

# Codes in Context

## TNC Regulation in an Era of Dialogues and Partnerships

# THE CORNER HOUSE

**“Historically, progress associated with corporate social and environmental responsibility has been driven, to a large extent, by state regulation, collective bargaining and civil society activism. Increasing reliance on voluntary initiatives may be undermining these drivers of corporate responsibility.”**

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As more and more corporations have expanded their operations beyond national borders over the past 30 years, the ability of an individual state to safeguard public interests through national regulation alone has substantially diminished. As yet, however, no effective and consistent web of laws and standards has emerged at the international level to hold transnational corporations (TNCs) accountable to citizens in all of the countries where they operate. Instead, ‘voluntary’ self regulation or ‘co-regulation’<sup>1</sup> between industry, citizen groups and governments now tend to be considered the most appropriate way to set global rules.

The trend towards industry self-regulation or co-regulation has been supported by two beliefs. One is that corporations are becoming more and more responsible of their own accord, for which the growing number of industry codes of conduct is cited as evidence. According to this view, society no longer needs to insist on legally-binding international regulation. The other belief is that transnational corporations have gained so much power in recent decades that it is impossible to regulate them by externally-defined rules anyway. Building on voluntary agreements with corporations is thus regarded as more pragmatic than antagonising them by promulgating binding international regulations.<sup>2</sup>

Are these beliefs supported by any evidence? Is it now unnecessary or, indeed, impossible to regulate transnational corporations internationally?

This briefing paper attempts to shed some light on these questions by drawing on a case study of the infant food industry. For more than two decades, a range of public interest groups, governments and UN agencies have tried to rein in the marketing practices of infant food manufacturers worldwide by means of an international code, drawn up under the aegis of the World Health Organisation (WHO) and the United Nations Children’s Fund (UNICEF). Their efforts represent one of the longest-standing attempts at international regulation of an industry sector.

1. More recently, the terms ‘corporate responsibility’, ‘good corporate citizenship’ and ‘good corporate governance’ have tended to replace ‘self-regulation’.
2. A third view advocates accepting industry offers to behave in a more socially-responsible manner only if it is possible to fall back on externally-defined binding regulation should such co-regulatory arrangements fail.

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*Efforts to rein in the marketing practices of infant food manufacturers by means of an international code are one of the longest-standing attempts at international regulation of an industry sector.*

Analysis of corporate responses to governments implementing this code in national legislation highlights the potential and limits of current efforts to keep in check corporate activities that conflict with human rights and other social concerns. It also raises crucial questions about endeavours to bring TNCs to account internationally at a time when dialogues and partnerships are regarded by many as the best way to interact with large corporations and their business associations.

### “Commerciogenic Malnutrition”

German born Henri Nestlé started his infant food business in 1867 by mixing toasted flour and condensed milk, the result of new techniques for processing milk. Just five years later, his company was reporting sales of half a million boxes of milk food throughout the world. Other baby food producers followed his lead.

Concerns about the gradual replacement of breastmilk with commercial infant foods in industrialised and developing countries were first voiced in the late 1930s. By the 1960s, breastfeeding was in rapid decline in many parts of the world. By 1967, just one-quarter of babies born in US hospitals were breastfed when their mothers took them home.

The infant food industry used a wide range of promotional methods to increase demand for its products: it stressed that infant formula was equivalent or superior to breastmilk; it played on women’s concerns that they did not have enough breastmilk; it depicted healthy-looking babies on its products and promotions; it dressed its salespersons as nurses; it sent large quantities of free supplies of formula to maternity wards; and it worked through the medical profession.

A 1910 study in Boston had already indicated that bottle-fed babies were six times more likely to die in infancy than breastfed ones. In the 1960s, health professionals working in developing countries pointed out these potentially fatal consequences of the inappropriate marketing of breastmilk substitutes – “commerciogenic malnutrition” as the director of the Caribbean Food and Nutrition Institute in Jamaica called it.<sup>3</sup>

International pressure groups began to publicise the problem in the 1970s and brought the issue of harmful marketing practices onto the international policy agenda.<sup>4</sup> Their work led to the first code aimed at regulating internationally the activities of an industry sector: the International Code of Marketing of Breast-milk Substitutes, adopted in 1981 by the World Health Assembly (the governing body of the World Health Organisation-WHO) and endorsed by UNICEF.

The Code does not forbid sales of breastmilk substitutes but rather governs the marketing of them. It prohibits promotion of breastmilk substitutes to the general public, and contact between marketing personnel and pregnant women or mothers of infants. It sets standards for pictures and information on labels, information about infant feeding, provision of samples and free and low-cost supplies, and interactions between companies and the health care system. The aim of the International Code is to:

“contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.”<sup>5</sup>

The World Health Assembly also required governments to implement

3. Jelliffe, D., “Commerciogenic malnutrition?”, *Food Technology*, 55, 1971, p.55, quoted in Chetley, A., *The Politics of Baby Foods: Successful Challenges to an International Marketing Strategy*, Frances Pinter, London, 1986, p.40.
4. Key citizen actions which facilitated this were: the publication in 1974 of *The Baby Killer*, a report on infant food promotion and its consequences in Africa, by the British group War on Want; the launch in 1977 of an international consumer boycott of Nestlé; and the lobbying for a US Senate public hearing, held in May 1978. Public attention was also drawn to the issue when Nestlé sued a Swiss group for libel in 1974 after it had published *The Baby Killer* under a new title, *Nestlé kills babies*. See Chetley, A., op. cit. 3, pp.38-60.
5. WHO, *International Code of Marketing of Breastmilk Substitutes*, World Health Organisation, Geneva, 1981, p.13.

# International Regulation of TNCs: A Short History

The international regulation of transnational corporations has long been the subject of heated debate. In the early 1960s, the United Nations called for comprehensive international regulatory regimes as part of a broader push towards a socially-just New International Economic Order. In 1972, the first calls for international codes of conduct for TNCs were made at the UNCTAD (UN Conference on Trade and Development) Conference in Santiago.

That same year, Chile's President Salvador Allende alerted the UN to plans of the International Telegraph and Telephone Company (ITT) and the Kennecott Corporation to overthrow his government. Allende's death in a CIA-supported military coup a year later contributed significantly to UN codes coming on to the international policy agenda.

The UN Economic and Social Council (ECOSOC) went on to set up a UN Commission on Transnational Corporations with a UN Centre on Transnational Corporations as its research and administrative body. In 1976, the Commission made a UN Code of Conduct on Transnational Corporations one of its top priorities.

## Opposition to Regulation

But by the early 1980s, the tide had started to turn against the regulation of TNCs. The neoliberal credo of liberalisation, privatisation and de-regulation (sometimes followed by re-regulation in the interests of transnational corporations) – in development circles known as the Washington Consensus – gradually spread all over the world. US consumer activist Michael Hansen points out that:

"As the world's largest source of Foreign Direct Investment, the United States became the leading opponent of efforts to control TNCs. In accordance with neoliberal textbook economic reasoning, the US position contended that

outcomes of international trade and investment generally need to be market-driven in order to maximise welfare and that interventionist policies in trade and investment would reduce global welfare. Consequently the very merit of an international code of conduct for TNCs was questioned."

By the mid-1980s, efforts to draw up a UN Code of Conduct for TNCs had been more or less abandoned. In March 1991, the US government requested all its foreign embassies to lobby their host governments to "quietly build a consensus against further negotiations" on the UN Code.

The Code's official demise came in 1992, when the president of the UN General Assembly reported that "delegations felt that the changed international environment and the importance attached to encouraging foreign investment required a fresh approach".

Thus few of the 30 or so international codes and guidelines envisioned during the 1970s were adopted. Those that were include the 1981 International Code of Marketing of Breast-milk Substitutes; the 1985 UN Guidelines for Consumer Protection; the 1985 FAO International Code of Conduct on the Distribution and Use of Pesticides; and the 1988 WHO Ethical Criteria for Medicinal Drug Promotion. Even these would have been abandoned had international citizen networks not exerted continuous pressure.

## Self-Regulation and Co-Regulation

One of the last attempts to introduce international corporate regulation via the UN was at the 1992 UN Conference on Environment and Development (UNCED) – the "Earth Summit" – held in Rio de Janeiro.

The UN Centre on Transnational Corporations drafted recommendations to be included in Agenda 21 (UNCED's global plan of action) for the environmental regulation of TNCs. But a coalition of Western industrial states and an industry lobby managed to get the recommendations removed. Instead, the Conference's

Secretary-General, Canadian businessman Maurice Strong, invited the newly-formed Business Council for Sustainable Development to write the recommendations on industry and sustainable development in what has been interpreted by some as clear evidence of the UN's capture by corporate interests.

The 1992 Earth Summit marked the beginning of a "regulatory vacuum" at the UN level. Since then, industry bodies have repeatedly opposed external international regulation and increasingly advocated industry self-regulation (or certification by private bodies) on the grounds that it is as effective as external regulation, yet cheaper.

UNCED in effect launched 'corporate social responsibility' and changed the role corporations were allowed to play in international politics. According to Pratap Chatterjee and Matthias Finger who analysed the Earth Summit:

"UNCED set up a process through which TNCs were transformed from lobbyists at a national level to legitimate global agents, ie. partners of governments. UNCED gave them a platform from where they could frame the new global issues in their own terms."

