatic, etc.) and supports the expansion of TNCs. Therefore, a powerful social order is likely to enable predatory behaviors by its TNCs.

3.3 Analysis of the Predatory Potential of a TNC

Table 2 provides an assessment of the predatory potential of a TNC based on the three criteria specified above. It is an attempt to estimate a propensity, not a mathematical calculation, and is intended to be logical and empirically verifiable.

The predatory potential of a TNC is high when it has economic power; in fact, economic power turns out to be the most decisive criterion. However, when there is a combination of a strategic TNC and a powerful home social order, the TNC’s economic weight is not important, as the home social order will expend effort to ensure the sustainability of the TNC in the host social order. For example, this is the case of TNCs within the military weapons industry: regardless of their economic weight, their promotion is de facto undertaken by the home social order.

⁷The characteristics of the social order will be specified when defining the prey potential (Sect. 3).

Table 2 The predatory potential of a TNC

Economic power	Yes	Yes	Yes	Yes	No	No	No	No
Strategic importance	Yes	Yes	No	No	Yes	Yes	No	No
Power of the home social order	Yes	No	Yes	No	Yes	No	Yes	No
Predatory potential	High	High	High	High	High	Medium	Low	Low

Yes = Important and No = Not important. For simplification, only these two possible answers have been used

Source Author

3.4 Example of Predatory Behaviors of TNCs

A TNC with a high predatory potential does not always act as a predator. However, if it does, it typically utilizes various dominating behaviors, especially within natural States. Some of these behaviors are detailed below:

- Corruption of government officials due to financial resources that sometimes exceed those of host natural States.
- Tax avoidance: the most sophisticated accounting practices allow TNCs to legally obtain revenues from host countries through tax havens or transfer prices manipulation (see OECD 2013).
- Intimidation or violence against local stakeholders (employees, unions, NGOs, etc.) opposed to the company's practices.
- Use of production techniques, processes, or raw materials prohibited in their home social orders, but tolerated or uncontrolled in the host social order, while the negative impact on health or environment is evidenced.
- Waste discharges without treatment, or natural environment destruction without repair.
- Development of transactions with co-contractors, subcontractors, suppliers, or customers who maintain predatory behaviors in their own value chains.
- Complicity in destabilizing institutions of host social orders, through fueling of militias or coups.
- Large philanthropic engagements while there are unaddressed negative impacts of business core activities on human and natural environments: in this case, philanthropic actions appear as a corruptive approach to divert attention.
- More broadly, the violation or complicity of violation of human rights in the company's sphere of influence.

This list is obviously not exhaustive. Predatory behaviors refer to all TNCs' activities that generate unaddressed social costs. While representing an opportunity for extra profits or savings for the company, these social costs are incurred by stakeholders without their knowledge, without their free and informed consent, or without fair compensation.

4 The Prey Potential of a Social Order

In this section, factors that dictate the prey behavior of social orders in the international social order are addressed. A social order is as exposed to predators as it is lacking in power. Coming back to the determinants of the power of a State (cf. 3.2.4) developed by Strange (1988), namely security, finance, production, and knowledge, let's group these into two major factors: Governance⁸ and Innovation.

North et al. (2009: 133, 136, 270) define Governance in terms of the Hayek's adaptive efficiency. This concept describes the ability of a social order to constantly adjust its decision-making processes, and the effective implementation of these decisions. North et al. (2009) define Innovation in terms of the Schumpeterian dynamics of creative destruction conducive to economic development.

Governance encompasses the whole process of coordination of actors to achieve collectively bargained plans (Dubresson and Jaglin 2002), while Innovation is the process and outcome of creating something new of value. These two axes respectively evoke the political capacity and economic capacity, and are both embedded in a virtuous circle of development. The political capacity (Governance) enhances the ability of institutions and organizations to act with effectiveness, while the economic capacity (Innovation) enables financial, technological and military means that support the social order's ambitions. Some measurements will be provided in Sect. 3.2 when illustrating the prey potential of some African countries.

