Global Advocacy for Corporate Accountability: Translantic Perspectives from the NGO Community

Isabella D. Bunn

Follow this and additional works at: http://digitalcommons.wcl.american.edu/auilr

Part of the International Law Commons

Recommended Citation
GLOBAL ADVOCACY FOR CORPORATE ACCOUNTABILITY:

TRANSATLANTIC PERSPECTIVES FROM THE NGO COMMUNITY

DR. ISABELLA D. BUNN*

INTRODUCTION ........................................................................ 1266

I. CONTEXT OF THE CORPORATE SOCIAL ACCOUNTABILITY MOVEMENT .................................................. 1267

II. KEY POLICY ISSUES RELATED TO CORPORATE SOCIAL ACCOUNTABILITY .............................................. 1267
   A. INTERGOVERNMENTAL EFFORTS ........................................................................................................ 1267
   B. UN GLOBAL COMPACT ...................................................................................................................... 1267
   C. UN COMMISSION ON HUMAN RIGHTS ............................................................................................ 1267
   D. PRIVATE SECTOR AND MARKET-ORIENTED INITIATIVES ............................................................ 1267
   E. FOREIGN DIRECT LIABILITY .............................................................................................................. 1267
   F. NATIONAL LAWS AND REGULATIONS .............................................................................................. 1267
   G. CSR AND DEVELOPMENT ................................................................................................................. 1267
   H. CSR AND TRADE ............................................................................................................................... 1267
   I. PARAMETERS OF INTERNATIONAL LAW ........................................................................................... 1267
   J. AN INTERNATIONAL LEGAL FRAMEWORK ....................................................................................... 1267

* Dr. Isabella D. Bunn specializes in ethical aspects of international economic law. She is affiliated with Regent's Park College, Oxford University, and serves as a consultant on issues related to corporate social accountability. She is a member of the District of Columbia and State of California Bars.
INTRODUCTION

Throughout Europe, a wide range of non-governmental organizations ("NGOs") is focusing on the impact of multinational corporations in areas such as human rights, working conditions, environmental protection, and other social issues.\(^1\) While

1. Among the many European-based NGOs involved in corporate social accountability issues, either in a research or advocacy capacity, are the following:


- Business and Human Rights Resource Centre; see Business & Human Rights Resource Centre: A Brief Description (noting the Centre provides an on-line library, updated regularly with relevant news items, reports, legal developments, and links to research and advocacy organizations) at http://www.business-humanrights.org/AboutUs/Briefdescription (last visited Sept. 24, 2004).


-FAFO Institute for Applied Social Sciences; see Economics of Conflict (setting this issue in the context of its work on labor relations and welfare), at www.fafo.no/english (last visited Nov. 21, 2004).


-Friends of the Earth International; see Towards Binding Corporate Accountability (outlining a case for an effective and legally binding international framework for corporate accountability), at http://www.foei.org/publications/corporates/accountability.html (last visited Sept. 24, 2004).

-Global Witness; see Our Mission (drawing attention to the connection between abuses in human rights and exploitation of natural resources, such as timber, diamonds, and oil), at http://www.globalwitness.org (last visited Sept. 24, 2004).

-Human Rights Watch; see Who We Are (providing various reports that expose human rights abuses, including those linked to corporations), at http://www.hrw.org/about/whoweare.html (last visited Sept. 24, 2004).


-International Restructuring Education Network Europe ("IRENE"); see International Labour Issues (noting their focus on workers involved in the international industrial and services sectors), at http://www.irene-network.nl/about.htm (last visited Sept. 24, 2004).


-Oxfam; see Mission Statement (asserting the organization’s commitment to working with others to overcome suffering and poverty, and providing a link to the
acknowledging the value of voluntary initiatives and company policies that promote "corporate social responsibility," these groups are beginning to place more pressure at the national, European and international levels for legally-binding approaches.

This article reviews ten key areas of policy related to corporate social responsibility, highlighting some of the questions in the debate and assessing the prospects for a global legal framework. It intends to serve as a practical guide to selected issues and resources, rather than as an analytical treatment of the subject.

I. CONTEXT OF THE CORPORATE SOCIAL ACCOUNTABILITY MOVEMENT

The very title of this symposium, The Profitable and the Powerless: International Accountability of Multinational Corporations, provides important insights into the debate on corporate social accountability. First, the word "profitable" points to

- War on Want; see Who We Are (describing the fight against poverty and a campaign for workers' rights as goals of the organization), at http://www.waronwant.org/?lid=1345 (last visited Sept. 24, 2004).
- World Wildlife Fund; see Who We Are (reporting on the impact of multinational corporations on people and nature), at http://www.wwf.org.uk/core/about/whoweare.asp (last visited Sept. 24, 2004).

The author notes that all of these organizations have distinct purposes and priorities. This article is not intended to represent their views, but rather, to give a sense of the debate on some of the issues. Moreover, a range of business-oriented associations is also involved in research and advocacy. While generally recognizing the importance of social issues in the global economy, such groups tend to favor voluntary approaches to corporate social responsibility. See, for example, the International Chamber of Commerce, www.iccwbo.org, and the International Organization of Employers, www.ioe-emp.org.

2. See American University International Law Review Symposium on The Profitable and the Powerless: International Accountability of Multinational Corporations (Feb. 27, 2004) [hereinafter The Profitable and the Powerless] (providing scholarship on the role of international organizations in regulating
multinational corporations ("MNCs"), sometimes called transnational corporations ("TNCs"). For the most part, NGOs do not question that the end goal of companies is to make profits; but many challenge just how such profits are made. Although some NGOs have a distinctly "anti-corporate" stance, most readily acknowledge the potential benefits of corporate investment, including creation of jobs, improvement of infrastructure, and transfer of knowledge. The problem arises when corporate activities impinge on the realization of human rights, exploit workers, harm the environment, marginalize vulnerable populations, or produce other negative social consequences. Moreover, in their global advocacy to promote responsible corporate behavior, NGOs have differing views on how, and whether, to engage the private sector. Nonetheless, many NGOs believe that constructive dialogue will encourage business managers to appreciate the benefits of legally-protected social standards.


4. See Trade for Life, supra note 1, at 109-110 (noting some of the positive contributions of TNCs to economic development).

5. See id. at 110-121 (noting some of the negative impacts of TNCs, especially on poor communities).


7. AMNESTY INTERNATIONAL: UN HUMAN RIGHTS NORMS, supra note 1 (noting that it is actively seeking to engage the private sector in discussions on the Global Compact and in the development of the UN draft norms on the human rights responsibilities of TNCs).
Next, who are the "powerless"? One can understand this on several levels. The first level is the national government that serves as either the home or the host of a TNC. Corporate structures and activities that transcend international boundaries are difficult to regulate. Another level includes the individuals or communities that are harmed by TNC activities. These may be "powerless" due to limited avenues of legal or other forms of redress. A third level is the international community as a whole. Every area of international law is challenged by difficulties in implementation and enforcement, generating charges that it is "powerless" to regulate global problems. This charge extends to control over some forms of TNC conduct.

Finally, the organizers of the symposium defined the subject as accountability, rather than merely responsibility. While "corporate social responsibility" is the more familiar catchphrase, "corporate social accountability" moves the debate toward legally-binding standards and procedures. As the discussion will show, many NGOs are urging that a regulatory framework should constrain the activities

8. See The Profitable and the Powerless, supra note 2 (discussing groups and communities that potentially stand powerless against transnational corporations).


10. See Peter T. Muchlinski, Multinational Enterprises and the Law 90-101 (Blackwell Publishers Inc., 1995) (discussing the difficulty of developing a regulatory agenda for multinational companies in relation to their home and host states).

11. See id. at 466-70 (providing examples of multinational corporations that fail to offer adequate wages and working conditions, and demonstrating how the application of International Labor Organization guidelines would promote improvements).

12. See Behind the Mask, supra note 1, at 1 (quoting former UK prime minister Lord Harold Macmillan that "[w]e have lived so long at the mercy of uncontrolled economic forces, that we have become skeptical about any plan for human emancipation.").

