

Can Corporations Be Trusted?

Towards a Multi-stakeholder Review of Voluntary Initiatives

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Why bother with voluntary initiatives?

Last April, the United Nations Commission on Sustainable Development (CSD) acknowledged the "potential value" of a proposal submitted by the NGO Taskforce on Business and Industry (ToBI). This proposal was to conduct a multi-stakeholder review of the effectiveness of voluntary initiatives. In its final report, the CSD asked for representatives from NGOs, trade unions, industry and international organizations to begin a process to explore this potential.² The results of the exploratory process are to be reported to the next session of CSD in April 1999.

The significance of *voluntary initiatives* nor the review of them may not be apparent at first glance. Initially, voluntary initiatives are simply another tool to be added to the mix of sustainable development strategies. Looking deeper, the topic of voluntary initiatives is part of a global debate about corporate responsibility and accountability, about the roles that business, civil society and government are to play in the transition to a sustainable society. How should business behave in a sustainable economy? Should corporations be treated as citizens with rights or as institutions obligated to serve society? To whom should business be accountable -- society or itself?

Can corporations be trusted to regulate themselves?

Union Carbide's poison gas tragedy in Bhopal, India. ITT's role in overthrowing the democratically elected government of Chile. Government troops executing critics of Royal Dutch Shell in Nigeria and Freeport-MacMoran in West Papua. Nestles peddling its breastmilk substitute in Africa. The Exxon Valdez oil spill in Alaska. These are some of the more well-known incidents involving corporations which have raised the public's eyebrows.

Furthermore, along with news stories about mergers and the spread of McDonalds and Nikes to all parts of the world, we are also slowly learning about

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¹ Submitted to Northern Lights, December 15, 1998

² United Nations. "Industry and sustainable development," submitted by Vice-Chairman, Mr. Michael Odevall, Commission on Sustainable Development, May 1, 1998. E/CN.17/1998/L.10

the dramatic growth of transnational corporations (TNCs) in number, reach, and economic muscle. For more and more people the shocking fact that more than half of the largest economies in the world are TNCs is quickly becoming a cliché. In turn, these new political entities are exerting their influence to shape the policies of national governments. "The borders and regulatory agencies of most governments are caving into the New World Order of globalization," according to Joshua Karliner, author of *The Corporate Planet*, "allowing corporations to assume an ever more stateless quality, leaving them less and less accountable to any government anywhere."³

Can transnational corporations be trusted to regulate themselves? This was one of the major questions running through the UN Conference on Environment and Development at Rio de Janeiro in 1992. At that time the long-awaited *Code of Conduct for Transnational Corporations* was to be circulated, in anticipation of finalizing a voluntary initiative to be facilitated and monitored by the United Nations. However, after vigorous lobbying by the International Chamber of Commerce, the US delegation and others this text never reached the hands of the Earth Summit delegates, dying an unceremonious death after over 13 years of development.

Instead, governments looked to the "leaders in business and industry" who "are increasingly taking voluntary initiatives, promoting and implementing self-regulations and greater responsibilities in ensuring their activities have minimal impact on human health and the environment."⁴ Six years later, voluntary initiatives and the self-regulatory approach continue to be heralded by industry representatives. "Using carrots rather than sticks is inherently more effective than rigid command and control strategies," explains Bjorn Stigson, president of the World Business Council for Sustainable Development (WBCSD). In order to get this message out, Stigson argues, "new cooperative efforts between governments and business leaders and various trade associations are needed."⁵ He did not include NGOs or trade unions as part of that cooperation.

This tendency to exclude all but business and government is a theme quite familiar to Sanford Lewis, of the Good Neighbor Project for Sustainable Industries. In local communities throughout the United States, Lewis has been fighting against the new state "secrecy laws" through which corporations and sympathetic politicians have been trying to overturn the Community Right to Know law in favor of a corporate self-regulatory approach. We need to "refocus the debate so that the relative roles of corporate and community power are addressed, front and center," advises Lewis. "Until then, environmental law and

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³ Karliner, Joshua. *The Corporate Planet: Ecology and Politics in the Age of Globalization*. Sierra Club Books, San Francisco, 1997.

⁴ United Nations. *Agenda 21: Programme of Action for Sustainable Development*. New York, 1992: 237.

⁵ Stigson, Bjorn. "Business makes the case for voluntary initiatives," *Industry and Environment*, Vol. 21, No. 1-2, January-June, 1998, United Nations Environment Programme.

policy may continue its slide down the slippery slope toward 'government by and for the corporation.'"⁶

Minding Our Business.

ToBI and the corporate accountability campaign

In 1997 the United Nations General Assembly met for the five-year review of global progress on sustainable development. In preparation for this review, the NGO Taskforce on Business and Industry (ToBI) prepared an independent assessment of industry's progress on its 1992 promises, drawing attention to the limitations of corporate self-regulation and the need for governments to recognize and ensure the accountability of business and industry.⁷

Representing an international coalition of more than 100 NGOs, ToBI's primary purpose is to promote the concepts and implementation of corporate accountability and responsibility, within government, business and civil society.

