

# Can Corporations Be Trusted?

*Towards Social and Environmental  
Responsibility and Accountability  
in the Corporate Sector*

NGO  
Taskforce on  
Business & Industry

A report to the Ministry of Housing, Spatial Planning  
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- Working to change unsustainable patterns of production and consumption, with an emphasis on Northern societies; and
- Linking NGOs that share our aims.

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# NGO Taskforce on Business & Industry

## Can Corporations Be Trusted?

Towards Social and Environmental Responsibility  
and Accountability in the Corporate Sector

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# Introduction: The ToBI Agenda

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Jeffrey Barber

Eventually, in discussions on production and consumption patterns, environmental protection, the sustainability of local communities, and even the integrity of government policy-making, the subject of transnational corporations and their increasingly dominant influence comes up. NGOs are understandably concerned as governments, particularly from "developed countries," claim they have "no new resources" to devote to sustainable development, that we instead need to look to the leadership of business and industry. While there may be many businesses and even TNCs sincerely attempting to be socially and environmentally responsible, the bottom line of business is to make a profit -- everything else is secondary.

## The Business of Business

Despite assurances by groups such as the World Business Council on Sustainable Development to "provide business leadership as a catalyst for change towards sustainable development," the world is shamefully scarred by the conduct of corporations giving little priority to social responsibility, abusing local communities and ecosystems in their quest for market share and higher returns. NGOs generally consider efforts to promote socially and environmentally responsible practices and accountability to the public through self-regulation and company-defined codes of conduct as inadequate.

While progress in achieving greater ecoefficiency has indeed been made in many cases, we continue to see the disastrous consequences of unregulated corporate behavior in human rights violations of indigenous and poor people and the degradation of their environment (e.g., the case of Shell and the Ogoni in Nigeria, Texaco in Ecuador), the unabashed marketing and encouragement of greater consumption of pesticides, fertilizers, and fossil fuels; continued dumping of toxic wastes near poor communities; and the shameful trade in weapons, particularly land-mines.) Yet, the United Nations and a chorus of governments around the world continue to promote and sing the praises of corporate deregulation and the creative power of the free market to eradicate poverty and rescue the environment.

At a time when corporate globalization is treated as an inevitable reality, NGOs need to coordinate our efforts to protect threatened local communities and ecosystems. We also need to make a strong case for government regulatory oversight and enforcement and strengthening of civil society mechanisms to

While there may be businesses sincerely attempting to be socially and environmentally responsible, the bottom line of business is to make a profit -- everything else is secondary.

protect the integrity and health of local communities and ecosystems, in both developed and developing countries.

## NGO Taskforce on Business & Industry

The NGO Taskforce on Business and Industry (hereafter "ToBI") is a coalition of concerned NGOs around the world working together *to promote the concept and implementation of corporate accountability within government, business and civil society*. This coalition first started as an idea emerging from an ANPED workshop on "NGO Strategies on TNCs" held in April 1996. The idea was to produce an NGO statement focusing international attention on the issue of corporate accountability, especially its role in sustainable development, to be presented at the UN General Assembly Special Session's five-year review of progress on Agenda 21 since the Earth Summit.

This message took shape in the NGO report *Minding Our Business: the Role of Corporate Accountability in Sustainable Development*, presented to the U.N. Commission on Sustainable Development (CSD) in 1997. The report, along with various roundtables and a speech to government delegates during the Major Groups Dialogue, called special attention to the distinction between the concepts of corporate accountability and corporate responsibility. ToBI emphasized the importance for government and civil society to play an active role to ensure the spread of socially and environmentally responsible business practices and policies. We believe these efforts contributed to the inclusion of text on corporate accountability and responsibility by the U.N. General Assembly Special Session in the *Programme for the Further Implementation of Agenda 21*.

Following the UN Special Session, ToBI members discussed the question of whether or not to continue the coalition and follow up on the seven-point list of recommendations (the "ToBI Agenda") made to governments in the ToBI statement. The majority of NGOs expressed their appreciation for the existence of the ToBI coalition and the value of developing it further and engaging in a new round of activities. This decision to begin a "phase II" then led to discussions about objectives, strategy, and organization.

### ToBI's mission and goals

NGOs agreed that the overall mission of ToBI is to promote the concept and implementation of corporate accountability. This effort identified the following primary goals, each dealing with a different target group:

- To examine and promote progress by **business and industry** toward greater responsibility and accountability.
- To promote progress by **government** towards ensuring greater responsibility and accountability of business and industry.

At a time when corporate globalization is treated as an inevitable reality, NGOs need to coordinate our efforts to protect threatened local communities and ecosystems.

- To help build alliances, capacity and effective strategies among **NGOs** to better understand and help implement corporate accountability in the larger society.

## The ToBI Agenda

In its 1997 Statement on Corporate Accountability, presented to the UN General Assembly Special Session, ToBI highlighted seven "steps" for governments to take to ensure corporations are accountable to society:

1. Acknowledge the importance of corporate accountability.
2. Monitor and assess corporate practices.
3. Strengthen public access to information.
4. Send the right message: eliminate unsustainable subsidies and tax breaks and make wrongdoers liable for their actions.
5. Empower local communities.
6. Make clean production the standard; and
7. Reduce the political influence of corporations on government.

This report documents some of the initial efforts by ToBI to advance these priorities as part of the international political agenda.

## This report

Since the *Minding Our Business* report, ToBI has produced a plethora of articles and speeches addressing various aspects of corporate accountability and responsibility. This report includes a selection of documents prepared during the course of the past year, each one linked to various lobbying and educational activities aimed at the above goals. Each paper represents a step forward in time as well as an evolving strategy by the Taskforce.

"Corporate Accountability at the United Nations" is adapted from two sources: (1) a paper originally provided as the ToBI contribution to the 1997 Statement of the International Peoples' Tribunal on Human Rights and Environment, and (2) the speech on corporate accountability given by Maria Elena Hurtado of Consumers International as part of the CSD's first NGO-government dialogue. The paper continues from where *Minding Our Business* left off, reminding its governmental audience of their responsibility to ensure corporations do not harm human communities or the environment. With the controversy of the MAI discussions heating up, the topic of corporate responsibility and accountability has become even more timely, particularly for the United Nations community.

"Investing in What? For Whom? Corporate Accountability and the MAI" addresses more directly the issue of the MAI, where the lack of transparency was just then becoming more widely known and talked about throughout the NGO community (if not the mainstream news media).

ToBI's mission is to promote the concept and implementation of corporate accountability, within government, business and civil society.

Many  
representatives  
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sector.

"Corporate Accountability and the Mining Industry," written by Simone Lovera of the Netherlands Committee for IUCN, applies the ToBI Agenda as a framework for addressing corporate accountability issues in a specific case (the Omai Mine in Guyana) within a specific industry (mining).

"NGO Perspectives on Responsible Entrepreneurship" is the collective work of 30 NGOs in producing one of the primary background discussion papers published by the UN CSD for the 1998 Major Groups Dialogue on Industry and Sustainable Development. The paper includes among its recommendations the first official proposal for the CSD to initiate a multi-stakeholder review of the effectiveness of voluntary initiatives, one of the controversial topics in the Dialogue on Industry.

"Responsible Action or Public Relations? NGO Perspectives on Voluntary Initiatives," was written as a more detailed follow-up to the Responsible Entrepreneurship paper in addressing voluntary initiatives. This article was published by the United Nations Environment Programme (UNEP) in the January-June 1998 issue of their journal *Industry and Environment*.

"NGO Speech to the UN on Responsible Entrepreneurship" is the speech given to the UN CSD by Jagjit Kaur Plahe of EcoNews Africa and the Southern Coordinator for ToBI. This was the opening NGO speech for the 1998 Major Groups Dialogue on Industry and Sustainable Development. In this speech, Ms. Plahe orally presented the NGO proposal, supported by the trade union delegation from the International Confederation of Free Trade Unions (ICFTU), for the creation of a multi-stakeholder review of voluntary initiatives. This proposal became one of the main items of discussion by the CSD in that session, resulting in a mandate in the Chair's final report to begin an exploratory process needed to conduct such a review. This mandate led to the creation of a Multi-stakeholder Steering Committee on Voluntary Initiatives and Agreements (VIAs), composed of ToBI, the ICFTU, the International Chamber of Commerce (ICC), UNEP, and facilitated by the CSD Secretariat.

One of the results of this process has been the planning of a three-day international multi-stakeholder consultation to take place in March 1999 in Toronto, Canada sponsored by the CSD and the Canadian government, to discuss the question of the key elements necessary in this review. The meeting will include representatives from selected corporations, trade unions, NGOs, national governments, academia and international organizations including the OECD, the International Labor Organization, UNEP and UNCTAD.

"Can Corporations Be Trusted?" is the final paper in the collection. This was prepared as a briefing for NGOs about the Toronto meeting. The paper was meant to explain more of the background and significance of the topic of voluntary initiatives within the large discussion about corporate accountability. Furthermore, it stresses the historic and strategic importance of establishing a multi-stakeholder review mechanism that provides an official voice and channel for NGOs concerned about and addressing the accountability of the private sector.

At this moment in time, establishing a multi-stakeholder mechanism at the UN, which allows a fair and transparent discussion of corporate accountability, is critical. It is critical especially considering the current controversy over what appears to be the promotion of corporate rights over the rights of citizens and communities, by both the United Nation and national governments. One of ToBI's immediate strategic objectives is to help establish this mechanism. Thus, many of the following papers should be seen as part of the evolution of this objective and strategy.

In April 1999, the Seventh Session of the CSD will meet and the multi-stakeholder review of voluntary initiatives and agreements is on the agenda. The question for this meeting will be whether and how the review process should proceed. ToBI will also be initiating some of its new working groups, on tourism, advertising, energy, toxics and the OECD Guidelines on Multinational Enterprises (another area of ToBI focus). The outcome of this CSD will also help determine ToBI's next moves and priorities. Is the United Nations and its national membership truly open to a fair and transparent dialogue about corporate accountability? Is this a useful place to effectively address this issue?

Considering the governmental secrecy in the MAI negotiations and the almost religious emphasis on trade liberalization and growth, how much do governments want to hear of civil society's concerns? To what degree is the corporate sector willing to sincerely engage in a productive dialogue with NGOs and civil society? How can NGOs successfully collaborate and productively discuss our priorities and differences in developing strategies for action, both collectively and as individual organizations? Looking forward to the U.N. General Assembly's ten-year review of progress on Agenda 21 in 2002, what lessons and message will ToBI have to share with for governments, business and civil society? This papers represent an early stage of ToBI's efforts to answer these and other questions.

Is the United Nations and its national membership truly open to a fair and transparent dialogue about corporate accountability?

# Corporate Accountability at the United Nations

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Jeffrey Barber<sup>1</sup>

## Progress on corporate responsibility since Rio

Not surprisingly, corporations continue to be one of the main forces underlying the globalization of unsustainability. While some exceptional companies sincerely try to operate on principles of social and environmental responsibility, the vast number of corporations operate simply to maximize profits and market shares, externalizing their costs to the environment and communities.

Today, five years after the Earth Summit when the proposed Code of Conduct for Transnational Corporations was tabled, we should see the report card on the promise that was made: that corporations could be trusted to regulate themselves without public oversight, that they would voluntarily move towards just and sustainable practices if left alone. The NGO Taskforce on Business and Industry (ToBI) was created with the specific mission of reminding the governments of this promise and their own responsibility to ensure that such promises are kept.

Five years later, during the General Assembly Special Session, we see neither the report card nor evidence that TNCs have done much more than fine-tune their equipment and public relations. Meanwhile, in a church across the street from the United Nations, presentations by local communities and indigenous people from around the world to the International Peoples' Tribunal on Human Rights and the Environment<sup>2</sup> revealed a common underlying theme. Corporations continue strip-mining the land and contaminating fresh water with mine tailings and cyanide, poisoning the people who live there. Soldiers continue forcing indigenous peoples off their ancestral farms and homelands, which are then plundered by companies feeding industrialized society's fossil-fuel addiction. In general, the evidence points to a world in which corporations continue to place

Instead of accountability, the trend is toward corporate immunity.

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<sup>1</sup> Prepared for *Northern Lights*, July 18, 1997. This paper is adapted from ISF's contribution to the Statement of the International Peoples' Tribunal on Human Rights and the Environment, as well as from Maria-Elena Hurtado's speech for ToBI to the UN Commission on Sustainable Development, April 1997.

<sup>2</sup> See also final report of the International Peoples' Tribunal on Human Rights and the Environment.

profits above human rights and environmental integrity, while governments either look the other way or add to the problem.

Five years after Rio, the corporate world has shown some progress on ecoefficiency and in some cases a greater awareness of environmental and social impacts. However, the record of abuses and the efforts by corporations to avoid responsibility for their actions cannot be ignored any longer.

## What is government's role?

As to the governments which should hold these corporations accountable for their actions, we discover a deadly silence. At the CSD Intersessional, CSD-5, and the UN General Assembly Special Session (UNGASS), the NGO Taskforce on Business and Industry mounted a continuous campaign to engage government delegates in a dialogue with NGOs on the topic of corporate responsibility and accountability. The main question was: What is government's role in ensuring that corporations do not harm human communities or the environment?

In our statement and report, *Minding Our Business: The Role of Corporate Accountability in Sustainable Development*, we identified the problem of society's inability to adequately deal with those corporations which refuse to be responsible, and pointed out the responsibility of government to address this problem. We gave three case studies illustrating the problem: the tragedy of Union Carbide in Bhopal, of Royal Dutch Shell in Nigeria, of the Freeport-McMoRan mining company in Irian Jaya. In public panels and in government briefings we continued to raise the question of the need for governments to define their responsibilities to the public; we proposed the creation of a UN Subcommittee on Corporate Accountability at the CSD to explore these issues and identify solutions. In the so-called NGO Dialogue with Government,<sup>1</sup> Maria Elena Hurtado of Consumers International again raised the question of the Subcommittee, but there was no dialogue, not one single word from the government delegates who heard her speak.

No one overtly recommends that corporations should have no regulations or oversight at all, that they should not be answerable to the law, or that the current laws should not be enforced. However, the trend is clearly towards increased promotion of corporate rights and less government "interference." Many government representatives at the UN give the impression of being seduced or intimidated by the power and influence of the corporate sector. For many delegates it is perhaps political suicide to criticize or suggest holding such economic giants accountable. Should it be surprising that so many delegates avoided and essentially remained silent in response to our questions?

The campaign to ensure that corporations are accountable to society is also a campaign to make sure governments are accountable to their citizens.

