

The Limits of Voluntarism

Corporate self-regulation,
multistakeholder initiatives
and the role of civil society

Uwe Kerkow
Jens Martens
Tobias Schmitt

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Berlin Office:

Torstr. 154, D-10115 Berlin, Germany

Tel.: +49 – (0)30 – 27582163

Fax: +49 – (0)30 – 27596928

Email: weed@weed-online.org

Internet: <http://weed-online.org>

Bonn Office:

Bertha-von-Suttner-Platz 13, D-53111 Bonn, Germany

Tel: +49 – (0)228 – 766130

Fax: +49 – (0)228 – 696470

Contact: Jens Martens

Authors: Uwe Kerkow, Jens Martens and Tobias Schmitt

Editing: Jens Martens and Wolfgang Obenland

Translation: Mike Gardner, JIGSAW, Bonn

Layout: Richard Fritz

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Abbreviations

BDA	Bundesverband Deutscher Arbeitgeber (Confederation of German Employers)
BDI	Bundesverband der Deutschen Industrie (Federation of German Industries)
BUND	Bund für Umwelt und Naturschutz Deutschland e.V. (Friends of the Earth Germany)
CEFIC	European Chemical Industry Council
CEP	Council on Economic Priorities
CERES	Coalition for Environmentally Responsible Economies
CSD	Council for Sustainable Development
DGB	Deutscher Gewerkschaftsbund (German Trades Unions Federation)
ETI	Ethical Trading Initiative
FSC	Forest Stewardship Council
GRI	Global Reporting Initiative
ICC	International Chamber of Commerce
ICCA	International Council of Chemical Associations
ICEM	International Federation of Chemical, Energy, Mine and General Workers Union
ICFTU	International Confederation of Free Trade Unions
ICME	International Council on Metal and the Environment
IFBWW	International Federation of Building Workers and Wood Workers
ILO	International Labour Organization
IMF	International Metalworkers Federation
ISO	International Standardization Organization
MSC	Marine Stewardship Council
NABU	Naturschutzbund Deutschland (German conservation association)
NCP	National Contact Point
NGLS	UN Non-Governmental Liaison Service
NGO	Non-Governmental Organization
SAI	Social Accountability International
TNC	Transnational Corporation
TUAC	Trade Union Advisory Committee to the OECD
UN	United Nations
UNCED	United Nations Conference on the Environment and Development
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
UNRISD	United Nations Research Institute for Social Development
VENRO	Verband Entwicklungspolitik Deutscher Nichtregierungsorganisationen (Association of German Development NGO's)
WEED	World Economy, Ecology & Development Assoc. (Weltwirtschaft, Ökologie & Entwicklung e.V.)
WSSD	World Summit on Sustainable Development
WWF	World Wildlife Fund

Introduction: The state of the debate on corporate accountability

The international debate on the environmental and social responsibility of Transnational Corporations (TNCs) has gained impetus over the last few years. Public criticism of transnational corporations has grown in response to more and more new environmental offences, flouting of fundamental labour and human rights standards, bribery accusations and growing white collar crime, such as the series of balance-sheet cooking instances by Enron and Co. that were disclosed in 2002.

Many firms have reacted to this by adopting their own codes of conduct in which they voluntarily commit themselves to complying with certain rules and standards. Levy Strauss already made a start with his "Business Partner Terms of Engagement" in 1992; now there are hundreds of such *codes of conduct*.

In addition to the unilateral steps on the part of companies, more and more joint initiatives of companies, trade unions, non-governmental organisations (NGOs) and intergovernmental institutions, the so-called Multistakeholder Initiatives, have developed over the last few years. They include the Forest Stewardship Council (FSC) founded in 1993 to ensure independent certification of timber products and the Global Framework Agreements between individual companies and international trade union secretariats, such as that between the Volkswagen AG and the International Metalworkers Union.

Moreover, while the topic was largely taboo to them in the 1990s, governments and international organisations are once again paying increasing attention to the social and environmental responsibility of transnational corporations. In 1998, the UN Sub-Commission on the Promotion and Protection of Human Rights appointed a group of experts to formulate binding standards on corporate responsibility; in 1999, UN Secretary-General Kofi Annan submitted his proposal for a *Global Compact* between business and the

United Nations; in 2000, the Organization for Economic Cooperation and Development (OECD) issued its revised Guidelines for Multinational Enterprises; in the following year, the European Commission published its Green Paper Promoting a European Framework for Corporate Social Responsibility¹; and in 2003, this topic was even included in the agenda of the G-8 Summit in Evian, France.

The current debate on corporate sustainability reached its initial climax at the World Summit on Sustainable Development (WSSD) in Johannesburg in September 2002, where a broad international campaign comprising NGOs and trade unionists demanded a binding convention on corporate accountability². Although this demand was not asserted there, the governments did at least resolve to "actively promote corporate responsibility and accountability [...] through the full development and effective implementation of intergovernmental agreements and measures, [...] and appropriate national regulations", in the Johannesburg plan of implementation.³

The offensive manner displayed by transnational corporations such as BMW, Daimler-Chrysler, BP and Shell, who presented themselves as environmental and social pioneers and advocated voluntary self-regulation and *best practice models as alternatives to "command and control"* approaches, clashed sharply with the campaign of the NGOs in Johannesburg.

The TNCs' position was supported by several governments, first and foremost by that of the US Administration. They categorically reject new instruments to regulate TNCs at multinational level.

In view of the global power relations and opposition on the part of several governments as well as the TNCs, it would be unrealistic to assume any short-term assertion of the demand for binding multilateral regulations for corporations. And even if a basic consensus were to exist on this among the governments, it would take years for the negotiations on such an agreement on corporate accountability to reach a conclusion.

It is for this reason that many call for a pragmatic approach, recommending that the existing voluntary instruments first of all be made more use of and be tested regarding their effectiveness. However, one basic condition for this would be for the codes of conduct, multistakeholder approaches and intergovernmental initiatives to provide for a minimum standard of participatory and monitoring options for civil society organisations.

Against this background, an attempt will be made in the following to examine what the scope of action and practical experience of NGOs and trade unions is with the application of voluntary initiatives by industry, what difficulties they are confronted with and what conclusions they have drawn from their experience so far. This is demonstrated by looking at some specific cases of direct investments of German companies in developing countries and the environmental and social impact these investments have had. Here, the fundamental issue arises as to the effectiveness of voluntary instruments in strengthening corporate accountability. What are the potentials of voluntarism, and where are its limits? Answering this question is of central importance to the further civil society strategies and political demands in the international debate on *corporate accountability*.

¹ Cf. Commission of the European Communities (2001).

² This campaign was initiated by Friends of the Earth International. Cf.

<http://www.foei.org/corporates/index.html>

³ Cf. UN Dok. A/CONF.199/20, Annex, para. 49.

II. Instruments for the (self-) regulation of transnational corporations – scope of action for NGOs and trade unions

The instruments that currently exist for the self-regulation of transnational corporations can be divided into three categories:

1. corporate self-regulation and **codes of conduct**
2. **multistakeholder initiatives** that both companies and civil society actors are involved in
3. **intergovernmental instruments** such as the OECD Guidelines for Multinational Enterprises

The instruments differ considerably with regard to their substance and their binding character. While some are based on self-defined standards or are

formulated so generally that any violation is virtually ruled out, others explicitly refer to internationally agreed environmental, social and human rights standards and provide options for monitoring and complaints in the case of non-compliance. Accordingly, the scope of action for NGOs and trade unions with respect to the various instruments differs considerably as well. In principle, four options for action can be distinguished depending on the range and quality of the instruments:

- involvement in **formulating and implementing** an initiative
- **monitoring and verifying** compliance with the code, etc.

- making use of **complaint-based mechanisms**
- making use of the code or initiative, as a **frame of reference** in public awareness-raising and media work when confronting a corporation (*naming and shaming*).

In this chapter, we are first of all going to take stock of important initiatives and instruments for the (self-) regulation of companies – especially with a view to the scope of influence for civil society (on paper). We will subsequently outline the practical experience NGOs and trade unions have made in applying the various instruments and what conclusions can be drawn from this.

1. Corporate self-regulation and codes of conduct

Voluntary initiatives and codes of conduct of individual companies have mushroomed over the last few years. Nowadays, there is hardly a corporation that operates on a transnational basis and does not have its own code of conduct. Alone in the USA, more than 500 corporations have either adopted codes of conduct of their own or at least signed international business guidelines. The exact number of self-compliance arrangements among German companies is not known, but at any rate, it has grown considerably over the last few years⁴.

In 2000, the OECD Trade Committee published a survey of codes of conduct among the major TNCs. In the survey, titled *Codes of Corporate Conduct – An Expanded Review of their Contents*, 246 of these company codes are analysed eleven of which are from Germany.⁵ 48 percent of the codes examined are of an internal company nature, while 37 originate from the activities of business federations and two percent have been initi-

ated by international organisations. Summing up, the survey states:

*“The codes [...] differ considerably in terms of their content and degree of detail. This reflects the underlying diversity of the organisations issuing the codes, which differ in terms of size, sector and regional affiliation.”*⁶

The difference in quality among the codes becomes particularly apparent in the level of consideration given to environmental and social standards. While they are only a marginal issue in some codes, others merely deal with one of the two areas. Nevertheless, environmental issues occur particularly frequently in such voluntary initiatives nowadays.

This is confirmed by a further OECD survey of 2001.⁷ It contains a closer examination of the 100 biggest transnational corporations. Twelve of these companies are seated in Germany: Bayer AG, BASF AG, BMW AG, Daim-

lerChrysler, Hoechst AG, the Volkswagen Group, Robert Bosch GmbH, the RWE Group, Siemens AG, the VEBA Group, VIAG AG and, finally, Mannesmann AG, which belongs to Vodafone today. According to this survey, 94 of the 100 companies have published codes of conduct or at least policy statements on the issue of environmental protection, and 85 companies regularly submit environmental reports.

However, only in the smallest number of codes are provisions made for an independent review of the reports and the involvement of the people affected. The 2000 OECD survey states that just ten percent of the 246 codes examined stipulate independent external monitoring and a mere four out of 100 company codes contain such a mechanism.

Susanne Dröge and Harald Trabold also arrive at this result in their working paper on environment-related codes of conduct for foreign direct investors, *“Umweltbezogene Verhaltenskodizes für ausländische Direktinvestitionen: Möglichkeiten und Grenzen”*, which states:

⁴ For statistics, cf. Köpke/Röhr (2003), p. 10.

⁵ Cf. OECD (2000).

⁶ Cf. OECD (2000), p. 4

⁷ Cf. OECD (2001).

*"However, there are several codes of conduct that do not make any specifications regarding monitoring mechanisms (...) or provide for purely internal monitoring (...). This becomes particularly apparent in environment-related guidelines (...). Although this may not necessarily mean that the parties to the contract are not complying with the code or do not wish to do so, it does encourage opportunistic behaviour."*⁸

This applies both to the voluntary initiatives of German industry and to the codes of conduct and guidelines of international industrial federations. Trade unions and NGOs do not play any role in formulating and implementing these instruments. And neither are civil society organisations consulted as a rule when it comes to monitoring compliance with the codes, let alone are any complaints mechanisms in place. Instead, German industry's pressure groups insist on entrepreneurial autonomy and the strictly voluntary character of self-compliance (see Box 1).

This also applies to international codes and business charters that were formulated in the past two decades. Important examples here are the Responsible Care Initiative, the Business Charter for Sustainable Development and metal industry's Sustainable Development Charter. German companies and industrial federations are involved in these initiatives.

The *"Responsible Care"* initiative launched in 1984, following the Bhopal chemicals accident, is an association of the chemical industry's national federations. There are national programmes in 45 countries world-wide. In addition, all members of the European Chemical Industry Council (CEFIC) participate in the Responsible Care Programme (in Germany, e.g., BASF, Bayer, and Aventis).⁹

Those involved in the initiative claim that its basic goal is above all that of improved communication between the chemical industry and the public on health, safety and environmental issues. Initially, the prime ulterior motive here was to repair damage done to this branch of industry's image by the Bho-

pal disaster. The Responsible Care Programme is based on ten very generally formulated guidelines referring, for example, to corporate policy, workers' participation, safety standards in production, protection of natural resources and waste reduction. The guidelines relate neither to intergovernmental agreements on environmental standards nor to the Core Labour Standards of the International Labour Organization (ILO).