13. See infra Parts II.I & II.J.

14. See The Profitable and the Powerless, supra note 2 (discussing the trend among NGOs to hold TNCs more accountable for their actions).
of TNCs. The largely voluntary measures associated with corporate social responsibility should be augmented by legal means to promote important social values.

This is not just an abstract debate. The demise of Communism, an ideological shift toward democratization, and a market-driven world economy have transformed the international environment in which corporations operate. As one commentator explains, the legitimacy and value of private free enterprise is no longer questioned; rather, a new challenge is directed against such enterprise "as a polluter, an abuser of market power, a corruptor of state officials, an exploiter of workers, and a potential accomplice to violations of fundamental human rights."

This challenge to multinational corporations is taking place within an increasingly integrated political and economic system. As the wealth and power of corporations has grown, so too has concern about the negative social impact of their activities. The private sector, seen as the primary catalyst and beneficiary of globalization, meets renewed scrutiny in the quest for an "ethical globalization."

15. See discussion infra Part II (indicating several key policy arguments raised in favor of greater regulation of TNCs).


17. Id. at 1049 (noting the lack of a regulatory framework to deal effectively with various environmental and human rights problems).


19. An "Ethical Globalization Initiative" has been launched under the leadership of Mary Robinson, former UN High Commissioner for Human Rights. See ETHICAL GLOBAL INITIATIVE, Home (introducing the Ethical Globalization Initiative as an organization that "brings key stakeholders together in new alliances to integrate concepts of human rights, gender sensitivity and enhanced accountability into efforts to address global challenges and governance shortcomings") at www.eginitiative.org (last visited Nov. 21, 2004). For other
These broad demands for the transformation of the international economic system have been accompanied by a sea of change in the field of "Corporate Social Responsibility" ("CSR"). This term describes the expectation that corporate operations and strategies be conducted "in ways that respect ethical values, people, communities and the environment." The promotion and protection of human rights, labor standards and environmental sustainability are an important part of such responsibility. CSR has become a large and specialized topic, involving many different types of agencies and organizations with multiple sources of standard-setting and pressures for enhanced implementation.

Not surprisingly, NGOs pursuing a variety of social objectives, including poverty relief and development, are increasingly sensitive to the impact of corporate strategies and activities. A number of examples of the growing body of literature on the subject of globalization, see generally JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS (W.W. Norton 2003); MAKING GLOBALIZATION GOOD: THE MORAL CHALLENGES OF GLOBAL CAPITALISM (John H. Dunning ed., Oxford Univ. Press 2003); GLOBALIZATION: THE UNITED NATIONS DEVELOPMENT DIALOGUE (Isabelle Grunber & Sarbuland Khan eds., UN Univ. Press 2000); JAN AART SCHOLTE, GLOBALIZATION: A CRITICAL INTRODUCTION (Palgrave 2000); JOHN BRAITHWAITE AND PETER DRAHOS, GLOBAL BUSINESS REGULATION (Cambridge Univ. Press 2000); DAVID HELD, ANTHONY MCGREW, DAVID GOLDBLATT AND JONATHON PERRATON, GLOBAL TRANSFORMATIONS: POLITICS, ECONOMICS AND CULTURE (Polity Press 1999); GARY BURTLESS ET AL., GLOBAPHOBIA: CONFRONTING FEARS ABOUT OPEN TRADE (Brookings Inst. Press 1998); DANI RODRIK, HAS GLOBALIZATION GONE TOO FAR? (Inst. for Int'l Economics 1997).


22. See discussion infra Part II (noting selected organizations and standards involved in the CSR movement).

23. See AMNESTY INTERNATIONAL: UN HUMAN RIGHTS NORMS, supra note 1, at 2 (recognizing that human rights and other organizations seek to bring corporations under a framework for international human rights, especially as
groups are regularly reporting on complicity in human rights abuses, exploitation of workers in the supply chain, the flaunting of environmental standards, and other forms of corporate misconduct. Such problems can be particularly acute in developing countries. This increased attention has led to substantial publicity about international corporate behavior, prompting a range of public and private sector responses.

Corporations are also under scrutiny because of the magnitude of recent business scandals, which undermine economic growth and confidence throughout the world. Over the last three years, questions of business ethics and accountability have been thrust into public awareness like never before. With widespread recognition economic globalization has expanded the reach of corporate power, available at http://www.amnesty.nl/downloads/UN_norms_for_business.pdf (last visited Sept. 24, 2004); Corporate Accountability: About This Site (providing a medium for NGOs and social movements to discuss the practices of TNCs, and encouraging the flow of information between Southern and Northern NGOs on CSR issues), at http://corporate-accountability.org/info/about.htm (last visited Sept. 29, 2004).

24. See supra note 1 (listing several NGO sources that review forms of corporate misconduct).

25. See Making Investment Work for People, supra note 1 (noting that while TNCs have the potential to benefit third world countries, some corporate operations actually cause conditions in poor communities to deteriorate).


28. See Howard Fineman & Michael Isikoff, Laying Down the Law, NEWSWEEK, Aug. 5, 2002, at 20 (profiling Enron, Andersen, WorldCom and Adelphia and observing that "[t]he rash of corporate misdeeds uncovered in recent months and the public's thirst for retribution inspired Congress and President Bush to change the rules of the game").
that self-regulation has failed, American policymakers have acted decisively to enact new laws and regulations that set higher standards for corporate practice and impose tougher penalties for executive misconduct. Other countries are also considering measures to improve private sector responsibility.

While the social issues under consideration here are distinct, they similarly point to the need for a rigorous approach to corporate governance. Furthermore, NGOs argue that this overall economic and political environment provides an opportunity to advance a new international legal framework for greater corporate accountability.

This article will consider ten key policy issues that relate to corporate social accountability. Each of these areas of NGO involvement is set within a complex dynamic of global information exchange, political lobbying at all levels, potential tensions between the interests of developed and developing countries, conflicting views within the business community, and significant media exposure.


32. See generally JANET DINE, THE GOVERNANCE OF CORPORATE GROUPS 151-201 (Cambridge Univ. Press 2000) (urging that implementation of corporate social responsibility must be tied to improvements in corporate governance in order to be effective).

33. See Friends of the Earth, supra note 29 (claiming that a corporate accountability framework would establish disclosure requirements for social and environmental impacts, allowing governments and members of the public to discern whether corporations are acting responsibly).

34. See discussion infra Part II (examining ten significant areas of policy that business managers, NGO representatives, policy makers and scholars have extensively debated).
II. KEY POLICY ISSUES RELATED TO CORPORATE SOCIAL ACCOUNTABILITY

An important area of activity for NGOs involved in questions of corporate accountability is the review of various policy initiatives and other actions aimed at improving corporate standards. These are evaluated for their content as well as their practical impact, raising questions for legal research and empirical study. Depending on their findings, NGOs can develop appropriate responses ranging from private consultations and field visits to public testimony and media coverage.

This article will consider the following selected policy areas: intergovernmental efforts, the UN Global Compact, the UN Commission on Human Rights, private sector and market-oriented initiatives, foreign direct liability, national laws and regulations, CSR and development, CSR and trade, the parameters of international law, and an international legal framework.

A. INTERGOVERNMENTAL EFFORTS

Three intergovernmental organizations are of particular interest to European NGOs: the International Labour Organization ("ILO"), the Organization for Economic Cooperation and Development ("OECD") and the European Union ("EU"). NGOs also are focusing increased attention on International Financial Institutions ("IFIs") such as the World Bank and the International Monetary Fund, which have shown a new resolve to assess the social impact of their activities and provide some accountability mechanisms.

35. See supra note 1 (providing the websites of several NGOs for further information on their programs of policy review and research, as well as their diverse activities related to corporate social accountability).

36. See discussion infra Parts II.A-II.J (providing an analysis of key issues indicative of the types of policy developments that NGOs monitor; the author notes that this list is selective rather than a comprehensive, and that NGO priorities vary depending on their goals and campaign strategies).

