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Regulating Business via Multistakeholder Initiatives

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**REGULATING BUSINESS VIA MULTISTAKEHOLDER INITIATIVES:
A PRELIMINARY ASSESSMENT**

by Peter Utting¹

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Summary

Since the 1980s, there has been a considerable shift in thinking regarding how to improve the social and environmental performance of transnational corporations. An earlier emphasis on governmental regulation ceded ground to “corporate self-regulation” and voluntary initiatives. This voluntary approach has evolved in recent years and assumed new institutional forms which attempt to overcome some of the limitations of company codes of conduct and other self-regulatory initiatives. The latest shift in approach involves the emergence of so-called “multistakeholder initiatives” where NGOs, multilateral and other organizations encourage companies to participate in schemes that set social and environmental standards, monitor compliance, promote social and environmental reporting and auditing, certify good practice, and encourage stakeholder dialogue and “social learning.”

Referring to 14 such schemes, this paper seeks to examine why multistakeholder initiatives have emerged as one of the dominant regulatory approaches in recent years. It clarifies their purpose and role, identifies some of their strengths and weaknesses and concludes by questioning whether such approaches are likely to significantly advance the agenda of corporate social responsibility (CSR). The schemes referred to include AA1000, the Clean Clothes Campaign, the Ethical Trading Initiative, the Fair Labor Association, the Forest Stewardship Council, the Global Alliance, the Global Compact, Global Framework Agreements, the Global Reporting Initiative, ISO 14001, the Marine Stewardship Council, SA8000, WRAP, and the Worker Rights Consortium.

It is argued that such forms of “civil regulation” emerged partly in response to the growing awareness that codes of conduct that were unilaterally designed and implemented by companies tended to be weak and often aimed more at public relations than substantial improvements in social and environmental performance. The paper suggests, however, that the rise of civil regulation also reflects changes that are occurring in the balance of social forces—notably the growth of NGO and consumer pressures—and notions of “good governance,” which emphasize the importance of collaboration and “partnership.”

Regarding the strengths and weaknesses of multistakeholder initiatives, the paper makes the following observations.

Multistakeholder initiatives have attempted to address some of the major weaknesses of codes of conduct associated with corporate self-regulation, notably aspects dealing with labour rights, the responsibilities of suppliers in commodity chains controlled by TNCs, and the need for independent monitoring. Some initiatives also aim to impose a degree of harmonization and standardization on what had become a confusing web of codes of conduct.

By their very nature, multistakeholder initiatives attempt to bring into decision-making processes a broader range of actors, but some initiatives have ignored or marginalized workers, trade unions, local-level monitoring and verification organizations in developing countries, and southern actors more generally. It is important to improve worker participation in monitoring and verification procedures. It is also crucial for multistakeholder initiatives to be more sensitive to the priorities and concerns of various actors in developing countries. Such a reassessment needs to give more thought to the cost and protectionist implications of CSR initiatives.

Despite the growth of multistakeholder schemes, the number of corporate sectors and companies involved remains relatively small. This is partly a function of the recent origin of such initiatives and the vast number of TNCs and suppliers. But it also reflects the difficulties of scaling up monitoring and verification procedures that are extremely complex and often costly. Not only is the range of data required quite broad (health, safety and environment

conditions; hours worked, pay, worker-management relations, gender relations, company-community relations, etc.), but accessing and obtaining such information can be extremely difficult given the expertise required, the reluctance of both workers and management to communicate openly and honestly on certain issues, and the typically short timeframe of any monitoring exercise.

The ability of different schemes to effectively promote CSR varies considerably. Some adopt relatively weak criteria for assessing corporate management systems or performance. Several of those that have more effective methods reach very few companies. The reliance of some schemes on commercial auditing and consulting firms raises serious problems regarding quality and cost.

Given the complexity of multistakeholder initiatives associated with reporting, auditing, monitoring and certification, and the difficulty of scaling up such activities, other alternatives also need to be considered. The paper stresses the importance of procedures and institutions to detect breaches of agreed standards. Such “complaints-based systems” can assume numerous institutional forms involving, for example, judicial and parliamentary procedures, global collective agreements between TNCs and trade unions, and NGO watchdog bodies that attempt to “name and shame” companies in relation to specific abuses. In recent years there has been a diversification of complaints-based systems with the rise of “transnational litigation,” shareholder activism, consumer boycotts and ombudsman initiatives. Some multistakeholder initiatives have also included provisions for complaints procedures although such aspects have often remained fairly marginal. They have also tended to avoid tactics involving negative publicity—or naming and shaming—which can be effective means of exerting pressure on large corporations.

Several multilateral organizations such as the World Bank, International Labour Organization (ILO), Organisation for Economic Co-operation and Development (OECD) and the North American Free Trade Agreement (NAFTA) have established complaints procedures. In practice, however, these tend to be very weak. Within the UN system there has been little attention to complaints-based systems although there may be some scope for developing such procedures via the human rights machinery of the UN.

Developments in the area of international regulation should avoid the implicit northern bias and top-down character associated with certain initiatives to promote CSR. They need to be more cognizant of developing country realities and based on consultative processes that include labour and southern actors as key participants. They also need to address the fact that global trade and policy regimes often restrict, rather than facilitate, the ability of developing countries to comply with higher labour and environmental standards.

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Introduction

The onus of responsibility for regulating transnational corporations (TNCs) and large national firms has shifted considerably in recent decades. This shift is sometimes characterized in terms of a transition from so-called state-led “command and control” regulation in the 1960s and 1970s, to corporate self-regulation in the 1980s and 1990s, to a more recent emphasis on co-regulation.² In the field of corporate social responsibility (CSR), co-regulation arises when two or more actors or “stakeholders” are involved in the design and implementation of norms and instruments that attempt to improve the social and environmental performance of firms. This may involve government and/or multilateral organizations working with industry. Increasingly, however, co-regulatory arrangements involve “civil regulation” where non-governmental organizations (NGOs) and other civil society organizations (CSOs) play a key role (Murphy and Bendell, 1999).

Civil regulation has, of course, been around for a long time, given the historical involvement of trade unions and religious organizations in influencing business policies and practices. In recent years, however, it has assumed different institutional and tactical forms. These include, for example, consumer campaigns targeting specific products and companies, NGO legal actions, NGO “watchdog” activities, NGO advisory and consultancy services, shareholder activism, and so-called “multistakeholder initiatives” where NGOs and other CSOs play an active role in the design and implementation of standards and a variety of reporting, auditing, monitoring, verification and certification systems.³

This type of approach has attracted considerable attention as a possible “Third Way,” which overcomes the perceived limitations of both government regulation and corporate self-regulation. Since the late 1990s, in particular, there has been a rapid growth in the number of multistakeholder initiatives.⁴ While these have been promoted primarily by northern or northern-based organizations, some NGOs in the South have also designed and implemented multistakeholder initiatives.⁵ This paper looks in particular at the experience of initiatives led by multilateral organizations, northern NGOs and NGO networks, and international trade union organizations. It seeks to clarify their objectives and role, analyze their recent growth and consider some of their strengths and limitations.⁶ Part 1 examines why civil regulation, in general, and multistakeholder initiatives, in particular, have emerged as an important regulatory approach. Part 2 identifies some of the strengths and weaknesses of selected multistakeholder initiatives. Part 3 asks whether such initiatives are likely to significantly

² While such a characterization exaggerates the relative importance of these different forms of regulation during these periods, it does suggest how mainstream thinking about different regulatory approaches has been evolving.

³ For convenient shorthand, all such initiatives will be referred to in this paper simply as “multistakeholder initiatives” although, clearly, such a term could be applied to many other types of initiatives.

⁴ This has resulted in a new set of regulatory institutions and a somewhat confusing array of acronyms. Selected initiatives referred to in this paper include: AA1000, CCC, ETI, FLA, FSC, the Global Alliance, the Global Compact, Global Framework Agreements, GRI, ISO 14001, MSC, SA8000, WRAP and WRC (see appended list of acronyms).

⁵ In Brazil, for example, the research and advocacy NGO, IBASE, has developed a social auditing programme. In India, the Centre for Science and Environment (CSE) has developed “green rating projects,” which rank companies in the pulp and paper, automobile and chlor-alkali sectors depending on their environmental policy and performance.

⁶ The assessment provided by this paper is “preliminary” in two respects. First, the paper forms part of an ongoing research programme at UNRISD on issues of corporate social and environmental responsibility. Further work on some of the issues addressed in this paper will be carried out during 2002. Second, the types of initiatives assessed in this paper were, for the most part, established very recently and are still evolving. More time is needed to assess their performance.

advance the corporate responsibility agenda, and identifies the direction in which recent critical thinking on civil regulation is headed.

1. The Rise of Civil Regulation

Various conceptual, ideological, structural and strategic currents and conditions underpin the rise of both corporate self-regulation and civil regulation. The doctrine of economic liberalization that spread globally in the 1980s stressed the importance not only of “deregulation” and the freeing-up of the market, but also corporate self-regulation, i.e., the notion that companies could regulate themselves. Improvements in social and environmental performance no longer needed to be ordered through “command and control” regulation but could be attained through “voluntary initiatives.” The discourse of corporate social responsibility⁷ and corporate citizenship⁸ highlighted the ethical basis of self-regulatory and voluntary approaches. Corporations, it was claimed, were coming to recognize that they must be more responsive to the concerns multiple “stakeholders” who affect or are affected by a company’s operations (Freeman, 1984); that increasing corporate freedom needed the counterweight of increased corporate responsibility; and that companies should be concerned not only with a “bottom line” associated with finance, profitability and market share, but with a “triple-bottom line,” that also included social and environmental goals.

This discourse, like that of “ecological modernization,”⁹ also stressed strategic and economic benefits of corporate social responsibility. In a rapidly changing and uncertain world, corporations are subject to multiple pressures and risks. Rather than simply reacting to pressure, companies should engage proactively with the corporate responsibility agenda and activists. This would allow business to not only deflect or dilute certain pressures but also be in the driving seat to ensure that change took place on terms favorable to business. At the more micro level, so-called “win-win” arguments suggested that corporate social and environmental responsibility made good business sense by boosting a firm’s competitive advantage, creating new markets and, in some instances, even reducing costs.

Business resistance to the notion that “civil society” might have a constructive role to play in corporate affairs diminished to some extent as certain academic theories gained in popularity. These included, for example, stakeholder theory, which stressed the need for companies to be responsive to concerns of a broader range of “stakeholders” (Freeman, 1984; Mitchell et al., 1997; Hopkins, 1999), and theories of risk management and “organizational learning” (Senge, 1994; Zadek, 2001), which stressed the importance of multistakeholder dialogue, NGO-business partnerships and “social learning” as a crucial mechanism through which firms could acquire the knowledge, values and competencies needed to survive, adapt and successfully compete in an increasingly risky world (Beck et al., 1994).

⁷ Corporate social responsibility has been defined as the ethical behaviour of a company towards society (Schmidheiny, et al., 1997). It recognizes that not only shareholders but multiple stakeholders have a legitimate interest in the activities and performance of a business and that a company needs to be responsive to their concerns.

⁸ The traditional notion of citizenship involved a social contract between individuals and the state in which each had certain rights and responsibilities. The concept of “corporate citizenship” gained currency in the 1980s and 1990s in a context where it became apparent that the increasing freedoms that business was acquiring through liberalization needed to be matched by increasing responsibility for the social and environmental impacts of business activities.

⁹ Ecological modernization involves an approach that emphasizes technological and managerial innovations to improve the efficiency of resource use, the need for a more systemic, as opposed to piecemeal, approach, the “win-win” possibilities of such an approach, and the capacity of existing institutions to internalize care for the environment (Hajer, 1995; Dryzek, 1997; Utting, 2002a).