The power of governance and innovation systems reflects respectively the quality of political and economic factors; economic factors being capital, labor, technology, knowledge, and institutions. All military powers and all open access orders have built effective governance and innovation systems that support political responsiveness when they face any adversity. The quality of governance and innovation systems determines the social order's resilience against predators, but also its ability to behave as a predator.

4.1 Power and Resilience of the Host Social Order

Governance and Innovation represent the resilience of the social order. North et al. (2009: 42) portray a fragile natural State as an institutional environment where resilience is weak: *"the State can barely sustain itself in the face of internal and external violence. Contemporary examples include Haiti, Iraq, Afghanistan, Somalia, and several other places in sub-Saharan Africa. In a fragile natural State,*

⁸Governance should not be reduced to the 'good governance' doctrine constructed for developing countries in the 1980s by the Bretton Woods institutions and international development finance institutions for structural adjustment plans and democratic reforms. Such an approach of governance is exogenous. In contrast, governance is a mix of endogenous leadership and relevant decisions that are successfully implemented.

commitments within dominant coalition are fluid and unstable, often shifting rapidly, and dependent on the individual identity and personality of the coalition members. The coalition is fragile in the sense that small changes in the situation of the coalition members—changes in relative prices, any number of shocks from climate, neighboring peoples, disease, and so on—can upset the coalition. (...) Because of their fluidity, fragile natural States are also characterized by simple institutional structures.” Therefore, powerlessness is a matter of weak governance and poor innovation systems.

As Diamond (1997) highlights, germs brought by Europeans killed most of the population of the Incan Empire (up to three-quarters in some cases) in the sixteenth century. However, it was only the European governance system and their innovation system (technological, military, and political superiority) that enabled them to reach the South American coast, thus surprising the Incas. The latter certainly could never have considered reaching Europe and invading Spain. Building on institutions that were more conducive to technological progress, Europeans resisted their predators and exerted predation over other social orders.

4.1.1 Governance Axis—Innovation Axis

The Governance or political axis refers to the ability to make the right decisions and organize and mobilize resources to address the challenges faced by the social order. A well-governed social order can avoid being preyed upon by surprise, whether by natural disasters or foreign TNCs. Governance is not necessarily equivalent to what is commonly called democracy; here it relates to making the right decisions in a timely manner. Without being a democracy, the regime of General Park Chung-Hee transformed South Korea in the 1960s into an open social order, thus escaping its prey status. Contemporary China is not a democracy, but it provides an example in which the prey status has been avoided under the party leadership.

It is one thing to be able to organize, and another to provide effective material means to achieve organization through innovation. Material means does not simply refer to the funds available, but to the endogenous capacity to generate these financial resources, which requires entrepreneurial, scientific, technical, and technological aptitudes of the social order to address adversity. This innovation axis reflects the ability to invent, learn, and renew methods of handling the changing natural and human environment. It refers to the accumulated stock of knowledge, the quality of human resources, and the capacity of institutions to develop knowledge. Overall, it determines the ability of a social order to conquer and dominate, or at least to withstand adversity.

If a social order is weak on these two axes, it is thus vulnerable and exposed to predators, displaying a high prey potential.

Table 3 Assessment of the prey potential of social orders

Prey potential		Governance	
		Low	High
Innovation	High	Medium	Low
	Low	High	Medium

Source Author

4.1.2 Summary Diagrams of the Prey Potential of a Social Order

Both the governance system and innovation system can be simplified as either high or low. Combining the two criteria, Table 3 presents the four possible situations regarding the prey potential of a social order.

With Governance along the x-axis and Innovation along the y-axis, the prey potential of a social order can be interpreted on the four dials of Fig. 1.

Dial I: Strong governance is coupled with a strong innovation system; the social order is likely to escape TNCs’ predatory practices. This social order is strong and can sustain economic and geo-strategic ambitions, including through its own TNCs. The prey potential is low.

Dial II: There is a strong governance system but the innovation system is still weak. The social order can lead and implement reforms, but under an inefficient innovation system. In such conditions, predators may thrive; at least until the governance mechanisms enable the technical and technological capacity to resist. In the meantime, the social order is vulnerable to predation. The prey potential may be high or medium.