37. See Chi Carmody, Beyond the Proposals: Public Participation in International Economic Law, 15 AM. U. INT'L. L. REV. 1321, 1327-38 (2000) (discussing initiatives of the International Monetary Fund and World Bank to increase transparency in their institutional operations and to enhance accountability for their activities).
In 1977, the ILO adopted the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, bringing together business, labor, and government interests. In 1998, the ILO updated the Tripartite Declaration by issuing a Declaration of Fundamental Principles and Rights at Work. The ILO also introduced a Voluntary Private Initiatives Program and established a website for global developments related to codes of conduct, social labeling, and other private sector initiatives related to labor rights. Thus, the ILO is devoting increasing attention to matters of globalization and the activities of TNCs.

NGOs appreciate the long history of the ILO and its early recognition of the importance of involving the corporate sector. However, the scope of the ILO’s mandate is rather limited in that it largely reaches only conditions arising out of the employment relationship. Also, while the ILO has developed a vast range of conventions, the level of ratification is often low. Moreover,


40. See generally International Labour Organization, Library and Information Services (demonstrating the ILO’s commitment to these issues through its broad range of sources and information, including materials from the World Commission on the Social Dimension of Globalization, the ILOLEX database of international labor standards, and the NATLEX database of national laws on labor, social security and related human rights), at http://www.ilo.org/ (last visited Sept. 24, 2004).


supporters of corporate accountability have long raised concerns about the limited number of enforcement actions.43

The OECD broadened its consideration of investment matters in the 1970s, adopting a set of Guidelines for Multinational Enterprises.44 In June of 2000, it issued revised Guidelines for Multinational Enterprises, intended to supplement applicable law and to "complement and reinforce" codes of conduct and other private efforts to promote business responsibility.45 The Guidelines provide that enterprises should "respect the human rights of those affected by their activities consistent with the host government's obligations and commitments."46 Follow-up procedures through National Contact Points ("NCPs") support implementation.47

The OECD Guidelines cover a wide range of issues including disclosure, employment and industrial relations, environment, bribery, consumer interests, science and technology, competition,

43. See, e.g., Virginia A. Leary, Lessons from the Experience of the International Labour Organisation, in THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL 580 (Philip Alston ed., 1992) (stating that although the ILO has a well-developed intergovernmental system for the defense of human rights, experts have largely ignored the ILO).


46. Id. at 19 (encouraging multinational enterprises to take fully into account generally established policies in the countries in which they operate, as well as the views of other stakeholders).

47. See id. at 32-63 (recommending that adhering countries establish NCPs to promote the OECD Guidelines and help solve related problems).
and taxation. However, critiques of the implementation process cite the paucity of cases and lack of transparency. Also, given their negotiating history and voluntary nature, it seems highly unlikely that these Guidelines will be transformed into more binding international obligations.

NGOs do acknowledge the OECD's success in forging a Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, seeing it as a potential model for other areas of regulation. However, the OECD experienced a serious setback in attempting to develop a Multilateral Agreement on Investment ("MAI"). NGOs note that the failure of the MAI negotiations in 1998 was tied to the inadequate involvement of developing countries in the negotiating process, as well as a lack of attention to social issues. Activists are forming a new NGO, called

48. See id. at 17-33 (supplying implementation procedures for the OECD Guidelines and establishing a Committee on International Investment and Multinational Enterprises).

49. See BEYOND VOLUNTARISM, supra note 1, at 77-82, 99-102 (discussing the obstacles to the enforcement of corporate standards and exposing the weakness and lack of deterrence in OECD procedures); see also James Salzman, Labor Rights, Globalization and Institutions: The Role and Influence of the Organization for Economic Cooperation and Development, 21 Mich. J. Int'l. L. 769, 774-848 (2000) (assessing the strengths and weaknesses of the OECD and proposing how the Organization can meet the challenges of globalization).

50. See Patrick Juillard, Direct Investment: MAI: A European View, 31 Cornell Int'l L. J. 477, 483 (1998) (asserting that the Guidelines are useful, but are non-binding and limited in scope to the OECD, which requires the international economic order to formulate its own system of "checks and balances").


53. See World Dev. Movement, Rights & Responsibilities: Lessons from the
OECD Watch, to monitor and assess the performance of the OECD in a number of key areas.\textsuperscript{54}

The EU has taken a strong interest in CSR, issuing a Green Paper entitled \textit{Promoting a European Framework for Corporate Social Responsibility}.\textsuperscript{55} The Green Paper generated a wide range of responses at the national, international, and European levels from public authorities, political parties, companies, social partners and unions, advocacy groups, research institutes, academics and other interested parties.\textsuperscript{56} As a result of this consultation process, the European Commission established a Multi-Stakeholder Forum on Corporate Social Responsibility to facilitate the dialogue process among CSR actors.\textsuperscript{57} The Commission held its first roundtable on Codes of Conduct in Brussels in April of 2002, with participation

\begin{quote}
\textit{Multilateral Agreement on Investment (MAI)} (arguing that the MAI undermines sustainable development and local economies, adversely impacting developing countries and promoting an imbalance of rights and responsibilities among nations), available at http://www.wdm.org.uk/cambriefs/wto/MAI.htm (last visited Sept. 23, 2004).
\end{quote}

\begin{quote}
\textsuperscript{54} See OECD Watch, \textit{OECD Watch on Investment and Multinational Enterprises} (describing the organization's efforts in establishing an international network of NGOs to review the policies and activities of the OECD's Committee on International Investment and Multinational Enterprises and to analyze the effectiveness of the OECD Guidelines for Multinational Enterprises), at http://www.oecdwatch.org (last visited Sept. 26, 2004).
\end{quote}

\begin{quote}
\end{quote}

\begin{quote}
\end{quote}

\begin{quote}
\end{quote}
from employers, trade unions, consumers, investors, standard-setting
organizations, business networks, and other groups.58

Nevertheless, the EU upholds CSR on a voluntary rather than an
obligatory basis; proposals with far-reaching legal implications for
international corporate operations have not progressed.59 The Green
Paper reflects this stance in its definition of corporate social
responsibility as a "concept whereby companies integrate social and
environmental concerns in their business operations and in their
interaction with stakeholders on a voluntary basis."60

B. UN GLOBAL COMPACT

Even today, NGOs point out that the United Nations Code of
Conduct on Transnational Corporations remains the most
comprehensive effort to develop binding international standards for
corporations.61 During the 1970s, alongside the debate on the New
International Economic Order, widespread concerns emerged about
the power of global companies and their impact on less-developed
countries.62 Thus, the United Nations established a Commission on

58. See Eur. Comm'n, Office of Emp. & Social Affairs, First CSR Round Table
   on Codes of Conduct (reporting the minutes from the Forum's first meeting, at
   which participants reviewed existing initiatives, exchanged experiences, and
debated the challenges of CSR codes of conduct), available at
http://europa.eu.int/comm/employment_social/soc-dial/csr/conduct.html (last
visited Sept. 27, 2004).

59. See EUR. PARL., COMM. ON DEV. AND COOPERATION, REPORT ON EU
   STANDARDS FOR EUROPEAN ENTERPRISES OPERATING IN DEVELOPING COUNTRIES:
   TOWARDS A EUROPEAN CODE OF CONDUCT 7 (1998) (requesting that the European
Commission and the Council make proposals, as a matter of urgency, to cultivate
the right legal basis for creating a European multilateral framework that would
govern operations of companies worldwide), available at

60. See GREEN PAPER, supra note 55, at 8 (defining corporate social
   responsibility as a voluntary concept).

61. See United Nations Draft International Code of Conduct on Transnational
forth a code of conduct which considers political, economic, socio-cultural, human
rights, environmental, technology, taxation, and consumer protection issues in
guiding transnational corporate operations).

62. See Declaration on the Establishment of a New International Economic
   Doc. A/9559 (1974) (calling for a code of conduct for TNCs to prevent economic
Transnational Corporations to develop a code covering areas such as labor, consumers, the environment, corruption, and restrictive business practices. However, after years of negotiations and deep divisions between developing and industrialized countries, the code was never brought for a vote.