Other currents underpinning civil regulation involved the idea that governance in the era of globalization must be the responsibility of multiple actors (Richter, 2001), given the changes that were taking place in power relations and the need to resolve complex global problems by tapping the capabilities of diverse actors (Nelson and Zadek, 2000). Both business and civil society, therefore, had a legitimate and crucial role to play in “good governance.” The Commission on Global Governance called for “more inclusive and more participatory” mechanisms of global governance which included not only the traditional state-based actors but also NGOs, citizen movements and TNCs (Commission on Global Governance, 1995:5). NGO-business collaboration and “partnerships” were also justified from social science and political science perspectives. The role of NGOs in cultivating frameworks of shared values and practices was seen as important for ensuring that markets were “embedded” in social institutions (Kell and Ruggie, 1999; Newell, 2001). Such perspectives often draw on the writings of Karl Polanyi.¹⁰ Others have drawn on Gramsci’s concept of hegemony to explain how corporations might encourage multistakeholder initiatives and various forms of collaboration with NGOs as a means of (a) accommodating threats to their dominance that derive from civil society activism (Levy, 1997; Murphy and Bendell, 1999) and (b) exercising what Gramsci had referred to as “moral, cultural and intellectual” leadership as a basis for rule via consensus as opposed to coercion (Utting, 2002b).

In a dual context where neo-liberalism was weakening certain state institutions and discrediting the idea of “command and control” regulation, and where certain state-based and international regulatory initiatives had failed, voluntary approaches were seen as the way forward. Initially, such approaches focused heavily on corporate self-regulation. As Jenkins (see essay in this volume) observes, this involved companies and business or industry associations unilaterally designing and implementing various types of initiatives such as codes of conduct, environmental reporting, social audits, corporate social investment and more traditional philanthropic activities. This type of approach, however, soon met with a barrage of criticism.

Many saw corporate self-regulation as essentially a public relations or window dressing exercise. They cited, for example, the tendency of companies to produce glossy environment reports that lacked substance, or to adopt codes of conduct and corporate social investment projects in order to deflect criticism and project an image of a caring company when in reality business carried on as usual. The catchword that summed up these concerns was “greenwash” (Greer and Bruno, 1996)—a term that was popularized to such an extent that it entered the Oxford Dictionary: “disinformation disseminated by an organization so as to present an environmentally responsible image.”¹¹ Several watch-dog, advocacy and research organizations regularly exposed cases of corporations and industry or business associations that failed to practise what they preached. The non-profit research and advocacy group CorpWatch¹² issued “greenwash awards” to companies such as BP, Shell, Monsanto, Ford, Home Depot, Mitsubishi, Exxon, Chevron, Pacific Lumber, WMX Technologies and ICI, as well as to industry associations like the American Plastics Council, the World Business Council for Sustainable Development (WBCSD) and the Chlorine Chemistry Council.

Corporate self-regulatory initiatives were typically ad hoc and piecemeal. Codes of conduct often ignored crucial issues and stakeholder concerns. Hundreds of codes were being designed by companies and industry associations. Each entity, it seemed, applied different

¹⁰ A reading of Polanyi’s *The Great Transformation* reveals the considerable weight he attached to regulation via government intervention, i.e., a mode of regulation that is sometimes bypassed or marginalized by some proponents of civil regulation (Polanyi, 1944).

¹¹ The Concise Oxford English Dictionary, 1999.

¹² Formerly known as the Transnational Resource and Action Center (TRAC). CorpWatch is the Secretariat for the Alliance for a Corporate-Free UN, which includes several prominent northern and southern NGOs.

criteria and promoted different standards. An OECD inventory of codes of conduct identified 246, of which 83% were company or industry/trade association codes. As this study revealed, the types of issues addressed by codes varied considerably and many ignored key concerns such as labour rights, bribery and taxation (Gordon and Miyake, 2000).

As suggested by the critics who accused corporations of greenwashing, there was indeed a large gap between what existed on paper and what happened in practice. The implementation of codes of conduct, for example, was often very weak. UNRISD work on codes of conduct revealed a range of problems. For example, while the affiliates and suppliers of major brand name companies often displayed codes, these were sometimes written in a language that workers could not understand. Workers were often unaware of how to channel complaints, and management received little if any training to facilitate code implementation, either in relation to learning about the different elements of the code or technical aspects related to environment, health and safety standards. Some TNCs ignored the principle of shared responsibility for code implementation and failed to provide suppliers with material assistance to raise their labour and environmental standards. Given their already tight margins, code compliance could pose an unacceptable economic burden on suppliers. As a result, many firms in developing countries, as well as local and national governments, see codes of conduct as a threat to development. One of the most vocal criticisms of corporate self-regulation centred on the lack of independent monitoring and verification (Kemp, 2001; UNRISD, 2001).¹³

Through corporate self-regulation, companies were adopting what Shell and some other companies later acknowledged was an ineffective “trust me” attitude, which called on stakeholders to simply take them at their word (Dommen, 1999). Sceptical stakeholders soon came to demand that companies actually “tell me,” “show me” or “prove it” via environmental and social reporting, independent monitoring, verification and certification systems.

These were some of the criticisms that confronted many TNCs and large national firms in relation to their attempts to promote corporate social responsibility via self-regulation and voluntary approaches. But such criticisms alone would not be sufficient to redirect the regulatory process towards civil regulation. There also needed to be a shift in the balance of social forces.

Throughout the 1990s, NGO and consumer pressures on business mounted. The number of CSOs and networks concerned with issues of corporate social responsibility and accountability expanded rapidly. While their precise goals and approaches varied considerably, some saw in these organizations and networks the makings of a “corporate accountability movement” (Broad and Cavanagh, 1999). Although the most dynamic arena of activism was located in the rich industrialized countries—notably North America, Europe and Australia—NGOs specializing in corporate social responsibility issues also emerged and expanded in many developing countries.

Certain TNCs, some business associations and business NGOs such as WBCSD, did not resist these movements but sought to enter into various forms of multistakeholder relationships or “partnerships.” Some large corporations recognized the need to move the corporate responsibility agenda forward, mainly for the strategic reasons outlined earlier. They too recognized the limits of corporate self-regulation and various forms of voluntary initiatives: too many different standards were being designed and voluntary initiatives that relied on

¹³ The term “independent monitoring” refers to monitoring carried out by an external or independent organization to check whether a company or its supplier have implemented a code of conduct. “Verification” refers to the process whereby an independent authority re-examines the evidence yielded by a prior monitoring process (Ascoly, et al., 2001).

corporate self-regulation were losing credibility, as well as their ability to realize basic objectives related to reputation and risk management.

However, the balance of social forces and the regulatory pendulum would shift only so far. Many of the most vociferous and well-resourced NGOs were not those with agendas that fundamentally questioned contemporary TNC-driven production and consumption patterns. Rather, they included a new breed of activist-cum-“service provider” that tapped the growing market for corporate responsibility services by conducting research, providing consultancy services, and carrying out environmental and social auditing, reporting, monitoring and verification activities. Their approach stressed the possibilities for changing business policy and practice through constructive engagement rather than confrontation (Murphy and Bendell, 1999). Many NGOs and others were also sceptical of a return to state-based regulatory approaches or those involving international regulation. State capacity to design and implement effective regulations was extremely limited in many countries. Indeed, state capacity often declined in a neoliberal policy context that put pressure on many governments to reduce spending and de-regulate, and which often had the unintended consequences of fuelling corruption. Certain multilateral agreements, which had emerged in the 1970s, such as the OECD Guidelines for Multinational Enterprises¹⁴ and the ILO’s Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy,¹⁵ had proved to be weak instruments (ICHRP, 2002). Both agreements are non-binding on states and corporations. The long-drawn-out efforts to design an international code of conduct for TNCs via the United Nations Centre on Transnational Corporations eventually ended without success in the early 1990s (Hansen, 2002).

Trade union structures also recognized the need to engage TNCs. Several International Trade Secretariats (ITSS) sought to negotiate Global Framework Agreements with TNCs that outlined basic social obligations. The willingness and capacity of unions to demand major reforms or mobilize against corporations by using more confrontational tactics had declined, reflecting the more general weakening of international trade unionism that had occurred since the 1980s. Also, the possibility of forging a strong “civil society” alliance was constrained by various tensions that characterized NGO-trade union relations (Gallin, 2000). Trade unions sometimes disagreed, for example, with the tactics of NGOs and consumer groups that called for consumer boycotts—tactics which could put their members’ jobs at risk. Tensions also arose from the perceived encroachment of NGOs into traditional areas of trade union work such as labour organizing, representation of worker interests, the definition of labour standards, and monitoring of labour conditions, as well as from their new (certification) role as the judge and jury of good corporate conduct.

While increasingly sensitive to issues of corporate social responsibility, some political parties and governments remained very cautious about upsetting business interests and inflows of foreign direct investment through talk of stronger regulatory approaches. They tended to support voluntary approaches rather than a return to “command and control” regulation. The US Government, under the Clinton administration, was fairly active on the environmental front and extended its concern to other issues such as child labour and sweatshops. In 1997 it

¹⁴ The OECD Guidelines were adopted in 1976 and revised in 2000. The revised Guidelines were adopted not only by the 30 OECD members but also by Argentina, Brazil and Chile. The Guidelines include standards related to disclosure of information, workers’ rights, industrial relations, environmental protection, combating bribery, consumer interests, science and technology, ensuring competition and taxation, respect for human rights, and elimination of child labour and forced labour (ICHRP, 2002).

¹⁵ The ILO Principles were adopted in 1977. They cover employment issues such as non-discrimination, security of employment, training, wages, benefits and working conditions, health and safety, freedom of association and the right to organize. They also call on companies to respect specific international human rights agreements (ICHRP, 2002).

set up the multistakeholder Apparel Industry Partnership. In March 2000, the UK Government appointed a Minister for Corporate Social Responsibility whose mandate centres primarily on promoting voluntary approaches. The UK Government has also been active in supporting the establishment of certain multistakeholder initiatives such as the Ethical Trading Initiative.

Several multilateral organizations have also become far more active in multistakeholder initiatives associated with corporate social responsibility. The World Bank, for example, created the Global Alliance for Workers and Communities, working with companies such as Nike and the Gap in improving workplace conditions throughout their supply chains. The World Bank also established the Business Partners for Development project which seeks to promote multistakeholder partnerships that encourage companies to support social and environmental improvements in developing countries. Various United Nations agencies, such as the World Health Organization (WHO), United Nations Children's Fund (UNICEF) and United Nations Conference on Trade and Development (UNCTAD), entered into "partnerships" with transnational corporations (Utting, 2000b). The United Nations Development Programme (UNDP) seemed to blow hot and cold on how best to promote corporate social responsibility, announcing one year the need for an international code of conduct (UNDP, 1999), but later refocusing its energies on softer forms of engagement via the short-lived Global Sustainable Development Facility, and later, the Global Compact. The growing interest of the United Nations in both CSR and voluntary approaches found its clearest expression in the establishment of the Global Compact, which became operational in July 2000.

This general shift in the correlation of social forces provided a political context that was highly conducive to the rise of civil regulation and multistakeholder initiatives associated with standard-setting, reporting, auditing, monitoring and certification.

2. The Potential and Limits of Multistakeholder Initiatives

How effective have such multistakeholder initiatives been in promoting corporate social and environmental responsibility? The following sections highlight a number of observations and concerns related to selected initiatives which have emerged during the past decade.

Selected Initiatives

Fourteen initiatives form the basis of these observations. They include standard-setting, auditing, certification or other activities associated with AA1000, the Clean Clothes Campaign, the Ethical Trading Initiative, the Fair Labor Association, the Forest Stewardship Council, the Global Alliance, the Global Compact, Global Framework Agreements, the Global Reporting Initiative, ISO 14001, the Marine Stewardship Council, SA8000, Worldwide Responsible Apparel Production and the Worker Rights Consortium. A brief description of each initiative is provided below. Additional information on some of the companies participating in certain schemes is provided in Annex 1.