Dial III: There is a strong innovation system but governance is still weak. Sophisticated technical and technological capacities are overseen by poor management and leadership. Such a social order remains vulnerable to predation. The prey potential may be high or medium.

Dial IV: A weak governance capacity coupled with an inefficient innovation system inevitably exposes the social order to predators. There is an inability to lead, implement, fund, or support governance and innovation systems. Such a social order is not resilient to predators or natural disasters. The prey potential is high.

Now, let’s illustrate this prey potential assessment framework by analyzing the prey potential of some African countries.

4.2 Assessment of the Prey Potential of Some African Countries

Data that are analyzed here on the level of governance in Africa come from the Mo Ibrahim Foundation, which defines governance as “the provision of the political,

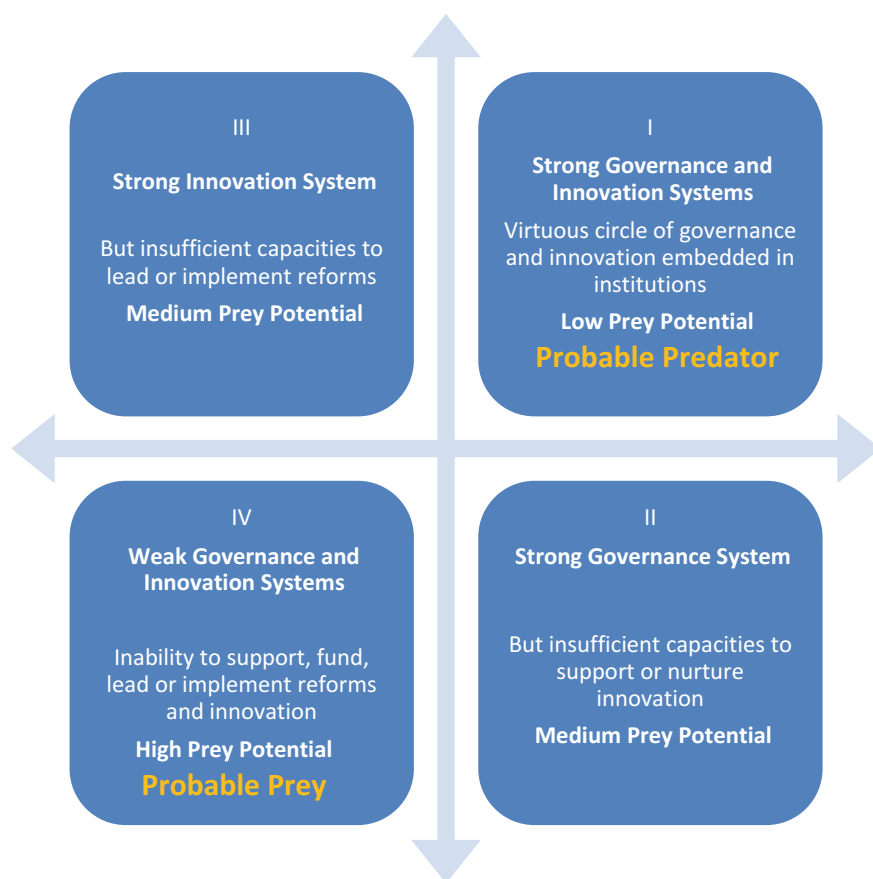


Fig. 1 Typology of the prey potential of social orders

*social and economic goods that a citizen has the right to expect from his or her State, and that a State has the responsibility to deliver to its citizens”.*⁹

Regarding the innovation system, the INSEAD-WIPO-Cornell University Global Innovation Index (GII)¹⁰ is used, which covers all continents.

⁹For more information on this organization and index construction, see <http://mo.ibrahim.foundation/fr/iiag/>.

¹⁰For more information on this index, see <https://www.globalinnovationindex.org/>.

4.2.1 Governance: The Ibrahim Index of African Governance (IIAG)

The Mo Ibrahim Index of African Governance (IIAG) has four categories, 14 subcategories, and over 90 indicators from 30 independent institutions, and stands as the most integrated measurement of governance in Africa. Since 2006, its ranking has earned a consistently high reputation and is now a reference for systematic and regular studies on governance in Africa. The edition published in 2015 ranked the 54 countries. The categories and subcategories are:

- Safety and Rule of Law
- Participation and Human Rights
- Sustainable Economic Opportunity
- Human Development.