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<sup>1</sup> See "Dialogue sessions with Major Groups: Summary report of the dialogue session with non-governmental organizations," Commission on Sustainable Development, 18 April 1997, E/CN.17/1997/L.7.

## Surrendering responsibility

Behind this silence lies a dangerous situation: governments are voluntarily giving up their national sovereignty to corporations, while corporations refuse to voluntarily give up their unsustainable practices.

This surrender by government of their responsibility to people and planet can be heard in the official chorus of calls for more deregulation and free trade, in providing more corporate rights and “breaking the barriers” of communities trying to protect themselves from what amounts to corporate colonialism.

While individual citizens remain accountable to the laws of their national governments, transnational corporations are increasingly allowed to operate in a global realm above all laws. It should not be surprising that there was little discussion of corporate accountability at the UN Special Session: instead of accountability, the trend is toward corporate immunity. Governments should realize that this trend of giving up their responsibility also means giving up their legitimacy.

## Where should society invest its resources?

When governments abdicate their responsibility to protect the people from destructive acts, as witnessed in the current Multilateral Agreement on Investment (MAI), they create a political and moral vacuum. This is a process by which governments, in the name of free trade and economic growth, surrender their responsibility to hold corporations accountable for their actions. In this transfer of rights and responsibilities to the corporate realm, the state essentially bows to corporate lawlessness.

The MAI discussed by the OECD governments and WTO partners promotes corporate rights over human rights and the well-being of local communities. Receiving extremely little coverage by the media, the MAI has been described as a plan to systematically turn the global economy over to a handful of dominant corporations. If allowed to continue on its current course, the MAI will overrule the protests of the Gwich'in, the Dineh, the Ogoni, the Innu, the people of Bhopal and Guyana and other local communities as barriers to investment and trade. The communities that came before the Peoples' Tribunal will have no legal standing before the law of the market. When corporate protectionism in the name of “free trade” is made law, the laws protecting our freedoms will be traded away.

This abdication of responsibility by government is a silent admission of governments' willing role to diminish their own legitimacy and right to govern. The people must not allow their citizenship to be reduced to passive consumerism. When government refuses to lead, leadership must then come from below. The voice of civil society must be clear and strong: people must take priority over corporations.

If we do not act as responsible citizens and engaged members of our communities and the larger world, we cannot expect government or corporations to automatically act in our best interests.

## The campaign for corporate accountability

The campaign to ensure that corporations are accountable to society is also a campaign to make sure governments are accountable to their people. The people in turn, individual citizens and community organizations, the nongovernmental bodies making up civil society, must have a clear understanding of our own responsibility to tell government and business what we want and need from them. As citizens, we must make sure that government does indeed represent our health and well-being; as consumers, we must make sure that business does indeed produce the goods and services that are for the good of people and the environment, and that serve the greater interests of society.

If we do not act as responsible citizens and engaged members of our communities and the larger world, we cannot expect government or corporations to automatically act in our best interests. Without the oversight of the people, the laws of the land will become empty rituals, and government will degenerate to an administrative organ to sort out differences among a small community of corporate giants.

Participation in the further development of the NGO Taskforce on Business and Industry is one type of action which concerned citizens and organizations can take. In the coming year, ToBI will engage in dialogue with Taskforce members, as well as government and business officials on what is needed to ensure responsibility and accountability within business and industry, government, and civil society. We all must follow a personal moral code as well as obey the laws of the larger society; the question is: How can we improve our institutions as well as our individual behavior so that they sustain rather than undermine our communities and environment? ToBI will continue to push for a Subcommission on Corporate Accountability at the CSD; we will relentlessly raise questions based on the ToBI “seven-step agenda;” and we will work to promote the inevitable dialogue, negotiations, commitments, implementation and monitoring that need to take place.

Citizens can also engage in various types of actions and strategies to protest efforts to increase corporate immunity, seen in the MAI and WTO negotiations. Communities can join hands and unite in a common global struggle to reinstate integrity in government and economy. The discussion over the MAI provides a Actions can be aimed at various levels, for example:

How can we improve our institutions as well as our individual behavior so that they sustain rather than undermine our communities and environment?

- **Individual corporations:** Organize or support public pressure on individual corporations known for socially irresponsible practices. Actions can include shareholder initiatives, consumer boycotts, litigation and media campaigns. Highlight how these specific corporations will gain from MAI rulings, in contrast to the losses to communities and environment. Support public campaigns now in progress addressing the abuses of specific corporations, such as Shell, Texaco, Freeport-McMoRan, and others.
- **Industry lobbies:** Help publicize the ways in which industries such as mining, oil, chemicals, agribusiness, and others are corrupting the democratic process through inappropriate financial influence of political

institutions. Support public initiatives calling for the elimination of destructive subsidies, industry tax breaks and other forms of “corporate welfare.” Draw special attention to politicians who have allowed themselves to be corrupted by corporate influences; applaud those with the integrity and courage to resist.

- **National and local government representatives:** Continually question government spokespersons, local and national, as to where their priorities lie, specifically with regard to protecting the public interest in the MAI and WTO proceedings. At every public hearing and gathering, challenge those who claim to be representatives of the people to define and act on their responsibilities to protect the health and well-being of citizens, their communities and environment -- or publicly admit that they put corporations before people.
- **The United Nations:** In particular, the Commission on Sustainable Development (CSD), in its annual meetings to assess progress on the Earth Summit agenda, should be one of the main places where the governments of the world should discuss and agree upon their responsibility to ensure corporate accountability. The proposed Sub-commission on Corporate Accountability can provide an ongoing process through which governments define and act on their responsibility to make sure that corporations are accountable to society. This process of defining the appropriate roles and responsibilities of government and business should include the active participation of NGOs and other members of civil society. After all, government and business are supposed to serve civil society, not the other way around; somewhere this fact has been forgotten.

# Investing in What, For Whom?

## Corporate Accountability and the MAI

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Jeffrey Barber<sup>1</sup>

### Don't look now, but...

Because of the secrecy maintained by a tiny circle of trade and finance officials within the US and other industrialized governments, we are now seeing public interest, labor and environmental organizations suddenly racing to comprehend the full consequences of the Multilateral Agreement on Investment (MAI) being quietly negotiated out of the public eye. This careful avoidance of public scrutiny is precisely because many of the local and state laws now protecting local communities and environments from harm will soon be rendered impotent, as transnational corporations are given bill of rights is designed to empower large companies to sue any nation interfering with its new rights to expand its business operations wherever it chooses.

With citizen organizations only learning about the actual details of the MAI when it was leaked to the public sometime last year, it is not surprising that these officials chose to keep the negotiations out of the limelight, and then attempt to torpedo the agreement through their congresses and parliaments before the voters have a chance to grasp the implications of this corporate/government power play. President Clinton's push for "fast track" powers to approve trade agreements is just one manifestation of this broader transnational corporate strategy.

It should come as no surprise that local and state governments, nongovernmental and community-based organizations, consumer groups and labor unions are now scrambling to understand and develop appropriate strategies and campaigns to stop the MAI from burying so many hard-won community rights and protections. As we increasingly see and communicate the implications of the MAI, the necessity of finding the right strategy, educating our colleagues and constituencies, and mobilizing resistance becomes more a priority. Yet, with the intention to reach an agreement by spring, little time remains to mobilize resistance.

### Strategies

The first priorities for public interest organizations are to familiarize ourselves with the MAI document and its implications and to help acquaint others. Then

The MAI systematically strips away corporate accountability, although it may offer language *encouraging* corporate responsibility.

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<sup>1</sup> Produced for the CSF Online MAI Seminar & *Northern Lights*, September 28, 1997.

we must work through the differences between those groups focused entirely on trying to kill the agreement and those groups trying to amend it. While these two objectives may generate different strategies, it is important that this division is not *divisive* – that the strategies are complementary and not competitive. The MAI campaign should allow for and become strengthened, not undermined, by these two levels of work.

The campaign to prevent approval requires immediate outreach to community leaders in each country and an effective effort to educate and inform workers, consumers and voters on the direct impacts to themselves, their families and friends, and communities, and to the environment. Different audiences will require different emphases and outreach methods. The most effective immediate strategy is to concentrate on building alliances with other organizations and networks that will be affected by MAI, getting the appropriate individuals within those groups to quickly mobilize their members and constituencies. The next step is maintaining these alliances with the communications and information necessary to coordinate actions to influence each country’s legislators. We can expect that our success in getting attention will be matched by increasingly aggressive public relations and lobbying efforts by business and industry. Since they will have the financial resources for this last stage before the vote, we will have to effectively mobilize our *social* resources.

If the campaign to mobilize enough public support against approving the agreement is not successful, as in the campaign against the creation of the WTO, we will then need whatever is successfully amended regarding mechanisms for public reporting and oversight and language asserting environmental, labor, health and human rights protections. We need more than non-binding acknowledgments of the importance of socially responsible business practices. Accountability requires mechanisms by which any harm or potential produced by a company can be determined and made known to the public (e.g., Right to Know laws need to be expanded), as well as mechanisms through which claims by harmed communities or individuals can be raised (as was heard last June in New York at the People’s Tribunal on Human Rights and the Environment). There needs to be acknowledgment, as done last summer in the UN General Assembly’s Programme for Further Implementation of Agenda 21, of the importance of promoting corporate responsibility and accountability.

The distinction between these two terms is crucial, but often confused by governments and NGOs alike. “Responsibility” refers to companies’ voluntary efforts to act in the best interest of society, while “accountability” refers to their legal obligation to do so. The MAI systematically strips away corporate accountability, although it may offer language encouraging corporate responsibility. However, government’s legitimacy depends on its own responsibility and accountability to the public; if government signs away its power and obligation to protect the public, it is also signing away its legitimacy to govern in the public’s interest. This fact must remain in the forefront of both strategies.

This careful avoidance of public scrutiny is precisely because many of the laws now protecting local communities and environment from harm will be rendered impotent.

## Alliances

Even if the MAI is rejected, its spirit will quickly find new incarnations. The effort to empower transnational corporations over communities will not stop at the MAI or WTO or NAFTA or any other agreement. On the other hand, if the MAI is approved, we will later need those amendments to further our struggle. That is, the struggle should not simply be against the MAI but to empower communities and workers and to protect human health, human rights and the environment.

Keeping our eyes on these common goals provides the basis for building alliances among a diversity of groups – environmental, human rights, trade unions, consumer, women, health, social development and others. Such alliances are often easier to rhetorically aspire to than to establish and maintain.

As the October NGO consultation in Paris approaches, it is important to develop the MAI strategy in relation to the other campaigns and strategies being conducted addressing the various aspects of corporate globalization. These include the focus on the WTO, structural adjustment and the World Bank/IMF, the struggles taking place at the Commission on Sustainable Development (CSD) and the follow-up to other UN Summit agreements, the focus on corporate welfare, as well as the many campaigns focusing on individual corporations and their impacts on specific communities (e.g., Royal Dutch Shell and the Ogoni in Nigeria or Freeport-MacMoran in Irian Jaya) and struggles by trade unions. Furthermore, there are the many efforts to promote socially responsible business practices and investment, which range from public relations maneuvers to truly innovative reforms. There is a broader movement addressing corporate abuses and the unaccountability of business and industry to society, a movement ultimately working towards the larger goal of changing the economic system. To gain the public support needed to go up against the MAI, we need to draw upon this movement, upon the many organizations and their constituencies making up this movement. Such a task requires looking at the problem from many different perspectives.

For the MAI campaign to be truly successful, we need to go beyond a defensive strategy to counter this particular corporate power play, to simply kill or amend the agreement. We need our efforts to contribute to as well as draw upon this broader movement of campaigns and strategies to change the global patterns of investment, production and consumption, and distribution of goods and services.

In the long run, we must do more than simply reverse the trend of empowering corporations rather than communities. We must also redefine and reinvent the corporation's role in society to that of socially responsible and accountable producer. In turn, we must redefine and reinvent our role as responsible and accountable consumers, workers and citizens.

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# Corporate Accountability and the Mining Industry

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Simone Lovera<sup>1</sup>

## Introduction

This paper was written as input to the deliberations of the 1998 session of the UN Commission on Sustainable Development (CSD) on the role of industry in sustainable development. It is based upon two existing reports: “Mining in Tropical Regions”, by S. van Bennekom, published in December 1996 by the Netherlands Committee for IUCN,<sup>2</sup> and “Minding Our Business, The Role of Corporate Accountability in Sustainable Development”, by the NGO Task Force on Business and Industry (TOBI), published in March 1997 by the Integrative Strategies Forum.

“Minding Our Business” is an independent assessment which was specifically prepared for the CSD by a large coalition of NGOs working on issues related to the role of industry in sustainable development. It includes a statement signed by a large group of NGOs from all over the world. This statement emphasized that both corporate accountability and corporate responsibility are essential elements of sustainable development. Corporate accountability is more comprehensive than corporate responsibility, though. Whereas corporate responsibility implies companies recognizing their own interests within the framework of sustainable development, and consequently committing themselves to “do the right thing”, corporate accountability refers to the legal obligation of a company to do the right thing. The aim of corporate accountability is to be sure a company's products and operations are in the interest of society and are not harmful.

The mining industry was chosen as a case study because of the magnitude of the environmental and social problems associated with this industry. A number of specific characteristics of the mining industry contribute to these problems. Choices of locations are not flexible, so often mining takes place in ecologically sensitive areas. Particularly in those cases the damage tends to be irreversible. By definition, the products of this industry are non-

The Omai Mine case illustrates the urgency of addressing the issue of corporate accountability at an international level.

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<sup>1</sup> Netherlands Committee for IUCN, December 8, 1997.

<sup>2</sup> A copy of the report “Mining in Tropical Regions”, by S. van Bennekom, published in December 1996 by the Netherlands Committee for IUCN, can be requested from the Netherlands Committee for IUCN, email: [mail@nciucn.nl](mailto:mail@nciucn.nl).

renewable. Another characteristic of the mining companies is that they tend to have a strong influence upon governmental policy making, due to the fact that the mining industry is seen as an economically strategic sector. This implies a risk in terms of corporate accountability.

The paper reemphasizes the need to recognize corporate accountability as a major policy challenge for governments within the framework of sustainable economic development, social development AND environmental protection. It also reemphasizes the need for the establishment of an institutional framework within the UN to strengthen local, national and corporate accountability as the most important policy challenge for the international community at the moment.

Lastly, this paper also links up to the four topics which are on the agenda for the CSD 1998 industry segment. The relationship between corporate responsibility and corporate accountability is mentioned above. The impact of the mining industry on freshwater resources is highlighted, inter alia, through a few short case studies, including the Omai Mine disaster in Guyana. The paper will briefly address the importance of environmental management tools in relation to the mining industry. And lastly, the need for technology transfer between mining companies is stressed and special reference is made to the role of corporate accountability in ensuring that the commitments made at the United Nations Conference on Environment and Development are implemented in this respect.