Provided that it is at all possible given the generality of the guidelines, compliance with them is monitored in the framework of in-company monitoring. In addition, the national chemical federations involved in the programme report on the status of implementation at local level. And the International Council of Chemical Associations (ICCA) issues an annual report on the status of the initiative as a whole once a year.

The *Business Charter for Sustainable Development* is an initiative of the International Chamber of Commerce (ICC) and was launched in 1991. Not by way of a coincidence, it was presented one year ahead of the UN Conference on Environment and Development (UNCED) in Rio as a counter-draft to the binding UN code of conduct for transnational corporations that was being discussed at the time. The notion of a binding UN codex failed in 1992, also because of active lobbying on the part of the ICC. World-wide, the Charter has been signed by around 2,300 companies so far, including HiPP Babynahrung, Villeroy und Boch, Volkswagen and Wella AG in Germany.¹⁰

The Charter consists of 16 general principles focusing on the environmental sector and addressing issues such as environmental management and technology transfer. The precautionary principle is also established in one of them. Under the heading "Openness to concerns", one principle deals with issues of transparency and dialogue. In it, the companies commit themselves

"to foster openness and dialogue with employees and the public, anticipating and responding to their concerns about the

potential hazards and impacts of operations, products, wastes, or services, including those of transboundary or global significance".

Compliance with the principles is checked on by in-company monitoring. In addition, individual companies can have external inspections carried out on a voluntary basis. No sanctions are provided.

In practice, activities in the framework of the Business Charter for Sustainable Development comprise company reports on environmental management, organising international conferences and symposia and the running of workshops by the ICC and national chambers of commerce. And every two years, in collaboration with the United Nations Environment Programme (UNEP), the Millennium Environment Prize is awarded. The initiative also collaborates with the Global Compact (see below).

The *Sustainable Development Charter*, which was drawn up in 1991, focuses on the metal branch. One of its supporters is the International Council on Metal and the Environment (ICME).¹¹ World-wide, 32 companies and federations are involved that control a considerable share of global metal production. The Franco-German METALEUROPE S.A. is one of the initiative's members.

The nucleus of the Charter is formed by twelve self-compliance principles, the "Fundamental Principles of Sustainable Development", which above all concentrate on environmental issues. However, the goals referred to also include getting rid of corruption and promoting human rights. In addition, the Charter stresses the significance of consultation and participation and a commitment to reports to the public. Verbatim, it says:

"We acknowledge that consultation and participation are integral to balancing the interests of local communities and other affected organizations and to achieving common objectives.

[...] We provide public reports on progress relating to economic, environmental and social performance."

⁸ Cf. Dröge/Trabold (2001), p. 12 (editor's translation).

⁹ Cf. <http://www.cefic.org> (16.01.2003)

¹⁰ Cf. http://www.iccwbo.org/index_sdcharter.asp (15.01.2003)

¹¹ Cf. <http://www.icme.com> (17.01.2003)

Box 1: Voluntarism above all else. The attitude of the Federation of German Industries (BDI) towards self-compliance and *corporate accountability*

A programmatic paper titled "Selbstverpflichtungen und Vereinbarungen im Umweltschutz" (self-compliance and agreements in the field of environmental protection) that the Confederation of German Industry (BDI) issued in July 2000 states:

"Over the last few years, voluntary self-compliance and agreements between industry and politics have constantly been gaining significance. In Germany, they have proved to be an effective and efficient way of achieving political objectives in more than 70 cases. [...]"

The reasons:

*Increasingly, environmental policy is no longer facing tasks that can be solved by defining limit or threshold values or with technical requirements and instructions. For example, such measures would be insufficient in addressing the challenge of climate change. Rather, such issues systematically bring regulatory law to the limits of its conceptual potential. [...] The more or less openly admitted 'deficit in enforcement' in the environment field raises the question of more efficient instruments." **

The paper also demonstrates what the advantages are that German industry sees in voluntary self-compliance:

"1. Voluntary agreements allow for a maximum of flexibility regarding the technical form of achieving a certain environmental objective. [...]"

2. Thanks to their basic concept, voluntary agreements can respond far more swiftly to urgent environmental problems than instruments requiring [...] a legal basis and a corresponding institutional framework.

3. The obligation to perform continuous progress monitoring is an opportunity to learn from the ongoing process of self-compliance and adapt the agreement to continuously changing political objectives. [...]"

*4. Banal as it may sound, the results of voluntary agreements are controlled – also because they are subject to such strict political monitoring.[...]" ***

The logical consequence of this attitude is the categorical rejection of any binding corporate rules at national or international level. This has become apparent both in the review of the OECD Guidelines for Multinational Enterprises and in the preparations for the Johannesburg Summit.

In "Arbeitgeber Magazin", the German employers' periodical, the attitude of the BDI and the BDA on the OECD Guidelines revised in 2000 is described as follows:

*"Ever since their inception, the Guidelines have not had a binding character. This principle was strongly questioned by trade unions and NGOs when they were revised. They demanded binding provisions for transnational corporations some of which would have entailed complicated implementing and monitoring methods. In contrast, the BDI and the BDA successfully campaigned for [...] the unrestricted retention of their non-binding legal character. [...] The Federations hold the view that this is a crucial precondition for a broad acceptance and application of the Guidelines by the companies." ****

This attitude was also displayed in the process of dialogue that the Federal Ministry of the Environment conducted together with industry, trade unions and NGOs in the run-up to Johannesburg to develop common principles to enhance environmental protection in German foreign investments. **** A BDI press release of the 31st July 2002, the issuing of which was prompted by the Federation's opting out of the dialogue process, unequivocally states:

"The BDI has decided not to endorse the 'Principles to Enhance Environmental Protection in Direct Investments' and not to further pursue the issue. [...] The reason for the failure of the Environmental Declaration is that the environment organisations [...] have made the attempt to introduce a further clause in the text of the agreement according to which the principles would merely be an interim step towards necessary, more far-reaching intergovernmental rules for corporations operating on a transnational basis. Thus the environment organisations have unilaterally violated the spirit of the agreement [...]"

Quite apart from the fact that the BDI's statement is demonstrably false since the NGO comment referred to was outside the text proper of the planned agreement, it shows that the BDI rigorously rejects not only refraining from the principle of voluntarism regarding the codes of conduct, but also any ongoing dialogue on corporate accountability with all those who do not share its opinion.

*BDI (2000), p. 3 (editor's translation).

**ibid., p. 5

***Arbeitgeber Magazin No. 3/53 – 2001: 'Multis' unter kritischer Beobachtung, p. 13.

****Cf. the brief assessment by Feldt/Martens and the draft principles in: DGB-Bildungswerk/terre des hommes/WEED (Eds.)(2003).

But again, compliance with this Charter is checked on solely via in-company monitoring. And neither does

this Charter provide any sanctions in the case of its principles being violated.

Summing up, it can be said that the voluntary initiatives of international

industrial federations referred to above generally do not provide for any direct participation of civil society groups and trade unions. Involving stakeholders

and informing the public are merely formulated as general postulates. Across the board, compliance with self-obligations is checked on solely via in-company monitoring. Neither can these codes serve as a reference frame for the activities of NGOs and trade unions, since they are formulated so vaguely that proof of violations (or, for that matter, a violation itself) is practically impossible. These structural deficits of voluntary self-compliance on the part of industry are also underscored by Ronald Köpke and Wolfgang Röhr in their comprehensive book on codes of conduct. Köpke and Röhr underline the non-committal character of most codes and criticise the absence of independent monitoring procedures. In addition, they state that actors outside the companies play "a minor immediate role in developing the codes".¹²

Practical experience of trade unions and NGOs

Practical experience made by civil society organisations with voluntary instruments of corporate self-compliance is just as limited as the scope of such self-compliance itself. For owing to the absence of a duty to report and verify on the part of the companies, NGOs can at best check on compliance with or violation of codes on their own initiative (and at their own expense). This means that, as a rule, the burden of proof is on them. However, in developing countries in particular, there is a lack of infrastructure that would be required, for example, to effectively monitor compliance with environmental standards.

Often, a considerable technical effort is already required to detect harmful impacts on the environment – for you can't see, smell or taste all environmental offences. These problems are exacerbated when it comes to attempting to unambiguously assign pollution to a certain plant according to scientific criteria. Only a handful of NGOs are capable of delivering such proof. Nevertheless, again and again, Greenpeace and Friends of the Earth have succeeded in providing direct laboratory evidence of their own accord (cf. examples in the Annex). In most

cases, the NGOs and the citizens' action groups – especially in the South – have to rely on the competence and readiness to co-operate of government authorities in order to be able to back up suspicions about a company with verifiable data. But often, the authorities are not capable of this.

So often, it is easier and more promising for NGOs to directly consult government authorities directly in the case of any suspicion than to attempt to supply evidence of culpable environmental pollution by a company themselves. In addition, at least what appears to be a detour via government authorities will always offer the opportunity to call a company to account for damage caused if it has violated the host country's legislation. For as we have seen above, voluntary self-compliance does not provide any leverage to hold companies accountable for such violations.

This applies all the more if a company withdraws from an investment owing to public pressure or becomes "invisible" to the public by way of a merger or transnational integration. One example of this is the Ok Tedi Mine in Papua New Guinea, which has been polluting thousands of square kilometres of land and water for decades. The leading stockholders, the Australian corporation BHP Billiton, simply responded to pressure exerted by NGOs by selling their investments. In this context, Friends of the Earth draw the conclusion that "it is becoming increasingly difficult for states and individuals to call companies to account for their behaviour. Mergers, takeovers, intricate links with other firms and changes of name make it virtually impossible to track down companies."¹³

Against this background, it is hardly surprising that we have been unable to find examples of voluntary codes of conduct of transnational corporations being made specific use of by groups and NGOs acting locally or at international level throughout our entire research for this publication.

This is interesting to note, for some NGOs were still setting their sights on this instrument in the 1990s. Examples here are the negotiations taking years between Shell and some European

NGOs that ultimately resulted in a company code of conduct. But once this instrument had been established, it proved ineffective in terms of the purpose it had been designed for. Oil production in the West African country of Nigeria continued to proceed accompanied by human rights violations and at the expense of the environment. The fact that effective threats of boycotts against Shell were only initiated in connection with the dumping of the Brent Spa in the North Sea also fits into the overall picture here. What is crucial to the options NGOs have to hold transnational corporations accountable for their environmental conduct is obviously not the codes of conduct the corporations have prescribed themselves but easily verifiable and publicly accessible information on misconduct.

However, the approach via government authorities also bears problems for NGOs, especially in developing countries. In countries like China or Burma, but also in some African countries, critical activities are virtually impossible given the repression civil society is subject to. The determined policy of some governments to unconditionally attract foreign investment to their countries adds to the difficulties in rallying a critical attitude towards the investors. Civil society organisations are faced with comparable problems in the Export Processing Zones. World-wide, there are an estimated 2,000 of these zones in more than 70 developing countries with up to 100 million mostly female workers. Many of these zones are exempted from national employment legislation, and trade union activities are impeded or even forbidden.

Given the weaknesses of voluntary codes of conduct on the one hand and deficits in the national implementation of basic rights for employees and an effective environmental policy on the other, more powerful instruments are now increasingly being sought to influence the activities of transnational corporations and the (side-) effects of their production. Here, the multistakeholder approaches and the initiatives at intergovernmental level play a crucial role.

¹² Cf. Köpke/Röhr (2003), p. 59 (editor's translation).

¹³ Friends of the Earth International et. al. (2002), p. 2.