**Sources:** Hoogvelt, A. with Puxty, G. A. *Multinational Enterprise: An Encyclopedic Dictionary of Concepts and Terms*, Macmillan, London and Basingstoke, 1987; Kline, J. M., "Business codes and conduct in a global political economy" in Williams, F.O. (ed.) *Global Codes of Conduct: An Idea Whose Time Has Come*, University of Notre Dame Press, Notre Dame, Indiana, 2000; Hansen, M., *Environmental Regulation of Transnational Corporations: Needs and Prospects*, mimeo, UNRISD, Geneva, 1999; Braithwaite, J. and Drahos, P., *Global Business Regulation*, Cambridge University Press, Cambridge, 2000; Chatterjee, P. and Finger, M., *The Earth Brokers*, Routledge, London, 1994.

# Rules and Rule-Setters

Regulating transnational corporations requires establishing rules to influence corporate practice in the public interest. Such rules are based on legal, administrative and ethical principles and norms as well as scientific standards.

As economist Robert Kuttner points out, "rules require rule setters". Distinguishing between public regulation, co-regulation and industry self-regulation highlights the major rule setters at work today.

## Public Regulation

Public regulation refers to rules set by the parliament and by government authorities. The rules they set usually include measures for monitoring and enforcement. Corporations should comply with such regulations by, for instance, devising internal guidelines and auditing procedures and allowing public verification of their compliance.

## Co-Regulation

Co-regulation denotes regulatory arrangements between business and one or more other parties. These parties can include government, trade unions, religious and civil society organisations, for instance. Several co-regulation combinations are possible: for example, between one corporation and one NGO, or among an international business association and several parties.

Co-regulatory arrangements initiated by government authorities are likely to differ significantly from those initiated by civil society organisations and from arrangements proposed by corporations or business associations.

As far as accountability is concerned, a key feature of co-regulation is whether or not governments are involved. Only they can link co-regulatory guidelines to legally-binding enforcement should the industry fail to comply with the agreed rules.

But corporate practices and conduct can also be influenced in other ways. Worker and civil

society organisations, for example, have drafted model codes of practice and pressured corporations publicly to adopt them as binding. Others have preferred to negotiate co-regulatory arrangements in tandem with industry. The main way of holding corporations accountable to this kind of co-regulation is negative publicity – the 'naming and shaming' of those corporations that violate agreed rules and standards.

## Self-Regulation

Under self-regulation, corporations or business associations set their own rules – codes of conduct, corporate guidelines or mission statements, for example – and pledge to abide by them.

Following the 'sustainable development' trend, for instance, many companies have committed themselves to using cleaner technology, environmental reporting and certification. Many 'sustainable development' business codes, however, omit key UN-agreed standards and lack effective enforcement mechanisms.

'Regulation' may not be the most appropriate term for arrangements in which the party to be regulated sets its own standards and whose effectiveness in protecting public interests depends entirely on its own sense of moral obligation.

## 'Voluntary' Confusion

Co-regulatory and self-regulatory arrangements are often described as 'voluntary', which creates further confusion. The term implies that the corporation or business association in question has decided on its own initiative to behave in a more socially-responsible manner – even if it has fiercely resisted a particular code of conduct and agreed to a co-regulatory arrangement only because of strong and persistent outside pressure.

The term 'voluntary' enables companies which follow such codes to gain credit for actions they should be taking anyway. Companies, like citizens, have an obligation, for instance, to respect ethical principles such as not harming human beings.

Moreover, the term 'voluntary initiative' does not distinguish between corporations' pledges of compliance to codes of conduct, corporate sponsorships, and a whole gamut of non-market based corporate activities, some of which are now called 'public-private partnerships'.

'Self-regulation' is certainly a misnomer when it refers to corporations' own non-legally binding codes drawn up to avoid mandatory regulation or to defuse public pressure.

Researchers Harris Gleckman and Riva Krut, who investigated environmental regulation contend that:

"While not generally recognised as such, 'self-regulation' is really an oxymoron [contradiction in terms]. Potential polluters cannot make 'laws' (ie. regulate) and order 'sanctions' (ie. authorise penalties and fines) that are against self-interest. Further, state regulation presumes that there is a political process that defines a level of pollution and regulations are issued to disperse this standard equitably over the generators of pollution. No individual 'self-regulator' can determine the publicly approved level of pollution or allocate itself the correct amount of pollution."

Gleckman and Krut postulate that co-regulation and self-regulation must be backed up by industry-independent measures if the public interest is to be effectively protected. These include clear guidelines on how to ensure compliance, external third-party verification of internal audits, public reporting and public participation.

**Sources:** Kuttner, R., *Everything for Sale*, The University of Chicago Press, Chicago, 1999; Gleckman, H. and Krut, R., *The Social Benefits of Regulating International Business*, UNRISD, Geneva, 1994; UNCTAD, *Self-regulation of Environmental Management*, UNCTAD, New York/Geneva, 1996; Krut, R. and Gleckman, H., *ISO 14001: A Missed Opportunity for Sustainable Global Industrial Development*, Earthscan, London, 1998.

the Code in national legislation. The Code specifies that manufacturers and distributors of breastmilk substitutes should, “independently of any other measures taken”, ensure that their conduct conforms to the principles and aim of the Code “at every level”.

## Interfering with Code Implementation

Twenty years on, advertising of infant formula is less blatant in many developing countries. Most formula labels state the superiority of breastfeeding and no longer depict chubby, smiling infants. The practice of disguising sales personnel as ‘mothercraft nurses’ has almost disappeared.

Many infant food companies, meanwhile, maintain that they have now put their house in order and fully support Code implementation.<sup>6</sup> Nestlé, for instance, stated in 1998 that, “in country after country”, it has:

“actively encouraged national adoption of the WHO Code, with strict measures backed up by impartial and effective monitoring . . . Nestlé strictly adheres to national codes and all relevant legislation”.<sup>7</sup>

But international and national monitoring carried out by citizen groups reveals that some corporations continue to violate the provisions and spirit of the Code. Infant formula is still widely advertised through the media while free supplies to maternity wards are on the increase in some countries.<sup>8</sup> An estimated one and a half million infants still die each year because they are artificially fed rather than being adequately breastfed.

It is up to national governments to implement, monitor and enforce the International Code (and related measures).<sup>9</sup> Reports indicate that corporations employ a range of lobbying and legal strategies to block these efforts.

- ***Disseminating industry versions of the Code***

Several companies have disseminated their own interpretations of the Code which have encouraged prohibited practices. Nestlé, for example, portrayed the Code in a way which allowed the company to continue giving free supplies of infant formula to health workers and institutions. In 1982, Dr. A. Tarutia from Papua New Guinea told the World Health Assembly that Nestlé’s instructions to its subsidiaries on how to interpret the Code constituted a “serious distortion” of it:

“Marketing practices prohibited by the Code are approved of and encouraged by the Nestlé document. My delegation is convinced no private sector has the right to amend the WHO/UNICEF Code”.<sup>10</sup>

Some infant food manufacturers have also implied that the International Code is not universal in its coverage but applies to developing countries only.

- ***Lobbying for legislation which is weaker than the Code***

In Russia, Nestlé provided the authorities with a Russian-language draft law that was much weaker than the Code. It would have allowed infant food companies to advertise directly to mothers in maternity wards.

Infant food companies are also reported to have told governments in Central and Eastern Europe that adoption of legislation based on the Code in its entirety would prejudice their future membership of the European Union.

6. In 1994, some 30 companies produced and sold infant formula on the world market. Just four companies, however, controlled more than two-thirds of the total market: Nestlé, Ross Laboratories (of Abbott Laboratories), Wyeth-Ayerst (of American Home Products) and Mead Johnson (of Bristol-Myers Squibb). In many countries, three or four TNCs controlled 90 per cent or more of the market. Nestlé controlled about 40 per cent of the worldwide infant formula market, but infant formula constitutes just 2-3 per cent of its overall annual turnover. The infant food market is estimated to be worth about US\$17 billion of which US\$11 billion is infant formula.
7. Nestlé, *Nestlé: Complying with the WHO Code*, Nestlé, Vevey, Switzerland, 1998, p.6.
8. A core marketing strategy is to provide breastmilk substitutes free or at low cost to maternity wards in hospitals. A woman’s production of breastmilk may be affected if her baby is fed with infant formula while a baby’s ability to suckle at the breast may be affected if it is fed by means of teats and bottles. The costs to the companies of the supplies appear to be offset by the medical seal of approval for their products and the creation of brand loyalty. An internal training manual for infant food manufacturer Abbott/Ross stated that “When one considers that for every one hundred infants discharged from hospital on a particular brand, approximately 93 infants remain on that brand, the importance of hospital selling remains obvious.”
9. The 1981 World Health Assembly Resolution which passed the International Code also mandated a review of Code implementation every two years. As a result of such reviews, the Assembly has adopted additional Resolutions to clarify the Code’s meaning, close its loopholes, take into account new marketing techniques, and to keep up to date with new knowledge about infant and young child feeding. Compliance with the Code thus means compliance with the Code and subsequent Resolutions. For ease of reading, this briefing refers to the Code to mean the Code and relevant Resolutions.
10. See Chetley, A., op. cit. 3., p.118.

- **Threatening trade retaliation**

When Zimbabwe was about to implement a law based on the Code, Nestlé threatened to withdraw from the country and relocate elsewhere, arguing that it would no longer be economically viable to operate in Zimbabwe. Nestlé UK added that the proposed legislation “would result in job losses for about 200 people and an extremely negative economic impact on local farmers who supply us with milk, wheat, maize and sugar”. A consortium of infant food manufacturers reportedly lobbied the Zimbabwean parliament, arguing that the legislation did not

## The Myth of the Self-Regulating Market

Many neoliberal economic policy-makers contend that unfettered markets deliver goods and services most efficiently and are therefore best left alone. The ‘invisible hand’ of pricing mechanisms, meanwhile, takes best care of societal welfare, they argue.