It should be emphasized that corporate accountability is a goal which reaches beyond the official agenda of CSD 6. The above-mentioned TOBI-statement elaborates upon 7 concrete steps to achieve corporate accountability at local, national and international levels. This paper will briefly touch upon each of these seven steps and explain why these steps form essential tools to ensure the corporate accountability of the mining industry.

Many countries regard the mining industry as essential for economic development and henceforth, the mining sector is awarded many privileges.

### **Economic, social and environmental aspects of the mining industry**

Many countries regard the mining industry as essential for economic development and henceforth, the mining sector is awarded many privileges. Particularly in developing countries, large-scale mining operations are often carried out as a separate entity within the country. This has far-reaching consequences. Mining companies contract foreign specialists rather than local labor. Furthermore the size of the operations often forces developing countries to attract foreign capital for investment in desired mining projects, and regularly lead to contracts which are more beneficial for the foreign investors than for the host country. Lastly, the sheer size of most mining operations implies a lengthy process of preparation. Often, more than a decade may pass between the initial geological explorations and the actual start-up of the construction phase. Mining projects are usually developed when market prices are expected to be favorable. When the price of a mineral improves, the company often expresses an urgency to complete the

process of construction and to obtain the necessary permits. Thus there tends to be little or no time to undertake serious environmental, social and economic evaluations and impact assessments of the entire mining operation.

As stated, there is a tendency of mining companies to attract foreign specialists in stead of local personnel, particularly in developing countries. Other social impacts of mining include both the health of the miners and the health and quality of life of the people surrounding the mines. Bad labor conditions of mine workers are often related to environmental problems. In the Netherlands, retired coal miners are still trying to receive compensation for health problems caused by exposure to mine dust. The impact of mines upon the health and quality of life of surrounding populations was well described in the case study on the Freeport McMoRan mine in Irian Jaya in the Minding Our Business assessment.

In terms of environmental impacts, the extraction of the earth's minerals is one of the most obvious examples of our current unsustainable behavior. The products of mining are non-renewable. Mines and smelters use up to a tenth of all the energy used on earth. Thus the mining industry can be seen as a substantial contributor to climate change. Mines also bring about a quantity of waste which dwarfs the world's accumulation of more familiar kinds of waste, such as municipal garbage. This waste is often used to "fill" exhausted mines, but the fact that the waste has been exposed to air, water and other substances can create severe degradation of the soil quality after the refill. Because of the crushing and grinding during the concentrating process of ore, elements which were bound up in solid rock, such as lead, zinc, copper, cadmium and arsenic can be exposed to water and disperse into ground water and streams. Oxidation can also create highly toxic elements. Mines also create air pollution problems, such as dust and acid rain, with major negative impacts upon human health and the environment, particularly near the location of the mine.

Another specific characteristic of mining operations is that the locations are inflexible. Thus mining operations are often planned in ecologically sensitive areas such as primary forests (e.g. the Amazon) and wetlands (e.g. the Waddensea). The damage caused is often irreversible, particularly in the case of open pit mines. Whereas reclamation of the site after exhaustion of the mine tends to be an important element of contracts between mining companies and governments nowadays, it should be emphasized that the reclamation and restoration of ecosystems like primary rainforests is out of the question. Restoration of the original environment is impossible in such vulnerable ecosystems with low self-generating capacity, highly complex food chains and abundant biological diversity, including many unknown species.

Underground mines cause relatively less deforestation and other environmental damage. It is important, however, that not only the environmental damage caused by the mine itself, but also the environmental

It is important to account for not only environmental damage from the mine itself, but environmental damage caused by the entire infrastructure needed to operate the mine.

damage caused by the entire infrastructure needed to operate the mine is taken into account; sites for waste storage, electricity plants, smelting or processing industries, infrastructure for transport and general facilities to house the miners. Moreover, particularly in tropical forests, the disclosure of the area and resulting fragmentation of ecosystems has considerable additional ecological impacts.

## **Impacts of mining on freshwater resources: the Omai case**

Specialists on the environmental impacts of mining tend to emphasize the effects on water quality. Waste dumping, run-off water, spills of mercury and alterations in watersheds have over the years resulted in substantial damage to marine and river ecosystems. Mining also has strong impacts upon the water quantity of nearby rivers and ground water. Large amounts of water are required for processing, transport and dust control. This is likely to affect the supply of water to downstream users. Especially in countries where water is scarce, the water used by the mining industry limits the availability of freshwater for man and nature. Conflicts between mining companies and other water users are already widespread. For example, the water extraction by the Toquelapa and Cuajono copper mines in Peru has caused pastures in the high Andes to dry up, the natural drainage of the waters of the basin has been interrupted and the pollution of waters has increased. Consequently agricultural and animal husbandry activities in the coastal valleys were endangered, as well as the health of the population consuming this water.

Yet, the most severe environmental problems are associated with water pollution caused by dumping of residues and processes which require water. The major pollutants are suspended solids, acid discharges, heavy metals and processing chemicals. Well-known are the disastrous ecological consequences of the spillage of mercury by small-scale gold miners in the Amazon basin. In 1990, goldminers in Brazil released at least 168 tonnes of mercury into the environment. Mercury pollution severely affects ecosystems. High concentrations of mercury were detected in fish as far as 800 km downstream from mining areas. Local people suffered from mercury poisoning, sometimes fatal. Once their natural environment was destroyed, indigenous peoples were often forced to leave their homelands due to lack of food.

One of the largest environmental disasters in terms of water pollution took place in August 1995 at the Omai Mine in Guyana. The Omai mine was opened in 1993, as a joint venture between two Canadian mining companies and the Guyanese government. The mine was controversial since its opening because of the unequal way in which the profits of the mine were distributed. The mine uses cyanide to extract gold from ore. Cyanide contaminated waste slurry was stored in clay tanks under tropical rainforest conditions, while this type of storage had never been tried under such conditions. Seepage from the ponds already led the mine company in the

Social impacts include the health of the miners and the health and quality of life of the people surrounding the mines.

first years of opening to issue warnings to local people not to drink local creek water because of possible cyanide contamination.

On the night of August 19<sup>th</sup>, 1995, a dam breached, releasing 4 billion liters of cyanide effluent into the Omai river. From there it flowed into Guyana's largest river, the Essequibo. Within days, the area had been declared an environmental disaster zone. Residents of riverine communities were warned not to use the Essequibo's water for any domestic purposes and the small Omai river became a mortuary for dead fish and wildlife.

The Dam Review Committee studying on the causes of the accident concluded that the breach was not caused (as the Omai mine company stated) by extreme weather conditions but that the dam was bound to fail because of structural construction failures. They stated that the dam breach had happened because of "inadequate application and execution of sound practice for design, construction, supervision and inspection that are well understood in current embankment dam and tailings dam technology". The case also proved that Western companies sometimes use every way possible to avoid environmental regulations. Mr. David Fagin of the Golden Star mining company, one of the two Canadian investors, stated last year that his company 'had looked increasingly at the Guyana Shield because of the increased pressure by environmentalists and the government in the USA'.

There tends to be little or no time to undertake serious environmental, social and economic evaluations and impact assessments of the entire mining operation.

## **Strengthening corporate accountability at an international scale**

The Omai Mine case illustrates the urgency of addressing the issue of corporate accountability at an international level. The dramatic growth of foreign direct investment over the last years (from US\$ 88 billion in 1992 to US\$ 460 billion in 1997), has made small countries increasingly vulnerable for bad practices as the ones described above. Corporate accountability is especially relevant to the current situation of increasing economic globalization and the unique position of transnational corporations, which in many cases are legally accountable to no one. Thus, the NGOs which signed the statement on corporate accountability in 1997 urged their government representatives and the CSD Secretariat to acknowledge the essential role of corporate accountability in sustainable development and to address the challenge of ensuring this accountability. They made the following seven general recommendations to meet this international, national and local policy challenge:

### **1. Acknowledge the importance of corporate accountability.**

As the specific example of the mining industry highlights, there is a need to develop or improve governmental and citizen-based mechanism designed to ensure greater accountability of a powerful industry like the mining industry.

## **2. Establish mechanisms to monitor and assess corporate practices.**

No central body yet exists to review the various claims of best and worst practices by business and industry. Such a body is of particular importance with regard to the mining industry, considering the powerful position of the industry in many countries and the international nature of its production chains. It was recommended that an institutional mechanism is created within the UN system, involving participation by governmental, non-governmental and industry representatives, to examine and define the range of government responsibilities necessary to ensure accountability by business and industry, especially by multinational corporations, and to delineate the proper role of government and the appropriate international instruments and mechanisms that are needed.

Moreover, as illustrated by the Omai case, there should be a revived process of clarifying the obligations of TNCs to host countries and to social, economic and environmental sustainability.

## **3. Strengthen Public Access to Information**

While NGOs like Minewatch and Project Underground have been gathering information on the mining industry for several years, there is a clear need for instruments like Community Right-to-Know legislation and laws requiring regular company reports on their releases, use and storage of potentially dangerous substances. Moreover, TNCs should be obliged to make public the same information as required in their home country to those countries in which they are operating or investing. There should also be more openness about the direct and indirect support the mining industry receives from governments.

## **4. Send the right message: reform unsustainable subsidies and tax-breaks; make wrong-doers liable.**

As stated above, the mining industry is often seen as a very strategic economic sector by governments. Thus, they tend to receive very favorable treatment in terms of "corporate welfare", free infrastructure, subsidies for energy use and other direct and indirect support. It was recommended by TOBI, in this respect, that subsidies, tax breaks and other forms of government incentives to corporations which are undeserved, ineffective or otherwise unsustainable should be identified and eliminated.

Probably even more important in relation to the mining industry was the recommendation to develop and enforce appropriate liability laws. Due to the fact that the damage of many mining operations is irreversible, strong liability laws are the only manner in which specific mining companies can be hold legally accountable for their actions. Evidence shows that companies are more likely to prevent and solve environmental and other problems where liability claims are high. Considering the known risks related to mining operations, it is recommended that governments impose strict liability on companies - extending to every country in which they invest or operate - for personal injury or loss of life, property damage, and

Practice often lags well behind the best available technology and many corporations still practice double standards.

damage to the environment. Corporate polluters should be held liable for environmental damage and transboundary pollution whether or not this damage or pollution results from negligence. Corporations guilty of past damage, even going back one or two decades, should also be held liable for their actions. Citizens and communities should be provided the legal resources where this is needed.

### **5. Empower local communities, not TNCs**

The case of the mining industry demonstrates how the economic playing field is being unfairly stacked against small local businesses and farmers and the economies of local communities in favor of greater power and advantages to large transnational corporations. Thus it was recommended by TOBI that international agreements and mechanisms are put in place which protect local communities from what might be called "corporate blackmail". Such corporate blackmail is a specific problem in the mining industry where many developing countries depend on the capital and technology of foreign TNCs to exploit their mineral resources.

Additionally, it was recommended that companies provide for a meaningful dialogue with the local communities surrounding the location of operations and public participation in company decisions that could impact the community's health and well-being.

### **6. Make clean production the required standard**

Since society should expect companies to engage in clean production processes, government and civil society need mechanisms to resolve questions as to what kind of production is clean and ecologically sustainable. Thus it was recommended that the Precautionary Principle was adopted as part of industrial policy, putting the burden of proof of safety on potential polluters instead of communities having to prove otherwise. This recommendation is particularly relevant for the mining industry considering the profound environmental risks which are inherent to mining operations.

It was also recommended to implement the Preventive Approach, regulating and evaluating company practices with an emphasis on clean processes and products rather than end-of pipe clean-up technologies. Furthermore, of particular importance for the mining industry was the recommendation to adopt and implement the principle of Extended Producer Responsibility, in which producers are from the start held accountable for the environmental and health impacts of their products throughout the product life-cycle. This principle is very relevant for mining companies which produce potentially hazardous metals and minerals.

Also, it was recommended that legislation instituting industry- and company-wide targets to reduce pollution, toxic use and energy consumption was established, as well as an obligation to produce annual,

No central body exists to review the various claims of best and worst practices by business and industry.

independently verified reports from all companies regarding their progress towards clean production goals.

## **7. Reduce political influence of corporations on government**

This recommendation implies a major challenge in respect to the mining industry. As stated before, the mining industry is often seen as a strategic economic sector and thus its influence upon governmental policy is very large. It was recommended by TOBI that the mechanisms by which corporations, including TNCs, possess and exercise undue political influence over government policy and decision-making were reformed, especially in cases where corporate sovereignty and well-being is given higher priority than the health and well-being of local communities and their environment. Specific recommendations were made to set up an institutional framework under the UN to examine the global political influence of TNCs on government policy-making.

### **Best practices versus worst practices**

This report, like the TOBI report, has paid a lot of attention to the “worst practices” of the mining industry. It should be emphasized that quite a number of companies have made substantial efforts to improve their operations and make them more environmentally, socially and economically sound. Nowadays, the mining industry is more concerned with environmental matters. This has, e.g. resulted in an environmental network, the International Council on Metals and the Environment. This network can play a useful role by transferring the knowledge about environmental practices. But, on the other hand, to protect their own interests they also play a political role by persuading governments to abstain from rough regulations.

The implementation of effective tools for environmentally sound management plays a crucial role in the prevention of environmental damage from mining operations. Environmental impact assessments are one of those tools. It should be ensured though, that these assessment take into account all the activities related to the operation of a mine, including waste storage and the development of roads and other infrastructure and the indirect impact of such activities.

Another promising tool could be the development of an integrated land management plan for the site of the mine and its surroundings. Such a plan was developed for the Mount Nimba, a site on the border of Liberia and Guinea, recognized as a World Heritage Site by the UN for its unique flora and fauna. Global pressure to preserve this area from the unregulated impacts of large-scale mining resulted in 1993 in a joint mission by all major stakeholders and a subsequent management plan to combine mining with nature conservation, sustainable agriculture and housing. The investing consortium will pay an annual amount of US\$ 500.000 to monitor the implementation of the plan.

As illustrated by the Omai case, there should be a revived process of clarifying the obligations of TNCs to host countries and to social, economic and environmental sustainability.

Modern technology has provided solutions for many of the environmental problems associated with mining. However, practice often lags well behind the best available technology and many corporations still practice double standards, i.e. different environmental practices in different countries. Using the best available technology should be seen as an inherent part of corporate responsibility and corporate accountability. This is particularly true for TNCs operating in countries with relatively lower environmental and social standards. Moreover, it should be emphasized that technology transfer plays a major role in improving the sustainability of mining operations worldwide. Such technology transfer should not only take place between the various companies of one TNC, but also between industries which do not have any relationship with one another, or which can be seen as potential competitors. Building partnerships between such industries in terms of transferring the best available environmentally sound technology and implementing the recommendations of Agenda 21 in this respect, is first and foremost a responsibility of the mining sector itself. Yet, also here, effective governmental incentives and regulations are needed to ensure corporate accountability.

