

United Nations Research Institute for Social Development (UNRISD)

Summaries of Presentations Made at the  
UNRISD Conference on

# **Corporate Social Responsibility and Development: Towards a New Agenda?**

17 November 2003–18 November 2003  
Salle XVI, Palais des Nations, Geneva



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## **CORPORATE SOCIAL RESPONSIBILITY AND DEVELOPMENT: TOWARDS A NEW AGENDA?**

**17 November 2003–18 November 2003**  
**Salle XVI, Palais des Nations, Geneva**

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Conference on

**Corporate Social Responsibility and  
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Towards a New Agenda?**

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## Opening Speech

### **Thandika Mkandawire**

Director, United Nations Research Institute for Social Development (UNRISD), Switzerland

On behalf of UNRISD it gives me great pleasure to welcome you to this conference.

This year marks the 40<sup>th</sup> anniversary of UNRISD. In commemoration of this date we have just completed a report that analyses the contribution of UNRISD research to thinking and knowledge on social development issues. In preparing the report, it was apparent how the issues of concern to the international development community have changed. Back in the 1960s and 1970s we were particularly concerned about the role of the state in developing countries and why development projects often failed. In the 1980s and 1990s considerable attention was focused on the role of civil society organizations in development and issues of people's "participation". These issues remain highly pertinent but increasingly attention is being focused on the role of the private sector in social and sustainable development has emerged as an important concern.

Various factors account for this: both economic growth and foreign direct investment have proved elusive for many developing countries; the role of the state in development has come in for considerable criticism and been reassessed; the euphoria with NGOs has subsided; and during the 1980s and early 1990s it became clear that neoliberal policies were granting corporations considerable rights and benefits without commensurate responsibilities and obligations.

Development and finance agencies that form part of the bilateral and multilateral systems are now emphasizing so-called "good governance" and public-private partnerships in their policies and programmes. One of the concrete outcomes of this new approach has been far greater involvement of business in policy dialogues and in the design and implementation of development programmes and projects. And business is being called upon to act more responsibly in relation to social, labour, environment and human rights issues or to engage in what is often called "corporate social responsibility".

This is quite a different scenario to that which existed 10 or 20 years ago. Then the main concern was how to accelerate foreign direct investment by freeing up trade and investment regimes, with little consideration of social, environmental and human rights impacts. The current situation is also different in another respect. In the past corporate interaction with the public policy process or the public sector consisted, to a large extent, of joint ventures and behind the scenes lobbying.

In the build-up to the World Social Summit in 1995, we carried out a broad inquiry into the social effects of globalization, which documented the growing divide between corporate rights and obligations. It was then that we began to look into the impact of transnational corporations in developing countries and this relatively new CSR agenda. A second phase of our work on CSR began in 1997 when we looked in more depth at the so-called "greening of business in developing countries, i.e. at what big business was doing to improve its environmental record, and why it was taking environmental issues more seriously.

In 2000 we received a generous grant from the MacArthur foundation to continue our work on CSR. Under this project we have broadened the scope of the inquiry to include social and



labour issues; we have also examined different types of regulatory arrangements, including corporate self-regulation and voluntary initiatives; so-called “civil regulation”, where regulatory pressures and norms emanate from civil society; and governmental and international regulation.

Research has been carried out in Brazil, India, Mexico, Peru, the Philippines and South Africa. Research was also carried out on specific issues such as UN-business partnerships and the Global Compact, the “corporate accountability movement” and international regulation of TNCs.

We will be presenting some of the results from this research at this conference, but we want the event to be far more than a dissemination outlet for UNRISD research. We have invited some leading researchers and writers on CSR and development issues to also share their perspectives. You will be hearing a range of views but, like UNRISD, many of the speakers share a number of concerns about the dominant CSR agenda and its developmental and regulatory implications. Joining them are several colleagues from other UN agencies that have been dealing with the private sector and CSR issues.

Peter Utting, who has been co-ordinating UNRISD’s work on CSR, will now expand on the issues and concerns that have motivated this conference.



## **CSR and Development: Is a New Agenda Needed?**

### **Peter Utting**

Deputy Director and CSR Research Co-ordinator, United Nations Research Institute for Social Development (UNRISD), Switzerland

During the nine years that UNRISD has been conducting research on corporate social and environmental responsibility (hereafter referred to as CSR), it has been interesting to see how research questions and concerns have evolved. The early emphasis on the “credibility” of CSR has been complemented by questioning its development dimension and a search for regulatory alternatives.

#### **The credibility question**

The mainstream CSR agenda developed in the aftermath of the Earth Summit in 1992 when an expanding group of large global corporations promoted certain practices and a particular discourse that emphasized ethical behaviour towards different stakeholders and a range of voluntary initiatives. These included codes of conduct, improvements in working conditions and environmental management systems (EMS), community development projects, corporate giving, and company reporting on social and environmental aspects. During the mid-1990s, UNRISD, like many others, was interested in what could be called the credibility question surrounding CSR: were companies really practising what they preached, did this new discipline amount to more than PR and window-dressing, and was this agenda likely to take off? Internationally, CSR research was often divided into two camps: one exposing “greenwash”; the other exposing “best practice”. A lot of research and writing was also preoccupied with understanding what exactly was driving CSR.

Heated debates still persist but the answers to these questions now seem a bit clearer. There is more clarity regarding the social, economic and regulatory pressures and incentives that are moving the agenda forward, although there is still considerable disagreement regarding the relative importance of these different “drivers”.

Certainly CSR did gather momentum, with more and more companies, business associations, civil society organizations, and governmental and multilateral organizations associating themselves with this agenda. CSR has also become institutionalized with the growth of company CSR departments and codes of conduct; university courses dealing with CSR and business ethics; an expanding CSR industry of consultants, NGOs, multistakeholder initiatives and public-private partnerships; and new forms of governmental and international regulation and market-based instruments that promote socially-responsible business and reporting.

Accusations that CSR amounts to “greenwash” or window-dressing still abound but it is clear that a considerable number of large corporations are thinking and acting more proactively about CSR issues rather than simply engaging in defensive posturing. There is considerable unevenness in the range of social and environmental issues addressed by CSR companies, and problems of weak implementation of standards and management systems, but there has been some tightening up of norms and procedures.

And there is still a tendency for the discourse on CSR to race ahead of the reality by suggesting that many more companies are seriously engaged with CSR than is really the case. A very rough reality check is to remember that there are over 60,000 TNCs. Probably no more





than several hundred have codes of conduct or produce environmental and social reports. There are nearly a million TNC affiliates, while the number of companies and facilities that have ISO certification is about 50,000.

In recent years, the debates and questioning have moved beyond the credibility issue. At UNRISD we have been concerned in particular with two issues. The first might be called the development question; the second, the regulatory question. And it is mainly around these two sets of concerns that we have organized this conference.

### **The development question**

Even if companies were to implement codes of conduct, improve their EMS and working conditions, and report on their environmental and social performance, would this make much of a difference in terms of development in the global South? Would it constitute a significant step in creating an enabling environment for development?

The main concerns on this front are that the CSR agenda is not in tune with priorities and realities in the global South, and that it is tinkering around the edges of the problem of underdevelopment or maldevelopment.

Key developmental issues such as food security, labour relations, the situation of home workers and the informal sector, pay and employment, the situation of small and medium-sized enterprises (SMEs) and infant industries, consumption patterns, and securing the fiscal basis of the state and public services, do not figure prominently, if at all, in the mainstream CSR agenda and the CSR practices of most companies.

There are concerns that the CSR agenda is being defined largely in the North and reflects development concerns as perceived and prioritized in the North or in the sphere of global institutions. There are also concerns that forms of CSR that are indigenous or historically rooted in developing countries are not sufficiently acknowledged.

A key problem is not only what issues are—or are not—being addressed—but who will pay for improvements related to CSR. It is often assumed that costs will be borne by affiliates or SMEs that are part of the value chains of Northern corporations. Far less attention has been focused on the issue of “shared responsibility” where parent companies or northern retailers and consumers bear a significant portion of the costs.

But if we are to assess CSR from a developmental perspective, we cannot simply assess CSR on its own terms, i.e. by considering the extent to which corporate performance related to a limited range of social and environmental issues has improved. If CSR is to mean anything, and if large corporations are to contribute in a meaningful way to social and sustainable development, the CSR agenda needs to address the central question of the structural and policy determinants of underdevelopment, inequality and poverty, and the relationship of TNCs to these determinants.

What our research indicates is that CSR is part and parcel of a scenario of double standards with major TNCs taking a lead on certain CSR issues, but simultaneously engaging in policies and practices that have negative developmental impacts and implications. This can be illustrated by a few examples from the UNRISD CSR research project. Although the agenda may be somewhat fragmented and piecemeal, in Chile, Mexico, the Philippines, South Africa and Brazil there is a fairly vibrant or emerging CSR movement. But ....

- In Chile, the CSR agenda says very little about the fact that foreign mining companies have not only managed to avoid paying both taxes and royalties, but have encouraged intra-corporate financial flows that have extremely perverse developmental impacts.



- In Brazil, relatively little attention was paid, until recently, to the social effects of labour market flexibilization and the three related problems of unemployment, the unravelling of labour rights, and the decline in labour standards associated with sub-contracting. The same was found in the case of South Africa. In many countries large firms are implementing CSR measures in relation to their core workers but are, simultaneously, shedding labour and externalizing, rather than internalizing labour costs.
- In Mexico, environmental certification and improvements related to eco-efficiency are gaining ground but from the point of view of sustainable development, there are worrying trends related to the increasing pollution load and the relocation of plants to semi-arid, environmentally fragile areas, where environmental regulation is often weaker than in the areas they are leaving.
- In the Philippines and South Africa, research on the food and beverage sector has shown that the CSR agenda ignores key issues to do with food security, ethical marketing, nutrition and consumption patterns.
- In China, as elsewhere, we know that suppliers in the apparel and footwear sectors often find themselves in a sort of straitjacket with CSR departments of corporations demanding more in terms of CSR standards and expenditures, while purchasing departments of the same corporation insist on tighter margins and delivery schedules.

UNRISD research on public-private partnerships and the corporate accountability movement has also highlighted the double standards involved when TNCs engage in CSR initiatives but simultaneously lobby for macro-economic policies and conditionalities, linked to trade and investment liberalization, that can have negative developmental impacts.

What these examples illustrate is that the mainstream CSR agenda has tended to focus on fairly narrow aspects of social and sustainable development and has ignored some of the basic development issues to do with corporate size, power and policy influence; the negative effects of labour market flexibilization and economic liberalization; unsustainable investment and consumption patterns; and perverse fiscal and pricing practices.

### **The regulation question**

What should be done about this? What type of regulatory approach would be most effective in addressing the problems of scope (range of issues addressed), scale (number of companies on board) and quality (of implementation) of the CSR agenda or movement.

This has constituted the second main aspect of UNRISD research, which has looked at how TNCs should be regulated, in particular, at the potential and limits of voluntary approaches and new relations that are emerging with TNCs through institutional arrangements such as public-private partnerships and multistakeholder initiatives. These aspects will be discussed in the second session of this conference later today.

Voluntary initiatives—such as codes of conduct, EMS, and company reporting—have evolved in the past few years with some tightening of standards and procedures, partly as a result of new multistakeholder initiatives such as the Global Reporting Initiative, the Ethical Trading Initiative, the Fair Labor Association and SA8000 certification, as well as Global Framework Agreements between TNCs and international trade union organizations.

Despite some progress, there is still a heated debate going on about the role of voluntary approaches, not just in terms of whether they can improve corporate social and environmental performance but also in other respects. One of the main concerns is that they tend to crowd out other forms of regulation. They are often promoted as the preferred or superior regulatory



alternative, and a means of diverting attention from government or international regulation involving law, external oversight, mandatory reporting and penalties for non-compliance.

The voluntary approach not only ignores the fact that such forms of regulation have been central to market regulation historically but also the complementarities and relations between voluntary and legal approaches—the former often being driven by government or international regulation, involving both soft and hard law.

Another concern is that the analysis of why some forms of regulation or institutions fail or are weak does not take into account political economy questions to do with the balance of social forces backing or resisting regulations, laws and other institutions. CSR itself should be seen in political economy terms. It was a counterbalance to the crude market liberalization of the 1980s. In systemic and structural terms, it was non-threatening as it respected the central tenets of neoliberalism centred on FDI, export-orientation, privatization and the down-sizing of the state. Catering to both reformist and “conservative” interests, it was supported by a broad coalition of interests. In a sense, CSR was for the corporate sector what targeting and social funds were for the public sector and the aid community, and all these approaches became elements of the so-called “post-Washington Consensus”.

What is interesting today are the signs that the balance of forces may once again be shifting as concern about the developmental and regulatory issues I have mentioned increases. We see a growing number of actors, organizations and networks calling for, and proposing, new rules and institutions governing the behaviour of TNCs. During tomorrow’s discussion, we will examine these developments, as well as the role of the United Nations in corporate accountability and international regulation of TNCs.

Our research suggests that the corporate accountability movement is quite different to the corporate responsibility movement.

- Rather than saying companies should assume responsibility for their actions; corporate accountability proposals stress that companies must be held to account.
- Rather than trying to monitor, audit or report on the vast activities of giant global corporations, corporate accountability proposals also place considerable emphasis on complaints procedures that focus on specific abuses of corporate power or instances of malpractice.
- Rather than seeing corporate self-regulation and voluntary approaches as an alternative to governmental and international regulation, the CAM is calling for a new mix of voluntary and legal approaches.
- The corporate accountability movement is also saying that if CSR is to really work for development, then it is not enough for companies to improve selected aspects of working conditions, EMS and community relations. Corporate responsibility cannot be separated from structural and macro-policy issues, such as perverse patterns of economic liberalization and de-regulation, corporate power, lobbying for certain macro-economic policies, and fiscal and pricing practices.

It is, then, with these concerns in mind, that we have organized this conference. To the title of the conference “CSR and Development”, we added the sub-title “Towards a New Agenda?” as we want to use this occasion to reflect on what might be done differently. In particular, we want to take stock of recent proposals to do with corporate accountability and to consider their feasibility both in political terms and as instruments for addressing the types of development concerns that surround the CSR agenda.



## CSER and Development in South Africa

### David Fig

Research Associate, Sociology of Work Unit,  
University of the Witwatersrand, South Africa

*What are the historical particularities about social, economic and environmental development in South Africa, and what sort of contribution has CSER made to this development?* These are amongst the questions raised through our collaborative research for UNRISD and amplified in some of the series of case studies we have conducted on sectors of the South African economy. In presenting these ideas, I owe a lot to the collaboration of my colleagues in the project, namely Andries Bezuidenhout, Rahmat Omar, Ralph Hamann and Shirley Miller. Our research was conducted mostly between 2001 and 2003, and our initial findings were released at a public workshop in Johannesburg in May 2003.

*The overriding development question in South Africa* is that of social and economic exclusion of black South Africans due to colonial and apartheid social engineering. South Africa's gap between rich and poor, measured in terms of the Gini co-efficient and other indices, competes with that of Brazil for the title of the most unequal society in the world.

To give some indications of this problem: South Africa has problems of unemployment (40 per cent of the economically active population); health (11.4 per cent of the population is HIV+; TB is rife in certain areas); education (under 2 per cent of black learners leave high school with maths and science passes); and hunger (the formal agricultural minimum wage is less than \$4 a day).

Whilst our decade-old democracy has placed new attention on resolving such questions, democracy was won at a historical conjuncture in which the new government embraced prevailing neoliberal norms. This has resulted in a process of self-instituted forms of "structural-adjustment" without such measures being externally imposed. Our transition has given us a constitution imbued with new democratic rights, but the government's switch from neo-Keynesian to neoliberal development strategies has eroded the ability of citizens to claim their rights. Simultaneously little new investment has occurred. Liberal market opening has meant a massive loss of jobs and negative growth for most of the past decade. Whilst labour laws have improved workers' rights, there are fewer workers permanently employed, and much more market flexibility. This has weakened the power of the government's trade union allies.

Marketization and privatization of formerly public services (water, energy, waste management) has removed the safety net for the poor and unemployed who now find bearing the full cost of these services punitive. As fast as new electricity and water connections are made, so are many users' access to these utilities cut because of their inability to pay. With the liberalization of agricultural marketing, food prices have escalated out of all proportion, leading to the establishment of commissions investigating whether price rises can be attributed to the profiteering of retailers. In terms of health provision, after a decade of freedom, only now is the state beginning to make plans for the public provision of anti-retroviral drugs for people with AIDS. This is a position reached reluctantly by government only after immense pressure from social movements utilizing the judicial system.

While more inclusionary efforts are being made in the spheres of "employment equity" (redress for formerly disadvantaged individuals—black people, women, and disabled people)



and “black economic empowerment” (trying to raise the level of black ownership of the formal economy from the current 1–2 per cent), these measures have often only empowered those who already have access to skills and capital, and have not had significant impacts upon reversing poverty. Similarly, the slow and partial process of land restitution has not been able to make significant inroads into reshaping the contours of land ownership nor the reconstitution of a formerly dispossessed peasantry.

*The structure of the South African economy* is such that there are strong continuities between the apartheid era and the post-apartheid era. South Africa is not typical of the poorer developing countries in that it has its own transnational corporations, some of whom have globalized their operations. There are a number of characteristics to this process: (1) many South African firms are now actively operating in other parts of the continent and of the world; (2) some formerly South African firms—in order to compete more easily for credit, clients and capital—have relocated their headquarters to the North (usually to London) and sought primary listings on northern stock exchanges. We have labelled this process “depatriation”; (3) South Africa is not (yet) a strong host to Northern TNCs looking for cheap production line labour. This has not occurred despite the potential opportunities offered by mechanisms such as AGOA (which, for example, has spawned sweatshops in neighbouring Lesotho).

The implications of South Africa’s slightly different kind of insertion into global markets and cycles of capital has had a number of implications for CSR, namely that CSR practices have tended to be embraced more by the global-oriented and depatriated companies (who are often monopolists in their sectors) than by medium and small operations. This has generally been driven by standards, codes and listings criteria operating more strongly in Northern markets, to which the more globally oriented South African corporations feel a need to adhere.

A further characteristic of continuity between the past and the present in South Africa is *the weak enforcement of environmental regulation*.

Only exceptionally, in our findings, have genuine attempts been made by corporations in South Africa to surpass basic compliance with legislation in an attempt to meet more rigorous global standards or expectations. Corporations have benefited from a combination of weak legislation and poor enforcement. Pressures from social movements are only now having an impact—government is having, in some cases, to tighten regulation (e.g., on air quality).

Apartheid generated a legacy of environmental racism, of disproportionate distribution of the burden of pollution on black South African citizens. Although, in principle, this question is addressed by the new National Environmental Management Act (NEMA—107 of 1997), in practice there is still a large gap.

NEMA was the product of a long consultative process, involving a wide number of South Africans. Its opening chapter contains important statements of principles and values. The Act is being expanded with subsidiary legislation on biodiversity, protected areas, air quality, coastal management, and other areas being elaborated.

However, there is a residual fear in civil society that the law does not accord South African appropriate compensation in the face of injustice. This is prompting litigation in British courts, for example, in the case of compensation being sought in relation to asbestos mining companies (Cape plc, Gefco, etc.) and to mercury recycling companies (Thor Chemicals).

The research project has produced a number of outputs, including:

- (i) A broad overview of CSER in relation to the *political economy* of South Africa. This study covers general trends in CSER looking at a number of initiatives,



- attempting to understand the different drivers of CSER, and drawing broad conclusions about its significance and character in South Africa.
- (ii) A case study on the *mining sector*, looking in depth at the example of the platinum mining industry, but also at aspects of the asbestos compensation claims, the government's legislative shifts in which the state now owns the resources and corporations require licences to exploit them, and the related Mining Charter and its implications.
  - (iii) A case study of the *food and drink sector*, which reviews the size and shape of the industry, the CSER practices within it, and concludes that the responsibility for resolving problems of hunger, food insecurity and diversification of ownership of the industry are being avoided by state and corporations alike, even though there may be greater adherence to narrow conceptions of CSER in the industry.
  - (iv) A case study of the *chemical industry*, focusing in depth on petrochemical corporation SASOL, a former state corporation, now privatized and poised to go global, with interests throughout Africa, Europe and the Middle East. The study also looks at the recent débâcle over the plastic bag industry, as well as tracing the poor progress of Environmental Management Co-operative Agreements, multistakeholder partnerships allowed for in NEMA.
  - (v) Along with these case studies our project will be commissioning two cross-cutting studies, one on corporate responsibility in the arena of *HIV/AIDS* and another reviewing the progress of the implementation of *Black Economic Empowerment* initiatives; we will also be adding to our mining case study some of the recent initiatives by civil society to challenge the environmental damage undertaken by the industry in their communities, as well as challenges by the environmental movement to potential damage in areas of biological sensitivity.

In broad terms, our conclusions are that the larger export- or globally-oriented South African corporations are leading and implementing CSER in a limited way, in order to ensure compliance with international trends, and commitments made at the WSSD in Johannesburg in 2002. However, these commitments often fall short of contributing to a socially and environmentally sustainable development agenda. CSER practices are being publicized and firms rely on the credibility derived from their implementation, but this often distracts from some of the real development issues.

For example, key government support for technologies such as the nuclear industry or genetic engineering flies in the face of declaratory commitments to a sustainable development agenda. Eskom, the power utility, is investing in a new generation of nuclear reactors, in an attempt to build up exports to Africa and Asia. The new reactors will be modular and capable of being built in a community or adjacent to a factory; the waste will be buried on site. One worry is that it will be exportable to countries that have not yet put regulatory measures in place. Similarly, the South African government is supporting the work of corporations like Monsanto, which have over the past few years bought up most of the locally-based seed corporations, and is sponsoring the spread of GM crops at a rate of growth of over 50 per cent per year inside the country. The attendant impact on food security in South Africa has led to grave concern in civil society, and a court case challenging the loose regulatory behaviour of the Department of Agriculture. Further, the government is supporting (as part of an offset process in a controversial arms deal) the establishment of further aluminium smelters, this time at Coega in the Eastern Cape. Since South Africa has no bauxite, the building of these smelters is tantamount to licensing the export of cheap electricity—the major input into the beneficiation of the bauxite. This has emerged at a time when claims are being made that the nuclear industry is necessary to make up the shortfall in power-generating capacity.

While it is important to encourage corporate commitments to social and environmental transformation, this needs to occur in a holistic and not a piecemeal fashion. In the context of a developing society like South Africa, which still displays a large gap between rich and poor,



CSER can only be palliative. To date, changes brought about under CSER are not transformative but reactive, responding to the productive and reproductive needs faced by capital, rather than to a systematic reconstruction and sustainable development agenda. Any “new agenda” requires structural changes, in which partnerships only become meaningful when co-ordinated and led by a transformative state as part of a wider developmental plan. Under current conditions, this requires an exceptionally active and vigilant civil society, able to demand accountability both from corporations and the state. As in the case of AIDS and anti-retroviral treatment, we are only beginning to see what is required of civil society at this conjuncture in the transformation of South Africa.



## **Corporate Social Responsibility in Mexico: The Tyranny of a Concept?**

**David Barkin**

Universidad Autónoma Metropolitana, Xochimilco, DF, Mexico

Many large corporations in Mexico enthusiastically embraced the concept of corporate environmental responsibility as part of their commitment to good citizenship. They have formed umbrella organizations to establish and certify compliance with guidelines and to supervise their participation in national and international programmes. Both the corporations and the organizations are advertising their participation in these initiatives and engage with supervisory agencies in ceremonies to congratulate themselves for their imaginative and far-reaching activities demonstrating their good faith and technical competence in applying international norms and practice in the Mexican setting.

This scheme for measuring and assessing compliance with this new dimension of corporate performance has spurred a seemingly endless agenda of activities for the professionals guiding this process and certifying its application. Several organizations in the social sector have emerged to service this agenda, at one and the same time advocates and overseers of the proposals to promote broader participation and assure adherence with the new standards. The Mexican Centre for Philanthropy (CEMEFI), The Center for Private Sector Studies for Sustainable Development (CESPEDES), the Environmental Law Commission of the Mexican Lawyers Guild and the Mexican Centre for Environmental Law (CEMDA) are among the more visible of the national organizations involved in these efforts. The regional Mexican chapter of the Businessmen's Council for Sustainable Development on the Gulf of Mexico (CEDES) is implementing a pilot local programme for corporate responsibility in the industrial port of Tampico-Altamira. The Mexican affiliate of the Global Environmental Management Initiative (GEMI) has promoted its own programme for subsidiaries of the largest transnational corporations operating in the country; although 40 companies are members of the GEMI in the US, only eight companies are formally associates of the Initiative in Mexico at this time.