More recently, the UN launched a high-profile effort to forge a "Global Compact" with the business community, reflecting the movement toward a cooperative rather than confrontational stance with corporations. This initiative, which Kofi Annan announced at the World Economic Forum in January 1999, encourages companies to support and adopt a series of principles related to social responsibility. An increasing number of business "partners" have joined in this effort.

In promoting the Global Compact, the UN recognizes that "although Governments have primary responsibility for exploitation of host countries). See generally, Adeoye Akinsanya & Arthur Davies, Third World Quest for a New International Economic Order, 33 INT'L & COMP. L. Q. 208 (1984) (explaining how developing countries became increasingly dissatisfied with an international economic order which shapes their economies but excludes them from management); GABE S. VARGES, THE NEW INTERNATIONAL ECONOMIC ORDER LEGAL DEBATE (1983) (considering the argument of developing countries in favor of greater economic and political obligations for industrialized nations to remedy a discriminatory and unjust international economic system).


64. See Andreas F. Lowenfeld, Investment Agreements and International Law, 42 COLUM. J. TRANSNAT'L L. 123, 123 (2003) (noting that the Code of Conduct never moved beyond significant paragraphs in square brackets or 'Chairman's Formulation on Matters Not Yet Concluded').


implementing internationally accepted values, corporations acting on their own can do a great deal to actualize these principles within their spheres of influence."  

The Global Compact is a very brief statement, featuring the vital topics of human rights, labor standards, and the environment. In June 2004, participants added a further principle on anti-corruption. Overall, the Global Compact acknowledges the growing role of transnational corporations in addressing global social issues. Supporting documents, such as reports that outline the links between respect for human rights and


69. See U.N. Global Compact, The Ten Principles, at http://www.unglobalcompact.org (last visited Sept. 27, 2004). The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the following areas:

Human Rights
Businesses should support and respect the protection of internationally proclaimed human rights; and
Make sure that they are not complicit in human rights abuses.

Labor Standards
Business should uphold the freedom of association and the effective recognition of the right to collective bargaining;
The elimination of all forms of forced and compulsory labor;
The effective abolition of child labor; and
The elimination of discrimination in respect of employment and occupation.

Environment
Businesses should support a precautionary approach to environmental challenges;
Undertake initiatives to promote greater environmental responsibility; and
Encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption
Businesses should work against all forms of corruption, including extortion and bribery.

70. See U.N. Global Compact, Corporate Leaders at Global Compact Summit Pledge to Battle Corruption (outlining the commitment of chief executives from around the world to the Global Compact's efforts on corruption), available at http://www.unglobalcompact.org/Portal/Default.asp (last visited Sept. 27, 2004).
better business performance, aid in building a positive case for corporate action on these principles.\textsuperscript{71} 

Despite these advances, the Global Compact also reflects an unwillingness to pursue compulsory corporate regulation, opting to rely on moral persuasion rather than legal norms.\textsuperscript{72} Indeed, many business statements reiterate the voluntary nature of the program and the deliberate lack of any monitoring mechanisms.\textsuperscript{73} Various NGOs have also criticized the closer relations between the UN and business. For instance, a group known as CorpWatch has launched a “Corporate-Free UN” campaign, calling attention to the dangers of collaborations such as the Global Compact.\textsuperscript{74} However, several NGOs remain directly affiliated with the Global Compact and are

\begin{itemize}
  \item \textsuperscript{71} See Office of the High Commissioner for Human Rights, \textit{Business and Human Rights: A Progress Report} (noting that active business concern for human rights helps companies accomplish several goals, including ensuring compliance with national and international laws, satisfying consumer concerns, promoting stable legal environments, building corporate community goodwill, aiding in the selection of ethical, well-managed, and reputable business partners, supporting a stable business enterprise, keeping markets open, and increasing worker productivity and retention), \textit{available at} www.unhchr.ch/business.htm (last visited Oct. 3, 2004).
  \item \textsuperscript{72} See U.N. Global Compact, \textit{What is the Global Compact?} (explaining that the Global Compact is not a regulatory instrument and that it does not enforce or measure the behavior or actions of companies), \textit{available at} http://www.unglobalcompact.org/Portal/Default.asp (last visited Oct. 3, 2004). Rather, the Global Compact relies on factors such as public accountability, transparency, and the self-interest of companies, labor, and civil society to initiate and share substantive action in pursuing the principles it sets forth. \textit{Id.}
  \item \textsuperscript{74} See CorpWatch, \textit{Alliance for a Corporate-Free UN Campaign Profile} (noting that its corporate-free U.N. campaign calls on the U.N. to forgo collaborations and partnerships with companies that have poor human rights and environmental records), \textit{available at} http://www.corpwatch.org/article.php?list=type&type=101 (last visited Oct. 3, 2004). One CorpWatch document states, “The UN’s positive image is vulnerable to being sullied by corporate criminals—while corporations can ‘bluewash’ their image by wrapping themselves in the UN’s flag symbolizing peace, human rights and dignity.” \textit{CorpWatch, UN and Corporations Fact Sheet} (commenting on the inadequacies in the Global Compact), \textit{available at} http://www.corpwatch.org/article.php?id=614 (last visited Oct. 24, 2004).
\end{itemize}
helping to guide its evolution, particularly in "aligning economic activities with social and environmental priorities."75

C. UN COMMISSION ON HUMAN RIGHTS

The UN Commission on Human Rights, under its Sub-Commission on the Promotion and Protection of Human Rights ("Human Rights Sub-Commission"), considered the relationship between the enjoyment of economic, social, and cultural rights, including the right to development, and the working methods and activities of transnational corporations.76 In 1998, the Human Rights Sub-Commission established a working group on transnational corporations and began efforts to develop a code of conduct for companies based on human rights standards.77 These efforts led to the preparation of a series of reports and draft principles that set forth guidelines for businesses.78 Following further deliberations, in 2003


the working group and the Human Rights Sub-Commission adopted the latest version of the principles, entitled "Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" ("Draft Norms"). In April 2004, the UN Commission on Human Rights adopted the report transmitting these Draft Norms, but emphasized that the norms had no legal standing.

For many NGOs, progress on the Draft Norms is an important step toward a legal framework on corporate responsibility for human rights. The Draft Norms are particularly useful because they synthesize a substantial amount of pertinent analysis conducted over several years. They draw carefully on many different sets of standards that are relevant to corporate activity, including binding conventions and charters, regional human rights instruments, certain


80. See U.N. ESCOR, 60th Sess., Agenda Item 21(b), U.N. Doc. E/CN.4/2004/L.11/Add.7 (2004) (indicating, in Decision 2004/116, that the document setting forth the draft norms "has not been requested by the Commission, and, as a draft proposal, has no legal standing, and that the Sub-Commission should not perform any monitoring function in this regard").


82. See Draft Norms, supra note 79, at 1 (relying on established standards and guidelines and taking note of global trends affecting transnational corporations and other business enterprises).
ILO and OECD documents, and multilateral environmental agreements.\(^8\) While the focus of the Draft Norms is on corporate responsibility for human rights, they also cover several other important social issues.\(^9\) Of particular interest to NGOs are the “General Provisions of Implementation,” outlined under Section H of the document, which provide for corporate adoption of internal rules in compliance with the norms, independent monitoring of corporate activity, national legal reinforcement supportive of the norms, and adequate reparation for those who have been adversely affected by a company’s failure to comply with the norms.\(^5\)

The political momentum behind this process, with widespread input from and consultation with agencies such as the UN Environment Programme, the World Health Organization, and the World Intellectual Property Organization, is also important. Trade unions, business associations, human rights groups, environmental groups, and church-based organizations have also been involved, along with international lawyers and other experts.\(^7\) Various NGOs

83. See id. at preamble (referencing multiple documents on subjects as varied as slavery, organized crime, oil pollution, and breast-milk substitutes).

84. See id. (outlining responsibilities toward equal opportunity and non-discriminatory treatment, security of persons, rights of workers, respect for national sovereignty, consumer protection, and environmental protection).