# NGO Perspectives and Recommendations on Responsible Entrepreneurship

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Prepared by the ToBI Working Group on Responsible Entrepreneurship<sup>1</sup>

In June 1997, the UN General Assembly emphasized the importance of strengthening “interaction with representatives of major groups including through greater and better use of focused dialogue sessions and round tables,” with “input from...business and industry groups in the elaboration, promotion and sharing of sustainable development practices and their promotion of corporate responsibility and accountability.”<sup>2</sup> The upcoming 1998 CSD Dialogue on Industry provides an important opportunity to examine how corporate responsibility and accountability fit within the larger framework of sustainable development.

This Dialogue seeks to achieve some common understandings of a number of concepts critical to achieving sustainable development. The concept of *responsible entrepreneurship*, linked to Agenda 21’s call for *stewardship* of natural resources, elicits a range of interpretations and opinions. In turn, the meaning of corporate *responsibility* and *accountability* garners a wide diversity of opinion among NGOs, business and industry, trade unions, governments and the United Nations. In this Dialogue we hope to establish enough of a common language to take us beyond the concepts and to the task of changing the way we do business.

While this paper cannot adequately address the diversity of issues surrounding this topic, we hope to at least focus sufficient attention on some of the critical points NGOs have raised in this process. All the NGOs who have contributed ideas and recommendations to this paper may not agree with all the points raised. However, this paper is intended to stimulate a dialogue, not to say the final word.

We hope to establish enough of a common language to take us beyond the concepts and to the task of changing the way we do business.

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<sup>1</sup> For the UN Commission on Sustainable Development, Sixth Session, December 16, 1997. This paper was published by the United Nations as one of the primary background papers for the Major Groups Dialogue on Industry and Sustainable Development, held in April 1998.

<sup>2</sup> United Nations. *Programme for the Further Implementation of Agenda 21*, United Nations Department for Policy Coordination and Sustainable Development, July 1, 1997.

## What is Responsible Entrepreneurship?

An entrepreneur, following Webster's definition, is "one who organizes, manages, and assumes the risks of a business or enterprise." Ironically, environmentalists and human rights advocates tend to criticize corporations precisely for externalizing their risks and costs, passing these on to the environment and society.

Several NGOs find the concept of *responsible entrepreneurship* problematic. Six years after Rio, many NGOs agree with our colleague from Eco News Africa who finds that "such responsibility is not reflected in the behaviour of huge corporations, and if anything things are only getting worse."

For the Northern Alliance for Sustainability (ANPED), responsible entrepreneurship "could be considered a contradiction in terms when related to sustainable development," in that for most entrepreneurs their primary responsibility is to their own financial bottom line. ANPED offers its definition of a "responsible" entrepreneur as someone who "actively supports sustainable development, does not harm the environment, public health or the social fabric of society and reveals to the public all the possible social and environmental impacts of their practices."

Many if not most NGOs agree that the widespread adherence by industry to responsible business principles and practice depends on the degree to which they are also accountable to society. In other words, *corporate responsibility requires accountability*. One NGO describes the notion of corporate responsibility without accountability as like trying to run a bank on the honor system, with no security guards. In spite of all the best practices of honest customers and staff, bank managers fully understand that it takes only a single dishonest exception to take away everyone's common savings. The same is true for sustainable development.

One NGO describes the notion of corporate responsibility without accountability as like trying to run a bank on the honor system, with no security guards.

## Voluntary Agreements

Voluntary agreements differ dramatically according to scale of application, the parties involved, their motivations and incentives, and how compliance is assured and verified, in addition to the issues (e.g., labor, health, environment) at the heart of the agreement.

Voluntary agreements can be distinguished according to their scale or level of application. They may be

- Company specific (e.g., Levi Strauss & Company; The Gap; Liz Claiborne; Reebok; Phillips-Van Heusen; L.L. Bean; the Petrobras Ideas Network);
- Product or industry specific (e.g., the CMA's Responsible Care initiative; the White House Apparel Industry Partnership);
- Location or community specific (e.g., Clean Clothes campaign in Bangor, Maine; the PADE Programme for waste management in Rufisque);

- Global or national (e.g., Sullivan Principles; ICC Business Charter; OECD Guidelines for Multinational Corporations; CERES Principles; ICCR's Principles of Global Corporate Responsibility).

There is a big difference between “closed” agreements, among companies within an industry, and more “open” agreements, involving a broader range of employees, communities and populations directly affected by company operations, consumers, concerned stockholders – sometimes clustered together under the term “stakeholders.”

#### “Closed” agreements: internal to business and industry

*Agenda 21* encourages business and industry to “increase self-regulation, guided by appropriate codes, charters and initiatives integrated into all elements of business planning and decision-making and fostering openness and dialogue with employees and the public.” It does NOT say that business and industry does not need to be regulated, but that they should voluntarily operate in a socially and environmentally responsible manner. From a business perspective, voluntary compliance with corporate responsibility codes can help companies anticipate the impacts of investment decisions on the environment, health and human rights – and thus avoid costly litigation, public protest, and disgruntled shareholders.

From the perspective of NGOs, the value of corporate self-regulation depends on whether or not any significant progress is made in adopting responsible practices and developing more sustainable products or services. NGOs are fully aware of the inevitable choice between responsibility and profitability. This conflict highlight the weakness of closed voluntary efforts, which often result in noncompliance, double standards, inadequate targets or standards, and greenwashing. These flaws obviously damage the public credibility of the agreements.

“No matter how great the goodwill or sense of responsibility of a business or industry, it cannot escape the reality that it has to remain competitive and financially viable,” the South Africa New Economics Network (SANE) points out. For a company to operate responsibly, it has to be assured that its competitors, who do not behave likewise, do not gain an advantage in behaving irresponsibly.

In other words, the “rules of the game” must be the same for all; there is no room for “free riders.” When the company must choose between the competitive bottom line and compliance with non-binding guidelines, management will be forced to choose the bottom line. Therefore, industry-based voluntary codes must be strengthened with appropriate government regulations and enforcement as well as public access to information and community participation in relevant company decisions.

As Friends of the Earth concluded in their report on the issue, this is not an argument “against voluntary initiatives by groups of firms or trade associations

"No matter how great the goodwill or sense of responsibility of a business or industry, it cannot escape the reality that it has to remain competitive and financially viable."

-- South African New Economics Network (SANE)

that aim to improve environmental performance beyond compliance with regulations. However...such schemes do not, and cannot, represent an alternative to regulation.”

### “Open” agreements: negotiating with stakeholders

In contrast to the closed agreements within business and industry are those more “open” or negotiated agreements and codes involving a wider range of parties. NGOs and the public are more likely to be skeptical of closed voluntary codes and agreements -- especially with no independent monitoring and verification of compliance. NGOs are more likely to support open agreements reached through negotiations with stakeholders.

One example of a stakeholder negotiated agreement is the Ethical Trading Initiative, currently chaired by the New Economics Foundation (NEF). According to NEF, this initiative “is funded by the UK government and incorporates 18 companies (mainly food and clothing retailers) and 16 UK NGOs. It has been established to develop common codes of conduct and approaches to business in poorer countries, in an effort to positively impact on the well-being of employees and their communities. Through the process of experimentation, dialogue and negotiation the ETI will aim to widely endorse a set of standards and an approach to monitoring and verifying these codes of conduct.”

In some cases, community-groups, consumer organizations, or NGOs may themselves initiate a corporate code or agreement, and then lobby companies to sign on as partners. For example, the “Maquiladora Standards of Conduct” was developed in 1990 by the Coalition for Justice in the Maquiladoras (CJM), an international coalition of environmental, religious, community, labor, women's, and Latino organizations.<sup>3</sup> This agreement provides guidelines to alleviate acute problems created by the maquila industry along the U.S.-Mexico border. Unfortunately, the Maquiladoras have yet to voluntarily adopt and implement these standards, which nevertheless help raise public awareness and support the workers and community organizers in Mexican border towns.

The Interhemispheric Resource Center (IRC) describes the emergence of stakeholder-initiated codes “as a response to the globalization of the marketplace.” According to IRC, “consumer groups and labor organizations see codes as a way to regulate the practices of corporations that have operations across the globe, while the companies themselves have adopted codes to improve their corporate image and head-off damaging boycotts and bad publicity.” On the other hand, some NGOs warn against open agreements whereby corporations specify the rules and control the moves in the process,

One NGO describes the emergence of stakeholder-initiated codes "as a response to the globalization of the marketplace."

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<sup>3</sup> Interhemispheric Resource Center.

using the term “stakeholder” to redefine and reduce communities, workers, and citizens to corporate constituencies in the global economy.<sup>4</sup>

“A prerequisite for such participative forums to work is a degree of trust between the parties,” states World Wildlife Fund-UK,<sup>5</sup> a trust which “has been undermined in the past by the secrecy with which most companies have shrouded their environmental performance. Responsible companies should have a presumption of transparency about their operations, and work to release as much data as possible. This openness should be supplemented by having regular independent environmental and social audits, drawing on input from employees and the surrounding community.”

Moving in the opposite direction from transparency is a trend toward what might be called the “corporate right to secrecy,” in which “environmental audit privilege” laws are enacted allowing companies to conceal information contained in environmental self-evaluations from national and local enforcement and environmental agencies, the courts, and citizens.<sup>6</sup> Another component of these corporate secrecy laws is the “privilege” given to regulated facilities of “outright immunity from prosecution for companies who disclose and self-correct violations as a result of auditing,” which will “allow some lawbreakers to retain the financial fruits of their previous disregard for the law.”<sup>7</sup>

"The road to environmental and social hell has already been paved by such 'codes of conduct' and alleged good intentions."

--ANPED

## Concerns and criticisms

NGOs express concerns about both types of voluntary corporate agreements because of their potential for greenwashing and public manipulation, wasting time, undermining needed legislation and regulatory efforts, weakening of monitoring and enforcement mechanisms, creating divisions among NGOs, and for masking the increasing power and influence of corporations over civic and governmental bodies.

Since the 1992 Earth Summit, the concept of "voluntary agreements" or "self-regulation" remains a red flag for many NGOs, as this was given to justify removing the Code of Conduct for Transnational Corporations from the Agenda 21 negotiations. This 17-year body of work, despite its non-binding nature, was dismissed at Rio with the promise of a new era of responsible business. “The

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<sup>4</sup> Karliner, Joshua. *The Corporate Planet: Ecology and Politics in the Age of Globalization*. Sierra Club Books, 1997, p. 42.

<sup>5</sup> Nick Mabey, WWF-UK

<sup>6</sup> These secrecy laws have been enacted in 19 states in the US, as of November 1996, although challenged by the federal environmental protection agency.

<sup>7</sup> Network Against Corporate Secrecy. Letter to Carol Browner, USEPA, March 24, 1997.

The value of corporate self-regulation depends on whether or not any significant progress is made in adopting responsible practices and developing more sustainable products and services.

most glaring weakness at Rio was the failure to include the regulation of business, financial institutions, and transnational corporations in Agenda 21 and other decisions,” stressed Martin Khor of Third World Network in a speech at CSD5.<sup>8</sup> “If nothing else,” laments Joshua Karliner of TRAC, “the Earth Summit clarified the fact that global corporations have the power and capacity to seriously influence the focus and trajectory of international agreements on environment and development.”<sup>9</sup>

Greenwashing is one obvious reason for NGO mistrust of corporations and their concerns about voluntary agreements. In their book on greenwash, Greer and Bruno of Greenpeace stress the need to look at the reality hidden beneath the green image fostered by TNCs, that “TNCs are not saviors of the environment or of the world’s poor, but remain the primary creators and peddlers of dirty, dangerous, and unsustainable technologies. The claims of these companies must be scrutinized carefully and their activities and products regulated for the good of the planet and its people.”<sup>10</sup>

According to ANPED, voluntary agreements “have not worked, do not reach all entrepreneurs, and are not participatory...which means that they are ineffective.” As they put it, “the road to environmental and social hell has already been paved by such ‘codes of conduct’ and alleged good intentions. In a legalistic society, victims of environmental crimes can find little comfort in ‘non-binding agreements,’ whether they be broken or fulfilled in some vague way. The solution lies in international legally binding regulations to ensure that responsible entrepreneurship will be the only way in which corporations world-wide operate.”

Friends of the Earth International (FoEI) also identify fundamental problems with the voluntary approach:<sup>11</sup>

- **Ineffective**, “because the potential motivations for compliance are neither strong enough nor sufficiently widespread;”
- **stifle innovation**, “not only to fail to stimulate innovation but also to tend to lock firms into existing, often short-term solutions;”

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<sup>8</sup> Khor, Martin. “Globalization is undermining sustainable development,” in *Third World Resurgence*, No. 81/82, May/June 1997, p. 26.

<sup>9</sup> Karliner, p. 57.

<sup>10</sup> Greer, Jed & Kenny Bruno. *Greenwash: the Reality Behind Corporate Environmentalism*. Third World Network & Apex Press, 1996, p. 12.

<sup>11</sup> Tony Juniper, Friends of the Earth International.

- **undemocratic**, focusing on industry’s interests and definitions of the problems while leading “to the Government effectively abdicating responsibility for whole sections of environmental policy,”
- **lack public credibility**, raising “the fear that it will serve the narrow interests of the firms concerned rather than those of the public,” and that even “industry groups themselves have serious doubts about the voluntary approach which centre on the lack of motivation for compliance and, in particular, the problems of free-riders.”

“Lack of compliance with international commitments made in Rio formed the key to the failure of UNGASS,” says Netherlands Committee for IUCN, “This underscores the need for compliance mechanisms in sustainable development agreements, particularly when they target the main actor in environmental and social degradation -- industry.” NC-IUCN criticizes voluntary agreements for not including compliance mechanisms, although they consider labeling initiatives like the “Max Havelaar” case in the Netherlands and certain labeling efforts for organic agriculture as “a compliance mechanism within the context of a voluntary agreement.” However, NC-IUCN raises the need to ensure that such cases also “fulfill the criteria for inclusiveness and accountability.”