The Commission for Environmental Cooperation (CEC), created to implement the environmental side agreement of the North American Free Trade Agreement (NAFTA), supports the Mexican Centre for Cleaner Production (CMP+L) and promotes the annual Mexican Roundtable for Preventing Contamination; both have been active in providing information about technologies that are available to assure compliance with existing regulations and to discuss proposed changes in legislation. The seminars bring together corporate officers, government officials, and other practitioners to learn about advances in the area and to learn of exemplary contributions to corporate practice in environmental responsibility. The corporate agenda has also spurred some local governmental efforts to improve environmental conditions in their jurisdictions, creating fora for the presentation of innovative programmes to manage municipal resources, waste streams or ecosystems in an environmentally responsible manner.

Private sector initiatives and public sector agencies have also spurred the university community to actively participate in several areas of corporate social and environmental responsibility. The CMP+L was housed in the Mexican Polytechnical Institute (IPN) and the Monterrey Technological Institute for Higher Education (ITESM) created its own Centre for the Study of Competitiveness. The School of Business Administration of the University of Guadalajara hosted the most recent Pollution Prevention Roundtable meeting (2003) as part of





its entry into the field, and the Centre for Research in and Teaching of Economics (CIDE) established a prize for best practices in local government activities to implement pollution control and prevention as well as water management programmes. Several international consulting firms and business organizations are also offering courses and advice on how to comply with local standards and international guidelines to assure certification by the International Standards Organization and compliance with principles established in international compacts or by the corporate headquarters of transnational organizations.

Similarly, the public sector has been encouraging compliance with environmental standards. The improved capacity of the National Water Commission to enforce legislatively mandated fees for contaminated effluent discharges have prompted many users to install their own water treatment and recycling facilities. Similarly, municipal water supply agencies have been obliged to install water treatment plants so that their systems can be brought into compliance with national standards, although insufficient funds are available from the National Public Works Bank (BANOBRAS) to finance this effort, prompting some to search for private sector service providers to manage their systems. The Border Environment Cooperation Commission focuses on designing public sector water treatment and air pollution prevention projects along the northern border that can then be financed by the North American Development Bank. The reforms of the solid waste and toxics disposal legislation has spawned a number of new consulting and social sector groups to offer their services so that the private sector might comply effectively.

The *maquiladora* (export assembly) sector merits special mention because of its importance in Mexico's new industrialization strategy and its controversial performance in the areas of workers' rights and environmental standards. The plants became notorious for their violations of Mexican labour laws, for their flagrant violations of even the prevailing lax environmental standards, and for the dismal living conditions in the border states. As conditions deteriorated, the cry for action provoked concerned consumer groups and labour unions in the United States to call for stricter oversight to ensure compliance with Mexican legislation and international agreements and standards. These groups joined with Mexican counterparts to improve local capacity for labour organizing and oversight of working and environmental conditions, while also generating demands for certification of compliance with international standards and corporate policies as a prerequisite for access to markets in the United States and elsewhere.

This flurry of activity generates a seemingly unending series of meetings and a barrage of information about entrepreneurial activities to promote social and environmental responsibility. The corporations, NGOs, public and private sector agencies, and consultants now constitute a substantial group of people committed to advancing work in this area. For an independent analyst, then, the task is to sort through this material to make some determination about the contributions this activity is making to environmental and social improvements in Mexico.

### **Environmental and social initiatives: Competitive or complementary?**

There is a groundswell of support in Mexico for corporate environmental responsibility among the larger companies. Throughout the country these firms are involved in efforts to reduce their "ecological footprint," as many of the experts in ecoefficiency prefer to label their efforts. The initiatives are widespread and involve a broad range of industries; this is not surprising, given the rising prices for many basic public goods and services (especially electricity, fuels and water). Simple measures to economize on inputs are complemented by more sophisticated initiatives to reduce waste streams by being more careful, by recuperating materials, and by improving quality control; in other cases companies are searching for ways to build new synergies into their production process, recuperating excess heat, for example, for drying or using vapor plumes or byproducts from one source in other processes. While



many of these efforts are the result of a careful reengineering of existing systems, technical innovations developed within firms or by outside consultants are being adopted. These projects are widely promoted and an industrial group marketing industrial equipment for waste recovery and ecological innovation has become an active participant in the activities around corporate environmental efficiency (Camara Nacional de Industrias Ecológicas, CONIECO).

What is more surprising, however, is the relative lack of enthusiasm for these initiatives among small and medium-size firms. An analysis of one case in point is revealing: the leather tanning industry, geographically concentrated in the central Mexican town of Leon, Guanajuato. The problem of toxic industrial effluents became international when chemical releases flowed to a nearby reservoir, where they were responsible for the death of some 40,000 migratory birds, whose summer home is Canada. In the follow-up, the CEC responded to the outcry from Canadians by implementing an innovative programme in “clean production” to train local tanners and finance the investments required to refit their shops with equipment that would recuperate the poisonous chemicals for reuse in the same processes; these modifications have been installed elsewhere and proven not only to be extremely effective in eliminating the source of the problem but also very profitable, since the pay-back period is generally less than one year. After a number of successful “showcase” examples, and several local training courses, managed by the IPN’s CMP+L, and with financing in place, it was particularly disappointing that the new process design was not broadly adopted by the many small shops in the area: neither the CEC nor the IPN have been forthcoming in explaining this lack of success.

Corporate social responsibility (CSR) does not receive nearly as much attention. When asked about such measures, most informed people mention their charitable contributions and the institutions sponsored by the larger corporations. About 50 companies participate directly in the CEMEFI that is the most visible promoter of these activities, and about half have received recognition for their efforts in the field. A very few companies have well-defined programmes to ensure that their employees have access to specific programmes designed to promote healthy communities and working conditions: two cement companies Apasco (subsidiary of Holcim) and Cruz Azul (a workers’ co-operative) are well known for their efforts. For most companies, however, there are few mechanisms to ensure their compliance with existing legislation; recent reforms in the social security legislation, for example, transferred responsibility for reporting industrial accidents and health problems directly to the firms, and registered incidents were dramatically reduced. Virtually no companies accept responsibility for ensuring that their workers are paid a “living wage,” even if it were narrowly defined at the government defined poverty line: perhaps one third of the labour force with formal employment live in families with incomes below this level. There are widespread violations of existing norms and legislative requirements and the government agencies charged with oversight are more inclined to look the other way or even to repress worker protest and strike actions rather than force employers to adhere to the law.

Transgressions of CSR extend far beyond the problems in the production process and with remuneration. One egregious example of the severity of the problem was brought to light several years ago when a mining company (MexMet or Peñoles) was denounced for poisoning the air and soil from its lead smelter; the problem was so serious that the US Center for Disease Control was asked to evaluate the problem and suggest remedial measures. After resisting local demands for quite some time, the company responded with a large-scale programme to “clean” its facilities and capture all emissions, while implementing a community programme to remove people from the most contaminated neighbourhoods and provide medical assistance for the most severely affected children. Unfortunately, according to informed toxicologists, the company’s refusal to remove a mountain of residue (1/2 km. long and some 40 m. high) from decades of operations at the smelter leaves the community at risk in spite of efforts to control contamination by using chemical means to reduce airborne



residues. (The company was awarded a certificate of social responsibility for its forthright response to popular demands for action!) In another industrial area (Tampico), local doctors are reporting an unusual incidence of infantile leukemia, but the local association of industrialists has not responded to social demands for further investigation and remediation. Another company that displays the symbol of corporate responsibility awarded by CEMEFI, Coca-Cola, has refused to allow researchers to evaluate its performance, and denies any problems, in spite of frequent complaints by workers in locally owned bottling companies; the regional headquarters insists that it cannot take responsibility for the problems occurring in these operations.

### **A final reflection**

In a developing country like Mexico, where formal employment opportunities are scarce and poverty is widespread, government agencies defend their lack of action by explaining that their priority is on job creation rather than enforcing labour standards. Environmental matters are a different matter, they explain, because of the widely recognized social benefits and the competitive demands for enforcement from trading partners.

This dilemma and the trade-offs offer an inadequate resolution of the matter. It is imperative to examine the changing productive structure, with desertification in the agricultural areas, deforestation in the mountains and contamination in the watersheds and river basins, exposing virtually all segments of Mexico's population to growing environmental threats. Industrialization in the northern arid and semi-arid regions represents a severe environmental danger that heightens social tensions and places a growing proportion of the labour force at risk because of inadequate resources to build the urban infrastructure that the existing residents and new migrants require. Political neglect and violence in the poorer parts of the country (in the south) allow new factories to hire people with little regard to safeguards for human dignity; the situation is even worse for undocumented workers from Central America who are employed on plantations. Adding to these problems is the dismal state of collective transport in urban areas, where more than two thirds of the population lives: unsafe and contaminating vehicles contribute to chaos, while local governments use scarce funds to improve road networks rather than investing in public transport.

Although there are outstanding examples of individual firms that are strictly adhering to national and international standards for environmental responsibility, CSR is not on the corporate or governmental agenda in Mexico. Firms come to Mexico for its cheap labour and its relaxed administrative framework, and the government is attempting to simplify existing restrictions further and reduce corporate tax burdens. In this political environment, it is little wonder that paternalistic systems of corporate charity are accepted as a substitute for social responsibility.



## What Difference Does CSR Make to Development?

### Monina Wong

Hong Kong Christian Industrial Committee (HKCIC), Hong Kong

The term CSR has replaced Code of Conduct as the buzzword by projecting company commitment and vision. In a recent conference about CSR in the United States, the Chair and CEO of the HP company, Carly Fiorina, says, as companies get more power, expectation of their responsibilities also accelerates. CSR is “the right thing to do”. It is also “the smart thing to do”. It is the business strategy. What she means is that before losing control with state regulation and civil society regulation, companies better act first and act voluntarily.

CSR is a contradictory concept, a grey area between the public and the private, the mandatory and the voluntary. CSR is further complicated by diversities in implementation due to globalized sub-contracting of production and state de-regulation. My presentation attempts to look at three questions by using the example of China. By CSR, I refer to the CSR initiatives taken by TNCs in supply chains in China. These questions are:

- 1) Do CSR initiatives improve labour standards in China?
- 2) What are the problems associated with CSR initiatives in China? Are they just PR game?
- 3) Is CSR an option for the regulation approach to control corporate power?

1) The first question: *Have CSR initiatives led to improved labour standards in China?*

- The answer is, yes, but that depends on what industry and economic sector. Ten years ago when a fire broke out in a Hong Kong-owned toy factory in Shenzhen that supplied the Italian infant toy brand Chicco, the Chinese Labour Law was not yet promulgated. The old labour law was applied to state-owned enterprise (SOE) workers and not foreign invested enterprise (FIE) workers. Employees worked 16 hours a day in the FIEs and were paid around RMB200–300 a month. They had to pay a down payment and some even had their identification documents retained by the management. Nobody cared about safety and health and therefore the tragedy of workers being locked up in the dormitories at night and 84 women workers were choked or burned to death in the fire in 1993. An international campaign demanding for a safety charter for the toy industry was started by trade unions and NGOs in Hong Kong (HK) and was supported by their counterparts in the north.

The next 10 years were marked by continuous research and international campaigns on the HK toy industry as well as international toy brands. Our research in the past 10 years has shown improvement in labour standards in the international subcontracting chain in China as a result of the pressure on, and by, the TNC buyers. Although there are still a lot of violations, the bar has been lifted a bit.

- Does CSR have impact on the labour standard in other economic sectors, especially the private sector, which is expanding in China? Unlike the TNC suppliers, the private sector and the non-export-oriented sector in China have even less incentive to comply with labour standard. Reason one: the supply of power is over abundant. A Chinese minister who participated in the WTO negotiations once said, the supply of labour “is enough to keep China remain competitive in the international market for another 30 years”. A large proportion of this labour force, hundreds of millions, is migrating from rural areas and even the government does not have the exact number. The migrant labour force forms the secondary labour market. Not only do they take up the 3D—dirty, demanding and dangerous—jobs, they are also ready sources to replace workers in the SOEs as the SOEs



are privatized and prefer informal labour. The problem is not only size but also the fact that the labour market, especially the secondary labour market in China, is unregulated, due to weak, if not flexible, enforcement of the labour law by local governments. And important it is due to the absence of freedom of association and collective bargaining in China.

- Under these circumstances, the incentive to not comply with law is always bigger than the incentive to comply. International campaigns and CSR initiatives are not enough to tip the balance and achieve sustainability. TNCs should realize that sustainability of their CSR initiatives is linked to sustainable regulation of the labour market so that Chinese workers do not race themselves to the bottom. The key issue is therefore freedom of association and collective bargaining.

(2) The second question: *What are the problems with CSR initiatives in China? Are they PR ploy?*

I have roughly classified the CSR initiatives in three categories to discuss the problems thus arise. The classification is very much based on my own research experience in company and worker conditions in southern China and the examples I take belong to the labour-intensive industries that are operated largely through international sub-contracting.

*The first category* is what I call “façade CSR”. It is illustrated in industries or companies that have not been “baptized” by international labour or consumer campaigns.

I take the example of computer manufacturing in Mainland China. HKCIC has done research on the working conditions of the computer manufacturing industry in China from 2002–2003. We have talked to more than 150 workers from a total of 23 Taiwan-owned supplier factories. They supply assembled computers, monitors, keyboards, power connectors, mice and other peripheral products to international brands names such as HP Compaq, IBM, Dell, Sony, Samsung that have company codes of conduct and CSR propaganda.

It is found that only two suppliers are in compliance with the national labour law. The rest are no more than high-tech sweatshops, with workers receiving only 50 per cent or less the legal minimum wage while earning their major income through production bonuses and under-rated overtime compensation. The number of working hours is as long as 14 hours a day in the peak season and workers are exposed to chemical and metal poisoning, radiation hazards, cuts and injuries, as well as ergonomic problems such as vision deterioration.

It is indeed ironic to find that the high-tech industry is also sweatshop industry. It is even more ironic to contrast the conditions of the sub-contracting workers of HP in China with the picture painted in the company CSR report.

HP’s CSR report in 2003 highlights the paid leave HP’s US staff enjoy for engaging in community work and the community projects undertaken in an Indian village where local people were aided in finding technology solutions to their power supply problem. In the words of Carly Fiorina, being a good global citizen means “(A)t a minimum upholding the highest possible standards of integrity and transparency”. . . . “In today’s world, good citizenship also means leveraging our assets to raise skill levels, extend hope, and extinguish despair. . . . And it requires an insistence that we choose suppliers and vendors that maintain appropriate standards in these areas as well.” The workers we interviewed in HP’s supplier factories in China do not know about national labour law, not to mention the buyers’ codes of conduct. The HP CSR report also provides little description of the monitoring of labour and environmental conditions of the company’s overseas suppliers.

The example of HP illustrates how unmonitored, unregulated CSR initiatives end in selective company self-reporting and not real improvement in the sub-contracting countries.



*The second category of CSR* is actually CPR—“Corporate Policeman Responsibility”, buyers monitor from top down. It is found in industries that may have been or are liable to labour or consumer campaigns such as the toy and apparel industry in China. These industries have low technology level, are highly seasonal and sensitive to fluctuations in the global market. Competition is intensive, worker turnover rate is high and short-term behaviour both on the supplier and worker level is the norm.

In regard to CSR of the TNC buyers, code monitoring is the major if not only tool. The level of labour rights compliance varies with the core suppliers out performing the others as they have bigger incentives and profit margins to live up to their buyers’ CSR labour standards.

This type of CSR very often makes the workplace a police state.

Our past research on the toy industry show that the factory management is under pressure of unstable order placing and harsh buying practice such as shortened delivery lead-time and race-to-the-bottom pricing. And the cost of compliance is not shared between the buyers and the suppliers. Workers are also put under pressure as they are coached and bullied by the management not to tell the factory conditions to the auditors or any outsiders.

Falsification and policing are two ends of the vicious circle. In this category of CSR, the race-to-the-bottom sub-contracting of TNC buyers actually backfires whatever CSR initiatives.

Because there is no sustainable relationship both on the supplying level and on the factory employment level, there is no sustainability to labour standard compliance.

This category of CSR is monitored somehow by civil society movements in the North and the South. Yet civil regulation through campaigns cannot replace that of the state and organized labour. The vicious circle drags on because of the absence of a level playing field where the inconsistent buying practices and CSR implementation can be regulated through organized collective bargaining at the supplier and buyer level.

*The third type of CSR* moves the spectrum towards local ownership and the bottom-up approach. It is the result of the demands of the international campaigns for worker participation.

It is also the realization on the part of the TNCs of the unsustainability of the top-down, policing approach in China. In an assessment exercise I did with the compliance teams of some key sportswear TNCs, they confessed being locked up in “compliance work (that ) is getting more and more difficult”, “workers talk less and less (to them) during the factory audits, and they relate that to the inconsistency between buying practices and CSR as well as the imbalanced position between the management and the workers on the shop floor.

The key element for this category of CSR is therefore civil society engagement.

TNCs are reaching out to involve civil groups in China and HK as an alternative to directly addressing the sensitive question of freedom of association. Different types of CSR initiatives belonging to this category include workers’ education and training (on safety and health, code of conduct, social and job skills etc), NGO monitoring of codes, establishing NGO-based worker complaint mechanisms, capacity building on the supplier level including industrial re-engineering projects for example in reducing the number of working hours at the workplace. Some companies venture to expand the CSR initiatives by leveraging on the suppliers and forming worker representative mechanisms or even workers’ unions in the supplier factories.

There are a number of issues worth taking note of regarding this approach.



(a) Is it Human Resources Management or Industrial Relation practices?

Some of these initiatives are actually HRM practices that are to avoid and pre-empt real workers' organizing. There is danger that these initiatives end up as 'sexy' programmes for CSR reporting only.

(b) Selective engagement

Because of the absence of credible independent unions in China, the liberty is with TNCs in cherry picking groups that "they can work with" while avoiding critical ones.

(c) Penalty for empowering workers

The example of Nike shifting supply from Indonesia is revealing. While Nike is with one hand expanding the worker empowerment CSR programmes in China, the other hand of Nike is actually closing down factories in Indonesia where the cost has gone up and workers are independently organized. Nike insists that it is the business decision of the Indonesian supplier. But it illustrates exactly how at critical moments "the corporate" always comes before "the social". No one knows when and whether it will come to China's turn to take the music seat when Chinese workers do get organized. Given the lack of regulation of footloose capital in developing countries, the danger of TNC penalizing workers' organizing is real and is taking effect.

(3) The last question: *Is CSR an option for regulating corporate power?*

A dynamic combination of the voluntary and the regulatory approach is necessary. In order to avoid privatization of CSR that only results in selective reporting, selective responsibility and selective engagement, there are some key elements that should pillar the regulatory approach to TNC power:

(1) Regulation through independent workers' organizing. The bottom-up CSR approach has the potential of preventing the privatization of CSR by first forming multistakeholder platforms on the ground in China and gradually moving that towards workers' organizing. It is important that international initiatives support worker empowerment and the building of a critical and independent civil society in China to prevent TNC whitewashing by selective local engagement.

(2) Regulation through civil campaigns. Naming and shaming is so far the only way to give pressure on footloose investment and the buying practices of the TNCs. The effect is limited as the regulatory platform for that does not exist. Yet in the long run, civil campaigns should be backed up by cross-border organizing and collective bargaining under the same company.

(3) Regulation on the level of the state. This includes implementation of the national labour law and the ILO convention and regulation of investment liberalization. In regard to implementing freedom of association in China, it should be noted that TNC initiatives especially in the area of worker representation and forming unions have created pressure on the labour bureau and the official union in China. The official union, the ACFTU, is under pressure to form new unions in the private sector and the FIEs and introduce open election for the union members and the union chair. Whether these unions formed either by the party-affiliated union or under CSR initiatives are real independent union is of course crucial. But at least the initiatives help to create legal space and incentives for worker empowerment in China.



## **Responsible Business Practice and Development: Perspectives from Recent Research by the New Academy of Business**

**David Murphy**

New Academy of Business, United Kingdom

The New Academy of Business is committed to transforming business and management practice through education and research. We create innovative learning materials and processes to explore social, ethical and environmental questions, helping entrepreneurs, leaders, managers, workers and students respond to dilemmas posed by sustainability and organizational responsibility.

Our research programme focuses on supporting responsible business practices in Africa, Asia and Latin America. We design action research processes that help people to understand change where cultures meet. The resulting awareness, abilities and publications are used as catalysts for further change, particularly through our education work with universities, companies, NGOs and other organizations.

Since 2001, we have been working with various Southern and global partners on three projects that offer a range of perspectives related to responsibility, business and development:

- *Enhancing Business-Community Relations in the Philippines:* From 2001 to 2003, we worked with United Nations Volunteers (UNV) and Philippine Business for Social Progress (PBSP) on this action research project that aimed to explore the meaning and experience of business-community relations at the local level. An added dimension was the active participation of UN volunteers as partnership facilitators between businesses and local communities. Other research countries included: Brazil, Ghana, India, Lebanon, Nigeria and South Africa.
- *Gender and Codes of Conduct in Central America:* Our associates Marina Prieto and Jem Bendell co-ordinated this action research project from 2001 to 2003 with women workers employed in factories and banana plantations in Nicaragua. The aim was to amplify the voices of women workers through the research process. In this work, funded by the UK Department for International Development, the New Academy of Business collaborated with the Central American Women's Network.
- *Social Marketing of Job Quality in Ghana:* Since 2000, we have been advising the International Labour Organization on the development of social marketing campaigns on job quality aimed at micro and small enterprises (MSEs) for its In Focus Programme on Boosting Employment through Small Enterprise Development. Our associate Chris Seeley has worked with local partners in urban Ghana since 2001 to find ways of using social marketing and mass media to communicate health and safety messages to MSEs.

The common theme of all this work has been to bring new and diverse perspectives to debates about corporate social responsibility (CSR) from the perspective of our Southern partners. This experience tells us that most current CSR debates are framed at the international organizational or Northern country level with little attention to many of the particular issues and concerns of Southern stakeholders. Findings from these three projects help to bring voices from the majority world to international discourses concerning responsible business practice.





## **1. Business-community relations in the Philippines: The case of Figaro Coffee**

The Figaro Coffee Company case study represents one of the outputs of the collaboration between the New Academy, UNV and PBSP in the Philippines. Researched and written in the Philippines by UN Volunteer Charmaine Nuguid-Anden, this case explores a trading collaboration between the 100 per cent Filipino-owned Figaro Coffee Company and Filipino coffee farmers. This case study offers an innovative local example of business-community trade. Figaro's relationships with small coffee producers in the Philippines illustrates that there are Southern alternatives to the fair trade consumer model prevalent in many Northern markets.

The Philippines was historically one of the world's top producers of coffee, with export earnings of at least US\$150 million before 1986. However, output has dropped dramatically to an annual production of about US\$500,000 or 500 kg per hectare. Over the past ten years, 80,000 hectares were lost, with only about 120,000 hectares of productive coffee land remaining in mountainous areas and traditional coffee enclaves. This change affects 60,000–80,000 coffee families, the majority of which are small farmers.

Figaro Coffee has played a key role in reversing the decline in demand for the indigenous coffee bean—the Barako. Demand had fallen because of imported Arabica and large-scale domestic production of Robusta by large corporations. Meanwhile, prevailing low world prices for coffee have meant that many coffee farmers have begun to shift to other crops and some have chosen to sell their land.

In 1998, the Figaro Coffee Foundation was formed to boost Filipino coffee production, particularly Barako. The foundation provides aid to the remaining local Barako coffee farmers, and organizes seminars to raise awareness about the domestic coffee industry. Geared towards obtaining consumer support, the foundation's initial activities aimed at securing a steadily increasing domestic demand for Barako coffee. The company's view of its community has subsequently expanded from its consumers to the farmers that produce its products.

While the task of rehabilitating the local coffee industry and saving the Barako remain challenging, Figaro and its various partners have developed the right channels and networks to solidify and integrate their efforts as a collective unit making longer-term success much more likely.

***To read the full case study, see:***

[www.new-academy.ac.uk/research/businesscommunity/unvpages/pdf/figaro.pdf](http://www.new-academy.ac.uk/research/businesscommunity/unvpages/pdf/figaro.pdf)

## **2. Gender and codes of conduct in Central America**

Codes of conduct are currently failing to meet their potential to improve the lives of many workers because they are not being developed, implemented and monitored in partnership with their intended beneficiaries. Instead, they have been shaped by a narrow set of commercial interests. What needs to be done to address this state of affairs?