85. See id. at sec. H (detailing the means of implementing the Draft Norms). During the UN deliberations on the development of the norms, the importance of implementation procedures was repeatedly emphasized. For example, in U.N. ESCOR, 53rd Sess., 25th mtg., U.N. Doc. E/CN.4/Sub.2/RES/2001/3 (2001), the Sub-Commission asked the working group on TNCs to:

Analyze the possibility of establishing a monitoring mechanism in order to apply sanctions and obtain compensation for infringements committed and damage caused by transnational corporations and contribute to the drafting of binding norms for the purpose.

Also, in U.N. ESCOR, 54th Sess., 22nd mtg. at 4(b), U.N. Doc. E/CN.4/Sub.2/RES/ 2002/8 (2002), the Sub-Commission asked that the working group consider:

the establishment or nomination, by the Commission, of a group of experts, a special rapporteur or a working group to receive information and undertake effective measures with regard to human rights violations or abuses committed by transnational corporations and other enterprises.

86. See, e.g., TNC Report, supra note 78, at intro (listing some of the many organizations and individuals that commented on the Draft Principles and Commentary). The Human Rights Sub-Commission has repeatedly requested wide
are currently disseminating this document, deliberating over its scope and implementation mechanisms, assessing its practical impact, and seeking to advance its legal status. The UN Office of the High Commissioner for Human Rights ("UNHCHR"), which is preparing a report on the scope and legal status of existing initiatives related to corporate responsibility for human rights, has requested NGOs to contribute comments on the Draft Norms and other relevant measures.

**D. PRIVATE SECTOR AND MARKET-ORIENTED INITIATIVES**

In addition to the intergovernmental efforts described above, a wide range of private sector and market-driven initiatives to promote CSR has emerged. To indicate the breadth of the topic, this article highlights several such initiatives. First, in recent years the number of company policy statements regarding standards of conduct or business ethics has proliferated. While many of these statements include affirmations regarding values such as human rights, labor conditions, and environmental sustainability, the scope and wording

---

87. See, e.g., AMNESTY INTERNATIONAL: UN HUMAN RIGHTS NORMS, supra note 1, at 4 (explaining the nature of and need for UN Human Rights Norms for Business and encouraging companies to "road test" the principles it sets forth).

88. The High Commissioner is preparing a report on the human rights responsibilities of corporations, to be presented to the Commission on Human Rights in March of 2005. The report is to identify the scope and legal status of existing initiatives, including the Draft Norms, and to identify any outstanding issues. The UNHCHR has contacted all States, as well as a range of organizations, including transnational corporations, employer and employee associations, intergovernmental organizations, NGOs, and human rights treaty bodies to encourage their contributions. See http://www.ohchr.org/english/issues/globalization/business/reportbusiness.htm (last visited Sept. 29, 2004).

89. See Simon Webley, The Nature and Value of Internal Codes of Ethics, in HUMAN RIGHTS STANDARDS AND THE RESPONSIBILITY OF TRANSNATIONAL CORPORATIONS, supra note 20, at 109 (noting that a 1999 survey by the Institute of Business Ethics showed that fifty-seven percent of the largest UK companies had or were preparing a code of conduct or policy, compared to a mere eighteen percent in 1987); see also RONALD E. BERENBEIM, GLOBAL CORPORATE ETHICS PRACTICES: A DEVELOPING CONSENSUS 7 (The Conf. Board, Inc. 1999) (outlining trends which favor corporate articulation of global business ethics principles).
of the policies vary with each company, as do the oversight and compliance mechanisms.\textsuperscript{90}

The development of codes of conduct relevant to human rights and other social issues, as well as standards for greater corporate reporting and disclosure, are also aiding in the promotion of CSR.\textsuperscript{91} According to one report, NGOs, such as development organizations, trade unions and environmental groups, are leading the current revival of interest in codes of conduct for businesses.\textsuperscript{92} Relevant initiatives include Amnesty International’s Human Rights Principles for Companies,\textsuperscript{93} AccountAbility 1000,\textsuperscript{94} the Ethical Trading Initiative,\textsuperscript{95} Global Sullivan Principles,\textsuperscript{96} Principles of Global

\textsuperscript{90} See Business & Human Rights Resource Centre, Companies With Human Rights Policies (listing the various codes of conduct and policies of nearly one-hundred different companies), available at \url{http://business-humanrights.org/Categories/Companypolicysteps/Policies/Companieswithhumanrightspolicies} (last visited Sept. 29, 2004). In the area of human rights, many of these policy statements include prohibitions on child and forced labor, as well as standards for wages, benefits, health and safety. \textit{id}.

\textsuperscript{91} See LPA, Inc., Codes of Conduct (offering examples of codes of conduct from different realms, including company codes, industry codes, union sponsored codes, and governmental codes), available at \url{http://www.codesofconduct.org} (last visited Oct. 4, 2004).

\textsuperscript{92} See Clean Clothes Campaign, Codes of Conduct for Transnational Corporations: An Overview (reviewing the role of charters and codes in regulating the behavior of transnational corporations, with a focus on how NGO’s have addressed labor issues in the garment, sportswear, and toy industries), available at \url{http://www.cleanclothes.org/codes/overview.htm} (last visited Sept. 29, 2004).

\textsuperscript{93} See Amnesty Int’l, Economic Globalization and Human Rights: Human Rights and Responsibilities of Companies (outlining how Amnesty’s principles require companies to protect human rights and abide by certain labor standards in countries in which they have facilities; also providing guidance on security arrangements), at \url{http://web.amnesty.org/pages/ec-index-eng} (last visited Sept. 25, 2004).

\textsuperscript{94} See AccountAbility, Welcome to AccountAbility (describing a set of standards for measuring the social achievements of companies against objective criteria that the Institute of Social and Ethical Accountability developed in 1999, and indicating how the framework intends to capture different stakeholder aspirations and needs, and balance and manage the interlinking elements of social, environmental and economic performance), at \url{http://www.accountability.org.uk/default.asp} (last visited Sept. 25 2004).

\textsuperscript{95} See The Ethical Trading Initiative, Ethical Trading Initiative (describing an alliance of companies, NGOs, and trade union organizations that promote and improve the implementation of corporate codes of practice, especially with respect
Corporate Responsibility: Bench Marks for Measuring Business Performance,97 and the Global Reporting Initiative.98

In addition, socially-responsible consumers are taking direct action to promote corporate protection of human rights. Consumers may boycott certain companies for tolerating exploitative working conditions, make purchasing decisions based on labeling or certification schemes to protect against child labor, and participate in programs to buy goods directly from third-world producers.99 NGOs are closely tied to some of these efforts.

Similarly, investor activism is increasing. Shareholders may take their grievances about human rights and other issues to their board of directors.100 A new category of “ethical investment” has also gained
momentum, leading stockbrokers and shareholding funds to scrutinize the business practices of companies in their portfolios. Moreover, a number of CSR-oriented indexes have recently emerged. For example, the Financial Times “FTSE4Good” program, launched in 2001, measures the performance of companies that meet globally-recognized corporate responsibility standards and facilitates investment in those companies.

Assuming companies are acting in good faith, corporate responsibility policies and programs do appear to influence corporate behavior. Reference to the “triple bottom line” of financial, social, and environmental performance has become widespread. Because CSR efforts are public, they encourage outside scrutiny of activities, leading to a greater likelihood that problems will be identified and corrected. The media, industry organizations, trade unions, and NGO interest groups can use CSR as a focal point to press for the protection of human rights, labor, and the environment. However, some critics have charged that CSR efforts are merely elaborate


101. See The Ethical Funds, What is SRI? (urging customers to discover how their investments can shape the world of finance and contribute to a just and sustainable society), at http://www.ethicalfunds.com/do_the_right_thing/sri/what_is_sri (last visited Sept. 25, 2004).