Noting the wide gap between business and industry’s promotion of voluntary codes and NGOs’ criticisms, Eco News Africa suggests that “this would be a good place to look into how far corporations have respected codes” as well as cases of corporate misconduct which gloss over “previous disasters that they have helped create and despite the existence of voluntary codes.” Research is needed to clarify the record, to identify the successes and failures, and to assess both the problems and the potentials of the different types of voluntary agreements. “Such an evaluation should include the views of the civil society at large,” stresses this Kenyan NGO; “NGOs and Community-Based Organizations...could work on an effective strategy on how this could be best achieved.”

### Recommended criteria for effective voluntary agreements

Many NGOs believe voluntary codes and guidelines can be effective contributions to sustainable development only if they fulfill the following requirements:

1. **substance:** appropriate content and language (i.e.,undiluted, unambiguous and watertight);
2. **inclusiveness:** active participation of appropriate stakeholders, including opportunities and resources for participation of the wide range of affected persons and organizations;
3. **motivation:** sufficient incentives to encourage voluntary compliance;

"If global guidelines and codes lead to building partnerships among those who have a stake in the health and well-being of communities in which they operate, then they can prove to be useful tools for sustainable economic and human development."

-- Interfaith Center on Corporate Responsibility

4. **integration:** incorporation of social and environmental values into not only the policies and operations of companies, but also in the way they define and measure success and progress;
5. **transparency:** independent monitoring of implementation;
6. **credibility:** independent verification of compliance, involving participation and endorsement by the NGO sector in the choice and methods of verification; and
7. **accountability:** regulatory and civic mechanisms enforcing responsible behavior, including penalizing companies that consistently behave irresponsibly.

“If global guidelines and codes lead to building partnerships among those who have a stake in the health and well-being of communities in which they operate,” says Interfaith Center on Corporate Responsibility (ICCR), “then they can prove to be useful tools for sustainable economic and human development.”<sup>12</sup>

## Regulatory Frameworks

Both industry and public advocates complain, for different reasons, about the inadequacy of regulatory frameworks for motivating responsible business practices. Industry often describes regulations as interfering with their ability to establish responsible practices. Advocates of regulation claim that threats of litigation and fines impel companies towards responsible behavior, that regulation *inspires* voluntary responsibility. Other critics point out that current regulations are not always enforced, or that the substance is watered down by industry lobbyists.

### Industry perspectives on regulation

Industry has consistently complained that “entrepreneurial solutions to environmental problems” are blocked by “complex and cumbersome regulations.” In their eyes, responsible innovations are hampered by “punitive regulations, costly and time-consuming enforcement and licensing methods” which have not kept up with the “increased awareness of the complex interrelationships between man [sic] and nature.” Speaking for industry’s promotion of the voluntary approach, the International Chamber of Commerce helped launch the *Business Charter* – their preferred alternative to the *UN Code of Conduct for TNCs*.

Both industry and public advocates complain, for different reasons, about the inadequacy of regulatory frameworks for motivating responsible business practice.

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<sup>12</sup> Schilling, David. “Making codes of conduct credible: the role of independent monitoring”. Paper prepared for conference on “Global Codes of Conduct” sponsored by the Center for Ethics and Religious Values in Business at Notre Dame, October 6-8, 1997. Interfaith Center on Corporate Responsibility.

Outside CSD, certain elements in industry and government have been secretly advancing a different, heavy-handed strategy for dealing with frustrating regulations. Through the proposed internationally binding Multilateral Agreement on Investment (MAI), companies will have the power to legally override local and national regulations and laws if they are determined to be obstacles to foreign investment. As NGOs gradually learn of this “stealth agreement” they tend to be scandalized and outraged at such an undemocratic and manipulative attack on hard-won laws to protect the environment, health, and human rights. Thus, five years after Rio, industry’s quest to escape accountability reaches new heights. In turn, NGOs continue to struggle for appropriate and effective safeguards, regulations, and access by citizens to information and to the courts to pursue compensation for damages caused by industrial activities.

### NGO perspectives on regulation

NGOs have no desire to burden industry with regulations, instead tending to agree with Friends of the Earth International (FoEI) that “traditional forms of regulation have been too prescriptive and consequently the opportunity for exploiting the ability of business to produce novel and timely solutions is constrained,” that “industry is granted no discretion in how to achieve an environmental goal.” Most NGOs readily agree that regulations are only one of many different instruments for influencing corporate and public behavior.

As part of the input to this paper, NGOs recommend a number of social and market-based instruments, such as redirecting or phasing out damaging and unsustainable subsidies by the year 2010,<sup>13-14</sup> shifting taxes from labor to resource consumption and pollution,<sup>15</sup> introducing an international CO2 tax, taxing airplane fuel<sup>16</sup>, implementing the Tobin tax on currency speculation,<sup>17</sup> committing to time-bound targets,<sup>18</sup> and mounting public education campaigns.

Acknowledging that “governments have often over-stretched regulation, and barely tapped the potential of market approaches,” David Roodman of

Most NGOs readily agree that regulations are only one of many different instruments for influencing corporate and public behavior.

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<sup>13</sup> Germanwatch.

<sup>14</sup> Roodman, David Malin. “Paying the piper: subsidies, politics, and the environment.” Worldwatch Paper 133. Washington, DC, December 1996.

<sup>15</sup> Betty Paschen, Canadian Green Party and Sustainable Edmonton Society.

<sup>16</sup> German Forum for Environment and Development.

<sup>17</sup> WEDO.

<sup>18</sup> NGO Caucus on Sustainable Production & Consumption.

Worldwatch<sup>19</sup> also points to a mix of market instruments and regulations, noting that “laws – not market forces alone – are what will protect endangered species, manage nuclear waste, and ban pollutants that may be deemed unacceptable in any amount, such as DDT or dioxins.” In contrast to industry arguments, Worldwatch observes “there is remarkably little evidence that regulations have seriously depressed the fortunes of industry, or that they have chased businesses into ‘pollution havens’ – countries with lax environmental rules.” Furthermore, says FoEI, “there is strong evidence that regulation remains the primary motivation for firms to improve environmental performance.”

### The need for an international regulatory framework

Many NGOs agree with Friends of the Earth on the “need for an international regulatory framework in respect of the monitoring and guidance of TNC activity,” that since the closure of the UN Center on Transnational Corporations, “there has been no official debate on how TNCs should be monitored and regulated.” For ANPED, “nationally enforced regulatory frameworks provide the only tool to hold corporations accountable and liable, ensuring that responsible entrepreneurship includes all business.” Furthermore, regulations level the playing field, eliminating the free rider problem by making the rules of the game the same for all. “This way of giving direction to business and industry,” explains the South African New Economics Network, “largely removes the complex issues which they need to face if these are left entirely up to the criteria of moral judgment and response to social pressure.”

### Mixing regulations and market incentives

In general, NGOs tend to call for defending and improving national and international regulations as well as market instruments. For example, the Taskforce on Business and Industry (ToBI) calls for governments to “send the right message” to business -- stressing a mix of ecological tax and subsidy reforms in combination with strengthening citizens’ Right to Know and litigation rights to challenge irresponsible practices.

The Women in Environment and Development Organization (WEDO) encourages CSD6 to promote the language agreed in the Habitat Agenda, in which governments commit themselves to “strengthening regulatory and legal frameworks to enable markets to work, overcome market failure and facilitate independent initiative and creativity, as well as to promote socially and environmentally responsible corporate investment and reinvestment in, and in partnership with, local communities and to encourage a wide range of other partnerships to finance shelter and human settlements development.”

While "governments have often over-stretched regulation and barely tapped the potential of market approaches... laws - not market forces alone - are what will protect endangered species, manage nuclear waste, and ban pollutants that may be deemed unacceptable in any amount."

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<sup>19</sup> Roodman, David Malin. “Getting the signals right: tax reform to protect the environment and the economy.” *Worldwatch Paper 134*. Washington, DC, May 1997.

To guide this mix of regulations and market incentives, minimum standards to define responsible practices are needed. To succeed, WWF-UK says, these standards must be “locked into place with binding international regulation.” To implement environmental and social accounting practices across the board, international regulations and binding standards are required. “A lot of ‘complex and cumbersome’ regulations are caused by the lack of political courage of governments to introduce at once the tough standards that are necessary from a sustainability perspective,” explains the Netherlands Committee for IUCN, “Instead, they tend to take a step-by-step approach in which standards are tightened every few years, thus causing a lot of uncertainty for industry.” Rather, a more direct implementation of standards would allow industry to immediately invest in the proper technologies, in contrast to “technologies which will be outdated before the investment is gained back.” Furthermore, adds WWF-UK, such regulations and standards should be promoted by company environmental officers and industry representatives such as the International Chamber of Commerce and World Business Council.

### NGO concerns: neglecting the precautionary principle

In their reaffirmation of the *Business Charter*, the International Chamber of Commerce explained that “business looks to government to provide the necessary regulatory framework based on sound science, the understanding of risk assessment and economics.” This emphasis on so-called “sound science” and risk assessment is a standard excuse made by industry to sidestep regulatory safeguards to put controversial new products, chemical additives, genetically modified organisms, or other questionable items on the market or engage in hazardous production practices -- unless science *has undeniably proven* significant harm or damage. Thus, for new chemicals or biotechnology products, the burden of proof and risk is passed onto consumers and communities – not on the company to demonstrate to the public that their intended actions are truly safe. Groups like ANPED, ToBI and others continue to urge incorporating the precautionary principle as part of clean production standards and regulations.

Emphasis on so-called “sound science” is a standard excuse made by industry to sidestep regulatory safeguards - unless science has *undeniably proven* significant harm or damage.

### NGO concerns: double standards

This is the problem whereby companies comply with certain environmental, health and labor standards in countries where this is legally required, but fall far short of such standards in other countries where they have subsidiaries, suppliers, or where they relocate. “Companies rarely relocate to take advantage of lower environmental standards, but when operating abroad often behave in ways which they know would be totally unacceptable in their home countries,” says WWF-UK. However, “a truly responsible company should not act in this inconsistent manner, but aim to operate to worldwide standards.” In this regard, “companies should undertake regular independent environmental audits of subsidiaries and major overseas suppliers,” and “any variation in environmental performance for similar processes must be explained inside the context of a company’s global responsibilities.”

## Reporting

In last year's UNGASS report, governments agreed to encourage the "voluntary publication" by business "of environmental and social assessments of their own activities." The intent is to encourage greater transparency by business and industry in providing valid and timely information – especially about those practices having an impact on the health and well-being of communities and environment.

In some countries, certain types of company reports – on campaign contributions and lobbying expenditures, environmental impact assessments for proposed projects or developments, and registers of toxic releases – may be legally required. Beyond these requirements, it is up to the companies as to what additional information they will divulge. Indeed, for the sake of improving their relationship and image with consumers, shareholders, government, and partners, many companies voluntarily provide an assortment of reports about their various practices. In turn, NGOs pose various questions about their reporting.

### Questions about corporate reporting

As with voluntary agreements, many NGOs are skeptical of voluntary company self-assessments, suspicious that such self-audits and environmental reports "effectively serve to preempt pressure on companies to open their facilities and books to independent inspectors who could more objectively assess the environmental impacts of their operations."<sup>20</sup> In general, NGOs raise a number of questions about corporate reporting, whether voluntary or required:

- Is timely and relevant information about company practices *available* to the public?
- Is the information a company provides *credible*?
- Is it *comprehensible* and *comparable*?
- Does the public have access to the courts or other bodies to act on this information?

### Making information available: Community Right to Know

In response to NGO skepticism, the chemical industry with their Responsible Care program says "don't trust us, track us." Although companies in the program are supposed to conduct annual self-evaluations, "the evaluations are not available to the public," says Greenpeace. "Without access to information – even that generated by the company itself," they continue, "the public does NOT have the opportunity to track the corporation any more than it did before

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<sup>20</sup> Karliner, p. 48.

Many NGOs are skeptical of voluntary company self-assessments, suspicious that such self-audits and environmental reports "effectively serve to preempt pressure on companies to open their facilities and books to independent inspectors."

Responsible Care.”<sup>21</sup> In order to effectively track companies and determine whether they are conducting themselves in a responsible manner, the public needs relevant information. If companies will not provide this information voluntarily, then government needs to take the necessary steps to ensure public access.

One example of information that companies are required to report to government and which in turn are to be made available to the public is the Toxic Release Inventory and Community Right to Know laws (in the United States. “Citizens armed with information,” observes ANPED, “are able to monitor their neighbourhood polluters and takes some of the regulatory burden off resource-strapped authorities.” Few other countries have the toxic reporting requirements of the U.S., but governments are being encouraged to introduce Pollutant Release and Transfer Registers (PRTRs). Simply by making this information available to the public, claims the OECD, PRTRs “have had a stronger impact than many regulatory programmes even though a PRTR sets no improvement goals mandatorily.”<sup>22</sup> What is mandatory, however, is the reporting.

Only a small handful of countries have yet implemented and enforce Community Right to Know laws. Even in these countries, the Right to Know has yet to be extended to include not just a company’s emissions, but the toxic chemicals used in the production process and in the products themselves. NGOs seek the extension of Right to Know to cover pesticides used and residing in food (an issue of increasing concern regarding the impact of endocrine disrupters), as well as on radioactive materials and genetically engineered organisms.

Industry representatives typically argue against this expansion of Right to Know, using many of the original arguments they used against reporting their toxic releases. Companies claim that public access to information needs to respect “certain limits,” that some data must be respected as proprietary and kept secret. NGOs argue that “too often corporations hide behind the mask of ‘commercial confidentiality’ claiming that disclosure will reduce their ability to compete.”<sup>23</sup>

A colleague from Australia suggests that to help soften the “policing nature” which businesses may perceive of government reporting requirements, the reporting system could be extended “to include recognition of outstanding practice through rewards such as awards/preference given to government contracts, etc.”

There are many reasons to question the validity of company reports not verified by reliable, independent methods.

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<sup>21</sup> Greer & Bruno, p. 34.

<sup>22</sup> OECD. *Pollutant Release and Transfer Registers: Guidance Manual for Governments*. Paris, 1996.

<sup>23</sup> ANPED.

## Achieving credibility: monitoring and independent verification

For a company or industry to establish its credibility with NGOs, it will need to do more than sophisticated advertising and clever public relations. Methods and criteria need to be developed to verify the claims of a company or industry about the safety of their activities. Whether due to gaps in information, simple errors, or overt greenwashing and deception, there are many reasons to question the validity of company reports not verified by reliable, independent methods.

Several NGOs clearly state their distrust of voluntary programs like Responsible Care, described as “vehicles that the transnationals use to define environmental issues on their terms”<sup>24</sup> and designed to “divert attention from the fundamental environmental issue: products such as nuclear reactors and toxic chemicals form the lifeblood of many TNCs.”<sup>25</sup> Even if these companies make their self-assessments available to the public, what is necessary for them to be credible?