AccountAbility 1000 (AA1000) is a tool and standard for social and ethical accounting, auditing and reporting. The AA1000 Framework was established in 1999 by the UK-based Institute of Social and Ethical Accountability to provide guidance on how an organization can improve its accountability and establish effective stakeholder engagement. Through training and dialogue, companies are encouraged to define goals and targets, measure progress made against these targets, audit and report on performance, and develop feedback mechanisms. The AA1000 Framework will be extended in the second half of 2002 to include additional components and will be known as the AA1000 Series (www.accountability.org.uk).

Clean Clothes Campaign (CCC) is an international campaign and network of NGOs, trade unions and other organizations that seek to raise labour standards in the supply chains of European garment and sportswear retailers, and to promote independent verification to ensure compliance with the CCC Code of Labour Practices that was adopted in 1998. CCC organizations in France, the Netherlands, Sweden and Switzerland are currently working with 15 European retailers in pilot schemes that test code implementation, monitoring and verification procedures (www.cleanclothes.org).

Ethical Trading Initiative (ETI) was launched in 1998 by a group of UK-based companies and organizations. The companies involved agree to respect the terms of a Base Code related to social standards, regular monitoring and auditing, and to encourage their suppliers to comply with the Base Code. By October 2001 some 36 companies, mainly in the food and beverages and garments sectors, were associated with this scheme. A central activity of the ETI to date has been a programme of pilot studies designed to test monitoring and verification systems (www.ethicaltrade.org).

Fair Labor Association (FLA) was established in the United States in 1998 as a successor body to the White House Apparel Industry Partnership. It promotes brand certification for garments and sports shoes marketed by TNCs. Certified companies must comply with the FLA code of conduct and submit to regular monitoring and external verification of up to 30% of their facilities. By November 2001, 13 corporations, with 4,000 factories in 75 countries, were participating in the FLA scheme and 161 US colleges and universities had affiliated to the FLA (www.fairlabor.org).

Forest Stewardship Council (FSC), an international NGO established in 1993 as an independent labelling scheme for forest products, aims to provide a credible guarantee that the timber and wood products come from forests that are well-managed environmentally, socially and economically. Based in Mexico, it is an association of members consisting of representatives of industry, conservation and community groups, indigenous peoples, the forestry profession and forest product certification organizations from around the world. By October 2001, 345 logging operations and 23.8 million hectares of forests had acquired FSC certification (www.fscoax.org).

Global Alliance for Workers and Communities is an initiative established in 1999 that involves the World Bank, the International Youth Foundation, Nike and Gap. It promotes corporate adherence to internationally-agreed standards; carries out in-depth assessment of workplace conditions, workers' aspirations and community needs; and establishes training and development programmes to foster management awareness, and assist workers—particularly young adults—and communities. After five years, this initiative aims to work with up to ten global companies in 12 to 15 countries (www.theglobalalliance.org).

Global Compact is a United Nations initiative that formally commenced in July 2000. It encourages TNCs and companies in developing and transitional economies to adhere to nine principles related to environmental protection, human rights and labour standards; adopt, publicize and learn from “best practices;” and develop projects with United Nations agencies and civil society organizations. By October 2001, approximately 400 companies from 30 countries had associated themselves with the Global Compact, and 31 companies had submitted “best practice” examples. This initiative aims to enlist the support of 100 global corporations and 1,000 companies by 2002 (www.unglobalcompact.org).

Global Framework Agreements are agreements negotiated by a trade union organization, usually an International Trade Secretariat (ITS), with a TNC. They specify minimum labour standards and rights associated with freedom of association and collective bargaining but can vary considerably in terms of their provisions for joint labour-management follow-up

procedures and negotiations. By late 2001, various types of Framework Agreements involving 18 corporations had been signed with ITSs (see Annex 1).

Global Reporting Initiative (GRI) was established in 1997 as a project of the US-based Coalition for Environmentally Responsible Economies (CERES) and the United Nations Environment Programme (UNEP). It plans to become an independent organization in 2002. GRI has developed and continues to refine guidelines for social and environmental reporting and encourages companies to provide information on their social and environmental impacts to the public. By October 2001, GRI was aware of 83 companies that had “referred to or followed” its Sustainability Reporting Guidelines (www.globalreporting.org).

ISO 14001 was established in 1995 by the International Organization for Standardization (ISO) as a set of guidelines for improving environmental management and a certification system that indicates that a company has put in place an environmental management system that conforms to the guidelines. By 31 December 2000, nearly 23,000 entities had obtained ISO 14001 certification (www.iso.org).

Marine Stewardship Council (MSC), a non-governmental body established in 1997, has developed a standard and a certification system that aims to assess and promote the sustainability of marine fisheries. Originally created by Unilever and the World Wide Fund for Nature (WWF), MSC began to operate as an independent organization in 1999. By October 2001, 12 fisheries (a “fishery” refers to a combination of fish species, geographical area and fishing method) had either acquired MSC certification or were in the process of being certified (www.msc.org).

Social Accountability 8000 (SA8000) was established in 1997 by the US-based Council on Economic Priorities and Accreditation Agency (CEPAA), now known as Social Accountability International. SA8000 is a cross-industry standard for workplace conditions and a verification and certification system. By November 2001, 80 factories and facilities had obtained SA8000 certification. Another eight northern retailers had become SA8000 Signatories, adopting SA8000 as the code of conduct for designated company-owned and supplier facilities (www.sa-intl.org).

Worldwide Responsible Apparel Production (WRAP), an initiative of the American Apparel Manufacturers Association, aims to ensure that apparel is produced under lawful, humane and ethical conditions. A set of “Production Principles” was approved in 1998 and a certification system for factories was tested in 2000. Since starting operations in June 2000, over 225 sewn-product factories have registered with WRAP and 23 factories have been certified. By October 2001, maquiladora and manufacturers’ associations in 13 countries had endorsed the Principles (www.wrapapparel.org; see also www.maquilasolidarity.org).

Worker Rights Consortium (WRC) was established in 2000 on the initiative of the United Students Against Sweatshops (USAS). It aims to improve labour conditions in the factories that form part of the supply chain of companies that produce sportswear goods under license for US colleges and universities. The WRC carries out investigations of factories in response to specific complaints and verifies compliance with standards contained in the WRC Code of Conduct. By November 2001, 90 US colleges and universities had affiliated to the WRC and investigative reports had been prepared in relation to two factories (www.workersrights.org).

Early Days or Drops in the Ocean?

Given the recent origins of many initiatives, it is difficult to assess their impact. Most emerged in the late 1990s and several, such as AA1000, the CCC schemes, ETI, Global Alliance, Global Compact, GRI and MSC are still in their start-up, pilot or experimental phase.

The early experience of these initiatives would seem to suggest, however, that their scaling up confronts serious limits. One of the most basic criticisms of voluntary approaches is the so-called “free rider” problem and the fact that many, indeed, most companies never participate in such schemes (FitzGerald, 2001). There is no reason to expect that this situation will change fundamentally with multistakeholder initiatives.

When assessing the quantitative impact of voluntary initiatives, in terms of the number of participating companies, it is important to remember some basic facts and figures. According to UNCTAD, there are over 60,000 TNCs with more than 800,000 affiliates (UNCTAD, 2001). The World Bank records some 50,000 domestic companies listed on stock exchanges (World Bank, 2000). Figures on the number of companies supplying TNCs would run into the millions.

In comparison with this universe of firms, the number participating in multistakeholder initiatives is fairly minimal. The information on selected multistakeholder initiatives, presented above and in Annex 1, provides a reality check on where these initiatives are in quantitative terms. Given the incipient and experimental character of several initiatives, one should not, perhaps, expect otherwise. There is a tendency, however, for some of the rhetoric surrounding multistakeholder initiatives to embellish their achievements or suggest that a major scaling up of these initiatives is possible. Some schemes are more circumspect. The Clean Clothes Campaign and the Ethical Trading Initiative, for example, have purposefully avoided any quick scaling up of their activities by engaging in fairly exhaustive pilot schemes to test methodologies. For reasons outlined below, the WRC is critical of approaches that are based on certifying numerous companies or factories.

Certification schemes, such as ISO 14001 and the FSC, which have a slightly longer history, suggest some scope for expansion. But even these initiatives reach only a small proportion of companies. Furthermore, many of the companies involved tend to be associated with a particular sector or category of firm and/or geographical region.

The ISO 14001 certification system for environmental management has been operational for six years. By the end of 2000, 22,897 certificates had been awarded, and if one takes as a very rough point of comparison the universe of TNC affiliates, this then represents 3%. While ISO 14001 certification now exists in 98 countries, the majority of certificates are awarded in Europe (48%) and Japan (24%). ISO 14001 certification is progressing far more slowly than ISO 9000, which is for quality management. If we compare the number of certificates issued under each scheme during their first six years, ISO 9000 certificates were awarded to nearly ten times as many entities.

The FSC certification system now extends to logging operations in 48 countries. Over half of the certified facilities are located in Sweden (39%) and the US (13%). FSC certification is heavily concentrated not only in northern countries (84%) but also in large logging operations (85%—Bass et al., 2001:23). The 24 million hectares of forest that have been FSC certified represent approximately 1% of the world’s forests outside of protected areas or roughly the equivalent of the area of forest which is cleared or degraded in just one year.¹⁶

¹⁶ Dudley et al., 1995. More recent FAO estimates suggest that net annual deforestation amounts to nine million hectares a year. This figure is disputed by both the World Resources Institute and WWF-International, which employ a figure of approximately 16 million hectares of annual tropical forest loss. This does not include, however, forests that are gradually being degraded or converted to plantations, which could bring the total area for cleared and degraded forest to more than 20 million hectares (personal communication, WWF-International, November 2001).

A feature of many multistakeholder initiatives is their narrow sectoral focus. The sectors and companies involved tend to be those where brand reputation is important, and where particular abuses have been detected by northern consumers and activists and placed under the media spotlight. As Kemp observes in relation to Indonesia, initiatives to promote corporate social responsibility have often ignored TNCs and sectors where some of the worst abuses occur, such as tobacco and hotels, and tend to focus on issues associated with the apparel, sportswear and mining sectors, even though a few prominent TNCs have taken considerable remedial action (Kemp, 2001). Even SA8000, which aims to be a global standard applicable to numerous sectors, has been taken up by firms in a limited number of sectors. Many of the companies that initially applied for SA8000 certification were either toy or apparel factories (www.sa-intl.org).

Quality Control

One of the key objectives of multistakeholder initiatives has been to improve the quality of standard-setting, reporting, auditing, monitoring and verification procedures. These initiatives have addressed some of the major gaps in self-regulatory codes related, for example, to labour rights, the responsibilities of suppliers and provisions for independent monitoring. In relation to labour standards, for example, SA8000, the Ethical Trading Initiative, the Clean Clothes Campaign, the Fair Labor Association, the Framework Agreements of the International Trade Secretariats, the Global Compact and the Worker Rights Consortium all stress the importance of the ILO Core Labour Conventions related to prohibitions on child labour, discrimination in the workplace, and the use of forced labour, as well as the right to collective bargaining and freedom of association. Apart from the Global Compact, these initiatives also contain explicit provisions dealing with minimum wages or “living wages.”¹⁷

Many such initiatives attempt to extend the scope of corporate social responsibility beyond production facilities directly owned by the TNC, and it is therefore common to have provisions for dealing with suppliers and subcontractors. Some schemes, notably those primarily concerned with conditions in the apparel and sportswear industries, focus explicitly on standards and independent monitoring related to suppliers. Others, including SA8000, contain provisions and recommendations related to subcontractors but “these do not constitute an enforced or enforceable part of a company’s agreement...” (Wick, 2001:34). Suppliers and sub-contractors are only certified at their request. Global Framework Agreements may also extend to suppliers although some recognize the difficulties TNCs face in complying with their provisions. The IUF/Chiquita agreement states: “Chiquita will require its suppliers, contract growers and joint venture partners to provide reasonable evidence that they respect...[the] Standards. The parties agree that the effective implementation of this provision is dependent on a number of factors such as Chiquita’s relative degree of influence over its suppliers and the availability of appropriate and commercially viable supply alternatives.”

