

**Business Regulation and Non-State Actors
Whose Standards? Whose Development?**

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Ananya Mukherjee-Reed**

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Preface

As markets and global corporations expand in scope and influence, so too have concerns about their social and environmental impacts, and the fact that conventional ways of regulating business through governments and self-regulation do not seem to be able to control the juggernaut. Although with globalization it might have been expected that multilateral organizations would take the lead in the social regulation of business, the most dynamic game in town has in fact involved a very different set of players – non-state actors. Through various forms of contestation, participation and governance, civil society and business organizations are proactively engaging in setting standards and other regulatory functions.

As Polanyi's analysis of early twentieth century *laissez-faire* capitalism showed, de-regulated markets not only generate deep social contradictions, they also prompt a social reaction. Changes in the composition of civil society and social movements in recent decades mean that today, in addition to trade unions and the labour movement, it is also non-governmental organizations (NGOs) and networks, and new social movements that are leading that reaction. And as corporations and business associations increasingly become political actors, they too must respond. The upshot of these structural, institutional and political changes has been the rise of new forms of governance where non-state actors play a central role in a variety of regulatory functions associated with improving the social, environmental and human rights performance of business and holding corporations accountable.

This volume assesses the achievements and limitations of this new set of regulatory institutions. It does so from a perspective that aims to address two limitations that often characterize this field of inquiry. The first is fragmentation: articles or books typically focus on one or a handful of cases. This volume examines more than 20 initiatives or institutions that reflect different approaches. Some are part and parcel of the mainstream, business-friendly, corporate social responsibility (CSR) agenda. Others are associated with a 'corporate accountability' approach that aims to give voluntary initiatives more 'teeth' and connect them with public policy and law; while another category promotes 'fair trade' or a social economy approach that emphasizes both the empowerment of small producers and the redistribution of income and value within global commodity chains. The second limitation relates to the lack of attention to questions of development: what does such regulation imply for developing countries and subaltern groups in terms of well-being, empowerment and sustainability? And what models of development or varieties of capitalism and globalization does multistakeholder regulation explicitly or implicitly reinforce or support?

To examine these questions, this volume brings together a relatively large number of chapters written by scholars and practitioners who have specialist knowledge of particular multistakeholder institutions, as well as conceptual dimensions of business

regulation and fair trade. Their findings give some cause for optimism in terms of (i) filling the regulatory deficit that has emerged with globalization; (ii) awareness-raising; (iii) ongoing incremental improvements in scale and quality; iv) concrete gains in selected areas, and (v) emerging coalitions for progressive change. And they provide useful pointers about the developmental, regulatory and political challenges that need to be addressed if non-state actors are to effectively regulate business from the perspective of equitable and sustainable development. But they also raise fundamental questions about exactly ‘whose development’ is being promoted, the participation of Southern voices, who bears the costs and risks associated with raising standards, and whether the types of regulatory initiatives being led by civil society actors and multistakeholder coalitions can really transform business-as-usual.

Darryl Reed, Peter Utting and Ananya Mukherjee-Reed
Toronto and Geneva, 18 May 2011

Introduction: Multistakeholder Regulation from a Development Perspective

Peter Utting

As globalization has proceeded apace in recent decades, so too has the development of new regulatory institutions that establish rules and standards aimed at shaping business behaviour. Certain institutional arrangements associated with industry or corporate self-regulation, as well as international law governing trade, investment and property rights, directly reinforce or legitimize particular approaches to development and globalization grounded on economic liberalization¹. The focus of this book is another category of institutions, which (i) are concerned with setting standards associated with the aspects of ‘good governance’, including transparency, participation and accountability; and (ii) involve non-state actors (for example, firms, business and industry associations, trade unions and non-governmental organizations (NGOs) as central players in some or all aspects of regulation, broadly understood. These include agenda-setting, design, implementation, enforcement, oversight, assessment, review and redress. Various labels have been used to describe these forms of ‘private’, ‘civil’, ‘non-state’, ‘co-regulatory’ or – the term used here – ‘multistakeholder regulation’, which simply expresses the fact that, in practice, particular initiatives tend to involve multiple actors in one or several regulatory functions.

There is an expanding literature that assesses the potential and limitations of these new institutions. Considerable attention has focused on questions of regulatory effectiveness, authority and legitimacy; how such arrangements relate to public governance and law, as well as the motivations, capacities and relative influence of the actors and stakeholders involved.² This volume touches on a number of these aspects but is particularly concerned with exploring the implications of multistakeholder regulation from a development perspective. In other words, what does multistakeholder regulation imply for developing countries and subaltern groups in terms of well-being, empowerment and sustainability? And what models of development or varieties of capitalism and globalization does multistakeholder regulation explicitly or implicitly reinforce or support?

¹ Such law is part of what has been called ‘New Constitutionalism’, which refers to legal and other arrangements that serve to lock-in trends and policies associated with neoliberalism (Gill 2003; Schneiderman 2008).

