

**Thirty Years of Corporate Social Responsibility within the UN:
From Codes of Conduct to Norms**

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Abstract: *The UN has been a focal point for the debate on the role of transnational corporations (TNCs) in the international system during two junctures in time. In the 1970s the UN Center for Transnational Corporations (UNCTC) initiated extensive research and other activities on various aspects of TNC activity, including negotiations for a code of conduct for TNCs. Although the negotiations proved unsuccessful in reaching an agreement on the content of such a code of conduct, and the work of the UNCTC eventually was discontinued, the research was carried on within the UNCTAD. Some thirty years later there has been a revival of the issue of TNCs when the Sub-Commission to the UN Commission on Human Rights in the 1990s began the work that led to the proposal in 2003 for “norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights” (the UN Draft Norms). Work related to TNCs is also carried out within the UN Global Compact. The paper will discuss important aspects of these events, and, in particular, the role of UN in the development of corporate social responsibility as well as the effect of globalization on the work of the UN in this issue are.*

Introduction

The role of transnational corporations (TNCs) has been an issue in the international system since the 1970s both as creators of wealth as well as a more problematic “new” actor with growing power connected to negative aspects of their activities. Their importance can be seen in the sheer numbers, at present consisting of some 77 000 companies with about 770 000 subsidiaries, but also in turn over and number of employees of the largest companies and the influence on national economies following among other things from liberalization policies.

From the community of non-governmental organizations (NGOs) criticism has been put forward that the TNCs are abusing labour rights and also associated with human rights violations, often under the lable of corporate social responsibility (CSR).¹ Lately this has also concerned the responsibility for situations where TNCs have outsourced their production to sub-contractors. In the 1970s these concerns were expressed in various campaigns, including the anti-apartheid struggle with the question of the role of TNCs in South Africa and the Nestlé boycott and the effects in developing countries of the company’s marketing practices of breast-milk substitutes. In the late 1980s there was a new development with the establishment of new organizations directly targeting TNCs, which in the 1990s cascaded with the proliferation of both organizations and initiatives in the area of CSR.

Based on the arguments of the norm life cycle I see the developments from the 1970s as the growth of CSR as a new norm in the international system, with a norm emergence stage in the 1970s and 1980s, a norm cascade stage in the 1990s and an incipient norm internalization beginning as of recently. In the three stages different actors, motives and social process can be identified, were the norm emergence stage is dominated by norm entrepreneurs, motivated by ideational commitment and involved in a process of persuasion. In the next stage a norm tipping leads to a norm cascade when the advocated norm becomes more and more adopted by various actors. Now many different actors influence the process and consequently also different motives are at play, including legitimacy, reputation and esteem. The social process is now dominated by socialisation. In the final stage of norm internalization other agents are at work, such as law, bureaucracy and professions. The motives and social process involved in this stage are conformity and institutionalisation.

¹ There are many terms used to define the social responsibilities of TNCs, such as corporate accountability, corporate citizenship, the triple bottom line, etc. Some make a distinction between corporate social responsibility as voluntary responsibilities and corporate accountability as more formal binding responsibilities. I will here use corporate social responsibility as an overarching term to cover all terms used to define the issue of the responsibility of companies for social responsibilities delimited to human and labour rights.

The three cases at focus here, the UNCTC Code of Conduct, the UN Draft Norms and the UN Global Compact, concern situations where the UN has been the focal point of the discussion of the role of TNCs in the international system. They represent both reflections of and responses to the transformation of the international system we call globalization. The case of the UNCTC Code of Conduct manifest a situation where the international system is very much linked to the idea of sovereign states as the only or at least the most important actors dominated by the developed and former colonial countries. It is also linked to a situation with a previous successful norm life cycle of international labour rights. This situation begins to change with among other things decolonialization, the growing importance of new actors such as TNCs and NGOs, which leads to a questioning of the existing order.

I will in the following section discuss the three cases and conclude with a brief discussion of the implications of the development in each of the cases.

UNCTC Code of Conduct for Transnational Corporations

Important for the understanding of the development of a code of conduct within the UN is the fact that it was made in a situation where the (formal) institution of colonialism was being dismantled, but where remaining de facto elements of this institutional structure still was reflected in the UN Center for Transnational Corporations (UNCTC) Code. The rebellion of developing states against former colonial powers, with various initiatives in the UN (resolutions on e.g. the New International Economic Order, and the Economic Rights and Duties of States, creation of UNCTAD, and G77), the effects of the Cold War as well as the economic crises of the Bretton Wood institutions all affected the negotiations within the UNCTC. In spite of the aims of developing a code of conduct for TNC, the whole endeavour was mainly an intergovernmental affair focusing on regulating the relations between states and TNCs, in particular the role of the newly independent states, and less on the conduct of TNCs per se.

The immediate start for the creation of the UNCTC was a decision was made in 1972 by the UN Economic and Social Council (ECOSOC) to initiate actions "on the role of multinational corporations and their impact on the development process and on international relations".² The decision was prompted on the initiative of the Chilean government with reference to the so called ITT-affair revealed by the Washington Post the same year, where the US based International Telegraph and Telephone Corporation with the support of the US government had attempted "to plot against the 1970 election of the leftist Chilean President Salvador Allende, to set in motion a military coup and to create economic chaos in Chile."³

At the time, similar concerns on the development and international relations were noted in several UN resolutions passed on matters such as the permanent sovereignty over natural resources of developing countries, transfer of technology, foreign private investment in its relationship to development, the economic rights and duties of states, and export promotion.⁴ Concerns on TNCs had at the time also been raised in other parts of the UN, e.g. in the annual *World Economic Survey* for 1971 in relation to the international economic system following the breakdown of the Bretton Wood Monetary System, by the ILO at a conference in 1972 and by the UNCTAD⁵.

² ECOSOC Resolution 1721(LIII) adopted 28 July 1972, meeting 1836.

³ Sethi, 1974:102.

⁴ UN, 1972a

⁵ UN, 1972a:242; UN, 1972b:10; ILO, 1973

A Group of Eminent Persons consisting of 20 representatives of governments from both developed and developing (including socialist countries), the business sector⁶, and of academics, was appointed to carry out an initial study and put forward recommendations on future work. After having studied the issue,⁷ the group issued a report⁸ in 1974 recommending the ECOSOC to create a permanent machinery to deal with issues related to TNCs. The specific issues raised in the report concerned ownership and control, financial flows and balance of payments, technology, employment and labour, consumer protection, competition and market structure, transfer pricing, taxation and information disclosure and evaluation.⁹ In short, mainly issues of an economic nature. As a result, the UNCTC was created by the ECOSOC the same year.¹⁰ The issue of a code of conduct was given top priority, and an intergovernmental working group was established, scheduled to start working in early 1977.

International Regulation on Transnational Corporations in the 1970s

International standards related to TNCs in place at this time were the International Convention for the Settlement of Investment Disputes (adopted 1965), the OECD Convention on the Protection of Foreign Property (adopted 1967) and similar regulations adopted by individual countries. Host government's effort in developing countries to regulate or control TNCs on a regional level was Decision 24 (a common regulatory framework for foreign investments) of the Andean Pact for the Andean Common Market.¹¹ Together with the UN resolutions mentioned above, these were then the *appropriate standards* in place at the time and reveal a focus on the issue of investments and development in an era of decolonization and Cold War. During the course of the negotiations of the UN Code from the 1970s and onwards, other regulation followed. These standards were adopted prior or in parallel to the UN Code negotiations such as¹²

- the International Chamber of Commerce (ICC) Guidelines for Investment (1972),

⁶ Apart from this formal representation, a strategy group of a small number of corporations, including Nestlé, is said to have been created with the purpose of "infiltrating" the UN to ensure that its findings were not too critical (Chetley, 1986:46, citing Edwards, R. and Newens, S., *The Multinationals*, (London, 1979) pp. 12-16.). See also Baade, 1980:418.