It is particularly important for women workers that codes are implemented and monitored effectively and that they participate in the process if provided with initial training. Therefore, advocates of corporate responsibility in the global North need to listen to the intended beneficiaries of their work. A philosophy of service and solidarity, not patronage, is important for future work on ethical trade.

The effectiveness of corporate codes of conduct in improving the lives of marginalized stakeholders in international value chains has been questioned. Women workers' views are



particularly important, as they often constitute the majority of the workforce in southern export-producing factories and an important percentage in plantations. Based on a feminist action research methodology, this work amplifies their voices, moving forward the debate about how codes—and their auditing—can respond to the needs of women.

The research found that:

- Although most codes address key issues, they are not being implemented properly and are monitored poorly—such as age discrimination, sexual discrimination, harassment, freedom of association and the right to collective bargaining.
- After initial training on codes is received, women workers provide an important contribution on how codes of conduct should be implemented and monitored.
- Current monitoring practices are failing because: management is forewarned and prepared for visits; those visiting rarely talk to workers and, when they do, it is often in the company of officials; and the complaints processes are ineffective. They have, therefore, made a number of recommendations to improve monitoring.
- The women identified a lack of awareness and interest of factory management as another reason for non-conformance with codes. Management and supervisors need to be trained in the code content.
- They also identified a lack of awareness among workers themselves as a problem. Those trained by local women's organizations are more likely to use codes to improve their situation.

Corporate codes of conduct will only help if:

- they emphasize the priorities of women such as maternity rights, freedom of association and collective bargaining, discrimination, sexual harassment and low salaries;
- workers know about them, discuss them and can influence them;
- different local organizations trusted by workers are involved in training, monitoring and complaints processes using methods and practices to empower workers;
- monitoring effectively uncovers and addresses the priority concerns of women workers, appropriate to the context;
- systems are created, or those already in place are supported, for workers to monitor and report on conditions themselves;
- suppliers actually want to implement codes, which will occur when retailers provide real incentives.

A new form of monitoring, called participatory workplace appraisal, needs to be developed. It appears that the local monitoring groups operating in different countries in the region are closest to this approach, although more research is required.

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### **3. Social marketing of job quality in Ghana**

This pilot social marketing campaign aimed for the first time to provide large numbers of micro enterprises in the Accra/Tema area of Ghana with mass media messages that would motivate them to improve job quality. The project was carried out between August 2001 and June 2003. The campaign itself was aired over a four-month period between January and April 2003 and the evaluation carried out during May-June 2003.

Mass media approaches to promoting job quality were new to the ILO, and so the project was considered experimental and “on the edge” of what the ILO does. We chose Ghana for the pilot campaign due to its thriving home-grown entrepreneurial activity, serving local markets



and relatively unhampered by corruption. The New Academy of Business collaborated with a Ghanaian social marketing company, a creative team from a London-based advertising agency and the EMPRETEC Ghana Foundation. Together, we researched, produced, aired and evaluated a series of television and radio adverts to promote job quality.

Key features of the research:

- The primary target markets were casual, informal and micro-enterprise workers and business owners in the metalworking, welding sector, wood processing and wood working sectors.
- The pilot campaign was conceived on the basis of developments in the life of a character, Kofi Brokeman, a well-meaning worker in small businesses, initially ignorant of safety and health issues, but gradually learning through his mistakes and the good example set by his friend.
- Commercial FM radio and TV were chosen as key media for the campaign and a total of over 1,200 placements of advertisements, live presenter mentions and discussion shows, incorporating 402 prime time radio airings, including music jingles.

Experience gained and lessons learned include:

- Early involvement of partners, such as the Factories Inspectorate, is crucial if the campaign is to have a chance of being sustained beyond pilot stage using local resources, sponsors and organizations.
- Having a simple and positive message that addresses local concerns and that informal, casual and micro-enterprise workers can easily relate to. Involve workers in the planning process.
- Making good use of the convening power of the project as it provides a focus to raise awareness of the importance of job quality issues amongst key influencers and stakeholders locally.
- Building a plan around a versatile character with scope for humour and stories to be unfolded over time, offering a light touch in dealing with a potentially solemn issue.
- Ensuring that as much of the project origination and production as possible is carried out locally. In addition, production revenues and expertise need to be developed and kept in the campaign's host country to help maximize the chances of the campaign being sustained locally over time.
- Starting exploratory discussions with local, national and international sponsors as soon as possible in the process. Sponsor involvement is essential if social marketing campaigns are to be successful in the long term.

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***More detailed information on the New Academy's research and education programmes are available on our website:*** <http://www.new-academy.ac.uk>

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Conference on

**Corporate Social Responsibility and  
Development:  
Towards a New Agenda?**

**Panel 2: Multistakeholder Initiatives**

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## **Deborah Doane**

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Over the past few years, we have seen an increasing trend towards NGOs and businesses partnering to achieve measured progress in Corporate Social Responsibility (CSR). The reasons for this come from mixed motivations on both sides. For NGOs, the move can be seen in part due to frustration over the failure of governments to regulate the behaviour of TNC's. Business, in turn, agrees to such measures as a way to stem the tide of growing "bureaucratic red tape". It is this invisible pact between business, government and stakeholders that has characterized the CSR debate since its inception—namely, that if business aimed to do better, then government wouldn't step in and regulate, but would rather give business a freer reign in its affairs.

It is also this very pact that is threatening to bring a new wave of activism from civil society, as various partnership approaches over the past few years have failed to live up to their original promises. For example:

1. The OECD Guidelines on Multinational Enterprise. In spite of the fact that the guidelines have the strongest buy-in from states, civil society groups are now witnessing the abject failure in some countries in its implementation. States have failed on multiple occasions to uphold the guidelines, either through lack of financial and administrative support or through precarious diplomatic reasons that meant they did not want to meddle in the affairs of foreign governments, whose business it was to regulate companies' behaviour abroad.
2. The UK's Ethical Trading Initiative (ETI) has also seen its share of failures, most recently with the public withdrawal of UK high street retailer, Littlewoods, which cut its CSR programme earlier this year and backed out of the ETI. Even without this disembarking, it is unclear whether or not even half of the members are meeting the ETI's base code. Of course, the reasons for this are more complicated than corporate failure—many of these codes are difficult to meet, demanding time, money and energy to invest in the right systems to see them implemented and upheld. But the spirit of implementation—and acknowledgement of the challenges—have not always been tipped in favour of openness. One of the reasons the New Economics Foundation withdrew from its partnership in the ETI was due to the requirement by some of the corporate members of the initiative to sign a confidentiality agreement if an NGO wanted to read case studies.
3. The Global Reporting Initiative has been successful as a multi-party effort in developing a reporting standard: but there are currently no plans in any country to embed these principles in law; and it is a fairly low hurdle a company must jump in order to be GRI-compliant.

These anecdotal findings are supported by more thorough evidence in a recent book on CSR and codes of conduct, edited by Rhys Jenkins, Ruth Pearson and Gill Seyfang<sup>1</sup>, which finds that the majority of voluntary codes and standards—most of them based on loose partnerships between corporate actors and civil society—are inadequate, unless backed by relevant legislation.

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<sup>1</sup> Jenkins, Rhys, Ruth Pearson and Gill Seyfang (eds.). 2002. *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy*. Earthscan, London. ISBN 185383 931. 232 pages.



The problem of third-way type partnerships lies in the fundamental nature of voluntary approaches to CSR, that is, they are founded on market-based principles. These principles assume that the market will reward good behaviour—that business can do well by doing good. Not always so. There are a plethora of examples where the opposite would seem to be true. Most companies still have to make ends meet and in hard times, or even simply “ruthless” times, as with the Littlewoods example, profits must ultimately override any altruistic concerns for society or the environment, unless there is a direct and immediate business case to be made.

Market pressures also mean that in an effort to bring forward a supposed “win-win” between civil society and business, we find that barriers are being lowered to allow companies to claim ethical progress. The recent Kimberley process on conflict diamonds saw NGOs having to compromise on their aim of seeing an independent and fair monitoring system, in the interest of partnership, in spite of the fact that this is the only way to ensure a code is being met.

The need to compete always wins over good intentions. For example, companies who now source their garments from Sri Lanka will face increasing pressure to move to China, where the labour is cheaper and, many argue, the standards lower. In an effort to stem this move, Sri Lankan garment manufacturers have been lobbying their government to increase the legal limits on overtime hours—effectively contravening many voluntary codes of conduct, to enable companies that do source from them to be able to say they meet the laws of the countries in which they are operating. As one UK high street sustainability manager said, “it’s still a business and we have to compete.”

Our expectations that the market will deliver progress on CSR simply does not hold up to scrutiny. For the market to succeed, it relies on consumers to reward good business. Yet research on ethical consumerism consistently shows that consumers are relatively passive. In the United Kingdom, just over 83 per cent of consumers intend to act ethically, while fewer than 18 per cent do so in practice occasionally. Only 5 per cent of consumers are fairly active “ethical consumers”. In the United States, data actually shows a decline in recent years of consumers’ interest in environmental concerns, according to the Roper Green Gauge survey.

And if we think SRI is the leading light: think again. Not only is the methodology of many of these funds dubious, by letting in the “best of the baddies” they make a mockery of sustainable development and ethical investment. In fact stocks without an SRI screen have even outperformed their so-called ethical counterparts in the recent bear market. In the UK, the “SINDEX”, comprised by Money Observer Magazine of those FTSE100 companies that did not make it onto the FTSE4Good, have made 15 per cent greater earnings over the last year. It pays to misbehave.

The question is: where do we go from here? First, we have to acknowledge the limitations of multistakeholder partnerships for achieving social responsibility. As the Jenkins book shows, they are no substitute for adequate legislation, which, in turn, must be monitored and upheld. In order to put adequate pressure on governments to develop more thorough regulatory approaches, civil society, too, must review their role in these partnerships. While there is a place for co-operation, this should not mean that NGOs have to give up their role as civic guardians in the process. Unfortunately, over the past few years, civil society has lost its ability to challenge business effectively, in the name of “partnerships”. And lastly, business must also acknowledge that CSR partnerships will only bring modest dividends, either to business or society. They cannot possibly change the world.

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## **Analysing Non-Governmental Systems of Labour Standards and Monitoring**

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Non-governmental systems of labour regulation are expanding extremely rapidly across industries and regulatory arenas—from garments, to shoes, toys, forest products, oil and gas, mining, chemicals, coffee, electronics, and even tourism. However, to date very little rigorous analysis has been conducted on the impacts and implications of these potentially transformative institutions. And the analysis that has been conducted has been highly contentious, either advocating programmes or dismissing them out of hand.

Advocates tout these initiatives as more flexible, efficient, democratic, and effective than traditional labour regulation, while critics conversely assert that non-governmental regulation is a corrupt attempt to free industry from the last vestiges of state regulation and union organizing. Proponents argue that these systems can supplement and even support government regulation, while opponents assert that non-governmental regulation implicitly challenges the legitimacy and efficacy of state regulation. Some fear non-governmental systems of regulation will preempt or “crowd-out” worker organizing efforts and the current role of unions, while others believe these systems can support worker empowerment and participation in shop-floor negotiations. Some believe monitoring and certification will provide consumers with a false sense that problems have been solved and will de-mobilize international labour and environmental campaigns, while others see the information generated by non-governmental regulation as key to transforming how we produce, consume, and regulate around the world.

This presentation will critically and constructively engage this heated debate and assess new systems of non-governmental labour monitoring and regulation. Based on interviews with staff of the leading multistakeholder initiatives in the United States and Europe, interviews with multinational managers and advocacy organizations, a review of the existing literature and programme documents, and direct evaluation of monitoring activities in China, Korea, Indonesia and Mexico, the presentation will detail key efforts at non-governmental labour regulation, discuss variations in how these systems function, describe the challenges they face, and evaluate their effectiveness in improving labour practices.

Non-governmental systems of labour monitoring and regulation are both more diverse and “messier” than traditional regulatory approaches. These initiatives go beyond the past procedures of government stipulation of fixed rules and standards, government monitoring and enforcement, and judicial review. Non-governmental initiatives involve multiple actors in new roles and relationships, experimenting with new processes of standard setting, monitoring, benchmarking, and enforcement. In a number of regards, these new non-governmental regulatory strategies are following in the footloose steps of global production processes. As networks of production extend out along increasingly complex supply chains, interested stakeholders are exploring systems of dispersed but inter-connected regulation over production. These emerging regulatory systems are almost as complex as the supply chains they seek to monitor. They include chains of standard setters, layers of monitoring and enforcement, and competing systems of incentives and action. At the heart of these systems are: codes of conduct, firm internal compliance monitoring, external monitoring and certification, independent verification and assurance, and continued independent exposes and investigations.



The diversity of these codes and monitoring systems has led to both confusion and debate about the benefits and costs of non-governmental regulatory strategies. Versions of non-governmental regulation range from individual factories paying to be certified, to multinational brands internally monitoring their contractor factories, to multistakeholder initiatives accrediting third party organizations to inspect factories, to independent NGOs inspecting factories individually or in co-ordination with worker campaigns. In these different forms of non-governmental regulation, the substance, scope, implementation, participation, and reporting of inspection results can vary considerably. And more importantly, these systems also vary in their underlying models for changing labour practices in global supply chains.

The Fair Labor Association (FLA), Social Accountability International (SAI), and Worldwide Responsible Apparel Production (WRAP) are all firmly centred around enlisting market drivers for improved supplier performance. WRAP and SAI advance a system based largely on factory certification. These initiatives certify that management systems are in place to guarantee acceptable performance in individual factories. Certification provides a stamp of approval that is designed to attract customers to self-selecting factories. WRAP and SAI tap into the motivations of individual factories seeking to connect into socially concerned (and presumably high-value) buyers, as factories are audited only if they ask (and pay) for the evaluation. These systems involve an advanced form of “privatized regulation”.

The FLA advances market pressures by creating a supply chain policing system involving multiple stakeholders. This advances a kind of “collaborative regulation” or “regulated self-regulation” that depends on top level commitment to the code from a brand or retailer, both internal and external monitoring of suppliers, and participation of NGOs in providing legitimacy to the system. The FLA also provides information to buyers to use to influence supply chains.

The Worker Rights Consortium (WRC) is building essentially a “fire alarm” model of regulation that focuses on creating new mechanisms of accountability for both firms and government agencies by gathering information from workers and local organizations and then helping them to organize to win demands. Alarms are triggered through complaints from workers and local NGOs, which motivate WRC inspections. Factories and the brands purchasing from them, are targeted through this bottom-up process. The WRC then puts pressure on brands to improve conditions, and at the same time works to facilitate worker empowerment and organizing to negotiate improvements. Supporting freedom of association and collective bargaining are primary goals of the WRC.

So these different emerging systems create a spectrum of new regulatory processes: from purely “privatized” regulation (firm internal monitoring and WRAP), to more “collaborative” regulation (SAI, FLA, and Ethical Trading Initiative—ETI), to more “socialized” regulation (Fair Wear Foundation [FWF] and WRC).

There is, unfortunately, virtually no public data available to analyse how well these systems of regulation are currently performing. Developing measures to evaluate non-governmental regulation remains a critical area for future research. However, there is some evidence from programmes in the US, and from sporadic reports from monitoring initiatives around the world, which can help us begin to evaluate non-governmental regulation.

This evidence shows that new non-governmental regulatory systems hold out both potential and peril. They offer the potential of opening up and strengthening regulatory systems, and bringing in new voices and mechanisms for motivating improvements in global supply chains. They also harbour the peril of privatizing regulation, effectively closing off democratic forms of regulation and bypassing local governance.





Questions thus remain on how to move these systems towards more credible and complete global regulation. Can these systems be implemented beyond the first tier of suppliers? Can improved practices “spill-over” into firms not directly tied to high-end global supply chains? Can Southern stakeholders be brought into discussions and have a real say in the structure and implementation of these programmes? Can mechanisms of representation and democracy be formalized in these non-governmental systems? Can these systems provide workers and their advocates real tools that will increase their space for organizing? Is it possible to move towards inter-operable systems of standards and monitoring? Can the International Labour Organization (ILO) and the United Nations be brought more fully into non-governmental regulation? And ultimately, can these new forms of regulation be designed to complement and support existing regulatory processes, and to directly benefit workers and poor communities around the world?

In some regards, the distinctions between these systems are beginning to break down. There is some convergence underway in codes and monitoring regimes. However, there is certainly no guarantee that voluntary codes of conduct and monitoring schemes will naturally converge into more complete or democratic systems of regulation. They are just as likely to diverge into a plethora of initiatives competing for the hearts and minds of consumers, serving to only confuse the public and undermine the credibility of non-governmental initiatives. However, with strategic policies and co-ordinated efforts, non-governmental regulation could instead move towards more credible, transparent, and accountable systems. Organizations implementing monitoring systems should commit at a minimum to making their factory audits and auditing methodologies public.

Another potentially promising avenue forward would involve efforts to build complementarity and inter-operability between these systems. The different models of non-governmental regulation are effective at different processes. Factory monitoring identifies willing factories and gives managers information to support change. Supply chain monitoring helps move standards down out-sourced chains of production, and provides brands with information to better manage their suppliers. Independent investigations help to expose the worst actors, provide information to workers, and create incentives for brands to prevent problems in their contractors. Connecting these initiatives in some inter-operable way, might help to overcome the challenges of access, scope and credibility.

Each of these emerging systems has clear weaknesses and challenges. Nonetheless, under certain conditions, non-governmental regulation can influence factory labour practices. With increased transparency, improved technical capacities, and new mechanisms of accountability for workers and consumers, non-governmental monitoring could complement existing state regulatory systems. As they develop, new non-governmental regulatory systems should be evaluated along a number of criteria: (1) legitimacy—are key stakeholders involved in all stages of standard setting, monitoring, and enforcement?; (2) rigour—do codes of conduct meet or exceed ILO conventions and local laws; are standards measurable; and is monitoring technically competent?; (3) accountability—is monitoring independent and transparent?; (4) complementarity—do non-governmental regulatory systems support state regulation and processes to learn and improve standards and monitoring methods?

Regulation in the global economy remains a daunting challenge. If these experiments in non-governmental regulation can be made more transparent, accountable, and democratic, it may be possible to build non-governmental regulation into an important response to the adverse impacts of globalization. At a minimum, non-governmental regulation offers a glimpse of emerging strategies to regulate global supply chains and to begin the process of building new systems of governance over a fast changing world.



## **Ineke Zeldenrust**

Clean Clothes Campaign International Secretariat, The Netherlands

### **1. Introduction**

The Clean Clothes Campaign (CCC) aims to improve working conditions and to empower workers in the global garment and sportswear industry. The campaign is currently active in 10 European countries, organized through autonomous national coalitions with a total membership of circa 300 NGOs and trade unions. The international partner network of the campaign consists of NGOs and trade unions in the majority of countries producing for the European market.

The CCC pursues four broad categories of activity to reach its goal: awareness-raising and mobilizing consumers, pressuring companies to take responsibility, solidarity actions and lobbying and legal action. With respect to the second area of work, the CCC pressures companies to take action on individual instances of labour rights violations, but also makes demands for structural improvements. The CCC believes that one way to obtain this is for companies on top of the garment industry to supply chain to adopt a code of conduct based on ILO labour standards, to ensure that these standards are implemented and that compliance with the code is adequately monitored and (independently) verified.

CCC's principles for this have been outlined in the 1998 CCC model code. CCC has engaged directly with companies willing to accept these principles in projects aimed at developing a better understanding of code monitoring and verification (e.g. in Sweden and Switzerland) and will continue such experiments. National chapters of the CCC have also joined Multistakeholder Initiatives (MSIs) such as the Ethical Trading Initiative (ETI) in the UK and the Fair Wear Foundation (FWF) in the Netherlands.

### **2. Context**

When discussing so-called Multistakeholder Initiatives, it is important to, first of all, situate them in the context in which they were developed. MSIs are meant to oversee, improve, guide or verify the implementation of codes of labour practice. These codes, and their accompanying structures, are a specific response to the growing awareness of labour problems in global supply chains of highly labour intensive products (apparel, athletic footwear, toys).

The increased globalization of these chains has brought with it a so-called “regulation gap”: local labour law enforcement mechanisms do not function, either through lack of capacity or of political will. There is enormous pressure on governments North and South to trade away workers’ rights, in law and in practice, for a place in the global economy. The ILO, although capable of setting standards, has no teeth when governments are not putting the conventions into the law, or not implementing their own laws. Trade unions are often repressed, or unable to reach out and organize the predominantly women workers in these sectors. In the small amount of workplaces where workers are organized and able to bargain collectively, they often find themselves negotiating with an employer who has no room to manoeuvre, since the real power and capacity for change lies with the sourcing companies at the top of the supply chains. Codes were developed as part of a strategy to take the responsibility back to the *de facto* employers: the retailers and the brands.



### 3. Different models and methods

The main MSIs relevant in this context started to develop during the “code wave” of 1995–1998. The US Apparel Industry Partnership, the forerunner of the present Fair Labor Association, was formed in 1996, the Council on Economic Priorities established the CEP accreditation agency (the forerunner of Social Accountability International—SAI) in 1997, the ETI was established in 1998. Although the Fair Wear Foundation had been in negotiation in the Netherlands since 1993 (and an initial agreement drafted in 1996), it did not get established until 1999, and then only on a project basis (it became fully operational in 2002). The Workers Rights consortium was established in 2000.

Though they all work on code compliance in the garment industry, and the codes themselves are relatively similar (key exception being the critical and combined issues of living wages and hours of work), they have quite different methods and aims. It is not possible to do this justice in this limited space, a few key points though should be highlighted to better address the questions asked to the panel:

FWF, FLA and ETI each work with member companies: sourcing companies have to adopt the code of the initiative as their own (or ensure that the standards are similar) and implement it. ETI then focuses on developing “best practices” in monitoring compliance, taking an approach centred around experimenting and learning. FWF and FLA aim to set criteria for the monitoring, which is considered to be primarily the job of the member companies, although of course that does not mean they have to undertake it by themselves. FWF prefers companies to use teams of locally skilled experts, to be identified through the partner networks and trained by FWF. Of course, this immediately raises the capacity issue. Such teams will have to be built.

FWF uses this same approach for its verification activities: checking if the implementation and monitoring programme of its members is taking place as intended, on the basis of complaints and random checks. FLA calls this independent external monitoring, and recently started to make the results of these checks public. Accredited FLA monitors include the well-known international audit firms and a few smaller local organizations. SAI’s focus is on the supplier rather than on the sourcing company. The supplier has to hire an SAI accredited firm (these are the same international audit firms) to do an audit, and if he passes he gets the certificate. This leaves the responsibility of the sourcing company unaddressed.

The WRC determinedly does not set criteria for implementation or monitoring, they investigate on the basis of complaints and then expect the universities to use their leverage over their licencees to ensure corrective action.

They were grouped under the term Multistakeholder Initiatives only recently, in an attempt to distinguish them from fully corporate controlled systems for code compliance, whose growth forms the backdrop against which we should understand the MSIs. Systems for corporate self-regulation include individual company-based initiatives, like Socam from C&A, to the audit programme of the French Retail Association (FCD) and more international corporate programmes like the Worldwide Responsible Apparel Programme in the United States or the newly coming up Business Social Compliance Initiative in Europe. The MSIs, on the contrary, have some engagement at certain levels with trade unions and NGOs, although the type of engagement varies considerably. Stakeholders can be represented at different levels: in developing the standards and the programme, in the governance of the initiative and in the execution of activities in the production countries.

First of all though it should be defined what stakeholders we are talking about. For the purpose of code compliance, we can define “stakeholder” as any party that is affected by the activity or operation of an enterprise (with an emphasis on affected), but all stakeholders are



not equal and should not be treated equally. The workers whose working conditions are the subject of the code should be recognized as having the greatest stake in the matter.

ETI and FWF both have fully tripartite boards, although FWF has industry associations rather than companies directly present. ETI sets up similar tripartite structures in the production countries where it conducts pilots. The FLA has companies and NGOs on its board (though no unions) and recently has started working more intensively with NGOs and unions in production areas. FWF has started to develop what they call “local partner networks” in countries where their member companies produce. SAI has an advisory council that includes NGOs and trade unions. WRC has universities (in their capacity of giving licences to sell garments on campuses), student organizations and (other) NGOs and trade unions on its board and works in its investigations closely with local NGOs and trade unions.