But the ‘free’ market has never been wholly unregulated. Most industrial states have long relied upon intricate rules to create a stable business environment and to tackle the market’s imperfections and corporate abuses. Although the market does many things well, there will always be some things which market mechanisms do not and cannot deliver – universal access to health care, for instance. They will also always be things which markets deliver which are not in the interests of society, such as pollution. Thus, as economist Robert Kuttner points out, regulation has often been employed “either to make the market work more efficiently or to solve problems that the market cannot fix.” He concludes that “the quest for a perfectly pure free market, or an economy free of political influences, is an illusion.”

Classical economic theory distinguishes between *economic* and *social* regulation. Economic regulation is employed when markets fail to be effectively self-correcting. Public utilities, such as water supply or electricity services, have their terms of entry, price, profits and terms of competition heavily regulated to prevent the market fragmenting and to ensure that the company awarded a contract does not abuse its monopoly.

Social regulation is meant to correct ‘negative spillovers’ from the economy and encompasses regulation of pollution, advertising, and health and safety. Kuttner points out that:

“None of these regulatory systems resulted from bloodless expert analysis of externalities, information failures, natural monopolies, bargaining asymmetries, and the like. For the most part, they resulted from gross abuses of private economic power – followed by exposé, indignation, societal conflict, struggle, and ultimately political remediation.”

There has always been – and continues to be – a need to regulate the market. The key question is: what type of regulation allows differing markets to do their best while preventing harms to societies?

### International Rules

Most industrialised countries still accept that the state should set rules and standards to protect and promote the rights and interests of its citizens (although WTO rules are threatening states’ ability to regulate in many respects). Many countries, for instance, have regulations governing monopolies (anti-trust), corruption, corporate taxation, workers’ rights, health and safety, consumer protection, corporate advertising and marketing, public relations and environmental protection.

But the need for *international* regulation is not generally accepted, even though countless practices of transnational corporate and financial organisations are now beyond the control of any one nation-state. In their study on the *Social Benefits of Regulating*

*International Business*, Harris Gleckman and Riva Krut argue that:

“It is as important to put regulations in place internationally as it is nationally . . . [A] systematic method to regulate and set minimum standards for international business activity is crucial to the achievement of some critical elements of international social life and development”.

An international structure to assist states in regulating international business on the basis of “the fundamental rights of individual citizens, international society and the earth” is essential, they claim.

The UN Research Institute for Social Development (UNRISD) shares the view that the “invisible hand” of the market will not bring about the best social outcomes:

“Left to their own devices, TNCs are likely to fulfil their responsibility in a minimalist and fragmented fashion. Their strategies may be conducive to economic growth and the stability of their operating environments, but not necessarily to sustainable human development. They still need strong and effective regulation and a coherent response from civil society.”

**Sources:** Kuttner, R. *Everything For Sale*, The University of Chicago Press, Chicago, 1999; Gleckman, H. and Krut, R., *The Social Benefits of Regulating International Business*, mimeo, UNRISD, Geneva, 1994; UNRISD, *Visible Hands: Taking Responsibility for Social Development*, UNRISD, Geneva, 2000.

support economic growth and development or trade liberalisation and foreign investment. Nonetheless, Zimbabwe passed its legislation in May 1998 – and Nestlé’s subsidiary is still operating in the country.

- ***Lobbying for ‘freedom of commercial speech’***

Corporations have attempted to undermine the Code by claiming that it interferes with ‘freedom of commercial speech’. In South Africa, for instance, the infant food industry formed an agency called the Freedom of Commercial Speech Trust which lobbied to prevent implementation of national legislation governing the marketing of infant foods. The Trust argued that such legislation would interfere with the role commercial advertising plays in informing HIV-positive mothers about how bottle-feeding can prevent transmission of the virus to an otherwise healthy infant.<sup>11</sup>

The industry used a similar argument in Swaziland. Pauline Kisanga, a regional coordinator for the International Baby Food Action Network (IBFAN) in Africa, commented that “the argument is always about ‘information’ but advertising is not information. It is . . . propaganda.” Swaziland’s Ministry of Health and Social Welfare listened to infant food manufacturers and IBFAN – and requested the companies not to “educate” the public about HIV and breastfeeding as it was the government’s responsibility to do so.

The industry’s argument about “freedom of commercial speech” implicitly appeals to the principle of freedom of speech, a fundamental civil and political right enshrined in the UN’s Universal Declaration of Human Rights. But there is no corporate ‘right’ to an unfettered flow of any and all commercial communications. Moreover, even citizens’ freedom of speech can be limited when it infringes upon legislation designed to protect other human rights, such as laws aimed at preventing racial discrimination and hatred.

- ***Enlisting health professionals***

In Pakistan, Nestlé wrote a letter to the ministry of health describing draft legislation as “*impractical and not workable* and therefore bereft of any support from the paediatric association and the industry” (original emphasis). Building on long-standing financial ties, the company enlisted the support of certain sections of the Pakistan Paediatric Association. Nonetheless, Association leaders voted in support of the law.

In Georgia, Nestlé approached the Ministry of Health in 1997 as the process of drafting legislation to implement the Code was nearing completion. The company offered to sponsor and collaborate in an infant growth monitoring survey, sponsored a tour of medical doctors to Russia, and gave ‘best doctor’ financial awards to two physicians. Nestlé and French infant food manufacturer Danone sponsored a Georgian medical congress while a German infant food manufacturer, Hipp, wrote newspaper articles opposing the legislation on the grounds that it would “interfere with free trade”.

Public awareness raising of these activities, and the good relationship between the Ministry of Health and Georgian NGOs, many of whose members are respected health professionals, ensured that the law implementing the Code was passed in 1999.

- ***Challenging legislation in the courts***

In India, consumer groups brought to the attention of the courts breaches of India’s 1992 legislation governing breastmilk substitutes. Two of the companies named by the groups apologised for the breaches, but Nestlé challenged the legislation itself, arguing that it was unconstitutional and inconsistent with the country’s food laws.

*Regulatory pressures are among the most powerful drivers of corporate responsibility.*

*There is no corporate ‘right’ to an unfettered flow of commercial communications.*

11. Some HIV-positive mothers may transmit the virus to their babies through breastfeeding. The most recent studies suggest that about one in seven infants breastfed by HIV-positive mothers who are not taking anti-retroviral drugs may become infected. Corporations appear to have used the resulting dilemma over whether or not to breastfeed to return to more aggressive marketing of infant formula.

*Public relations is a concealed instrument of corporate power.*

*'Dialogues' and 'partnerships' are among the most sophisticated and up-to-date PR methods.*

12. All these examples are drawn from reports received by UNICEF country offices, NGOs and citizen alliances such as IBFAN (International Baby Food Action Network). All letters quoted were seen in the original by the author. For the latest information on baby food marketing trends and corporate interference with Code implementation, see the website of the International Baby Food Action Network, [www.ibfan.org/english/codewatch/](http://www.ibfan.org/english/codewatch/) and of the Campaign for Ethical Marketing/Baby Milk Action, [www.babymilkaction.org](http://www.babymilkaction.org).

13. For more details, see Richter, J., *Engineering of Consent: Uncovering Corporate PR*, CornerHouse Briefing No. 6, March 1998.

14. International Infant Food Manufacturers (IFM) briefing document, *Public-private partnerships between health providers and companies including infant food companies, are important to improved infant health around the world. Confrontation is counter to the interests of child health*, [www.ifm.net/briefdoc2.htm](http://www.ifm.net/briefdoc2.htm), accessed 12 July 1999.

- ***Lobbying to draft legislation and monitor compliance***

Although a key principle in establishing the 'rule of law' is to ensure that the fox is not invited to guard the chicken coop – that the corporations to be regulated do not exercise undue influence over the regulatory process – the infant food industry has lobbied hard to be part of national monitoring committees in Pakistan, Sri Lanka, Swaziland and Zimbabwe. In 1998, Nestlé complained to the Ministry of Health in Gabon that it had not been invited to participate in the drafting of the national law and reprimanded the drafting body for its “apparent lack of desire for a dialogue”. Recognising potential conflicts of interest, delegates at the 1996 World Health Assembly urged member states to ensure that monitoring of the application of the Code was transparent, independent and “free from commercial influence”.<sup>12</sup>

These reports thus reveal a significant gap between corporate statements about marketing practices and support of marketing regulation, and corporate conduct. Nonetheless, assistance to national governments from UNICEF, national and international public interest groups, and WHO has often helped countries to resist corporate pressure and enact measures that do protect infant health.

## **Strategic Public Relations**

Besides subverting or circumventing the Code over the past 20 years, the infant food industry has also assiduously developed and used public relations (PR) to defuse criticism, marginalize its critics and interfere with efforts to regulate transnational corporations internationally.