⁷ By e.g. conducting hearings with representatives of corporations, governments, IGOs, NGOs (apart from trade unions, the NGOs concerned were the International Council for Social Welfare, International Organization of Consumers Union, and the International Chambers of Commerce), a US trade union The American Federation of Labour-Congress of Industrial Organizations (AFL-CIO), the World Federation of Trade Unions (the ICFTU was not called to the hearings) and Ralph Nader, a well-known US activist. Mostly from developed countries, but also this time, almost all men (UN, New York, 1974a).

⁸ UN, 1974b.

⁹ The employment and labour section concerned differentials in employment and wages, labour relations (respect of trade unions and trade union rights and bargaining matters) and labour standards (TNCs acting as spearheads of good labour practices), whereas consumer protection dealt with false and misleading publicity, price differentials of identical products, implications of differentials in consumption patterns, quality and safety. (UN, 1974b:74-82).

¹⁰ It can be noted that a new organization was seen necessary, when the ILO with its unique tripartite constitution probably could have undertaken the work. However, the ILO was seen as "politicised" (Landelius, 1968) with the re-entrance of the Soviet (also mobilizing other socialist countries) and the increasing number of membership of newly independent countries, with the consequence that the majority of the ILO membership being countries without free and representative labour market organizations. The US government left the ILO in 1977.

¹¹ UN, 1986.

¹² See Tharp, Paul A. Jr., "Transnational Enterprises and International Regulation: A Survey of Various Approaches in International Organizations", in *International Organization*, Vol. 30, No. 1 (Winter, 1976), p. 47-73, Baade, 1980:407-441 and UN, 1986.

- the ICFTU Charter of Trade Union Demands For the Legislative Control of the Multinational Companies (1975)
- the OECD Guidelines on Multinational Enterprises (1976),
- the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977),
- the UNCTAD Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (1980),
- the WHO International Code of Marketing of Breast-milk Substitutes (1981),
- the UN General Assembly adoption of international guidelines for consumer protection (1985),
- the Convention for the Establishment of a Multilateral Investment Guarantee Agency (MIGA, 1985), regarding insurance coverage for non-commercial risks associated with foreign investments.

Of the just mentioned regulations, only the OECD Guidelines (to a minor extent), the ILO Principles (focused on labour issues), and the later WHO Code (limited to a specific issue) represented the initial introduction of corporate social responsibility (CSR) issues into the international system. Furthermore, it can be noted that the OECD and the ILO regulations arrived just as the UNCTAD was about to start the negotiations on the UN Code, and could be seen as a positioning before these negotiations that were to begin. The same could perhaps also be true for the ICC Guidelines, although arriving already at the same time as the decision of the ECOSOC to take measures on TNCs.

Worth noticing here are also the first two central treaties on human rights¹³ adopted by the UN in 1966 (in force 1976), i.e. the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Of importance is also the adoption of the Convention on Racial Discrimination in 1965. The two conventions had initially intended to be one document; however, due to the disagreements between the US (supporting civil and political rights) and the Soviet Union (supporting the economic, social and cultural rights) two separate conventions were eventually developed. Thus, paralleled with the negotiations of the UN Code, the concept of human rights was introduced into the international system. Labour rights (also part of human rights) had of course already been introduced through the work of the ILO. In all, the ILO had adopted some 115 conventions on international labour standards by 1960; including most of the core ILO conventions (except for the one on child labour).

As can be seen from the overview of existing international standards at the time, they mainly dealt with TNCs in relation to economic matters, with some exceptions as in the case of the ILO Guidelines and the WHO Code that developed simultaneously with the UN Code negotiations. This focus on economic issues was also to be the case with the UN Code, as will be seen.

Trade Union Activity on the Issue

Although the formal decision to undertake activities on TNCs was a political decision by an IGO on a government initiative, i.e. the traditional view of the workings of the international system, the issue had been addressed outside of the UN system for some time. In the late 1950s foreign investments and development were important concerns on the International

¹³ Treaties on genocide (1948), refugees (1951, 1967) and racial discrimination (1965) had already been adopted. The European convention on human rights was adopted in 1950.

Federation of Free Trade Unions (ICFTU) agenda.¹⁴ An ICFTU study from this period¹⁵, however, also reveals a firm trust in foreign investments and the improvements that the final outcome of industrialisation would provide. There are only minor direct criticisms towards “foreign firms”¹⁶, e.g. that they are expected to give a lead (on the issue of low wages) and that previous investment had not been aimed at economic development but for the utilisation of minerals, raw materials and cheap labour and to develop transport and communication only for this purpose and not for the benefit of the society as a whole.¹⁷ However, a more active work on issues concerning TNCs was to begin in the late 1960s¹⁸.

One of the international trade secretariats, the International Metalworkers’ Federation (created in 1893), and the US national trade union the United Automobile, Aerospace and Agricultural Implement Workers¹⁹ had also started working on the issue of TNCs in the 1950s.²⁰ Their views were less optimistic due to the growing concern among US workers for the loss of jobs when production started to move to low-wage countries (although creating new jobs for developing country car industry workers). In spite of this, the International Metalworkers’ Federation saw the need for adopting an “enlightened attitude” to structural changes and recognition of free trade (not least for the developing countries that might otherwise start trading with communist countries). However, not at the expense of the workers involved. Exploited labour and trade liberalization in general were seen to undermine the living standards of all workers; the need to induce a sense of obligation and responsibility in investment policies was identified as a counter measure in order to prevent “economic cannibalism” and for workers to be moved around like “chessmen”.²¹ Individual car industry workers in developed countries, experiencing the concrete effect of structural changes, thus, called on their trade unions to act. At the same their trade union representatives were constrained by a support for free trade and “containment” policies limiting the choice of action.

The strategy chosen by the International Metalworkers’ Federation to counteract the powers of TNCs was to create world company councils for international collective bargaining purposes. The first councils were established in 1966 at Ford Motor Company and General Electric.²² Other international trade secretariats were to follow this initiative, such as the international chemical and general workers and the international food workers’. However, these councils did not turn out successful, among other things due to the reluctance of national trade union to give up power, counter-attacks by journalists and academics, and tensions

¹⁴ ICFTU, 1959a. The ICFTU was created in 1949 when trade unions of Western countries within the World Federation of Trade Unions (WFTU, created in 1945) broke off. They considered WFTU a communist organization, as the national trade unions of the socialist countries were not seen to be independent of their home governments. (Trade Unions of the World, 2001; van der Linden, 2000). The American Federation of Labor (AFL) had already from the start been opposed to the formation of WFTU after the Second World War for fear of communist influence, but the British Trade Union Committee (TUC) with the support of the US Congress of Industrial Organizations (CIO) carried out its plans and created the WFTU. AFL and CIO later merged.

¹⁵ ICFTU, 1959b.

¹⁶ The term TNC is not used.

¹⁷ ICFTU, 1959b:70.

¹⁸ Gumbrell-McCormick, 2000a:377.