² See, for example, Bernstein and Cashore (2008); Büthe (2010); Conroy (2007); Crane et al. (2008); Gibbon and Ponte (2007); Gulbrandsen (2010); Haufler (2001); Kirton and Trebilcock (2004); Mattli and Woods (2009); McBarnet et al. (2007); Prakash and Potoski (2006); Rittberger and Nettesheim (2008); Tamm Hallström and Boström (2010); Vogel (2005); Wheeler and Newell (2006).

To examine these questions this volume brings together a relatively large number of chapters written by scholars and practitioners who have specialist knowledge of particular multistakeholder institutions, as well as conceptual dimensions of business regulation and fair trade. This introduction situates the rise of multistakeholder regulation in contemporary globalization, governance and politics; explains the focus of the volume; and distils from the chapters that follow key findings related to achievements and limitations associated with these new modes of business regulation. It concludes by pointing to a number of dilemmas and challenges – developmental, regulatory and political – that need to be addressed if the promises of equitable and sustainable development via multistakeholder regulation are to be realized.

THE RISE OF MULTISTAKEHOLDER REGULATION

Much has been written in recent years about this new arena of business regulation. Conceptually and strategically, various perspectives and insights from international relations, political science, sociology, law and management studies contribute to understanding the emergence and consolidation of multistakeholder regulation. These relate to the changing nature of the state, governance, policy making, industry and firm structures, the coordination of economic relations, and collective action. They include:

- (i) filling institutional deficits or governance gaps that have arisen under globalization and the expansion of global value chains (Mayer and Gereffi 2010), often to un- or weakly regulated sites (Scherer and Palazzo 2010), and in contexts of retrenchment or ‘failure’ associated with multilateral regulation, the state or trade unions (Haufler 2001; Held and Koenig-Archibugi 2003; Reinicke and Deng 2000);
- (ii) the rise of the ‘competition’ (Cerny 2000) or ‘regulatory’ state, which decentralizes and delegates regulatory authority to non-state actors (Braithwaite 2005);
- (iii) the so-called shift from government to governance (Rosenau and Czempiel 1992) or ‘new governance’ (Pierre and Peters 2000), involving multiple actors and soft law, as well as the rise of particular modes of governance associated with networking (Keohane 2002; Piccioto forthcoming) and corporate hierarchy (Crouch 2010);
- (iv) trends associated with cosmopolitanism (Beck 2005), ‘Third Way’ or ‘post political’ discourse and practice (Mouffe 2005), involving consensual politics centred on dialogue, partnership and collaborative governance (Garsten and Jacobsson 2007);
- (v) the need to share knowledge and competencies, and for reflexive learning, under conditions of increasing complexity and risk (Beck 2005; Freeman 1984); the enhanced problem-solving capacities of non-state actors; and increasing recourse to ‘experts’ in policy or decision-making processes and epistemic communities (Haas 1992; Braithwaite and Drahos 2000);

- (vi) efforts to re-embed liberalism to address market failures and negative externalities associated with economic liberalization (Ruggie 2003);
- (vii) new forms of contentious politics and social movements associated with a contemporary 'double movement' (à la Polanyi) and counter-hegemonic globalization (Evans 2008), reacting to economic liberalization and self-regulating markets and targeting transnational corporations (Klein 2000; Korten 1995; Conroy 2007; Gereffi et al. 2001);
- (viii) the growing 'market for virtue' (Vogel 2005) associated with reputation management and 'ethical' products;
- (ix) recourse to standards-based regulation as a means of managing and controlling value chains and protecting brand value (Cragg 2005; Gibbon et al. 2010); and
- (x) finding a stable regulatory (coordination) regime through codification, formalization and harmonization (Zadek 2001), that can be sustained over the long term, as in previous 'Fordist' or corporatist eras (Jessop and Sum 2006; Palpacuer 2010).

Crucially, the rise of multistakeholder regulation reflects changes in the relative power and influence of states, trade unions, NGOs, social movements, global corporations and other business enterprises. Such changes include the rolling back of certain state and trade union capacities and authority; the growing structural, instrumental and discursive power of big business (Fuchs 2005), and changes in the bargaining power of different types of firms within global value chains (Gibbon and Ponte 2007; Tallontire 2007). They also include the enhanced role of professionalized NGOs in service delivery, knowledge networks and policy processes (Heap 2000), and the rise of new social movements concerned with global justice issues, such as corporate accountability and fair and ethical trade (Broad and Cavanagh 1999; Bendell 2004; Jaffee 2007; Soule 2009).