PR is a concealed instrument of corporate power. It influences legislation and political processes and shapes public debates. The PR repertoire includes smuggling PR messages into newspapers and magazines disguised as news, features or opinion articles; encouraging scientists and other non-corporate middlepersons to act in the corporate interest; and building up grassroots groups to act as front organisations. Its aims include:

- gathering intelligence and assessing the socio-political environment in which a company operates, including gaining information about pressure and public interest organisations;
- keeping issues out of the public debate;
- manipulating public debates in favour of the company by delaying legislation, depoliticising discussions, by diverting attention elsewhere, and by fudging the issues;
- constructing a good public image and reputation through strategic sponsorship and by appropriating the image of trusted and well-reputed organisations, institutions, groups or individuals to the corporation (image transfer);
- excluding diverging or antagonistic voices from public debate.<sup>13</sup>

'Dialogues' and 'partnerships' are among the most sophisticated and up-to-date PR methods. The strategy today is to emphasise consensus-oriented dialogue with selected critics, and to urge the public and non-governmental sectors to work with corporations rather than stirring up controversy over industry marketing practices. Those that do not want to enter dialogue or partnerships are often disparaged. The International Association of Infant Food Manufacturers, for example, states that “ongoing confrontation stands in the way of . . . vitally needed partnerships” for infant and young child health.<sup>14</sup>

## Regulation in an Era of Dialogues & Partnerships

The promotion of closer interactions based on 'trust' and 'mutual benefits' between the public and NGO sector, on the one hand, and corporations and their business associations, on the other, extends beyond the infant food controversy and corporate PR strategies more generally. The governments of the US, UK and, more recently, Germany, have championed various kinds of partnerships with the for-profit (private) sector since the mid-1990s. Much of the current discourse among international agencies on governance portrays 'dialogues' and 'partnerships' between large corporations and civil society organisations, national governments or UN agencies and other international organisations as an endeavour which would benefit everyone.<sup>15</sup>

Several public interest groups are now collaborating with business. Many are assisting companies with their internal operations by drawing

15. For a critique of World Bank 'dialogues', see [www.developmentgap.org](http://www.developmentgap.org) and [www.irm.org](http://www.irm.org). An October 2001 *Financial Times* guide to "responsible business" suggests that the majority of initiatives to encourage corporate responsibility should not be a matter of legislation, but should instead "be developed and overseen by new social partnerships and corporate codes of conduct, with companies seeking to 'reduce risk by linking their codes to partnerships that involved human rights and development NGOs'." See Pike, A., "Introduction", *Responsible Business in the Global Economy: A Financial Times Guide*, October 2001, p.5.

### Dialogues . . . or Strategic Public Relations?

At the Tenth Public Relations World Congress in 1985, international PR consultant Rafael Pagan, Jr. drew attention to more than 30 different codes of conduct for TNCs or guidelines being considered at the UN level. He went on to point out that the International Organisation of Consumer Unions (IOCU) intended "to create a climate of support for national and international regulation".

With these developments, Pagan concluded that it wasn't enough for corporations simply to go on lobbying governments and UN agencies behind the scenes or trying "to communicate a decent company image to the general public in order to gain support, or at least consent, for the industry's objective."

Corporations should also, he advised, move towards an 'issues management' strategy focused on dialogue:

"If a company opens itself up to dialogue with critics of conscience, seeks support and understanding through openness and dialogue with news media and UN staff members, and acknowledges a broad responsibility for the more remote effects of its marketing practices in the Third World, it can gain respect for its essential decency, legitimacy and usefulness".

The infant food case study illustrates how easy it is for such 'dialogue' to become another corporate PR tool for

engineering consent to socially-unacceptable corporate practices, rather than being a conduit allowing society to make corporations more accountable to them.

Marketing lecturer Craig Smith pointed out that corporations may use dialogues not only to find out what problems exist and to 'comply' with societal demands, but also to fight pressure groups or to manipulate the debate. As far as companies were concerned, he suggested, direct dialogue with pressure groups could be an excellent tool to assess the extent of the 'threat' posed by critics' demands. It could also be used to co-opt pressure groups.

Thus corporate 'dialogues' are often anything but open and straightforward discussions about controversial issues. They can be used to gain intelligence, transfer image, divide groups amongst themselves, delay actions, fudge issues, depoliticise debates and divert attention from more pressing issues. Civil society and other organisations should therefore consider carefully whether, when and how to enter into discussions with a company.

#### Dialogue or Delay?

In 1989, citizen and church groups around the world resumed the boycott of Nestlé products because the company continued to violate the International Code and subsequent resolutions. The International Association of Infant Food Manufacturers then proposed

a two-day meeting "with the participation of WHO and UNICEF . . . to resolve the controversy over the free or low-price supplies of infant formula and other breastmilk substitutes in developing countries".

Most of the organisations invited by the Association to attend saw no need for a meeting. They said that industry interpretation of the Code as permission to continue distributing large amounts of free supplies to maternity wards was clearly contradicted by a 1986 World Health Assembly Resolution. They queried why the industry asked for such a meeting in 1989 – just after the boycott had been renewed – but not in 1986 at the time of the WHO Resolution. They regarded the request to meet as yet another delaying tactic and thus the meeting never took place.

Subsequently, rather than ensuring that its members stop handing out free supplies, the Association issued a statement as to how it would work with governments, WHO and UNICEF to end this practice.

**Sources:** Pagan Jr., R. D., "The challenge to multinational marketing: A public relations response", in Denig, E. and van der Meiden, A. (eds.) *A Geography of Public Relations Trends*, Martinus Nijhoff Publishers, Dordrecht, 1985; Smith, C. N., *Morality and the Market: Consumer Pressure for Corporate Accountability*, Routledge, London, 1990.

# Voluntary Initiatives - Limitations and Risks

Corporate initiatives to take greater social and environmental responsibility can benefit society. But they can also have significant limitations and risks from the perspective of the public interest.

A code is usually a set of principles and standards guiding a firm's conduct in relation to its social and environmental duties and responsibilities. It is important to distinguish between regulatory codes, which are guides for national legislation, and co-regulatory or self-regulatory codes which depend on a company's commitment to take its ethical obligations seriously.

It is also more productive to distinguish between legally-binding and non-legally-binding codes than to classify as 'voluntary' those initiatives which set out what a company should be doing anyway.

Relevant to analyses of different regulatory arrangements is not just how comprehensive and sound the text of a particular code might be but also what type of code and institutional arrangement would most likely lead to improvements in corporate practices.

In a 1998 *Encyclopedia of Applied Ethics*, Jane Pritchard points out that voluntary codes are usually seen as a "warranty . . . of how business will conduct itself in regard to certain moral principles" such as respect for human rights and dignity. But codes of conduct, including codes of practice, corporate charters and mission statements, can have various functions in practice, ranging from "quasi-legal requirements through moral prescriptions to mere advertising puffery". Pritchard warns against assuming that codes always act in a positive way:

"Rather than improving standards of practice, they may actually serve to reduce them . . . [A] code may be put in place to avoid statutory regulations being imposed on a business or industry. Thus by pretending to have moral

standards, legal constraints are sought to be avoided. The code, by misleading people about managers' intentions, makes the situation worse than had it never been adopted at all."

## Codes of Conduct

During the 1990s, more and more companies and business associations formulated codes of conduct, either on their own or with citizen groups. UNRISD's Business Responsibility for Sustainable Development project analysed many of these codes and concluded that voluntary initiatives are often drawn up without transparency, mechanisms for independent verification, worker/community participation, or regard to international standards for the protection of labour, the environment and human rights. As a result, companies often set inadequate targets, indulge in mere greenwashing, or simply fail to abide by their own rules.

UNRISD also pointed out that corporate social and environmental responsibility has historically been driven to a large extent by state regulation, collective bargaining and civil society activism, all of which can be undermined by over reliance on non-legally binding codes, certification schemes and other joint initiatives with the corporate sector.

In the infant food case, if policymakers had yielded to the industry's proposals to let the industry regulate itself or work out voluntary agreements with national governments, it would have been that much harder for governments and international citizen alliances to curb harmful transnational practices. Debates about appropriate actions would have become privatized and fragmented. Without the weight of the World Health Assembly behind the International Code, IBFAN and others would have been in a weaker position to demand that governments implement the Code in national legislation while national authorities would have found it harder to call on the support of UN agencies.

Many citizen groups are under pressure today to support co-regulation with TNCs instead of pressing their governments to strive for effective international regulatory codes. A 1996 study of European NGO campaigns on transnational corporations, published by the UK Catholic Institute for International Relations, cautioned that:

"The system of voluntary codes of conduct needs to be questioned from a long term perspective, since it gives in to the TNCs' strategy that aims to keep control of TNCs out of public/governmental hands. It also presents practical problems: how would thousands of corporate codes of conduct with independent monitoring bodies be followed up?"

It would also be difficult for NGOs to use thousands of corporate codes of conduct as tools to raise public and government awareness about the practices of corporations which operate transnationally.

The broader societal and political functions of publicly-devised regulatory codes are often overlooked. As UNCTAD pointed out:

"The negotiations over codes of conduct [in the 1970s and 1980s], whether ultimately successful or not, were instrumental in defining areas of common understanding over the proper conduct of transnational corporations and in clarifying the standards for their treatment."

**Source:** Sources: Pritchard, J., "Codes of ethics" in Chadwick, R., (ed.) *Encyclopedia of Applied Ethics*, Academic Press, London, 1998; Utting, P., *Business Responsibility for Sustainable Development*, UNRISD occasional paper 2, January 2000; van der Stichele, M. and Pennartz, P., *Making It Our Business*, CIIR, London, 1996; UNCTAD, *International Investment Instruments*, Vol. I, UNCTAD, New York/Geneva, 1996

up codes of conduct, developing systems of environmental reporting or carrying out social audits.