¹⁹ The creation of the UAW (in 1935) is closely linked to the history of the American Left, which contributed to its formation and activities. This influence diminished by time and especially under the leadership of Walther Reuther (also leader of the CIO and vice-president of the ICFTU), who was the first to comply with the US Taft-Hartly Act and its anti-communist affidavit provisions concerning trade unions. The Left influence, however, still broke through on issues such as the support for collective bargaining in the 1950s and 1960s, civil rights legislation and the opposition to the Vietnam War (Buhle, 1992).

²⁰ Trade Unions of the World, 2001; Gumbrell-McCormick, 2000a:377. Including conferences on world trade, studies of steel companies and proposals for international fair labour standards.

²¹ The International Metalworkers’ Federation Bulletin, 1959, 1960, 1961, 1962.

²² Gumbrell-McCormick, 2000a:379.

within the world labour movement (between anti-communist and communist influenced unions in the same workplace). It has been pointed out that it was not accidentally that these councils emerged in the car industry, being a highly concentrated, capital intensive, and unionized industry as compared to e.g. the textiles and clothing industry, even though the latter also attempted at similar activities²³. The latter industries have only lately received attention, partly through the activities of NGOs such as the Clean Clothes Campaign established in 1990s to address labour conditions in the garment and sportswear industry.

In 1968 the ICFTU made a statement to the ILO calling for the first time for a study on the social aspects of the operations of multinational companies.²⁴ The ICFTU appear to have been influenced by the activities of the International Metalworkers' Federation and other international trade secretariats to take a somewhat stronger stand on the issue of TNCs but also to gain control of the trade union activities in this issue-area. In a joint statement following an international conference in 1971 an appeal was made to the trade union movement to intensify activity in international and regional organizations for the adoption of an international agreement on a code of conduct²⁵. This statement is followed by an address by the ICFTU to the Third Session of UNCTAD in Chile in April 1972 (one month after the ITT affair had been known), the tone regarding TNCs is this time more confrontational.²⁶

It is evident from what has just been discussed that trade unions played an important role in advocating international action on the issue of TNCs prior to the actual decision of ECOSOC. A change of motives in ICFTU activities from the late 1950s on the issue of TNCs can also be seen, where an initial optimism on industrialisation and foreign direct investment (FDI) was later accompanied by also other considerations.

Issues and Differences in the Formulation of the UN Code

The negotiations of the UN Code were primarily a governmental process, where the differences in perspectives and motives between the countries would show to be considerable. Two purposes were given for the development of the UN Code: the positive role of TNCs for development in both developed and developing countries, and the need to formulate guidelines to control TNC activities²⁷. Thus, the UN Code was to simultaneously be about prescribing standards of conduct (seen as the main objective of the code by developing and socialist countries) as well as principles for the treatment of TNCs (the main objective according to the developed countries). These purposes were stated as follows by the UN:

“further the understanding of the nature of transnational corporations and of their political, legal, economic and social effects on home and host countries and in international relations, particularly between developed and developing countries; to secure effective international arrangements aimed at enhancing the contribution of transnational corporations to national development goals and world economic growth while controlling and eliminating their negative effects; and to strengthen the negotiating capacity of host countries, in particular the developing countries, in their dealing with transnational corporations.”²⁸

The overall concerns shared by most countries were that, although there had been an increasing internationalisation of economic activity, this had not been followed by a

²³ Gumbrell-McCormick, 2000a:381.

²⁴ ICFTU, 1968:34; ICFTU, 1970:14. The American Federation of Labor-Congress of Industry Organization leaves the ICFTU in 1969.

²⁵ ICFTU, 1970:38.

²⁶ Address by Mr. Heribert Maier, Assistant General Secretary of ICFTU to the Third Session of the United Nations conference on Trade and Development, Santiago, Chile, April 24th, 1972.

²⁷ UN, 1986:1.

²⁸ UN, 1986:ii.

development of an international regime of standards concerning foreign direct investments (FDIs) as there had been for trade, money and finance (as with the establishment and activities of the General Agreement on Trade and Tariffs and the International Monetary Fund). When it came to more specific issues, however, there was less of agreement. The *developing and socialist countries* were mainly concerned with issues on tax evasion, restrictive business practices, illicit payment, and abusive transfer pricing, to achieve consistency with national laws, disclosure of information, environmental and consumer protection. This was seen necessary to increase the flows of capital to developing countries. From the *developed countries* (often both home and host countries at the same time) the idea was to obtain a favourable climate for FDIs as a means of advancing and promoting economic development. This was to be achieved by standards of fair and equitable treatment of TNCs *as well as their conduct*.²⁹

Almost 10 years after the work on the UN Code had started, there were still a number of key issues unsolved. The draft of 1986 consisted of six main areas³⁰, and contrary to what perhaps might be expected, the most controversial area was not the *activities and conduct of TNCs*³¹ (agreement existed on most provisions, except on the exercise of permanent sovereignty of natural resources and wealth), but the legitimacy in *the treatment of TNCs* by host countries. This concerned issues such as nationalization of property and compensation, “national treatment”, and jurisdiction. The developed countries wanted to see a flexible provision, so that the general national treatment standard could be waived when necessary, whereas the developing countries referred to the importance of the sovereign discretion of each individual country. The issue of free transfer of earnings and other payments also caused disagreement; host governments being unwilling to give up their power to regulate the use of foreign exchange resources. The most difficult issue concerned nationalization and compensation³², i.e. whether the standards of compensation should be explicitly stated in the UN Code and if, in particular, international law should govern this process (the view of the developed countries).³³ The intended code of conduct for TNCs, thus, seemed to have turned into a code of conduct for host countries, developing countries in particular.

Unsurprisingly, the efforts of the UNCTC never led to the establishment of an international code of conduct and the UNCTC was eventually dissolved in 1992 and the work on TNCs continued in another form under the UNCTAD Division on Investment, Technology

²⁹ UN, 1986:2. In the ILO conference of 1972 mentioned earlier, five strands can be identified among the participants (an almost complete domination of men and developed country representatives): the diplomatic but cautiously TNC positive *developed country governments*, the TNC hostile *socialist country governments and socialist worker representative*, concern over conflict between national policies and remote control of TNCs of *developing country government*, generally positive attitude to TNCs of *developed and developing country employers*, and the TNC critical (while admitting their beneficial contributions) *developing and developed country workers representatives*. (ILO, 1973)

³⁰ UN, 1986:7-24.

³¹ Issues concerning national sovereignty (and issues related to the effects of decolonialization), human rights, antiapartheid and the occupation of Namibia, non-interference in internal affairs or in intergovernmental relations and corrupt practices. Also economic, financial and social issues (e.g. ownership and control, balance of payments and financing, transfer pricing, taxation, restrictive business practices, transfer of technology, consumer protection, and environmental protection, disclosure of information).

³² UN, 1986:20.

³³ The reference to international law in general, and whether the international law reflected the changes in the composition of the international system (after the decolonialization) created further disagreement. The developing and socialist countries accepted treaties and conventions (as they were binding to the signatories), but not customary international law. The latter, being developed by the OECD countries and therefore unrepresentative of developing countries views and practices (most of them under colonial rule when developed). International obligations meant different things to different governments. The disagreement on international law in combination with the issue of jurisdiction (UN, 1986:22), of states over TNC, and of corporate law in an international setting, further complicated the matter.

and Enterprise Development³⁴. This should be viewed in relation to the initiatives of the Sub-Commission in 1994 that led to the UN Draft Norms and of the UN General Secretary Kofi Annan to launch the UN Global Compact in 1999 occurring only a few years later.