Most initiatives stress the need for independent monitoring to check whether agreed standards are being adhered to. The only scheme that has explicitly avoided this approach is the Global Compact. Indeed, a key stakeholder of the Global Compact, the International Chamber of Commerce, warns that “business would look askance at any suggestion involving external assessment of corporate performance, whether by special interest groups or by UN agencies” (Cattai, 2000).

¹⁷ Definitions of a “living wage” vary and finding a definition that can be applied in practice has proven difficult. In relation to the garment sector, WRC has defined a living wage as “a ‘take home’ or ‘net’ wage, earned during a country’s legal maximum work week, but not more than 48 hours. A living wage provides for the basic needs (housing, energy, nutrition, clothing, health care, education, potable water, childcare, transportation and savings) of an average family unit of employees in the garment manufacturing employment sector of the country divided by the average number of adult wage earners in the family unit of employees in the garment manufacturing employment sector of the country” (www.workersrights.org).

Another potential advantage of multistakeholder initiatives is their attempt to impose some degree of harmonization and standardization on what had become a tangled web of codes of conduct, each with differing standards and requirements. SA8000, for example, sought to apply the ISO 14001 auditing model for environmental management to the realm of labour standards, and to do this in multiple sectors on a global scale. In some sectors, however, multistakeholder initiatives seem to be following the same path as company codes in terms of proliferation. Several competing base codes and independent monitoring systems are being developed by different NGOs or multistakeholder groups. This is particularly apparent in the apparel and sportswear sectors where several US initiatives have emerged partly or exclusively in response to the concerns of northern consumers and activists about “sweatshops” and the activities of corporations such as Nike. These include, for example, the Fair Labor Association, the Worker Rights Consortium, WRAP, the Global Alliance and SA8000. A number of European schemes (for example, ETI and CCC) also target apparel firms. Rather than competing, however, these initiatives work with companies from different countries.

There are considerable differences in the approaches adopted by different multistakeholder initiatives to improve corporate social and environmental policy and performance. Some, such as ISO 14001, do not monitor the environmental impacts of companies—they simply certify that certain elements of an environmental management system (for example, that the company has a written environmental policy and relevant staff training procedures) are in place. Whether or not such a management system actually reduces significantly a company’s emissions or waste is not directly relevant for ISO 14001 certification (Krut and Gleckman, 1998). ISO 14001 certification, then, is a “process” standard related to how an environmental management system should be organized.

Other schemes like the Global Reporting Initiative and AA1000 also stress process as opposed to performance: processes related to how companies should report on their environmental performance and how they should engage in triple-bottom line accounting, respectively. The Ethical Trading Initiative does not directly certify member companies that have agreed to adhere to the principles of the ETI Base Code. Rather it provides a forum where a learning process can take place regarding how best to implement codes and participate in monitoring and verification systems. This is somewhat different from other multistakeholder initiatives such as SA8000 and FSC certification that monitor performance. FSC certification, for example, is based on performance standards that need to be met by the forest operation, but even FSC certification may change little on the ground. One analysis suggests that it has been adopted primarily by “good” producers, which had already developed relatively acceptable forest management practices (Bass et al., 2001:24).

Multistakeholder initiatives are often faced with a dilemma when it comes to the methods they emphasize to promote changes in management systems. As Zadek points out, two very different approaches can be adopted: innovation and the promotion of new values and competencies through dialogue and social learning, and the development of rules-based systems and “codification” (Zadek, 2001:152-154). The former approach, which is emphasized by initiatives such as AA1000, can result in “over-flexibility,” difficulties in promoting change throughout the corporate structure, and loopholes, which can ultimately undermine the credibility of the initiative. The latter approach, associated with initiatives such as SA8000 and the FLA, tends to result in a simpler checklist approach that may be easier to apply but may undermine the effective assessment of workplace conditions and the possibility of inducing significant changes in corporate culture (ibid.).

Despite the fact that most multistakeholder initiatives claim to promote labour rights, in practice, corporations participating in certain schemes seem to be more willing to address

issues of labour welfare and working conditions, rather than labour rights issues such as freedom of association and collective bargaining. In an evaluation of the Better Banana Project (formerly Eco-OK) certification scheme, involving the US NGO Rainforest Alliance and the TNC Chiquita Brands, Bendell suggests that such an imbalance has served to strain relations between the NGO and various stakeholders, notably certain trade union organizations, which in turn has undermined the global legitimacy of the scheme (Bendell, 2001a).

Another difficult issue has been the certification of companies that have no unions or operate in countries where there is no right to freedom of association, such as China. One way out of this conundrum has been to accept as an indicator of good practice the existence or development of some sort of “parallel means” of independent workers’ representation and bargaining. The ETI and SA8000, for example, have such a clause. Some trade union organizations, such as the International Union of Food and Allied Workers (IUF), question the legitimacy of such clauses arguing that parallel representation may not be an effective alternative to freedom of association. It can be used, for example, to legitimize the existence of “union” structures that, essentially, may be tools of management.

Parallel representation can provide spaces for the empowerment of workers, and may be particularly relevant for women workers in countries where they have been poorly represented by traditional male-dominated trade union organizations (Kabeer, 2001).

The Hong Kong-based NGO and union coalition, LARIC, saw the ETI clause as providing a space for training worker organizers and for trade union education. LARIC therefore agreed to participate in the ETI pilot project in China in order to work on such aspects. This approach, however, was not supported by business interests involved in the pilot. A report by the Centre for Research on Multinational Corporations (SOMO) reveals that the UK retailer, Littlewoods, wanted instead to focus on evaluating and improving working conditions, while the supplier in China would only accept training carried out by the local labour bureau. As a result the pilot was put on hold (Ascoly et al., 2001).

There can be a trade-off between “quality” and “scale.” The CCC initiatives, for example, are experimenting with comprehensive monitoring and verification methods but, for the present, can only do so in a very few companies. This has proven to be a difficult and time-consuming exercise (Ascoly and Zeldenrust, 2001). In contrast, certain certification schemes like ISO 14001, SA8000 and the FLA rely heavily on large accounting and auditing firms like PricewaterhouseCoopers (PwC) and Société Générale de Surveillance (SGS). The methods used by such initiatives and companies have been questioned for their superficiality and inability to assess accurately and objectively workplace conditions, labour relations and factory-community relations. An evaluation of PricewaterhouseCoopers’ monitoring of compliance with labour standards in factories in China, Korea and Indonesia revealed that auditors had found minor violations but failed to note various serious health and safety problems, including the use of hazardous chemicals, obstacles to freedom of association and collective bargaining, violations of both overtime and wage laws, and what appeared to be falsified timecards (O’Rourke, 2000).

Referring to such methods, the WRC Principles point out that: “experience has shown that factories are often ‘cleaned up’ for short periods of time, but then return to significantly violating the Code. One-time investigations often just cover up poor working conditions. Hence, certifying ‘compliance’ of an entire corporation or factory is ultimately impossible...” (www.workersrights.org).

Ongoing Greenwash?

Given the emphasis that most schemes place on developing a set of comprehensive standards and putting in place independent monitoring and verification procedures, multistakeholder initiatives have consciously aimed to reduce the scope for “greenwash.” Some schemes, however, have been more successful than others.

Certain critics of the Global Compact suggest the concept of greenwash should now be broadened to embrace “bluewash,” i.e., the ability of participating firms to boost their image through their association with (the blue flag of) the United Nations, in return for having done little to improve their social and environmental performance (TRAC, 2000). The Global Compact has responded to these concerns by applying certain controls on the use of the UN logo and corporate funding, and no longer publicizes the names of companies on its website that have merely signed up to the Compact. It is only when such companies actually comply with the Global Compact provisions and submit reports on what they have done to promote the Global Compact’s principles that their names will appear. At the time of writing, however, companies are usually named in relation to a specific “best practice” example.¹⁸ There are concerns that this format does not provide a mechanism to examine the extent to which companies are complying with all nine of the Global Compact Principles.¹⁹ And because of delays in establishing the Global Compact Learning Forum—a data bank and Internet platform that aims to facilitate information-sharing on issues of corporate social responsibility—these examples were being publicized on the Global Compact website without any accompanying commentary or stakeholder feedback.

The essence of the bluewash criticism, of course, has to do with the absence of both effective mechanisms for monitoring the performance of participating companies and penalties or “shaming” mechanisms in cases of non-compliance. It also has to do with the fact that companies can gain mileage from their participation in a scheme that only asks them to address certain issues and not others. Such loopholes are not only conducive to double standards but, as bad practices periodically come to light, may also undermine the credibility of the Global Compact. A recent example is the participation of certain Global Compact companies in a “nine-year conspiracy to control the vitamins market,” for which they received the largest fine ever imposed by the European Commission (Financial Times, 21 November 2001).

Pressures on companies may, in the future, come about through the Learning Forum, which aims to provide a space for various stakeholders to comment on company best practices and performance.²⁰ Different stakeholders also participate in the Global Compact Advisory Council, established in January 2002 to promote “measures that might enhance the quality and concrete impact of participation in the Global Compact.”²¹ One of the Advisory Council’s main tasks will be “to propose better standards of participation in order to improve the Compact’s effectiveness and safeguard its integrity.”²²

Until the present, however, it has mainly been actors outside the Global Compact that have exposed the gaps between company statements and performance. Several NGOs, for example,

¹⁸ There are some notable exceptions. Statoil, for example, is mentioned for having used the Global Compact Principles as the basis for a Framework Agreement with the International Federation of Chemical, Energy, Mine and General Worker’s Unions (ICEM).

¹⁹ Personal communication, International Baby Food Action Network (IBFAN), Geneva, November 2001.

²⁰ Personal communication, Georg Kell, Global Compact Office, New York, November 2001.

²¹ Kofi Annan, inaugural meeting of Global Compact Advisory Council, 8 January 2002 (www.unglobalcompact.org).

²² Daily press briefing by the office of the spokesman for the United Nations Secretary-General.

have formed the Alliance for a Corporate Free UN. The Alliance regularly publishes exposés of participating companies and other stakeholders that, it claims, are violating the Principles of the Global Compact. During the Global Compact's first year of existence, six such reports were prepared on the International Chamber of Commerce, Aventis, Nike, Norsk Hydro, Rio Tinto and Unilever (www.corpwatch.org).

The Global Compact still needs to prove its ability to force the pace of corporate reform. Some stakeholders are concerned that the “social learning” approach²³ will be insufficient to assure corporate responsibility (Bendell, 2001c, citing Human Rights Watch). At the launch of the Global Compact in July 2000, the United Nations High Commissioner for Human Rights, Mary Robinson, called on the participants “to recognize...that there is a price to be paid for participating in the Global Compact....We must be working towards independent monitoring of the application of the principles; there must be public reporting of how principles are implemented...and we must identify measures to be taken against those who have subscribed to the Global Compact but clearly are not adhering to the principles. It is quite clear that you can't just sign on and think that there will be a free ride.” Similarly, Gerald Helleiner, in a lecture to the United Nations on “civilizing the global economy” identified the activities of untransparent corporations as a grave threat to democratic and accountable global economic governance: “They must be ‘exposed,’ i.e., made transparent, and their effects analyzed and, if baleful, addressed. Any UN Global Compact with private business that does not address this issue cannot be taken too seriously” (Helleiner, 2000).

