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## Beyond corporate social responsibility – rethinking the international business agenda

**David Mepham**

**Globalization and the growth and reach of the international private sector raise tough questions for progressives about the regulation and governance of transnational corporations (TNCs). While considerable progress has been made over the last few decades in holding large companies to account for their environmental performance, progress on social issues such as human rights, corruption, corporate transparency and labour standards has been more limited.**

So far, the main way in which progressives have sought to address these issues has been through support for corporate social responsibility (CSR). For most companies, this has consisted of a series of voluntary initiatives to enhance the social impact of their policies, with some of these initiatives actively promoted by government. In the UK, for example, leading CSR bodies like the International Business Leaders Forum have developed substantive human rights agendas and the new FTSE4Good indices benchmark companies on their CSR performance. The UK Government has also been a strong supporter of the Ethical Trading Initiative (ETI), which aims to promote adherence to ILO core labour standards along companies' international supply chains.

Some corporate sectors have incorporated human rights provisions into their codes of conduct. A number of companies have also sought to work more closely with human rights NGOs in formulating corporate policy in difficult countries. BP, for instance, has adopted this approach: working with Amnesty International after serious concerns were raised about the human rights impact of the Baku-Tbilisi-Ceyhan (BTC) pipeline project.

But while CSR has brought benefits, it also has serious limitations. Many of the most difficult issues surrounding the international corporate sector occur in poor countries with weak and sometimes corrupt systems of government. Poorly regulated international investment in these environments can distort local development, fuel conflict and contribute to human rights abuses. This is particularly the case in poor countries that are heavily dependent on natural resources. World Bank research has shown that around 50 armed conflicts, active in 2001, had a strong link to natural resource exploitation, and that the international private sector is often involved in this resource extraction. As a result of weak management and regulation, abundant natural resources, which should be a blessing for a low-income country, in many cases make poor people poorer.

In response, progressives should support a strengthening of political and economic institutions in such countries, so that their governments are more accountable and effective and better able to regulate the private sector in the public interest. But progressives should also support a strengthening of cross border corporate accountability and more effective global regulation of TNCs.

The case for more effective regulation is further reinforced by the fairly limited impact of some existing international initiatives for promoting high corporate standards, for example, the UN Global Compact, the OECD Guidelines on Multinational Enterprises, and the Extractive Industries Transparency Initiative.

### The UN Global Compact

The UN Global Compact was established at the instigation of the UN Secretary-General in 1999. The Compact brings together the private sector and NGOs with UN member states and UN agencies. It is based on nine core principles covering human rights, labour standards and the environment. Companies that sign up to the Compact are required to ensure that they support and respect human rights within their sphere of influence.

But while the Compact has played a role in drawing attention to the responsibilities of the private sector in relation to human rights, labour standards and the environment, it is not yet having any real impact in influencing and changing corporate policies on the ground. There are no conditions of membership or criteria that companies must meet before they are permitted to become a member of the Compact and no system for dealing with complaints made against specific companies.

Progressives should support clearer criteria for membership and a system of independent monitoring of company compliance with the principles of the UN Global Compact. There is also a case for introducing a proper complaints system, either through a small executive committee or through an appointed ombudsman.

### **The OECD Guidelines on Multinational Enterprises**

The longest standing initiative for promoting high corporate standards is the Organisation for Economic Co-operation and Development (OECD) Guidelines on Multinational Enterprises. First adopted in 1976, the Guidelines have been endorsed by all 30 members of the OECD, and a further eight non-OECD countries. They set out a comprehensive list of guidelines for good corporate behaviour, including guidelines on human rights and labour standards.

The OECD Guidelines contain a mechanism - reporting through national contact points (NCPs) - with the intended purpose that signatory governments should respond to concerns raised about specific companies, including adverse impacts on human rights. But this mechanism is weak and ineffective. For example, in October 2002, the UN Expert Panel on the Illegal Exploitation of the Natural Resources of the Democratic Republic of Congo named over 50 OECD companies as being in breach of the OECD guidelines in its report to the UN Security Council. A subsequent UN Security Council resolution - 1457 - urged "all states ... to conduct their own investigations, including as appropriate through judicial means, in order to clarify credibly the findings of the panel".