The UN Draft Norms

Some thirty years after the establishment of the UNCTC a proposal by the UN Sub-Commission on the Promotion and Protection of Human Rights (the Sub-Commission) in 2003 of Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights (UN Draft Norms) has attracted much attention.³⁵

The UN Draft Norms represent a wide-ranging set of principles that covers the responsibilities of companies in areas regarding equal opportunity and non-discriminatory treatment, right to security of persons, rights of workers, respect for national sovereignty and human rights, consumer protection, environmental protection of human and labour rights. It also includes provisions regarding implementation involving reporting and monitoring, as well as responsibility for states to provide legal and administrative mechanisms for this purpose. This initiative resembles that of the UNCTC in that it attempts to construct an international instrument at the UN level to regulate TNCs, but both the content and the context differs significantly on several aspects as will be seen in the discussion below.

Background to the Development of the Norms

The work on the UN Draft Norms was formally initiated in 1997 when the Sub-Commission established a sessional working group to examine the activities and working methods of TNCs.³⁶ However, this was not the first time that the Sub-Commission or the Commission on Human Rights (the Commission) had raised the issue of TNCs. It had been a concern in the work of the Sub-Commission dating at least as far back to the late 1980s and early 1990s. During this period various issues in relation to TNCs were brought up in the meetings of the Sub-Commission, with a majority of the concerns related to the effect of issues such as privatization and investments, the role of TNCs in society, and whether they should be brought to compensate for negative effects or if regulated in general. Other matters concerned the right to development and self-determination in relation to natural resources and cultural intellectual property rights, as well as more specific areas regarding media monopoly and the export and dumping of waste. Those seen as exposed to the negative effects of TNC activity are often the indigenous peoples, groups that had been an important focus in the work within the UN also in the previous decades. The indigenous peoples NGOs were in majority of the NGOs bringing up these issues in the Sub-Commission, but also the members of the Sub-Commission were quite active and thus shared the views of many of the NGOs present on this point.³⁷

The work concerning indigenous peoples had begun already in the early years of the UN, but this work had progressed slowly. During the late 1950s to early 1980s the ILO had taken the initiative in this area through the adoption of conventions addressing these issues (in particular No. 107 and 169). The contentious issues involved were questions of self-

³⁴ UN, 1993.

³⁵ E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003

³⁶ Sub-Commission resolution 1998/8, 20 August 1998.

³⁷ See the following documents of the Sub-Commissions work, e.g. Summary Record of 31st Meeting, E/CN.4/Sub.2/1992/SR.31, 31 August 1992, para. 25 ff, Summary Record of 26th Meeting, E/CN.4/Sub.2/1992/SR, 31 February 1993, para. 21 ff, and Summary Record of 22th Meeting, E/CN.4/Sub.2/1993/SR, 26 August 1993, para. 93 ff.

determination, access and control of land and natural resources, collective property rights, and compensations. Similar to the issues present in the negotiation of the UNCTC Code, but at that time the parties in the disagreements were mainly developed and the (often newly independent) developing states. With the latter making the claims of the right to development and self-determination, which contributed to the difficulty of simultaneously raising the issue of indigenous peoples rights that might undermine the claims of developing country governments. However, in the 1980s the UN begins addressing the issue more actively by appointing a special working group, and the drafting of a declaration.³⁸ A large study regarding the discrimination of indigenous peoples presented in 1984 (the so called Cobo study), where TNCs are mentioned in relation to various issues, but only explicitly pointed out as a problem in connection to the question of land.³⁹ There was at this time consequently no particular focus on TNCs. The Sub-Commission also addressed the issue and were in contact with the UNCTC in its last years of existence to ask for studies⁴⁰ on the impact of transnational investments on indigenous peoples.

The issue of indigenous peoples had thus been an important concern in the work of the Sub-Commission and this was partly present when the Sub-Commission in 1994 adopted a resolution on “Measures Towards the Full Realization of Economic, Social and Cultural Rights”.⁴¹ This was made within a context of concern for issues regarding developing countries problems to realize economic, social and cultural rights, economic adjustment policies arising from debt, extreme poverty, human rights, environment, right to development, and adequate housing. In the resolution that covers several issues, among other things the international financial institutions (the World Bank, the IMF and the WTO), only the last paragraph requests the Secretary-General to prepare a study on the relation between human rights and TNCs.⁴²

Although touching upon issues relevant to indigenous peoples, they are here no longer specifically targeted; instead there is a more general emphasis on development and on the international financial institutions to consider human rights in their programmes. TNCs are not even a major concern at this point, apart from the brief mentioning in the last paragraph of the resolution. This stands in contrast to the focus on TNC that was to emerge later. In the years between the 1984 so called Cobo study and the decision in the 1997 resolution to establish a working group there had thus been a major shift towards a clear focus on TNCs, but also down play the indigenous peoples in the issue.⁴³

³⁸ Adopted by the Sub-Commission in 1993 and by the Commission in 2006.

³⁹ Martínez Cobo, José R., *Study of the Problem of Discrimination Against Indigenous Populations, vol. 5: conclusions, proposals and recommendations*, United Nations, Sub-Commission on Prevention of Discrimination and Protection of Minorities, (New York, 1987). The declaration referred to is the Declaration on the Rights of Indigenous Peoples.

⁴⁰ The Sub-Commission’s first resolution mandating the studies made by the UNCTC was made in 1989 (Resolution 1989/35) and the UNCTC presented four reports, the last in 1994 (Discrimination against Indigenous Peoples: Transnational investments and operations on the lands of indigenous peoples. Report of the Centre on Transnational Corporations submitted pursuant to Sub-Commission resolution 1990/26, E/CN.4/Sub.2/1994/40, 15 June 1994)

⁴¹ Sub-Commission resolution 1994/37.

⁴² Sub-Commission resolution 1994/37.

⁴³ The Sub-Commission resolution 1995/31 for the first time specifically addressed TNCs is entitled the “Relationship Between the Enjoyment of Human Rights and the Working Methods and Activities of Transnational Corporations”, adopted 24 August 1995. The Sub-Commission report presented the following year was entitled “The Realization of Economic, Social and Cultural Rights: The Impact of the Activities and Working Methods of Transnational Corporations on the Full Enjoyment of All Human Rights, In Particular Economic, Social and Cultural Rights and the Right to Development, Bearing in Mind Existing International Guidelines, Rules and Standards Relating to the Subject-Matter”, E/CN.4/Sub.2/1996/12, 2 July 1996.