At the same time, some of the world's leading corporations are actively reaching out to NGOs and UN organisations. As a review of green business noted in 1998, for forward-thinking businesses, "partnership . . . quickly established itself as the strategy of choice".<sup>16</sup> As a result, the number of 'partnerships' linking business and UN organisations such as UNCTAD, UNEP, UNIDO and WHO has increased sharply in recent years.<sup>17</sup>

At the 1999 World Economic Forum,<sup>18</sup> for example, UN Secretary-General Kofi Annan proposed a Global Compact of "shared values and principles . . . in the areas of human rights, labour standards and environmental practices." In exchange for UN support of free trade, Annan asked member companies of the International Chamber of Commerce (ICC) – a business association of more than 7,000 transnational corporations from 130 countries – to "make sure that in your own corporate practices you uphold and respect human rights; and that you are not yourselves complicit in human rights abuses."<sup>19</sup>

Some UN-connected initiatives have been funded by prominent corporate figures or foundations associated with them, or rely on corporation donations. The Global Alliance for Vaccines and Immunization (GAVI), for instance, was set up by the Bill and Melinda Gates Foundation and includes on its board the World Bank, UNICEF, WHO, the Rockefeller Foundation, and the pharmaceutical and vaccine industries.<sup>20</sup>

## Privatisation of the UN?

Proponents of such partnerships argue that "only private sector firms can provide the research, technology and development capacity to address global health, environmental, and information challenges of the coming decade".<sup>21</sup> A number of governments and public interest groups, however, point out that such "partnerships are leading down a slippery slope toward the partial privatisation and commercialization of the UN system itself"<sup>22</sup> and risk subordinating the mission and values of the United Nations to commercial trade, investment and finance rules.<sup>23</sup> The UN-ICC Global Compact and GAVI confirm more general concerns about 'public-private partnerships'.

Any hopes, for instance, that the Global Compact might constitute co-regulation of industry under the UN aegis were soon dashed. From its inception, leading corporate figures repeatedly emphasised that they did not want external monitoring or Compact enforcement.<sup>24</sup> Corporate compliance with its nine principles is wholly voluntary. The UN Secretary-General's office has stressed that the arrangement "is not a regulatory instrument or code of conduct but a value-based platform designed to promote institutional learning" which relies on "the power of transparency and dialogue to identify and disseminate good practices based on universal principles."<sup>25</sup> ICC Vice-President Adnan Kassas says that the Global Compact assembles "a broad picture of company actions that demonstrate corporate citizenship in action in every part of the world."<sup>26</sup>

But the Global Compact has no mechanisms, independent of industry, to verify whether the conduct of its partner corporations comply with the Compact's nine core principles or not. The Compact office no longer lists its partner corporations, making it harder for citizen

16. Frankel, C., "One foot in the future", *Tomorrow*, Vol IX, No. 1, Jan/Feb. 1999, p.11, cited in Utting, P., *Business Responsibility for Sustainable Development*, UNRISD, Geneva, 2000.
17. Several UN agencies have turned to commercial sources of funding partly because their funding from governments has declined.
18. The World Economic Forum describes itself as "the leading interface for global business/government interaction." It aims to create "partnerships between and among business, political, intellectual and other leaders of society to define, discuss and advance key issues on the global agenda". See [www.weforum.org](http://www.weforum.org), accessed 14 December 2001.
19. UN, *Secretary-General proposes Global Compact on human rights, labour, environment*, Press release SG/SM/6881/Rev1, 1999, [www.un.org/partners/business/davos.htm](http://www.un.org/partners/business/davos.htm), accessed 17 January 2001.
20. See [www.vaccinealliance.org](http://www.vaccinealliance.org).
21. Tesner, S., *The United Nations and Business: A Partnership Recovered*, St. Martin's Press, New York, 2000, p.150, quoted in Utting, P., "UN-Business Partnerships: Whose Agenda Counts?", paper presented at "Partnerships for Development or Privatization of the Multilateral System?", seminar organised by the North-South Coalition, Oslo, Norway, 8 December 2000, (abridged version published in UNRISD News, No. 23, Autumn/Winter 2000, pp. 1-4.)
22. Bruno, K. and Karliner, J., *Tangled Up In Blue: Corporate Partnership at the United Nations*, Transnational Resource & Action Center (TRAC), San Francisco, 2000, [www.corpwatch.org](http://www.corpwatch.org).
23. The South Centre fears that if global public policies are founded on the basis that "what is good for big business is good for the world at large", hopes for an equitable world economic system and social justice are slender. See The South Centre, "The UN, Big Business and Global Public Policy", *South Letter*, Vol. 3, No. 34, 1999, p.1. See also "Zimbabwe Health Minister Accuses WHO of Capitulating to Pharma Companies", Press Release, Reuters Health Information, 18 June 2001.
24. At its launch in July 2000, the Global Compact included 44 corporations, 6 business and industry associations, and 14 NGOs and trade unions. It aimed to enlist 100 transnational corporations and 1,000 companies over the next following years (of an estimated 63,000 transnational corporations in the world with 690,000 affiliates.)
25. The Global Compact: What it Is – and Isn't, Mimeo, annex to Letter of John O. Ruggie, Assistant Secretary-General of the UN to Alison Linnecar, IBFAN/Geneva Infant Feeding Association, 22 January 2000.
26. Kassas, A. "Taking up the Challenge: Business and the Global Compact," text distributed during the UN's Millennium Summit, 6-8 September 2000, quoted in Corporate Europe Observatory (CEO), *ICC: Global Compact Violators*, CEO Issue briefing July 2001, p.2. [www.xs4all.nl/~ceo](http://www.xs4all.nl/~ceo)

27. In October 2001, Compact partners submitted to a Global Compact Learning Forum meeting held in the UK some 30 case studies intended to demonstrate the actions they had taken according to Compact principles. An independent team of academic analysts which reviewed the submissions found that none conformed to the Compact case study guidelines while a significant number made no reference to any of the nine Global Compact principles.

See [www.unglobalcompact.org/un/gc/unweb.nsf/content/policynote.htm](http://www.unglobalcompact.org/un/gc/unweb.nsf/content/policynote.htm), accessed 22 January 2002.

28. Corporate Europe Observatory. op. cit. 26. For details of how Aventis, Nike, Rio Tinto and the International Chamber of Commerce (ICC) have violated the principles of the Global Compact, even though they have endorsed it, see [www.corpwatch.org/un/updates/2001/gcseries.html](http://www.corpwatch.org/un/updates/2001/gcseries.html).

29. Hardon, A. "Immunisation for All? A Critical Look at the First Gavi Partners Meeting", *HAI-Lights*, March 2001, [www.haiweb.org/pubs/hailights/mar2001/index.html](http://www.haiweb.org/pubs/hailights/mar2001/index.html); "Do Pharmaceutical Companies Play Too Large a Role in Vaccine Fund?" *Wall Street Journal*, 3 December 2001; Save the Children Fund, *New Products into Old Systems: The Initial Impact of the Global Alliance for Vaccines and Immunizations (GAVI) from a Country Perspective*, SCF, London, 2002.

groups to do so. Compact partners can, however, promote initiatives which they believe demonstrate their corporate responsibility on the Global Compact website. They can use the UN initiative to enhance their reputation and political influence even if they haven't significantly changed their practices.<sup>27</sup> Many of the Compact's corporate partners are renowned for lobbying against international environmental and other regulatory treaties. Some citizen groups have therefore called on the UN Secretary-General to "break with the ICC before the UN's credibility suffers permanent damage."<sup>28</sup>

Health groups, meanwhile, have criticized the Global Alliance for Vaccines and Immunization (GAVI) for distorting and fragmenting vaccine policy-making and programmes at both national and international levels. GAVI emphasises subsidies for the research and distribution of new vaccines rather than for the purchase and distribution of existing basic vaccines. The prices of some of the vaccines which the Alliance has bought were higher than those which governments and UN agencies might have obtained through open tender on the international market. Health groups have raised concerns about conflicts of interest arising from the involvement of the pharmaceutical and vaccine industry on GAVI's board.<sup>29</sup>

When faced with criticisms of their partnerships, the various UN agencies point to recent or evolving guidelines on interactions with the private sector. Critical questions about industry influence over public

## Partnerships – Some Critical Questions

Public-private partnerships – seemingly pragmatic, constructive and cooperative – have considerable appeal. Yet before organisations rush into them, they need to reflect critically on their implications and raise some key questions.

- **Will the agenda of the public interest groups change and, if so, how?**

Partnerships between NGOs and the private sector can coopt NGOs and dilute critical positions. Many NGO staff end up becoming, in effect, company consultants. Others often feel less able to criticise business practices. Moreover, as public institutions have increasingly relied on corporate funding, a culture of censorship and self-censorship within them has grown.

- **Will the power of the business 'partners' to influence decision-making processes change and, if so, how?**

Partnerships' enable business to have greater access not only to public interest groups but also to policy-makers in government and international organisations. Partnerships enable corporate

interests to 'capture' or heavily influence the decision-making processes of public interest institutions. Corporate interests are now exercising more influence in some UN agencies through funding, participating in consultation and policy processes, and placing corporate staff with public agencies.

- **What criteria are used to select partners? Who selects the partners?**

Organisations such as public interest groups and UN agencies, which have considerable legitimacy because of their association with ethical causes, need to be especially careful about who seeks them out as potential partners and whom they select as partners. Certain UN agencies, for instance, have become partners of companies which have poor environmental, social and human rights records.