4.2.2 Innovation: The Global Innovation Index (GII)

Originally launched in 2003 by INSEAD Business School (Fontainebleau, France), as of 2016 the GII is in its ninth edition, published in partnership with the World Intellectual Property Organization (WIPO) and the Johnson Cornell University. The six main components are:

- Input: Innovation Institutions
- Input: Human Capital and Research
- Input: Infrastructures
- Input: Market sophistication
- Output: Knowledge Products
- Output: Inventions.

Going beyond the usual measures of innovation that focus on the level of research and development, the GII develops a horizontal vision of innovation that is applicable to both developed and developing countries. In the 2016 edition, only 28 African countries were ranked. Table 4 and Fig. 2 are based on the 28 African countries where there are both IIAG and GII data.

4.2.3 The Governance-Innovation Relationship for Africa

Given that there are only African countries presented in Fig. 2, the four dials have been adjusted to the data of the continent in order to obtain an intelligible display.¹¹ It is obvious that the introduction of a European country would upset the positioning of African countries, as these countries would all (Mauritius and South

¹¹This adjustment involves a shift (in equal proportion) to the right on the Governance axis and up on the Innovation axis.

Table 4 2015 IIAG on governance and 2016 GII on innovation in Africa

Country	Governance	Innovation
Mauritius	79.9	35.86
Botswana	74.2	28.96
South Africa	73.0	35.85
Namibia	70.4	28.24
Ghana	67.3	26.66
Tunisia	66.9	30.55
Senegal	62.4	26.14
Rwanda	60.7	29.96
Zambia	59.5	19.92
Kenya	58.8	30.36
Benin	58.8	22.25
Morocco	57.6	32.26
Malawi	56.7	27.26
Tanzania	56.7	26.35
Ouganda	54.6	27.14
Algeria	52.9	24.46
Mozambique	52.3	29.84
Burkina Faso	52.2	21.05
Egypt	51.3	25.96
Madagascar	49.1	24.79
Mali	48.7	24.77
Ethiopia	48.6	24.83
Niger	48.4	20.44
Togo	48.4	18.42
Côte d'Ivoire	48.3	25.80
Cameroon	45.9	22.82
Burundi	45.8	20.93
Nigeria	44.9	23.15

Source Author, according to 2015 IIAG and 2016 GII reports

Africa included) join the dial IV. However, it would not change the relative positioning of different African countries within the dial.

According to Fig. 2:

- Dial I: Three countries of the 28 (Mauritius, South Africa, Tunisia) represent a low prey potential. South Africa, which already possesses TNCs, is likely to develop predatory behavior.
- Dial II: Four countries (Botswana, Namibia, Ghana, Senegal) represent a medium or high prey potential, as their innovation system is still weak while their governance system is improving.