Eco News Africa asks a critical question: “Who [is to] establish such a means for independent verification?” Some NGOs, such as Germanwatch, suggest that governments, business and green NGOs should jointly select an institute to conduct corporate monitoring. The Good Neighbor Project for Sustainable Industries suggest a “right to inspect,” an approach proven effective in numerous previously negotiated agreements. “In this approach, community and workforce representatives or NGOs have been entitled to their own experts, and to accompany them to inspect problem plants and evaluate pollution prevention opportunities.” In many places, particularly in developing countries in Africa and elsewhere, the technical capacity for such monitoring and verification is not immediately available. Rather than commission outside (Northern) consultants to do the job, NGOs suggest “building the strength of primary stakeholders,” particularly local community-groups or others who understand the problems and are best positioned to observe a company’s on-going behavior.

“Today, there is a struggle...over the definition of independent monitoring and who can qualify as an independent monitor,” the Interfaith Center on Corporate Responsibility (ICCR) points out. “The pressure created by NGOs for companies to adopt independent monitoring has created a new industry. Accounting, auditing and consulting firms... have moved into the monitoring field and developed social audit instruments to measure compliance with company codes of conduct.” While the big accounting firms may appeal to companies as credible monitors of their behavior, these firms are less qualified for daily monitoring of potential labor, health and environmental violations to which local NGOs and community groups would be more attuned. Furthermore, since such NGOs are perceived as “not beholden to the company,” they have a credibility “which can carry weight with consumers, investors, labor, human rights groups and the public.”

Today there is a struggle over the definition of independent monitoring and who can qualify as an independent monitor.

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<sup>24</sup> Karliner, p. 48.

<sup>25</sup> Greer & Bruno, p. 33.

One example of an NGO-business partnership to develop such an independent monitoring and verification system is among the Gap and ICCR, Businesses for Social Responsibility, and the National Labor Committee Education Fund in Support of Worker and Human Rights in Central America. In this case, the Gap responded to NGO observations of a violation of the Gap's Code of Vendor Conduct by its maquiladora supplier in San Salvador. By February 1996, the Independent Monitoring Group of El Salvador (IMGES) was formed, a result of consultations and negotiations with factory workers and managers, local and international NGOs, religious and business groups to develop appropriate independent monitoring methods. In March 1996, a historic resolution was signed pledging all parties to improving worker-management relations, rehiring former union leaders and giving total access by NGOs to the plant to monitor the factory's operations. A year later, IMGES issued a public report on its work, stating that all points in the resolution had been fulfilled.

While this example may not be a model for all independent verification situations, it is one positive example of a process in which a company gives up some of its control and trusts in the integrity of an equal partnership with the community and NGOs to reach a solution to a volatile human rights situation. Such an example might be contrasted with the disastrous experience of Royal Dutch Shell with the Ogoni in Nigeria.

### **Social and environmental audits and screens: making them meaningful**

There is also the need of mechanisms ensuring that company self-audits and reports by external auditors are comprehensible, capable of being verified, comparable to some kind of appropriate standard, and that the public has the capacity to respond in a meaningful way.

A number of organizations, such as the Council on Economic Priorities (CEP), the New Economics Foundation, and others are working to develop appropriate auditing and screening mechanisms to make coherent sense of company practices. For CEP and organizations working to promote Socially Responsible Investment (SRI), the emphasis is on developing and using environmental and social screens by which to identify companies acting in an environmentally and socially responsible manner. Such screens are useful to concerned investors who want to be sure they are not investing in enterprises which are causing harm. Groups such as the Institute of Social and Ethical AccountAbility promote "best practices in social and ethical accounting and auditing" and are working to "develop standards and accreditation procedures" for professional social auditors.<sup>26</sup>

Available and timely data about company behavior is worthless if it is not easily accessible, understandable and comparable to some kind of standard or criteria.

There is also the need of mechanisms ensuring that company reports are comprehensible, capable of being verified, comparable to some kind of appropriate standard, and that the public has the capacity to respond in a meaningful way.

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<sup>26</sup> Institute of Social and Ethical AccountAbility. *AccountAbility Quarterly*, No. 5, Autumn 1997.

Special training, technical assistance and software may be needed to allow public interest groups to access and apply this data to their work in monitoring the effects of companies on their community.

The UNECE Convention on Access to Environmental Information and Public Participation in Environmental Decision-Making<sup>27</sup> is now being negotiated, with NGOs trying “to strengthen the role of the public as an environmental watchdog.” Among European NGOs’ concerns with the Convention include “excessively long time limits...proposed for responding to information requests from the public,” and that “information should be provided in the form requested, where available, and certain data placed on the Internet.” European ECO Forum members also stress the importance of making information not only available, accessible, and credible, but that citizens have access to justice to enforce noncompliance and seek compensation. The UNECE Convention “needs to provide not only the right to complain about infringements of the Convention, but also the right to sue both public and private bodies for breach of environmental laws in general.”

Right to Know and public participation laws need to encompass all regions of the world. Efforts to provide access to information, participation in decision making, and access to justice should be gender sensitive and account for the needs of women. Technologies and methodologies, including information and legal systems, to establish public access to information and participation should be considered part of the discussion about technology transfer to developing countries. In some places, citizens do not even know they have a right to information about the company practices that affect them.

### **The need to protect whistleblowers**

One traditional type of non-statutory monitoring and reporting which requires governmental protection and public support is company “whistleblowing” – whereby employees within a company “blow the whistle” on harmful, dangerous or illegal company practices, which otherwise would remain unknown to the public or government agencies. Generally, this type of employee watchdog activity is penalized by demotion, dismissal or other punishment. Protection for whistle-blowers must be provided in all countries.

Where national whistleblower protection laws exist, workers may be pressured by other “marginally legal” methods to discourage disclosure of embarrassing or costly secrets. Furthermore, warns the Good Neighbor Project for Sustainable Industries, efforts are being made to enact anti-whistleblower provisions into environmental audit protection laws. In addition to having the capacity to challenge such provisions in court and legislatures/parliaments, communities and workers “need expanded rights and opportunities to ensure responsive action on identified hazards.”

Right to Know and public participation laws need to encompass all regions of the world.

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<sup>27</sup> The UNECE Convention will cover over fifty countries: all of Europe, US, Canada, the Central Asian Republics of the former Soviet Union, and Israel.

## Partnerships

As UNIDO recently observed, “relatively few companies have successfully integrated sustainability requirements into their overall corporate strategy and even fewer have made a commitment to follow through in the absence of stringent regulations. Today’s challenge is to stimulate businesses to take this step.”<sup>28</sup> As to partnerships between businesses and NGOs, it comes as no surprise that there is much mutual suspicion as well as differences in priorities and worldviews. Many NGOs are especially disturbed by the behavior of industry lobbies to kill environmental legislation or water down agreements. A prime example is the Kyoto climate change summit, which offers “disturbing examples of this lack of responsibility presented by the large oil companies and car manufacturers in the US as they financed a multi-million dollar disinformation campaign to undermine the climate change treaty negotiations.”<sup>29</sup>

### What kind of partnerships are possible?

There are numerous examples of partnerships among NGOs, businesses, government and trade unions, from the neighborhood to the global level. We will undoubtedly hear about many of these examples between now and the Dialogue in April. Some of these will be inspiring models which we may wish to promote or attempt to emulate, such as Clean Clothes Campaign in Bangor, Maine or the examples Malick Gaye of ENDA Tiers-Monde<sup>30</sup> gives of entrepreneurial citizens working to build the local economy and community democracy by finding innovative, grassroots solutions to provide local services.<sup>31</sup> On the other hand, there are numerous examples of a lack of cooperation, false promises, and a competitive treatment of public interest groups and civil society as if they are meant to be included in the concept “global competitiveness.”

“The NGOs are being bamboozled by the UN and the corporations,” David Korten warns. “We are given just enough opportunity to create the appearance of citizen input, but the real action is elsewhere. I think its time to blow the whistle in the realization that talking to ourselves in rooms provided by the UN has little to do with citizen participation in a democratic global governance process.”

Many NGOs continue to believe that CSD is the place for NGOs committed to sustainability to come together to engage our governments, the UN, business and industry and other major groups to define our roles and responsibilities.

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<sup>28</sup> UNIDO. *Changing Course: Sustainable Industrial Development as a Response to Agenda 21*. Vienna, June 1997.

<sup>29</sup> Gail Karlsson, UNA/USA and CitNet Working Group on Climate Change and Energy.

<sup>30</sup> Environment & Development Action in the Third World.

<sup>31</sup> Gaye, Malick. *Entrepreneurial Cities*, ENDA, 1996.

However, many NGOs continue to believe that CSD is the place for NGOs committed to sustainability to come together to engage our governments, the UN, business and industry and other major groups to define our roles and responsibilities, our obligations and our accountability to society. Particularly in light of the global power being granted to corporations by the industry-oriented World Trade Organization and the Multilateral Agreement on Investment, NGOs look to the CSD as the primary international institution where the multiple voices for sustainability have a chance to be heard.

On another level, perhaps the term “responsible entrepreneur” should be thought of not so much in terms of companies but rather in terms of specific responsible individuals within companies and government. Such entrepreneurs would be those people who have personally accepted the risks and responsibility for improving things -- even if their colleagues, staff, Board members or superiors are not convinced. In this case, informal, personal partnerships and alliances among committed individuals may provide the vital levers to move reluctant companies towards more responsible policies and practices. Thus, even if a company continues to cling to irresponsible policies and practices, there may be a set of potential partners within that company who are struggling to change it and who deserve to be acknowledged and supported.

### **Partnerships to promote responsibility**

Many of the concerns and hopes raised by NGOs in this paper depend on government to represent its citizens and ensure that business behaves responsibly. Corporations are not citizens and do not have the right to risk the health and well-being of communities and the environment, despite their responsibility to shareholders to seek higher revenues and financial returns. To possess legitimacy in the eyes of civil society, businesses must be accountable to society.

To move forward, NGOs need to make greater efforts to develop partnerships with businesses sincerely trying to be responsible, governments to help define and implement accountability, and with trade unions to help protect the rights, health and well-being of workers in all countries and companies. Furthermore, NGOs need to take advantage of the CSD’s efforts to include NGOs and major groups more directly in dialogues and consultations with member governments, to help build more productive relationships and mechanisms to achieve deeper understanding and solutions to the global challenge of implementing sustainable development.

Finally, in the words of Eco Africa News, “[the suggestions] need to be debated by all the players who are willing to spend their time to build up good strategies and who can do some work. Otherwise very often we all get together in New York, have long discussions and go back home to the business as usual scenario.” Since our involvement in this Dialogue is to change business as usual, it is up to us to make sure there are indeed practical outcomes.

Perhaps the term “responsible entrepreneur” should be thought of not so much in terms of companies but rather in terms of specific responsible individuals within companies and government.

## NGO Recommended Outcomes for CSD6 Industry Session

NGOs recommend for the CSD, business and industry, trade unions, and other major groups over the coming months and years to join with NGOs to engage in the following actions:

1. For CSD to **sponsor an inventory and evaluation of the effectiveness of voluntary agreements**. This evaluation should include active participation by representatives from business, NGOs, trade unions, and research institutions involved with these issues, as well as an analysis of their differences. The goal would be to identify the strengths and limitations of voluntary agreements and viable mechanisms to assure and verify compliance. The results of this evaluation could be reported at Earth Summit III in 2002, with yearly status reports to the CSD up to that time.
  
2. For CSD to **establish a Panel on Corporate Responsibility and Accountability**. This Panel could serve as a vehicle for governments and major groups to explore in greater depth methods for promoting corporate responsibility and accountability, as recommended in the UNGASS Programme for Further Implementation of Agenda 21. This Panel could coordinate or sponsor dialogues among major groups and different sectors of business and industry to better define those areas where government regulation and oversight is appropriate and necessary (accountability), and needs to be investment and reinvestment in local communities. With this aim in mind, the Panel could implement some of the following recommendations, such as the inventory and evaluation of voluntary agreements, and provide a vehicle for partner dialogues on the results. In turn, in 2002, the Panel could issue a joint position on recommended measures to the General Assembly for ways to more effectively promote corporate responsibility and accountability in sustainable development.
  
3. For CSD to **compile, define and further explore NGO and other major group recommendations emerging from this Dialogue**. Such recommendations include:
  - That companies commission regular independent environmental audits of subsidiaries and major overseas suppliers;
  - that companies support efforts to give affected host country citizens the automatic right to primary redress in the company's home country courts, without having to fight for legal standing on a case by case basis;
  - that companies support efforts to institute binding international minimum standards on environmental and labour practices to avoid others free-riding on their efforts;

- for governments to enact or strengthen laws protecting whistleblowers from company reprisals;
- for each country present a plan to redirect or phase out all unsustainable subsidies step by step by the year 2010;
- to explore the need and feasibility for a Convention on Corporate Responsibility and Accountability.

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# Responsible Action or Public Relations? NGO Perspectives on Voluntary Initiatives

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Jeffrey Barber<sup>1</sup>

## More or less effective?

Much is heard these days about the role of voluntary initiatives by companies in implementing the sustainable development objectives of the Earth Summit and in achieving national environmental goals. In the Dialogue on Industry taking place at the 1998 Commission on Sustainable Development the topic of voluntary initiatives will undoubtedly elicit lively discussion among the Major Group and government participants. Differences in perceptions, assumptions and values among industry, NGOs, trade unions and governments may generate moments of disagreement and discomfort; however, these very differences may very well shed new light on critical problems, as well as suggest possible solutions or ideas for improvements.

In *Agenda 21*, business and industry is encouraged to

*increase self-regulation, guided by appropriate codes, charters and initiatives integrated into all elements of business planning and decision-making and fostering openness and dialogue with employees and the public.*

Such self-regulatory approaches are said to represent a more effective and desirable alternative to achieving sustainability goals than the “command and control” approach of government regulations and enforcement programs. “They provide flexibility,” says the World Business Council on Sustainable Development, “which allows business to achieve the desired goals in the most economically effective manner possible.”<sup>2</sup>

However, many nongovernmental organizations (NGOs) are skeptical of industry’s promotion of the voluntary approach. The Northern Alliance for Sustainability (ANPED), for example, is quite blunt with their skepticism; for this NGO network, voluntary agreements “have not worked, do not reach all

What is the nature of this credibility gap between industry and NGOs?

To what degree are NGOs' criticisms and concerns about voluntary initiatives legitimate or mistaken?

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<sup>1</sup> Published in *Industry and Environment*, Volume 21 No.1-2, January-June 1998, United Nations Environment Programme.