105. See id. at 61 (discussing how the emergence of multistakeholder initiatives is encouraging companies to protect basic human rights, worker’s rights and the environment).
public relations exercises designed to give the impression that TNCs are concerned about social issues.\textsuperscript{106}

Indeed, many NGOs have argued that traditional CSR efforts do not go far enough.\textsuperscript{107} Most such initiatives are purely voluntary in nature. Few include meaningful monitoring mechanisms or disclosure requirements designed to enhance compliance. While some high-profile TNCs are in the forefront of the corporate social responsibility movement, countless other companies remain uninvolved and unconcerned.\textsuperscript{108}

Professionals in the field increasingly recognize the inadequacy of voluntary initiatives, along with the need to move toward legally-binding norms for corporations. For example, a report by the Geneva-based International Council on Human Rights Policy concluded that, "The relevance of international law and enforcement is beginning to be treated seriously. Indeed, there is a growing sense that voluntary codes alone are ineffective and that their proliferation is leading to contradictory and incoherent efforts."\textsuperscript{109} Similarly, the UN working group on TNCs acknowledges that the use of an entirely voluntary system for codes of conduct is not enough, and anticipates that the international community will move toward the codification of binding norms, backed by a range of implementation measures.\textsuperscript{110}

\textsuperscript{106} See \textit{id.} at 70 (noting that corporations were often guilty of "greenwashing," essentially purporting to follow codes of conduct, but creating a large gap between what existed on paper and what happened in practice).

\textsuperscript{107} See \textit{BEHIND THE MASK}, supra note 1, at 3 (providing case studies of the CSR activities of certain TNCs, asserting that some companies raise CSR to deflect government regulation, and urging greater legal accountability due to the limits of a voluntary approach); see also \textit{Towards Binding Corporate Accountability}, supra note 1 (detailing that voluntary measures to promote corporate social responsibility have failed because they (1) do not provide strong incentives for compliance to counterbalance the financial incentives for non-compliance, because, for example, sanctions are absent or weak; (2) rely on the appearance of compliance through self-regulation, without any independent verification; and (3) fail to empower citizens and stakeholders).

\textsuperscript{108} See \textit{BEHIND THE MASK}, \textit{id.} (arguing that most companies subscribe to CSR due to outside pressures, and also noting the problem of rogue businesses that operate with virtual impunity, especially in developing countries).

\textsuperscript{109} See \textit{BEYOND VOLUNTARISM}, supra note 1, at 7 (noting the weaknesses of a voluntary approach to corporate responsibility, and maintaining that binding codes of conduct may be a more effective tool for changing company behavior).

\textsuperscript{110} See \textit{Human Rights Principles and Responsibilities for Transnational
E. FOREIGN DIRECT LIABILITY

Another important source of pressure on corporations to uphold social standards lies in litigation. A Royal Institute of International Affairs briefing paper on foreign direct liability observed that a new wave of legal action in the UK, US, Canada and Australia aims to hold parent companies legally accountable in developed countries for negative environmental, health and safety, labour or human rights impacts associated with the operations of members of their corporate family in developing countries.\textsuperscript{111}

In the United States, several claims for human rights violations allegedly implicating corporations have been brought under the Alien Tort Claims Act ("ATCA"), which gives courts power to hear civil cases brought by foreign citizens for injuries caused by actions "in violation of the law of nations or a treaty of the United States."\textsuperscript{112} By way of example, a federal case filed under the ATCA against Unocal for its operations in Myanmar may have far-reaching implications.\textsuperscript{113} The U.S. Supreme Court recently decided another case, though


111. \textsc{Halina Ward}, \textit{ Governing Multinationals: The Role of Foreign Direct Liability} 1 (2001) [hereinafter \textsc{Governing Multinationals}] (indicating that foreign workers harmed in the fields of mining, oil or gas extraction, or chemical production are usually the plaintiffs in such actions) available at http://www.ciaonet.org/pbei/riia/wah01.pdf (last visited Sept. 25, 2004). Occasionally, the governments of host states will file suit on behalf of its injured citizens. \textit{Id.}

112. See 28 U.S.C. § 1350 (1789) (granting district courts original jurisdiction in certain matters of tort civil actions that aliens file); see also Filartiga v. Pena-Irala, 630 F.2d 876, 880 (2d Cir. 1980) (This ground-breaking case noted: "Construing this rarely-invoked provision, we hold that deliberate torture perpetrated under color of official authority violates universally accepted norms of the international law of human rights, regardless of the nationality of the parties.").

113. \textsc{See} John Doe, et al. v. Unocal Corporation, 2002 WL 31063976 (9th Cir. 2002) (asserting that the plaintiffs in the appeal made sufficient allegations for UNOCAL to stand trial under the ATCA and the law of nations); \textsc{see also} Press Release, Center for Constitutional Rights, Court Orders UNOCAL to Stand Trial for Abuses in Burma (Sept. 15, 2004) (reporting how UNOCAL's efforts to dismiss the suit failed), at http://www.ccr-ny.org/v2/newsroom/releases/pReleases.asp?ObjID=HYDF8X6hrH&Content=438 (last visited Sept. 25, 2004).
unrelated to corporate behavior, which examined the nature of a cause of action under the ATCA.\textsuperscript{114} Not only are NGOs monitoring the progress of these cases, but groups such as the Center for Constitutional Rights and EarthRights are actively involved as plaintiffs' counsel.\textsuperscript{115}

Other types of litigation have arisen in the United Kingdom, Canada, and Australia. In general, these foreign lawsuits reflect pressure for parent companies of multinational corporate groups to ensure that their behavior as direct investors in other countries matches the standard of care in the home country.\textsuperscript{116} Litigation involves many complex jurisdictional and procedural issues, and legal rulings have been inconclusive.\textsuperscript{117} Nonetheless, the potential threat of such claims in the corporation's home country is raising TNC awareness of human rights and other responsibilities. The loss of shareholder confidence and the threat of substantial financial liability will also induce greater internal scrutiny of worldwide operations.\textsuperscript{118}

\section*{F. National Laws and Regulations}

While NGOs devote substantial attention to international initiatives related to corporate accountability, they recognize that the

\textsuperscript{114} See Sosa v. Alvarez-Machain, 124 S.Ct. 2739 (2004) (denying Alvarez-Machain's ability to bring a claim under the ATCA, but rejecting the United States government's attempt to eliminate the ability of human rights victims to bring such claims in US courts).

\textsuperscript{115} See Press Release, Center for Constitutional Rights, \textit{supra} note 113 (setting forth the arguments to require Unocal to defend its actions in front of a jury).

\textsuperscript{116} See \textit{GOVERNING MULTINATIONALS, supra} note 111, at 2 (explaining how a ruling by the House of Lords has held that certain workers in foreign enterprises owned by English-based companies may bring claims for work-related diseases before English courts, but noting that the potential for this new jurisdictional avenue in other cases will depend on access to justice in a host state).

\textsuperscript{117} See \textit{id.} at 3 (discussing how cases have not resulted in clear victories for the plaintiffs on the substantive issues and how out of court settlements do not clarify outstanding judicial questions).

adoption, implementation, and enforcement of laws at the national level will remain paramount in governing corporate behavior. A large range of substantive national laws relate directly to issues of corporate social responsibility, such as labor standards, health and safety regulations, consumer protection, factory emission requirements, anti-trust provisions, product liability, and many others. While the terminology may not expressly refer to human rights or environmental sustainability, these laws are a vital element of corporate social responsibility.

Such substantive laws, as well as procedures for implementation and redress, vary dramatically from country to country. In situations where national laws are weak, companies may be able to engage in objectionable conduct with impunity. Even where legal standards do exist, governments may be unwilling or unable to enforce them. Given their relatively disadvantageous position, the governments of developing countries may be under particular pressure to avoid confrontation rather than risk losing the benefits associated with foreign investment. Official corruption, reportedly widespread in many countries, exacerbates this problem.

In response to these weaknesses, many European NGOs are seeking to evaluate the effectiveness of national laws related to CSR and to assess the potential impact of international legal efforts in promoting regulatory and procedural reform at the national level.


120. See BEYOND VOLUNTARISM, supra note 1, at 77-82 (summarizing legal obstacles at the national level which, in turn, enhance the importance of international procedures).

121. See Graymore & Bunn, supra note 119 (arguing that developing countries, in particular, face pressure in attracting and maintaining foreign investment).