The rise of multistakeholder regulation can also be partly explained in relation to the failure of self-regulation to address both coordination and political problems related to capitalist development under globalization and liberalization. Major weaknesses and contradictions soon became apparent with self-regulation and the voluntary initiatives that characterized the emerging corporate social responsibility (CSR) movement in the 1980s and early 1990s. These included the proliferation of unconnected, often competing, initiatives; picking and choosing among standards; weak implementation procedures; ineffective remedy; lack of credibility and legitimacy; a largely Northern-driven agenda; and limited attention to a number of key development issues (UNCTAD 2011; UNRISD 2010). More generally, it was apparent that self-regulation was doing little to fill the institutional deficit associated with globalization. This was evident both from the perspective of effective intra- and inter-firm coordination and 're-embedding' liberalism in order to minimize social and environmental contradictions and contestation. Ongoing corporate scandals, involving not only so-called CSR laggards but also leaders, fuelled a corporate accountability movement calling for harder regulatory approaches.

Against this backdrop emerged a new set of regulatory initiatives,³ prominent features of which include some combination of:

- multistakeholder dialogue and governance structures;
- a more systematic approach to the design and application of standards;
- strengthening and integrating different components of regulation, including design, promotion, implementation, disclosure, monitoring, verification, certification and complaints procedures;
- closer cooperation among non-state regulatory actors and institutions, as well as with governments and intergovernmental organizations; and
- more complex and eclectic forms of contestation and claims-making on the part of civil society organizations and networks in relation to corporate accountability and ethical and fair trade.

ABOUT THIS VOLUME

Curiously, although multistakeholder governance associated with business regulation directly impacts core dimensions of sustainable, social and rights-based development, there has been relatively little systematic assessment of such initiatives from a development perspective (Blowfield and Murray 2008). In recent years a number of books and special journal issues have addressed these questions through the critical analysis of one or a few multistakeholder initiatives, selected value chains and industrial sectors; specific regulatory approaches (for example, fair trade or CSR); or particular thematic issues.⁴ This volume adds to this body of literature by focusing on 21 initiatives or institutions that reflect different regulatory, governance and developmental approaches associated with mainstream CSR, ‘corporate accountability’ and fair trade,

The cases include those that have:

³ Some such institutions existed prior to the 1990s, notably the International Organization for Standardization (ISO), although its focus on auditable environmental management systems (ISO 14001) dates from the early 1990s. Of the other 20 initiatives examined in this volume, the only ones that existed prior to the 1990s were IFOAM and WFTO (which began as the International Federation for Alternative Trade).

⁴ See, for example, Bacon et al. (2008); Bendell et al. (2009); Blowfield and Frynas (2005); Blowfield and Murray (2010); Cashore et al. (2004); Clapp and Fuchs (2009); Fridell (2007); Frynas and Newell (2007); Gibbon et al. 2010; Hutchens (2009); Gibbon et al. (2010); Macdonald and Marshall (2010); Neilson and Pritchard (2009); O’Laughlin (2008); Eade and Sayer (2006); Fig (2007); Hamann et al. (2007); Reynolds and Wilkinson (2007); Utting and Marques (2010).

- a *global and multi-sectoral focus*: the Ethical Trading Initiative (ETI) (supply chain management), SA 8000 (labour standard) certification; standard-setting and certification associated with the International Organization for Standardization (ISO), the United Nations Global Compact, the Global Reporting Initiative (GRI), and the Brazilian social audit scheme, *Balanco Social*;
- a *sectoral, industry or company focus*: the Forest Stewardship Council (FSC), the Marine Stewardship Council (MSC), the Global Partnership for Good Agricultural Practice (GlobalG.A.P.) and Wal-Mart's Ethical Standards Program;
- a single-industry and *single-issue focus*: the Atlanta Agreement on *Child Labour*, the Extractive Industries Transparency Initiative (EITI – *corruption*) and the Kimberley Process (*conflict diamonds*);
- a *rights-based focus* aimed at realizing the rights of workers and indigenous peoples: Permanent Peoples' Tribunals (PPTs) in Latin America, the Worker Rights Consortium (WRC) and International Framework Agreements (IFAs) between Global Union Federations and transnational corporations (TNCs); and
- a *fair trade and agro-ecology focus*: International Federation of Organic Agriculture Movements (IFOAM), 'fair trade gold', the World Fair Trade Organization (WFTO), Fairtrade International (FLO), and *Comercio Justo México*.

Although this categorization is used to structure the case study chapters, it masks what can be significant variations in the type of regulatory instruments that are adopted or promoted (such as normative guidance, reporting, monitoring, assessment, certification and redress), the broader regulatory and developmental approach supported by different types of initiatives, and the varied configurations of state, business and civil society actors and interests associated with different initiatives. The selection of cases for inclusion in this volume purposefully aimed to capture different developmental approaches and configurations of actors and interests. Three approaches are of particular interest: first, 'corporate social responsibility', with its emphasis on voluntary initiatives that are generally amenable to business interests (for example, GlobalG.A.P, United Nations Global Compact, ISO standards, SA8000, GRI, ETI, MSC and Wal-Mart's Ethical Standards Program); second, 'corporate accountability', which not only emphasizes voluntary initiatives 'with teeth' but also the role of law, public policy, the state and civil society in holding corporations to account and ensuring compliance with agreed standards (for example, FSC, IFAs, WRC, PPTs, Kimberley Process), and third, 'social economy' with its emphasis on enhancing livelihood security and empowerment of small-scale producers (for example, IFOAM, Fair Trade Gold, WFTO, FLO, *Comercio Justo México*).