#### **4. Key challenges**

A lot of the activity in “CSR-Codes area” takes place in the international arena and at the policy level, and still has not translated into substantial change on the ground. The progress that has been made is limited to shoes rather than apparel, to the first tier of the supply chain rather than further down, and to the visible issues, like health and safety, rather than to the more rights based issues (like freedom of association) or to the more costly issues (like hours and wages). To move beyond this takes a lot of resources, experimentation, skills, knowledge and input from civil society, something that corporate self-regulation can never deliver. Providing this is the focus of the ETI, but also the MSIs, more focused on checking compliance, are increasingly required to fulfil this function. It seems that pilots and experimenting will be an ongoing feature of code compliance mechanisms, rather than a phase, and given the inherent risks and the many mistakes that have been made, this is a positive development.

The more active companies tend to be members of MSIs, but not all members of MSIs are active—and it will be challenge for the MSIs to deal with that, just as they will have to deal with companies that leave (or threaten to leave) and follow an easier option. Given the growing activity of corporate self-regulation and the trend of huge retailers (Walmart, KQ) to look at that route first, it will be a challenge to raise the bar, and yet it will have to be raised if the quality issues are to be addressed.

There is increasing recognition among most of the MSIs that the quality of monitoring and verification will have to improve, and that the large, commercial, globally operating audit firms that presently perform the majority of workplace audits cannot, in their present way of working, deliver the kind of quality that is needed. The global lack of local expertise, in organizations or individuals trusted by civil society, capable of investigating and providing advise on remediation, is one of the major stumbling blocks into changing this around.

The level of consultation, training and investment required to make serious inroads is huge, and will probably require the collective resources of the different MSIs. And yet it is precisely this programme that will need to be started, if codes are to really contribute to the empowerment of local civil society to defend labour rights and build improvements in the general labour situation. Ultimately, this is also the only way to address the systemic issues that keep coming up as another key challenge: some of the changes required cannot be worked out on a company by company basis. Creating such change needs a sectoral approach, both at the sourcing company level (one company may not have the leverage required) and also at the supplier level (problems that are endemic to the industry in the region, like a minimum wage level set too low or blacklisting, cannot be dealt with by a few suppliers only). Strengthening local civil society, and its capacity to work on labour issues and to engage directly with local industry and labour enforcement authorities, can contribute to



creating this more systemic change. Using an international firm for your audits does not contribute to that agenda.

“Stakeholder involvement” will have to be addressed at different levels. For the credibility of the systems, it is essential that NGOs and trade unions be represented at the governance level, in a decision-making capacity. The question is which NGOs and trade union organizations, and how can representation of their counterparts in the production countries be assured? Clearly Northern-based NGOs cannot be seen to represent their Southern or Eastern partners, nor can buyers represent their suppliers. And though the International trade union organizations can represent their affiliates, direct engagement with local unions and workers themselves is by many considered a main priority. ETI’s experimentation with local tripartite pilot groups, FWF’s partner networks and the different NGO/TU advisory councils and meetings can be considered attempts to grapple with this issue. If there is one conclusion to be drawn it is that there is no “one size fits all” approach possible, local variety is just too great. It will be important to bring the results together and for the NGO and trade union community to establish, working with their partners, regional approaches whereby it is up to civil society in a specific production region itself to set the terms and conditions under which they wish to engage with code compliance. Involving workers more directly can be done by putting greater emphasis on worker training and education programmes and complaints procedures. Complaints can be seen as means to ensure direct input at any given time from workers and their organizations in the monitoring and verification process, and to balance and supplement the limited scope of social audits, which only provide a “snapshot” of labour practices at a specific moment in time.

Often the reason given for the failure of codes to fulfil their promise is lack of leverage: the company in question claims to do the maximum they can, but the supplier refuses. Given the increasing numbers of large supplier conglomerates in these sectors (often multinational corporations themselves, built with, or controlled by, Asian capital), it is entirely possible that in some cases the power dynamics in the supply network are such that a supplier can easily afford to lose a client. On the other hand, sourcing companies have too often used lack of leverage as an excuse from the start, without fully exploring all options, including promising long-term relations and/or investments, good quality contracts, longer lead times, better prices, or co-operating with other buyers. MSIs which have a focus on the entire sector potentially offer a platform for such co-operation and recently we have seen some examples of this happening (e.g., the WRC/FLA co-operation on Central American cases).

If all these issues are addressed (and that is quite a big “if”), MSIs can indeed prove an effective means of deepening and scaling up of CSR. The resources and leverage required, however, will probably necessitate more co-operation among the MSIs. Such co-operation should be structured around an actual work programme on specific issues rather than via endless debates at the institutional level. A joint project is foreseen in Turkey next year in which the MSIs listed above aim to test in practice the possibilities for working together on all aspects of code implementation; exploring if common protocols and quality standards can be developed for investigations, for complaints mechanisms, for consultation with local stakeholders and for working with local authorities.

Scaling-up, however, will also require a broadening beyond the relatively small circle of active companies. With all these issues on the agenda though, it does not become exactly more attractive for companies to join, especially with less demanding alternatives out there. They will have to be pushed, and this not just for the campaigners and activists to work on. The academic community can contribute greatly by putting the research spotlight also on those companies presently unwilling to engage in any serious way with NGOs or trade unions, Walmart being a case in point. Support for the more advanced MSIs, willing to work on the above-mentioned changes, from the wider CSR interested community and from governmental organizations will be equally important.



The last question asked concerned the possibilities of MSIs becoming a “new system for global corporate regulation”. Before we ask if they *can*, we should first ask ourselves if they *should*. As was stated in the beginning, codes and code compliance mechanisms were developed in the context of a regulation gap. Their mission should not only be to fill the gap, but also to transform the traditional regulatory framework so that it can address the massive labour problems in global supply chains in a manner that is transparent and democratic, and that gives space to workers and their organizations to advance their own interests.

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Conference on

**Corporate Social Responsibility and  
Development:  
Towards a New Agenda?**

**Panel 3: UN-Business Partnerships**

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## **Ann Zammit**

United Nations Research Institute for Social Development (UNRISD),  
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*What has been the added value of UN-Business Partnerships?*

This is a difficult question to address for three principal reasons:

- a) the vast array of arrangements designated as UN-business partnerships;
- b) the fact that assessing the added value of anything is a complex undertaking, let alone a far from homogeneous bundle of initiatives;
- c) the subject can hardly be addressed without also considering the second question on the panel's agenda, namely what are the tensions associated with UN-Business partnerships.

To summarize the situation:

While most or all UN-Business partnerships are said to contribute to the United Nations Millennium Development goals, partnerships have not been specifically designed to meet these goals. Each of the several hundred or more so-called business partnerships have their own immediate objectives and involve different types of relationship with the UN. For example, to mention just a few:

- some partnerships are formed to raise money for particular UN agencies, such as UNICEF;
- some have a practical immediate task in view, such as the provision of cheap drugs or vaccinations for developing countries;
- some partnerships that have a practical end purpose, such as increasing the capacity of developing countries to attract FDI (foreign direct investment), also give the business partners an implicit or explicit involvement in policy formulation.

The added value UN-Business partnerships is often said to be that they engage the skills and experience of business in a direct and practical way to help resolve key development problems. However, the added value of UN-Business partnerships can only be assessed by not only looking at how much money was raised, or how many vaccines were delivered, or whether guides and institutional frameworks to encourage FDI were established in particular countries. These initiatives have to be assessed in terms of their wider implications for developing countries and poverty reduction.

Thus, any assessment of the added value would need to consider whether, in providing the specific good or service through partnership, a positive contribution was also being made to enhancing developing countries' own capacities to deal with their problems. This therefore involves considering the impact on, for example, the concentration of ownership in the production or services sectors concerned, on the degree of national ownership, and on the level of competition. There may also be other implications, such as whether they enhance wider TNC product penetration, contribute to market segmentation that furthers the gap between rich and poor citizens and impedes the development of national health and education services and infrastructures that serve the mass of the population. Partnerships that are specifically intended to enhance developing country capabilities and capacities may be exempt from such criticisms, but even these need careful analysis to determine the extent of net benefit.





*The question of added value is also related to that concerning tensions and contradictions.* In addition to the above potential negative implications or outcomes of UN-business partnerships, there is another highly important negative aspect, both latent and actual. Many of the most publicized partnerships involve large TNCs (mainly of the North) who, by and large, actively support an orthodox neoliberal global economic agenda. They promote “free market” policies, including free trade and capital movements and a “level playing fields” approach, whereby developing countries, no matter their level of development, are expected to pursue the same policies as the rich and powerful. Yet, there is a very considerable body of theory and evidence that suggests that such an approach is inimical to development in much of the South. Moreover, as the recent Cancun meeting clearly demonstrated, hypocrisy on the part of Northern governments is the order of the day: developing countries must “Do as we say and not as we do (or did)”, when it comes to protecting certain Northern interests.

Thus, to put it bluntly, to the extent that the UN engages with large businesses in partnerships to achieve certain immediate developmental type objectives, providing them with additional market power and kudos, it is complicit in the promotion of a global policy agenda which undermines development in much of the South. What is more, close relations between the UN and the business sector presents the conditions for “capture”, whereby big business is able to advance its own global policy agenda through the UN and its own agenda for the UN, the UN becoming overly-sensitized to the business case and itself a protagonist of the business agenda.

In my own work, I have outlined a new framework that would engage business in development but in a more socially responsible and development friendly way than is the case at present.

*Turning to the question of whether current partnership arrangements have responded to criticisms and concerns about their developmental and governance implications,* there is no single, simple answer, due to lack of information. From my own review of UN-Business Partnerships, I detect few mechanisms through which criticisms and concerns about the developmental and governance implications can be raised, other than through the executive boards and general assemblies of specialized agencies and what seems a rather unsatisfactory review process in the Second Committee of the General Assembly. But executive committee members and country representatives to specialized bodies (such as the World Health Organization) may not be development economists and aware of the potential developmental implications of the “partnership” route in relation to what seem to be strictly health matters.

These clearly are issues that need to be looked into in more detail. One had hoped that a number of detailed evaluations would have been undertaken to provide inputs into the UN for the recent General Assembly evaluation of partnerships. But such work seems to be lacking. Even so, the UN Secretary-General in his own report conveyed the message that partnerships between the UN and Business should be encouraged, though some proposals were made to achieve greater rationalization of the organizational aspects.

In my own work, I have been able to do little more than raise the issues. To do justice to the issues it would require a considerable effort by the UN and its agencies, well beyond what could be undertaken by one individual UN institution, such as the Joint Inspection Unit.

Now, a word about the Global Compact: what was and perhaps still is regarded as the UN’s flagship partnership. This initiative has been criticized not only from NGOs dedicated to monitoring the behaviour of TNCs but also from some of the NGO members of the Compact itself. Their main concerns relate to the “credentials” of Global Compact “business partners” and the lack of accountability. Some have also criticized the Compact for drawing in only TNCs.



Part of the Compact's continual state of evolution can be seen as a response to criticisms, but the responses have, in turn, generated their own criticisms. In brief, the shift from a membership organization to one based on partnership has resulted in the removal of initial screening procedures and the shifting of companies' commitment to report on corporate compliance with the nine principles from the Compact's website to the annual company reports. These changes have reduced even further the likelihood that the Compact will become engaged in monitoring. While the Compact plans to establish a place on its website that records whether companies have duly reported, the problems associated with assessing corporate compliance with principles or standards through what is written in company reports are well known. Whether the shifting of reporting functions to outside the UN puts their implementation and monitoring into the voluntary realm or partly in that of government regulators is yet to be seen.

Finally, it needs to be said that the Global Compact has responded to criticism of its earlier almost exclusive focus on TNCs. Now, of the over 1,000 business participants in the Compact, the bulk are from developing countries—many of them being small and medium enterprises (though not according to developing country standards). This, together with greater emphasis being put on national replicas of the Global Compact, suggests that advocacy regarding the nine principles could well reach further. But whether this will promote greater discussion of ways of promoting their implementation that are compatible with national development and the removal of poverty has yet to be seen. (And whether the current reporting commitments are relevant to developing country non-incorporated firms is another question.)



## CSR in a Globalizing World Economy

**John H. Dunning**

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1. Corporate Social Responsibility (CSR) must be viewed in the light of Responsible Global Capitalism (RGC) which embraces (i) markets, (ii) national and sub-national governments, (iii) civil society and (iv) supranational entities.
2. In our discussion we consider CSR only in so far as the commercial operations of corporations are concerned. We do not deal here with corporate “civic” responsibility.
3. From the perspective of firms, CSR is likely to be determined by the extent and content of:
  - (a) its ownership of/access to resources and capabilities
  - (b) its institutions
  - (c) how it relates (a) and (b) to other institutions and economic actors in (i) the national and (ii) the global economy.
4. *Institutions matter.* The institutional structure of a firm (and of society as a whole) is a combination of formal rules, informal constraints and their enforcement characteristics, which shape its (their) incentive structure. It is these norms of behaviour, governance, cultures, conventions and codes of conduct which determine the way in which the firm (and other participants in society) “play the game”.
5. In a globalizing economy, the CSR of multinational (transnational) corporations (MNCs) is especially influenced by the content and quality of their internal institutions and those of the other organizations of global capitalism with whom they have associations.
6. These are likely to vary across national boundaries, as underpinning institutions, are a set of values, belief systems, and ideologies which, at any moment of time, reflect the inherited culture of both firms and societies.
7. In this age of increasing interconnectivity and cross-border alliances and networks, CSR is being strongly influenced by:
  - (a) the extent to which it is possible to create an integrated set of global institutions, which are able to devise and implement “rules of the game” for governing business behaviour;
  - (b) the extent to which it is possible for the business and international communities to respect and conform to institutional (and particularly moral) difference between cultures.
8. How then may CSR (and its underlying institutional structure) be upgraded in a globalizing world? We might suggest two main approaches:
  - (a) Top-down [e.g. (i) the UN’s Global Compact, and (ii) Legislation to curb/outlaw unacceptable business practices].
  - (b) Bottom-up [e.g. (i) spontaneous upgrading of CSR, and (ii) activism by stakeholders, investors, consumers, workers and by civil society].



We believe the former approach is more likely to reduce “bad” behaviour and the latter more likely to foster “good” behaviour.

9. Reconciling the global approach to CSR to the “dignity of organizational and national cultural difference”. Why a “one size fits all” approach/philosophy is unlikely to succeed? But is there a sufficient impetus to upgrade CSR?

10. What then are likely to be the triggers to upgrading CSR?

- regulatory compliance/Incentives;
- market signals;
- reputation/Status pull;
- societal ethics;
- shocks and crises.

11. Finally, CSR is not an option in today’s globalizing economy, in which there is increasing freedom of choice and a growing value-intensity of consumer wants and needs (including intangibles such as the environment, security and reduction of “bads”). Rather (properly conceived) it is an integral part—and indeed is essential to the survival—of socially acceptable, inclusive and sustainable global capitalism.



## **Amalia Waxman**

World Health Organization (WHO), Switzerland

Noncommunicable diseases (NCDs) including Cardiovascular diseases (CVDs), diabetes, cancer and obesity now account for 59 per cent of deaths globally and for 45.9 per cent of the global burden of diseases. NCDs increasingly affect more and more people from the developing world, as well as from developed countries. Today, most deaths from NCDs occur in developing countries during working age. One half of these deaths—almost 17 million annually—are CVD, the majority are heart disease and stroke.

The World Health Report 2002—Reducing risks, promoting healthy life—identified the selected global disease risk factors. In the 10 leading risks to health are high blood pressure, high blood cholesterol, tobacco use, obesity, low fruit and vegetable intake, obesity, physical inactivity and alcohol use. These global leading risk factors are the main contributors to the rising burden of NCDs globally. This picture reflects a significant transition. The world is undergoing an epidemiological transition whereby the disease burden shifts from being attributed predominantly to infectious diseases to noncommunicable disease. An ageing world population; urbanization and industrialization; economic developments and increasing food market globalizations all contribute to the nutrition transition in which diets change to be high in nutrients conducive to increasing rates of NCDs such as high levels of sugar, fat (especially saturated fats and trans fatty acids) and salt, and decreased consumption of fruits and vegetables. At the same time as the dietary changes are taking place, physical activity levels are dropping.

This situation affects people's health and quality of life and has substantial economic implications for countries. Further, capacity is weak in developing countries to tackle this combination of risk factors and disease burden. For example, health systems are designed to deal with acute situations and infectious disease outbreaks, plus they are strained already.

Recognizing this, the 2002 World Health Assembly (WHA) requested the director general to develop a global strategy on diet physical activity and health. The World health Assembly resolution requested that this strategy be developed through consultation with member states and the involvement of other stakeholders: UN agencies, the private sector and civil society. The process was divided into three main phases: completion of a WHO/FAO expert consultation report on diet, nutrition and the prevention of chronic diseases, consultation with stakeholders and final drafting and approval of a global strategy. This process has been conducive to the current preparation on an implementation plan of the global strategy at regional and country levels.

As part of the process of developing this strategy WHO liaised with the private sector, NGOs and other UN agencies. The private sector has been invited to comment on WHO/FAO expert consultation report on diet, physical activity and health (TRS 916), on a discussion paper for the global strategy and several meetings have been held in an attempt to define the role of the private sector in improving diet to reduce NCDs.

This process has been developed at an exciting time when the issue of NCDs has suddenly become prime time news. This is true for North America and Europe, Australia, New Zealand and other developed countries but also in many developing countries. Concerns over NCDs (obesity in particular) have spilled over to sectors previously not interested in these issues.

The reasons for involving the private sector are multiple. First, because food is not tobacco. We all need to eat and wish to enjoy the food we consume. Tobacco is a deadly product that kills half of its regular users. This is not the case for food. Second, the WHO/FAO nutrition



recommendations of the expert report pertain to the most popular food products in many markets. As the report calls for reduction of salt, fat, especially saturated fat, and sugar and, at the same time, an increased consumption of fruit and vegetables, it is clear that the food industry will have to be involved in strategies to achieve these goals. Third, transnational companies (TNCs) play a major role in developing countries as they become the biggest food producers (or retailers) in many parts of the world and influence dietary and consumption patterns that later are imitated by local industry. Fourth, there are many food chain challenges that need to be addressed together with industry (farm to fork), such as nutrient cut off, shelf life, availability of certain products, sustainability issues (soil erosion), and consumer demand.

In several meetings with the private sector, and more importantly through the consultation process, the role for the private sector in addressing diet related NCDs was identified to include: product composition, portion sizes, and information including marketing to children, labelling and health claims.

The private sector, however aware they are of the above issues and concerns of the public health community, faces a huge challenge: changes in food composition to address fat, sugar and salt may need investment in R&D; adjustments to taste preferences, changes in consumer demand and marketing to children are a critical issues at the heart of “making business”. The private sector is also faced with other trends in countries since the WHO consultative process raised issues of global approaches to certain issues, regulation, litigation, “naming” of foods (good and bad) and, of course, shareholder value and profit losses.

Through the process agreement has been reached on a few key issues. First, the growing burden of diet and physical activity related NCDs is of importance in particular to developing countries. Second, product change, however difficult, is feasible, and some companies have already been active through their R&D arms. There is also a growing recognition that marketing and advertising are important; that agreement on key messages is possible and even that pilot projects could be introduced in certain countries.

During this process, some changes in the attitude of the food industry have occurred. There is greater understanding that food choices have to do with several environmental factors and are not just a matter of personal choice. The initial resistance to acknowledge advertising to children as an issue relevant to public health and diet has been reduced and changed to exploration of approaches to address these concerns, mainly through self-regulation. Finally the industry has moved to initiate changes in products as well as corporate strategies on obesity.

So, we see a move that is, in some way, inspired by corporate social responsibility. There are other drivers that influence corporate social responsibility (CSR) movement in other areas, that have lately been having an impact in this area too: great pressure on the food industry to respond proactively to the health-threats of obesity, pressure in particular by the media, politicians, consumer groups and public health organizations. The other source of pressure is that of the litigation in the USA and other countries (Brazil) against the food industry. Over the past year, four reports on obesity have been produced by financial houses, which also discussed the role of the industry in addressing the obesity epidemic (UBS Warburg, JP Morgan, Merrill Lynch and Morgan Stanley). These reports reviewed in detail the current NCD burden, the existing concerns of different stakeholders and the different aspects of the current debate. Some of them ranked corporations and created an “obesity index”, assessing the risks to companies and concluding that the product portfolio of TNCs determine their vulnerability in light of the obesity debate. Further, in some countries, as the debate around this issue has escalated, parliament bills and other regulatory measures have been proposed to address the problem of NCDs. These range from proposals to tax certain types of foods, to restricting television advertising of food. The EC developed a new directive on nutrition food



labelling and health and nutrition claims, and some of the Codex Alimentarius committees have debated these issues extensively over the past year.

Current CSR approaches need to be examined in terms of their compatibility with the challenge of NCDs and obesity. CSR programmes have not always challenged corporations to reassess their business strategies, as the financial reports for example suggest. Further, the shift in the approach required from the industry is to fully recognize that a paradigm shift is needed from seeing diet and physical activity as a personal responsibility to a broader responsibility of the community at all its levels. Admitting diet and NCDs into the CSR milieu will be a huge step forward on the part of the food industry in taking responsibility for the impact of their products on health. A question here is, once the broad responsibility concept is agreed to, whether it is a matter of SOCIAL responsibility or just corporate/business responsibility. Whose responsibility is it ? Another challenge that will be faced by successful projects on CSR, diet and health would be sustainability and effectiveness. Is a CSR approach likely to change consumer demand and behaviour? Will it go as far as including changes in products high in fat, sugar and salt? Could CSR evaluation mechanisms be applied to a wide range of corporations, including local food companies in the developing world? Currently there are options beyond CSR that are being proposed by many countries and consumer groups. These range from regulations to self-regulation to litigation and multistakeholder approaches. CSR programmes will have to consider these approaches and to operate in tandem with these different approaches either to mitigate them or complement them.



Conference on

**Corporate Social Responsibility and  
Development:  
Towards a New Agenda?**

**Panel 4: CSR from a Developmental Perspective**

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## **Ajit Singh**

Professor of Economics, University of Cambridge, United Kingdom

My remit in the presentation this morning is to address two questions:

- How might the contradictions between TNCs and developing countries' interests be managed?
- Is a new CSR agenda necessary? If so, what would a CSR agenda look like from a developmental perspective?

I examine each of them in turn below.

### **TNCs and developing countries**

The first issue concerning the contradictions between TNCs and developing country interests and how these might be managed raises immediately the obvious question: what are these contradictions? There is evidence to suggest that there may not be any contradiction at all: during the last decade or more developing countries have been falling over themselves to welcome TNCs in order to attract multinational investment to their countries. This is in sharp contrast to the 1970s when Third World countries were demanding a new international economic order, as well as restraints on multinational behaviour, rules to facilitate the transfer of technology, rules against the exercise of monopoly power by TNCs, and so on. So the question arises whether this has been a genuine change in developing countries' view of multinationals or is it one forced by the difficult economic situation, which many of these countries face today. I would like to suggest that it is the latter and it arises in part from their new role as the main providers of foreign finance to developing countries.

Over the last twenty years, the financing of economic development has changed enormously. Official finance (ODA) has greatly declined in proportionate terms, while there has been a huge increase in private foreign finance (including loans from banks, foreign portfolio investment and foreign direct investment). FDI has become the main source of foreign finance for developing countries and that is an important reason why developing countries compete with each other to welcome multinationals. However, the record shows that very few of them succeed in this endeavour. Most FDI goes to a small number of countries, ones that do not necessarily have fewer regulations against multinationals but ones which have good economic prospects.

The contradictions between multinationals and developing countries arise over a number of issues. The first is the desire of multinationals to be able to operate anywhere they like, to invest wherever they want without restraint, and they are backed in this by their governments. For example, the European Community (EC) has tabled proposals for a new multilateral investment agreement. This makes some important concessions to developing countries to make the agreement more palatable. In its current incarnation, the Community has made a significant concession by suggesting that the proposed agreement would not apply to portfolio and other forms of investment but would only cover long-term investment in the form of FDI.

The new EC proposals still, however, essentially call for the national treatment of multinationals, which amounts to saying that these corporations should have the right to establish any business anywhere without any hindrance, unless similar restrictions are imposed on a host country's own firms. There are many good reasons why developing countries would need to strengthen their own firms, to take steps which would give preferential treatment to the domestic, as against foreign, firms. This is historically the path used by today's developing countries themselves as my colleague, Ha-Joon Chang (2002), has



eloquently demonstrated. However, similar arguments can be found in modern economic theory to justify giving unequal treatment to national firms to be able to compete against multinationals. It must be remembered that we start here from very uneven playing fields, as large multinational firms have enormous advantages which they derive from their sheer size and from their monopoly position in various markets, including the labour market and the market for inputs. The typical large TNC in the world's top 200 is too big already to have genuine technological economies of scale or scope, which may have positive welfare implications. Developing country firms are handicapped by their small size in a number of ways, including being below the threshold required to conduct R&D. However, if say two such small firms were permitted to merge while denying this possibility to a large multinational firm, it could help both competition and development. So the arguments for national treatment are therefore not necessarily economically sound.