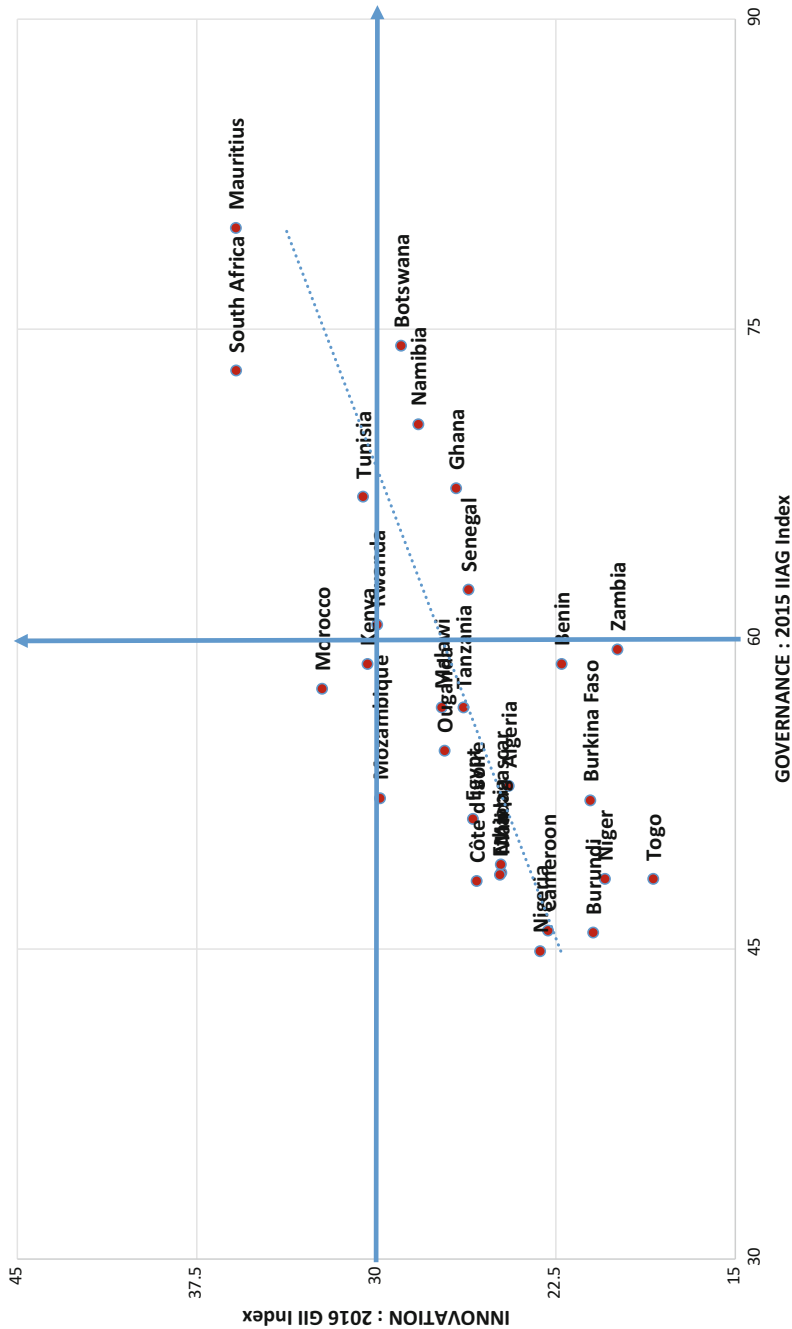


Fig. 2 Prey potential of African countries: governance—innovation relationship

- Dial III: Four countries (Morocco, Kenya, Mozambique and Rwanda) represent a medium or high prey potential, as their governance system is still weak while their innovation system is improving.
- Dal IV: The remaining 17 countries represent a high prey potential, as their weak governance and innovation systems expose them to predators.

The strong correlation between Governance and Innovation appears very clearly in Fig. 2 and highlights a progressive trend from dial IV to dial I (following the dashed line). Passage through dials II and III appears to be optional. Such a correlation is not surprising given the overlapping of political and economic capacity reflected in the content of both indices.

5 The Risk of Predation

The definition of the predatory potential of a TNC and the prey potential of a social order enables the overall assessment of the risk of predation. From the three values (high, medium, low) of both predatory and prey potentials, there are nine possibilities for the risk of predation, as presented in Table 5.

The risk of predation by a TNC is high when its predatory potential and the prey potential of the social order are high. It may also be high when the predatory potential is high while the prey potential is medium, and vice versa.

As the behavioral dynamics of TNCs according to institutional environments have now been specified, let’s explore the conditions required to effectively regulate the activities of TNCs though sustainable development and corporate social responsibility standards.

6 Regulating TNCs Behavior Through SD and CSR

From a focus on the natural environment, the sustainable development (SD) and corporate social responsibility (CSR) movements have gradually extended their attention to all dimensions of human and social life. Today, they broadly address human rights violations and thus actually combat predation. Basically, SD and CSR

Table 5 The risk of predation by a TNC

		Prey potential of the social order		
		High	Medium	Low
Predatory potential of the TNC	High	High	High	Medium
	Medium	High	Medium	Low
	Low	Medium	Low	Low

Source Author

movements are aiming for the transformation of predatory practices into responsible behaviors.