In response to lobbying by NGOs, trade unions, and like-minded government delegates, the 1997 UN General Assembly recommended that business and industry report on its progress towards greater responsibility and accountability, particularly in dialogue with other major groups, such as nongovernmental organizations, trade unions, indigenous peoples, women, and others.

CSD Dialogue on Industry

In contrast to the stereotype that NGOs seek more "command and control," most NGOs, including the members of ToBI, recognize that the transition to a sustainable economy requires a combination of regulatory, market-based, citizen-based and voluntary approaches. In this search for the "right mix" of instruments and actions, ToBI members agreed to focus attention this year on the controversial topic of voluntary initiatives and agreements. In particular, we began focusing attention on initiatives such as Responsible Care, the ICC Business Charter, the CERES Principles, ISO 14000, the OECD Guidelines on Multinational Enterprises, as well as individual company codes.

While most business representatives vigorously promote voluntary approaches, especially in contrast to strong regulatory and enforcement regimes, NGOs tend to be more skeptical, arguing that company and industry initiatives are more likely to be smokescreens to avoid regulations. The most skeptical NGOs flatly declare that voluntary initiatives do not work and simply waste the time of sustainability activists. Other NGOs, such as the Interfaith Center for Corporate Responsibility (ICCR), argue that some codes, especially those involving NGO

The industry representatives made it very clear they did not want their company members to be put in any position in which they might be criticized or made uncomfortable.

⁶ Lewis, Sanford. "Feel-good notions, corporate power, and the 'reinvention' of environmental law." Good Neighbor Project for Sustainable Industries, March 17, 1997.

⁷ NGO Taskforce on Business & Industry. *Minding Our Business: The Role of Corporate Accountability in Sustainable Development*, February 12, 1997.

participation, can be essential tools for "promoting comprehensive standards by which to measure responsible corporate action in the global economy."⁸ ICCR is known for its part in producing the *Principles for Global Corporate Responsibility: Bench Marks for Measuring Business Performance*.

Who is right? What *are* the actual contributions of voluntary initiatives and agreements to sustainable development? How can we determine their effectiveness? What conditions are necessary to make these initiatives really work? What other questions should governments ask when voluntary solutions are proposed?

Exploring the elements

In the initial NGO proposal, the review process is to take place between 1999-2002, providing a focus and forum for ongoing dialogues on the role of business and industry in sustainable development. The review essentially continues the Major Group Dialogue on industry and sustainable development begun at the CSD last April. At that session, the CSD requested a multi-stakeholder exploration *to identify the key elements of a review of voluntary initiatives and agreements*. The Secretariat will report in April 1999 on the possible contributions of such a review to the future work of the CSD.

Through ToBI, NGOs have identified five basic objectives for this exploratory process:

1. Overall, to achieve greater understanding and clarity on the nature of voluntary initiatives.
2. To develop a practical and useful evaluatory framework for examining different kinds of voluntary initiatives and agreements.
3. Using this framework, to distinguish between initiatives successfully implementing ecologically sustainable and socially responsible practices from ineffective or insincere efforts.
4. To identify the elements and conditions necessary for voluntary initiatives to make effective contributions to sustainable development.
5. To establish a multi-stakeholder mechanism at the UN to provide input and advice to CSD and member governments on voluntary approaches. In particular, this review mechanism will examine the potential contribution of specific initiatives proposed as measures addressing upcoming topics in CSD's Programme of Work, especially food and agriculture, chemicals, forests, energy, and transportation.

"So long as official forums remain captive to this closed and deeply flawed ideological culture, our governmental and corporate institutions will almost surely lead our world ever deeper into crisis."

-David Korten

⁸ Interfaith Center on Corporate Responsibility. "Religious groups *propose Principles for Global Corporate Responsibility* -- a tool for accountability and corporate change." Press release, June 26, 1998.

Both International Chamber of Commerce and US Council on International Business, along with ToBI and the International Confederation of Free Trade Unions (ICFTU), are part of the current exploratory process to "examine voluntary initiatives and agreements" for the CSD. Since April, representatives from these groups, plus members of the UN's Division on Sustainable Development and the UN Environment Programme, have met and engaged in international conference calls to discuss the purpose, objectives, assumptions, terminology, and rules guiding the process.

As might be expected, a dramatic gap separated industry representatives from those of NGOs and trade unions. In particular, the industry representatives complained about the emphasis given to "effectiveness" and "evaluation," making it very clear that they did not want their company members to be put in any position in which they might be criticized or made uncomfortable. Rather, they acted as if the goal of this process was to promote voluntary initiatives and encourage their adoption. Furthermore, they demanded that any profiling of initiatives first be approved by the initiating company. In addition, they repeatedly expressed their opposition to setting up "another endless bureaucratic UN institution" to "cast judgements on business."

Both NGOs and trade unions rejected these efforts to dismiss the review process, and instead continued to assert the need to look in depth at the claims and the actual contributions to sustainable development that different voluntary initiatives do or do not make. They argued that evaluating effectiveness *is* one of the necessary elements and that critical input from trade unions and NGOs should not be censored.