2. Multistakeholder initiatives

Given the deficits of purely in-company codes of conduct, new initiatives have been gaining significance over the last few years in which not only the companies but also the groups affected by their activities (stakeholders) participate in various constellations. These multistakeholder approaches reflect a new paradigm in international co-operation that sees the future of international co-operation in "global partnerships" (Kofi Annan), "coalitions for change" (James Wolfensohn) or "global public policy networks" of state and private sector actors beyond the traditional multilateralism of the nation-states.¹⁴

The current multistakeholder approaches go back to the 1992 Rio Conference on Environment and Development (UNCED). With Agenda 21, it passed an action programme a large section of which is devoted exclusively to enhanced co-operation among the so-called "major groups". In the Rio follow-up process, it was above all the UN Commission for Sustainable Development (CSD) that implemented this approach in its activities. This trend reached its climax at the Johannesburg Summit in September 2002. There, more than 2,000 partnership initiatives of public and private sector actors, the so-called "Type-2 Outcomes", formed an integral element of the official process.¹⁵

Involvement of NGOs and trade unions in multistakeholder initiatives

Over the last ten years, a large number of multistakeholder initiatives have developed that NGOs and trade unions are involved in to a varying extent. The most important initiatives include the Forest Stewardship Council (FSC), the Marine Stewardship Council (MSC), the Ethical

Trading Initiative (ETI), the Global Reporting Initiative (GRI), ISO 14000, Social Accountability International (SA 8000) and the growing number of Global Framework Agreements between transnational corporations and international trade union federations.

The **Forest Stewardship Council (FSC)**¹⁶ is an initiative for the certification of timber products originating from sustainable forest management. FSC activities are based on ten principles for sustainable forest management. On this basis, the various national committees draw up specified, detailed standards for the FSC certificate. Formally, the FSC is an association that was founded in accordance with Mexican Law in 1993. It recently transferred its head offices to Bonn.

Environmental organisations, trade unions, forest owners and the timber processing industry and trade co-operate in the FSC and represent their interests in the Council's three Chambers (Economic Chamber, Social Chamber, Environmental Chamber). These Chambers are the result of a resolution passed by the FSC General Assembly in 1996 to structure membership according to social environmental and economic criteria and set up corresponding Chambers.

The FSC provides for the involvement of trade unions in the Social Chamber and that of NGOs in the Environmental Chamber. In Germany, in addition to forestry representatives, FSC membership includes the IG Metall (metalworkers trade union), the IG Bauen-Agrar-Umwelt (trade union for employees in the building, farming and environmental sectors), Greenpeace, Friends of the Earth, WWF, NABU, Robin Wood and Urgewald.

The **Marine Stewardship Council (MSC)**¹⁷, which was founded in 1997, works in a similar way to the FSC. It emerged from a joint initiative of Unilever ("Captain Igloo") and the WWF and commenced its activities in 1999. This Council has developed an independent certification system as well as corresponding principles for a sustainable fisheries industry. Its aim is to prevent overfishing of the oceans by compliance with voluntary standards. Civil

society organisations work together with fishery and trade representatives in the Council. They are represented in the Council's Board and, above all, in what is known as the "Stakeholder Council".

The **Ethical Trading Initiative (ETI)**¹⁸ has set itself the goal of promoting and complying with the fundamental international labour standards. It was founded in the United Kingdom in January 1998 and commenced its activities with the financial support of the UK Government in October 1998. Current membership comprises 30 companies (including Body Shop, Levi Strauss and Marks and Spencer), 15 NGOs (including Oxfam, Christian Aid, War on Want and World Development Movement) and four international trade union federations (including the International Confederation of Free Trade Unions - ICFTU). Member companies commit themselves to comply with a "Base Code" which, in addition to the ILO's Core Labour Standards, comprises a number of further ILO conventions (on health and safety standards, a living wage, etc.). Furthermore, the companies involved are to "encourage" their suppliers to observe the code. In order to monitor compliance with the code, the companies are required to report and provisions are made for monitoring and independent verification. They have been tested in the first phase of the initiative in the framework of various pilot projects.

Trade unions and NGOs enjoy equal representation alongside the companies in the ETI decision-making committees. In addition, they are requested to monitor compliance with the code by the companies involved in the framework of independent verification procedures. Confidential reporting and appellate procedures are provided for company workers.

Company reporting is at the centre of the **Global Reporting Initiative (GRI)**¹⁹. The GRI is a project that was launched by the US American Coalition for Environmentally Responsible Economies (CERES) and the United Nations Environment Programme (UNEP) in 1997. It officially commenced its activities in 2002. This

¹⁴ Also see: Wolfgang H. Reinicke/Francis M. Deng (2000): *Critical Choices. The United Nations, networks, and the future of global governance*. Ottawa.

¹⁵ In the preparatory process for Johannesburg, a distinction was made between the official intergovernmental results of the Summit, i.e. the Final Declaration, and the Implementation Programme ("Type 1"), and the Partnership Initiatives ("Type 2"). For an initial analysis of these Type-2 Initiatives, also see Witte et. al. (Eds.) (2003).

¹⁶ Cf. <http://www.fscoax.org> (11.01.2003)

¹⁷ Cf. <http://www.msc.org> (17.01.2003)

¹⁸ Cf. <http://www.ethicaltrade.org> (16.01.2003)

¹⁹ Cf. <http://www.globalreporting.org> (18.01.2003)

Box 2: German companies that have signed a Global Framework Agreement
(status: February 2003)

Firm	Branch	Trade union federation	Year
Faber Castell	Stationary	International Federation of Building Workers and Woodworkers (IFBWW)	1999
Freudenberg	Chemical industry	International Federation of Chemical, Energy, Mine and General Workers Unions (ICEM)	2000
Hochtief	Building industry	International Federation of Building and Woodworkers (IFBWW)	2000
Volkswagen	Car manufacturers	International Metalworkers' Federation (IMF)	2002
DaimlerChrysler	Car manufacturers	International Metalworkers' Federation (IMF)	2002

initiative is seated in Amsterdam. The GRI develops (and elaborates) guidelines for social and environmental reporting. In addition, the initiative attempts to persuade companies to inform the public on the social and environmental impacts their activities have of their own accord. Furthermore, the GRI aims to harmonise corresponding reporting at international level. Its basic goal is to establish a common framework for sustainability reporting. Monitoring of reports and forms of certification or verification by the GRI is explicitly not stipulated.

In February 2003, 147 industrial companies, 26 financial service companies, 13 industrial federations, 68 NGOs, four trade union federations, 12 authorities and international organisations as well as a number of consulting firms, foundations and educational institutions were listed as stakeholders in the GRI website. In Germany, the stakeholders include BASF, Bayer, Opel, Siemens, VAW Aluminium and VW, the Chemical Industry Federation as well as Transparency International and the Wuppertal Institute.

The scope for participation of civil society actors is outlined in the summarised version of the "2002 Sustainability Reporting Guidelines" as follows:

*"GRI invites all parties to join this 'work in progress' – through Guidelines testing, working groups, dialogues, feedback sessions, and through participation in GRI's governance – to ensure that both its process and products achieve the level of excellence and legitimacy to which it is firmly committed."*²⁰

The **ISO 14000 Series** of the International Organization for Standardization (ISO)²¹ exclusively addresses the environmental conduct of companies. It is intended to promote the establishment of in-company environmental management systems. The ISO 14000 norms, and in particular ISO 14001, chiefly regulate the procedures required to plan and monitor environmental protection targets within a company. The actual targets are defined by the companies themselves. So strictly speaking, the ISO 14000 series does not comprise environmental but management standards.

The ISO norms are linked to a certification system. By the end of 2001, 36,765 certificates had been issued in accordance with ISO 14000 in 112 countries.

The ISO standards are based on the following principles²²:

- consensus ("The views of all interests are taken into account: manufacturers, vendors and users, consumer groups, testing laboratories, governments, engineering professions and research organizations.")
- sectoral or comprehensive application ("Global solutions to satisfy industries and customers worldwide.")
- voluntarism ("International standardization is market-driven and therefore based on voluntary involvement of all interests in the market-place.")

The activities of the ISO are largely decentralised and carried out in a hierarchical system of around 2,850 Technical Committees, Sub-Committees and Working Groups. Experts from companies, research institutions, government authorities, consumer organisations and international organisations co-operate in these bodies on a par.

However, ISO's principle of leaving the definition of environmental targets up to the companies themselves to decide and merely assessing planning, implementation and control leads to results that are not very meaningful. Consequently, a survey commissioned by UNCTAD on self-regulation and environmental management states with regard to the ISO 14000 series:

*"If a policy created by a corporation or industry association is inadequate, then no amount of implementation activity, monitoring, publicizing and so on, will make it more adequate. [...] There is a management aphorism, that 'if you don't know which way you're going, any road will get you there.' In the same way, it is the direction and targets of these codes that need to be assessed before the 'mileage' is monitored and measured."*²³

The **SA 8000** sets out from the ISO as a model but is oriented on the social sector. This standard was created by a US American research institute, the Council on Economic Priorities (CEP), in 1997. In this year, CEP founded the Council on Economic Priorities and Accreditation Agencies (CEPAA). In the summer of 2000, this organisation was renamed as **Social Accountability**

²¹ Cf. <http://www.iso.org> (19.02.2003)

²² Cf. <http://www.iso.org/iso/en/stdsdevelopment/whowhenhow/how.html> (19.02.2003)

²⁰ Global Reporting Initiative (2002), p. 9.

²³ UNCTAD (1996), p.86.

International (SAI)²⁴. It is seated in New York. SAI's aim is the promotion of international labour standards by voluntary self-compliance on the part of the companies involved in connection with a comprehensive reporting, verification and certification procedure. It is based on the SA 8000 standard, which, in a similar manner to the ETI, comprises the ILO Core Labour Standards as well as some further ILO standards. Signatories of SA 8000 include Avon, Chiquita, Toys 'R' Us, and, in Germany, Otto Versand and Voegelé Mode. In addition, some NGOs, mostly US American, and public institutions are involved.

SAI provides for the participation of trade unions and NGOs at four levels:²⁵

- *"Auditing – by seeking accreditation through SAI."*
- *Training Provider – working with SAI or independently to offer Worker Training, Supplier Training, Supply Chain Management Training, or others.*
- *Watchdog Organization – conducting research and/or filing complaints or appeals about potential problems among SA 8000-certified facilities*
- *Consulting Organization – conducting preparatory and/or pre-certification audits for companies."*

The **Global Framework Agreements** between individual TNCs and Global Union Federations are a relatively new type of multistakeholder initiative. Currently, there are about 20 of these agreements, including five that German companies are involved in (see Box 2). The contents of these agreements above all comprise the commitment to comply with core labour rights and minimum health and safety standards.

The Global Framework Agreements of German companies provide for the following options for trade unions and employee representatives to participate:

Faber Castell²⁶: This agreement explicitly refers to environmental protection issues and stipulates a Monitoring Committee. This Committee comprises

equal representation of the company and the IG Metall metalworkers' trade union or the IFBWW. It is to monitor the implementation of the Framework Agreement.

Freudenberg²⁷: Annual meetings of the employers and trade unions are agreed. ICEM is explicitly required to immediately and directly report violations of the Framework Agreement. ICEM stresses that, unlike with the internal codes of conduct among TNCs, the Framework Agreement with Freudenberg is verifiable in its entirety by the trade unions.

Hochtief²⁸: Trade unions (IG BAU, the builders' union, the IFBWW and the Hochtief works council as well as works councils of companies maintaining contractual relations with Hochtief) are required to immediately report violations of the Framework Agreement. A Hochtief official is specially assigned to see to the Framework Agreement affairs.

Volkswagen²⁹: The VW world works council discusses the implementation of the Framework Agreement with management. If necessary, "appropriate measures" are agreed. It is explicitly pointed out that third parties cannot deduce any rights from the declaration

Daimler Chrysler³⁰: The Framework Agreement does not provide for any formal monitoring or appellative role for the trade unions. The respective works management and corporate audit division are responsible for monitoring. The management of the respective units are responsible for compliance with the principles, and they are to adopt "suitable measures" to this end. They appoint contacts the business partners, clients and employees can consult in individual cases. An appeal must not result in any disadvantageous consequences for anyone making it. When conducting revisions, the corporate audit division also takes note of compliance with these principles and adopts them in its review criteria. In addition, the corporate audit division provides a hotline. It serves as a contact

point if compliance with these principles at a decentralised level is not sufficiently ensured. Central management reports on and discusses the observance of social responsibilities in the company and the implementation of these principles with the international employee representatives on a regular basis.