This can be seen as reflection of or a response to the influence of the increasing attention given to the effects of globalization and in particular the role of TNCs. Another more immediate reason why the Sub-Commission established a working group and began this work is the fact that the Commission did not, in spite of an explicit request from the Sub-Commission. After receiving two reports that it had requested on the issue of TNCs,⁴⁴ the Sub-Commission in 1996 called for the establishment of a working group by the Commission and attached the mentioned reports. However, although taking note of the receipt of the reports and the resolution,⁴⁵ the Commission did not follow the recommendations by the Sub-Commission. Instead the Commission adopted a resolution in very general terms on the realization of economic, social and cultural rights and the problems of developing countries without any reference to the resolution by the Sub-Commission nor specifically mentioning of TNCs.⁴⁶

Apparently the proposal by the Sub-Commission did not sit well with the opinion of the Commission, being composed of country representatives with different interests to consider in comparison with the expert composition of the Sub-Commission (elected on their personal capacity). The members of the Sub-Commission were thus “free” to address the issue without having to take other considerations. The uninterest of the Commission did not discourage the Sub-Commission which in 1998 established a working group of its own and began working. Fairly soon the working group decided that the mandate of the working group also should include the drafting of the so called UN Draft Norms.⁴⁷

Support and Resistance to the UN Draft Norms

The initial intention of the working group was to construct a legally binding document, although there was an understanding within the group that this was not feasible at the time. Instead, the working group decided that the proposal would be constructed so as to be

“Implemented as soft law, the Norms could be similar to many other UN declarations, principles, guidelines, standards, and resolutions which *interpret existing international law and summarize practice* without reaching the status of a treaty.”⁴⁸

In spite of this pragmatic stance, however, the UN Draft Norms attempted to achieve something more than the above stated UN instruments. It aspired to make an interpretation of international human rights law and practice that considered the changing context of globalization. In the preamble to the UN Draft Norms this intent is in fact also stated

“Noting also that new international human rights issues and concerns are continually emerging and that transnational corporations and other business enterprises often are involved in these issues and concerns, such that further standards-setting and implementation are required at this time and in the future.”

Although, the intent was not to create a binding treaty, the general provisions of the UN Draft Norms do contain provisions of implementation that assigns explicit obligations on companies, states and the UN. TNCs “shall adopt, disseminate and implement internal rules”,

⁴⁴ Reports of the Sub-Commission, E/CN.4/Sub.2/1995/11, 24 July 1995 as well as E/CN.4/Sub.2/1996/12, 2 July 1996.

⁴⁵ E/CN.4/Sub.2/1997/110, 31 January 1997. Written support for the Sub-Commission resolution 1996/39 is made by the Human Rights Advocate (an NGO with consultative status to the Commission), E/CN.4/1997/NGO/48. A draft resolution adopting the Sub-Commission resolution 1996/39 is also put forward (but not adopted by the Commission) by Cuba, Iran, Morocco, and Nigeria, E/CN.4/1997/L.44, 7 April 1997.

⁴⁶ Commission resolution 1997/17, 11 April 1997.

⁴⁷ Sub-Commission resolution 1998/98, 20 August 1998. See also Weissbrodt and Kruger, (2005), p. 322.

⁴⁸ Weissbrodt and Kruger, (2005, p. 325). Footnotes in the original text have been omitted. Section in italics added by the author.

“periodically report on and take other measures” and “apply and incorporate these Norms in their contracts or other arrangements and dealings”, and “be subject to periodic monitoring and verification by United Nations, other international and national mechanisms already in existence or yet to be created”. They are also to “provide prompt, effective and adequate reparation to those ... adversely affected”. States are expected to “establish and reinforce the necessary legal and administrative framework” to ensure the implementation of the Norms as well as other relevant law.

Thus in spite of not attempting at constructing a legally binding treaty the proposal represents a bold attempt by the working group and the Sub-Commission at extending or reinterpret the traditional boundaries of the responsibility for human rights. Although the UN Draft Norms only claimed to represent a restatement of already existing direct and indirect legal responsibility for companies in the international law.⁴⁹ The conviction of the benefit of the project was not shared by the Commission. In a unanimous decision it made clear that although the issue of the responsibility of TNCs was an important one, the UN Draft Norms has no legal standing and that the Sub-Commission was not to perform any monitoring.⁵⁰ This was a clear signal to the Sub-Commission that it had acted on its own in presenting the UN Draft Norms and that they were not to proceed in this direction.

The work on the UN Draft Norms were conducted so as to involve consultations during the process, and there were seminars held at two occasions (in 2001 and 2003) as well as widespread dissemination of the various drafts for providing the possibility of external groups not attending the seminars to present their opinions. The participants in the first seminar included NGOs with an interest in the issue area at question, business representatives and scholars. The second seminar was organized by a number of NGOs that presented their comments on the UN Draft Norms and which were responded to by the working group in charge of the drafting.⁵¹

The reaction to the UN Draft Norms has been quite strong, creating a division mainly between those generally in support of the norms (NGOs in general) and those against (such as the large business associations). However, not all in the business community share the views of the latter group. In 2004, the French based retailer Carrefour, and to my knowledge so far the only company, expressed their public support for the UN Draft Norms.⁵² Also a NGO made up of a membership of companies (called partners), the International Business Leaders Forum, has voiced their support for the UN Draft Norms. If this statement includes the opinions of the individual partner companies of the International Business Leaders Forum is not clear, some of them are also members in the International Chamber of Commerce (ICC) and the International Organization of Employers. Another group of companies involved in the Business Leaders Initiative on Human Rights (BLIHR) have expressed a cautious statement in favour of the UN Draft Norms.⁵³ BLIHR is an initiative of initially seven companies (today there are 13 companies in the initiative), chaired by former UN High Commissioner of Human Rights and President of Ireland Mary Robinson. BLIHR have agreed to “road-test” the UN Draft Norms. I will here only mention the content of some of the critical voices.

⁴⁹ Weissbrodt and Kruger, 2005:328. Weissbrodt was a member of the Sub-Commission working group involved in the drafting.

⁵⁰ Commission resolution 2004/116.

⁵¹ Weissbrodt and Kruger, 2005.

⁵² Carrefour, Communiqué de Press, Le 14 novembre 2005, “Carrefour s’engage en faveur des normes de l’ONU sur la responsabilité des entreprises en matière de droits de l’Homme”, and Groupe Carrefour, Sustainability Report 2005. The French retailer is also cooperating with the International Federation of Human Rights (FIDH) to improve the working condition of the Carrefour sub-contractors.

⁵³ BLIHR, Submission to the Office of the UN High Commissioner for Human Rights relating to the “Responsibilities of transnational corporations and related business enterprises with regard to human rights”, 28 September 2004.

Among the more notable critics are the ICC and the IOE, who presented their argument in a joint statement.⁵⁴ The ICC had previously stated partly similar arguments in occasion with the release of the *EU Green Paper* on CSR in 2001,⁵⁵ at that time with arguments of duplication of already existing initiatives, the issue being the responsibility of governments, cultural and other differences between countries and that voluntary activities of corporations were already undertaken in this area. With regard to the EU Green Paper the ICC stressed the role of corporations as that of “responsible entrepreneurship” for the advancement of sustainable development and the providing of resources to “meet social and environmental challenges”. This is better done by “example”, encouragement and debate than by government regulation. Here the argument is that CSR is seen as a global issue in need of a global approach and not at a regional level.

There are similarities to the opinions of the ICC on occasion of the EU initiative on CSR seen in its submission on the UN Draft Norms, although now stated somewhat differently. The main theme in the critique of the UN Draft Norms concerns the issue of TNCs being made responsible for the actions of foreign governments (human rights is the responsibility of governments) and in doubtful context. However, the argumentation is more accommodating this time. In the critique of the EU initiative the central argument is that non-binding and voluntary initiatives already developed and implemented by the corporations themselves, such as the UN Global Compact, the OECD Guidelines and the Global Sullivan Principle. These are favoured against the “legalistic approach to human rights” of the UN Draft Norms that even may be counterproductive and provoke a negative response from business. Voluntary initiatives can instead bridge “cultural diversity within companies” and enhance “awareness of societal values and concerns” through “persuasion and peer pressure rather than prescription”. The arguments in relation to the UN Draft Norm concern a support for voluntary versus binding regulation, rather than the argument in support of global versus regional solutions made in relation to the EU.