The configuration of both state and non-state actors associated with different initiatives and approaches is examined systematically in Chapter 1. The volume also

seeks to shed light on how non-state actors shape regulation, not only through formal participation in standards-based institutions, but also myriad forms of action associated with, for example, protest, advocacy campaigns, lobbying, dialogue, the provision of expertise, monitoring and redress. Such forms, and the increasingly eclectic nature of collective action by both business and civil society actors, are addressed systematically in Chapter 2.⁵ This introduction and the final chapter take stock of the case study findings. The sections that follow distil from the case studies and thematic chapters key achievements, limitations, dilemmas and challenges associated with multistakeholder regulation, as seen from a development perspective. The concluding chapter reflects on the broader question of how these initiatives relate to different models of governance, development and globalization.

ACHIEVEMENTS

While different types of regulatory initiatives yield quite different balance sheets in terms of achievements, limitations, winners and losers, on balance there are several areas where some degree of progress has been apparent. These relate to discursive and normative shifts that place social and environmental issues more centrally on the development agenda, institutional thickening to fill regulatory gaps, improvements in relation to specific outcome standards, ongoing ratcheting-up of standards and implementation, and a degree of maturing of both voluntary multistakeholder initiatives in terms of their relation to public governance, and of regulatory activism in terms of recourse to a wider portfolio of action.

At the normative level, multistakeholder regulation has played a key role in raising awareness of social, environmental, human rights and governance problems associated with contemporary patterns of production, investment, trade, consumption, corporatization and self-regulation. Their role in facilitating learning via stakeholder dialogue often emerges as a key impact. Indeed, as Auld and Cashore note when discussing the FSC (Chapter 9), impacts related to ‘transparent learning processes’ are often far more obvious than those related to ‘problem amelioration’.

At the micro level of the enterprise or production unit, gains have been reported in certain value chains and countries in issue areas related to child labour, improved compliance with minimum wage legislation, improved prices for smallholders through fair trade schemes, anti-corruption, enhanced environmental protection, and improvements in human rights situations in some conflict zones and areas of natural resource extraction (see, in particular, chapters referring to ETI, Atlanta Agreement on Child labour, EITI, Kimberley Process, FLO, ISO14001, SA8000). As Barrientos and Smith note in relation to the ETI (Chapter 3), multistakeholder initiatives and

⁵ In addition to some of the cases listed above, this chapter also examines the issue of civil society engagement with the OECD Guidelines for Multinational Enterprises and the recent drafting process related to the ISO 26000 guidance standard on organizational social responsibility.

participating firms have tended to pay more attention to the implementation of outcome standards than to process rights.

An important exception, of course, involves various initiatives whose starting point or core objective relates to worker or producer empowerment, notably the WRC, IFAs, and PPTs, which focus on monitoring and redress, and several fair trade schemes (see Chapters 16, 17, 18, 21 and 22), which promote not only the payment of premium prices to small producers but also their social organization and empowerment.

In relation to regulatory approaches associated with CSR and corporate accountability, the focus on engaging larger corporations has, to some extent, broadened, with more attention to small and medium-sized enterprises (SMEs). Initiatives like the GRI, SA8000 and the United Nations Global Compact have introduced or supported differentiated procedures that take into account the context and constraints of SMEs or, in the case of GlobalG.A.P., small agricultural producers. Some initiatives are attempting to correct the tendency of standards-based initiatives in the extractive industries to neglect artisanal miners, for example, in the cases of gold and diamond mining, discussed by Hilson and Kamlongera (Chapter 20) and Smillie (Chapter 15), respectively.

Considerable regulatory dynamism is evident in the sense that many initiatives evolve, mature and are ratcheted-up. Progressive reform is apparent in terms of adopting additional standards, as well as strengthening specific mechanisms and procedures to enhance implementation and oversight, for example, in relation to transparency, disclosure and complaints procedures. Several initiatives have enhanced the quality of specific tools, such as monitoring, social auditing, certification and sustainability reporting, by addressing weaknesses that were apparent when these practices first emerged. Initiatives, such as the EITI, GRI, FSC, MSC and SA8000, have become more inclusive of a broader range of standards, procedures and stakeholders. A complex set of factors and conditions underpin progressive incremental change. In addition to intra-organizational or institutional learning, interactions with other institutions and policy instruments, contestation associated with civil society organizations and networks, as well as business-NGO coalitions, have played an important role.