Greenwash criticism does not only apply to multistakeholder initiatives that are relatively weak on independent monitoring and verification. Even those that have gained a reputation for having adopted more rigorous standards, for example, SA8000 and the Ethical Trading Initiative, have been criticized by some trade unions and labour NGOs for their definition as to what constitutes compliance with labour rights such as freedom of association and collective bargaining. Indeed some trade unions are perplexed as to why companies that operate in China—where free trade unions are not allowed—can acquire the ethical blessing of such schemes.²⁴ Furthermore, they are concerned that companies such as Dole are acquiring SA8000 certification when, in practice, they have a fairly poor record in relation to certain labour rights. Even Nike, which participates in more schemes than any other company, still remains very much in the media and activist spotlight for alleged breaches of the principles and standards it purports to uphold.

Such revelations should not be surprising. Large global corporations will always commit social and environmental sins: they are under pressure to cut costs and cut corners; by their very nature they need to exploit human and natural resources; and they have bureaucracies and corporate cultures that are difficult to change. Perhaps more surprising is the approach—adopted by some multistakeholder initiatives—that provides certificates of good conduct rather than establishes an institutional mechanism to detect and deal with the abuses and breaches that will inevitably occur. This issue will be further discussed in Part 3.

It has often been observed that the power of civil regulation to influence business practices derives from a combination of “carrots” or forms of engagement/collaboration and “sticks,” i.e., the politics of confrontation. It is apparent that different multistakeholder initiatives adopt different approaches in this regard. This is particularly apparent in relation to their policies on disclosure of information. If schemes publicize the results of their monitoring and verification, this information can be used by others to praise or name and shame corporations. Keeping corporations in the spotlight has proved to be a particularly effective means of getting them to act. But many schemes are reluctant to ruffle the feathers of their corporate “partners” by engaging in naming and shaming tactics. The Maquila Solidarity Network notes

²³ See Ruggie, 2001.

²⁴ Personal communication, Ron Oswald, IUF, August 2001

that FLA and WRAP do not list certified factories on their websites, making it difficult for civil society organizations to check on the factories concerned (Maquila Solidarity Network, 2001). It points out that such information is available for SA8000 certified companies but no information is provided on facilities that fail to obtain certification, and very little is said about the specific results of audits. In the case of all three schemes, auditors' reports are generally the sole property of the companies involved.

Complexity

One of the major concerns with multistakeholder codes and certification systems is similar to concerns associated with company codes of conduct—namely weaknesses related to monitoring and verification. A system of regulation that has to rely on in-depth, periodic and independent monitoring of codes of conduct is extremely difficult to apply effectively on any scale.

The technical complexities and costs of independent verification are considerable. Not only is the range of data required quite broad (health, safety and environment conditions, hours worked, pay, worker-management relations, gender relations, company-community relations, etc.), but accessing and obtaining such information can be extremely difficult given the expertise required, the reluctance of workers and management to communicate openly and honestly, and the typically short timeframe of any monitoring exercise. As a SOMO report points out: “finding the right mix of organizations and people to take part in the monitoring and verification process and the right way to include their knowledge and information, requires a lot of capacity that at present is generally not available” (Ascoly et al., 2001). The mass of information required, the timeframe needed for information gathering and analysis, and the types of expertise required make monitoring and verification systems quite costly.

Compounding these problems, of course, is the fact that large corporations may have vast numbers of affiliates and suppliers. Monitoring most or all of them is, clearly, an impossible task. Therefore, relatively few are selected, which raises concerns about the criteria for selection and what goes on in the others. If we add to this the fact that verification is generally supposed to be undertaken periodically, then the effectiveness of such systems and their application on a large scale is called into doubt.

There are concerns that many firms (notably small and medium-sized enterprises) in developing countries find it difficult to participate in such schemes. For example, ISO certification can prove costly—generally between US\$5,000-20,000 for the first-time audit and consultation for establishing an environmental management system, assuming local auditors are available, plus an annual cost of US\$4,000-5,000. These costs increase considerably if international auditors are used (Clapp, 1998). To obtain SA8000 certification, manufacturers and suppliers reportedly pay (a) a US\$500 application fee; (b) per diem audit costs, which could amount to approximately US\$750 per day; (c) travel and translation costs; (d) the cost of five surveillance audits after six months; and, of course, (e) the costs of any improvements that need to be made to labour conditions (Wick, 2001:36). The auditing costs alone (items b and d) could amount to approximately US\$20,000 (ibid.).

Autonomy and Participation

The degree of independence that an initiative enjoys from business interests can sometimes be a pointer as to how rigorous that initiative is in terms of the standards adopted and the quality of monitoring, verification and disclosure. Most of the multistakeholder initiatives discussed in this paper, notably AA1000, ETI, FLA, FSC, GRI and SA8000, have been heavily influenced by NGO interests and have sought to design fairly rigorous standards and implementation procedures.

Criticisms of schemes like ISO 14001 and WRAP sometimes establish a connection between what are regarded as fairly weak standards, monitoring or disclosure provisions and the fact that such initiatives have been strongly influenced by business interests. The credibility of some multistakeholder schemes such as the Global Alliance and the MSC has been undermined because of the key role that major corporations have played in designing the initiative.²⁵ The objective basis for this may, in fact, be quite thin. Referring to the work of the Global Alliance in Indonesia, Kemp notes that “[this initiative] had been dismissed by much of the international consumer movement as being a front for corporate values....In fact it turned out to be an effective critic of Nike as its work was done by trained social scientists using empirical research methods and a large sample” (Kemp, 2001). The MSC has taken steps to broaden its governance structure and to dilute its association with its corporate founder, Unilever. As Fowler and Heap point out, this does not necessarily mean that the stakeholders involved feel that they genuinely own the initiative. Contrasting the formation of the MSC to that of the FSC, they note: “...the FSC is a membership organization that helps to engender a sense of belonging and ownership for those involved....This has enabled the FSC stakeholders to overcome seemingly insoluble problems and disputes....[A]lthough a series of stakeholder consultations has been undertaken to discuss the MSC Principles and Criteria, the ultimate decision on issues of structure and governance rests with the MSC board in what could be described as a top-down model of institution building...this accounts for some of the challenges to the MSC’s credibility, particularly within the international development NGO community.”

A key question regarding the legitimacy and accountability of multistakeholder initiatives concerns the involvement of trade unions in governance structures. This may vary considerably from little or no formal involvement in the case, for example, of ISO 14001, WRAP and the Global Alliance and FLA, to significant participation, in the case of several other schemes such as SA8000 and ETI, to more extensive involvement in the case of WRC and CCC. In some instances, however, formal trade union participation needs to be interpreted with care. It may not mean that the trade unions involved fully endorse the initiative, rather, their participation amounts to a form of “critical engagement.” International Trade Secretariats like the International Union of Food and Allied Workers and the International Textile, Garment and Leather Workers’ Federation, have agreed to be on the boards of initiatives such as SA8000 and ETI as much to criticize as to shape them. By participating they hope to raise certain criticisms, notably the fact that such schemes may endorse factories or companies where free trade unions or collective bargaining do not exist. Participation also provides an opportunity to interact more directly with the senior management of the TNCs that employ their members.²⁶ Where the IUF is strong, the policy is to negotiate Global Framework Agreements. In some sectors, such as agriculture where they are weak, various initiatives associated with codes of conduct and certification, as well as pension fund pressure, can exert pressures on companies to open the way for union organizing (IUF, 1999).

While certain multistakeholder initiatives initially adopted relatively weak standards and procedures, some have been engaged in an important learning process, partly prompted by external criticism and/or competition from other initiatives. Certification systems associated with the Fair Labor Association and SA8000, for example, have taken on board various concerns of trade unions and have tried to strengthen the verification system of apparel firms. As noted above, the MSC has broadened its governance structure to dilute its association with Unilever. The FSC has shifted from a more environmental perspective to one that also incorporates social and labour concerns. The Global Compact has also adapted its initial best practice approach and has strengthened elements associated with social learning.

²⁵ For a discussion of the MSC, see Fowler and Heap, 1998.

²⁶ Personal communication, Ron Oswald, IUF, August 2001.

Southern Concerns

The issue of participation extends beyond that of NGO and trade union involvement, to that of southern actors more generally. There is growing recognition that civil regulation has been driven primarily by northern actors and interests that have paid insufficient attention to certain developing country realities, while some initiatives have assumed paternalistic overtones. Southern workers are often seen as “victims” that need help rather than as actual or potential agents of change (Abrahams, 2001; Kabeer, 2001). Concerns have also arisen as to whether the types of standards promoted by multistakeholder initiatives really address the priority concerns and problems of southern workers. Bendell found that the concerns of women workers on a Costa Rican banana plantation were “more or less” covered by the SA8000 and ETI initiatives (Bendell, 2001b).²⁷ Others are less positive. Referring to women workers in the garment industry in Bangladesh, Dannecker writes: “while certain work-related problems were mentioned by the majority of women,...the complaints of women focused on other issues than the ones discussed in the literature or mentioned by union or NGO representatives as the most significant problems” (Dannecker, 1998, cited in Kabeer, 2001). Also referring to garment workers in Bangladesh, Kabeer points out that “other disadvantages relating to women’s employment experience were more culturally specific in nature and hence unlikely to be captured in global discussions about labour standards: for instance, anxieties about their reputation in the wider community; discomfort at having to work alongside men; concern that they might indeed be violating purdah; the lack of provision for a place to pray and so on” (Kabeer, 2001). In India concerns have emerged that the northern CSR agenda sometimes pays insufficient attention to key problems such as bonded labour and the way in which corporations actively shape government policies that are socially regressive.²⁸

There is a danger that the considerable attention given to corporate responsibility issues, TNCs and their supply chains, is diverting attention from more pressing labour, environmental and community concerns related to conditions outside of TNC supply chains (Kabeer, 2001), particularly in the growing informal sectors of developing countries. Furthermore, as noted earlier, attention tends to focus on just a few corporations and sectors such as garments, sportswear, toys, and mining, and often ignores the activities of corporations in other sectors where labour and environmental conditions could be worse (Kemp, 2001).

Economic and developmental concerns of southern firms and governments are sometimes ignored, particularly the question of who should bear the cost of improving labour and other standards of suppliers and sub-contractors. Of particular concern are the protectionist implications of some multistakeholder initiatives. As UNCTAD warns, “despite all the best intentions, when backed by the power of consumers in developed countries, such initiatives could function like non-tariff barriers or significantly raise the cost of competitive entry into global markets” (UNCTAD, 1999:369). In extreme cases, some initiatives could result in TNCs severing their links with southern suppliers. Although it is not clear to what extent the protectionist effect has materialized in practice, such concerns need to be addressed.

Several initiatives, such as the Worker Rights Consortium, explicitly warn participating companies not to adopt a “cut and run” approach when suppliers in developing countries breach standards. Rather than switching from southern to northern suppliers, it is perhaps more likely that TNCs will switch from smaller to larger suppliers, which have a greater capacity to comply.

The promotion of corporate social responsibility in TNC supply chains may end up squeezing small and medium enterprises from such chains and favouring larger national firms. Smaller

²⁷ He notes, however, that a key topic not covered by these initiatives is the issue of job insecurity that arises when banana prices fall. Both schemes focus on individual production units only.