There are also other reasons why a multilateral investment treaty of the kind being proposed by the EC, even if confined to FDI, would not be in the interests of developing countries (these issues are more fully discussed in Singh 2002, 2003). There are also other more prosaic, but nonetheless important, contradictions between the interests of TNCs and developing countries. The World Bank (2003) reports that cartels operated by multinationals in developing countries overcharged these countries to the tune of 7 billion dollars. This is generally regarded as the tip of the iceberg since many cartel-type price-fixing arrangements go undetected.

In the light of these facts and the global reach of the corporations, I have proposed, in Singh (2002), the establishment of an International Competition Authority (ICA), which would regulate the behaviour of large multinationals. One purpose of the Competition Authority would be to stop the abuse of dominant positions by multinational firms and to keep the international markets contestable, both now and in the future. The characteristics and responsibilities of this Authority would include:

- It would be charged with maintaining fair competition in the world economy and keeping the markets contestable by ensuring that the barriers-to-entry to late industrializers are kept at low levels.
- Analogous to the social welfare objectives of the European Commission, the proposed International Authority would be asked to pay attention to the special needs of the developing countries, to competitive opportunities for small- and medium-sized firms, to facilitate the transfer of technology to developing countries, and to ensure fair prices and the fair distribution of wealth.
- It would have the authority to scrutinize mega-mergers and to deter the mega-firms from abusing their dominant position.
- Again on the European Community model, the International Competition Authority would be concerned mainly with cross-border or international aspects of the workings of competition. Below the authority, at a national level, the member countries would have their own national competition policies.
- For good administrative and practical reasons, references to the Competition Authority would only be permissible in case of anti-competitive behaviour by corporations above a certain size. The size criterion would normally keep even most large developing country corporations outside the direct purview of the Competition Authority.
- In relation to the international merger movement, the authority would attempt to limit growth by merger by large multinationals under its purview. They would be allowed to merge provided they divest themselves of a subsidiary of equal value. This would mean that multinationals would not be able to grow by mergers, but they could expand through organic growth or green-field investment. It would not stop them



from taking over other firms provided they were willing to divest themselves of a similar-sized subsidiary.

- As argued in detail in Singh (2002), the main merits of this proposal may be summed up as follows. A large body of research on mergers indicates that, on average, they do not appear to improve economic efficiency, and that the mega-mergers have the potential of increasing market dominance and reducing contestability. Discouraging such mergers would therefore enhance global competition and global economic efficiency while at the same time being distributionally more equitable.
- The governance of the ICA would have proper representation of developing countries and would not be dominated by developed countries.

Although international co-operation on competition policy, in the form outlined above, would be of particular benefit to developing countries, it also has useful features to assist the large multinational corporations. The International Competition Authority would, for example, be able to provide multinationals under its purview with unambiguous decisions on mergers and other competition related matters. Instead of being subject to the often conflicting decisions of many different jurisdictions (e.g., the United States, the European Community, Japan, and over time countries like India and China), the International Competition Authority's rulings would prevail overall national and regional jurisdiction.

There is no illusion that an international agreement of the above kind would immediately be acceptable to advanced countries. Nevertheless, it indicates the nature of economic arrangements in this area, which would best serve the developmental needs of poor countries. It may, however, be helpful to proceed to the establishment of the ICA in stages. At the first stage, the Authority may have no coercive powers but simply be able to monitor and to report on abuses of dominant market positions, on mergers, and the Authority's other competition objectives.<sup>2</sup> Such monitoring would itself be beneficial to developing countries as it would provide them with information on cartels and on market power abuses of multinationals. Developing countries would find it difficult to acquire such information otherwise. With the experience gained from this kind of limited international co-operation, nations can, over time, work towards greater co-operation by giving ICA the necessary powers to enforce its rules.

### **Corporate social responsibility**

I turn now to the second question—this is more difficult to answer. I believe it is necessary to have a new CSR agenda, as the previous one has been rather limited in some important ways. Hitherto, the CSR agenda has consisted of minimal labour standards and environmental standards being implemented by the corporation. The anti-sweat-shop movement, together with a number of other NGOs, has played an important part in encouraging the implementation of corporate social responsibility along those lines. They have been criticized by the more orthodox of my colleagues in the economics profession in the US for putting obstacles in the way of globalization and thereby hindering development in the poor countries. I am not a great enthusiast of globalization as currently implemented—a regime of free trade, free capital movements and instead of free movement of labour, domestic labour market flexibility. I believe that this regime is sub-optimal for both the rich and the poor countries. Apart from being iniquitous, it is also highly inefficient, as a consequence of which the world economy is growing much below its potential.

Notwithstanding my serious reservations about the globalization project, I nevertheless have some questions and observations on the work of the anti-sweat-shop activists in relation to corporate social responsibility. I shall concentrate my remarks on labour standards and, for reasons of time, only towards the end briefly discuss environmental standards.

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<sup>2</sup> Scherer (1994) makes a similar point in relation to his proposal for an international agreement on competition policy.



As far as labour standards are concerned, the basic difficulty is that in a country like India only 7 per cent of the workers are in the formal organized sector. This section of the workforce is protected by labour legislation and is represented by unions and is thereby able to reach the minimum labour standards, which one may expect in a poor country. However, 90 per cent of the workforce is in the informal sector, without suitable legislation or appropriate modes of representation. A large proportion work in the agricultural sector and about half of them are self-employed or smallholders. The ILO Conventions, which were drawn up to fit the needs of European countries with well-established categories of workers and employers, are hardly suitable for organization and representation of this vast mass of working people in the informal sector in the Third World. Here there is a genuine challenge for the anti-sweat-shop activists in the United States and elsewhere: how do you bring labour standards to this colossal informal sector? It requires some fundamental changes in thinking about these issues.

The US trade unions emphasize the freedom of association and free collective bargaining as fundamental human rights. However, it is at least equally arguable that reducing poverty and preventing hunger, which are also internationally accepted goals, should have the same status as these freedom of association and collective bargaining Conventions of the ILO. It becomes necessary to ask whether promoting labour standards in the formal sector is the best way to achieve poverty reduction in developing countries. In principle, and I emphasize “in principle”, promotion of labour standards in the small formal sector can lead to reduced employment in this sector and an even greater burden on the informal sector. There is, however, no evidence that this has happened so far in relation to the work of the anti-sweat-shop movement (Elliott and Freeman 2003). However, what is needed are ways to reduce absolute poverty: this objective deserves considerably more attention from the activists than it appears to have received. The activists have been extremely successful in rousing consumer concern over sweat-shop conditions in developing countries and convincing many Americans to be willing to pay more for goods produced under more humane conditions. This is a remarkable achievement in the context of aid fatigue and other similar phenomena in rich countries. I would hope that students would be equally ingenious in devising ways to reach the informal sector in poor countries in relation to labour standards and in eliminating absolute poverty. The relationship between labour standards and reducing poverty requires deeper consideration.

I would like to end on a more positive note. The successful efforts of the anti-sweat-shop students in changing at least some consumer perceptions and tastes have important implications for other areas, including the environment. In relation to the environment, a central issue has always been the question of consumer preferences. From the point of view of production, one could produce either pollution (for example, polluting a river through waste from economic activity) or anti-pollution (for example, activity to clean up a dead river). Which of these activities will be chosen depends on consumer preferences. If the students can persuade the people in rich countries to prefer anti-pollution to pollution activities, that would be a genuine cultural revolution which would not only affect the North but also would be widely emulated in the South. So here is another huge opportunity and challenge for the anti-sweat-shop activists. To sum up, a new agenda for corporate social responsibility must include, in addition to labour standards, the issues of poverty reduction and the informal sector, as well as changing public preferences on the environment.

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## **Guy Standing**

International Labour Organization (ILO), Switzerland

Ajit Singh has covered many of the issues and I agree with much of what he has said. In fact, I am going to speak to you about a rather different type of project and I very much hope that even though it is different there will be some value added. I am glad that the session is called “Beyond Corporate Social Responsibility”, because I hate the term, so I am hoping that we can reach beyond wherever it is. I think that the CSR stuff is dangerously public-relations-oriented and is very vague. My own interest in this area began in the 1980s when I had the distinction, or otherwise, of being an advisor to Mahatir in Malaysia and we didn’t have any information on companies operating in the country, so I proposed to do a National Survey of corporations. We conducted one of 3,000 companies and since then we have been developing the instruments that I am going to be talking about this morning. And those of you who have research interests who would like to work with us and have access to our data are welcome to contact us after this meeting.

Now the question I wanted to pose was: What would make a good firm in terms of its treatments of workers in developing countries or in transition countries? I think we should differentiate between what firms should not do, what firms should do, and what firms could do, if possible. Now clearly we expect a good firm to do more than respect the minimum or core standards, but very rarely do we go to the other point and say that there are limits to what we would like firms to do. And, as mentioned, the book I have written, *Beyond The New Paternalism*, I genuinely believe that state policy and enterprise policy at this stage of development are in danger of becoming highly paternalistic and coercive and directive in prospect. Clearly, the state is downloading its responsibilities for social policies to firms, to NGOs, to churches, to charities and so on, and this you see wherever you go in the world. The nearest historical model is early twentieth century paternalism in the United States, commonly called “welfare paternalism” and the sort of corporate citizenship that developed out of it. And I think there are dangers of that that are implicit in the CSR literature.

We have been doing these establishment surveys, collecting extremely detailed information on labour practices, social practices and the economic issues of companies. We have done about 20 surveys, and I will refer to some of the latest to give you a sense of where we have been doing them. The data has been collected through very complex visits which last many hours, collecting a lot of detailed micro information from managers, from union representatives and so on, so we have a database which is extremely rich on labour issues.

Now what I want to do is to say something about what sort of labour practices we would want good firms to pursue and to see in fact what firms do actually practise. If you go to a developing country—and we have just done a survey in Tanzania—the most basic thing you would want a firm to do is have separate toilets for men and women—as basic as that. Corporate responsibility starts there. But you can build up and look at what sort of responsibilities you would want firms to accept and build in accountability rules and regulations that are easily implemented even in the poorest countries. We can build from basic principles a model of what you would expect a good firm to do, starting with four principles.

The first principle is what I call “the dynamic efficiency principle”. There are all sorts of efficiencies, but the key one in terms of accountability and a good firm is dynamic efficiency because that is where bargaining comes in and that is where roles for stakeholders exist to put pressure on management. The second principle is “the shadow of the future principle”. It is very important to know that the people you are bargaining with now are going to be the people you are bargaining with tomorrow. There must be the shadow of the future because otherwise opportunism will always dominate the discourse. Clearly this principle must be



reflected in the practices of a good firm. The next principle is what I call “the security difference principle” whereby a good firm should promote adequate security but give precedence to improving the position of the worst-off—the workers, the suppliers, the contractors. And, very critically, the “efficient inequality principle”, which I think the ILO should be advocating, is very crucial in this modern world where we know pay differentials between executives and ordinary workers have widened to absolutely disgusting proportions. This principle is something that economists could use far more effectively. And the fourth principle is “the paternalism test principle” which should be used at the macro-level. We have a lot of literature on how this applies at the macro-level, but also within the confines of a firm. As I said earlier, I feel it is very dangerous if firms step outside and become social policy advocates and get plaudits for doing things that it would be much better if the state were forced to take responsibility for.

In the short time remaining I will try to give you just a flavour of what it is we are doing, and the statistics and indexes we are using. What we are trying to do is to say, OK, can you identify the practices inside a firm that you would regard as decent and good? And clearly you should take account of commitments made by management but also the existence of mechanisms to put those commitments into practice and then you should have information on the outcomes. We have used measurable indicators and converted them into an index.

First, we are taking a low-hanging fruit approach to this. We start by saying that a good firm provides training for its workers—and training not just for those who come into the firm but for those going through the firm throughout their careers, or for however long they are with a firm. You can do this with small firms, you can do it with multinationals and you get a picture. And I can assure you that the data shows some remarkable pictures even at this level, where you get a lot of firms that you would expect to be providing training and a training environment but don’t, and quite a lot that you would not expect to provide training actually do.

That’s the easiest part. You then go to the next stage and you say, what sort of accountability and responsibility would you expect beyond that? And we move to what we call “social equity” which includes non-discrimination, work security, occupational health and safety, and all the basics of that, and the provision of employment security. You can see they are pretty fundamental, and you would expect a good firm to do these sort of basic things. In terms of actual measurements, what we have are indicators of the number of accidents, a number of workdays lost, all those things that I mentioned before, toilet access and the rest of it, and you can use those according to different countries and different types of firms. As regards non-discrimination we have got a variety of measures and firms get a higher score if they are not discriminating against women and they are showing a willingness to employ workers with disabilities, provide facilities for such workers, and so on. Similarly for employment security we have various basic measures. Then you go beyond employment security and the next one you reach—and I am being very telegraphic given my limited time—is in terms of saying “a firm should be economically equitable”. Now what does that mean? Well, in terms of looking at incomes of people working for an enterprise, there certainly must be an effort to minimize the differentials for workers with an effort made to improve the conditions of the least well-paid workers in a firm. But also the firm should be encouraged to recognize—and the data show that this is the case—that those firms that are economically equitable in the way they treat their own people actually do better than those that do not. There are very good psychological reasons for that and it is an encouraging result. This is the case of South Africa where we have done two surveys.

Now the next stage and the final stage—and this is where I get into most difficulty with some old-style employers and trade unionists—is to incorporate economic democracy. Basically the argument is that, if democracy in the twenty-first century is going to be meaningful, then it has to be economic democracy as well as political democracy, and that means forms of



democracy within corporations and not just at the political level. Clearly, this is the point where often you have the most animated discussion about how this can be measured in particular countries. All I would like to say is that if you can have indicators that you like, and I don't like, you can try several variants and see which work better, and it is a matter of negotiation. I think it is important that incentives have to be given to all while having monitoring mechanisms limiting opportunism. This is a clear aspect of voice that is essential. I don't like the term "social dialogue", so I am ashamed to have put this slide up, but collective bargaining and negotiations are the essentials that are required of a good firm.

I want to end with a few of the standard criticisms. If you say that a good firm has all these qualities, the standard neoclassical position, say a Milton Freedman, would say, "that's all very well having all these delightful qualities, but then the company will go bankrupt". So it is very interesting that we have got these data for thousands of firms, something like over 20,000 firms, including big multinationals to small-scale informal activities, so we are able to do some correlations and multivariate analysis to look at the links between a good firm in terms of its treatment to workers and other characteristics and its performance. This is where Mozart starts to play, because the results from around the world are remarkably encouraging. Firms that have these characteristics and score high in terms of being a decent workplace, having economic democracy and economically equitable practices suddenly seem to perform better than those that do not. There are a number of variables that we have looked at. One is capacity utilization. Everyone could say, which is cause and which is effect? But the interesting thing is that at least there is this compatibility with having these practices and performing well. Another case is in Indonesia where you can see the companies that score high in terms of their decent work practices have been doing well and this is in the period following the Asian crisis. Another case is with China, but I could have given other examples. As regards productivity, firms with a high score, in terms of decent work practices, and don't forget that means commitments, having mechanisms and having good outcomes, have higher productivity than other companies.

So why don't more companies have decent work practices and act more responsibly towards those people to whom they should be responsible—the workers? I think the argument of market failure, a lack of information, is very important. For my pains and also for my privilege, over the last 10 years, I must have visited and spent many days interviewing managers of literally hundreds and hundreds of firms around the world in very different circumstances—in the heart of Russia to the heart of Africa and South Asia and Latin America. And I think that the lack of information is the biggest thing that impedes good practice.

The last point—to those who say I don't like your measure of this or that, first I would say, it should be left to negotiations between the workers and employers and civil society groups that have a stake in these issues to determine what are the desirable attributes of good firms. But you can also test it with the sort of data that we have collected—if you say that unions are bad, see what happens to the outcome and the correlations when you drop the union variable. It is an instrument that enables you to have a more specific approach to decent, responsible and accountable practices than many of the more vague callings for work in this area. It is something that we are constantly refining and there are obviously deficiencies in every type of survey, but I think it's a powerful instrument to peer at practices and see the implications of different practices in terms of outcome. Of course, one could extend the same sort of instrument to non-labour issues—environmental, social issues as well.





Conference on

**Corporate Social Responsibility and  
Development:  
Towards a New Agenda?**

**Panel 5: Corporate Accountability and  
International Regulation of TNCs**

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## **The Corporate Accountability Movement: With Courage toward Coalition**

**Dr. Jem Bendell**

UN Non-Governmental Liaison Service (UN-NGLS), Switzerland\*



I've been advised to say that I'm speaking in my personal capacity so I have sought to make this indeed quite personal.

It's nearly 2004. We're nearly into the fifth year of this first decade, which the marketers would probably call the Noughties if everyone wasn't so stressed out about debts and terror. Even for marketers, things haven't been getting much better recently. Is this because we really are, as the Calvin and Hobbes' cartoon suggests, so stupid?

Perhaps. At least then we might believe in what we are doing here today. We are meant to be learning from each other—improving our knowledge and thus the intelligence of the human race. I presume some of you believe in creating and sharing knowledge to make the world a better place. Perhaps even a place that intelligent life might want to come and visit.

But is a lack of intelligence really why things aren't getting better? After 8 years of professional research I'm beginning to think that we don't lack the knowledge—we lack the courage. We chose to ignore the reality of our planet. We make up stories that help us to rationalize our comfortable existence. No, Calvin and Hobbes. People aren't stupid. They are clever enough to know that power is key, and if they challenge power they risk being hurt, and hurting the ones close to them.

So we must have the courage to start speaking truth to power. My own truth is this. Humanity is being undermined by corporate power. Now what people hear depends on their own experiences and assumptions, and perceptions of the person who speaks. So I must point out that I make this statement as someone who has been working to promote voluntary corporate responsibility for over 8 years, working on developing the FSC in 1995, devising the MSC in 1996, writing a book about this with David Murphy in 1997, and then spending the following years working on improving voluntary initiatives. But this experience, along with other research and readings, have led me to conclude that humanity is being undermined by corporate power. There's a wealth of economics, political science, sociological and

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\* Jem Bendell spoke in his personal capacity only and his comments do not necessarily reflect the views of the UN-NGLS.



anthropological research to demonstrate this simple reality, which I won't go into today, but some of which I summarize in my paper for UNRISD, out early next year. The knowledge is there. What I want to suggest, is that many of us who are exposed to this knowledge that corporate power and global capitalism are at the root of our problems fail to act responsibly on this. We know that radical rhetoric for the media, letters to politicians, and petitions to international organizations, and even our sacred publications are of limited use... And we know that doing some good projects won't address the structural problems. No nation ever developed because of a few voluntary partnerships.

It takes courage to embrace certain knowledge. Recognizing where the power is today and deciding to tackle it is a difficult first step. The second is equally tough—the inglorious process of trying to build coalitions and constituencies for change and always being careful about how your own power, own ego and self-interest could send you off track at any moment.

In my paper I write about those people who give me hope, because they do have the courage of their convictions and are acting on them. The paper, which UNRISD publishes early next year, is the product of a year's research on campaigns that call for corporate accountability. It provides a contemporary history of what we could call the "corporate accountability movement". It's not possible to do this justice in 15 minutes, so instead I'll focus on clarifying some terms and highlighting some contexts and initiatives that suggest the term "corporate accountability movement" is relevant today. So, before going any further, like a good academic, I should clarify some terms: corporate, accountability and movement.

What are corporations? To answer this we need to look behind the logos and at the legal form of a corporation and its history. Corporations were invented at the end of the sixteenth century as a means of managing colonial trade. Being chartered by European governments to undertake specified activities. In the following centuries their legal form slowly changed as they were given more freedom to choose their own activities. Today, in most countries, creating a corporation means establishing a legal identity, distinct from the people who run it. It becomes a "legal person", as opposed to a natural person. This is useful in a number of ways. First, unlike us, the corporation is not certain to die, so inheritance tax is avoided. Second, it has some civil and legal rights, so can go to court. Third, it can limit liability or, in other words, shield those who own or run the business from some of the responsibilities of their actions.

These privileges have caused some concern. First, as legal persons they can claim rights such as free speech, allowing them to influence political processes and sometimes overturn restrictions on advertising. Second, limited liability is problematic when corporations create subsidiaries with separate legal personality, which do risky and dangerous operations, like transporting crude oil or nuclear fuel. The parent corporation, being only a shareholder in the subsidiaries can not easily be held responsible for the actions of the subsidiary. These aspects of corporations have helped them acquire significant power, with limited accountability.

Concern about this is not at all new. Throughout history people have questioned the corporate invention. In the United States, Abraham Lincoln was particularly concerned about the implications of corporate power for democracy. In 1864 he lamented that "corporations have been enthroned", and suggested that "an era of corruption in high places will follow . . . until wealth is aggregated in a few hands . . . and the Republic is destroyed." He feared creating a monarchy of the monied. Something we could keep in mind as Bush the II meets Elizabeth the II tomorrow.

So, that's the corporation, the institutional form behind the logos. Now to accountability. The Merriam-Webster dictionary defines it as "the quality or state of being accountable; especially: an obligation or willingness to accept responsibility or to account for one's



actions.” Key words here are obligation and willingness. To most people accountability means not just giving an account but being held to account—with an element of enforceability implied. Thus the definition of accountability I use is the quality of being regulated by those you affect. Therefore, corporate accountability can be defined as the ability of those affected by a corporation to regulate that corporation.

The fact that corporate accountability is often used interchangeably with other terms like corporate social responsibility has helped to muddy the waters. However, more people are identifying a key divide between those who regard corporate power as a problem, and those who either accept it or consider it as an opportunity, if engaged appropriately. The latter are said to be involved in “corporate responsibility”, and the former involved in “corporate accountability”.

Now to “movement”. “Social movement” is defined in *Encyclopædia Britannica* as a “loosely organized but sustained campaign in support of a social goal, typically either the implementation or the prevention of a change in society’s structure or values.” Now, you can’t look out of the window and see a movement, like you might see a tree. You could see some people, banners, buildings, hear some views, which together, you may choose to understand as constituting a movement. So to say something is “a movement” is a political activity itself, suggesting that certain people and events are linked by beliefs or experiences, and are moving towards a common goal. So defining “a corporate accountability movement” is important, as it may help people who are doing different things recognize how they relate to each other—and how they might.

A few years ago Robin Broad and John Cavanagh noted that there was no “self-conscious” corporate accountability movement, as many activists were not yet making the connections, and were unaware of the history of struggles against corporate power. Broad and Cavanagh were looking at the brand-bashing campaigns of people concerned about sweatshops, dolphins, forests, pollution, and so on, and linking these to calls for greater accountability. However, as we know, these campaigns led to voluntary initiatives, not often legal reforms. They were precursors to a corporate responsibility movement, if anything. Is the concept of a corporate accountability movement useful today?

I believe it is. One reason is that a variety of contexts are coming together which suggest that new coalitions for corporate accountability are possible. The importance of these contexts depends on where you live, and some are particular to the industrial North, but have implications for the majority world.

The first context is anti-globalization and its maturing into a global democracy movement. Seattle was important because corporate media picked up on the concerns and work of people whom they had ignored. Hopefully you’re having a fairly comfortable stay in Geneva. If you had visited in May, we might have provided you with a slightly different welcome. The G8 Summit was the latest instalment in the ritual parade of politicians and protesters. Hopefully your response to our hospitality will be slightly more favourable than that of our visitors in May. These fights shouldn’t distract us from the fact that those initially brought together under the banner of “anti-globalization” are now promoting a counter-globalization of different values and priorities. The World Social Forum explains that all the alternatives are “in opposition to a process of globalization commanded by the large multinational corporations.” This movement has once again re-opened a debate about capitalism and corporations, creating some political space for the discussion of innovative policies.

Another trend is that more human rights lawyers are directing their attention to corporations. The legal infrastructure and precedents for applying international law directly to corporations are weak. Prosecuting corporations in their home country for abuses committed in other countries, by their subsidiaries, is one means of addressing the problem which has increased



in recent years. There is now evidence that in various courts human rights conventions and soft laws are increasingly considered in relation to corporate prosecutions. Further evidence of this trend came when the United Nations Sub-Commission for the Promotion and Protection of Human Rights adopted human rights norms on the responsibilities of corporations.