122. See, e.g., Transparency International (providing general information on the issue of bribery and corruption, including country reports), available at www.transparency.org (last visited Sept. 27, 2004).

Where possible, they consult with local partners and legal experts in developing countries. Among other developments that NGOs monitor are national legal initiatives that seek to address corporate conduct overseas.\textsuperscript{124} Two examples are instructive, though neither currently has enough political support for enactment.

First, legislation has been introduced in the US Congress that would require US nationals that employ more than twenty people in a foreign country to implement a Corporate Code of Conduct.\textsuperscript{125} The bill imposes reporting requirements, identifies situations that allow for a termination of government contracts or other preferences, and provides enforcement mechanisms including civil liability.\textsuperscript{126} While the proposal is stalled in the committee process, it provides a useful example of possible legislative action at the national level.\textsuperscript{127}

Second, the Corporate Responsibility Coalition is spearheading an effort in the United Kingdom, linked to an overall review of the Companies Act.\textsuperscript{128} This group of NGOs, called CORE, is seeking new standards in the areas of reporting, duty of care, and liability to ensure that companies meet their environmental, social, and economic responsibilities.\textsuperscript{129} However, various factors have stymied

\begin{itemize}
\item \textsuperscript{124} See IRENE, Controlling Corporate Wrongs: The Liability of Multinational Corporations: Legal Possibilities, Initiatives and Strategies for Civil Society (conveying the importance of pressure by a corporation's home state to ensure that the company acts responsibly in other countries), available at http://www.indianet.nl/irene.html (last visited Oct. 9, 2004).
\item \textsuperscript{126} See id. §§ 6-8 (outlining mechanisms for implementing responsible business practices for United States nationals operating in foreign countries).
\item \textsuperscript{127} See id. (on Aug. 24, 2001, the Corporate Code of Conduct Act was referred to the House Subcommittee on International Monetary Policy and Trade, for a period that the Chairman would subsequently determine).
\item \textsuperscript{128} See generally CORE Coalition, The CORE Report (providing information on numerous NGOs seeking to promote greater corporate accountability under the law), available at http://corporate-responsibility.org/ (last visited Sept. 28, 2004).
\item \textsuperscript{129} See Press Release, Corporate Responsibility Coalition, Business Leaders and NGOs Meet on Corporate Responsibility (May 1, 2003) (noting that CORE seeks information on the social, environmental, and ethical impacts of business
\end{itemize}
legislative proposals here as well. Despite calls for greater legal regulation of companies, the UK Minister for Social Responsibility "remains convinced that the main focus of CSR should be a voluntary one."[130]

G. CSR AND DEVELOPMENT

Most NGOs welcome the involvement of the private sector in forging global solutions to the problems of sustainable development.[131] They acknowledge that business resources and expertise should be mobilized to promote the UN objectives of alleviating poverty, advancing human rights, and protecting the environment. Recent global policy initiatives make clear that business is to play an increasing role in development policies and programs.[132] However, as companies intensify their collaboration activities), available at http://www.foe.co.uk/campaigns/corporates/core/news/pdf/core_iblf_press_release_2.pdf (last visited Sept. 28, 2004).


131. See, e.g., DAVID F. MURPHY & JEM BENDELL, PARTNER IN TIME? BUSINESS, NGOs AND SUSTAINABLE DEVELOPMENT 5 (UNRISD 1999) (asserting that NGOs, by working as agents of civil society, are gaining greater recognition and power at local, national, and international policy levels).

with governmental and international agencies in the development process, the need for international legal standards becomes ever-more compelling.

The 2002 World Summit on Sustainable Development ("WSSD"), held in Johannesburg, South Africa, provides one example of how NGOs may advance corporate accountability in this debate; among the tens of thousands of participants were heads of state, national delegates, UN and inter-governmental agency staff, and representatives from NGOs, churches, labor and business groups, and other organizations. The WSSD, intended as a follow-up to the 1992 Conference on Environment and Development at Rio de Janeiro, covered topics ranging from famine to global warming to the AIDS epidemic.

During preparations for the WSSD, a number of civil society groups argued that participants should firmly place corporate social accountability on the Johannesburg agenda. While NGOs worked


136. See World Dev. Movement, Making Investment Work for People: An International Framework for Regulating Corporations (noting that, as international law applies mainly to governments, the challenge is to design a regulation mechanism which can deal with the global nature of corporations and also recognize national governments as legal sovereigns), available at http://www.wdm.org.uk/cambriefs/wto/TNCs.htm (last visited Sept. 28, 2004); see also KENNY BRUNO, CORPWATCH, GREENWASH +10: THE UN'S GLOBAL COMPACT, CORPORATE ACCOUNTABILITY AND THE JOHANNESBURG EARTH SUMMIT 12 (2002) (arguing that a convention on corporate accountability would provide a step toward democratic control over corporations at an international level, and showing how this goal supports the Johannesburg Summit's purposes),
throughout the summit to secure concrete commitments, these fell short of expectations. A lengthy "Plan of Implementation" did, however, provide some grounds for further relevant action. A section on "sustainable development in a globalizing world" included a provision to

Actively promote corporate responsibility and accountability, based on the Rio Principles, including through the full development and effective implementation of intergovernmental agreements and measures, international initiatives and public-private partnerships, and appropriate national regulations, and support continuous improvement in corporate practices in all countries.  

Thus, NGOs are following up on the results of the WSSD and preparing for other development-related conferences, while striving to ensure that this increased corporate involvement in development policy is accompanied by an increased commitment to global values. As this process unfolds, they seek to remain aware of the special needs and development objectives of poorer countries and communities.


138. Id. ¶ 45 (affirming that globalization should be fully inclusive and equitable, and that states and NGOs should formulate and implement national and international policies to promote the participation of developing countries).

139. See, e.g., UN Research Institute for Social Development (UNRISD) (explaining that UNRISD is undertaking a five-year study on "Business Responsibility for Sustainable Development" that aims to examine the effectiveness of governmental and international regulation as well as the developmental impact of efforts to raise social and environmental standards), available at www.unrisd.org (last visited on Nov. 21, 2004); Business for Social Responsibility ("BSR") (providing a report on "Business and Economic Development: The Impact of Corporate Social Responsibility Standards and Practices"), available at www.bsr.org (last visited Nov. 21, 2004).
H. CSR AND TRADE

Developments such as the globalization of the economy, the widespread push for deregulation, and the privatization of sectors previously within the public sphere have created unprecedented opportunities for international businesses.140 International regulations have provided new ways for companies to protect their interests in areas as diverse as the North American Free Trade Area, the International Center for the Settlement of Investment Disputes, and the World Intellectual Property Organization.141 NGOs often raise the argument that such corporate rights must be balanced with corporate responsibilities, especially where vulnerable populations may be affected.

A current focus of NGO activity is the troubled round of trade negotiations under the World Trade Organization ("WTO").142

140. See Paul Redmond, Transnational Enterprise and Human Rights: Options for Standard Setting and Compliance, 37 INT’L. LAW 69, 78 (2003) (noting how globalization in both developed and developing countries has also led to a reduced role for the state through deregulation of the economy and the privatization of public ventures).


Among the dozens of issues that NGOs monitor under the "Doha Development Agenda" are the prospects for an investment agreement.\textsuperscript{143} In previous rounds, the WTO addressed associated areas such as Trade-Related Investment Measures ("TRIMs") and a General Agreement on Trade in Services ("GATS").\textsuperscript{144} Many developing countries object to the inclusion of this "new issue" of an investment agreement in these trade negotiations. They fear that the resulting agreement may force them to open industry and service sectors to foreign competition, while diminishing their ability to apply domestic legislation.\textsuperscript{145} Thus, any agreement on investment may portend less control over the activities of international corporations, rather than more.\textsuperscript{146} NGOs are seeking to ensure that if

---


\textsuperscript{143.} See Doha WTO Ministerial Declaration, supra note 142, ¶ 20 (agreeing that, with respect to trade and investment, "negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations").