- **Will the partnership build or split alliances?**

Many groups striving for social and environmental justice realise that they need allies. Partnerships with mainstream organisations may broaden support for their work – or they may split existing alliances.

Many corporations are well aware of this and deploy 'partnership building' efforts as part of a divide-and-rule strategy. Activists who decide not to participate in a 'partnership' with a corporation or business association risk being marginalised and labelled unrealistic, confrontational and uncooperative. Yet rejecting certain arrangements in favour of others is often a crucial step in building stronger links among consumer groups, social-interest groups, trade unions and environmentalists.

- **Will the partnership weaken governmental and inter-governmental regulation, trade unions and collective bargaining or more critical forms of civil society protest and activism?**

All these factors has been crucial in the struggle to foster environmental and social responsibility among private firms.

**Source:** adapted from Utting, P., *Business Responsibility for Sustainable Development*, UNRISD occasional paper 2, January 2000.

policy-making and implementation, standard setting and regulation, and public advocacy on behalf of the poor and marginalised are not well received. Neither are questions about the increasing trend among governments and public agencies to prevent their staff and outside experts from querying the appropriate role of transnational corporations in democratic decision-making.<sup>30</sup>

## Ruling by Consent

In line with the prevalent neoliberal ‘governance’ and ‘partnership’ discourse, TNCs are now asking for privileged status in international decision-making.<sup>31</sup> In 1996, Nestlé’s then Executive Vice-President Peter Brabeck-Letmathe argued at the UNCTAD Global Investment Forum that “business and its organisations should not be lumped together with the many single-issue NGOs, but accepted as interlocutors of different stature, as the engineers of wealth.”<sup>32</sup>

In 1997, when then Nestlé CEO Helmut Maucher took over the helm of the International Chamber of Commerce, he urged governments to work with business to establish a framework for the global economy. In an opinion piece titled “Ruling by Consent”, he wrote:

“Governments have to understand that business is not just another pressure group but a resource that will help them set the right rules. The International Chamber of Commerce . . . is the obvious partner from the business side for this intensified dialogue with governments.”<sup>33</sup>

Maucher announced that the ICC was convening a formal Business Dialogue which would bring together the heads of international companies and the leaders of international organisations such as UNCTAD and WHO so that “the business experience is channelled into the decision-making process for the global economy.”<sup>34</sup> Just one year later, Maucher asserted that the ICC was “the preferred dialogue partner for business with the United Nations and other international institutions.”<sup>35</sup>

Now, in addition to lobbying at UN meetings, industry invites high-ranking UN and government officials to *their* meetings, such as the annual World Economic Forum in the Swiss mountain town of Davos.<sup>36</sup>

## Regaining Clarity, Facing Controversies

**“It is dangerous to assume that the goals of the private sector are somehow synonymous with those of the United Nations, because most emphatically they are not. Business and industry are driven by the profit motive . . . The work of the United Nations, on the other hand, is driven by a set of ethical principles that sustain its mission – principles of the Charter of the United Nations, in the Universal Declaration of Human Rights, in the Convention on the Rights of the Child . . . In coming together with the private sector, the UN must carefully, and constantly, appraise the relationship.”**

**Carol Bellamy**  
Executive Director UNICEF  
1999<sup>37</sup>

Any analysis of industry’s role and conduct in policy-making and the regulation of corporate practices has to take into account and expose corporate PR and corporate lobbying. The first step in preventing

Given that software giant Microsoft, of which Bill Gates is founder and chair, was being accused of overcharging its customers and of breaking anti-trust or monopoly laws in the US in 1999 when GAVI was formed, some commentators regard Gates involvement in philanthropy as an attempt to deflect attention away from efforts to regulate Microsoft’s activities. See Utting, P., op. cit. 21.

30. See, for example, Ferriman, A., “WHO accused of stifling debate about infant feeding”, *British Medical Journal* 7246 (320), 20 May 2000, p.1362, and ensuing debate on the BMJ’s website, [www.bmj.com/bmj/](http://www.bmj.com/bmj/)

31. This supplements the previous TNC strategy of attempting to influence international politics by creating business organisations and gaining official representation for them at UN agencies as NGOs. Since the early 1990s, public advocacy groups have been calling on the UN to make an official distinction between “associations of citizens” and “organisations of capital”. See Krut, R., *Globalization and Civil Society: NGO Influence in International Decision-Making*, United Nations Research Institute for Social Development (UNRISD), Geneva, 1997, p.8.

32. Brabeck-Letmathe, P., “Intervention in panel 2: Towards a multilateral framework of investment?”, in *UNCTAD High Level Meeting - Global Investment Forum*, Geneva, 1996, p.3.

33. Maucher, H., “Ruling by consent”, *Financial Times* (guest editorial), 11 December 1997, p.1.

34. Ibid.

35. quoted in Williams, F., “The voice of business heard around the world”, *Financial Times*, 29 December 1998. Maucher also questioned the legitimacy of “pressure groups” being involved in international decision-making.

36. This meeting “is now considered the global summit which defines the political, economic and business agenda for the year” (emphasis added). See [www.weforum.org](http://www.weforum.org), accessed 14 December 2001.

For more information on business-lobby groups, see Corporate Europe Observatory, “The Geneva business dialogue: Business, WTO and UN – joining hands to regulate the global economy?”, CEO (2), October 1998, pp.3-6, [www.xs4all.nl/~ceo/](http://www.xs4all.nl/~ceo/); Balanyá, B., Doherty, A., Hoedeman, O, Ma’anit, A. and Wesselius, E., *Europe Inc: Regional and global Restructuring and the Rise of Corporate Power*, Pluto Press, London and CEO, Amsterdam, 2000.

37. Bellamy, C., “Sharing Responsibilities: Public, Private and Civil Society”, paper delivered at Harvard International Development Conference, 16 April 1999.

*Avoid using the words 'dialogue' and 'partnership' for interactions between the public and the commercial sector.*

corporations from exercising undue influence over public policy-making and public debates is to avoid using the words 'dialogue' and 'partnership' for interactions between the public and the commercial sector. These interactions should be described by more accurate, specific terms.

Instead of 'dialogue', for instance, words such as meeting, talks, discussion, debate or negotiation would be more exact. Using other terms would limit the impression that communications between industry and other actors aim at a free and open exchange of views between equal partners.

Instead of 'partnership', the following terms could be used:

- *corporate sponsorship* or *funding* (for donations in cash and kind);
- *tenders* (for instance, for negotiations to achieve lower prices for industrially-manufactured products such as medicines);
- *outsourcing* or *contracting out* (of public services such as water supply and health care to for-profit entities);
- *collaboration* (such as on research into new pharmaceuticals and vaccines, which is often publicly subsidised);
- *consultation* (for example, on scientific standards which affect industry products or practices);
- *co-regulation* (for mutually-agreed arrangements governing corporate conduct);
- *personnel secondment* (for corporations placing and paying for their employees to work in international agencies such as those of the UN and the World Bank).

Using more precise descriptions would make clear that the terms 'dialogue' and 'partnership' in fact encompass a wide range of interactions between industry, governments and NGOs. Such usage would increase awareness that no single guideline can capture all the potential conflicts of interest of these different interactions. It would illustrate the need for broad-based public discussions to clarify which interactions may be relatively unproblematic, which may cause problems which could be limited by rules and arrangements to minimise conflicts of interest or their appearance – and which interactions may undermine completely the mandates and functions of governments and UN agencies to act in the public interest. Careful terminology may also stimulate discussions about the potential adverse implications of 'dialogue' and 'partnership' on democratic decision-making.

Finally, avoiding using the words 'dialogue' and 'partnership' would limit the ability of corporations to enhance their power and influence by appropriating what is generally perceived as the good image of civil society and religious organisations and UN agencies.<sup>38</sup>

Of the corporate tendency to use 'stakeholder dialogues' and other joint initiatives as a way of enhancing their reputation, UNRISD's researcher on corporate social responsibility, Peter Utting, says:

"The UN has a choice. Either can it be a party to corporate strategies of reputation management or it can be an ally of the global corporate accountability movement and insist, in stronger terms than it has to date, that business improve its social and environmental record."<sup>39</sup>

It is important to stress that it is not interactions between the public and the commercial sector *per se* which are at issue. The infant food industry, for instance, does have a role to play in infant nutrition – one of delivering good quality, reasonably priced products for the minority of infants who need them.

38. Image transfer is the transfer of the good reputation of a group highly respected by the public to a criticized organisation or industry sector.

39. Utting, P., op. cit. 21.

But many UN agencies, governments and NGOs are in danger of accepting, and even promoting, a dichotomy between ‘constructive dialogue’ or ‘partnership’, on the one hand, and ‘non-constructive’ or ‘counterproductive controversy’ and confrontation, on the other. This sharp division ignores the fact that controversy is an inherent, often constructive and innovative part of democracy. Rule-setting, particularly the regulation of transnational corporations, is a highly political

## WHO Roundtables and Infant Food Industry Activities

The infant food industry's concerted lobbying efforts to be recognised as privileged partners in global decision-making arenas have coincided with a policy change within the World Health Organisation (WHO). In 1998, WHO decided “to initiate, in collaboration with concerned parties, a process for specifying, examining and overcoming the main obstacles to implementing . . . the International Code and subsequent related resolutions.” The first WHO roundtable discussions were held in November 1998 – first with consumer and breastfeeding groups on their own, and then just with infant food manufacturers.