The crucial role of influences and pressures associated with civil society actors, such as advocacy NGOs and networks, trade unions and social movements, emerges from numerous cases. Contestation and discursive struggle have created spaces and opportunities for ratcheting-up regulatory initiatives. Various chapters – in particular, Gregoratti, Levy and Brown, Sum and Utting – suggest the utility of neo-Gramscian analysis, and the concept of discursive or ‘hegemonic’ and ‘counter-hegemonic’ struggle, for understanding processes of regulatory reform. Civil society action associated with corporate responsibility and accountability (as well as with specific regulatory initiative) has become far more eclectic, involving some combination of protest, advocacy, lobbying, social dialogue, participation in epistemic communities

or governance structures, monitoring and recourse to grievance procedures. This tactical mix is examined by Utting in Chapter 2, particularly in relation to reforms to the United Nations Global Compact, the development of the ISO 26000 social responsibility guidelines and the current review of the OECD Guidelines for Multinational Enterprises.

Conceptually and strategically there is greater recognition that ‘corporate logic’ and ‘activist logic’ may share more common ground than suggested by the traditional categorization of NGO-business relations in terms of ‘collaboration’ versus ‘confrontation’. The growing market for both reputational and ethically-traded goods, the compatibility of the preferences of some types of firms and industries with aspects of social and sustainable development, and the rise of global corporations as political actors that must compromise, are features that favour multistakeholder regulation. They also increasingly characterize coalitions between big business and some civil society organizations and networks. Both activism and regulatory governance have thus adapted to globalization and the power of transnational corporations by becoming more ‘multi-scalar’. They involve actors and institutions that often complement those operating at the national level by focusing on both the micro level of the factory, mine or farm, and the global level involving international norms or agreements with corporate headquarters related to their global operations.

Multistakeholder regulation has advanced thinking and policy on what constitutes both effective activism and effective regulation. Some initiatives are going beyond the narrow compartmentalization of ‘voluntary’ versus ‘mandatory’ regulation, by promoting hybrid forms of regulation where voluntary standards (i) are based on international labour, environmental, human rights and other law; (ii) serve as benchmarks for national law and public policy; and (iii) involve not only business entities and civil society organizations, but also governments and intergovernmental organizations. Several initiatives (for example, GRI, ISO 26000, GlobalG.A.P., IFOAM and FLO) have attempted to address the problem of the proliferation of initiatives and are positioning themselves as *the* internationally recognized standard. Furthermore, some show signs of coalescing into a more harmonized and structured regulatory system. This is apparent both in forms of collaboration between some sectoral and certification initiatives (for example, FSC, MSC, SA8000, FLO), and in initiatives that try to harmonize standards in related sectors (for example, GlobalG.A.P. and IFOAM). It is also apparent in relation to certain global initiatives – associated with the United Nations Global Compact, ILO and ISO standards, the GRI and the OECD Guidelines for MNEs – which have become more mutually supportive, establishing partnerships or signing Memoranda of Understanding (MoUs). Such collaboration suggests the possibility that an incipient form of transnational regulatory governance may be emerging where functions of global standard setting, promotion, reporting, certification and grievance/redress procedures are coordinated or organized around an internationally networked institutional division of labour. The filling of certain institutional gaps at the global level is also apparent in relation to the increasing number of International Framework Agreements

between Global Union Federations and global corporations, which attempt to broaden the locus of industrial relations and collective bargaining beyond the national level.

LIMITATIONS AND CONSTRAINTS

From a development perspective, key limitations of multistakeholder regulation relate to questions of scale, scope, compliance, the distribution of costs and benefits among stakeholders, local embeddedness, participation of subaltern and developing country interests in agenda-setting and governance arrangements, and structural constraints that limit progressive change.

Despite the institutional thickening and ratcheting-up associated with multistakeholder initiatives, this field of regulation is still fairly constricted in terms of the number of global corporations and other enterprises that are proactively engaged. Even some of the largest global initiatives, such as the United Nations Global Compact and the GRI, involve relatively few of the world's TNCs and affiliates. Sectoral initiatives such as the EITI confront the reality that some key emerging global players, notably corporations from developing countries, are not engaged. The uptake of certain schemes such as SA8000 and the *Balanço Social* initiative in Brazil declined significantly after a few years. Numerous factors and conditions inhibit scaling-up and proactive engagement. These include conventional resource constraints associated with NGOs and SMEs, the ongoing scope for free-riding in contexts of weak compliance mechanisms, and the rise of competing initiatives.