<sup>2</sup> Schmidheiny, Stephan; Rodney Chase & Livio DeSimone. *Signals of Change*. World Business Council for Sustainable Development, 1997: 55.

entrepreneurs, and are not participatory...which means that they are ineffective.”<sup>1</sup> Like many NGOs, ANPED believes that “the solution lies in international legally-binding regulations to ensure that responsible entrepreneurship will be the only way in which corporations world-wide operate.” This sentiment is echoed by other NGOs. Friends of the Earth, for example, claims voluntary initiatives are ineffective, undemocratic, stifle innovation, and lack public credibility. “Voluntary efforts have not been sufficient,” points out Consumers International, “Governments must set standards and legal obligations for companies.”<sup>2</sup>

These statements are generalizations, and the same NGOs would probably agree that there are many cases of voluntary initiatives which contribute significantly to sustainability. Still, the skepticism runs deep. What is the nature of this credibility gap between industry and NGOs? To what degree are NGOs’ criticisms and concerns about voluntary initiatives legitimate or mistaken? What is needed to make voluntary initiatives more credible in the eyes of NGOs?

## Corporate responsibility: embrace or evasion?

Like the concept of eco-efficiency, the concept of voluntary initiatives in itself is not at issue. The problem is when this idea is presented as justification for weakening or eliminating valuable regulations, consumer rights, or other accountability measures which NGOs believe are important if not essential to sustainable development and protection of human rights.

The concept of voluntary initiatives is not at issue. The problem is when this idea is presented as justification for weakening or eliminating valuable regulations, consumer rights, or other accountability measures

*Agenda 21* identifies voluntary initiatives as a valuable addition to a wide “mix of economic instruments and normative measures such as laws, legislations and standards.”<sup>3</sup> In fact, *Agenda 21* acknowledges regulatory regimes as contributing to the emergence of voluntary initiatives.<sup>4</sup> One view is that appropriate regulations motivate companies to take a proactive, voluntary approach to their environmental and social responsibilities and are thus a prerequisite. “There is evidence,” claims the Institute for Agriculture and Trade Policy “that voluntary initiatives are insufficient to alter corporate behavior significantly,” that several studies show “governmental regulation is the most effective means of directing corporate behavior.”

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<sup>1</sup> NGO Taskforce on Business & Industry. “NGO Perspectives and Recommendations on Responsible Entrepreneurship,” Commission on Sustainable Development, 1998.

<sup>2</sup> Hurtado, Maria Elena. “Change of course or ‘greenwash’? Five years after the Earth Summit, big industry parades its ‘green’ credentials.” *World Consumer*, No. 225, Consumers International, 1997.

<sup>3</sup> United Nations. *Agenda 21: Programme of Action for Sustainable Development*, 1992, Section 30.8.

<sup>4</sup> *Agenda 21*: Section 30.3.

It is no surprise that NGOs have a different perspective from industry. Many NGOs see themselves as forced to defend environmental regulations and consumer rights from an overzealous global assault by the corporate sector. During the UN General Assembly Special Session on progress since the Earth Summit, the International Chamber of Commerce (ICC) complained that “entrepreneurial solutions to environmental problems” are blocked by “complex and cumbersome regulations.” Their argument was that responsible innovations are hampered by “punitive regulations, costly and time-consuming enforcement and licensing methods,” which have not kept up with the “increased awareness of complex interrelationships between man and nature.”<sup>1</sup> Although this year the ICC literature describes voluntary initiatives as “complementing regulation,” their emphasis on “science-based and non-discriminatory” conditions point to what NGOs perceive as legal hoops and loop holes to keep the regulators and enforcers at bay.

From this perspective, industry’s promotion of voluntary initiatives as the preferred alternative to regulatory measures is viewed not as an embrace of responsibility but an evasion. “There has been a strong...trend, which is now dominant,” warns Third World Network, “to reduce and remove more and more regulations that governments have over corporations, to grant them increased rights and powers, whilst removing the authority of states to impose controls over their behaviour and operations.” This removal of the rights of states to regulate business, they conclude “is a major and perhaps fatal flaw in the international community’s attempt to arrest environmental deterioration and promote sustainable development.”<sup>2</sup> “Self-regulation serves to stave off the efforts of governments and citizens’ groups to impose tougher controls on the transnationals,” explains Joshua Karliner, one of Greenpeace’s representatives at the Earth Summit. “Corporate self-audits and environmental reports, for instance, effectively serve to preempt pressure on companies to open their facilities and books to independent inspectors who could more objectively assess the environmental impacts of their operations.”<sup>3</sup>

Paul Hawken, entrepreneur and author of *The Ecology of Commerce*, agrees that there are too many laws and regulations restricting business. However, this situation “begs an underlying question: Which arose first, the regulations or the violation of societal standards that has brought upon itself the minutiae of government regulation?”<sup>4</sup>

Industry's promotion of voluntary initiatives as the preferred alternative to regulatory measures is viewed not as an embrace of responsibility but an evasion.

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<sup>1</sup> International Chamber of Commerce, 1997.

<sup>2</sup> Third World Network. “Effects of globalisation on sustainable development after UNCED,” *Third World Resurgence*. No. 81/82: 10-11.

<sup>3</sup> Karliner, Joshua. *The Corporate Planet: Ecology and Politics in the Age of Globalization*. Sierra Club Books, San Francisco, 1998: 48.

<sup>4</sup> Hawken, Paul. *The Ecology of Commerce: A Declaration of Sustainability*. HarperCollins, New York, 1993: 121.

## ICC Business Charter: contribution or diversion?

The question “responsible action or public relations?” reflects the tension between the hopes and concerns held by many NGOs in distinguishing between authentic efforts by companies to minimize their damage to the environment, and efforts meant to avoid accountability for such damage. In their submission to the CSD Dialogue on Industry, the International Chamber of Commerce highlights voluntary environmental codes of conduct, such as the **ICC Business Charter on Sustainable Development**, as tools for “improved environmental performance, while simultaneously creating jobs and improving living standards.”<sup>1</sup> At the Charter’s founding event in Rotterdam in 1991 (convened by UNEP and the UNCED Secretariat), over 1000 companies signed this nonbinding agreement stressing the important role of environmental management and eco-efficiency within the free market system.

Many NGOs, however, questioned both the degree and nature of Charter signatories’ contribution to sustainable development; some NGOs claim the Charter was created to replace what they believe to be a more open, transparent and fairer UN Code of Conduct for Transnational Corporations with a more closed, untransparent and industry-biased document. NGO criticisms of the Charter also focus on perceived failures of companies to follow-through in practicing the principles they agreed to uphold, or that companies fail to apply the same standards in Southern countries and countries-in-transition. Another criticism is the absence or inadequacy of verifiable company reports. Some NGOs criticize the Business Charter for attempting to undermine the precautionary principle by promoting a watered-down, alternative precautionary “approach.”

In their book *Greenwash*, Greer and Bruno say the problem goes beyond company practices not living up to the claims; that “even the skeptics are too trusting.” These two critics argue that voluntary codes such as the ICC Business Charter “adopt environmental terminology, such as ‘environmentally sound’ and ‘sustainable development,’ while subtly changing the meaning of key words to cover industry behavior. In the end, the new rhetoric and the acknowledgment of relatively superficial problems in voluntary codes divert attention from the fundamental environmental issue...The codes are themselves a form of greenwash.”<sup>2</sup>

“At issue,” says Maria Elena Hurtado of Consumers International, “is not only double-speak by corporate giants – for example, the gap between Shell’s rhetoric and its activities in Nigeria’s Ogoniland – but whether the corporate search for profits and economic growth can be reconciled with poverty eradication and

"At issue is not only double-speak by corporate giants-- but whether the corporate search for profits and economic growth can be reconciled with poverty eradication and environmental protection."

--Consumers International

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<sup>1</sup> International Chamber of Commerce. “Responsible entrepreneurship. Background paper for the U.N. Commission on Sustainable Development.” January 30, 1998.

<sup>2</sup> Greer, Jed and Kenny Bruno. *Greenwash: The Reality Behind Corporate Environmentalism*. Third World Network, Penang & Apex Press, New York, 1996: 33.

environmental protection. A second issue is whether self-regulation is the best method of transforming business practices.”

## Responsible Care: trust and track record

Another voluntary initiative highlighted in the CSD Dialogue on Industry is the chemical industry’s Responsible Care program. The ICC and WBCSD describe the Responsible Care initiative as seeking “to continuously improve the environmental, health and safety (EHS) performance of the chemical industry’s operations and products in a manner responsive to the concerns of all stakeholders.”<sup>1</sup> Emerging in the wake of the Bhopal tragedy, Responsible Care was a public acknowledgment that there were indeed serious problems with the way the industry had been doing business and that serious change was needed. Many NGOs continue to applaud the industry’s motto “Don’t trust us, track us,” which acknowledges the importance of accountability. This statement raised hopes that there are indeed people within the chemical industry who truly care about being responsible and will do what it takes to avoid any possibility of a Bhopal-type repeat.

Following up on the Responsible Care slogan, NGOs complain that the information they need to track chemical company practices is not available and that Responsible Care signatories are not providing the public with any more information than was available before. While companies may conduct environmental performance evaluations of themselves, these self-evaluations too often remain confidential or simply unavailable to the public. Without sufficient access to information, NGOs cannot track these companies. Understandably this situation decreases trust, causing NGOs to describe Responsible Care as just another vehicle to define environmental issues in corporate terms.

In evaluating the progress of Union Carbide and other chemical companies, NGOs and the public face an absence of information, framed by suspicious-sounding corporate publicity and advertisements. While part of the solution lies in the technical task of collecting and distributing information, another lies in communicating directly with the citizens, consumers and stakeholders in the communities directly affected by chemical production and products. This communication also includes stakeholders of foreign subsidiaries. ICC acknowledged the problem of stakeholder discussions “hampered by a lack of credible information,” although without offering an immediate solution.

ICC points out that “one of the key tenets of voluntary industry initiatives such as Responsible Care is openness and responsiveness to public and stakeholder concerns,” and that “industry appreciates the need to seek out these concerns and to include them in its development of policy.”<sup>2</sup> On the other hand, many companies and CEOs are understandably uncomfortable with having their

NGOs and the public face an absence of information, framed by suspicious-sounding corporate publicity and advertisements.

On the other hand, many companies and CEOs are understandably uncomfortable with having their mistakes and limitations held up to the public spotlight.

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<sup>1</sup> ICC. “Responsible entrepreneurship,” section 3.

<sup>2</sup> ICC. “Responsible entrepreneurship,” section 4.3.

mistakes and limitations held up to the public spotlight. Thus, movement toward greater inclusiveness and transparency will undoubtedly spark resistance from various parts within a company or industry. Such resistance can be expected and may thus call for certain kinds of governmental or civic incentives or disincentives to help make the process work.

ICC has mentioned the establishment of Community Advisory Panels “which provides input to chemical facility management and reinforces the local facility’s accountability to the community in which it operates.” Building on this idea, plus other accountability mechanisms such as mandatory environmental reporting, community right to know provisions and community- or stakeholder-based independent verification processes could help bridge the information gap needed to gain credibility among NGOs. If chemical companies or other businesses are going to be taken seriously by NGOs they need to do more than make unverifiable claims about their responsibility and care. Companies need to demonstrate sufficient transparency in their reporting and make relevant information available to the public; of course they also need to demonstrate that they are making their products and practices safe, environmentally sustainable and socially responsible.

## ISO14000: standard behavior

Another voluntary system promoted at the CSD is the ISO 14000 environmental management system standards. The ISO 14001 standard was developed “to improve the internal management of environmental issues in an organization...and thereby create opportunities to improve its environmental performance.”<sup>1</sup> As with other voluntary initiatives promoted by ICC and other large industry groups, ISO 14000 draws its share of critical comments from NGOs. For example, Joshua Karliner, from the Transnational Action Resource Center, explains that although the ISO standards may help establish valuable environmental standards in places where these are nonexistent but needed, certain problems stand out:

While ISO 14000 may indeed improve environmental conditions in some areas, it can also mislead the public into thinking that certified companies are performing well when in actuality they continue to harm the environment and threaten public health and safety.

1. the standards lack mechanisms for public accountability or oversight,
2. the eco-labeling system being promoted focuses on the eco-efficiency of the process by which it is made rather than the ecological impact it may have,
3. as international standards, these may be adopted by the WTO and used to override stricter local regulations and controls as trade barriers, and
4. ISO 14000 may be used by industry lobbyists as a diversion from the creation of internationally binding standards.<sup>2</sup>

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<sup>1</sup> ICC. Corporate management tools for sustainable development. Background paper for the UN Commission on Sustainable Development, January 30, 1998.

<sup>2</sup> Karliner, 185.

“While ISO 14000 and EMAS set standards for environmental management systems, they do not stipulate how the EMS should be implemented,” writes Kerry Tullis Hattevik, from Norwegian Forum on Environment and Development, in the NGO submission to CSD on corporate management systems. Again, lack of transparency, credibility and accountability are raised as critical issues: “ISO 14000 does not require the publication of environmental impacts and the public is not made aware of audit results,” points out Hattevik. “Especially disturbing is the fact that the type of data and information as well as environmental impacts that must be inventoried is left entirely to the discretion of the firm.” Furthermore, rather than measuring a company’s improvement in terms of their impacts on the environment, “improvement” is defined in terms of management system performance – although even this is not externally monitored. “Rather than require a compliance or performance audit, ISO only requires a management systems audit that states that procedures to measure performance are in place.”<sup>1</sup> Even if a company is in non-compliance with environmental regulations, this will not disqualify them from ISO certification as long as procedures are in place to address the problem. While ISO certification requires “pollution prevention,” companies are qualified by citing non-preventative actions such as end-of-pipe technology and recycling measures, so that “meaningful change from polluting production processes and practices is thoroughly undermined.”<sup>2</sup>

NGO's skepticism of voluntary initiatives highlights three problems:

1. lack of credibility
2. greenwashing
3. protection of free riders.

Thus, while ISO 14000 may indeed improve environmental conditions in some areas, instituting a bottom line, it can also mislead the public into thinking that certified companies are performing well when in actuality they continue to harm the environment and threaten public health and safety. “ISO cannot be credible if rogue companies can misuse it,” cautions Sierra Club’s Michael McCloskey. “When big money is at stake, who is going to stand firm to make sure that ISO does not become a refuge for poor performers?”<sup>3</sup>

Another criticism running through the various NGO comments about ISO 14000 is the lack of inclusiveness in the development of the standards. Hattevik points out that “the drafting committee for the ISO 14000 series was dominated by industry and consultants. McCloskey, explaining some of the reasons why environmental groups have not “bought into” the process, notes that invitations to participate in the initial negotiations were extended far too late for NGOs to effectively participate. Basically, ISO 14000 is “the product of private, not public, processes. There is no public accountability.” The NGO Initiative ISO 14000, a joint project of the Community Nutrition Institute and Ecologia, note that NGOs are “uneasy about negotiating from a weak position.” However, they

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<sup>1</sup> Hattevik, Kerry Tullis. “From accounting to accounting: corporate management tools for sustainable development,” an independent analysis presented to the UN Commission on Sustainable Development, January 23, 1998.