A third context is the end of the dotcom boom and subsequent accounting scandals in the United States, which brought down companies like Enron, Worldcom, and Arthur Andersen. Despite attempts to portray this as a few rogue elements, many people have realized that the problems are more systemic. Prosecutions, new authorities and regulations have been forthcoming, the impact of which is yet to be seen. But they will not be the only lasting effect. The simplistic celebration of Anglo-Saxon models of capitalism and the corporation is over, and its promotion around the world now questionable.

Moreover, this has added to debates about the role of a corporation in society, which increased in the West in the past decade. CSR is something that most companies must now have an opinion on, a massive change from just 10 years ago when it was extremely difficult to find a manager of a publicly listed company who would accept responsibility for the social and environmental credentials of their operations or suppliers, aside from being within the law. The myth of business being a purely economic activity has been shaken.

Although some CSR evangelicals may claim otherwise, research and experience shows that there is no hard and fast rule that you can make more money by being good. It depends on the industry and the place. Individual companies who want to go green, or improve their practices in developing countries could be undercut. They have a self-interest in levelling the playing field upwards.

Meanwhile corporate friendly NGOs are also re-considering CSR. The Joburg Summit not only marked the crowning of CSR and voluntary partnerships on the intergovernmental scene, but it witnessed a co-ordinated critique of this, as NGOs from the North and South formed the coalition Peoples Action for Corporate Accountability (PACA).

My paper suggests these contexts and trends create potential for progress towards corporate accountability. We hear more on this from NGOs everyday. Christian Aid, Oxfam Australia, Greenpeace, The Consumer Unity and Trust Society and The World Wide Fund For Nature are all calling for a stronger framework for corporate accountability, and Amnesty International has announced it will campaign for the legal accountability of corporations for human rights under international law.

Some are testing existing mechanisms. Groups from eight countries have filed an official complaint with the OECD against BP and others involved in the construction of a pipeline from Azerbaijan to Turkey. Like the Trade Union Advisory Committee, they have also produced a handbook on using the OECD's guidelines.

Various groups are now forming coalitions to work for specific accountability objectives. One example is the Publish What You Pay campaign, launched last year as a coalition of more than 70 NGOs. It tackles the problem where companies pay billions of dollars to Southern governments which disappears, fuelling corruption and conflict. The campaign says that relying on companies to disclose information voluntarily has failed and they call on the G8 governments to require companies to publish what they pay. This initiative is a watershed, because although it seeks legislation on the transparency of corporate operations in foreign countries, it avoids anti-corporate rhetoric and focuses on a specific problem and solution, for which it makes a business case.

Meanwhile a coalition of 200 groups in the United States have launched the International Right to Know campaign, which calls on the government to require companies traded on US



stock exchanges to disclose information on the social and environmental impacts of their overseas operations. Arguments presented under sub-titles such as “faith in US companies” and “US leadership” suggest that their regulatory objectives will benefit business. In the United Kingdom the Corporate Responsibility Coalition (CORE) is also pushing for regulation on corporate disclosure.

Most of these proposals seek to use existing state governance mechanisms to support new forms of local or supra-state governance. By requiring transparency and consultation the intention is to empower local governance.

Will this lead to anything? Neoliberalism is more advanced than in the 1970s and 1980s when the previous big push to tackle corporate power was thwarted. The 1990s witnessed the consolidation of corporate property rights at the international level, though trade agreements, such as TRIPS, GATS, and NAFTA. Many Southern governments are involved in the neoliberal project, either by choice or imposition, and focus on attracting Foreign Direct Investment (FDI). At a time when everyone is deregulating here are some people proposing new regulations! Is it just rhetoric? Perhaps. The only way this will work is if the new contexts are used, and new coalitions are formed across sectors and regions.

This means shifting CSR out of its current Pharisee mentality, where companies try to show how good they are. If individual managers are truly interested in tackling the problems of the world, then they need to channel their institutions power towards supporting greater accountability. Just because I won't kill anyone, doesn't mean I believe there shouldn't be a law against murder, or that I wouldn't be worried about people getting away with murder. The responsibility of one is to promote the accountability of all.

Coalitions will also need to be forged North and South. My research shows that currently there is minimal engagement between Western NGOs working on accountability and Southern business, civil society or the Southern delegations to intergovernmental bodies. Without this, initiatives like the Norms developed by the UN Sub-Commission may not progress much further.

Coalition building like this presents a variety of challenges arising from unequal power relations. Thus we not only need the courage to build coalitions but to be prepared to be self-critical as they develop. So, we are back to courage, rather than just knowledge.

You're here at a meeting of a research institute of the world's premier international organization. If aliens were seeking to hear some intelligence from the human race might they descend on this room? If so, what would they see? A group of people who chat, swap cards and return to work on things dictated to them by whoever buys eight hours of their day? Or perhaps they would see something different. See people who decide to act. But what if those actions challenge power? Will they see people ignored, marginalized, un-funded?

Our challenge is shift our inquiry, our research, into how we act, how we not only get heard, but how we get to shape decisions that shape people's lives. It is through this that we will reveal knowledge, find wisdom, and make the world a better place.



## **Janelle Diller**

International Labour Office, Switzerland

### **1. Introduction**

I have been asked to address the relationship between CSR and development agenda in the context of the work of the independent World Commission on Social Dimension of Globalization (WC/SDG), and the work of the ILO itself. First, I will touch upon debate and discussion of these issues within the ILO-convened World Commission. Of course, my remarks do not represent views of the Commission itself, whose Report will be published in February 2004. Then I will consider the potential role of the ILO's Multinationals Declaration and similar international commitments, and provide several examples of how ILO works with companies, unions and governments to facilitate development-based approaches in CSR initiatives.

### **2. First, discussion and debate within WC/SDG on CSR**

In a way, the World Commission has served as *a microcosm of the debates elsewhere on CSR, globalization and development.*

- The WC is composed of 21 eminent persons with two co-chairs who are sitting presidents (Finland and Tanzania). Ex-officio members include the DG of the ILO and workers' and employers' representatives.
- The WC mandate is very broad: to review the implications of globalization for economic and social progress, and to recommend innovative ways of combining economic, social and environmental objectives, to meet the needs of people.
- WC debates have fully considered the important contribution that CSR can make, and these discussions are intended to be reflected in its Report and recommendations for follow-up.

In its deliberations, the Commission has considered the wide range of contributions and interests of the many different actors engaged in globalization—governments, workers, enterprises, international organizations and civil society groups.

*One uniting focus has been the common values* that all these different actors share—values like democracy, human rights, the rule of law, and solidarity.

- These universal values are viewed as guiding the path for a fair governance of globalization—a governance that involves sharing responsibility among all the actors—public sector, private sector and civil society within their respective spheres of influence.

*How does CSR fit in?*

- CSR is an area of voluntary initiative in which enterprises develop their own approaches that go beyond legally-required action to consider the impact of their activities on their workers, communities of operation and other stakeholders.

*Employer members of the Commission* have stressed the distinction between CSR as a type of self-regulation, on the one hand, and statutory regulation of companies and industrial relations by public authority.



- They have acknowledged, as does the ILO, the important and primary role of national legislation in keeping with universal standards, and national capacity to monitor and enforce labour laws.
- *In this approach, CSR is considered as a complement, not a substitute, for government regulation and social and economic policy, including development strategy.*

So the key issue has been how to *build bridges between self-regulation and government policies to ensure that the effects of CSR truly complement national efforts?*

### **3. I will highlight several ways of doing this from ILO's experience.**

3.1 *First, CSR efforts should be in line with internationally accepted principles and standards [—including reporting and performance measures for MNEs and local suppliers].*

Why international standards?

*As I mentioned, International standards reflect the universal values and priorities of the entire international community and these include development principles and priorities.*

In the world of work, universally agreed values are found in international labour conventions and other legal instruments. These instruments are agreed within ILO in a *process of shared power* among representatives of governments, workers and employers involving participation of over 175 countries within ILO. This is important because it *reflects the consensus not just of political authority but also those who hold economic power and social legitimacy.*

There are some 180 such conventions, but the single concept of *decent work* captures their objectives in a nutshell. Decent work *identifies certain essential elements of development that bring social justice*, including needs for fundamental rights, full employment, social protection and social dialogue.

They are also *tools to building development capacity within countries, both in public sector institutions and through self-regulation.* Although they primarily address government obligations to take specific measures, their success is only possible with employers and workers equally involved in achieving the goals.

How can these tools operate in co-ordination with CSR initiatives? In two ways—as to principle, and methods of practice.

- *First, the targets within codes, reporting and certification systems, and investor funding screening funds should be fully consistent with universally-agreed framework of goals and priorities:*
  - In a pioneering study in late 1998, ILO reviewed 200 codes of conduct and found that they varied greatly in selection of labour issues to be treated and in defining core targets such as child labour and freedom of association.
  - Less than 15 per cent were concerned with freedom of association, even though it was recognized internationally as one of the four *interdependent* categories of labour rights essential to enabling other rights and to social development; no “*pick and choose*” approach was endorsed at the Copenhagen Summit or in ILO instruments, including the Dec on Fund Principles and Rights at Work. Even some that did include the subject treated it inconsistently with global





goals—e.g., one company set its goal as “a trade union-free workplace”.

- *This consistency relates to specific methods of development and implementation of the initiatives.* International labour standards contemplate the use of social dialogue and accountability mechanisms that set the role of self-regulation in context of the broader functioning of markets and society.
  - The methods include *social dialogue* among freely-chosen representatives of those affected, *accountability mechanisms* like grievance procedures and training, and *corrective action and remedies* for injuries and justified complaints.

3.2 *Second*, to be development friendly, CSR must contribute to, and not undermine, the development of *industrial relations institutions* that are necessary for decent jobs and can raise standards of living.

- What are these development institutions? Labour inspectorates, small and medium firms in developing countries, employment services, vocational training for skills employability, trade unions with meaningful participation of women members, and social dialogue mechanisms that lead to recognizing grievances, dispute resolution procedures.
  - With this in mind, consider the recent initiatives discussed here: (ISO, UN Norms, OECD NCPs):
    - Are *the participants* in the initiative those most concerned?
    - Are *international standards* determining the reference points?
    - Are the initiatives serving as *opportunities to strengthen local institutions*? To what extent, e.g., are employment challenges and disputes being channelled to institutions that resource social dialogue? Or are they acting as alternatives, undermining development of national capacity to handle such disputes?

#### 4. So what tools does ILO offer to help support development-friendly CSR efforts?

4.1 First, a key tool is the ILO *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*, 1977, rev. 2001. This non-binding instrument has been called the “mother of all CSR benchmarks” in the world of work. It offers *practical guidelines inspired by international labour standards* for building decent work in cross-border investment operations.

A *key distinction* between this instrument and other publicly-endorsed multilateral guidelines (OECD, UN draft norms etc.) is its *built-in premise that MNEs cannot act responsibly in isolation*. The key to good social policy in MNEs is discussion and co-ordination with governments (host and home), trade unions, and employers’ organizations, including local enterprises.

ILO has published a Users Guide to the MNE Declaration with *concrete examples* of development approaches to CSR. The Guide proposes *qualitative and quantitative elements* to use in putting the principles into practice across industries, in workplaces and communities of operation, and in home countries.

4.2 Second, another way to support development-friendly CSR is to *encourage more broad-based industry level partnerships that contribute to local institutional development*. These partnerships can engage enterprises, employers' organizations, unions, co-operatives, governments and related civil society organizations in programmes that combine globally agreed values, local policies, and monitoring and certification capacities.

- One example is the programme underway in the cocoa sector with ILO's child labour elimination programme (IPEC) in 5 countries in West Africa.
  - *Financed by global industry partners*, the programme aims to build development while eliminating the child labour threat to decent work.
  - It is establishing *child labour monitoring systems*; creating *awareness* within communities and concerned public and private agencies about the hazards of child labour and the benefits of education; delivering *systems of social protection*, such as education, and *training* to families, older children and other groups; and strengthening public *agencies*, including the labour and education departments, through training and information, and encouraging *updating and improvements to law and regulation* related to child labour, and enhancing *the capacity of producers* themselves.
  - *Project partners* are the strength of the design: they include locally-based NGOs, workers' and employers' organizations and public sector agencies, research agencies and international agencies.
  - Expected direct and indirect beneficiaries include *nearly 80,000 children below age 18*, of these, *nearly 10,000 below 13 years* to be taken from child labour; *some 70,000 involved in hazardous or exploitative child labour* will be protected through occupational safety and health outreach interventions, including literacy. *500 families* are expected to receive training, income-generation, credit loans and other benefits to encourage small-scale enterprises and job skills.

4.3 Third, ILO offers global scope of dialogue and information to help companies pay *attention to the bigger picture*. This involves *evaluation of how existing investment and competition strategies are affecting employment promotion* and what a company's role in macro-economic policies across countries. It encourages CSR actors to better respond to and *support national planning processes for development* and poverty reduction.

- Through the MNE Declaration, MNEs have the means for dialogue and gaining a deeper understanding of the situations of their key market partners—local workers, governments and enterprises.
  - *A global reporting follow-up mechanism* provides useful information on interaction between FDI and national planning processes; the most recent survey of this sort analysed the impact of MNE strategies and practices on development policies in 100 countries for such goals as employment creation, improvement of living standards, and enjoyment of human rights, among other factors.
  - From this *base of dialogue and understanding*, ILO engages in technical assistance to address workers' and enterprises' needs as well as improvements in law and public institutional capacity. [These projects have taken a similar partnership approach to those of IPEC—they include MNEs, local employers, trade unions and government authorities in specific sectors and regions (e.g. agriculture in East Africa and oil and gas in Central Asia).]
  - With this information, companies could engage in *voluntary development impact assessments* to help make more informed choices for investment and economic growth that will encourage *skills development, employability* to



better prepare workers and whole communities or countries for sectoral shifts in global market demand.

## 5. Conclusion

How do these approaches relate to increased efforts at accountability of MNEs?

*By ensuring that CSR principles and practices are in line with globally shared values, and developing participatory frameworks in which CSR can contribute to, and not undermine, the development of industrial relations institutions, we are taking concrete steps in the direction of genuine contributions to decent jobs and higher standards of living.*

*It is true that CSR built on global values is a complement and not a substitute to government regulation and public policy. But, in this world of globalization, it is a necessary complement because it takes everyone in society to make markets and communities work well for everyone.*



## **Dwight Justice**

International Confederation of Free Trade Unions (ICFTU), Belgium

I want to thank UNRISD for inviting me here because in looking at a new agenda for corporate social responsibility it is good to break the tradition and not have conferences on CSR where there are no trade unions present. Essentially, I think that trade unions have to be seen as the principal private means by which business activity was made consistent with the social interests of society and for taking corrective action to deal with the negative impacts of business activity on society. This is often overlooked and it is actually a central point in the discussion. There has been no more effective counterbalance privately other than trade union organization.

I spent a few years living in Illinois and I just have to follow Jem Bendell with another Abraham Lincoln quote. He was also famous for saying that labour is prior to capital and deserves a higher consideration. I think that is a very good answer also to some of the people who emphasize labour rights and labour standards in the discussion of corporate social responsibility. The fact of the matter is that apart from generating wealth, often the major impact of business activity on society is its impact in the world of work.

The discussion here is about accountability and development and I think it is useful to look and see where CSR fits into this accountability idea. In the area of CSR there has sometimes been a dialogue of the deaf because when you use the term corporate social responsibility, some people think you are talking about what are the established social responsibilities of business and other people think that you are talking about a certain kind of system of business ethics. Now if you go and see how the term is used by business and by the emerging CSR industry, you see that what they are really talking about is a certain kind of system of business ethics which says that in the area that is not binding, businesses should identify and account for the impact of their regular activities on society. It is basically a notion that places a great deal of emphasis on management systems and on managing social impacts and identifying them. It also is very much dependent on a voluntary approach.

My own view is if that is what we are going to mean, then we need to realize that is not the same thing, as the expectations of what the society might have with respect to the impact of business on society or what businesses are to do. The problem is this: the debate always centres around two things—what is binding and what is voluntary. And, if it is voluntary, it must be optional. The problem is very simple: there are three things, not two things. The problem is that society sometimes chooses to legislate and regulate, but sometimes it expresses its interests in other ways. Some of these might be informal and cultural, and involve non-binding expectations. At the international level, you have some non-binding expectations and agreements but they are not optional because they are applicable, meaning the company or the enterprise does not have to sign onto them in order for them to be applied to that company. An example would be, say, the OECD Guidelines or the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy that Janelle spoke of, and there are others as well. So it's not a question of non-binding and optional, it is optional and applicable.

The second part of the problem is the idea of corporate social responsibility having settled the debate over what should be binding or not. The fact of the matter is it hasn't. There is a large concern over the accountability of business that is independent of this interest in corporate social responsibility. You have a very serious debate over corporate governance occurring in many of the developed countries, reflecting not a failure of voluntary initiatives or responsibilities, but recognizing that there is in fact something seriously wrong with the legal institutional framework by which companies are held accountable in law—not only in law to



the state but also in law to the owners and perhaps other identified people who have an interest in the company. Now that debate—and it includes accounting standards and the relationship of the management to the owners and all sorts of things—is, I think, not totally connected to CSR. It is, if you will, prior to, and more important than the CSR debate because it gets to something more fundamental. I am not arguing that we should not have CSR; I am arguing that CSR does not settle this other thing, which is more important.

The implication of what I am saying is that some of the interest in CSR isn't really an interest in CSR. It is an interest in regulating companies. Also some of the interest in labour standards and some other social concerns, isn't because of the altruism of the consuming public in developed countries, it is that people are genuinely worried about the kind of precariousness that globalization has brought about, and they are beginning to understand that the kind of power that is being concentrated there and the kind of societies that are emerging out of the lack of appropriate legal and institutional frameworks is scary. Interest in some of these labour issues isn't just about kindness, it is an understanding of how they got to be in good societies in the first place and understanding that some of the things that helped countries get rich and become wealthy are in fact being taken away and threatened.

The key problem is that of doing business without appropriate legal and institutional frameworks. You see it in many national environments where the law is not quite being applied. In that context I think the informal question needs to be addressed. But you also see it in trying to organize a global economy with a lack of understanding of how markets work and of what is necessary. Social and economic development can only be separated in the mind and then only after years of training. The fact of the matter is that there is a big imbalance between global rules for a global economy in the economic area and in the social area. Trying to balance intergovernmental agreements concerning property rights with voluntary initiatives of business concerning human rights is only going to end in tears. To the extent that the CSR agenda is partly reflecting a strategy of low-maintenance globalization, I think it will be a failure.

The ICFTU is the organization most closely associated with linking trade and labour standards and that is one component of trying to build a framework globally that would correspond to what we know markets need nationally and what our experience was in making them work. There are many other ways to incorporate in a solid sort of regulatory framework the kind of things that are going to be necessary if the benefits of global economic activity are to be fully realized.

Our view is that there are only two ways that workers are protected in the end—actually two and a half. One is by law and its application, and the other is what they can do for themselves through their self-organization, through creating unions. That is the private version. What they do for themselves through collective bargaining, industrial relations, unions, that is the experience. Now, what is the half way? The kindness of strangers, and our experience is that this isn't very satisfactory or sustainable. As an "approach", it doesn't work. When we look at some of these CSR initiatives, there are attempts to address some of these problems, but we are going to look at them from the viewpoint of what we know to be true. In discussing some of the alternatives to finding out what workers want through buzz groups and surveys and finding out how they can be given voice without representation, which is not possible, we basically have to say, we know this isn't going to work. We have to go back to what we know works and drew from past experience. So we are going to be sceptical of some of this CSR stuff.

What I would like to do very briefly is touch upon certain developments that relate to accountability, if we want to use that word to distinguish it from these voluntary notions. As trade unionists we have the experience of knowing that sometimes we have interests in common with our employer and sometimes we don't have interests in common. We



understand that the sustainability of the enterprise is not the same thing as the sustainability of society that was described at the Rio conference. We understand that while there is high-road behaviour with respect to the workforce in training and everything else, there is not always a business case for doing the right thing. Sometimes you need rules. Our problem with the CSR agenda is that so much of it is dependent upon an almost religious attachment to a business case idea or a faith that contradicts what we have learnt about altruism and philanthropy—we can't depend upon it. Trade unions could not have survived and we would not have advanced if we accepted that or if we accepted the trade-off between jobs at any price and good jobs. Fortunately, the societies where they decided that good jobs were more important than jobs at any price ended up with more jobs, but that's another point.

Now a couple of comments. Regarding the issue of reporting: the problem is that with the triple bottom line you move from the financial, to the environmental, to the social, and in doing so you are also moving into areas of greater and greater intangibility and it becomes very hard to measure and quantify things in a way that is meaningful and comparable. I think that part of the drive for certain kinds of reporting is coming from the investment community. It is coming from the accounting industry, but it is sort of mismatching the sustainability of the enterprise with the sustainability of society. And it is redefining some of the responsibilities that business in fact has. I think we have to distinguish between just reporting for the sake of it and look at the kind of reporting that is actually going to relate to accountability. I am interested in initiatives like the "publish what you pay initiative" because that relates in this case to the accountability of governance. Or requiring companies with long supply chains in labour-intensive industries to report whom they are sourcing from. These can be tied to some form of accountability that I think is different than coming up with certain kinds of derivative numbers that are meant to be comparable, with for example one company having a labour practice index of 17 and another 12. It is important to remember that not everything that counts can be counted and not everything that can be counted counts.

Finally a couple of points about private initiatives. There is a lot of confusion as to whether these private initiatives can become important in increasing accountability because I think there is a tendency to treat NGOs and stakeholders as if they are the same thing when in fact they are not. NGOs can be amongst the elements of a civil society but they are not the only elements; not all NGOs are part of civil society, even though many NGOs are extremely important; and stakeholders and NGOs aren't all the same either. Some NGOs in the CSR debate have been acting as sort of surrogates for stakeholders but not necessarily the stakeholders. I think some of that needs to be sorted out if we are going to look at how to be accountable. It is like the movie "Blazing Saddles" by Mel Brookes and the scene where the sheriff points the gun to his head and says: "Don't anybody move or the sheriff will get it". And the problem is that everybody looked in the room and they saw two people there, but in fact there was only one. What I am saying is that business is running out of stakeholders to talk to and they are creating a lot of them. When you think you see two there, you are only looking at one, so look very carefully. Where is the money coming from? Who are these people and what are they saying? The scary thing is that I went to a conference on CSR in the Americas organized by the Inter-American Bank. It was a governmental conference. They introduced as the representative of civil society the Global Alliance for Workers and Communities, which was a charity created by three companies with a major image problem. Mattel, Nike and The Gap funded this charity and then all of a sudden they were speaking on behalf of civil society. Now I am not commenting on this initiative, but I don't think this is what we mean by civil society or, if we do, it is civil society light.

Let's talk about civil society "heavy duty"—trade unions. In most countries of the world trade unions are usually the largest of civil society organizations in addition to being part of industry and they are about power and also about dealing with some of the forces that normal people can't control. As I am out of time I can't tell you what I think about the private



standard setting that goes on in the CSR initiatives, but let me just say that not all of it is legitimate and business is using a lot of this to redefine its responsibilities downwards.



## **Halina Ward**

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This presentation is aimed at public policy makers and businesses in the high-income countries of the North. It aims to show how law shapes corporate social responsibility (CSR). In doing so, the paper addresses one of the basic dividing lines of the CSR agenda in Europe, North America and Australia—a line between people who argue that CSR should be limited to consideration of “voluntary” business activities “beyond compliance” with legal baselines, and those who argue for a broader starting point, based on an understanding of the total impacts of business in society. As the definitional debate rages, the legal baseline for CSR is itself changing.

Legal analysis has the potential to bring valuable insights to both public policy and business management. Failure to take account of the legal dimensions of corporate social responsibility substantially weakens the chances of making meaningful process in some of the most difficult “boundary” areas about the proper balance between government, business and civil society roles and responsibilities.

Transparency and access to information on social and environmental aspects of company performance are central themes of the CSR agenda. Mandatory legislation on various aspects of business transparency is emerging around the world. It can form part of company law, environmental regulation, or tailored legislation for institutional investors or on social and environmental reporting. Pressure for enhanced public sector accountability has also given rise to calls for company reporting on revenues paid to host government by companies in the extractive industries.

Even voluntary approaches to CSR have a legal context. Laws on misrepresentation or false advertising frame voluntary company reporting, for example. And voluntary approaches such as company codes of conduct can shape the standards of care that are legally expected of businesses. In the workplace, agreements reached through collective bargaining between employers and trade unions can become legally binding through incorporation in employment contracts.