Practical experiences of NGOs and trade unions

Practical experience gained by civil society organisations with multistakeholder initiatives is of course more extensive than with the codes of conduct since NGOs and/or trade unions are involved in these initiatives *qua definitione* and play an active role both in creating them and in implementing them.

At the same time, however, most of the initiatives dealt with here are still relatively young. So practical experience with these initiatives is only limited; in the case of the Marine Stewardship Council and the work of the Global Reporting Initiative, hardly any evaluations by NGOs are on hand. And there are only a handful of reports on experience gained with the activities of the International Organization for Standardization (ISO 14000pp) by civil society, although this initiative is much older. So this section will concentrate on practical experience with the Ethical Trading Initiative, Social Accountability International (SA 8000), the Forest Stewardship Council and the Global Framework Agreement between companies and trade union federations.

In the case of **Social Accountability International** (SA 8000), there is a practical obstacle to involvement in it in the shape of very high membership fees for participating companies and NGOs. They are graded according to income and range from 1,500 US dollars for an annual turnover below 25 million US dollars up to 15,000 US dollars if annual turnover is above 10 billion US dollars. Even if one can assume that most NGOs and trade unions have a turnover of less than 25 million US dollars and non-profit organisations are granted a 20-percent rebate, formal membership of SAI still entails financial contributions of at least 1,200 US dollars a year. This is unaffordable for small and medium-sized

²⁴ Cf. <http://www.sa-intl.org> (17.02.2003)

²⁵ Cf. <http://www.sa-intl.org/Participation%20Opportunities.htm> (17.02.2003)

²⁶ Cf. <http://www.ifbww.org/xsite/faber-castell.html> (18.02.2003)

²⁷ Cf. <http://www.icem.org/update/upd2002/upd02-04.html> (18.02.2003)

²⁸ Cf. <http://www.ifbww.org/xsite/hochtief.html> (18.02.2003)

²⁹ Cf. <http://www.imfmetal.org/main/index.cfm?id=47&lid=2&cid=7214> (19.02.2003)

³⁰ Cf. <http://www.imfmetal.org/main/index.cfm?id=47&lid=2&cid=7524> (19.02.2003)

NGOs and, in particular, for civil society groups from the South.

NGOs from the South are hardly represented in the initiative's advisory committee. The overwhelming majority of NGOs are from the USA, and only one of them comes from a developing country (Brazil)³¹. Chinese organisations are not represented in spite of the fact that SAI has certified a particularly large number of companies in Southern China.

So it is no surprise that criticism regarding SAI activities comes from the Far East. LARIC, a coalition of trade unions and NGOs in Hong Kong, regards it more as a cosmetic instrument and has doubts in principle whether commercial auditing firms are capable of appropriately conducting a social audit³². Furthermore, NGOs criticise that *"owing to its character, the SA 8000 Standard is above all a certification system for individual works, and not for transnational trademark companies including their supplier chains"*.³³ The responsibility and the costs of the required improvements are passed on to the producers in the developing countries.

In the case of the **Ethical Trading Initiative** (ETI), the costs involved do not represent such a limiting factor as they do with SAI. The UK Development Ministry provided appropriated funding for the initial phase (1998 to 2001) to the tune of 850,000 US dollars, and in 2002, the equivalent of more than 400,000 US dollars (250,000 pounds sterling) was made available by the UK government.³⁴ Even so, only a few NGOs from the South are involved in ETI. One of them is the Central American Women's Network.

However, there is another problem that has already been referred to in the context of SAI that also faces companies subjecting themselves to the ETI evaluation process. The local producers are expected to meet the necessary costs for the adaptation of their works

³¹ Cf. <http://www.cepaa.org/AboutSAI/Boards.htm> (20.02.2003)

³² Cf. LARIC (1999): No illusions. Against the global cosmetic SA 8000. Hong Kong. Quoted as in Wick (2001), p. 37.

³³ Cf. IG Metall (Eds.) (2001): Weltweit gegen Sozialdumping. Frankfurt a.M. p. 41 (editor's translation).

³⁴ Cf.: http://www.ethicaltrade.org/pub/publications/ann-rep/2001nocss_en/ (20.02.2003)

Box 3: Eucalyptus Plantations in Brazil

Towards the end of 2002 the World Rainforest Movement (WRM) criticised the FSC certification of two major eucalyptus plantations in Brazil: a 235,886 hectare area of V&M Florestal Ltda. Company and a 13,287-hectare plantation of Plantar Reflorestamentos S.A. V&M Florestal is a subsidiary of the Franco-German steel corporation Vallourec & Mannesmann (V&M). The eucalyptus trees are grown to make charcoal that is mainly used to make steel. Some of it is also traded as charcoal for barbecues. The Evaluation report,^{*} which was compiled by a seven-member team of experts for the World Rainforest Movement, accuses the companies of violating environmental and social standards required for the award of the FSC seal. In addition, it accuses the certifying companies SGS (Société Générale de Surveillance) and SCS (Scientific Certification Systems) of making grave mistakes. For example, it claims that they failed to take the framework conditions for the eucalyptus plantations into account in their observations, leaving a number of important social, economic and environmental aspects unconsidered. Only a small number of stakeholders had been interviewed, and interviews had been conducted very selectively. Here are some of the severe offences committed by the companies that had not been taken account of:

- No environmental impact assessment as required by Brazilian legislation was conducted.
- There are conflicts over the ownership of built-up land both with the local population and with the state government.
- In March 2002, both companies were brought to trial by the Regional Labour Commissariat for not respecting Brazilian labour laws (on charge of illegal practices of sub-contracting as well as of humiliating and dangerous working conditions); the proceedings are still in progress.
- Most of the workers are sub-contracted, which means that they enjoy fewer rights and benefits than those directly employed by the companies.
- The keeping of black lists indicates that workers are persecuted, especially those who are organised in trade unions and their leaders (in violation of ILO Conventions 87 and 98).

In addition, the plantations are the cause of a number of environmental problems related to the way the eucalyptus plantations are managed:

- Rivers and water resources dry up.
- Topsoil erosion is on the increase.
- Biodiversity in the region is on the decline.
- The population, the fauna and the water springs are poisoned.

As a conclusion, the Evaluation report recommends, among other things, that the FSC award two labels in future: one for forests managed in a traditional manner and one for monocultures or plantations, since the FSC principles do not suit both types of forest. New and special criteria ought to be sought for monocultures and plantations that also take the local communities and their social, cultural and environmental conditions into consideration.

The consequence for the operators of the two plantations would be to remove the negative environmental and social impacts of their activities - or to disqualify them for the FSC seal.

* Cf. World Rainforest Movement (Hg.) (2002)

to the ETI standards themselves, while the ETI member companies are merely urged to pay their suppliers appropriate prices. So here, too, there is no ultimate

guarantee that the costs that arise are reflected in the balance sheets of the transnational corporations.

ETI's character does not currently allow it to currently serve NGOs and trade unions as a comprehensive monitoring instrument when countering transnational trading firms. Rather, in its pilot phase so far, ETI has been concentrating on project activities that conventional development co-operation would call *capacity building*. The latest annual report refers to a number of examples of this, such as a wine-growing project in South Africa in which a tripartite local committee was created to carry out inspections at local level in the future, a monitoring project for the textiles industry in Sri Lanka and the production of two handbooks for the Zimbabwean horticultural sector that are to be used for the continuing education of inspectors and "training of trainers".³⁵

According to the initiative, it was possible to improve the working conditions of the stakeholders in the pilot projects in spite of their limited character. And with regard to the companies, ETI contributed to raising awareness of their corresponding responsibilities.

No doubt the **Forest Stewardship Council** (FSC) is among those multistakeholder initiatives that enjoy the greatest level of acceptance among NGOs and trade unions. The involvement of such renowned environment organisations as Greenpeace, Friends of the Earth and Robin Wood, which also observe a critical stance towards collaborative projects with industry, can be regarded as a basic indication of their regarding the participatory options for civil society organisations and the effectiveness of the initiative as satisfactory. And the growing acceptance of the FSC seal on the consumer markets also speaks for comprehensive support by NGOs with regard to the FSC's external relations (awareness raising/lobbying).

Nevertheless, even an initiative that enjoys such a broad level of support does not guarantee flawless monitoring of companies – especially in the case of transnational timber producers in developing countries. This became apparent towards the end of 2002, when the World Rainforest Movement (WRM) criticised the certification of two large eucalyptus plantations in Brazil: a certified area of 235,886 hectares belonging to V&M Florestal Ltda. Company and a 13,287-hectare plantation

³⁵ Ibid.

Box 4: Codes of Conduct and Global Framework Agreements in Comparison

Codes of Conduct	Global Framework Agreements
Unilateral initiatives	Negotiated between employee representatives and corporate management
Do not necessarily recognise all Core Labour Standards	Recognise all Core Labour Standards
Only seldom cover suppliers	Cover suppliers as a rule
Controlled by corporate management, if at all	Trade unions are involved in implementation
Weak basis for dialogue between the employees' side and corporate management	Strong basis for dialogue between the employees' side and corporate management

of Plantar Reflorestamentos S.A.³⁶. V&M Florestal is a subsidiary of the Franco-German steel corporation Vallourec & Mannesmann (V&M). The eucalyptus trees are grown to make charcoal that is mainly used to make steel. Some of it is also traded as charcoal for barbecues. The WRM survey accuses the companies of violating environmental and social standards that are a precondition for the award of the FSC seal. It claims that in doing so, the companies have also violated Brazilian law. The survey demands that the defects be remedied by the companies affected and, on the basis of such experience, recommends the FSC to introduce an additional seal the principles and criteria of which are to apply specially to plantations. (cf. Box 3).

This case study shows that even a multistakeholder initiative like the FSC, in which NGOs and trade unions are actively involved, occasionally has to rely on being controlled by independent third parties.

So far, there has only been sporadic experience with **Global Framework Agreements** between individual companies and Global Union Federations since most of them were only signed in the last few years. It is above all thanks to the new agreements in the automobile industry (Volkswagen, Daimler-Chrysler) that this form of entrepreneurial self-compliance has experienced a boom that is set to continue over the next few years. For the International Metalworkers' Federation, IMF explicitly recommends its members to sign such agreements:

"International Framework Agreements (IFAs) are a relatively recent tool but one now widely used by Global Union Federations to lay down the rules of conduct for transnational companies. Since they are negotiated on a global level and require the participation of trade unions, International Framework Agreements are an ideal instrument for dealing with the issues raised by globalisation. This is why the International Metalworkers' Federation is dedicated to pursuing IFAs in all transnational companies where our affiliates have members."³⁷

The IMF maintains that the Global Framework Agreements offer considerable advantages compared to the traditional company codes of conduct. It summarises these advantages as follows:³⁸

The International Labour Organization (ILO) also stresses the advantages of Global Framework Agreements, provided that they contain an effective monitoring and arbitration system:

*"Because framework agreements involve two globally active partners, the methods for implementation can be particularly effective. It is important, in any such agreement, to ensure a system for dispute settlement and periodic review of the terms and implementation of the agreement based on criteria agreed by both sides."*³⁹

³⁷ Cf. International Metalworkers Federation (2002).

³⁸ Ibid.

³⁹ International Labour Organization (2002), p. 25.

³⁶ Cf. World Rainforest Movement (Eds.), (2002)

However, effective monitoring is only possible where concentrated corporate power is countered by the power of a world-wide network of trade unions. With regard to the Framework Agreement between the transnational building corporation Ballast Nedam and the International Federation of Builders and Wood Workers (IFBWW), Anita Normark, IBWW General Secretary, stresses:

*"The verification of the efforts of the company to live up to international standards can be facilitated through the use of a global union network which IFBWW can provide with 289 affiliates in 125 countries."*⁴⁰

Vice versa, this means that Framework Agreements in branches without strong world-wide trade union representation are not possible. So in spite of the current dynamic developments, their number is going to remain limited in the future. A further weakness of the Framework Agreements is the lack of integration of other stakeholders and local initiatives as well as environment and consumer organisations. Although it was precisely on account of the pressure these groups exerted that the existing Framework Agreements were passed, they were not included in the formulation and implementation of the Agreements. This also explains the limited focus of the Agreements which, as a rule, concentrate on compliance with key employee rights. Usually, the observance of environmental and human rights standards and aspects of consumer protection is merely a peripheral issue.