Since the roundtable discussions, several infant food companies have increased their lobbying activities. In 1999, for example, Nestlé presented as ‘proof’ of its compliance with the Code and subsequent Resolutions a 180-page report sent to the WHO Director-General, other UN agencies, key policy-makers, Members of Parliament and journalists.

The report, however, was simply a collection of letters from 54 government authorities which had been asked by Nestlé for written confirmation of company compliance with national legislation; in many countries, such legislation does not exist or is weaker than the Code and Resolutions. Many countries, moreover, do not have monitoring mechanisms which would allow them to check whether infant food companies violate national legislation. Nearly half the replies did not in fact confirm that Nestlé had complied with national legislation or any other measure – one merely acknowledged receipt of Nestlé's letter. Three authorities (Palestinian, Oman and Danish) complained

that their letters were being used, falsely, as certificates of Code compliance.

In 1999, Nestlé chief executive office Peter Brabeck-Letmathe described the purpose of WHO's roundtable as “to resolve once and for all the differences which exist in *interpretation* of the International Code” (emphasis added).

NGOs have argued that the obstacles to Code implementation are not differences in Code interpretation, but a lack of will on the part of the industry to comply with the Code in letter and spirit, as well as industry interference with the drafting and monitoring of national legislation. They have also stated that the proper forum for clarifying Code interpretations is the World Health Assembly, not a semi-private roundtable forum between industry and civil society organisations.

### Divide-and-Rule

The industry also used its involvement with WHO to move its divide-and-rule strategy into a higher gear. After years of attempting to discredit and isolate the citizen action groups that monitor them and keep the infant food issue on the public agenda, companies began to try to discredit UNICEF and to divide it from WHO. It disseminated widely its interpretation that “WHO... *alone* has responsibility for Code implementation within the UN system”. In May 1999, at a press conference in the UK, Nestlé's Brabeck-Letmathe criticised UNICEF for its alleged unwillingness to engage in dialogues with the company.

UNICEF in fact has an extensive history of interactions with Nestlé and other infant food manufacturers. In the early 1990s, when UNICEF and WHO urged the companies to stop handing out free supplies to maternity wards

and clinics, UNICEF and the International Association of Infant Food Manufacturers met every two months to discuss the matter – and yet the industry did not stop providing free supplies.

Since the Code was adopted, UNICEF has also had many direct discussions with Nestlé to stress that the Code applies to all countries, not just developing ones. In October 1997, UNICEF Executive Directive Carol Bellamy suspended further discussions until Nestlé recognised the universal applicability of the Code.

Nestlé then wrote to the UN Secretary-General Kofi Annan to complain about UNICEF's “closing its door to any future conversation”. It went on to hire former US vice-presidential candidate Geraldine Ferraro as a lobbyist to press UNICEF to reopen discussions. By the end of 1999, after an article in the *Wall Street Journal* described the agency as being engaged in a senseless “feud against industry”, UNICEF entered a new round of talks with Nestlé and abandoned its insistence on the company's prior recognition of the universal applicability of the Code.

**Sources:** Brabeck-Letmathe, P., “Beyond corporate image: The search for trust”, address to the University European Affairs Society, [www.nestle.com/all-about/insight/oxford.html](http://www.nestle.com/all-about/insight/oxford.html), accessed 13 December 1999; Koenig, P., “Mr Nestlé gets angry”, *Independent on Sunday*, 9 May 1999; Freedman, A.M. and Stecklow, S., “Wyeth, Nestlé offer free tins to stem spread of AIDS – children's agency balks”, *Wall Street Journal*, 5 December 2000; *Wall Street Journal*, “Formula for Disaster,” editorial, *WSJ (European Edition)* 6 December 2000.

process in which challenges and healthy distrust are no less valuable, and often more appropriate, than uncritical cooperation and trust. The long-standing efforts to end the harmful marketing practices of infant food manufacturers illustrate that conflict must sometimes be prolonged until there is real change.<sup>40</sup> Comments Anthony Giddens, Director of the London School of Economics, whose work on the 'Third Way' (neither market nor state) has significantly influenced the UK and other governments to collaborate more closely with corporations:

## Codes in Context

The World Health Organisation (WHO) has had a closer relationship with business since Gro Harlem Brundtland became its Director-General in 1998. She declared then that 'dialogue' and 'partnership' with industry and activist groups would be a new strategy for the organisation, a strategy she has long believed in.

But even Brundtland spoke out in November 2001 against corporate self-regulation. "We have seen no evidence that tobacco companies are capable of self-regulation," she said after a three-year effort to persuade these companies to address problems caused by advertising. "Tobacco addiction is a communicated disease", said Brundtland, "communicated through advertising, promotion and sponsorship."

British American Tobacco (BAT), Philip Morris and Japan Tobacco recently agreed to work together to stop marketing activities directed at non-smokers, particularly children and teenagers, and have asked governments, UN agencies and the World Bank to have faith in their voluntary initiative. The initiative was launched just before a WHO meeting of 191 countries to negotiate rules for global tobacco control.

But Tobacco Control Coordinator of the World Bank, Joy de Bayer, said:

"Voluntary codes have proved to be a failure [while] interventions like comprehensive advertisement bans and price increases have a measurable and sustained impact on decreased tobacco use."

Research by the US investment bank Credit Suisse First Boston stated that:

"by proactively setting new international standards, the multinationals could be trying to counter a number of proposals that the WHO has been working on to curb the amount of cigarettes that are consumed on an international level".

The analysis added that in many countries, existing legislation is stricter than the provisions of the international marketing standards.

## Inconsistencies

Industry's use of codes to preempt regulation is nothing new. The infant food manufacturers, for instance, drew up and promoted a self-regulatory code of ethics in 1975 as public pressure for legal restraints on their marketing methods grew.

In the 1980s, meanwhile, the International Pharmaceutical Manufacturers' Association delayed international regulation of its practices for several years by arguing that it needed time to implement its own 1981 voluntary code. At the same time, it lobbied for weaker public measures. What started out as an UNCTAD debate to regulate a whole range of pharmaceutical industry practices ended in 1998 with the World Health Assembly adopting the relatively loose and non-committal *WHO Ethical Criteria for Medicinal Drug Promotion*.

Why is WHO not as cautious with the infant food or pharmaceutical industries as it is with tobacco manufacturers? Pharmaceutical TNC Merck Sharp and Dohme seconded one of its employees to WHO's Tobacco Free Initiative. WHO, UNICEF, UNAIDS and the UN Secretary General now praise the pharmaceutical industry as a 'partner' in various new

public-private initiatives for health. Yet pharmaceutical companies have recently challenged the governments of South Africa and Brazil to prevent them interpreting the World Trade Organisation's patent agreement (TRIPS) in a way that would allow them to provide HIV drugs at lower prices.

WHO asked a senior staff member who had been advising developing countries on TRIPS to keep quiet about physical assaults and anonymous telephone calls he had received which warned him not to "mess with the pharmaceutical industry."

WHO support for the implementation of the Code of Marketing of Breastmilk Substitutes, meanwhile, has weakened as its partnership policy has gained momentum.

**Sources:** "Member States need to take actions against tobacco advertising", WHO press release WHO/47, Geneva, 1 November 2001; Kanji, N. et al., *Drugs Policy in Developing Countries*, Zed Books, London, 1992; "WHO's partnership with the pharmaceutical industry", letter from Health Action International to Gro Harlem Brundtland, Director-General World Health Organisation, 18 May 1999, [www.haiweb.org/campaign/PPI/brundtland](http://www.haiweb.org/campaign/PPI/brundtland); Allemand, A., "L'OMS réduit au silence son expert menace de mort: Face à l'industrie pharmaceutique l'agence adopte un profil bas", *Tribune de Genève*, 25-26 August 2001; Ferriman, A., "WHO accused of stifling debate about infant feeding", *British Medical Journal* 7246 (320), 20 May 2000, p.1362.

“Governments mustn’t shirk confronting corporate interests, where it is necessary to do so – and it often *is* necessary to do so.”<sup>41</sup>

## International Regulation of TNCs: A Necessary Task

**“Voluntary approaches can do a great deal to promote better practice, but the worst offences will only ever be prevented through national and international laws and binding rules. Such systems can operate in parallel: binding rules to ensure minimum standards and voluntary initiatives to promote higher standards.”**

European Parliament, 1999<sup>42</sup>

The 1999 annual *Human Development Report* from the United Nations Development Programme (UNDP) described how “profit-driven” economic globalisation had resulted in the neglect of human rights and social justice for the vast majority of the world’s people.<sup>43</sup> The *Report* proposed that corporations should be made more accountable to society:

“Multinational corporations are already a dominant part of the global economy – yet many of their actions go unrecorded and unaccounted . . . They need to be brought within a frame of global governance, not just a patchwork of national laws, rules and regulations.”<sup>44</sup>

Such a “coherent and democratic architecture for global governance” would include a binding code of conduct for multinational corporations because TNCs “are too important for their conduct to be left to voluntary and self-generated standards.”<sup>45</sup>

Policy-making has to become more democratic – that is, people-centred and participatory – if there is to be more democratic control over transnational corporations. Political debate should shift its focus away from corporate responsibility towards corporate public accountability. It should move away from relying on corporate statements of intent towards creating legal and political institutions to monitor and sanction socially- and environmentally-harmful corporate practices.