The relationship between voluntary and mandatory approaches is evolving in innovative ways—with broader implications for global governance in an era of economic globalization. The new Kimberley Process Certification Scheme addresses the problem of “conflict diamonds”. It links an intergovernmentally agreed framework of national controls on trade in rough diamonds to industry self-regulation through a system of warranties and “conflict free” guarantees on invoices for rough diamond sales.

Litigation is also bringing new light to the CSR agenda. A new wave of legal actions—mostly in US courts, but also in some EU countries—is testing the boundaries of existing legal principles in relation to some of the most difficult issues of the CSR agenda. For example, a series of cases in the US, France and Belgium are testing how fundamental principles of international law—particularly human rights law—apply to parent companies of multinational corporate groups.

Many of these cases are closely associated with campaigns against companies that invest in countries associated with abusive regimes. A related set of actions has been brought against parent companies in their home territories, testing the circumstances under which they can be held liable to pay compensation to people harmed by their operations in other countries. Many





of the cases present courts with delicate issues about the potential for judges to interfere with domestic foreign policy, or the legitimate policy choices of governments in other countries.

These “foreign direct liability” claims are not the only examples of litigation at the frontiers of corporate social responsibility. One action in the United States has tested the liabilities of retailers in respect of abuses of labour rights elsewhere in the supply chain—potentially reducing the scope for companies to “contract out” the risky operations that might be targeted through foreign direct liability cases. And a legal action in California against sports goods giant Nike is testing whether the US First Amendment on freedom of speech protects companies from litigation over factual statements that they make in response to criticism from non-governmental organizations (NGOs). The implications for the future of company social and environmental reporting, as well as the development of verification and assurance standards, are significant.

Legal actions such as the so-called “McLibel” litigation, or more recently Nestlé’s litigation against the government of Ethiopia, offer examples of a different intersection between litigation and CSR; when litigation proves reputationally unwise. Breaches of minimum legal requirements can also place companies’ reputations as good corporate citizens on the line. For example, action against a cartel that had fixed prices of vitamins around the world drew attention to the CSR implications of basic principles of fair dealing.

CSR also has an international trade law dimension. Voluntary labelling and certification schemes developed in European countries have more than once generated discussion in the World Trade Organization over potential negative impacts on market access as well as WTO-compatibility—an area of considerable legal uncertainty. Companies and public policy makers can play important roles in reducing trade tensions by working to shape a CSR agenda that is more sensitive to, and inclusive of, developing country stakeholder needs and interests.

For companies, the connections between law and CSR raise some fundamental management challenges. One clear message concerns the need for businesses to integrate legal risk management with reputational risk management. That means that lawyers will need to become more involved at the same time as learning from the culture of transparency and partnership that informs CSR. It means “joining up” strategies for day-to-day CSR communication with strategies for communicating about litigation and responding to “bad practice”. And integration between lawyers and CSR professionals is also critical to giving meaning in concrete cases to “best practice” (rather than corporate restructuring) as a response to the emerging legal risks of foreign direct liability.

On the public policy side, the legal dimensions of CSR point to a need to revisit the institutional settings of CSR. Litigation has raised important public policy questions that have not been adequately addressed elsewhere. A global public policy dialogue could deliver integrated solutions—beyond the false “legal versus voluntary” divide—to some of the most difficult outstanding CSR issues. A key challenge is to ensure better integration between national and international policy agendas on good public governance, corporate social responsibility and corporate accountability.

Some tough policy discussions almost certainly lie ahead. For example, the frontier CSR litigation raises substantial question marks over the social and environmental efficiency of limited liability as a mechanism for allocating risk. And the agenda on environmental and social reporting leads naturally to the potential for a future debate on the role of a right of public access to information held by companies.

However challenging the implications, it is increasingly clear that law and litigation are an important part of the CSR toolkit around the world. It is high time to get beyond the tired dogma of “voluntary versus mandatory” to look at the real challenges of ensuring that



economic globalization is coupled with good environmental and social performance on the part of businesses around the world.

Source: Halina Ward, *Legal Issues in Corporate Citizenship*, Swedish Partnership for Global Responsibility, February 2003.



Conference on

**Corporate Social Responsibility and  
Development:  
Towards a New Agenda?**

**Panel 6: The Role of the United Nations in Corporate  
Accountability and International Regulation**

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## **Jan Aart Scholte**

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My remarks highlight six main points: (1) the significance of globalization in contemporary history; (2) the importance of capital in propelling globalization; (3) the shortfalls of governance in respect of expanded global relations; (4) CSR as a response to this regulatory gap; (5) the need for more public global regulation of transborder business; (6) the obstacles to achieving this more adequate global corporate governance framework.

### **1. Globalization**

CSR schemes can be largely understood as a by-product of contemporary accelerated globalization. Globalization can be understood as the growth in transplanetary connections between people. Increased globality is manifested across social relations: in communications, travel, production, markets, money, finance, ecology, military, health, law and culture. The cumulative effect of all these developments is a reconfiguration of social geography away from a territorialist world that was ruled through a statist mode of governance.

### **2. Capital as a motor of globalization**

The rise of transnational business is an important part of this wider process of globalization. More than that, certain turns in contemporary capitalism have been major drivers of the trend towards more global social relations. For example, firms have sought through globalization to attain lower input costs, to develop larger markets and to achieve economies of scale through larger turnovers. In addition, globalization has offered firms a way to overcome some of the tougher regulations and redistributive taxations that states put in place across most of the world by the third quarter of the twentieth century.

### **3. Governance deficits**

Governance has not kept pace with globalization. To be sure, there has been historically unprecedented growth of global law and global regulatory institutions in the past few decades. However, the extent and effectiveness of global governance remain very modest in relation to the scale of globalization overall. These regulatory deficits are especially apparent in respect of transnational business and have in recent years prompted considerable public disquiet, especially in the form of so-called “anti-globalization” protests.

### **4. CSR as stopgap**

Many transnational companies have recognized the political problem and concede that a free market cannot be an irresponsible free for all. Certain minimum environmental, financial and social standards—the now well-known “triple bottom line”—must be respected. As a result we have seen a proliferation of self-regulatory corporate responsibility schemes as an attempt to fill the regulatory gap towards global business.

At the same time corporate responsibility regimes can be seen in good part as a preemptive step against greater public regulation of transnational business. CSR rests on a claim—implicit or explicit—that the global private sector can, together with consumer pressure in the marketplace, adequately police itself. CSR is a move to evade more interventionist official global corporate governance, including redistributive mechanisms through global taxation and the like. Were such regimes to emerge, transnational business would face the same kinds of constraints that national business had hoped to escape by going global.



So is global corporate self-regulation through CSR schemes working? Certainly many companies have shown more consideration towards social and environmental matters than in the period of untrammelled neoliberalism in the 1980s and early 1990s. However, TNC respect of environmental, financial, human rights and labour standards is still often wanting. Many firms have not engaged with CSR at all, and most CSR schemes (including the UN's Global Compact) have remained superficial.

One response to these shortcomings would be to ask for more time. It could with some justification be argued that CSR initiatives are relatively new and can with prolonged dedicated efforts gain wider coverage and deeper effectiveness. However, another analysis—and one that is vindicated by the historical record—affirms that significant elements of binding official regulation are indispensable. Just as, in an earlier period, philanthropy and self-restraint were not sufficient to make national capital work for the general interest, so CSR will remain inherently wanting when it comes to achieving fuller social justice, financial probity and ecological integrity.

### **5. More public global regulation**

Much of the increased official governance of transnational business can be achieved through local, national and regional arrangements, and the principle of subsidiarity would suggest that the regulation should wherever possible devolve to these smaller spheres. However, public global rules for transnational business are also needed to bring consistency and coherence to the whole and to effect equitable distributions between regions and countries. Elements of this upgraded global governance would include a Global Competition (or Anti-Trust) Authority and a Global Consumer Protection Agency. These two bodies could perhaps function as divisions within a much larger WTO, a WTO that was moreover integrated into the UN system and fused with UNCTAD. Labour standards in global business would be secured through a Global Labour Organization that gave more teeth to the existing ILO. Ecological aspects of corporate responsibility would be secured through a Global Environmental Organization that stood on a par with the WTO. A Global Tax Authority would supersede the existing private International Accounting Standards Board and contribute towards economically and politically justified progressive redistribution of world incomes with global corporate taxes (perhaps introduced in tandem with reductions of national corporate taxes).

Of course none of these institutional innovations would be viable if the UN did not considerably increase its legitimacy. On the one hand these new or enhanced global governance arrangements would need to be run with highly competent staff administering optimally crafted regulations. On the other hand, and equally importantly, these global agencies would need to have sound democratic credentials of a sort that no global governance framework (and no CSR scheme) has possessed to date. If global institutions are to hold considerable authority vis-à-vis global business, then they need to be democratically accessible, transparent and accountable to the publics that they are meant to serve.

### **6. Easier said than done**

Admittedly the proposals just described are visionary. Effective and democratic global regulation of business through the UN or other co-ordinating global governance framework is not an immediate prospect. Not only will it take time to build up the required technical capacities and democratic mechanisms, but the development will also face stiff resistance from a number of powerful quarters.

Transnational companies generally only favour regulation that facilitates their profit-making operations. They will vigorously oppose externally imposed regulation that constrains their activities and reduces their rate of profit.



Likewise, neoliberal authorities in national, regional and global regulatory institutions will oppose steps that amount to a construction of social democracy on a world scale. Even if, as seems bound to happen at some point, neoliberalism loses its position as the prevailing discourse of governance, states are likely to resist any transfers of competence to global agencies and the growth of alternative sites of regulation.

Meanwhile there is as yet no strong public constituency to resist this opposition and press for new or upgraded global institutions for the effective and democratic public regulation of transnational companies. True, so-called “anti-globalization” and “alter-globalization” movements have gained a considerable following in recent years. However, few amongst them are actively campaigning for the kinds of bodies advocated here.

This pessimistic assessment of the current political landscape would no doubt prompt many a sceptic to dismiss proposals for full-scale global public regulation of transnational business as “utopian”. Maybe, but we should recall that the few people who envisioned national government regimes of corporate regulation in the mid-nineteenth century also got little hearing. Given the generally accelerated pace of institutional change in contemporary history, perhaps developments that took several generations to unfold in relation to national capital could occur in several decades in relation to global capital.

In any case, we are talking at a minimum about medium-term time frame. Let us hope that global corporate regulation will not need promptings from world war, violent revolution and great depression. We should already find ample promptings in the screaming injustices of poverty, inequality and financial scandal that afflict the current globalizing world. Perhaps we defer the challenge of building public global regimes of corporate regulation at our peril.



## Judith Richter

“Through partnerships, corporate influence within the multilateral system is likely to increase. As it increases, there may be growing acceptance within the UN for development strategies that involve tinkering with the current model of economic globalisation that provides obvious benefits for rich countries, certain social groups and corporations, but far less obvious benefits for poor people and countries. As corporate influence grows, policy approaches with deregulation and voluntary initiatives are likely to prevail over those that involve redistributive policies and binding regulations. Yet, historically, it is essentially the latter that have obliged business to act in ways more compatible with sustainable and social development” (Peter Utting, Research Co-ordinator on Corporate Social Responsibility, UNRISD, 2000:12).

“Critics of the UN Global Compact have pointed out that it lacks the necessary mechanisms to ensure enforcement. This reflects a misunderstanding of today’s global realities. We live in a world in which the traditional domination, hierarchical, command-and-control model is hopelessly inadequate to cope with the speed at which a knowledge-driven global economy and interconnected society evolves and changes. The UN Global Compact challenges us to behave in a more mature and responsible way. As society matures, it needs less—rather than more sanctions—because it bases its behaviour on shared values. People that are bent on seeing corporations as fundamentally evil will disagree with such an argument. More optimistic people—and I am one of them—consider corporations as fundamentally good, even if they unarguably make mistakes, and see the wisdom of co-operation and partnerships” (David Syz, Secretary of State, Swiss State Secretariat for Economic Affairs, 2002:2–3).

What role should United Nations institutions, old and new, play in the international regulation of TNCs and corporate accountability? What does “old” and “new” mean? Can we discuss whether certain new institutions should even exist? The problem is that over the past few years, space for honest, public, controversial debate about the alleged merits of “partnership” interactions with corporations has diminished at breathtaking speed.

The two statements quoted above show clearly that the establishment of the Global Compact has changed our political landscape. Those who call for a public debate about the uncritical rush into initiatives which involve corporations as privileged “stakeholders” or “partners” in public affairs, or which build on their promises to behave as responsible “corporate citizens”, risk being portrayed as “enemies” of business. They risk being told they will be responsible for harm that will inevitably result from slowing down these initiatives. They are instructed that the way forward is to “trust” corporate “leaders” and their wish to engage in what will turn out eventually to be “win-win” situations for all involved.

The heading of session 3 challenges the panel speakers to think beyond corporate social responsibility, to look at alternative approaches and proposals. This panel’s title implicitly presents corporate accountability and international regulation the solution to analyse.

My presentation, in fact, is not really looking “beyond” corporate social responsibility. I want to make the point that corporate social accountability is not a logical extension of corporate social responsibility.

My presentation first investigates the question of whether the UN (and many governments, NGOs, and academics) have allowed CSR-based approaches to displace approaches that would actually make better progress towards a more socially just and environmentally sustainable world. It asks whether UN agencies have done all they can do to ensure that corporations can be held accountable to the citizens of this world.

I shall limit my presentation to the relationship between approaches based on corporate social responsibility and approaches promoting corporate accountability by means of public, binding



regulations.<sup>3</sup> In particular, I shall focus on the question of whether or not the Global Compact initiative contributes to the marginalization of alternative, more promising, efforts of influencing the practices of transnational corporations.

I shall finally suggest some steps that could be taken to support efforts to set up legally-binding regulations for transnational corporations.

### **The Global Compact and efforts to build legally-binding regulations**

The history of efforts to set up more binding international regulations for TNCs has been very rocky. As we all know, the work on a UN Code of Conduct on Transnational Corporations died in the early 1990s. As did the UN Centre on Transnational Corporations (UNCTC) with its mandate to:

- monitor and provide reports on the activities of TNCs;
- to strengthen the capacity of developing countries in dealing with them; and
- to draft proposals for normative frameworks for the activities of TNCs.

These events have multiple causes. An important contributing factor was the credence that was given to claims advanced by powerful industry lobbies at the 1992 Rio Earth Summit, that they were “changing course”. The proliferation of industry “self-regulatory” codes of conduct in the 1990s was advanced as proof of this shift in corporate behaviour.

The Global Compact idea was launched by the UN Secretary General at the World Economic Forum in 1999, at a time when the idea of industry self-regulation came increasingly under criticism. Since then, there have been many debates and analyses about the usefulness, limits and risks of this high-level initiative (see, for example, Bruno and Karliner 2002). Questions about why the arrangement did not move towards meaningful systems of scrutiny of the corporations wishing to enrol as “members” or “participant” companies, questions about monitoring of the true extent of participant companies’ integration of the nine Global Compact’s UN principles into their core practices, questions about the absence of systematic mechanisms to receive complaints about companies which visibly violate the principles, nor sanctions for such behaviour (at the very least, in the form of exclusion from the initiative) have been invariably answered by the following statement. The Global Compact is not a regulatory initiative, but something totally different, which should be given a chance to prove its worth (see, for instance, Richter 2003:15–16).

### **A question on the impact**

The Global Compact does not easily lend itself to an analysis of its “added value” (comparative advantage) to alternatives of holding corporations accountable. Given the claim that the Global Compact is something fundamentally new and the use of terms and language that are difficult for the uninitiated to understand, many citizens and civil servants may shy away from asking a crucial question:

Does the Global Compact really change corporate practices? More specifically, does it (a) help shift corporate practices towards the better—or is it an arrangement that helps (b) corporations continue to do business as usual while conferring on them (c) additional protection from legally-binding regulation and public pressure?

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<sup>3</sup> Given the time available, I am not looking at the question to what extent other efforts to hold corporations accountable, in particular public pressure, are being undermined (for example, by some initiatives analysing the role of NGOs). Neither shall I go into the question about whether and when other “partnership” initiatives with corporations—be they funding relationship, research co-operations, or the out-contracting of public services—are displacing better alternatives.





Does the Global Compact help to hold corporations accountable to the peoples of this world, or does it help corporations rule the world?

**Some answers**

(a) In 2002, Utting concluded in his review of regulation via “multi-stakeholder initiatives” that “the Global Compact still needs to prove its ability to force the pace of corporate reform” (Utting 2002:90).

(b) By its very design, the Global Compact can easily be used by corporations to do business as usual. There are reasons to believe that it cannot be reformed into a more meaningful instrument to hold corporations accountable. Its powerful main business association partner—the International Chamber of Commerce (ICC)—had early on set its prime condition for participation: “There must be no suggestion of hedging the Global Compact with formal prescriptive rules. We would resist any tendency for this to happen” (ICC 2000). The other obstacle is the framework of thought underlying the arrangement. In the business community, the Global Compact is promoted as an initiative of “enlightened self-interest” rather than an initiative to ensure respect for ethical principles. It is sold with the promise that “doing the right thing” will not interfere with profit-making (Kell 2002:2). The Global Compact has recently been repositioned as a “voluntary” corporate citizenship initiative. It builds on the idea that a “virtuous circle” of corporate citizenship will lead towards a more sustainable and inclusive process of globalization (The Global Compact Office 2003a:1; 2003b:10–11).

(c) One can argue that the Global Compact, moreover, gives transnational corporations new avenues to influence public affairs. In particular, it allows them to undermine efforts to build up more efficient public regulation—and to create what some of the world’s most powerful corporations regard as a business-friendly environment.

When the Global Compact arrangement was promoted by the UN Secretary-General, in co-operation with the International Chamber of Commerce, it took the wind out of the sails of the recommendations of the 1999 UNDP *Human Development Report*. The report’s authors had investigated ways to give neoliberal globalization a human face. They had argued that the task to build a more “coherent and democratic architecture for global governance in the 21st century” included the establishment of a binding code of conduct for multinational corporations (UNDP 1999:12, 100).

ICC Secretary-General Maria Cattai reacted promptly. In an open letter to the *Financial Times*, she claimed that the *Human Development Report* was “on the wrong track in calling for a mandatory code of conduct for multinationals” and that binding rules “would put the clock back to a bygone era” (Cattai 1999).<sup>4</sup>

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<sup>4</sup> While opposing binding regulation for potentially harmful corporate practices, the ICC was very much in favour of binding and enforceable rules in another area. When it signalled its support for the Global Compact, it specified that, in return, the UN’s September 2000 Millennium Assembly should “ensure that the United Nations takes the lead in supporting a rules-based open system of international trade and investment while opposing all forms of protectionism” (quoted in New 2000).



## **Towards human rights-based business regulation?**

While the Global Compact was being advanced—and while the UNDP *Human Development Report*'s proposal was discarded (already in the forward of the UNDP's new Director)—another initiative was actually already on its way. The *1996 Report of the Secretary General on the Impact of the Activities and Working Methods of Transnational Corporations on the Full Enjoyment of Human Rights* had warned that “the global reach of TNCs is not matched by a coherent global system of accountability” (Commission on Human Rights 1996).

In 1998, after much lobbying by popular movements, labour unions and NGOs, the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities called for the establishment of a sessional Working Group on the Working Methods and Activities of Transnational Corporations under the auspices of the United Nations Sub-Commission on the Protection and Promotion of Human Rights. Referring, among others, to the Working Group on the Right to Development's recommendation to adopt “new international legislation and creat[e] effective international institutions to regulate the activities of transnational corporations and banks . . .” the Resolution set out the mandate for this working group. It included, among others, the tasks:

- “To identify and examine the effects of the working methods and activities of transnational corporations on the enjoyment of economic, social and cultural rights and the right to development, as well as civil and political rights;”
- “To consider the scope of the obligations of States to regulate the activities of transnational corporations, where their activities have or are likely to have a significant impact on the enjoyment of economic, social and cultural rights and the right to development, as well as of civil and political rights of all persons within their jurisdiction” (Commission on Human Rights 1998).<sup>5</sup>

There have been discussions about whether the shift towards corporate social responsibility based initiatives have not contributed to diluting the mandate of this working group. Be that as it may, in August 2003, the UN Sub-Commission on the Promotion and Protection of Human Rights unanimously adopted the *UN Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights* (E/CN.4/Sub.2/2003/12/Rev.2). These draft norms bring together a range of widely accepted obligations on corporations, drawn from existing, human rights, labour rights and environmental instruments.

Business associations have criticized the document and commentary for calling on companies to be “subject to periodic monitoring and verification by the UN.” They say this is at odds with the “voluntary” spirit embodied in the UN's Global Compact initiative (Birchall 2003). Two major Global Compact partners, the International Chamber of Commerce and the International Organisation of Employers have criticized the “binding and legalistic approach” of the draft norms. They have described the proposed draft norms as “counterproductive to the UN's ongoing efforts to encourage companies to support and observe human rights norms by participating in the Global Compact.” They threatened that the draft norms “risk inviting negative reaction from business, at a time when companies are increasingly engaging into voluntary initiatives to promote responsible business conduct” (ICC/IOE 2003).

The highly advertised UN corporate social responsibility/corporate citizenship initiative is thus used to undermine efforts to establish a more binding instrument to hold corporations accountable.

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<sup>5</sup> For more information, see, for instance, CETIM/AAJ/FICAT (2000).



## Recommendations

The Commission of Global Governance said nearly ten years ago that one of the major tasks to democratize global governance is to subject “the rule of arbitrary power—economic, political, or military—to the rule of law within global society” (CGG 1995:5).

It is amazing to see how the discussions about CSR-based initiatives continue to divert attention from the fact that UN Member States are neglecting such a crucial part of their mandate.

Seen this history, there are two main recommendations which can be made to the leaders and civil servants of the UN if they want to contribute to the task of holding corporations more accountable:

1. UN agencies and UN Member States should refrain from engaging in initiatives that risk displacing the unfinished work on binding regulations for economic actors which are beyond nation states’ reach.
2. They should re-focus their attention on (a) preventing harm from corporate practices and (b) on shaping policies in the interests of the peoples’ of the world.

This agenda includes:

(a) Create space for open, honest debate on the relationship between initiatives based on so-called corporate social responsibility and approaches which do not anthropomorphize corporations but see them as actors who have the fiduciary duty to make profit for their shareholders.

(b) Discard false dichotomies from documents and UN discourse. For example, those who are sceptical about CSR approaches are not pursuing an “adversarial” approach. They are simply advocating that governments and the UN should stay at “arms-length” from corporations and interact with them as business actors and refrain from promoting them as “partners” to be trusted without further scrutiny.

Most important however, is to refrain from pitting “voluntary” against legally binding (“legalistic”) regulation. In fact, the true distinction to be made is that between ethical versus legal obligations of corporations—no publicity should be made for corporations and corporate “leaders” for “voluntarily” fulfilling nine basic ethical obligations which have been formulated under the aegis of the UN over the past decades. All efforts should be made to hold them accountable via legal means. This includes:

(c) Disband the Global Compact.

(d) Support moves to establish binding regulation for transnational corporations—in particular, lend high-level support to pass and effectively implement the UN Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights.<sup>6</sup>

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## **Simon Walker**

Office of the High Commissioner for Human Rights (OHCHR),  
Switzerland\*

### **Introduction**

Chairperson, ladies and gentleman. First of all, let me thank you for giving me this occasion to speak today on the role of the United Nations in Corporate accountability and international regulation. As you know, there are a number of initiatives in this area—I will focus on one of those—namely, the Norms on Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights adopted by the Sub-Commission on the Promotion and Protection of Human Rights in August this year.

In many ways, the Norms are quite radical. While some human rights treaties recognize that non-State actors have responsibility towards human rights, that responsibility is traced through governments. The Norms go beyond this and claim that business has direct responsibility for protecting some human rights.