Against the background of experience gathered so far with multistakeholder initiatives, Peter Utting, a UN-RISD staff member, draws what tends to be a rather critical conclusion in a preliminary assessment of 14 of these initiatives:⁴¹

"Despite the growth of multistakeholder schemes, the number of corporate sectors and companies involved remains relatively small. This [...] 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 [...], 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."

This is why Utting stresses the need for a further development of the multistakeholder initiatives and for alternatives to be explored. One alternative he mentions is for

*"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."*⁴²

The demand for effective international complaints-based procedures against corporations takes us from purely non-governmental initiatives to instruments aimed at enhancing corporate accountability.

⁴⁰ Cf. „Weltweite Kollektivvereinbarungen als Grundlage für Arbeitnehmerrechte“, in: Welt der Arbeit, No. 45, Dec. 2002.

⁴¹ Utting (2002), p. 63.

⁴² Ibid.

3. Intergovernmental instruments to enhance corporate accountability

In addition to company self-compliance and multistakeholder initiatives, initiatives to enhance corporate accountability at the intergovernmental level have also once again gained significance over the last few years. Here, the OECD Guidelines for Multinational Enterprises and the Global Compact between the UN and business play a special role. However, unlike the failed attempts of the 1970s and 1980s to introduce a binding code of conduct for TNCs, these new initiatives explicitly stress the principle of voluntarism.

The Standards for Corporate Accountability that are currently being discussed in the UN Sub-Commission on the Promotion and Protection of Human Rights bear the potential to reach beyond these instruments both in terms of their binding character and their outreach regarding contents. So far, however, they only exist as a draft.

In the following, the question will be examined whether these instruments offer better options for NGOs and other civil society actors than the purely non-governmental procedures to monitor the activities of transnational corporations and take effective action against the violation of environmental, social and human rights standards.

OECD Guidelines for Multinational Enterprises

The Guidelines for Multinational Enterprises are an initiative of the Organization for Economic Cooperation and Development that goes back to 1976. At the time, their political role was primarily that of taking the sting out of a potentially stricter UN code of conduct and calls by several developing countries for binding regulations for TNCs. Today, these Guidelines are still linked to a "Declaration on International Investments and Transnational Corporations" in which the governments also commit themselves to encourage a favourable investment climate (e.g. to equal treatment of foreign and native companies, so-called National Treatment).

The Guidelines were last revised in 2000. The OECD itself states that the guidelines represent "are recommendations jointly addressed by governments

to multi-national enterprises. They provide principles and standards of good practice consistent with applicable laws. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable."⁴³

The guidelines were signed by 33 countries in 2000, the then 29 OECD members as well as Argentina, Brazil, Chile and the Slovak Republic, but they are valid world-wide:

"Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries."⁴⁴

In detail, they refer to the disclosure of relevant information, employment and industrial relations as well as environmental protection. General recommendations the guidelines make in their chapter on environment include:⁴⁵

- collecting and evaluating adequate and timely information;
- setting measurable targets and, if required, specified objectives;
- regular monitoring and verification of progress made in implementing general or specified goals in the field of environment, health and safety;
- providing the public and employees with adequate and timely information on the potential impact their activities have on the environment, health and safety;
- introducing an adequate and timely process of communication and consultation with the communities affected by corporate policy in the fields of environment, health and safety in due time;
- assessing and taking into consideration in the decision-making process the foreseeable impact that the corporation's processes, goods and services may have on the environment, health and safety throughout their entire life cycle;

- not to postpone the implementation of cost-effective measures to prevent damage or reduce it to a minimum under the pretext that there is a lack of absolute scientific certainty;
- maintaining contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations;
- continually seek to improve corporate environmental performance;
- offering their employees sufficient training and educational measures;
- contributing to the development of environmentally meaningful and economically efficient public policy.

Further elements of the OECD Guidelines relate to combating bribery, consumer interests, science and technology, competition and taxation.

The extended complaints mechanism provided for various interest groups that the revised guidelines of 2000 include represent a significant new element. The National Contact Points (NCP), which are to be set up in each signatory state, are to process possible complaints. The practical form such an institution may assume is to remain up to each individual state to decide. However, the criteria for establishing it are visibility, accessibility, transparency and accountability.

On paper, National Contact Points had already been in existence before the Guidelines were revised in 2000. However, a survey by the Trade Unions Advisory Committee at the OECD (TUAC) among member federations had revealed that they were regarded as virtually meaningless in most of the OECD countries⁴⁶. In Germany, the department responsible for international investment issues at the Federal Ministry of Economics acts as a Contact Point. It was not consulted even once throughout the 1990s.⁴⁷

⁴³ OECD (2000a), Part 1, "Terms and Principles", para. 1.

⁴⁴ *Ibid.*, para.2.

⁴⁵ Cf. OECD (2000a), Part 1, Section V "Environment".

⁴⁶ TUAC (1999): Initial Submission on the 1999 Review of OECD Guidelines for Multinational Enterprises. Paris.

⁴⁷ Federal Ministry of Economics and Technology, Ref. V C/F 2 (1999): Answers to the questionnaire of 15 July 1998 on experiences with the Guidelines (1991-1998), 1st February.

Box 5: Using the OECD Guidelines – Handbooks for NGOs and Trade Unions

“Using the OECD Guidelines for Multinational Enterprises. A critical starterkit for NGOs” is the title of the handbook issued by Friends of the Earth/The Netherlands. It contains an introduction to the Guidelines and brief assessments of the existing complaints mechanism, and in its main part, it provides answers to practical problems in applying the Guidelines. The following answer is given to the question of who can lodge a complaint with an NCP:

*“Basically any ‘interested party’ can file a complaint. The interested party does not necessarily have to be an organisation, although individuals planning to raise a case are advised to seek back-up from one or more organisations. The party that is filing the complaint, for example a community fighting against pollution by a company, has to make clear what its interest in the case is. This ‘interest’ can be the legitimate concern of any citizen or organisation.”**

Generally the authors give the Guidelines and their potential as an instrument against corporate misconduct a positive appraisal. They state:

*“[...] the fact, that they are recommendations made by the [...] OECD governments to their enterprises make the guidelines a potentially interesting tool to use when pressing on corporate accountability. Companies are vulnerable to adverse publicity that connects their brand name to allegations about sweatshop labour or environmental pollution [...]”***

The authors stress the following advantages of the Guidelines:

- the complaints mechanism provides a forum that the state is involved in;
- the Guidelines are also applied outside the OECD countries, i.e. in countries in which national legislation may not be sufficient to sanction corporate misconduct;
- the possibility to complain may itself already prompt a debate to discuss the conduct of corporations with them.

Nevertheless, the assessment Friends of the Earth/The Netherlands makes of the OECD Guidelines is not unrestrictedly positive. They first of all recommend to carefully check whether it makes sense in a respective individual case to consult the National Contact Point and warn that NGOs resorting to this may be inundated with lawsuits. The resulting costs can represent a considerable risk for NGOs, limiting their ability to operate or crippling them entirely. This is why the environmental campaigners also draw attention to the classic instrument of civil society mobilisation:

One of the tasks of the National Contact Points is to process “legitimate requests for information” that may above all be filed by three groups:

- other National Contact Points;
- private industry, employee organisations, other non-governmental organisations and the public; and

- governments of states not party to the agreement.⁴⁸

In addition, the National Contact Points are expected “to help resolve [issues relating to the implementation of the Guidelines]. Generally, issues will be

⁴⁸ Cf. OECD (2000a), Explanations for the Implementation Procedures of the OECD Guidelines for Transnational Corporations, para. 12.

*“There are of course many other ways to influence corporate behaviour and put pressure on those that deny their responsibility besides the various possibilities to file complaints related to Guidelines and Codes of Conduct and to start judicial procedures in court. Public opinion campaigns, media work, consumer boycotts and direct action are only several of the campaigners options. ... In many cases it is also worthwhile to pursue several lines of action simultaneously.”****

“A Users’ Guide for Trade Unionists to the OECD Guidelines to Multinational Enterprises” is the title of the instructions to use the OECD Guidelines issued by TUAC. In addition to an overview of the appellate procedures, this brochure contains sections comparing the Guidelines with Global Framework Agreements and voluntary self-compliance. While TUAC concedes that the new Guidelines have not met all trade union demands, it does stress their usefulness for trade unions:

*“An optimum outcome for trade union aspirations has not occurred on all issues. But [...] TUAC believes that much progress has been achieved, especially when the new Guidelines are viewed in the light of earlier phases in this debate. Trade unions are therefore urged to make maximum use of this new instrument, in order to show governments and business that the labour movement means business in securing further respect for workers’ rights. The Guidelines can also be used in trade union campaigns involving key global corporations on issues such as human rights, the supply chain, the environment, information disclosure, and combating bribery. They can be useful in efforts to solve specific problems and to create a favourable environment for social dialogue and agreement with corporations. The strengthened implementation procedures [...] can be used to influence company compliance with the provisions of the Guidelines, including workers’ rights protection. Other major revisions to the instrument include global applicability, the coverage of all core labour standards, and the encouragement to suppliers and sub-contractors to apply the Guidelines.”*****

* Friends of the Earth International (2002a), p. 14.

** Ibid. p. 11.

*** Ibid. p. 13.

**** TUAC (2002), p. 1.

dealt with by the NCP in whose country the issue has arisen. Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level.⁴⁹ Setting up or upgrading of National Contact Points extends the scope of action for civil society organisations. They can file requests for in-

⁴⁹ Ibid., para. 13.

formation and complaints about specific companies to the NCPs. In order to draw the more attention to the procedure, TUAC and Friends of the Earth/The Netherlands have published two handbooks for NGOs and trade unions on making use of the new complaints mechanism. In them, they assess and critically review the scope for civil society participation that the Guidelines offer (see Box 5).

Well over two years after the adoption of the OECD Guidelines, there are only individual cases of experience being made with them and their complaints mechanism. By the end of 2002, around 25 complaints had been filed to the National Contact Points, including six cases involving German firms (see Box 6). Most of the complaints relate to the violation of employee rights or to intolerable working conditions and were submitted by the trade unions. So far, there have been hardly any cases of environmental offences constituting the object of complaints. An NGO evaluation of the implementation of the OECD Guidelines by the National Contact Points (*'NGO Report on Implementation of the OECD Guidelines for Multinational Enterprises by National Contact Points'*) in October 2002 arrives at a critical assessment.⁵⁰

The Report refers to the following weaknesses in the current appellate procedure:

- insufficiently specified provisions on schedules,
- a lack of transparency that above all results from the high demands placed on confidentiality and
- confusion about the scope of the OECD Guidelines regarding trade, in-company trade and supply chain issues.

Patricia Feeney, the Report's author, strongly criticises an incident in Germany in which the NCP (i.e. the responsible department at the Federal Ministry of Economics) required that an NGO consult a solicitor before the case in question could even be dealt with by the National Contact Point.

According to Feeney, the composition of the National Contact Points and their staffing are of central importance to the efficiency of the Guidelines.

⁵⁰ Cf. Feeney (2002)

Box 6: Complaints about German companies in the context of the OECD Guidelines (status: February 2003)

Czech Republic (two cases):

Complaints about **Siemens** and **Bosch**, regarding the violation of employee rights (impeding of trade union activities) filed by trade unions in 2001 (Czech-Moravian Confederation of Trade Unions). The parties reached a consensus.

Germany (two cases):

Germanwatch filed a complaint about **Continental** – plant closure by a subsidiary in Mexico without considering employee rights and in violation of national legislation. The Mexican NCP is the chief responsible body, and the case was referred to it.

Complaint by Greenpeace about **TotalFinaElf** (production plant in Germany) referring to oil production and transport in Western Siberia. Since trade issues are involved, the applicability of the OECD Guidelines is currently being examined.

Poland:

Solidarnosc complained about employee rights not being respected in a company with a **German investment share** (company name not given). The Polish NCP attempted to arbitrate but failed.

Austria:

Complaint by the Clean Clothes Campaign (CCC) Austria about **adidas** and suppliers Panarub in Indonesia referring to miserable working conditions. Was lodged in September 2002, and passed on to the **German NCP** in November 2002. In February 2003, CCC Germany took up the case.