²⁸ Personal communication with the Director of Partners-in-Change, February 2001.

and more fragile enterprises will, of course, find it much more difficult than larger ones to bear the costs of complying with the relevant standards and participating in certification programmes. In practice, such schemes could have the effect of displacing production to larger factories. A study on forest certification carried out by the International Institute for Environment and Development (IIED) notes that “there are aspects of FSC’s standards and their assumption of ‘western’ scientific forestry, that conspire against smaller companies and community groups....Certification is a regressive instrument: the fixed costs of certification are higher for smaller producers....Often there are inequitable effects: certification is often granted to larger, richer groups, whilst others experience various forms of discrimination (because of costs, or because local norms and practices are not recognized by standards)” (Bass et al., 2001:24). Some similar effects have been noted in the horticultural sector (UNCTAD and SGS, 1998).

The prospects for raising standards in the South depend not only on economic considerations but also on institutional ones. Advances in relation to corporate social responsibility typically occur in an institutional context where, for example, there exists a free press, a vibrant civil society—including free trade unions and social and environmental movements, a “welfare-minded” state that enjoys some autonomy from business interests, and effective parliamentary and judicial systems (Hanks, 2002). In countries where such conditions are weak, it is unrealistic to expect significant progress in relation to corporate social responsibility. Moreover, it is likely to remain an externally driven agenda that lacks crucial elements of ownership and control by local stakeholders.

Ignoring the Bigger Picture

The initial enthusiasm for voluntary initiatives and civil regulation has been slightly tempered by recognition of the fact that certain policies, institutions and processes associated with neoliberalism and the capitalist system impose objective limits on what can be achieved in terms of corporate social responsibility and multistakeholder initiatives. As was pointed out at an UNRISD conference on the potential and limits of voluntary initiatives, they not only hinder efforts to promote corporate social responsibility but may actually foster social and environmental irresponsibility:²⁹

- Target or piece-rate systems, which are used in many factories, often undermine attempts to improve workers’ health and safety, given their effects on the intensity of labour and the fact that tasks can often be performed faster without protective items such as gloves or masks.
- Monetary policies that result in high interest rates in developing countries may restrict corporate investment in infrastructure, technology and training associated with corporate social and environmental responsibility.
- Policies to promote foreign direct investment and fiscal discipline (i.e., reduced state expenditures) can result in a lowering of labour standards and of state capacity to protect and inspect labour conditions. Such policies may also restrict the use of fiscal incentives to encourage firms to become more socially and environmentally responsible.
- Financial markets and credit ratings tend to favour governments and companies that cut labour and environmental protection costs and penalize those that increase such expenditures.
- TNC suppliers are expected to raise standards but fierce price competition and delivery schedules impose serious financial and managerial constraints.
- Some TNCs are improving certain aspects of labour and environmental standards in their core operations but are increasing their reliance on sub-contracting for various

²⁹ UNRISD Workshop, Promoting Corporate Responsibility in Developing Countries: The Potential and Limits of Voluntary Initiatives, 23-24 October 2000, Geneva.

activities. This often results in a lowering of labour and environmental standards and may weaken trade unions.

- Deflationary policies and privatization may not only affect “decent work” but also restrict job creation and result in higher levels of formal sector unemployment.
- In areas like the US-Mexico border where there is a movement of polluting industries from the North to the South, firms that relocate may have environmental management systems that are superior to those that previously existed in the host country, but such shifts in location may imply an overall deterioration of environmental standards for the companies involved.
- Certain patterns of consumption and industrial production encourage the manufacture of goods and the adoption of technological systems that are inherently unsound from an environmental perspective and may be associated with negative social impacts.

3. Future Directions

There are signs that certain strands of academic and activist thinking regarding the role of multistakeholder initiatives are evolving. The somewhat uncritical perspective that saw such forms of “civil regulation” as key to corporate social responsibility is giving ground to a more realistic assessment of their potential and limits.

On the plus side, civil regulation in general, and multistakeholder standard-setting and certification initiatives in particular, can be seen as a constructive attempt to fill the large gap in regulatory or governance arrangements that state and international organizations had been unable or unwilling to fill during the 1980s and 1990s. These new forms of “transnational private governance” (Gereffi et al., 2001) or “private global regulation” (Murphy and Bendell, 1999) can complement and sometimes bolster state and international regulatory regimes. Multistakeholder initiatives can add “a new set of carrots and sticks to encourage compliance” with labour and environmental standards (Newell, 2001), and can play a useful role in processes of organizational learning through which corporations acquire values and competencies associated with corporate social responsibility (Zadek, 2001).

Clearly, multistakeholder initiatives represent an advance on codes of conduct unilaterally designed by corporations or industry associations. Most of the schemes referred to in this paper have addressed, albeit with varying degrees of effectiveness, some of the major limitations that characterized self-regulatory initiatives. In particular, they have sought to standardize the content of codes, strengthen components related to labour rights, and ensure the centrality of monitoring and verification processes.

Opinions vary considerably, however, regarding the extent to which multistakeholder initiatives really do “fill the regulatory gap” or are “quickly becoming a powerful tool for promoting worker rights and protecting the environment in the era of free trade” (Gereffi et al., 2001). The concerns expressed in this paper suggest that such power—and the speed of change—may be overstated.

It is apparent that multistakeholder initiatives suffer some of the same limitations that characterize corporate self-regulation. Several have been noted earlier. First, the number of companies participating in such schemes is very limited. Like any voluntary approach, multistakeholder initiatives encounter the “free-rider” problem (FitzGerald, 2001). All firms, including those that are not participating in any scheme, may benefit, for example, from the fact that voluntary approaches may divert attention away from mandatory regulation. They may also benefit from the enhanced image and legitimacy of a private enterprise sector led by corporations claiming to be socially responsible. Certain types of companies, notably those whose brands are not in the public eye, can remain shielded from the watchful eye of civil

society organizations. NGOs and consumer pressures, for their part, tend to coalesce around quite specific products, firms and sectors. Furthermore, the capacity of NGOs to rapidly and significantly scale up their activities can be seen as being quite limited.

Second, although in contrast to many self-regulatory initiatives, most multistakeholder initiatives have attempted to build in mechanisms to ensure that what is agreed on paper—principles and standards—is in fact implemented, there is no guarantee that participation in initiatives that focus on management systems will significantly improve a firm’s social and environmental performance or impact. This was noted above in relation to ISO 14001. Furthermore, certain schemes that have weak compliance mechanisms and provisions for independent monitoring and verification may facilitate greenwashing.

The future of various multistakeholder initiatives, notably certification schemes, may be in doubt not only because of the difficulties and complexities mentioned earlier, but because of the long-run threat to their credibility. Such schemes hand out certificates of good conduct to corporations that, because of their very nature and size, are likely to breach social and environmental standards and periodically commit serious abuses. In the era of global communications and activism, such faults are likely to be detected and quickly given international exposure. The reality of corporate behaviour is likely to clash with the image of good conduct conjured up by certification schemes, and this juxtaposition of “best” versus “bad practice” could eventually undermine their credibility.

Third, multistakeholder initiatives associated with certain sectors, such as apparel and forestry, are experiencing the problem of proliferation. As Gereffi points out, “certification arrangements compete for legitimacy with NGOs and consumers, as well as for adoption by multinationals. And there is no guarantee that the most effective standards...will win these battles” (Gereffi et al., 2001). Referring to forestry and tourism certification, an IIED publication notes that proliferation may have increased the relevance of certification for certain groups but “is now confusing to both producer and consumer” (Bass et al., 2001:26).

Fourth, while independent monitoring is crucial for ensuring that standards are translated into operational practice, serious difficulties undermine the quality of monitoring and verification processes. The different methodologies employed can be fairly superficial or complex, can often fail to detect violations, and can be costly.

The above concerns are leading to a variety of proposals for change and reform of regulatory approaches.³⁰ Some observers are calling for greater honesty in CSR reporting and for the ambit of CSR to be broadened to cover such aspects as pay and delivery schedules of suppliers and the intensity of labour. Beyond the “micro” level, there are also calls for the CSR agenda to embrace the issue of corporate influence on government and intergovernmental decision-making processes that may lead to socially and environmentally regressive national and international policies.

Two sets of proposals seem particularly pertinent for dealing with the types of concerns and constraints that have been identified in this paper. One involves the question of participation, the other involves alternative approaches to regulation.

Participation

Participation is an issue of particular concern. By their very nature, multistakeholder initiatives bring into decision-making processes a broader range of actors. However, some

³⁰ There are also signs that some of these concerns, notably those that have to do with issues of cost and competition, are also leading to a backlash against CSR. This is most clearly articulated in Henderson, 2001.

initiatives have ignored or marginalized crucial actors. This is particularly apparent in relation to the role of workers and trade unions, local-level monitoring and verification organizations, and, more generally to southern actors.

There is increasing recognition that the potential impact of multistakeholder initiatives, in terms of their capacity to significantly improve the social and environmental of TNCs and their supply chains, depends to some extent on workers' participation. Such participation is necessary at various levels, not only on the factory floor where codes of conduct are implemented and monitoring takes place, but also in the head office of the organizations that are designing these initiatives and overseeing their implementation.

Despite the efforts of several schemes to constitute themselves as multistakeholder initiatives, there is still a sense that the social base of such initiatives and the alliances involved are somewhat restricted. To guard against this, there have been calls for improved identification of relevant stakeholders, concerted efforts to forge broad-based coalitions of civil society organizations to support an initiative, and active participation of such stakeholders in designing relevant standards and implementation procedures (Bendell, 2001a). As one former trade union leader expressed to this author: "legitimacy comes from negotiation: anything that is decreed, proclaimed or imposed has no legitimacy."

From various quarters there are calls for certification and other multistakeholder initiatives to become tools not only for workers' welfare but also workers' empowerment. This requires, first, correcting the imbalance that exists in several initiatives where they tend to focus more on issues of labour welfare than rights (e.g. the right to organize and engage in collective bargaining) and second, greater direct involvement of workers in processes associated with the design and implementation of standard-setting, monitoring and certification initiatives. The Clean Clothes Campaign initiatives, for example, stress that monitoring and verification processes should promote social dialogue at the local level and the direct involvement of workers, trade unions and labour-related NGOs in all stages of the process. In a review of European monitoring and verification schemes, the Centre for Research on Multinational Corporations states that: "organizations at the local level, whether unions, NGOs or indeed industry need to have much more capacity, knowledge, and a sense of ownership of the codes used in the initiatives and its provisions before they can really participate in the monitoring and verification of the codes....This will take a lot of time and effort" (Ascoly et al., 2001).

A study carried out in Costa Rica to examine the effectiveness of conventional social auditing methods and the application of standards associated with SA8000 and the Ethical Trading Initiative among banana plantation workers revealed a number of limitations with "rapid social auditing." The study suggests the need to pioneer new forms of "participatory workplace appraisal" (PWA), involving methods used by the Salvadorean monitoring organization GMIES and other local monitoring groups.³¹ PWA not only serves to improve the flow of information by involving workers more fully in the auditing process, it also attempts to empower them through raising awareness of certain issues and by establishing a forum where they can develop a "voice" and articulate a position on issues (Bendell, 2001b). PWA requires both checking that spaces for empowerment exist and creating such spaces by conducting the appraisal (ibid:27).

Bendell draws an analogy between a shift from "rapid social auditing" to PWA, to that which has occurred, to some extent, in the field of development assistance where so-called "participatory rural appraisal" (PRA) has gained favour over "rapid rural appraisal" (RRA). This comparison is useful but leaves pending a number of questions. Since the late 1980s, PRA has spread fairly rapidly and has had some positive spin-offs. But this experience also

³¹ Personal communication, Jem Bendell, December 2001.

suggests potential problems for any scaling up of PWA. First, many mainstream institutions have adopted only certain elements of PRA or, worse, simply co-opted the discourse of participation. The upshot is often what can be called “technocratic participation” (Utting, 2000c), where certain values and objectives are diluted or ignored. As Singh points out, scaling up has involved “the commercialization of PRA service provision [which] seriously threatens notions of learning and sharing” (Singh 2001:186). Second, the transition from RRA to PRA was relatively smooth in the sense that the ideological currents and social forces underpinning the shift in approach confronted only limited resistance at the international level. Indeed, the type of academic opinion that promoted this shift in approach was absorbed fairly comfortably within many of the bilateral, multilateral and NGO institutions that designed and managed development projects. This may not be the case in relation to PWA. Key players such as TNCs and commercial auditing firms, as well as multistakeholder initiatives that are heavily influenced by business interests, may well resist or dilute any serious application of such methods.