Also other business associations have criticised the UN Draft Norms with similar arguments. The United States Council for International Business (USCIB) refers to the “legal and practical limitations faced by any non-state actor.” and calls for the Commission on Human Rights to

“help advance the discussion by clarifying the legal issues, by providing an objective assessment of the opportunities and limitations of business efforts to promote respect for human rights, and by establishing an open and constructive dialogue with the global business community.”⁵⁶

In a similar vein can one see the statement by the Confederation of British Industry (CBI) where the organization “strongly support the Commission’s explicit statement in Decision 2004/116 (c) that the Sub-Commission’s draft norms have no legal standing & that monitoring of them should be formed.”⁵⁷ Once again the emphasis is clear, binding regulation are to be avoided. It is not the responsibilities of TNCs as such or the boundaries of these that are in focus, rather that they are voluntary.

Although the proposal of the UN Draft Norms by the Sub-Commission to the Commission was not adopted, it resulted in the decision by the Commission to study the scope and legal status of existing initiatives and standards. The result of the study was to be the basis for the identification of outstanding issues in order for the Commission to be able to

⁵⁴ ICC and IOE, 2003.

⁵⁵ ICC, 2001.

⁵⁶ USCIB, “Submission to the High Commissioner for Human Rights for the report on the “Responsibilities of transnational corporations and related business enterprises with regard to human rights”” (undated).

⁵⁷ CBI, Submission by the CBI on the UN Norms, “Request from the Office of the UN High Commissioner for Human Rights”, 4 August, 2004.

look at different options regarding standards for companies. Once again a study was presented to the Commission where a number of existing initiatives (including the UN Draft Norms) were dealt with as well as the outstanding issues, together with recommendations among other things that the responsibilities of human rights needed further clarification but also stating that the benefits of the UN Draft Norms were worth studying more closely. This was seen of particular interest since the UN Draft Norms had been the object of “road-testing” by the participants in the Business Leaders Initiative on Human Rights (BLIHR).⁵⁸ The report thus expressed a subtle support for the UN Draft Norms.

As a result of the study the Commission requested the Secretary General to appoint a Special Representative on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, to try to solve the many thorny issues involved. Not least the divide that had arisen among the supports and those against the UN Draft Norms.⁵⁹

In 2007 the Special Representative presented his final report, which is more moderate than the interpretation of the direct and indirect legal responsibilities that can be drawn on the present international law made by the Sub-Commission. Only in the area of international crimes (serious human rights violations such as genocide) was there according to the Special Representative a clear development towards the extension of liabilities on companies. This means that there still remained “protection gaps” for the human rights of individuals and “predictability gaps” for companies uncertain of the “verdicts” of public opinion in such situations. It was also pointed out that states had not fully taken advantage of their possibility to legislate nationally in this area regarding the responsibility of the acts of non-state actors in foreign countries. There was also a discussion on the clarification needed of the concepts of “sphere of influence” of companies and of “shared responsibility” between states and companies, concepts that have evolved with the grey areas involved in soft law initiatives that represent a new development in international law.⁶⁰

The Special Representatives will present his final views and recommendations in 2008 and for the present the future of the UN Draft Norms is uncertain. One reason for this uncertainty is that, in spite of the appointment of a Special Representative the Sub-Commission did not end its work on the issue and the working group that had been in charge of the drafting continued working. In 2007 the Sub-Commission once again decided to put forward the UN Draft Norms proposal, this time to the new human rights body the Human Rights Council.⁶¹ One may suppose that the different structure and composition of the Human Rights Council body compared to the Commission of 2003 might have led the Sub-Commission to perceive it as more favourable towards the UN Draft Norms.

Voluntarism and the UN Global Compact

More or less simultaneously to the work of the Sub-Commission on the UN Draft Norms, the UN Global Compact (UNGC) initiative developed. The UNGC was formally launched in 2000, but had already been brought to the attention of the business community through the call made upon business in a speech by the former Secretary General to the UN, Kofi Annan, at the World Economic Forum meeting in Davos, Switzerland in 1999.⁶² The speech called

⁵⁸ Commission resolution 2004/116 and report E/CN.4/2005/91, 15 February 2005.

⁵⁹ Commission resolution 2005/69, 20 April 2005.

⁶⁰ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/4/35, 19 February 2007.

⁶¹ Sub-Commission resolution 2006/7, 24 August 2006.

⁶² UNGC, “Secretary-General Proposes Global Compact on Human Rights, Labour, Environment, in Address to World Economic Forum in Davos”, Press Release SG_/SM/6881, 1 February 1999. The speech at World Economic Forum was the third time the UN General Secretary Kofi Annan was in contact with the organisation since he took office in 1997 to expressing ideas of creating a partnership between the UN and the private sector.

for business to cooperate with the UN in order to give “a human face to the global market.” and expressed concern about economic globalization that, although being “a fact of life”, societies and political systems no longer had a say in its development and even more so experienced difficulties from its effect. Participation in the UNGC was at the time include the support and implementation of core values regarding human rights, labour and environment based on already established international standards including the UDHR, those of the ILO and following the UN Conference in Rio on the environment.

Content and Gradual Formalization

In the speech to the World Economic Forum in 1999 the Secretary General Kofi Annan rejected the idea of putting restrictions on trade regimes and investment agreements, although at the same time expressing support for the concern that such claims were based on. As such the statement represents a clear support for free trade, market economy and capitalism, or in other words the existing order. However, to preserve this order, which was not bringing benefits to every one – contrary to the mainstream argument, it was needed to restore the harmony between the “economic, social and political realms”. Kofi Annan implicitly gives the business two choices (although presented as a problem for the international community as a whole), 1) to encourage States to develop international policies within the multilateral institutions, or 2) take action in their own corporate sphere. In practice this meant a choice between binding or voluntary regulation. If business chose the second alternative, the UN was there to offer its support. For those inclined to minimal interference in business operation, this represented a dilemma with a choice between the least harmful alternative.

The basic idea of this initiative consisted of creating a UN-sponsored platform, where the UN would act as a facilitator for dialogue and action. The emphasis on constructive participation is particularly stressed in the early years, future participants are asked to “recognize that a non-confrontational approach is conducive to arriving at solutions to the social challenges of globalization.”, thus leaving outside of this network the more critical voices. Within this framework, business, together with a number of UN agencies,⁶³ representatives of labour and civil society were given the task to explore ways that companies could take responsibility for (within their spheres of influence) the development of globalization in order for it to benefit all people. The core values of the UNGC were formulated in nine principles relating to human rights, labour rights and the environment (a 10th principle on corruption has been added later),⁶⁴ that companies joining the UNGC had to commit to formally by sending a letter to the UNGC. Furthermore, companies were initially requested to post activities in the area on the UNGC website once a year and to participate in partnerships with UN organizations in activities to advance the content in the principles.⁶⁵ Participation in the UNGC allows for the use of the UNGC logo under certain conditions.

The commitment to the UNGC does not include any monitoring, but as of 2003 the participating companies are now requested not only to *share* their activities but to submit a *report* on their activities relating to the UNGC principles. This is called Communication on

At the launch in 2002, 50 companies were present (UNGC, “Issues Relating to the Global Compact”, Internet website <www.un.org/partners/business/gcevent/press/whatis_hd.htm>, 10 October 2002).

⁶³ As of 2007 they include the Office of the High Commissioner for Human Rights, the UN Environment Programme (UNEP), the ILO, the UN Development Programme (UNDP), the UN Industrial Development Organization (UNIDO), and the UN Office of Drugs and Crime (UNODC). This leaves out some more, if not the most, important IGOs in this context, notably the WB, the IMF and the WTO.