However, no proper investigations have been mounted to assess the charges and no action has been taken against any OECD national or company for their actions in the DRC. Progressives should support a significant strengthening of the OECD Guidelines on Multinational Enterprises and a strengthening of the National Contact Point (NCP) system. Specifically, NCPs should be empowered to investigate allegations whether or not a formal complaint has been made. There is also a case for denying access to export credit guarantees and other forms of government support for a specified period for companies that breach the OECD Guidelines.

### **The Extractive Industries Transparency Initiative**

Another important recent development is the Extractive Industries Transparency Initiative (EITI). The EITI was launched by Tony Blair at the World Summit on Sustainable Development (WSSD) in Johannesburg in September 2002. It is now a multi-stakeholder partnership of oil and mining companies, northern and developing country governments and NGOs.

The establishment of the EITI came partly as a response to an international NGO campaign 'Publish what you pay' which called for greater transparency over the revenue payments made to host developing country governments by international oil, mining and gas companies.

Revenues from oil, mining and gas are very important in about 60 developing and transition countries, but in many of these countries neither the host government nor the multinational companies investing there are disclosing information about the payments made to governments for access to those resources. Of the 3.5 billion citizens in these countries, some 1.5 billion live on less than US\$2 per day, representing over two-thirds of the world's poorest people. In the absence of revenue transparency, the people of these countries, and the international development community,

have no adequate means to assess governments' management of their resources.

The aim of the EITI is to increase transparency over payments and revenues in the extractives sector. While the best companies are engaging with it, there is no guarantee that all companies will do so, particularly while the requirement for revenue transparency by companies remains purely voluntary.

Progressives should support the EITI, and work for greater involvement by other developed countries, particularly the G8, in the EITI process. They should provide increased support for governments committed to making their budgetary processes more transparent, as well as support for civil society in developing countries to interpret and use the newly available data. In the long-term, there is also a powerful case for the introduction of an industry-wide mandatory requirement on companies to disclose net revenues to all national governments.

### **Is voluntarism enough – do we need a new legal framework?**

The discussion over whether the requirement for revenue transparency should be voluntary or mandatory raises a wider issue about the application of international human rights law to companies. The traditional view is that international law applies to governments but not to non-state actors, including companies. But this approach is open to serious challenge and is being rapidly undermined by new national and international legal precedents.

Under existing UK law, for example, a parent company is protected to a large extent against liability claims for human rights abuses involving its subsidiaries, including those overseas. What is known as the 'corporate veil' allows parent companies to argue in law that they are mere shareholders in the enterprise and, therefore, not directly responsible for the activities of subsidiaries.

However, the extent of foreign direct liability has been altered by recent cases in American and British courts, which have also seen extensions of extra-territorial jurisdiction. In the US, The Alien Tort Claims Act of 1789 is being used in a number of cases to sue TNCs for violations of international law in countries outside the US. There have been separate civil law developments in the UK, involving Rio Tinto in Namibia and Thor Chemicals and Cape plc in South Africa. Following a series of House of Lords judgements in these cases, transnational companies, headquartered in the UK, can now be held legally liable for human rights violations abroad where, for whatever reason, access to justice locally is restricted.

In addition, a clause in the UK Anti-Terrorism, Crime and Security Act (2001) has opened up the possibility that UK companies and nationals, including company directors, could be prosecuted in the UK for corruption offences abroad, regardless of whether they involve public officials or the private sector.

### **Corruption**

Corruption is a good example of where voluntary CSR initiatives need to be underpinned both by international regulation and law, as well as much better systems of enforcement. Corruption is fuelling conflict and human rights abuse around the world, and damaging the development prospects of many poorer countries. Developed country companies are often involved in corruption, paying bribes to secure commercial deals. Some of these companies receive cover from export credit agencies.