(compiled and material added by Cornelia Heydenreich, Germanwatch)

"The NCPs are usually middle ranking or junior civil servants in the investment department of the trade or finance ministries, few would appear to have legal or human rights training.

*[...] If the OECD governments [...] are serious about the value of the Guidelines and implementation procedures [...], then they should consider separating out the promotional aspect of the Guidelines work [...] from the investigative watchdog function, which should be assigned to an independent law officer."*⁵¹

In Germany too, the fact that it is precisely the civil servants responsible for trade promotion who should also process complaints about domestic companies has proved to be a severe problem. It remains to be seen whether very recent re-staffing measures at the National Contact Point are going to have a positive impact on the implementation of the OECD Guidelines in Germany. One of the issues this depends on is the equal representation of the NGOs in the activities of the Con-

tact Point. In the scheme's initial phase, they were at best assigned a second-class status below that of the employers and the trade unions.⁵²

A far more fundamental criticism of the OECD Guidelines is based on their weak sanctioning potential. If a National Contact Point has found out that a company has violated the guidelines and the company refuses to remedy the situation, the appellants and the Contact Point only have the option to go public, i.e. to use the instrument of naming and shaming. But NGOs and trade unions can resort to this instrument without a time-consuming detour via the OECD Guidelines. Only experience made with the first concluded cases of complaints will show whether they can exert additional pressure on corporations. In this context, the International Council on Human Rights Policy formulates three demands on the complaints mechanism of the OECD Guidelines:⁵³

⁵² For experience gathered by NGOs with German Contact Points, see Heydenreich (2003).

⁵³ International Council on Human Rights Policy (2002), p. 161.

⁵¹ Ibid., p. 2.

- *“The identities of the companies about which a complaint has been lodged should be on the public record as a matter of routine.*
 - *Member states of the OECD [...] should act to ensure that decisions on complaints are enforced against companies.*
 - *Procedures should be speeded up so that decisions are made before disputes have been resolved or have become irrelevant.”*
- Given the weak sanctioning potential of the Guidelines, NGOs and trade unions also call for the award of government subsidies and granting of investment guarantees to be made conditional on compliance with the OECD Guidelines (cf. Box 7) – a demand that the Federal Ministry of Economics and Employment has so far vehemently rejected.

Box 7: Excerpt from the Joint Declaration of attac, DGB and VENRO “Making Globalization Equitable” (December 2002)*

“[...] Regulations for multinational enterprises The political reformation of globalization processes must also be accompanied by a binding regulation on the activities of multinational corporations. Multinational enterprises must acknowledge their social, environmental and human rights responsibilities and obligations and take these into consideration in their actions. Voluntary standards or codes of conduct are an important first step, but are not enough. The objective must be the creation of legally binding international regulations with effective controlling mechanisms and sanctions. The draft of the UN Sub-Commission on the Promotion and Protection of Human Rights or the International Framework Convention on Corporate Accountability proposed in Johannesburg by the trade unions and NGOs can serve as the basis for such regulations.

In the meantime, we expect of the Federal Government:

- that it vigorously follow up on its obligation to promote the implementation and application of the OECD Guidelines for Multinational Enterprises (MNEs), for example through information and public relations work as well as relevant consulting programmes;
- that all interested social groups be equally involved in the work of the national contact office according to the principles of transparency and accountability;
- that it vigorously demand that multinational enterprises headquartered in Germany comply with the OECD Guidelines and with the ILO Code of Conduct for Multinational Enterprises in all of their social activities, including the cooperation with supplier enterprises; in this context it should encourage enterprises to conclude framework agreements with the trade unions;
- that it only then grant export credit and investment guarantees when the applicant enterprises pledge to comply with the OECD Guidelines.”

* The complete joint declaration is published in: DGB-Bildungswerk/terre des hommes/WEED (Eds.) (2003).

Global Compact

The Global Compact between the UN and business was announced by UN Secretary-General Kofi Annan at the World Economic Forum in Davos in January 1999 and officially launched at the United Nations in New York on the 26th July 2000. The aim of this initiative is to put tasks central to the United Nations into practice with the aid of the voluntary involvement of companies. The Global Compact is based on nine principles relating to the observance of human rights, respecting the Core Labour Standards and environmental protection. The UN Secretary-General regards the Compact neither as a binding set of regulations nor as a code of conduct for companies but as a basis for a dialogue forum in which mutual learning among companies is to be promoted with examples of best practice.

Anyone wishing to become a member of the initiative has to comply with a number of guidelines that the Secretary-General formulated before the initiative was founded.⁵⁴ In addition to a commitment to the nine principles, companies participating are required to report on success made in implementing the principles in company practice on the initiative’s website (<http://www.unglobalcompact.org>) once a year. Furthermore, the firms have to conduct projects in “partnership” with UN organisations that serve the implementation of the nine principles. Companies that are implicated in violations of human rights or tolerate forced or child labour, manufacture or distribute anti-personnel mines or violate other relevant commitments of the United Nations are not accepted as

signatories of the Global Compact in accordance with the guidelines. However, any checking, let alone continuous monitoring, of company activities by the United Nations is explicitly not stipulated.

This is why, so far, no company has been excluded owing to a violation of these guidelines in practice. Therefore, many civil society organisations view the Global Compact and its guidelines with considerable scepticism. NGOs that have joined up to form an “Alliance for a Corporate-Free UN”⁵⁵ warn of a sell-out of the United Nations to the interests of major corporations and a blue-washing of precisely those companies by the UN that have been proven to have committed offences in

⁵⁴ Cf.: Guidelines for cooperation between the United Nations and the business community. In: UN General Assembly (2001), Annex 3.

⁵⁵ Supporters of this alliance include the Third World Network, the Institute for Policy Studies (USA), Focus on the Global South (Thailand), and the Women’s Environment and Development Organization (USA).

Box 8: German signatories to the Global Compact

(Status: 23rd January 2003)*

A.C.A. Riegelsberger	Allianz Group
BASF	Bayer AG
BMW AG	DaimlerChrysler AG
Deutsche Bank AG	Deutsche Telekom AG
Gerling Group of Insurance Companies	Helog Lufttransport KG
Lufthansa Aviation Group	Otto Versand (GmbH & Co.)
SAP AG	Sitec AG
Volkswagen AG	

* Cf. <http://www.unglobalcompact.org/> (19.02.2003)

“As equal partners and important stakeholders, civil society and other non-business organisations can participate through a number of Global Compact engagement mechanisms, including Policy Dialogues, Learning, Local Networks and Partnership Projects. In these areas, such organisations have a crucial role to play in helping to foster partnerships and produce substantive action.”⁵⁷

In addition, NGOs and trade unions are represented in the Pact’s Advisory Council. They include the International Confederation of Free Trade Unions (ICFTU) and amnesty international.

the environmental, social and human rights area in the past.⁵⁶ As examples, they refer to founding members of the Compact such as Shell, Nike, Rio Tinto und BP Amoco. Rather than regarding the Global Compact as an instrument to promote corporate commitment to environmental, social and human rights, critics view it as an obstacle to achieving this goal.

A total of 15 companies from Germany had signed the Global Compact by January 2003 (cf. Box 8). Thus, on an international scale, German industry assumes a lower rank. The 15 German firms compare with 119 from Spain, 91 from Indonesia and 86 from India. All in all, more than 550 companies were involved in the Global Compact by early 2003 (status: 23. January 2003).

By January 2003, A.C.A. Riegelsberger, BASF, Bayer, Deutsche Bank, the Gerling Corporation, Otto-Versand and Telekom had submitted the reports required once a year by the Global Compact.

Thus reports include those of

- Deutsche Bank on its environmental consultancy services for small and medium-sized clients in Germany and its investments in alternative energy sources;
- the Gerling Corporation on its efforts to improve the employment situation of its employees with children and a newly established

insurance category for low-emission cars;

- Otto-Versand on progress made in reducing carbon dioxide emission in its transport chains;
- Deutsche Telekom on its surveys on energy efficiency in modern information technologies;
- BASF on progress made in establishing a “Sustainable Management Structure” and developing measurements to measure and demonstrate progress made in sustainability;
- Bayer AG on a project in Brazil that is aimed at overcoming child labour in co-operation with a local NGO;
- A.C.A. Riegelsberger on information campaigns and conferences that are to help spread the Global Compact concept.

However, the use of such reports is dubious. For on the one hand, such examples of *best-practice* do not allow any conclusions to be drawn regarding normal practice among the respective companies, and on the other, they usually cannot be generalised to set examples for other companies.

In theory, there are a multitude of options to participate in the Global Compact. Officially, the Compact even regards itself as a joint initiative of the UN, business and civil society. Under the heading “*frequently asked questions*”, the Global Compact website states with regard to the participatory options for civil society actors:

In reality, however, the claims and the reality of civil society participation are wide apart. While the Compact was originally conceived purely as an agreement between the UN and business, civil society has been verbally granted equal participation since the formal founding event in 2000. But it remains unclear how NGOs can become members of the Global Compact at all. What is worth noting is that, under the heading “*how to participate*”, the Pact’s website only refers to the participation of firms. The adoption criteria for NGOs are opaque and are said to be considerably stricter than those for companies⁵⁸. They state that only those NGOs may become involved in the Global Compact that

- operate globally,
- are not *single-issue* organisations,
- can co-operate with all actors in society,
- can effect changes, and
- provide information on their membership and their funding sources.

So it should come as no surprise that the list of the actors involved in the Global Compact refers to several hundred companies but less than 30 civil society organisations (in the widest sense), including the ICFTU, the WWF, Transparency International and amnesty international (see Box 9). But even

⁵⁶ Cf. Bruno (2002) and Bruno/Karliner (2000). Both texts as well as further material on the topic are available at: <http://www.corpwatch.org/un>

⁵⁷ Ibid.

⁵⁸ Assessment by Iris Schneider (2002) in: *Globale Werte für die Wirtschaft*. In: *ai-journal* 3/2002, p.6.

these organisations don't support the Compact without major reservations. For example, TUAC states:

*"The Global Compact, in itself, produces little. Its impact must be measured through its effect on global social dialogue, including framework agreements and the encouragement of companies to engage other parties based on international standards."*⁵⁹

However, it is precisely such effects that many NGOs are in doubt about. Indeed, they fear that the Global Compact is counterproductive regarding attempts to regulate entrepreneurial activities according to environmental criteria. Critical points that have been raised again and again above all include that the Compact lacks any binding character and enforcement mechanisms. Thus criticism is aimed chiefly not so much at a lack of participatory options but at the Global Compact's principal weakness in terms of its contents and structure. Peter Utting concludes:

*"There are only few effective mechanism to ensure that the corporations comply with the principles of the Global Compact. [...] The 'Social Learning' theory and the 'Best Practices' approach [...] are inappropriate because they have a tendency to ignore the crucial points of friction and the institutional contexts that cause the corporations to raise standards because they divert attention from 'bad practices'."*⁶⁰

In order to give civil society more space in the Global Compact, Brigitte Hamm suggests that the Global Compact Learning Forum enable "public commentaries of *examples* and *case studies*". She argues that all in all, the Pact has to "be developed into a true multistakeholder forum in which all those involved have the same vote. (...) Transparency, participation, and accountability" are "criteria crucial to its success". Moreover, Hamm demands that, "even as a forum for dialogue and learning", the Global Compact must not "forfeit any reporting and monitoring system" and has to be complemented by "progress control".⁶¹

⁵⁹ TUAC (2002), p. 13.

⁶⁰ Cf. Utting (2002a) (editor's translation).

⁶¹ Cf. Hamm (2002), p. 33 ff.