<sup>2</sup> Hattevik.

<sup>3</sup> McCloskey, Michael. “ISO 14000: An environmentalist’s perspective.” Presentation at EPA Roundtable Meeting, Philadelphia, Pennsylvania, April 26, 1996.

warn, failure to aggressively involve themselves “gives industry free rein to develop the standards to their specifications, risk policies that undercut the ability of federal, state, and local agencies to protect health and the environment.”<sup>1</sup> However, participation is not necessarily a matter of inclination. “In principle, the NGOs can claim access to the meetings of the technical committees where the most crucial decisions are taken,” observes Sander van Bennekom, “In reality, the transnational corporations have resources to send their experts to these meetings – NGOs do not. Following the agenda as it is currently set by industry itself, therefore, puts NGOs almost inevitably in a disadvantaged position.”<sup>2</sup>

## Defining and assessing effectiveness

In NGOs’ various comments on voluntary initiatives, a number of common themes emerge. Voluntary initiatives are meant to contribute to transforming business and industry so that it is more socially and environmentally responsible and sustainable. Societies require more than laws and police to guide behavior; they also need moral laws, ethical principles, and visions of a better way of life. In turn, corporations need more than government regulations, consumer boycotts, and bad press to guide their policies and actions. Ideally, voluntary initiatives are a way to improve corporate products and production processes, as well as management practices and values, so that they contribute to an improved society and quality of life. On the other side of the coin, voluntary initiatives can also be used as clever strategies for cheating society and other companies, improving public image while covering up irresponsible, harmful actions.

Following are some common elements identified by NGOs as contributing to the effectiveness of voluntary initiatives:

1. **Substance.** First of all, voluntary initiatives need to contribute to solving, not avoiding problems of environmental deterioration and social inequities. That is, they need to be substantive and the ideas and language need to be unambiguous, undiluted and meaningful.
2. **Incentives.** Voluntary initiatives require appropriate incentives to motivate industry to adopt and implement them.
3. **Integration/internalization.** Companies need to incorporate social and environmental values into their policies and operations. These values need

Beyond sticks and carrots, the solution to the problem of unsustainable and irresponsible business is the qualitative transformation of companies and the *nature* of business.

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<sup>1</sup> NGO Initiative: ISO 14000.

<sup>2</sup> Van Bennekom, Sander. *Green Business Policies: What to Do With It?* Groundwork Series No. 7, ANPED Working Group on Changing Consumption and Production Patterns, Netherlands Committee for IUCN, Amsterdam, December 1995.

to be integrated into companies' definitions and measurements of progress and success.

4. **Independent verification.** In order for companies to gain significant credibility among stakeholders, independent monitoring and verification is needed. Whether or not a voluntary initiative achieves its objectives, there remains the problem of whether the public believes it.
5. **Inclusiveness/public participation.** Throughout the comments by NGOs, inclusiveness or public participation was regularly cited as one of the important requirements as well as one of the prevalent weaknesses in many voluntary initiatives. NGOs stress the active participation of stakeholders, especially those in the communities directly impacted by a company's operations.
6. **Transparency.** Adequate and timely information about company products and processes need to be made available to the public to allow effective tracking and assessment.
7. **Accountability.** Where voluntary initiatives fall short, appropriate regulatory and civic mechanisms may be needed to complement or provide the necessary motivation to successfully follow through on the agreements made. In the long run, many voluntary initiatives require an enabling regulatory framework to succeed.

Responsibility will come when companies measure profit margins not only in terms of money but also in the good they provide the community and environment.

## Conclusion: looking closely at words and deeds

NGOs' skepticism of voluntary initiatives highlight three major problems:

1. lack of credibility due to lack of transparency and independent verification in reporting;
2. the practice of greenwashing, whereby companies focus more on changing public perceptions than changing their actual practices; and
3. the disservice and disincentive to responsible companies posed by the industry's protection of free riders.

Despite the rhetoric, most NGOs tend to view voluntary initiatives as an important contribution to sustainable development, recognizing that regulations can only go so far in getting companies to act responsibly. Most NGOs realize that beyond sticks and carrots, the real solution to the problem of unsustainable and irresponsible business practices is the qualitative transformation of companies and the nature of business itself. Such a change will come when companies fully internalize not only their externalized costs but also the values of sustainability, when they begin to measure profit margins not only in terms of money but also in the good they provide the community and environment.

Until that time, NGOs will maintain a healthy and understandable questioning of unverified claims of voluntary achievements. In turn, business and governments will hopefully move closer towards constructing a framework of policies and practices enabling voluntary initiatives to achieve their full potential as well as credibility. In this light, NGOs participating in the Sixth Session of the CSD have proposed a major groups review of voluntary initiatives, recommending that the CSD establish a process to review the effectiveness of voluntary initiatives for sustainable development. This review process would provide a focus and forum for ongoing dialogues on the role of business and industry in sustainable development, and would aim to provide CSD with recommendations on best practice models of stakeholder involvement, reporting, monitoring and verification, and for the progressive integration of voluntary agreements into comprehensive national strategies for sustainable development. With future CSD focus on sectors such as tourism, agriculture, energy and transportation, this review could help identify the actual and potential contributions voluntary initiatives in each. Such a process, if adopted and implemented, and indeed drawing upon multi-stakeholder/major groups participation, could help to bridge at least part of the credibility gap.

# NGO Speech to UN on Responsible Entrepreneurship

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Jagjit Kaur Plahe <sup>1,2</sup>

Good morning everyone. I would like to thank Chairman Habito, government delegates, and the CSD for providing the opportunity for this dialogue. This particular dialogue we feel is a major step forward in achieving the common goals that have brought us here today. As our contribution to this dialogue, I would like to highlight the following five points.

1. *"Responsible entrepreneurship" means taking the necessary risks to do the right thing - not just to earn profits but to benefit the rest of society and to sustain the health of the environment.*

Considering the dictionary definition of an entrepreneur as "one who organizes, manages and assumes the risks of a business," it is paradoxical that one of the major criticisms of business and industry is that risks are often externalized to the environment and society. We agree with the trade unions that responsible entrepreneurship "seeks to change the way things are done." However, there are major risks attached to changing business as usual -- both within companies and industries, and government as well. Nevertheless, responsible entrepreneurship, in order to promote sustainable development requires taking these risks.

Industry is not monolithic, but a complex community of different players. Industry is not simply the owners and CEOs, but also includes the workers, the shareholders, the consumers who make up the market, and the community of which each business is a part. Furthermore, there many different kinds of businesses -- with some sincere and responsible, others shrewd and irresponsible. It is a mistake to lump all companies into one stereotypical group, assuming they all think and act alike. Thus, we must give proper credit to the companies and individuals who take the necessary risks to do business in a way that serves communities and the planet. On the other hand, we also need to be able to see through the facade of companies (or public relations departments) which have learned the right words to mask bad habits.

"Responsible entrepreneurship" means taking the necessary risks to do the right thing.

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<sup>1</sup> Presented to the Commission on Sustainable Development 6th Session, United Nations, New York, for the NGO Working Group on Responsible Entrepreneurship and the NGO Taskforce on Business & Industry, April 21, 1998

<sup>2</sup> This presentation is not intended to represent the views of all NGOs, but only a number of NGOs participating in the discussions and writings in the production and follow-up to the paper "NGO Perspectives on Responsible Entrepreneurship."

Also, businesses may involve a range of different players, with some deserving credit for taking the risk of doing the right thing. This risk-taking behavior is (as the dictionary defines it) the essence of "entrepreneurship." To move beyond the motive of making money to the motive of making the world a better place is the essence of "responsible entrepreneurship."

*2. One of biggest obstacles in making voluntary initiatives work is a lack of credibility.*

Because voluntary initiatives have so often been paraded as a substitute for regulations, and also because they so often fail to live up to the positive publicity they are given, the public is naturally critical and suspicious. Credibility requires not only "proper reporting of the voluntary initiative's achievements and wide communication of these results"<sup>1</sup> but also reporting on the rest of the information essential to evaluating the effectiveness of those initiatives. Credibility also requires not only exploring "verification of adherence"<sup>2</sup> but independent verification of results. Discussions about sustainability are indeed "hampered by a lack of credible information" -- information that is not being voluntarily provided.

*3. Current corporate reporting and auditing practices need to be significantly improved.*

One weakness of many voluntary initiatives is an absence of useful information to the public. That is information necessary to determine to what degree that initiative actually achieves sustainability. One of the more controversial discussions within the business community is: How much information should be made public? This question has yet to receive a suitable answer.

Thus, the following topics need to be adequately addressed:

One of the biggest obstacles is a lack of credibility.

- a. Transparency: How transparent is the company in making information available to the public on its products and processes?
- b. Independent verification: To what degree can the public verify a company's movements toward sustainability? What mechanisms are available?
- c. Standardization: What kind of standards are appropriate for achieving environmental and social sustainability?

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<sup>1</sup> International Chamber of Commerce/World Business Council for Sustainable Development. "Responsible Entrepreneurship. Background Paper No. 1." Commission on Sustainable Development, 1998: Para. 4.

<sup>2</sup> Ibid, para. 4.

- d. Stakeholder involvement: To what degree are stakeholders involved in the development, implementation,
- e. monitoring, verification and evaluation of the initiatives?

*4. Voluntary initiatives cannot be a substitute for good environmental, labor and health laws and regulations -- and they can certainly not justify a neglect of basic human rights.*

Voluntary initiatives are meant to be an aid to companies and individuals to improve their behavior - not to be used as a justification for getting rid of regulations and hiding information about company practices from the public. Unfortunately, because of these abuses and mistakes, NGOs sometimes generalize and claim that "voluntary initiatives don't work" -- giving the impression that they do not recognize the positive steps and contributions some companies have made to further sustainability and human rights. Most NGOs would probably agree that companies should indeed be encouraged to voluntarily do the right thing, to improve their practices and to deepen their understanding of their responsibility to the community and society of which they are a part. As both NGOs and the trade unions agree: corporate responsibility cannot exist without accountability. Just as the behavior of individuals is guided by both personal moral codes as well as the laws of society, companies must also operate by regulating their practices according to a code of responsible conduct as well as the laws and regulations of the communities and societies to which they belong.

*5. To help establish credibility and identify the strengths and weaknesses of voluntary initiatives, we urge the CSD to support a Major Groups Review of their effectiveness.*

In order to get beyond generalizations and unsubstantiated claims about the specific strengths and weaknesses of different voluntary initiatives -- such as Responsible Care, ISO 14000, EMAS, the OECD Guidelines on Multinational Enterprises, the CERES Principles, and the UN Guidelines on Consumer Protection -- we need more than a three-hour dialogue, or even two weeks of discussions. Therefore, we urge governments to adopt the proposal for organizing a Major Groups Review of the Effectiveness of Voluntary Initiatives.

In particular this Review can contribute to each of the upcoming sectoral discussions at the CSD: in tourism, sustainable consumption and production, energy, transportation, food and agriculture, timber and land.

The equal partnership of Business and Industry, NGOs and Trade Unions in this review is essential. Industry has acknowledged the importance of "openness and responsiveness to public and stakeholder concerns" and "the need to seek out these concerns and to include them in its development policy."<sup>1</sup> NGOs and trade unions, in turn, have expressed the need to "monitor and assess corporate

Voluntary initiatives cannot be a substitute for good environmental, labor and health laws and regulations nor justify neglect of basic human rights.

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<sup>1</sup> Ibid, para. 42.

Conducting an evaluation of different voluntary initiatives would be a valuable contribution to each year's CSD session.

practice."<sup>1</sup> Thus, a Major Groups Review will provide not only a rich and balanced assessment of voluntary contributions to sustainable development and but also help to achieve greater credibility.

Conducting an evaluation of different voluntary initiatives -- combining the perspectives of industry, NGOs and workers -- would offer a valuable contribution to each year's CSD session. Furthermore, the overall exercise will provide an important implementation of the principle of partnership -- applied to a cooperative, comprehensive look at some of the proposed solutions to the problems of unsustainable production and consumption practices.

Obviously, these topics cannot be adequately defined or discussed within a seven minute presentation, nor can we hope to resolve some of the complicated questions which each of these subjects raise within the three hours allotted to the overall dialogue. However, we can use this time to find common agreement on the importance of addressing these questions and to point out a direction and perhaps methods for us to answer them.

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<sup>1</sup> International Confederation of Free Trade Unions/Trade Union Advisory Committee - OECD. "Responsible Leadership for Change. Background Paper No. 2." Commission on Sustainable Development, 1998: Para. 40 (c); also, NGO Taskforce on Business and Industry, *Minding Our Business: The Role of Corporate Accountability in Sustainable Development*, p. 3.

# Can Corporations Be Trusted?

## Towards a Multi-stakeholder Review of Voluntary Initiatives

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Jeffrey Barber<sup>1</sup>

### 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.<sup>2</sup> 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

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.

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<sup>1</sup> Submitted to Northern Lights, December 15, 1998

<sup>2</sup> 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."<sup>3</sup>

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."<sup>4</sup> 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."<sup>5</sup> 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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<sup>3</sup> Karliner, Joshua. *The Corporate Planet: Ecology and Politics in the Age of Globalization*. Sierra Club Books, San Francisco, 1997.

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

<sup>5</sup> 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.'"<sup>6</sup>

## *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.<sup>7</sup>

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.

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

<sup>7</sup> 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."<sup>8</sup> 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

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<sup>8</sup> 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..."<sup>9</sup>

## 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."<sup>10</sup>

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

<sup>10</sup> International Chamber of Commerce, *Geneva Business Declaration*, September 24, 1998.

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.

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)."<sup>11</sup> 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."<sup>12</sup> 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:<sup>13</sup>

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).

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

<sup>12</sup> Ibid.

<sup>13</sup> Korten, David. "The United Nations and the corporate agenda," June 1997.

## Towards a Multi-stakeholder Review of Voluntary Initiatives

"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."<sup>14</sup>

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."<sup>15</sup> We will see, in the months to come, how successful civil society's voice will be in penetrating that veil of silence.

NGOs need to recognize the importance of fighting for civil society's voice within the UN.

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<sup>14</sup> United Nations. *Agenda 21*, paragraph 27.8

<sup>15</sup> *Ibid.*