Furthermore, one must question the strength of the social forces that are likely to back PWA. Relying on consumer pressure to move companies in this direction may involve a long wait. Increasing the capacity of NGOs to adopt and apply such methods may also be a slow process. Furthermore, NGO/trade union tension could increase as NGOs increase their role in empowering workers.

Clearly there are important reasons for improving worker participation in monitoring, verification and certification initiatives, and for using such initiatives to educate and empower workers. The above concerns suggest, however, possible limits to effectively scaling up such approaches.

A key challenge for multistakeholder initiatives is to address the concerns of various southern actors and possible contradictions related to development. The perception or reality that multistakeholder initiatives are driven by northern interests needs to change if corporate social responsibility is to be scaled up and become more relevant for developing countries. “Accountability,” as Gray points out, “...is the duty to provide an account of those actions for which one is held responsible...[it] is a quintessentially democratic notion that is about society deciding what type of world—including what type of businesses—it wishes to work towards” (Gray, 2001:53). At present, many countries and stakeholders in the South feel that outsiders are making these decisions for them. The North-South tensions identified earlier imply the need for improved dialogue between northern and southern actors on issues of corporate social and environmental responsibility and the participation of southern groups and organizations in the design and implementation of multistakeholder initiatives. The steps that some multistakeholder initiatives have taken to broaden and democratize their governance structures need to address not only the balance of NGO, trade union, corporate, government and multilateral agency participation, but also the question of balancing North-South views and interests.

There needs to be greater sensitivity to the economic and developmental concerns of southern firms and governments, particularly the question of who should bear the cost of improving labour and other standards of suppliers and subcontractors, and the protectionist implications of some schemes. In this regard, it is important to reduce costs through the development of local certifying capacity and, in certain sectors such as forestry, the development of group certification schemes (Bass et al., 2001:30). Certain multistakeholder initiatives, such as those promoted by the Clean Clothes Campaign, stress the importance of “shared responsibility” and the need for TNCs and northern consumers to bear much of the costs of improvements (UNRISD, 2001). Unless this occurs, the promotion of corporate social responsibility in TNC supply chains may well end up squeezing small and medium enterprises from such chains to the competitive advantage of larger firms.

Rethinking Regulatory Approaches

Critical thinking on both corporate self-regulation and civil regulation is also leading to a reassessment of the role of state and international regulation. The tensions and contradictions referred to earlier suggest that CSR confronts some fairly fundamental limits that cannot be overcome through voluntary approaches. As Gray points out, corporations must grow to survive, and with that growth comes increases in total resource use, wastes, emissions and product. Despite some eco-efficiency gains, the environmental footprint of corporations inevitably increases. On the social front, “the existing market system simply will not permit corporate management to act within the principles of social justice as the centrepiece of strategy. Such an organization would probably be acting illegally, outside its zone of competence, and would in all likelihood be ‘disciplined’ most severely by the marketplace.” The “rules of the game,” therefore, need to change and such a task is incumbent upon government and international regulation (Gray, 2001).

Certain multistakeholder initiatives have gone some way towards avoiding the anti-(state) regulatory discourse often associated with corporate self-regulation, by acknowledging the importance and ongoing need for state-regulatory frameworks. The ETI, for example, claims to have the potential to make “a major contribution to addressing the needs of many poor working people” but also admits that “many major questions need to be addressed, such as the future direction of policies connected to trade liberalization, debt and environmental protection, and the political will of national governments and the international community to ensure that fundamental human rights in employment are enjoyed by all working people” (www.ethicaltrade.org). Most of the multistakeholder initiatives reviewed in this paper include the provision that firms should comply with national law and international agreements related to labour and environmental standards. But like corporate self-regulation, certain aspects of some multistakeholder initiatives appear to involve an implicit trade-off with state-based regulation.

As Newell points out: “...civil regulation does not amount to an adequate or appropriate replacement for regulation at the state or international level. The NGOs engaging with the corporate sector in this way have neither the mandate nor the legitimacy to represent broader publics ...” (Newell, 2001:913). In relation to the FSC and other forms of certification, Bass et al. note that they “raise expectations for better-than-legal practice and accountability. However, [such] schemes are rarely embedded in the ‘set’ of regulatory and policy instruments for sustainable development, which is partly because government bodies are seldom involved” (Bass et al., 2001: 30). Referring to Indonesia, Kemp observes that processes associated with the design and implementation of codes of conduct—be they company or multistakeholder codes—take place outside of the tripartite negotiating framework which has been one of the important reforms of recent years (Kemp, 2001).

Others too, even some key proponents of multistakeholder initiatives, are now questioning the long-term contribution of external verification schemes. According to Zadek, they have been “positive and productive...during this period of experimentation...but these approaches...are seeking—and largely failing—to deal with issues that should properly be dealt with elsewhere in the overall process of corporate and societal governance...[N]either the people principally responsible for the implementation of corporate governance, nor the mandates under which they operate, equip them adequately to cope even with the financial risks associated with social and environmental performance, let alone questions related to the non-financial substantive implications of the performance itself...[E]xternal verification will [not be able to] provide an adequate substitute for establishing a framework of accountability that extends across and beyond the corporate body” (Zadek, 2001:211).

Given the complexity of multistakeholder initiatives associated with reporting, auditing, monitoring and certification, and the difficulty of replicating their procedures on any scale, other approaches also need to be considered. What in effect are “complaints-based systems” constitute one alternative approach that has attracted increasing attention. Such systems focus on detecting and addressing abuses of corporate power and breaches of agreed standards rather than trying to monitor and overhaul a broad array of corporate practices.

Such systems have, of course, a long history and assume numerous institutional forms. Courts, parliamentary bodies, institutions like that of ombudsman, and multilateral organizations can hear complaints and take different types of action. Trade union organizations also deal with specific abuses and violations of negotiated or collective agreements on minimum standards. The naming and shaming tactics of watchdog and other NGOs, as well as trade unions, constitute another form where specific breaches and abusive practices are publicized.

In recent years, there has been a diversification of complaints-based systems. Developments in this field include transnational litigation where NGOs bring legal cases against corporations, shareholder activism where shareholders raise specific concerns at company annual general meetings, and consumer boycotts (Newell, 2001).

There have also been various initiatives to establish an ombudsman to hear complaints related to TNCs. These include, for example, the proposal of the Taskforce on Internationalisation of Norwegian Industry for an Ombudsman for Norwegian Enterprises Abroad; the proposal of the Earth Council for an International Environmental Ombudsman; and the establishment by Oxfam Community Aid Abroad of an NGO ombudsman to receive and consider complaints related to the operations of Australian mining companies.

Several multistakeholder schemes, such as the Clean Clothes Campaign initiatives, SA8000, the Ethical Trading Initiative and the Fair Labor Association, are paying more attention to complaints procedures although the extent of actual progress varies considerably. As Ascoly and Zeldenrust point out, these are intended to provide a mechanism whereby workers, trade unions and NGOs can convey their complaints about labour rights violations at any time, rather than waiting for audits. To date, however, a “disproportionate amount of attention [has been] placed on auditing methods...and complaints mechanisms have received only limited attention” (Ascoly and Zeldenrust, 2001). The Worker Rights Consortium is essentially a complaints-based system as its principle investigative procedures only become operational after a complaint has been lodged.

Most of the multistakeholder initiatives reviewed in this paper have not only paid limited attention to these types of complaints procedures, they have also avoided naming and shaming tactics, opting instead for “naming and praising” and engaging companies in “social learning.” Naming companies that commit breaches and publicizing malpractice has proven to be an effective tool for activists (Richter, 2001), particularly when the issue is picked up by the media. This approach has been used in several Asian countries where some CEOs and managers are sensitive to questions of “honour” and “loss of face” (Kemp, 2001). In the North, naming and shaming tactics have been adopted by several NGOs such as CorpWatch and the International Baby Food Action Network. In general it is NGOs which are “confronting” rather than “engaging” TNCs that adopt such tactics.

There are various reasons why most multistakeholder initiatives are reluctant to use such tactics. It is partly related to the fact that many initiatives are in an early phase of development and are attempting to build constructive relationships with companies based on cooperation and trust, and more confrontational tactics could undermine such an effort. But other dynamics and social relations may also be involved: cultural and economic ties also influence

the type of tactics adopted. The observation of Hulme and Edwards (1997) regarding NGO relations with bilateral donors—that they are “too close for comfort”—is also relevant for certain NGOs associated with multistakeholder initiatives. Certain initiatives, such as the Global Compact, acknowledge that the promotion of corporate social responsibility should be pursued via different strategies and that a certain division of labour based on very different approaches can and should exist among the various players involved.

Clearly there are limits, then, to the extent to which organizations involved in multistakeholder initiatives can be expected to adopt naming and shaming tactics. It is important to remember, however, that very different types of shaming exist, some of which are far less confrontational than others but still potentially effective. These differences emerge in some of the literature on crime control. Shaming criminals typically involves “stigmatization,” which tends to isolate the culprit and treat him as an outcast. A very different approach is that of “reintegrative shaming,” which involves a process whereby the guilty party is shamed publicly but then accepted back into the “community” (Braithwaite, 1989).³² Through such a process, the moral bonds between the offender and the community can, in certain circumstances, be strengthened (UNRISD, 1995).³³ Such approaches might be more amenable to NGOs and multilateral organizations involved in multistakeholder initiatives. Some, such as the Worker Rights Consortium already attempt to do this by publicly disclosing the results of their monitoring and investigations into complaints while trying to develop constructive relationships with companies in order to facilitate both investigative and remedial efforts. Certain rating schemes, such as those promoted by the Centre for Science and Environment (CSE) in India, also perform this sort of function. The CSE ranks companies in terms of their compliance with basic standards and publicly discloses the information related to both good and bad performers. At the same time, the CSE attempts to develop and maintain constructive relationships with the companies involved.³⁴

The Global Framework Agreements described earlier, involving TNCs and International Trade Secretariats, are also a form of complaints-based system. They formally commit the corporation involved to respect workers’ rights, and they create or expand the space where TNC headquarters and the ITS can discuss and deal with specific complaints. Potentially, any breach of agreement can be detected by local and national unions and then taken up by the ITS with corporate headquarters. In practice, the capacity of trade unions at all levels to oversee the implementation of Framework Agreements is limited, as are the resources and muscle that ITSs can muster to deal with breaches. Often union structures or other forms of workers representation do not exist. Like company codes of conduct, workers may not even know that a Framework Agreement exists. Another problem with Framework Agreements is that, unlike many national collective agreements, Global Framework Agreements contain few binding mechanisms for implementation or dispute settlement.³⁵ It has been suggested that the type of government or independent conciliation, mediation and arbitration institutions, which often exist at the national level, would need to be developed at the international level if systems of regulation based on TNC-ITS agreements were to be effective.³⁶

³² The concept of reintegrative shaming was developed by Braithwaite to explain why crime levels had remained low in certain countries such as Japan.

³³ Reintegrative shaming will only work in certain contexts. It is likely to be relatively ineffective, for example, when the fundamental conditions that are causing crime are not addressed (UNRISD, 1995).

³⁴ Personal communication, CSE staff, February 2001.