⁶⁴ Referring to the OECD Convention on Corruption.

⁶⁵ UNGC, “Issues Relating to the Global Compact”, and “Overview”, Internet website <www.un.org/partners/business/gcevent/press/whatis_hd.htm>, 10 October 2002. Quotes from “Issues Relating to the Global Comjpac”.

Progress and the reports provided are accessible on the UNGC website. Although there is no monitoring of the activities of the companies by the UN, a mild form of sanction has hereby been introduced. Participants that do not report receive a change of status in their participation in the UNGC, i.e. from active to non-communicating and from non-communicating to inactive if they continue to omit reporting. This means that the UNGC does not expel any member of the UNGC for not fulfilling the reporting requirements. However, the companies that are “non-communicating” or “inactive” are listed publicly on the UNGC website and their use of the UNGC logo is restricted or not permitted respectively. Those reporting can of course be found on the UNGC website.⁶⁶

Here the UNGC through a strategy of transparency and disclosure of information actually comes close to the “naming and shaming” strategies used by some activists. It is worth noting that the UNGC furthermore publicly lists participants that according to the UNGC are undertaking measures that can be of guidance to others, i.e. they represent best practices. These companies become role models for other to follow demonstrating in practice the appropriate standards to conform to.

Linkage to Other Initiatives

The requested reporting of UNGC participants is not prescribed to follow a specific format, but the UNGC encourages companies to use the reporting guidelines of the Global Reporting Initiative (GRI), the so called G3 Guidelines.⁶⁷ This follows from the strategic alliance that the UNGC entered into with the GRI in 2006. For companies that do not use the G3 Guidelines there is a handbook to advise the companies on how to proceed.⁶⁸ Here we can see the joining together of two voluntary initiatives that both on their own have been successful in attracting quite a number of participants in a fairly short time. The initiatives can benefit from each other and be strengthened, but also leads to a formalization of the UNGC as the initial UNGC general principles are given substance through both the OECD and the GRI Guidelines that both are more elaborate.

The GRI has not only been linked to the UNGC, but has also made the connection to the OECD Guidelines for Multinational Enterprises. In a recent report the GRI has combined and matched elements in the GRI Sustainability Reporting Guidelines with those of the OECD Guidelines, with the purpose to facilitate the use of the latter and strengthen the complementarities of both. Through this, the GRI “can be used to help measure and report on performance in relation to some of the recommendations set forth in the OECD Guidelines.”⁶⁹

The initiative was taken by GRI alone with the input of various stakeholders, but also the OECD has been given the possibility to comment on the initiative and has given a positive response (the document describing the connection between the GRI GR Guidelines and those of the OECD is available on the OECD website). This initiative by the GRI makes the OECD Guidelines “operational” in a way that they have not been earlier with its more generally formulated principle. This might also enhance a greater application of the OECD Guidelines and perhaps furthermore contribute to that more cases are brought to the National Contact Points in charge of the implementation. As some activists organizations, e.g. the Clean

⁶⁶ UNGC, “After the Signature: A Guide to Engagement in the United Nations Global Compact”, March 2007.

⁶⁷ The G3 Guidelines are an elaborate set of criteria for how to adequately report on economic, environmental and social performances for any organization, not only companies.

⁶⁸ UNGC and GRI, Making the Connection, (2007).

⁶⁹ GRI, OECD Guidelines for Multinational Enterprises (MNEs) and the GRI 2002 Sustainability Reporting Guidelines: A Guide to help Organisations Communicate Their Use of the OECD MNE Guidelines for Multinational Enterprises (MNEs), June 2004.

Clothes Campaign and OECD Watch, have begun campaigning for making use of the OECD Guidelines in the monitoring of TNCs, this could also contribute to enhance the work of the actors.

What began as a loosely coordinated and structure endeavour to address the issue of globalization and the role of TNCs at the end of the 1990s has seen a significant development over the years. There is a tendency towards “bureaucratization”⁷⁰ of the UNGC initiative seen in the development of both the content, the procedures and the organization of the initiative itself due to its growth both in scale and scope.

The initial core values that Kofi Annan referred to in his speech to the World Economic Forum have developed into ten principles with elaborate references to existing international standards. They have developed from “simply” values and aspirations to become more explicit and concrete standards of appropriateness. Their linkage to specific established international standards enhances this feature.

Even though the intent of the UNGC is not to develop a monitoring system in relation to the UNGC Principles, the development where the participating companies are being requested to give more detailed account for their performance is pointing in this way. The reporting format recommended (the GRI G3 Guidelines) is not a prescript, but in practice seen as the preferred choice. This makes the commitment to the UNGC Principles more material and also easier to check for compliance for those that would like to. The link through the GRI to the OECD Guidelines mentioned above presents an interesting development that contribute to making the UNGC Principles more substantial.

Critique of the UN and its Association with Business

As of February 2007 there were over 3.000 companies and about 700 trade unions and NGOs participating in the UNGC.⁷¹ This means that more than one company a day has jointed the UNGC initiative since it was launched in 2000. This represents a remarkable growth from the initial 50 companies that took part in the initial launch. Although impressive on its own, when compared to the total number of TNCs, i.e. 77 000 companies, this only represents less than 5 %. Yet, should this increase continue, in a matter of years the number of companies participating could very well reach 10 % and, although still a small share of the total numbers of companies, this would no longer be quite as marginal.

It should also be noted that approximately 20 % (108 companies) of the Financial Times FT Global 500 are found as participators in the UNGC. These companies together employ 10 million workers and represent revenues of USD 3.5 trillion.⁷² This means that the largest companies are overrepresented among the UNGC companies and thus influential in their capacity of business leaders. This could contribute to the further enhancement of UNGC.

With the growth of the UNGC initiative there is an apparent need to find ways of decentralizing the process if the initial idea of being a platform and a network and not an organization is to be maintained. This has led to the development of local UNCG network, as of 2007 nine such networks have been launched and about the same number of networks are in development.⁷³ These local networks may play an important role in the future development of the UNGC in terms of bringing more participants into the network.

⁷⁰ Here not referring to a massive increase in the number of employees at the UN Global Compact New York offices, but to the development of an organization where individuals have specific roles and functions, there are hierarchies, rules, etc.

⁷¹ UNGC, “After the Signature: A Guide to Engagement in the United Nations Global Compact”, March 2007.

⁷² UNGC, UN Global Compact Annual Review: 2007 Leaders Summit, New York, 2007

⁷³ UNGC, UN Global Compact Annual Review: 2007 Leaders Summit, New York, 2007, p. 16.

The UNGC initiative has proven successful in certain aspects, including obtaining the support from individual companies and business associations. Lately this support has also come from the most important governments, the G8 countries, which in connection to their meeting in 2007 stated public support to the UNGC and the GRI.⁷⁴ It is interesting to note that since the UN Draft Norms were launched the greater the interest has become for the UNGC, not least from the business community. The UNGC might in the light of the perspective of the UN Draft Norm seem as a compromise or a preferable choice in view of the reaction from business to the UN Draft Norms discussed above.