I assume that a global code of conduct on TNCs would consist of mechanisms to combat predation based on SD/CSR standards, strategies, and tools. Some of the now existing SD/CSR standards, like the Global Compact, the Extractive Industry Transparency Initiative (EITI), or OECD Principles for TNCs, have paved the way towards more effective and operational tools. Effective regulations depend not only on their intrinsic quality but also on the institutional environments where they are applied and the parties involved. I draw upon the concept of crypto-morality to sketch the institutional conditions under which TNCs are likely to effectively implement SD/CSR standards against predation.

6.1 *Crypto-Morality*

The concept of crypto-morality developed by Greif and Tadelis (2010) is based on the work of Bisin and Verdier (2001) on socialization. Socialization is the process by which social norms are transmitted and internalized by individuals. The postulate is as follows: in institutional environments where the intrinsic morality of an individual is easily detectable and highly penalized, a moral transition to the new morality is observed; elsewhere, the individual operates a simple behavioral transition and maintains a hidden practice of his intrinsic morality, a crypto-morality.

Applied to TNCs, their predatory or responsible rent-seeking activities will depend on the cost-benefit analysis they undergo when interacting with society. In this analysis, the characteristics of the institutional environment are pivotal, especially due to stakeholders' propensity to detect and penalize TNCs' predatory practices. There are four potential scenarios, but before specifying them, let's explore the notions of detectability and penalties.

A TNC's predatory practices are detectable when stakeholders (especially the State) have the right, the opportunity, and the ability to observe them, and they can provide evidence and enforce penalties. As such, strong economic and political inequalities between a company (more powerful) and stakeholders may undermine detectability. Mitchell (2013) shows how oil production activity is anti-democratic in nature because of its short value chain, its high technological intensity, and its isolation at sea or in rural areas where stakeholders can be little informed.

Penalties are the stakeholders' response to a TNC's predatory practices. Penalties include sanctions (when suitable enforcing institutions exist and they are effectively implemented), and any negative impact that stakeholders' actions may cause on the TNC's image and reputation, and incidentally on its economic and financial performance. A penalty is typically sufficient for victims if it is at least equivalent to the social costs incurred, and it is sufficiently dissuasive for a TNC if it exceeds extra savings or profits the TNC has incurred due to the challenged predatory practices.

Table 6 TNCs’ strategies vis-à-vis SD/CSR engagement

	High penalties	Low penalties
Detectable predation	1. Moral transition	2. Behavioral transition (crypto-morality)
Non-detectable predation	3. Behavioral transition (crypto-morality)	4. Behavioral transition (crypto-morality)

Source Author

6.2 TNCs’ Cost-Benefit Analysis of Predation

Depending on the detectability of predation and the level of penalties, there are four scenarios corresponding to two behaviors: behavioral transition under crypto-morality, and moral transition (see Table 6).¹²

Scenario 4—Non-Detectable Predation and Low Penalties: it is almost impossible to detect the TNC’s predatory behaviors, and any potential penalties are low. The company will be encouraged to continue predation as long as resulting savings or benefits outweigh penalties. The TNC’s SD/CSR commitment will consist of a simple behavioral transition to assure a positive image and reputation.

Scenario 3—Non-Detectable Predation and High Penalties: the TNC would pay heavy penalties if its predatory behavior became detectable. Therefore, the TNC will strive to keep its predatory practices non-detectable. It may hide pollution, or bribe and intimidate the most threatening stakeholders to ensure their cooperation. The TNC’s SD/CSR commitment will consist of a simple behavioral transition to assure a positive image and reputation.

Scenario 2—Detectable Predation and Low Penalties: it is possible for stakeholders to easily identify that the TNC practices predation, but penalties are low. The company will only endorse these residual penalties while reducing its exposure to stakeholders, and therefore, any SD/CSR commitment will consist of a simple behavioral transition.

Scenario 1—Detectable Predation and High Penalties: the TNC’s SD/CSR commitment may consist of a moral transition to an actual fight against predation. This is the case in environments where institutions are strong and credible. Here, stakeholders are informed and able to enforce penalties against predators. The TNC does not stop innovating regarding methods of predation, but the institutional environment is so dynamic that stakeholders are also able to keep innovating to detect and penalize any new predatory practices.