Box 9: Civil Society Organisations Supporting the Global Compact

(Status: February 2003)

Amnesty International	Human Rights Watch
The Danish Institute for Human Rights	Lawyers Committee for Human Rights
World Wide Fund for Nature (WWF)	The World Conservation Union (IUCN)
World Resources Institute	International Institute for Environment and Development
Conservation International	Regional and International Networking Group
Global Reporting Initiative (GRI)	Transparency International
The Save the Children Alliance	SA 8000
Global Sullivan Principles	The Copenhagen Centre
European Business Campaign on Corporate Social Responsibility	International Center for Alcohol Policies (ICAP)
GoodCorporation	International Telecommunication Academy
The Aspen Institute Initiative for Social Innovation through Business	Insituto Ethos (Brasil)
Fundação Abrinq pelos Direitos da Criança (Brasil)	Entreprises pour l'Environnement (France)
The International Confederation of Free Trade Unions (ICFTU)	International Federation of Chemical, Energy, Mine and General Worker's
Union Network International UNI	Trade Union Advisory Committee TUAC

This is precisely what the UN Secretariat has so far rejected with reference to other, more far-reaching corporate rules. Superficially, the Global Compact presents itself as an instrument complementary to rules imposed on business at governmental and intergovernmental level. But at the same time, intergovernmental interventions in free world trade and impediments to investment flows for social and environmental reasons are rejected as the wrong instruments by the UN Secretary-General. In his speech in Davos in 1999, Kofi Annan clarified this with regard to the implementation of environmental, labour and human rights standards:

"There is enormous pressure from various interest groups to load the trade regime and investment agreements with restrictions aimed at reaching adequate standards in the three areas I have just mentioned. These are legitimate concerns. But restrictions on trade and impediments to investment flows are not the means to use when tack-

*ling them. Instead, we should find a way to achieve our proclaimed standards by other means. And that is precisely what the compact I am proposing to you is meant to do."*⁶²

Thus the Secretary-General presented the Global Compact as an alternative to a social and environmental regulation of trade and investments, and not as a complementary instrument. Probably also as a result of strong trade union opposition, the UN Secretariat has not actively pursued this line of argument since then, but neither has it developed any initiatives of its own that would demonstrate the Global Compact's ostensibly complementary character. Many NGOs hold that the UN Secretariat could only gain credibility with its argumentation by displaying the same level of involvement it has in promoting the Global Compact in campaigning for corporate rules with a globally binding character.

⁶² UN Secretary-General (1999): Address to World Economic Forum, 31st January 1999 (UN press release SG/SM/6881).

The Norms on Responsibilities of Transnational Corporations that are currently being developed in the Sub-Commission of the UN Human Rights Commission could provide a basis for this.

Draft Norms of the UN Sub-Commission on the Promotion and Protection of Human Rights

The “Draft Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights” of the UN Sub-Commission on the Promotion and Protection of Human Rights assume a special role among the initiatives discussed here.⁶³ There are several reasons for this special role. First, the *Draft Norms* have as yet not entered into force but, just as their name states, they only exist as a draft developed by a five-member working group of the Sub-Commission. Second, the *Draft Norms* bear the potential to go beyond all existing international instruments for corporate responsibility in terms of their

are ultimately responsible for implementing the norms.

The *Draft Norms* are not based on new standards. On the contrary, they explicitly refer to already existing international documents and conventions, including:

- the International Covenant on Civil and Political Rights,
- the International Covenant on Economic, Social and Cultural Rights,
- the Rio Declaration,
- the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy,
- the OECD Guidelines and
- the Global Compact.

From a total of more than 30 of these documents, the working group of the Sub-Commission distilled 23 Norms that are to give a comprehensive definition of the responsibilities of transnational corporations (cf. Box 10).

shall carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate as well as in accordance with relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment as well as human rights, public health and safety; and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development.”

Civil society groups are to enjoy a wide range of participatory options for monitoring and verification. In addition, the Norms on implementation provide for an appellate procedure. If a dispute emerges from a complaint, national courts are to rule on the complaint and, if necessary, on compensation for the victims.

It yet remains to be seen whether the *Draft Norms* provide civil society organisations with an instrument to take action against the environmental offences of transnational corporations. Much depends on whether the *Draft Norms* in their present form are going to clear the first hurdle in August 2003 and be passed by the Sub-Commission of the Human Rights Commission at its 55th session. This could already be regarded as a huge step forward even if the Norms were not to be granted a legally binding character

at this stage but were merely to be attributed the status of a declaration. Nevertheless, all in all, human rights experts assess the prospects the *Draft Norms* offer as very positive.⁶⁴ Here, the International Council on Human Rights Policy states:⁶⁵

“The [Draft Norms] provide the foundation of an authoritative and

Box 10: Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights

Norm 1	General Obligations
Norm 2	Right to Equal Opportunity and Non-Discriminatory Treatment
Norms 3-4	Right to Security of Persons
Norms 5-9	Rights of Workers
Norms 10-12	Respect for National Sovereignty and Human Rights
Norm 13	Obligations with regard to Consumer Protection
Norm 14	Obligations with regard to Environmental Protection
Norms 15-19	General Provisions of Implementation
Norms 20-23	Definitions

legally binding character. The term “norm” was intentionally adopted to stress this instrument’s normative character. Third, the norms also provide for sanctions up to the level of reparations and address not only private companies but, above all, governments, which

The Norms are complemented by a detailed commentary (*“Draft Commentary on the Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights”*) explaining the individual Norms, stating sources and giving instructions on implementation.

With regard to the obligations of companies in the area of environmental protection, Norm 14 states:

“Transnational corporations and other business enterprises

⁶³ Cf.: United Nations Sub-Commission on the Promotion and Protection of Human Rights (2002): Draft Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights. Geneva (UN Doc. E/CN.4/Sub.2/2002/13, 14th August 2002).

⁶⁴ Cf. e.g. Elisabeth Strohscheidt’s assessment (2003), p. 26.

⁶⁵ International Council on Human Rights Policy (2002), p. 160.

comprehensive statement of the scope of companies' obligations in relation to human rights. The principles offer the best chance to clarify, at least in a soft law instrument, that international law can impose direct obligations on companies. A comprehensive document such as this would give coherence and greater effectiveness to single issue approaches."

However, beyond the small circle of human rights organisations, the process in the Sub-Commission has gained only little attention so far. Neither among environmental nor among development organisations are the *Draft Norms* and their potential to form a set of regulations for transnational corporations going beyond the small human rights area familiar. This applies to an even greater degree to those that are most strongly affected: the local groups and initiatives in the developing countries. So one important task has to be that of drawing more attention to the Norms beyond the small circle of human rights experts.

III. Conclusions: The limits of voluntarism

Many NGOs and trade unions have always been sceptical about voluntary codes of conduct and corporate self-regulation. This scepticism is not based on the rejection of private self-initiative for ideological reasons or on blind faith in the state. Rather, it results from experience with the day-to-day practice of many companies. All too often, a considerable gap has become apparent between the rhetorical commitments to environmental and social action made by companies and the real impact of their activities on people and the environment. The list of “*best-practice*” examples contrasts with a list of “*worst practice*”.

Hoping for the voluntary engagement of companies is based on the misunderstanding that the voluntary achievement of social, environmental and human rights standards automatically coincides with the interests of the companies and their owners. Given the globalised competitive pressures many firms are exposed to and the growing power of international investors reckoning with high yields, this is by no means the case. Rather, there is a conflict of aims in the company strategies between the short-term economic interests and the long-term interests of society – in other words a conflict of aims between maximising shareholder value or stakeholder value. With share prices plummeting and world-wide recession trends, the shareholders usually gain the upper hand in this conflict, which is perfectly rational from a microeconomic point of view.

Nevertheless, some NGOs do not reject voluntary codes of conduct in principle. In a joint statement to the Commission on Sustainable Development (CSD), a group of environmental and development NGOs listed a catalogue of criteria that would have to be fulfilled for voluntary initiatives to “contribute positively to sustainable development”.⁶⁶ The catalogue contains the following seven criteria:

Substance: Voluntary Initiatives must have appropriate contents and language (i.e., no general expressions of good intentions; not watered down; addressing the important issues and not minor details; not ambiguous and full of loopholes) and they must be based on internationally agreed legally binding labour, environmental and human rights standards and conventions;

Inclusiveness: they must guarantee the active participation of all affected stakeholders;

Motivation: they must contain sufficient incentives to encourage voluntary compliance;

Integration: incorporation of the social and environmental values of the agreement into not only the policies and operations of companies, but in the way they define and measure success and progress;

Transparency: independent monitoring of implementation;

Credibility: independent verification of compliance; and

Accountability: regulatory and civic mechanisms able to impose sanctions, penalties or other means to deal with companies that consistently behave irresponsibly.

But if we undertake a “reality check” and assess the hundreds of sectoral and company codes and voluntary initiatives, we have to realise that there is no single code yet that fits all these requirements. Usually, provisions are made neither for stakeholder participation nor for an independent verification of compliance. It would be absurd to assume that a company not complying with a code would impose sanctions on itself. Consequently, NGOs and trade unions do not make use of company codes of conduct as a reference frame. At best, these forms of self-compliance can act as an instrument raising awareness at company level.

There are numerous cases of violations of environmental standards and the rights of employees by transna-

tional corporations not having been prevented by codes of conduct. In the Annex, we give recent “*worst-practice*” examples of German corporations or their subsidiaries in which they are accused of grave environmental offences or the violation of international labour standards. Virtually all companies have drawn up codes of conduct of their own and/or have signed international business charters and codes such as the Global Compact. In these cases, such instruments have quite obviously demonstrated that they are without any effect.

More and more companies have realised how limited the use of the “first generation” of unilateral self-compliance agreements is – also in terms of their own public relations activities – and are now concentrating on more far-reaching initiatives with a greater level of credibility.

These above all include the multistakeholder approaches that appear to have mushroomed over the last few years. But they too show a number of structural weaknesses:

1. **Limited number:** In spite of this boom over the last few years, the actual number of initiatives and companies involved is only small compared with the overall number of transnational corporations, which UNCTAD puts at 60,000, with an additional number of subsidiaries of more than 700,000. Leaving aside the relatively widespread environmental management systems of the ISO-14000 series, only a few hundred companies all told are involved in the multistakeholder initiatives. Most of them are firms that respond particularly strongly to consumer pressure (e.g. retail store chains, the sport article industry), firms whose production processes bear considerable risks, which exposes them to the limelight to a particular degree (e.g. chemicals industry), or firms in which the employee interests are particularly well organised in trade unions (e.g. Volkswagen). The great majority of companies

⁶⁶ Cf. United Nations Commission on Sustainable Development (1998), para. 26.

are not involved in multistakeholder initiatives.

2. **Limited participation:** Some NGOs and trade unions play an outstanding role in multistakeholder initiatives, such as the WWF in the Marine Stewardship Council or the International Trade Union Federations in the Global Framework Agreements with individual firms. All in all, however, both the range and the quantity of civil society involvement in the initiatives are limited. Only a relatively small number of NGOs and trade unions are involved in most initiatives. In almost all cases, e.g. SA 8000, civil society groups from developing countries are under-represented. Some initiatives, such as the Global Framework Agreements, make no provisions for the involvement of NGOs and local groups in the first place.
3. **Limited focus:** The selectiveness of the involvement of civil society groups is matched by that of the thematic focus the individual initiatives have set themselves. Some initiatives above all concentrate on environmental aspects (e.g. ISO, MSC), while others are concerned with the implementation of the ILO core labour standards (e.g. SA 8000, Global Framework Agreement). Thus, the initiatives only reflect partial aspects of *corporate social responsibility* rather than a coherent approach to sustainable development putting environmental, social, human rights and economic targets on a par. Occasionally, the initiatives tend to pursue a "*corporate accountability à la carte*" approach. In other words, the companies take their pick of areas of responsibility in which it will hurt them least to make concessions. But the environmentally friendly production of land mines fits in just as little with a comprehensive concept of corporate responsibility as the manufacture of a 20-litre car does even if this is done out without child labour.
4. **Limited monitoring:** The observance of voluntary self-compliance is monitored to a very varying extent in the context of multistakeholder initiatives. Whereas some initiatives stipulate certifying and auditing by commercial companies

(e.g. FSC, SA 8000), others restrict themselves to checks at company level (e.g. some Global Framework Agreements), and some refrain from monitoring altogether (e.g. the GRI). The commissioning of commercial auditing and certifying firms in monitoring environmental, social and human rights standards is viewed sceptically by NGOs. But usually, the NGOs themselves do not have the personal, technical and financial capacities to systematically monitor compliance with company responsibilities. They are overtaxed with the highly praised *watchdog* role. While complaints-based systems could be more effective, they require an independent body that receives and rules on complaints (e.g. an arbitration tribunal) as well as effective sanctioning mechanisms. As a rule, multistakeholder initiatives meet neither of these requirements.