However, in the words of the US Council on International Business, industry insists that "governments should refrain from...the imposition of any form of review by an outside party of individual company compliance with a voluntary code..."⁹

Are NGOs a threat to democracy?

In other quarters, industry representatives are being much more heavy handed in their statements about NGOs and trade unions, claiming these groups pose a serious threat to society itself, blocking social progress and the creation of prosperity. Last September, at the 1998 Geneva Business Dialogue, the President of the International Chamber of Commerce (ICC), Helmut Maucher, warned business leaders that "the emergence of activist pressure groups risks weakening the effectiveness of public rules, legitimate institutions and democratic processes." These organizations, which Maucher criticized as having a lack of "internal democracy, transparency and accountability," should "place emphasis on legitimizing themselves."¹⁰

⁹ United States Council on International Business, "Codes of conduct: old solutions for new problems."

¹⁰ International Chamber of Commerce, *Geneva Business Declaration*, September 24, 1998.

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Across the ocean, the US Council on International Business expressed its own concerns about the efforts of environmental, human rights, and consumer groups seeking to rein in the growing global power of corporations. In their paper "Codes of Conduct: Old Solutions for New Problems," USCIB complained that many NGOs "now seek binding rules, either by changing the voluntary nature of existing codes or by imposing binding conditions related to labor and the environment in new international instruments such as the proposed Multilateral Agreement on Investment (MAI)."¹¹ What especially bothers USCIB is their belief that NGOs "seek a compliance procedure in which these groups could sit in judgment on individual corporate behavior."

Do Corporations Control the UN?

NGOs have a different worry on their minds, some arguing that the entire United Nations has been taken over by corporations. Evidence for this charge includes statements by ICC's Maucher describing his association as having "confirmed and strengthened its position as the *voice of business* through a close working relationship with the WTO and constructive consultations with the UN Secretary General and the heads of UN agencies."¹² Indeed, a UN press release celebrated this ICC-UN partnership -- a partnership that does *not* include NGOs and trade unions.

Reporting on his experience of being one of the NGOs invited (despite objections) to a lunch which was originally supposed to include only business and government leaders and UN officials, David Korten admitted being shocked at the friendly rapport among these three groups. Korten was especially disturbed by the casual acceptance of many "neoliberal" free trade assumptions:¹³

We need to "refocus the debate so that the relative roles of corporate and community power are addressed."

-Good Neighbor Project for Sustainable Industries

Recently, Corporate Europe Observatory (CEO) reported on the ICC-United Nations partnership agreement. In a joint statement, UN Secretary General Kofi Annan and ICC Secretary General Maria Livanos Cattai agreed that "broad political and economic changes have opened up new opportunities for dialogue and cooperation between the United Nations and the private sector." The two committed their organizations to "forge a close global partnership to secure greater business input into the world's economic decision-making and boost the private sector in the least developed countries."

Significantly less effort is made to secure greater civil society input into these economic decisions -- a fact taking scandalous shape in the secret negotiations of corporate rights in the Multilateral Agreement on Investment (MAI).

¹¹ United States Council on International Business, *Codes of Conduct: Old Solutions for New Problems*.

¹² Ibid.

¹³ Korten, David. "The United Nations and the corporate agenda," June 1997.

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"One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making....particularly those which potentially affect the communities in which they live and work." [Preamble to Chapter 23, *Agenda 21*]

The effort to establish a Multi-stakeholder Review of Voluntary Initiatives is nothing less than the effort to defend the voice of civil society at the United Nations. As industry sets up its partnership to help coordinate its efforts to stabilize the globalization process, NGOs and trade unions must insist on mechanisms to communicate the needs and concerns of local communities and citizens.

The United Nations itself declared the importance of protecting this voice, stressing that "governments and international bodies should promote and allow the participation of non-governmental organizations in the conception, establishment and evaluation of official mechanisms and formal procedures designed to review the implementation of Agenda 21 at all levels."¹⁴

The Multi-stakeholder Review of Voluntary Initiatives represents exactly this participation. Whether or not this review actually takes place depends on a variety of factors. Supporters of the review must either overcome the opposition of the industry groups or find a way to channel industry's objections into a constructive dialogue process. The NGOs promoting this review also need the active support of other NGOs. Some NGOs insist that there should be no dialogue with industry, that talking to businesses and business associations is a mistake. These NGOs need to understand that business and industry are not going to go away, nor is the problem simply "good vs. evil." Other NGOs believe the United Nations is already lost, that the corporations have taken over and NGOs are wasting their time participating in UN events. These NGOs need to recognize the importance of fighting for civil society's voice within this institution.

"The burden of providing alternative leadership that falls on those elements of civil society that are not captive to the official culture is thus enormous," David Korten points out. "We must speak fearlessly with force and clarity in an effort to penetrate the veil of silence that shields our official and corporate institutions from confronting the devastating consequences of their ideologically driven leadership."¹⁵ We will see, in the months to come, how successful civil society's voice will be in penetrating that veil of silence.

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¹⁴ United Nations. *Agenda 21*, paragraph 27.8

¹⁵ *Ibid.*