Another concern is related to limited progress in achieving one of the stated objectives of several initiatives, namely, the empowerment of workers and producers. Attention to issues of core labour rights, particularly collective bargaining and freedom of association, is often marginalized. The scaling-up of fair trade through the involvement of large corporations may direct attention to price premiums and market access but neglect a key goal of fair trade, namely producer empowerment. Processes of monitoring and verification, which potentially could empower workers, tend to engage more with management than workers. This, in turn, creates suspicion of auditors among the workforce, and limits the capacity of auditing to identify issues of concern for workers. Weak transparency and disclosure associated with schemes, such as the United Nations Global Compact, GRI and SA8000, inhibit the capacity of NGOs and trade unions to monitor and act as watchdogs. As in the case of SA8000 (Chapter 4), some social auditing and certification schemes that require the audited enterprise to pay the auditors remain compromised by conflicts of interest, lack of independence and weak disclosure. A technocratic and managerial approach to compliance often sidelines the facilitation of empowerment and process rights of workers and small producers. As a result, embedded social or commercial relations that can undermine labour and other standards in value chains are often ignored (as in ETI and SA 8000).

Lack of systematic review of compliance, and ineffective grievance procedures and remedy, emerge as key limitations in several initiatives (for example, the United Nations Global Compact, the GRI, OECD Guidelines, SA8000, the Kimberley Process and FLO). This often results from the combination of resource constraints; technical complexities associated with investigation, monitoring and verification; and imbalances in power relations and influence favouring certain business interests or governments. Civil society activism, organizations and networks are increasingly directing their energies toward strengthening such aspects, as seen in the case of NGOs and trade unions that are testing the complaints procedures of the OECD Guidelines for Multinational Enterprises, International Framework Agreements, and the Permanent Peoples' Tribunals in Latin America.

Economic development dimensions and the fact that there may be winners and losers within supply chains are often ignored. Indeed, limited attention to impact assessment is a widespread feature of multistakeholder regulation. Of particular concern are the cost implications of multistakeholder regulation for small suppliers and workers, and the capacity of large corporations to use their market power to transfer the costs of raising standards and risks to weaker stakeholders. Productivity gains may not conform to the theory regarding 'win-win' outcomes. Furthermore, there is a tendency for standards regimes to favour concentration at different levels of the value chain. Standards-based initiatives may facilitate market access for some enterprises and work more as a protectionist barrier to trade for others.

With some notable exceptions (for example, FSC, *Balanço Social* in Brazil, *Comercio Justo México*), the multistakeholder initiatives examined in this volume were generally designed in the North and are often perceived locally as externally-driven initiatives. Several cases raise concerns about issues of local embeddedness. This relates to the relevance for local stakeholders of the issues being prioritized, such as the exclusion of aquaculture and small-scale fisheries from the MSC (Chapter 10) or the range of poverty and conflict-related issues affecting artisanal fair trade gold miners (Chapter 20). There is sometimes also limited attention to local solutions to specific problems, for example, as argued by *Comercio Justo México* in relation to conventional fairtrade schemes (Chapter 23), and as the Diamond Development Initiative attempted to address (Chapter 15). Finally, the question of how to sustain externally-driven regulatory initiatives once donor resources are withdrawn emerges clearly in Lund-Thomson and Nadvi's examination of the implementation of the Atlanta Agreement on Child Labour in the football manufacturing industry in Pakistan (Chapter 13).

The neglect of development dimensions is also reflected in, and a product of, the marginalization of Southern actors and stakeholders in the design of standards, monitoring, implementation and the governance structures of various initiatives. This was noted in relation to ISO 14001, SA8000, GRI, ETI, FLO, GlobalG.A.P. and IFOAM. Where both Southern and civil society participation are substantive, there may be a tendency on the part of organized business interests and governments to

craft alternative schemes that are seen as more business-friendly or where business can exert more control. This occurred, for example, in reaction to the FSC (Chapter 9), and was also been apparent in the shift from ‘civil-led’ to ‘business-led’ social reporting schemes in Brazil (Chapter 8).

Multistakeholder regulation is constrained by a range of structural conditions associated with the profit motive, shareholder primacy, consumer culture and power relations. Various chapters allude to this set of constraints, which are theorized more fully by Reed and Mukherjee Reed in the final chapter. Such conditions can impose severe limits on the scope for internalizing social and environmental costs, redistributing income and value, and lessening regulatory capture. Indeed, they underpin countertrends associated with the so-called ‘race to the bottom’ in labour standards and precarious employment, and enhance the capacity of large corporations to transfer risk and cost associated with standards along the value chain. The changing structure of global production, notably the rise of emerging market economies and their national (corporate) champions, has resulted in situations – evident in the case of the extractive industries (Chapter 14) – where a multistakeholder initiative may seem out of step, focusing on the old, as opposed to the new, guard.

Both the nesting of multistakeholder regulation within broader institutional structures of capitalism and the considerable influence of corporate interests in regulatory design, implementation and other policy processes can severely constrain the potential of such initiatives to transform business practices, core product and market strategies and patterns of corporate governance. Achievements are often not replicated in more informal and casualized segments of the value chain; indeed, standards regimes can fuel informalization as firms outsource as a means to bypass regulation and reduce costs. Within some export-manufacturing chains, women have been particularly affected by this situation. In mining, certain initiatives have until recently ignored the situation of millions of informal sector miners. As explained by Hilson and Kamlongera (Chapter 20), such neglect may be reinforced by government policies that restrict land rights and licences and render artisanal mining illegal.