At the same time, there is also a great concern for the cooperation between TNCs and the UN. Right from the start there was strong opposition from certain strands of NGOs, including cases of public letter writing.⁷⁵ This opposition also formed a coalition under the name Alliance for a Corporate-Free UN, with the purpose to monitor the business-UN partnership, pressure the UN to avoid such cooperation and instead develop UN instruments for accountability (such as the UN Draft Norms).⁷⁶ The UNGC is according to these critics seen as undermining efforts by the UN and states to establish legal intergovernmental accountability frameworks, and that companies are given undue influence in the UN that risk to weaken the work of various UN organizations. The critique also points to that companies that have committed to the UNGC Principles are found violating these, but still enjoy the public relations benefit of being seen cooperating with the UN and using the UNGC logo referred to as blue wash. The different goals and values represented in the UN compared to business is also seen as a problem. The most serious argument perhaps involves the lack of monitoring and enforcements mechanisms.⁷⁷ The absence of monitoring and enforcement was stated implicitly as a condition for the support of the business community according to an opinion by the ICC published in the International Herald Tribune at the time of the launch of the UNGC.⁷⁸

Concluding Discussion

As can be seen from the discussion of the three cases above reflect changes in the international system, with the emergence of new issues and the importance of TNCs and NGOs as “new” actors.

Although the ECOSOC and the Chilean government were the main initiators in *the UNCTC Code case*, and the negotiations mainly an intergovernmental affair, there were other influences as well. Apart from the obvious effect of the world event of the ITT-affair and the breakdown of the Bretton Woods system, as well as the activities of other IGOs (in particular the ILO and the OECD), the national and international trade union movements also partly

⁷⁴ G8 Summit 2007, Heiligendamm, Growth and Responsibility in the World Economy, Summit Declaration (7 June 2007).

⁷⁵ See e.g. letter from the Alliance for a Corporate-Free UN to Secretary General Kofi Annan, 29th of January, 2002 entitled “Letter to Kofi Annan Recommending Redesign of Global Compact”, letter from the UN Global compact Office to the Alliance for a Corporate-Free UN, 21 February 2002, entitled “UN Response to the Alliance for a Corporate-Free UN, and the response entitled “Alliance for a Corporate Free UN Rebutts Global Compact Letter”, 7 March, 2002. The letters can be found on the internet website of CorpWatch, www.corpwatch.org.

⁷⁶ CorpWatch, CorpWatch Campaign Profile: Alliance for a Corporate-Free UN, March 2001.

⁷⁷ Critical publications were also issued such as “Greenwash +10: The UN’s Global Compact, Corporate Accountability and the Johannes Earth Summit”, January 2001 and “Tangled Up in Blue: Corporate Partnerships at the United Nations”, September 2000. Kahn, Joseph, “Multinationals Sign U.N. Pact on Rights and Environment”, The New York Times, 27 July, 2000.

⁷⁸ Livanos Cattau, Maria, “Yes to Annan’s ‘Global Compact’ if It Isn’t a License to Meddle”, in *International Herald Tribune*, 26 July, 2000.

contributed to the developments in the UN Code case. One should bear in mind that this occurred within a Cold War context, with the “politization” of IGOs and trade unions.

The emergence of international production made the individual car industry workers in developed countries concerned over the loss of jobs to low wage developing countries to call on their trade unions to act. The national trade unions, and later the ITSs of the industry sector concerned, early on recognized the problem and attempted unsuccessfully to establish so called international company councils. This failure was partly due to the free trade and “containment” policies to which the non-socialist trade unions had given their support as well as internal differences within the trade union movement (socialist trade unions and individual member unions).

Other aspects also contributed to constrain the trade unions. A belief in industrialisation and its positive effect on development,⁷⁹ a mainstream view up until the 1970s⁸⁰, made criticism of TNCs difficult and there was also the growing membership of developing country trade unions in the ICFTU to consider. There was furthermore the need to keep the organization unified by balancing the many different interests (developed and developing countries membership, industry and political concerns). Not being directly part of the actual negotiations also made the task difficult. Although the ICFTU was in a better position than the World Federation of Trade Unions or the International Metalworkers’ Federation to advocate for international labour standards (ICFTU having consultative status at the ECOSOC), the ICFTU made other priorities. The anti-apartheid movement was e.g. seen as a cause of greater interest for the trade union.

What the negotiations on the UN Code did was to bring up the underlying unsolved issues of a more political nature (related to Cold War and decolonialization) to the forefront manifested in the disagreement on the treatment of TNCs, rather than the seemingly uncontroversial “technical” issues of economic matters or jurisdiction stated in the UN Code. This disagreement involved mainly the developed countries on the one side and the developing and socialist countries on the other. A parallel to the situation of underlying unsolved issues in international politics is seen in the need to develop two human rights treaties following the UDHR instead of one, with the differences in the focus on either political and civil rights, or on economic, social and cultural rights made by the different sides in the Cold War. Surprisingly enough, from today’s perspective, labour and human rights were but minor issues in the negotiations of the UN Code.

The setting for the other two cases discussed above both also occur within the UN, i.e. the *UN Draft Norm* and the *UNGC*, but develop in another context and display different features to the UNCTC Code case. The context is now one where the issues of decolonialization and Cold War have faded and the effects of globalization have been much more apparent than they were in the 1970s. There is now a much clearer focus on the TNCs. These initiatives have both drawn considerable attention internationally, not least seen in the great interest of TNCs and NGOs that was not the case of the UNCTC Code. The attention given to these later initiatives are however dividing the opinions. They also demonstrate an interesting contention taking part within the UN itself, with CSR taking quite different turns within one and the same organization as well as a form of subtle competition between them.

The long history of the development of the UN Draft Norm, with origins in the concern for indigenous peoples, a linking of development closer to the realization of economic, social cultural rights, in the concern over the policies of certain multilateral institutions, and the

⁷⁹ An effect one might expect of a trade union with industry workers supposedly as an important base for the membership.

⁸⁰ Until the 1970’s poverty is viewed as an individual issue, i.e. human beings were poor, thereafter more of a focus is made on poverty as a collective responsibility and thereby the need for development policies. (Finnemore, 1996:9)

advent of globalization with a the growing and ultimately the main concern directed towards the negative effects of TNC activity. One even might trace the history to the unsuccessful UNCTC Code case in the contacts between the Sub-Commission and the UNCTC, where the work of the Sub-Commission could be seen a continuation the UN Code but in a different form. The UN Global Compact is an initiative that takes its point of departure equally in a concern for the effects of globalization, but also with a belief in the constructive engagement with an enlightened business to improve the workings of market economy. Although voluntary there are signs of a formalization in the changes of the reporting requirements, which in the far end links the initiative to the activists.

The UN Draft Norms and the UNGC show the divide that is seen within the development of CSR simplified as a divide between voluntary initiatives and binding regulation. A divide that is not simply one between progressive NGOs and free trade oriented business, but that also show some elements of unexpected behaviour with representatives from business expressing support or cautious appreciation for the UN Draft Norms.

In a sense the two UN initiatives in some ways are the direct opposites of each other. One is quite wide ranging and elaborate, where the other is brief. One is a far reaching (progressive?) interpretation of international law, the other more moderate and traditional. One is de facto binding in character whereas the other is not, and where those opposing one side usually are supportive of the other. One could also argue that they are mutually constitutive as the perceived inappropriateness of one leads to increased support of the other. They also represent the choices that the former Secretary General Kofi Annan presented to business in his speech to the World Economic Forum in 1999, i.e. one between either call for states to develop international policies or to take action in their own corporate sphere. These choices are both founded in the UN, one in the Commission on Human Rights and the other launched by the charismatic for Secretary General that both have high moral standing and legitimacy in the international system. It seems fair to conclude that a majority of the business community, or at least their major representatives, with support from leading heads of state have sided with the second option.

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