\textsuperscript{146.} See, e.g., Alejandro Villamar, RMALC-México, Learning Lessons from NAFTA: Dangers of an Investment Agreement in the WTO (explaining how the investment provisions in NAFTA impinged on the Mexican government's constitutional law powers, as NAFTA's rules apply when dealing
such an agreement does emerge, its provisions will adequately take the interests of developing countries into account.\textsuperscript{147}

As a matter of advocacy strategy, a number of European NGOs are working together in a "Trade Justice Movement" campaign to change the rules that govern international trade and investment to make them more responsive to the needs of the poor.\textsuperscript{148} Although the issues raised in this article are generally distinct, this campaign has prompted NGO interest in corporate accountability.\textsuperscript{149}

I. PARAMETERS OF INTERNATIONAL LAW

The debate on CSR poses major conceptual questions about the status of corporations as moral actors and the nature of their ethical and legal obligations. As the debate moves to the global level, further issues arise concerning the scope, formation, and implementation of international law and the extent to which it can bring corporations within its purview. A topic of particular interest to NGOs, tied into

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{147} See Oxfam, \textit{Unwanted, Unproductive and Unbalanced: Six Arguments Against an Investment Agreement at the WTO} (demonstrating that such an agreement would be against the interests of developing-country members of the WTO), \textit{available at} http://publications.oxfam.org.uk (last visited Nov. 21, 2004); see also Global Trade Negotiations, \textit{WTO Public Symposium 2003: Investment Negotiations in the WTO} (describing how NGOs such as Oxfam and the Third World Network petitioned to prevent investment issues from being considered in WTO negotiations because of the potentially negative impact on developing countries), \textit{at} http://www.cid.harvard.edu/cidtrade/geneva/investment.html (last visited Oct. 9, 2004).
\item\textsuperscript{149} See Trade Justice Movement, \textit{About the Trade Justice Movement} (explaining how, through the Trade Justice Movement, NGOs hope to create a fundamental change in the unjust rules and institutions governing international trade, so that trade can benefit everyone), \textit{at} http://www.tradejusticemovement.org/about.shtml (last visited Oct. 9, 2004).
\end{enumerate}
\end{footnotesize}
many of the policy areas noted above, is international human rights law.150

The legal basis for holding companies accountable under human rights law poses a number of theoretical challenges. For one, there is ambiguity about the responsibility of corporations under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.151 There is no express requirement that companies must affirmatively protect human rights or take steps to prevent others from violating them. However, similar language in all three documents indicates that no state, group, or person has any right to engage in any activity aimed at the destruction or limitation of any of the rights or freedoms recognized therein.152 Thus, there is an inference that companies are at least


151. See Frey, supra note 20, at 163-64 (noting that the UN human rights covenants bind ratifying governments rather than non-state actors such as transnational corporations).

152. See Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., art. 30, U.N. Doc. A/810 (1948), (providing that “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”); see also International Covenant on Civil and Political Rights, opened for signature Dec. 19, 1966, art. 5(1), 999 U.N.T.S. 171, 6 I.L.M. 368 (entered into force Mar. 23, 1976) (providing that “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.”); International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, art. 5(1), 993 U.N.T.S. 3, 6 I.L.M. 360 (entered into force
under a duty to respect the rights of others.¹⁵³

This leads to a vital question about the indirect or direct responsibility of corporations. The traditional view is that nation-states, and not corporations, are the bearers of human rights obligations.¹⁵⁴ Thus, through the nation-state, certain duties may be placed on corporations indirectly. The other view, which is gaining ground in the wider discussion of corporate social responsibility, is that persons and communities may hold corporations directly accountable for the observance of certain human rights.¹⁵⁵

While the complexities cannot be addressed within the scope of this article, legal experts are grappling with theories on corporate accountability for human rights. For example, in one analysis, the corporation’s duties turn on four factors: its ties to the government or complicity in the violation, its nexus to affected populations, the nature of the particular human right at issue, and the internal structure of the business enterprise.¹⁵⁶ Overall, the trend appears to be towards establishing greater legal accountability.
A function of law is to balance power and obligation by establishing enforceable rights and corresponding duties. Just as human rights law was initially developed as a response to the power of states, now there is a need to respond to the growing power of private enterprise, which affects the lives of millions of people around the world.\textsuperscript{157}

This theme of responding to the growing power of private enterprise is at the core of many NGO campaigns related to the conduct and impact of multinational corporations.

\section*{J. An International Legal Framework}

A growing number of NGOs, policy institutes, legal experts, and development specialists are urging that voluntary efforts toward CSR be augmented with legally-binding obligations, including the elaboration of an international framework or treaty. One general problem, as a United Nations Development Program report explains, is that "there are no mechanisms for making ethical standards and human rights binding for corporations."\textsuperscript{158} Aside from the lack of international procedures, NGOs report that the resort to national laws is often frustrated by the "corporate veil" of business structures, official corruption, the lack of effective procedures, or the unavailability of counsel or resources to aggrieved parties.\textsuperscript{159} Effectively, this leaves TNC legal standards ambiguous and the avenues for redressing TNC breaches of such standards limited.

NGOs are well aware of the legal, practical, and political difficulties associated with the development and implementation of a binding normative framework for corporations. Apart from reaching agreement on substantive principles, the international community

\begin{footnotes}
\begin{enumerate}
\item \textsuperscript{157} See \textit{Beyond Voluntarism}, supra note 1, at 9-10 (considering the use of legal principles to constrain corporate power).
\item \textsuperscript{159} See \textit{Insights from Foreign Direct Liability}, supra note 1, at 2-4 (describing legal efforts to secure transnational corporate accountability).
\end{enumerate}
\end{footnotes}
would need to establish effective procedures to promote compliance and provide remedies in the event of breach. Indeed, such legal issues feature prominently in NGO conferences and workshop related to CSR. Just a few of the questions NGOs are attempting to clarify include:

- The scope of industry sectors to be covered, as well as a definition of corporations or other business enterprises.
- The substantive set of principles to be upheld, including any distinctions for types of business or level of a country’s economic development.
- The adequacy of any single set of principles to address the wide range of CSR issues—from human rights, to labor conditions, to environmental protection and so forth.
- The relationship between an international approach to regulation and national legal systems.
- The impact of legally-binding measures on voluntary initiatives and corporate policies.
- The need to assess the potential regulatory burden and liability exposure of transnational corporations, especially with respect to detrimental economic impacts on developing countries.
- The need to establish some type of oversight body and ensure its competence, legitimacy and authority.
- The challenge of establishing a system of implementation and enforcement, including corporate disclosure and reporting requirements; monitoring, investigation and complaint mechanisms; the problem of extraterritoriality and conflicting jurisdiction; the relationship with national laws and administrative processes; the potential legal procedures for making a claim for damages, including

160. See CHRISTIAN AID, LEGAL WORKSHOP ON INTERNATIONAL REGULATION OF MULTINATIONALS 1 (2003) (communicating the aims of a joint legal workshop that Christian Aid hosted in collaboration with FIELD and CAFOD), available at http://www.field.org.uk/PDF/Multinat.pdf (last visited Sept. 30, 2004). The goals of the workshop were to: (1) develop ideas for future international regulation of the social and environmental impact of multinationals in light of the current political momentum around corporate accountability; and (2) consolidate and build upon past efforts to establish an international regulatory model for multinationals, addressing the application of international law to corporations through national governments, as well as through intergovernmental institutions and processes. Id.
standing to bring an action; the potential range of remedies available to provide redress to victims; the availability of sanctions against corporations and possibly their officers; the source of funding to operate such a system, and many other issues.\footnote{161}

- The prospects for establishing interim accountability mechanisms, as the process of securing any international convention on corporate accountability will be difficult and time-consuming.

In closing, this quest for greater legal accountability of corporations may be understood as part of the international community’s commitment to the international rule of law. The law, of course, is not without its limits; but it is one means of advancing the realization of international justice. Many NGOs would argue that global companies, as powerful economic, social, and political actors, must increasingly be brought within the law’s domain.

\footnotetext{161. See \textit{Trade for Life} supra note 1 at 139-43 (arguing for the establishment of an official international body or agency to oversee the implementation of binding standards for corporations).}