Various chapters below suggest that such structural conditions not only constrain the potential of multistakeholder regulation, but that several standards-based initiatives have failed to interrogate these conditions. The cases of the United Nations Global Compact, GRI and GlobalG.A.P., for example, reveal that the process of enlisting support from corporate interests may involve explicit or implicit compromises that dilute some aspects of regulation or keep certain issues off limits. Similarly, the recent ISO 26000 process, discussed in Chapter 2, agreed early on to focus broadly on ‘organizational’ rather than ‘corporate’ social responsibility in an effort not to single out TNCs.

DILEMMAS AND CHALLENGES

The course of regulatory action needed to meet multiple and sometimes contradictory goals associated with economic, social, sustainable and rights-based development is never clear cut. Not only is regulation a highly contested field, but various tensions and dilemmas are also apparent. These include the trade-off between the scale of uptake, on the one hand, and the substance of standards and compliance, on the other hand; the balance between engaging corporations as ‘partners’ and being co-opted by them; the extent of compromise needed to achieve small gains and incremental improvements; and raising the bar in labour and environmental standards, and the costs for small enterprises and producers.

The tension between scale and substance was noted, in particular, in the chapters dealing with the GRI, *Balanço Social*, United Nations Global Compact, SA8000, WRC, FSC, MSC, IFOAM and FLO and *Comercio Justo México*. Rapid scaling-up often occurs on the back of institutions and instruments that are relatively ‘business-friendly’, and where norms and procedures do not pose much of a challenge to conventional business practices and culture. The process of ‘conventionalization’, discussed by Audet and Gendron in Chapter 19 when examining standards in organic agriculture, applies as well to other areas of multistakeholder regulation. In other words, a dual process occurs whereby large producers or enterprises increasingly engage with ethical and fair trade standards, but interpretation and implementation of standards increasingly conforms to the preferences and practices of these larger commercial interests.

Uptake can be impeded by setting the bar quite high, as seen in the case of the WRC and the FSC. When this occurs, other institutions are likely to emerge that are seen as more business friendly. Referring to the experience of social and sustainability reporting in Brazil, Gomes and Kirschner (Chapter 8) note the shift over time from civil society- to business-led regulation, which had implications for corporate accountability. But such institutional repositioning can work both ways. The existence of organizations that are perceived as weak from a regulatory and development perspective often leads to the formation of, or reinforces, alternative organizations, as occurred, for example, in the case of WRC (Chapter 17) and *Comercio Justo México* (Chapter 23). As fair trade is mainstreamed, Reed (Chapter 22) raises the question of whether Fairtrade International should now split into two organizations to deal with two different stakeholders, namely business and small producers.

At a broader level, this tension is reflected in the relationship between regulation that ultimately enhances capitalist (inter-firm and intra-firm) coordination on the one hand, and regulation that is driven by global justice issues, on the other. Important substantive and procedural differences often characterize initiatives and that are (i) driven by risk and reputation management or competitive advantage (such as GlobalG.A.P. and Wal-Mart’s Ethical Standards Program); (ii) centred on rights or pro-poor developmental goals (*Balanço Social*, WRC, FLO, and WFTO); or (iii) explicitly accommodate both these logics (ETI, FSC, GRI and SA8000, for example).

Those concerned with global justice issues are in the complex strategic position of having to engage big business to push for regulatory change, to guard against co-optation, to compromise and accommodate certain business demands and preferences, to know with whom to ally, and when to switch tactics and ratchet-up action to another level.

The analysis contained in this volume provides numerous pointers, summarized below, to answer the question of whether the promise of multistakeholder regulatory initiatives in relation to inclusive and sustainable development can be realized. This will largely depend on the way in which three challenges, associated with developmental, regulatory and political aspects, are addressed.

The *developmental challenge* is apparent at the level of ideas, objectives and practice. The regulatory institutions considered in this volume, explicitly or implicitly, support different development models, which are characterized in both Chapters 2 and 24 in terms of ‘neo-liberalism’, ‘embedded liberalism’ and ‘alter-globalization’. While the regulatory initiatives discussed in the following chapters all claim to enhance social or sustainable development and ‘good governance’, these catch-phrases mask variations in meanings of, and approaches to, development. Such variations imply different visions of sustainability and distributional consequences for different actors. These differences need to be interrogated if multistakeholder regulation is to advance goals associated with decent work, livelihood security, empowerment, the realization of rights, equity and sustainability.