The OECD Bribery Convention, 1997, principally focused on criminalising bribery of foreign officials. However, the overall impact of the OECD Convention has been weakened by limited attempts to publicise the convention amongst business, by loopholes in the Convention itself and by deficiencies in the OECD's monitoring process. Only 51 per cent of the 835 business experts interviewed by the NGO Transparency International had heard of the OECD Convention. The OECD Convention does not require states parties to criminalise the bribery of their own public officials, nor does it address the bribery of private officials. And no OECD national has yet been prosecuted for corruption offences abroad under the terms of the Convention.

Without a stronger and more concerted effort by developed countries to clean up their act over



bribery, there will be limited global progress in reducing the incidence of corruption. Progressive governments should allocate additional resources to investigate cases of corruption and bribery by their nationals abroad and to bring successful prosecutions. They should also ratify the UN Convention against Corruption as soon as possible.

### **The UN Norms**

The most serious attempt in recent years to establish a comprehensive legal framework for the human rights responsibilities of companies is the *Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights* (the Norms). These were discussed by the UN Commission on Human Rights in March 2004 and are now the focus of a year-long consultation process overseen by the UN High Commissioner for Human Rights.

Faced with a proliferation of codes developed by NGOs and governments, the Norms are an attempt to rationalise the existing standards relating to the human rights responsibilities of companies. Their purpose is also to assist companies to implement human rights standards throughout their operations and to integrate human rights principles into their decision-making processes.

The Norms are based solely on existing international human rights law and labour standards, drawn, for example, from core ILO conventions, the UN Global Compact and the Guidelines for Multinational Enterprises, and dealing with issues like workers rights, corruption, security and environmental sustainability.

A number of companies have already welcomed the publication of the Norms and expressed a willingness to use them. For example, in December 2003, a group of seven multinational companies launched a three-year project, the Business Leaders Initiative on Human Rights (BLIHR). Progressives should support the Norms, as an essential means for establishing a clearer legal framework of accountability for companies on human rights and as something that can develop into a more binding legal document over time.

Progressives should also address the legal and practical issues surrounding Host Government Agreements. These agreements, concluded privately and without transparency between business and governments, are often for large-scale, long-term infrastructure projects, sometimes affecting a large population and geographic area. They routinely contain clauses that discourage compliance with the international human rights obligations of host states. They can distort the democratic process by dictating the shape of domestic laws without accountability to the public and by demanding creation of a regulatory climate favourable to foreign direct investment without regard to the rights of local populations. Progressive governments should offer clear guidance to companies on how to formulate Host Government Agreements in a way that is consistent with international human rights law.

### **Corporate reporting**

Another critical means for strengthening the social obligations on companies is through reporting requirements. Openness and disclosure are essential prerequisites for the success of voluntary initiatives to enhance the social impact, including the human rights impact, of international commercial operations. Without disclosure companies cannot build the trust of their stakeholders. Greater disclosure can help strengthen the socially responsible investment (SRI) community, helping them to engage better with companies on social issues.

There is an important precedent for this from the UK: the amendment to the Pensions Act 1995 (which entered into force in 2000). This required pension fund trustees to reveal whether they had social, environmental and ethical policies. While there is still scope for considerable improvement, particularly on implementation, a survey of investment funds conducted in 2003 found that two-thirds of respondents now claimed to take account of social, ethical and environmental issues. Progressive governments should make it a mandatory requirement for international companies to report on their international human rights impact.

### **Beyond CSR**

The extent of global economic interdependence is making the purely voluntarist approach to corporate standards look increasingly outdated. To maximise the benefits of international private investment and to secure public policy goals, global business needs to operate within a clearer framework of governance, which is underpinned, at the national and the global level, by law and regulation.

Having secured reputations for prudent economic management, progressive governments should be much more self-confident about making the case for a changed relationship with the international business sector, one in which corporate rights are matched by a stronger set of global corporate responsibilities. This is not an argument for heavy-handed 'command and control' regulation, but rather for intelligent government intervention to secure the progressive goals of sustainable development, human rights and social justice.

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