In all three scenarios 4, 3 and 2, the TNC’s SD/CSR engagement remains superficial. It is manipulated through various ethical codes and standards to cover predatory rent-seeking activities. Scenario 1 represents a situation where the TNC is forced to undertake a moral transition as its predatory attempts are regularly detected and punished. Such a moral transition does not immunize the company to

¹²This cost-benefit analysis has been introduced in Lado (2016).

predation. Crypto-morality is merely reduced and is likely to re-emerge once the company notices a slackening in detection practices and penalties. Thus, the TNCs' SD/CSR engagement against predation is dynamic: it evolves alongside the regulation and stakeholders' ability to maintain an active watch on predatory practices.

7 Conclusion

In the search of conditions for a successful development of a global code of conduct for TNCs, the ambition of this work was to analyze the behavioral dynamics of transnational corporations (TNCs) with respect to the institutional environments in which they operate. In fact, effective regulations for responsible behavior depend not only on their intrinsic quality but also on the institutional environment where they are applied and behavior of parties involved in their implementation. Building on North et al. (2009)'s conceptual framework on the categorization of social orders (limited access order or developing countries vs. open access order or developed countries), I have developed an analytical framework on the behavioral dynamics of TNCs when they move from one social order to another. The analysis of predator-prey dynamics between TNCs and States (in what I have defined as an international order of predation) reveals that TNCs are more likely to develop predatory practices in limited access orders where the prey potential is high. Greif and Tadelis (2010) concept of crypto-morality provides grounds for the demonstration that the sustainable development (SD) and corporate social responsibility (CSR) movements are likely to be effective in mandating responsible behavior in institutional environments where TNCs' predatory behaviors are highly detectable and heavily penalized.

To describe predatory and prey potentials, I have made use of the indicators 'important', 'high', 'low' or 'medium'. I'm aware that these terms only partially represent a reality that is complex by nature and varies from one TNC or social order to another. An attempt to move towards a more predictive analysis framework would require definition of discrete thresholds of these indicators; however, the elaboration of a predictive tool was not the purpose of this work. The aim was to provide a framework that depicts actors, institutional environments, and interactions that underlie predatory behaviors among TNCs and States. This should aid the design of a global code of conduct for TNCs; a promising approach is to focus on transparency and penalties mechanisms, and to foster capacity building in limited access orders for increased resilience and boldness.

In this analytic framework, the configuration in which a TNC is the prey and a social order the predator has not been considered. However, this case exists, especially in the situation where TNCs' investments or revenues are coveted by government officials. This is also the case when local populations perceive the TNC only as a provider of rents they can capture through violence. Furthermore, this work has demonstrated that limited access orders are most likely subject to predation, but this should not lead to the conclusion that predation does not exist in open access orders.

In fact, as open access orders' institutions and organizations are more sophisticated, predation is likewise sophisticated. When predatory practices thrive, they may be spectacular and their spillovers may impact the entire world, like the subprime crisis in 2007/2008 and the Volkswagen scandal in 2016. However, as limited access orders suffer most in terms of poverty, security, and other basic needs, predation is likely to cause more vital damages in terms of human rights.

This framework could be enriched with the analysis of predatory or prey potentials of other international actors such as intergovernmental organizations or non-governmental organizations. The influence of these international players in the international social order is significant, especially as in recent decades authority has moved from States to international organizations, as noted by Strange (1996). This framework would thus gain complexity with the consideration of the interplay between several international actors.

Finally, it should not be inferred from this work that TNCs concentrate all evils when operating in limited access orders. Their significant contribution to wealth creation and technology transfer has been well documented. However, even though host social orders must play a leading role in the protection of human rights, it is obvious that in their legitimate quest of rents, responsible TNCs must remain vigilant in their operations in institutionally weak social orders if they do not wish to foster predation. A global code of conduct for TNCs should consider transparency and dissuasive penalties as key drivers of responsible practices, and should target an improvement of the capacity of host countries in the fight against predation.

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