³⁵ Personal communication, Liv Toerres, Institute for Applied Social Science (FAFO), October 2001.

³⁶ At present, the ITSs have few options for dealing with breaches. If a TNC does not agree to take remedial action, then there is relatively little the ITS can do other than launch a campaign against the company. With limited staff and resources, the ITSs are constrained in their ability to do this (personal communication, General-Secretary, IUF, August, 2001).

Certain multilateral organizations have also established complaints-based systems but, in practice, these tend to be fairly weak. In 1993 the World Bank established an independent Inspection Panel that can hear complaints from local stakeholders actually or potentially affected by World Bank financed projects. The impact of this complaints mechanism has been decidedly mixed. One evaluation revealed serious limitations in its mandate and practice, noting that it had facilitated some degree of transparency and raised the internal profile of World Bank environmental and social guidelines but “it has produced few on the ground solutions...[nor] led to more targeted or institutionalized pro-accountability reforms, such as credible sanctions for non-compliant managers or staff” (Fox, 2000).

The ILO and the OECD are the two main international fora where, potentially at least, the behaviour of corporations can be scrutinized against a set of principles or guidelines. As one recent report observes, however, “the mechanisms of both are rather weak. Each has voluntary standards for multinationals; neither provide any remedies; individual companies are not identified publicly or judged; and the procedures actually merely clarify the meaning of standards for the future” (ICHRP, 2002). The OECD Guidelines do contain an implementation procedure that is binding on governments, though not on corporations, and contains provisions for dealing with disputes about the meaning of the Guidelines and for lodging complaints but “... decisions are not enforced in any way and ...the identity of the company is kept confidential [which] means that there is no public scrutiny” (ibid.: 81).³⁷

There may be some scope for developing international complaints-based systems within the framework of regional bodies such as the European Union (EU) and NAFTA. A 1998 resolution of the European Parliament calling on the EU to draft a code of conduct and a monitoring and complaints procedure has progressed very little but is still alive. The labour and environmental side agreements of NAFTA also provide some scope for indirectly complaining about corporations (ICHRP, 2002:106). While weak in various regards, “the mechanisms do allow almost any concerned citizen or group in one country to complain about corporate behaviour if one of the other two governments has failed to enforce its domestic regulations” (ICHRP, 2002:78).

Within the UN system there has been little attention to complaints-based systems. The Global Compact stresses that it is not about monitoring or penalizing corporations. It remains to be seen, however, whether the Global Compact Learning Forum is merely a conduit for publicizing “best practices” or whether it will provide a space where NGOs, trade unions and others can bring to public attention breaches of the agreed principles and standards.

Possibilities for developing complaints-based mechanisms may exist via the UN machinery related to human rights. There have been instances where the Special Rapporteurs appointed by the United Nations Commission on Human Rights have taken up cases related to TNCs. Proposals have also been floated for creating a Special Rapporteur specifically to deal with TNCs (ICHRP, 2002:108). The ongoing discussions about a code of conduct for TNCs, which are taking place within the Sub-Commission on the Promotion and Protection of Human Rights, may also generate proposals related to complaints-based systems.

Action in the area of international rules related to corporate social and environmental performance has, to date, been extremely slow. There are some signs that this may change given the concerns that have surfaced in relation to voluntary approaches associated with both corporate self-regulation and multistakeholder initiatives. It is becoming more common to

³⁷ The revision of the Guidelines which took place in 2000 has attempted to slightly strengthen the mechanism for promoting and interpreting the Guidelines by enhancing the role of the national level “Contact Points,” one of whose tasks is to handle initial discussions between the parties in case of disputes (ICHRP, 2002:79).

hear calls within some academic³⁸ and policy-making circles for greater complementarity of voluntary and mandatory or state-led initiatives. The problem, however, is that government and international regulation does not happen in a vacuum or in response to the lone voice of academic or technocratic opinion. Historically, such regulation has often emerged either in contexts of crisis or in response to significant social pressures. At present, much of the social force that is promoting corporate responsibility is channelling its energies and resources towards corporate self-regulation and civil regulation. Until greater public concern and civil society activism puts pressure on political parties, governments and multilateral organizations to support other regulatory approaches, it is unlikely that significant developments in this area will be made.

It is important, however, that international action is based on consultative processes that are both “participatory” and fully cognizant of developing country realities. Proposals to link labour standards and trade via a WTO sanctions mechanism appear to have failed on both counts, given the weight of northern interests within the WTO, the absence of a level playing field for rich and poor countries, and the fact that sanctions constitute a rather blunt instrument.³⁹

The above analysis suggests that the notion of a “Global Social Contract,” which UNCTAD and others have put forward (UNCTAD, 1999), needs to go beyond the question of balancing the rights and responsibilities of large corporations. It must also embrace the idea that if developing countries are to force the pace of change in relation to social and environmental standards, then they need to be part of an international system that facilitates their ability to comply with higher standards.⁴⁰ This would mean correcting the gross imbalances and double standards in the global trade and policy regimes where, it seems, there is one set of rules for the rich countries and another for the poor.⁴¹

So far, only a few of the NGOs and multilateral organizations involved in multistakeholder initiatives have engaged systematically with these broader participatory, regulatory and South-centred agendas.

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³⁸ See, for example, FitzGerald, 2001; ICHRP, 2002; Kamminga and Zia-Zarifi, 2000; Piccioto and Mayne, 1999; Richter, 2001; and Utting, 2000a.

³⁹ For a strong critique of linking trade and labour standards, see Singh and Zammit, 2000.

⁴⁰ FitzGerald refers to the EU proposal to include investment in the WTO Millennium Round with an explicit “development dimension” as a step in the direction of a global social contract (FitzGerald, 2001).

⁴¹ Put bluntly, whereas the rich industrialized countries often maintain high tariff barriers on many products, heavily subsidize certain sectors, adopt expansionary macro-economic policies when necessary, and do not comply with their international aid commitments, many developing countries are under considerable pressure to lower tariff barriers, reduce subsidies and corporate taxes, adopt deflationary policies and repay their debt.

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ANNEX 1 COMPANIES PARTICIPATING IN SELECTED INITIATIVES

CCC: The main retailers involved in the CCC pilot projects and auditing activities include Cora Kemperman/Jurk BV, van Winkel Fashions and Vilenzo BV in the Netherlands; Auchan, Carrefour, Cora, Casino and Monoprix in France; Hennes & Mauritz, Indiska, Kapp-Ahl and Lindex in Sweden; and Charles Veillon, Mabrouc and Migros in Switzerland.

ETI member companies include Anchor Seafood, Arbor International, ASDA, The Body Shop International, Co-operative Wholesale Society, Desmonds & Sons, Dewhurst Group, Fisher Foods, J Sainsbury, LambertHowarth Global, Levi Strauss Co., Lyons Seafoods, Littlewoods, M & W Mack, Macleod McCombe, Marks & Spencer, Mothercare, Monsoon, Pentland Group, Premier Brands, Safeway Stores, Somerfield, Tea Sourcing Partnership, Tesco.

FLA participating companies include Adidas-Salomon, Charles River Apparel, Eddie Bauer, GEAR for Sports, Jostens, Joy Athletic, Levi Strauss & Co., Liz Claiborne, Nike, Patagonia, Phillips-Van Heusen, Polo Ralph Lauren.

Global Framework Agreements: Companies that have signed Framework Agreements with ITs that adopt joint labour-management follow-up procedures include Accor, Carrefour, Chiquita, Danone, Faber-Castell, Freudenburg, Hyder, IKEA, Merloni Elettrodomestici, OTE, Skanska, Statoil and Telefonica. Other codes of conduct negotiated with trade union organizations include Artsana, Hochtief, ISS, Suez Lyonnaise Des Eaux and Vivendi.

Global Alliance members include Gap and Nike.

Global Compact companies that had submitted reports describing their activities to promote Global Compact principles during the first year include ABB, Aluminium Bahrain, Aracruz Celulose, Aventis Pharma, BASF, Bayer, BP Amoco, British Telecommunications, Credit Suisse First Boston, DaimlerChrysler, Deloitte Touche Tohmatsu, Deutsche Bank, Deutsche Telecom, Dupont, the Esquel Group, the Gerling Group, Group Suez, Eskom, France Telecom, ISS, LM Ericsson, the Martha Tilaar Group, Nike, Novartis, Organizacoes Globo, Pearson, Placer Dome, Rio Tinto, Royal Dutch Shell Group, SAP, ST Microelectronics, Statoil, Tata Iron and Steel, UBS, Unilever, Volvo.

Global Reporting Initiative: Companies that pilot tested the GRI Guidelines in 1999 and 2000 include Baxter International, The Body Shop International, Bristol-Myers Squibb, British Airways, Electrolux, ESAB, Excel Industries, Ford Motor Company, General Motors, Henkel, ITT/Flygt, KST Hokkaido, NEC Corporation, Novo Nordisk, Procter & Gamble, Riverwood International, SASOL, Shell, Sunoco, TXU Europe (Eastern Group) and VanCity Savings Credit Union.

MSC: Fisheries certified according to MSC standards include Alaska Salmon, Burry Inlet Cockles, New Zealand Hoki, South West Mackerel Handline Fishery, Thames Herring, and Western Australian Rock Lobster. Fisheries currently being assessed for certification include Alaska Pollock, Banco Chinchorro Lobster (Mexico), British Columbia Salmon, Mexican Baja California Spiny Lobster, and South Georgia Toothfish.

SA8000: Signatory companies include Amana, Avon Products, Cutter & Buck, Dole Food, Eileen Fisher, Otto Versand, Toys R Us and Vögele.

Source: Official websites of the relevant initiative (see pp. 75-80); information regarding Framework Agreements was provided primarily by Liv Toerres at FAFO. The information contained in this list was compiled in late 2001.

ACRONYMS

AA	AccountAbility
AGM	Annual General Meeting
CCC	Clean Clothes Campaign
CEO	Chief Executive Officer
CEPAA	Council on Economic Priorities and Accreditation Agency
CERES	Coalition for Environmentally Responsible Economies
CSE	Centre for Science and Environment (India)
CSO	Civil society organization
CSR	corporate social responsibility
ETI	Ethical Trading Initiative
EU	European Union
FAFO	Institute for Applied Social Science (Norway)
FLA	Fair Labor Association
FSC	Forest Stewardship Council
GMIES	Grupo de Monitoreo Independiente de El Salvador
GRI	Global Reporting Initiative
IBASE	Brazilian Institute of Social and Economic Analyses
IBFAN	International Baby Food Action Network
ICEM	International Federation of Chemical, Energy, Mine and General Workers' Unions
ICHRP	International Council on Human Rights Policy
IIED	International Institute for Environment and Development
ILO	International Labour Organization
ISO	International Organization for Standardization
ITS	International Trade Secretariat
IUF	International Union of Food, Agricultural, Hotel,

	Restaurant Catering, Tobacco and Allied Workers' Associations
LARIC	Labour Rights in China
MSC	Marine Stewardship Council
NAFTA	North American Free Trade Agreement
NEC	Nippon Electric Company
NGO	non-governmental organization
OECD	Organisation for Economic Cooperation and Development
PRA	Participatory Rural Appraisal
PWA	Participatory Workplace Appraisal
RRA	Rapid Rural Appraisal
SAI	Social Accountability International
SGS	Société Générale de Surveillance S.A.
SOMO	Centre for Research on Multinational Corporations
TNC	transnational corporation
TRAC	Transnational Resource and Action Center
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNICEF	United Nations Children's Fund
UNRISD	United Nations Research Institute for Social Development
USAS	United Students Against Sweatshops
WBCSD	World Business Council for Sustainable Development
WHO	World Health Organization
WRAP	Worldwide Responsible Apparel Production
WRC	Worker Rights Consortium
WWF	Worldwide Fund For Nature