The developmental objectives or achievements of regulatory initiatives are often quite narrow. Important in this regard is the need to promote both outcome standards – be they improved working conditions, living wages or premium prices for small producers – and process rights, such as labour rights and producers’ empowerment. With some notable exceptions (for example, *Comercio Justo México* and WRC), core development issues, such as the distribution of value along the value chain and the gross and growing inequities in the functional distribution of income (profits and wages), rarely assume centre stage in the discourse and practices associated with multistakeholder regulation. Blind spots related to the exclusion of particular stakeholders or social groups – for example, numerous types of artisanal, informal or small-scale commodity producers – need to be addressed. The discussion related to fairtrade also raises the question, addressed explicitly by Reed and Mukherjee Reed, of whether the process of re-embedding markets and curbing the power of corporations requires not only new institutional regimes but also alternative forms of production centred on social and solidarity economy.

At the operational level, various cases point to the need to achieve a more equitable distribution of costs and benefits of regulation along the value chain, particularly in relation to small enterprises, producers and workers, as well as more equitable participation of Southern actors and stakeholders in dialogue, negotiation and governance associated with multistakeholder regulation. It is crucially important to

pay more attention to local, national and international contexts that may facilitate or constrain the capacity of smaller firms and producers to comply with, and benefit from, standards, as well as the extent to which efforts to enhance social protection, realize rights and promote sustainability are locally embedded rather than simply externally-driven. Recent developments related to fairtrade (Chapter 21) and living wages (for example, the Asia Floor Wage Campaign), point to the potential for regionally- as opposed to globally-driven initiatives, which may facilitate embeddedness, uptake and social mobilization. States (including both developing country governments – local and national – as well as development assistance agencies) have a key role to play in supporting small producers and enterprises to enhance levels of social organization, bargaining power, managerial skills, competitiveness and productivity. States can also play a role in reducing the risk that multistakeholder regulation associated with increasing corporate involvement in fair trade, for example, does not act as a barrier to trade or impose burdensome costs on suppliers.

The *regulatory challenge* is apparent in several respects. First, and most obviously, the considerable weaknesses identified in various chapters related monitoring, reporting and verification, as well as such aspects as transparency, assessment and review, suggest the need to strengthen key regulatory mechanisms and functions. Second, just as the rise of multistakeholder regulation in the 1990s promoted a qualitative leap from words to action – moving beyond codes of conduct to monitoring, reporting and verification – so the consolidation of multistakeholder regulation needs to seriously address the challenge of effective remedy via both judicial and non-judicial grievance procedures. Third, it is important to bring states and multilateral institutions more centrally into the arena of multistakeholder regulation for purposes of promotion, scaling-up and enforcement. This is also necessary to ensure that attention remains fixed on other related areas and types of regulation, including mandatory national and international law, as well as needed reforms of broader market and corporate institutions. As seen in the case of artisanal mining, an overhaul of state policy related to land rights and licensing may be an important pre-condition for multistakeholder regulation.

This coming together of private and public governance involves crafting forms of ‘hybrid regulation’ where voluntary and legalistic approaches are mutually reinforcing. Voluntarism and soft law need to be complemented by other regulatory approaches and institutions at both national and global levels, including for example, extra-territorial jurisdiction, binding law and effective judicial grievance and redress procedures, as well as so-called mature systems of industrial relations. It also requires the regulation of wider institutions of capitalism, such as corporate governance structures and financialization, in which multistakeholder regulatory initiatives are nested.

The *political challenge* relates to the fact that power relations both within value chains and in the governance structures of regulatory institutions are often skewed

against subaltern groups and developing countries. It also relates to the need to bring the state and public governance more centrally into the arenas of both business regulation and development. Unless these political dimensions are addressed, then various reforms suggested above, such as strengthening monitoring and verification, can easily serve elite as opposed to subaltern interests. This highlights the need to reconfigure power relations by enhancing state capacity, active citizenship, deliberative democratic practices, including the effective participation of Southern actors in shaping standards and regulatory regimes.

Building coalitions, reproducing and sustaining bottom-up pressures, and promoting forms of participation that address development contradictions are important in this regard. Such coalitions and pressures are also crucial for ensuring compliance with agreed standards and the type of incremental reform discussed earlier. The political challenge requires strengthening and sustaining coalitions and alliances of various types: among civil society actors – in particular, NGOs and trade unions; between civil society actors and firms which have a stake in the ‘market for virtue’; between Northern and Southern actors; and between civil society actors and intergovernmental organizations, states and so-called programmatic political parties with a progressive development vision. Just as capital under globalization is multi-scalar, so regulation and politics conducive to transformative change also need to be organized and articulated locally, nationally, regionally and globally.

Addressing these developmental, regulatory and political dimensions is essential to ensure that standards associated with multistakeholder regulation achieve objectives associated with equitable and sustainable development. It is also essential to ensure that standards-based regulation aimed at growing the ‘market for virtue’ and coordinating and controlling intra- and inter-firm relations, does not crowd out regulation aimed at more transformative patterns of development that enhance the well-being and rights of marginalized groups and future generations.

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