In a positive sense, multistakeholder initiatives can play a trendsetter role by going beyond the existing legal regulations in committing companies involved to social, environmental and human rights standards. But only when all companies follow the trend that has been set, i.e. when "best practice" becomes "normal practice", can a positive widespread impact be achieved. But this is where the limits of voluntarism have been reached at the latest. For experience has shown that this is not done voluntarily but only if governmental or intergovernmental institutions put the necessary rules in place.

This is also the conclusion that a survey by the California Global Corporate Accountability Project arrives at. Setting out from case studies of the oil and hi-tech industry, it formulates "*A New Policy Agenda for Corporate Accountability*", in which it states that:⁶⁷

"Best Practice isn't Good Enough: Public Policy is Needed – The case study lessons point to two broad conclusions. First, individual companies can do much on a voluntary basis to improve their own environmental and social commitment and performance. The performance span between leading companies, especially those committed to best

practice, and lagging companies, is substantial. Second, without change in the policy frameworks that set rules and determine market incentives for all players, voluntary initiatives can go only so far. They cannot fully resolve the human and labor rights dilemmas that multinationals face in a highly differentiated global economy, nor deliver broad social objectives such as sustainability at home or abroad. Without complementary policies that change market incentives and generate a new, common floor for corporate social obligation, voluntary initiatives will generate limited and incremental change. At the macro level, and often the micro level as well, best practice is not good enough."

The OECD Guidelines demonstrate the general direction international rules for corporate accountability can take. They were passed by governments and are binding for them. They are valid for all companies with their headquarters in the 33 signatory states of the Guidelines. They comprise a wide range of topics that includes both environmental and labour law issues. And they provide an, albeit rudimentary, mechanism for complaints. However, they do also bear grave weaknesses. Some of the company responsibilities, such as those in the environmental area, are only vaguely formulated, while the complaints procedure relies on the will to co-operate and the goodwill of the responsible National Contact Points, and no provisions are made for sanctioning and compensating procedures to be applied if the guidelines are violated.

The *Draft Norms* of the United Nations Sub-Commission on the Promotion and Protection of Human Rights bear the potential to go beyond the guidelines in terms of contents and of their binding character. They could do away with some of the weaknesses of the Guidelines, especially if they were to be linked up with national legal instruments and supplemented by international instruments, such as an international law concerning liability. Currently, it is these Draft Norms that come closest to the demands made by NGOs and trade unions for binding international corporate regulations (cf. Box 7). At the same time, they are in

⁶⁷ Natural Heritage Institute et al. (Eds.) (2002), p. 158.

line with the decision of Governments at the Johannesburg Summit to actively promote corporate responsibility and accountability, e.g. by developing inter-governmental agreements and international initiatives.⁶⁸

Based on their experience so far with corporate practice, the application of voluntary codes of conduct and the involvement of governments in this area, NGOs have drawn the consequences. At international meetings and strategy debates, such as at the recent World Social Forum in Porto Alegre, a multi-level strategy has emerged for their future addressing of the issue of *corporate accountability*:

1. **Increased support for local groups in their struggle against Transnational Corporations.** This ranges from traditional forms of public relations activity as well as "naming and shaming" and boycotts to the more active use of complaints mechanisms, such as in the framework of the OECD Guidelines, and of national law. In Europe in particular, hardly any experience has been gathered with the "extraterritorial" use of national legal instruments to confront TNCs. One basic prerequisite for this is a better flow of information between the groups in the North and the South.
2. **Increased campaigning for binding corporate rules at national and regional level.** Examples here are the British proposal for a *Corporate Responsibility Bill* put forward in 2002 and the European Parliament's suggesting a code of conduct for European companies operating in developing countries⁶⁹.
3. **Developing international "Trendsetter Initiatives"** between forward-looking companies, NGOs and trade unions in specific issue areas in order to raise the threshold for all companies. This can especially make sense where governments are blocking each other's action and short-term intergov-

ernmental solutions are not in sight.

4. **Continuing the international campaign for binding corporate rules.** Many NGOs continue to regard the establishment of binding corporate rules at global level as a central goal. The UN Sub-Commission's *Draft Norms* can represent a point to set out from in this respect. In addition to the long-term demands for a *Framework Convention on Corporate Accountability*, the emphasis in activities in the immediate future will be on achieving progress regarding individual aspects such as the issue of an international law concerning environmental liability or the demand for a duty of disclosure of transnational flows of payment from corporations to governments, which has been raised by the *Publish-What-You-Pay* campaign.

However, in the international debates among NGOs, it has also become apparent that the demand for greater corporate accountability must not be restricted to the areas of environment, labour and human rights in the future. Civil society organisations also have to take a closer look at other implications of transnational economic activities. For example, TNCs also have a considerable influence on fiscal policy and the revenue situation of states. Transfer-pricing and profit reallocating to low-tax countries reduce state revenue and can considerably restrict the ability of the state to act (e.g. in the environmental and social sector). But foreign investors also have an influence on the balance of payment of a country, on its industrial policy and even on public opinion and politics as a whole (e.g. by way of corruption and the intertwining of business and politics, for example in the case of Enron). The discourse on corporate social responsibility does not deal with these "side-effects" of corporate activities. And the campaigns run by NGOs and trade unions have given them too little attention in the past as well, since they are usually not as obvious as direct environmental destruction or the violation of human rights.

However, campaigning for international corporate rules *beyond voluntarism* also requires that the focus be shifted in the strategies of NGOs and trade unions. Peter Utting has clearly

formulated the key challenge that civil society organisations are currently facing:⁷⁰

"At present, much of the social force that is promoting corporate responsibility is channeling 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 multi-lateral organizations to support other regulatory approaches, it is unlikely that significant developments in this area will be made."

⁶⁸ Cf. UN Doc. A/CONF.199/20, Annex, para. 49.

⁶⁹ European Parliament: Resolution on EU Norms for European Companies operating in Developing Countries with a View to the Development of a European Code of Conduct, 15th January 1999.

⁷⁰ Utting (2002), p. 116.

ANNEX: „Worst-practice“ examples of German foreign investments

(compiled and material added by: Tobias Schmitt)

Company Location	Incident	Violated codes and standards	Time Frame	Sources
BASF Different locations in Latin America	Violations of labour standards	<i>inter alia</i> UN Global Compact	Research conducted by November 2002	observatório social http://www.observatoriosocial.org.br/download/mapabasf.pdf
Bayer AG Different locations in Brazil	Violations of labour standards; Pollution of the environment	ILO-Standards	Recent Study (2002)	observatório social cd-rom: globalizar o homem ou humanizar o globo? http://www.observatoriosocial.org.br/ (16.02.2003)
Bayer AG Belford Roxo, Rio de Janeiro, Brazil	Pollution of the environment	National environmental law	Since 2001: Greenpeace Campaign and official screening by the state	Greenpeace International (2002), p. 27f.
Bayer AG (Bayer Crop Protection) Taucamarca, Peru	Insufficient labelling of poisonous pesticides resulting in the death of 25 children.	<i>inter alia</i> FAO Code of Conduct for Pesticide Use an Sale „Responsible Care“ initiative	1999, 2001 action brought against Bayer and the Peruvian ministry of agriculture; case pending.	Greenpeace International (2002), p. 57f.
Bayer AG Norway	Pollution of costal waters	<i>inter alia</i> OECD Guidelines for Multinational Enterprises.	January 2003: The city of Oslo is suing for compensation of € 3,5 millions.	Friends of the Earth International (2002), p. 46f. Norges Naturvernforbund (Friends of the Earth Norway) http://www.naturvern.no/gif/index.en.html (19.01.2003)
Bosch Various locations in Brazil	Violations of labour standards	<i>inter alia</i> ILO-standards	Recent study (2002)	observatório social cd-rom: globalizar o homem ou humanizar o globo? http://www.observatoriosocial.org.br/ (18.02.2003)
Bosch Czech Republic	Violations of labour standards	OECD Guidelines for Multinational Enterprises	2001 consensus achieved	Germanwatch
Continental Mexico	Violations of labour standards	OECD Guidelines for Multinational Enterprises	Recent study	Germanwatch http://www.germanwatch.org/tw/kw.htm (14.01.2003)

Company Location	Incident	Violated codes and standards	Time Frame	Sources
Ok Tedi Mining Ltd. Papua New-Guinea (supplier of the Norddeutsche Affinerie AG)	Demolition of the eco-system	OECD Guidelines for Multinational Enterprises	Recent studies	Friends of the Earth International (2002), p. 16f. Mineral Policy Institute (MPI) http://www.mpi.org.au/oktedi (17.02.2003)
PT. Panarup und PT Nikomas Gemilang Indonesia (suppliers of adidas)	Violations of labour standards	OECD Guidelines for Multinational Enterprises	Feb. 2003: Brought before the German NCP.	Clean Clothes Campaign: http://www.cleanclothes.org/companies/adidas.htm (13.02.2003) SÜDWIND-Institut für Ökonomie und Ökumene: http://www.suedwind-institut.de/3-020_fs.htm (17.01.2003)
Rhodia S.A. (subsidiary of Aventis S.A.) Cubatão and São Paulo, Brazil (Aventis is the merger of Rhône-Poulenc (former parent company of Rhodia S.A.) and Hoechst Marion Russel)	Inappropriate means of toxic waste disposal	<i>inter alia</i> OECD Guidelines for Multinational Enterprises	Facility closed in 1993 by the Brazilian prosecutor. Public hearing by April 2002, case pending	Greenpeace International (2002), p. 37ff.
Siemens Czech Republic	Violations of labour standards	OECD Guidelines for Multinational Enterprises	2001: Consensus achieved	Germanwatch
Thyssen-Krupp AG Various locations in Brazil	Violations of labour standards	<i>inter alia</i> . ILO-standards	Recent study	observatório social cd-rom: globalizar o homem ou humanizar o globo? http://www.observatoriosocial.org.br
Vallourec & Mannesmann (V&M Florestal) Minas Gerais, Brazil	Violations of labour standards; Pollution of the Environment	Forest-Stewardship-Council standards; Brazilian labour-law; ILO conventions 87 & 98; OECD Guidelines for Multinational Enterprises	Action brought against Florestal by the ministry of labour; a parliamentary investigating committee was formed.	world rainforest movement: http://www.wrm.org.uy http://www.wrm.org.uy/bulletin/64/viewpoint.html (18.02.2003)
Westdeutsche Landesbank (WestLB) Ecuador (as leader of a consortium of banks financing the OCP-Pipeline)	Endangering of the eco-system; violent suppression of protests by the military.	Ecuadorian law, environmental standards of the World Bank	Recent studies	Friends of the Earth International (2002), p. 16f Oilwatch http://www.oilwatch.org.ec

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weed Website on corporate accountability



<http://www.corporate-accountability.org>

This website aims to facilitate the flow of information among NGOs and social movements who believe their governments, private sector and civil society need to make greater efforts to ensure the accountability of business and industry, especially Transnational Corporations, to society. It contains information about ongoing civil society campaigns on corporate accountability and about NGOs and trade unions who are active in this field. It provides comprehensive material on codes of conduct, multistakeholder initiatives and intergovernmental processes, as well as best and worst practice cases of corporate conduct. Finally, this site makes available documents and publications on corporate accountability and links to relevant research institutes and databases.

World Economy, Ecology & Development

weed was founded in 1990 to boost the advocacy in the Federal Republic of Germany of alleviating global poverty and resolving international environmental problems. weed campaigns for a course correction in international economic and development policies that would put more emphasis on social justice and economic sustainability. Its aim is to create more awareness in this respect and develop and implement concrete political alternatives. weed systematically analyses global economic, environmental and socio-political issues, linking the vision of a socially equitable and environmentally sustainable society to action and policy reform.

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weed

Contact us by e-mail or give us a call:

weed

Torstr. 154, D-10115 Berlin

Tel.: +49 - (0)30 - 27582163

Fax: +49 - (0)30 - 27596928

E-Mail: weed@weed-online.org

Internet: <http://weed-online.org>