The Norms set out four areas of human rights obligations—the right to equal opportunity and non-discriminatory treatment, the right to security of persons, rights of workers, and respect for national sovereignty and human rights. Further, the Norms include obligations with regard to consumer protection and environmental protection. The Norms also provide for their implementation and have a section on definitions. Key elements of those provisions include:

- First, business entities shall ensure equality of opportunity and treatment with a view to eliminating discrimination based on sex, race, religion and other recognized categories of individuals. The principle of non-discrimination is a basic principle of human rights law—International human rights treaties recognize the responsibility of private actors not to discriminate. However the Norms go further and ascribe direct responsibility for ensuring equality and protecting against discrimination.
- Second, business entities shall not engage in or benefit from war crimes, crimes against humanity, genocide, torture, forced disappearances, forced or compulsory labour and a range of other abuses of the right of the security of the person. This provision is important given cases at the domestic and regional level considering the collusion of businesses with the action of security forces in Myanmar (Alien Torts Act, Unocal) and Nigeria (Ogoni case).
- Third, business shall recognize the right to collective bargaining. While this might seem fairly obvious to a human rights audience, many of the voluntary codes of conduct on corporate social responsibility do not include recognition of collective bargaining—yet from a human rights perspective, this is critical.
- Finally, the sections on consumer protection and environment protection are relatively novel in international human rights law. Significantly, both sections require business to comply with the precautionary principle which is traditionally a principle of environmental law rather than human rights law.

The provisions on implementation require businesses to:

- adopt and implement the Norms internally;
- report periodically on the implementation of the Norms;
- apply the Norms with sub-contractors;

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\* Simon Walker spoke in his personal capacity only and his comments do not necessarily reflect the views of the OHCHR.



- be subject to periodic monitoring by the UN or other international or national mechanisms;
- undertake human rights impact assessments;
- provide prompt remedies to victims of human rights violations where they are responsible.

This brings me to the first question posed in the programme.

**What role should UN institutions, old and new, play in the international regulation of transnational corporations and corporate accountability?**

*The first UN institution I will consider is the Sub-Commission*

It is useful at this point to recall the actual role of the Sub-Commission. The Sub-Commission is an expert body that serves as a think-tank to the Commission. It is made up of 26 experts in the field of human rights who act in their independent capacity and who are appointed according to regional balance. The Sub-Commission undertakes studies on issues relevant to human rights, makes recommendations to the Commission on Human Rights and undertakes any other duty given to it by the Economic and Social Council or the Commission on Human Rights.

The Sub-Commission appears to view its role in this area as two-fold. First, it has adopted a role of *facilitator*. Second, it sees itself as having a *monitoring* role.

In relation to the first role—that of facilitator—the Sub-Commission provided the expertise and the forum that was able to pull together through a process of consultation, the norms and standards of international human rights law most relevant to business.

Now that it has done so, the Sub-Commission sees its role as a *monitor* of the Norms. To this end, the Sub-Commission has set out a process of monitoring that has three steps:

- First, the Sub-Commission has requested its working group to receive information from governments, NGOs, business enterprises, individuals and any other source concerning the negative impact of the activities of business on human rights.
- Second, the working group would then invite the concerned business to provide comments on allegations within a reasonable time period.
- Third, the working group would then study the information submitted and transmit the information to the organization concerned.

There is no provision in the resolution for the working group to make this information public, which would seem to suggest that the communications remain with the parties only.

The Sub-Commission therefore perceives its role as facilitator and mediator. However, understanding the facilitating and monitoring role of the Sub-Commission depends on understanding the corresponding role of the Commission on Human Rights.

*Commission on Human Rights*

The Commission is the parent body of the Sub-Commission. As noted above, the Sub-Commission has a role of a think-tank for the Commission. Ideas are discussed and strategies elaborated in the Sub-Commission. However, it is for the Commission to take action—political and financial—on suggestions of the Sub-Commission.



The Commission is a political body established under the Economic and Social Council. It is made up of 53 member states elected according to regional balance. Other states, inter-governmental organizations and NGOs can participate in the Commission as observers. The Commission meets every year for a period of six weeks during March/April.

The Commission therefore has an important role of *legitimizing* the work of the Sub-Commission. In line with this hierarchy, the Sub-Commission has transmitted the Norms to next year's Commission. In its resolution, the Sub-Commission did the following:

- The Sub-Commission transmitted the Norms for the consideration and adoption of the Commission.
- The Sub-Commission recommended that the Commission invite governments, IGOs and NGOs to submit comments on the Norms to the 2005 the Commission.
- The Sub-Commission recommended that, at the 2005 session of the Commission, the Commission decides itself to establish a working group of the Commission—namely with the participation of governments as well as other actors—to review the Norms.

Consequently, the Commission has a role of *legitimizing* the Norms. The resolution in this sense is a little confusing as, on the one hand, it transmits the Norms for consideration and adoption, while on the other hand it recommends that the Commission simply discuss them. However, I think that it is pretty clear on reflection that the “adoption” recommended by the Sub-Commission is only after the possibly long period of review that the Commission might engage in.

While I have been asked to discuss the role of UN institutions, I think it is relevant at this stage to consider the role of business and civil society in relation to the Norms.

#### *The role of business and civil society*

While the Commission on Human Rights and the Sub-Commission have roles of *facilitating*, *monitoring* and *legitimizing* corporate social responsibility initiatives NGOs and business have a role of *implementing* the Norms.

The Norms are of course a free standing document. The adoption by the Sub-Commission gives a level of expert legitimacy which depends on the Commission for political legitimacy. But there is nothing stopping NGOs and business from themselves adopting the Norms and putting them into practice now, and there are currently initiatives in the following areas:

- NGOs using the Norms to hold businesses accountable for their actions—Amnesty and I think Human Rights Watch have relied on the Norms in documenting allegations against certain businesses.
- NGOs working with businesses to pilot the Norms—I understand that the Ethical Globalization Initiative is currently piloting the Norms with several transnational corporations.
- Businesses considering adopting the Norms voluntarily as a code of conduct. Several businesses have contacted the Office of the HCHR indicating interest in the existence of a UN as opposed to civil society—code of conduct on corporate social responsibility.

#### **What type of relations between UN agencies and business and civil society actors should develop in order to promote corporate accountability?**

*Relations between UN agencies and business and civil society to promote corporate social responsibility*



In relation to the Norms, it is still premature to answer this question. The role of the Office of the High Commissioner for Human Rights in relation to the Norms will remain limited until a decision on the progress of the Norms is taken by the Commission next April. The role of the Office could change depending on the action of the Commission. Until now, the Office has primarily a role of *servicing*—in other words, providing the administrative support to the Sub-Commission's working group. This role could be expanded depending on the action taken by the Commission.

However, beyond servicing, the Office and other UN agencies have an important role of *mediating* debate and *information dissemination*. A language problem can often emerge when human rights practitioners interact with business. These are two quite separate communities with often competing expectations and objectives. These objectives need not be opposed although they can lead to conflict if each side does not recognize the legitimacy of the others concerns. Indeed, many of the human rights concerns arising in business are directly related to a lack of *communication* between government, business and civil society.

UN agencies such as the Office of the High Commissioner for Human Rights have an important role and a unique opportunity to bridge the knowledge gap between these communities by highlighting the legitimacy of the concerns of different communities while at the same time dispelling some myths. For example:

- Not all business are violators of human rights—bad news makes good news but most business is not involved in gross forms of environmental pollution or the use of compulsory and forced labour that have received wide publicity in the past.
- Different risks are involved with different businesses. While mining companies have had a poorer track record on several human rights issues—relationships with indigenous communities, health problems arising out of pollution—these are not necessarily relevant to businesses in other areas—for example, telecommunications which have a strong potential to improve the enjoyment of human rights. Human rights concerns facing private water companies are different again. The list goes on. It is important to nuance the discussion on business and human rights.
- Transnational corporations can have positive roles in improving environmental and work standards by importing high standards from home countries to host countries.
- International accountability standards adopted through the UN can be helpful for business—by ensuring a transparent and rules-based global system of accountability and by clarifying exactly what human rights responsibilities businesses have.
- A universal and legitimate corporate accountability standard provides a level playing field so that all business understands the rules—which makes business easier.
- Finally, promoting human rights in the context of business can make good business sense. While human rights standards are justifiable goals in themselves, there is increasing evidence that respect for human rights standards such as the principle of non-discrimination can promote better work relations as well as higher and more sustainable production—a universal accountability standard could help achieve these wider longer term goals.

## Conclusion

In summary, I have identified distinct but complementary roles for human rights bodies, civil society, business and UN agencies.

- UN human rights bodies such as the Sub-Commission and the Commission have roles of facilitating, monitoring and legitimizing corporate accountability standards.
- Civil society and business have roles of implementing standards.





- UN agencies such as the OHCHR have at least at the moment, mediating roles.

To conclude, my final comment has to qualify this discussion with a big “if”—by emphasizing that in many ways this discussion is premature. The Norms will be before the Commission in April next year so their future is in the Commission’s hands. Until that time, the future of direct corporate social accountability initiatives for human rights and the role of UN institutions are still unclear.



## **Derek Yach**

World Health Organization (WHO), Switzerland

It is difficult to come at this time of the conference when I am sure you would all prefer to go for a walk in the beautiful fresh air outside. My task is to try and wake you up before you leave with comments related to work in practice.

Well, who are we? The World Health Organization is a specialized agency of the UN. It has a mandate to promote health. It recognizes that investments in health are a direct benefit for reducing poverty and obviously we recognize that the opposite is also the case. We also recognize that investment in unhealthy consumption threatens health and the attainment of sustainable development. And that, in many cases, we are dealing with consumption patterns that directly interface with, and require us to interact with the commercial sector, particularly in relation to food, tobacco, alcohol, transport and pharmaceuticals. The mandate and our constitution provides us with very clear guidance about the development of treaties and conventions, resolutions and codes, but until Dr. Brundtland became the Director-General in 1998 we had never embarked upon developing a treaty. We have a code for the marketing of breast-milk substitutes. The code was actually intended initially to be a treaty, but due to extreme lobbying by certain multinationals and countries at the time—the late 1970s and early 1980s—it came out to be what is the weakest form of international agreement—a resolution. You might ask: Why have we not expanded our use of international regulations and international law? It is a question I keep asking colleagues, both international lawyers, public health professionals, people in the commercial sector and NGOs. And I think the answers come from each one of those mandates: the public health community distrusts lawyers; the corporate world doesn't want regulation; and many of the officials who are within the UN system, particularly within the WHO system, see this as being unnecessarily messy and complex to do, whereas there have been people, particularly in the academic community, who have written scholarly works about how the advancement of international regulations can benefit both business and public health.

Let me summarize why we first used our treaty right to address tobacco. Tobacco kills 5 million people a year, mainly in developing countries. And the figures are rising. It is a unique product in that half of its regular users will die of the habit. If you read the corporate reports of the tobacco companies, they are very proud of their human rights record, their labour standards and their environmental standards. Pity their product kills half its regular users, and a pity also that many NGOs and activists don't acknowledge this fact and push for health considerations to be put alongside labour, environment and human rights standards in the Global Compact or in lobbying for sustainable development generally. This is a major example of when the core business of a set of corporations, which kill or harm people, is ignored.

We realized that national laws had failed, that self-regulation had failed, and that transnational approaches to tobacco were expanding, particularly in relation to marketing, deceptive practices and smuggling—the only way to address them was through an international treaty. Dr. Brundtland was not naïve enough to believe that a treaty *per se*, a piece of paper, would make a difference without the powerful mobilization of civil society behind it, and without the strong support of leading countries. That is why the last five years has seen as much effort going into supporting the development of what I very much like David Fig calling “the militant vigilance of NGOs”. From having virtually no NGOs engaged in tobacco control, we now have a Framework Convention Alliance of almost 200 NGOs spread worldwide, understanding the harm the product does, understanding the arguments about the harm it causes economically, and able to address the mythology that the tobacco industry has put out, and willing to do this often at considerable cost.



Over the last three years perhaps the most important thing we did was to change the debate around tobacco from being one about individual frailty and weakness to one of corporate behaviour. And this was done by going to the tobacco industry's previously secret documents and carrying out an enquiry jointly with the World Bank, led by an eminent group of international people, who asked the question: Have the tobacco companies over the years carried out efforts to thwart the policy process of WHO, the World Bank, FAO and many others? And of course the answer was, yes.

Those reports have been published. Reports have been done at the regional level and now we have reports at the country level. They show an extraordinary trail of consultants being paid by the companies to put out deceptive science. They show that officials within our own agencies were complicit in the process. They show that many of these processes continue today. Because of the litigation in the US, we have access to a continuous stream of those documents, which bring us right up to 2002. The response of WHO to the enquiry was not only to use it to illuminate delegates of the World Health Assembly, that is our ministers of health—our main stakeholder group—that they need to be extremely vigilant, but to have a unique resolution passed unanimously by the Assembly, calling for transparency in the way in which they carry out the development of the Convention. When the Convention was finally adopted in May this year, there was a clause in it that explicitly addresses the need for parties to act to protect public health from commercial and other vested interests of the tobacco industry. What is also unique in treaty language are very strong liability provisions with, of course, the discussion about the potential use of litigation and compensation.

This is all to show that, in the case of tobacco, we certainly believe that the UN has a very strong regulatory role and has to continue down that route to full implementation, given the harm caused by the product and the failure of that set of corporations to act responsibly. While we were doing this, what were the corporations doing? They were embarking on one of the most extensive campaigns to try and recast themselves using the corporate social responsibility language. We know that because the tobacco industry documents are now in the public domain. Philip Morris wrote internally to its own Vice-President, saying that:

"the company must become more systematic in managing political and social issues, shareholder value and corporate reputation. Over the past two years we have been able to improve our management of the tobacco industry through proactive approaches to WHO. But we believe that corporate issues management must now look beyond the wolves at the door on just the tobacco business and begin to deal with the wolves that are likely to come to the door because of the full breadth of our global business. We must get ahead of the curve of public expectations of a corporation. That will reduce the risk of lawsuits and improve our standing. When we are sued as a responsible corporation, we need to be ready. As the leading global consumer products company, we need to act like our peers in the evolving area of corporate social responsibility, otherwise we will stand out as a target and we will be vulnerable where we have weak links."

That internal memorandum gives us insight not only into tobacco companies but into why they embarked on the corporate social responsibility path.

Philip Morris went further. They believe that they had to change the name of the company, the ultimate in trying to project the notion of corporate social responsibility. As some of you may be aware, they chose the name Altria, derived from *altus*, meaning high, symbolizing a company that is already great but reaching even higher: "Altria already represents our continuing commitment to be socially responsible and to align our thoughts and actions with the common goods of the communities we serve."

They ended a recent statement by saying "what we in the Altria family of companies call responsibility goes by many other names around the globe: corporate social responsibility,



corporate citizenship, sustainable development, or managing for the triple bottom line. We believe that the name chosen is less important than the core concept.”

What we found very interesting was that as the Convention was evolving, Philip Morris decided to distance itself from British-American Tobacco, and that again shows us that you cannot apply one set of ideas, even within a sector, to one group of companies as if they are the same. They told us that they are now supportive of the Convention. In fact, when it got adopted, they came out publicly saying they support strong international regulations. BAT said the opposite. Why did Philip Morris say that, and is there a lesson for us?

Maybe profitability and public health can actually come together when you have tough international regulations. Philip Morris control the market share of the biggest brand in the world: Marlboro. The international framework convention is likely to freeze the current position worldwide and give them a competitive advantage over other companies. They have also had decades of investment in new products and we predict that over the next decade or so they may well have a product that becomes fairly inert and therefore does not fall within the regulatory authority of the framework convention. In other words, they are looking well beyond the present to a situation where their company will evolve to have a product that is less health damaging.

But let's jump to food and ask the question: what has all this to do with the food industry or the alcohol industry, and how might we approach them? Do we need a convention on junk foods, do we need a convention on chocolates? I hope not. But what we have found interesting is that WHO, putting their finger on treaty development, has changed the debate we are having with the food industry. The fact that we have looked at the way the litigation has gone in tobacco has changed the way the food companies talk to us. They are now looking among themselves to ask a very exciting and fundamental question: How can they compete on health grounds in the market? They are asking us a challenging question that I don't think we know yet how to answer. What are the incentives, not just the disincentives, that we can put in place to have multinationals and other companies compete to actually address some of the rising problems of diabetes, obesity and cardiovascular disease?

At the moment, the incentive systems are not there. Some may be modest, like allowing legitimate health claims when new products come onto the market with real impacts on lowering your cholesterol, for example. The others may be much more complex to deal with. But we certainly think, in the public health community, real social responsibility starts when the company realizes that it wants to align its overall objectives with UN objectives, in this case, health objectives.

Let me end with a couple of words asking more specifically the question about the role of the UN. What I have learnt from the last two days, not being engaged as deeply as many of you in this debate, is summarized by a couple of you yesterday and today, saying, regulate the laggards and incentivize the leaders. We shouldn't regulate unless there is a real market failure, as we have with tobacco, and as we have in marketing alcohol and certain foods to children. For the UN, step one seems to be to have coherence among our social goals. I started off by being critical of my own colleagues in the UN, and I remain concerned—and Dr. Brundtland has spelt this out—that the Global Compact neglected health from the beginning, and that is resulting in the perverse situation that many companies can have good environmental, human rights and labour standards, but kill people through the products they are producing, knowingly. Clearly we need to think about what it would mean for health to be a conditionality in the Global Compact. It would mean that the core business, the nature of the products, and the way they are marketed would have to be considered as criteria alongside the nine other objectives. I think that would create incentives for the market leaders out there, not disincentives.



Secondly, we have a fundamental role in international regulation but I don't think that there will be many other examples of convention work, the way we have gone for tobacco. We certainly need to have a stronger regulatory authority in a wider range of areas and we certainly need to work far more effectively with civil society to encourage the spread of "militant vigilance", but with a slight difference. I would like militant vigilance with a strong reporting system, and a reporting system that leads to action.

Thirdly, I think the UN has to think far more carefully about the area of incentives and how we could actually be promoting health and environmental standards that also enhance profitability.

And, finally, we do need to look at the laggards and be willing, where needed, to take up the tools of litigation, liability and compensation for those who fail to become true corporate citizens.

Thank you.



## **Ludger Odenthal**

United Nations Conference on Trade and Development (UNCTAD),  
Switzerland

As most of you know, UNCTAD has a specific role in the United Nations family, in particular in dealing with economic issues of development and globalization. I work in the division which deals with foreign direct investment and transnational corporations. So when we approach the issue of good corporate citizenship, it has to be from that angle. In the past couple of years, we have felt that the debate on good corporate citizenship, or corporate social responsibility, has gathered momentum, but has omitted some vital aspects, particularly in relation to the issue of economic development. So what I want to do is explain the work we are doing in the area of foreign direct investment, good corporate citizenship and development.

I think it is good that this afternoon's discussion actually started out with the Global Compact. The Global Compact is a good example of a number of initiatives that have recently sprung up in the area of good corporate citizenship, which covers a certain number of issues. These issues are usually sort of *grosso modo* speaking, human rights, environmental, labour and social rights. In the Global Compact these are the areas that make up the nine principles. Of course, in terms of the Global Compact, there are good reasons why they chose these issues and not others.

However, we feel that while all these issues are important, there are some that are left out but which are particularly important when it comes to the economic development of developing countries. Many of the issues that are addressed are particularly important to developed countries. They emerged from a discussion between corporations, governments and NGOs which raised their international profile while other issues, which are more related to the economic development, have been left a little bit on the sidelines. So we feel that there is a need to bring the economic development dimension more into focus and we feel there is a role for UNCTAD to do this.

What do we mean by economic development dimensions? There is no international convention or agreement that specifies this. You could say these are the areas where companies can make a contribution, as part of their social responsibility of good corporate citizenship, through the economic development of the host countries they are doing business in. UNCTAD is trying to push an agenda where you get a consensus-building process on which issues are part of this and which are the areas where companies can make a difference. Judith Richter referred to a conference that took place last year, organized with the Swiss government, which was a first step in this direction. We are in the process of organizing further meetings to ultimately come to a consensus about what it is that companies can contribute to economic development.

Some of the issues, which include the most obvious elements where there is little dispute, as well as areas where one could challenge companies to do more, include the following: creating additional employment opportunities; creating linkages to local suppliers as opposed to importing inputs, in other words, maximizing local value-added; increasing the skill level of the local workforce; transferring technology to local businesses they work with or society in general; of course, contributing to public revenue generation by paying taxes and other dues; assisting in increasing exports as well as abiding by the laws of the host country, although you could argue about whether this is something that needs to be expressed explicitly, or whether it is already understood by companies. Another issue would be assisting and improving the climate for economic development and that might also include initiatives like helping governments to attract further investment within the country or attract further



companies to invest in the country. It could also mean they can make a contribution by adding additional products to the market. I have just come back from Mali where we organized a workshop with public and private sector participants on investment promotion in the country. One company which was there was Icatel which is a subsidiary of France Telecom. In the space of five months they had created 250,000 telephone connections in the country, which represents basically an increase of approximately 400 per cent of the existing fixed and mobile phone lines which existed in the country before. This is an example of what companies can contribute to development in that area by introducing services or products which have not existed before.

I think that the most important aspect is the effort that companies can make to maximize local value-added. In other words, not being satisfied in finding somewhere a cheap production site where you can cheaply assemble your mobile phones, your computers and then eventually move on if you find another location which provides you with a more favourable cost basis, but rather to make an active effort to work with local companies and local government to see whether you cannot increase local value-added by moving or relocating certain corporate functions that have a higher value-added. This would likely increase not only employment but also the level of skills in the country. In a lot of places, many companies are likely to say, in a first instance, this is wishful thinking and we know best how to manage our business and where to locate which part of the business. But they are sometimes astounded when they see examples of other companies which have made an active effort to develop a certain location where they were initially present just in terms of low value-added activities and where through co-operation with local government and with research institutions and local supplies they managed to upgrade this.

There are some very good examples in this area, which we have collected in the framework of another project. One classic example in this context is the evolution of the electronics industry in Penang, Malaysia. The location started out just as a cheap assembly location for electronic components. However, with the help of clever government policy and the active participation of companies, this turned into a location where eventually the design activities and more value-added activities took place. This is a classic example of something which is not really mentioned in the current corporate social responsibility debate. And it is also a good example to demonstrate why we at UNCTAD feel that it is worthwhile to also put these issues on the agenda and to press companies to be more active in this area.

Now the question is how to deal with this new economic development dimension? Should you leave it up to voluntary initiatives or should we force companies to apply certain standards by using legally binding instruments? When working on this year's *World Investment Report*, which dealt with the issue of how to address the development aspect in international investment agreements (IIAs), we looked at how the economic development dimension was addressed in various existing agreements, be it on the multilateral, regional or bilateral level. One example we found was when good corporate citizenship principles are embedded in non-binding instruments—one example is of course the OECD Guidelines for Multinational Enterprises. Then you can go one step further. You could link voluntary instruments to legally binding ones—that could occur for instance when countries which are part of the OECD and adhere to the Guidelines negotiate bilateral investment treaties. In these treaties there could be made a reference saying the companies affected by the treaty should adhere to the OECD standards for multinational enterprises. A third option is that treaty benefits are granted only to investments made in accordance with national laws and regulations of the host country. To give you an example—the Chinese government has in all of its bilateral investment treaties a reference to this. The reference is only general—that the companies should abide by the law of the host country—but in theory a government could insert there certain principles of good corporate citizenship if they are part of the national legislation.



Other options are also discussed in the report. One includes referring to the importance the parties attach to observing good corporate citizenship objectives in the preamble of IIAs. What implication does this have? This basically means that the international investment agreement, whether it be bilateral, regional or multilateral—let's say, as part of an agreement in the framework of the WTO on investment—would mention something in the preamble of such an agreement. By definition, this would not be linked to the operational provisions directly, but it clearly helps or affects the interpretation of the provisions and the objectives in a certain manner. So if you state clearly that parties are asked to observe good corporate citizenship standards, then if the operational provisions are later on interpreted, it is clear that the parties in theory have to bear in mind the good corporate citizenship factors.

Creating mandatory procedural obligations for governance—that also sometimes takes place when bilateral investment agreements are negotiated. I think it is also part of the OECD code that asks countries who are party to the code to come up with obligations and follow-up mechanisms to ensure that companies originating from their country are really adhering to the principles of the code.

And finally of course you can incorporate legally binding provisions into IIAs. This is certainly much more difficult than some other options because, as has been mentioned a couple of times during this session, there is certainly resistance by business to get into this. But there are certain areas, like technology transfer, where countries at least have tried to put this into IIAs. Now the question is whether in practice it has worked effectively and whether companies should be forced to do this. But, again, this is one option for ensuring, or at least trying to ensure, that good corporate citizenship gets into existing frameworks.

In conclusion, ensuring that issues related to economic development become part of the good corporate citizenship or corporate social responsibility agenda is increasingly important. TNCs are becoming increasingly important to developing countries. More and more investment, at least 25 per cent of annual foreign direct investment flows worldwide go to developing countries. So the question of what does this investment contribute to economic development is increasingly important, as is its relation to good corporate citizenship. Using international investment agreements to link the economic development and good corporate citizenship agendas is a way of doing this.