Key questions which should be raised about appropriate regulatory regimes go well beyond simply asking whether international standards for corporations should be mandatory or not. Such questions should include:

- In which areas are binding laws needed? In which areas are other arrangements sufficient?
- Who sets the rules and on what basis?
- Who implements the rules and how?
- How can society ensure that any regulatory arrangement effectively prevents – or at least minimises – potential harm to people and the environment from industry activities?

## Vision and Action

The challenge to regulate transnational corporations is severe, given that the political climate and economic balance of power has favoured regulators less and less over the past 30 years. Excuses for government

*TNCs need to be brought within a framework of global governance, not just a patchwork of national laws, rules and regulations.*

40. Denise Lach, who analysed the role of conflict in the US environmental debate, pointed out: “Contrary to the common view that conflict is always a negative force that must be managed to resolution, conflict can be a driving force for social change . . . Fundamentally, conflict forces us all to clarify and adapt our perspectives in response to changing human interests and environmental conditions.” See Lach, D., “Introduction: Environmental Conflict”, *Sociological Perspectives* 39 (2), 1996, pp.211-217.

41. Giddens, A., *The Third Way and its Critics*, Polity Press, Cambridge, 2000, p.142, original emphasis.

For further literature about global public-private partnerships cf. e.g. TRAC, *A Perilous Partnership: The United Nations Development Programme’s Flirtation with Corporate Collaboration*, The Transnational Resource & Action Center, San Francisco, 1999, [www.corpwatch.org](http://www.corpwatch.org); SID/WHO/ISS, “Report on the International Seminar on ‘Global Public-Private Partnerships for Health and Equity’”, SID/WHO/ISS, Rome, 2000; HAI, “Public-private partnerships: Meeting real health needs?”, seminar report. Health Action International (HAI-Europe), Amsterdam, 2001, [www.haiweb.org/campaign/PPI/seminar200011](http://www.haiweb.org/campaign/PPI/seminar200011).

42. *Report of the European Parliament on EU Standards for European Enterprises Operating in Developing Countries: Towards a European Code of Conduct*, European Parliament, Committee on Development and Cooperation, Brussels 1999.

43. UNDP, *Human Development Report: Globalization with a Human Face*, Oxford University Press, Oxford/New York, 1999, p.30.

44. *Ibid.*, p.100.

45. *Ibid.*, pp.12, 100.

# Corporate Watchdogs and the State

**“If markets are not perfectly self-correcting, then the only check on their excesses must be extra-market institutions . . . To temper the market one must reclaim civil society and government, and make clear that government and civil vitality are allies not adversaries.”**

**Robert Kuttner**

The infant food industry claims that citizen action groups, such as the International Baby Food Action Network which monitors corporate compliance with the International Code, are “usurping the sovereignty of national governments”, a claim which is increasingly levelled at civil society organisations in general. (Business associations don’t raise the parallel question of whether TNCs are undermining states.)

Do citizen actions for corporate accountability conflict with a state’s duty to act in the public interest and to protect and promote human rights? In her study of the influence of civil society organisations in international decision-making, Riva Krut stressed that:

“It is not the function – nor usually the intention – of civil society organisations to usurp the functions of governments. [Their] role may be to shape and steer public issues and public officers, to monitor the implementation of public policy, to deliver humanitarian relief. [Their] mission may be to ensure that governance is democratic, accountable, transparent, inclusive, participatory and equitable. In this sense, domestic civil society relies on a strong state which functions best under strong government. Global civil society, in parallel, would rely on strong national government and strong international governance from a reformulated United Nations.”

UN Secretary-General Kofi Annan has pointed out that:

“We know from experience that neither the United Nations, nor individual States, can by themselves meet the challenges of the 21<sup>st</sup> century. We know that civil society’s participation is essential . . . We know this because healthy and democratic societies are ultimately the product, not the creator, of a strong civil society. The same applies to a healthy and democratic international community.”

The rise of transnational corporations has been a major challenge to the decision-making powers of states – a challenge which has in turn led to the emergence of more transnational civil society networks. In the words of Krut:

“As national and international government declines in authority and international economic institutions leap into the space of government, civil society not only has to grapple with what a democratic system of global governance may look like, but has to do so in the absence of active players willing and able to take on the executive roles of governance.”

Citizen alliances pressing for the external regulation of transnational corporations generally complement the role of states. Systems of checks and balances capable of making corporations in Western industrialised states accountable have rarely been established simply because state authorities thought they were needed. Usually, the need for regulation has first been articulated within the public sphere. As Harris Gleckman and Riva Krut point out, national regulatory protection has rarely been easily or completely achieved:

“The worker struggle was a century in the making in the developed world and continues in the less developed world. Women’s rights and consumer rights, also the focus of decades-long struggle, are not yet secure. Environmental regulation, the newest ‘global’ social issue, has required decades of efforts by environmental organisations and activists.”

## A Vibrant Public Sphere

Many citizen and labour activists have persuaded some governments and corporations to take their duties towards society more seriously. Yet many of these same activists are now disturbed that their successes are being used in debates on ‘global governance’ to argue that states should abdicate should abdicate their rule-setting and monitoring functions altogether and hand them over to civil society organisations – preferably working in tandem with industry. (The fact that citizens cannot take over the role of states to promulgate legislation and sanction corporations is not part of this discourse).

Some NGOs may be attracted by the proposition. But with their limited financial and human resources, citizen groups should reflect whether it would not be more productive to form broad-based alliances to press their governments to develop a comprehensive and effective international regulatory regime against corporate abuses and malpractices – and to support those who do so despite industry disparagement.

Vigilant, active citizens – a vibrant public sphere – are the core of a democratic society. US economist Robert Kuttner stresses in his analysis of the political pre-conditions for good and effective regulation of the market:

“Strong civic institutions help constitute the state, and also serve as a counterweight against excesses both of state and market.”

**Sources:** Kuttner, R. *Everything For Sale*, The University of Chicago Press, Chicago, 1999; Krut, R., *Globalization and Civil Society*, UNRISD, Geneva, 1997; Gleckman, H. and Krut, R., *The Social Benefits of Regulating International Business*, UNRISD, Geneva, 1994.

inaction, however, such as ‘the power of TNCs’ or ‘globalisation’ often omit the accompanying worldwide trend governments have taken towards neoliberal policy-making. Balances of power can be shifted if there is enough clear analysis and political will to keep in check the socially- and environmentally-damaging practices of TNCs.

The following conclusions can be drawn from the infant food example and from general reflection on public regulation and corporate social responsibility debates:

- Officials and activists concerned with public welfare should reassess the trend towards co- or self-regulation.
- They should not automatically accept industry statements of corporate responsibility, but should assess whether such statements correspond to industry actions. Moreover, they should be aware that any improvement in a criticised practice may be a reaction to outside pressure and a host of other external and internal factors, not necessarily a result of increased corporate responsibility and change of heart.
- Effective industry self-regulation is not possible when it interferes with industry’s maximisation of profit. Besides, business associations which promulgate self-regulation often do not comprise all companies within an industry sector. Less socially-responsible corporations, both within and outside such associations, tend to drag the standards of others down. Only effective external regulation can create a ‘level playing field’ whereby all corporations are held accountable.
- Corporations cannot determine acceptable standards of risks for society. Standard setting for corporate conduct, practices and products requires not only scientific and ethical analysis but also social and political consideration. Deciding whether an emission level of a pollutant is acceptable, whether a chemical substance or a pharmaceutical drug should be banned, or whether a marketing practice, such as promoting tobacco or alcohol to teenagers, should be prohibited is a matter not only for scientists, doctors and ethics committees but also for public policy-making.
- The paramount duties of corporations are to refrain from interfering with processes of public rule-setting and enforcement; to establish effective auditing mechanisms in line with publicly-formulated codes and national legislation; and to cooperate in public investigations of potential violations. Corporations wishing to demonstrate their social responsibility can draw up and implement industry codes which are additional to publicly-formulated codes and national legislation. But they should abstain from using their codes to pre-empt legally-binding regulation required in the public interest.
- A clear distinction must be made between the party to be regulated and the parties drawing up the regulation and making it effective. The party to be regulated must not be allowed to influence unduly the regulation of its practices. The relevant corporations or business associations should not be invited to participate as ‘partners’ in the process, nor regarded as simply one among several ‘interested parties’ or ‘stakeholders’. Public regulation, monitoring and sanctions should be wholly independent of industry.
- Preventing regulatory capture by corporations, however, is ultimately a question of the awareness and civic-mindedness of public institutions and civil society groups, and of the civic behaviour of corporate decision-makers themselves.

*TNCs are too important for their conduct to be left to voluntary and self-generated standards.*

*Controversy is an inherent, often constructive and innovative part of democracy.*

*Corporations cannot determine acceptable standards of risk for society.*

## To 'Dialogue' or Not? That is the Question

If a dialogue is an honest and open discussion between equals, then many industry-initiated dialogues are not dialogues. Researchers Günther Bentele and his colleagues point out in *Dialogue-Oriented Corporate Public Relations* that the concept is often "instrumentalised and misused on the basis of its positive connotations."

How then can public interest groups and public agencies make the best use of their time and avoid being instrumentalised for a corporate, possibly hidden, agenda? When should public interest groups stay out of a 'dialogue'? When should they enter one? How should they do so? What are the opportunities, limits and risks of doing so? The following questions may be useful in making a decision.

- What are the declared goals of the meeting? Are the goals clearly defined? What are the public interest group's goals in attending the meeting? What is the likelihood of reaching them? If the group's goals differ from those of the meeting, is it still useful to continue?
- What are the potential undeclared goals of the meeting? What does the group think industry is really hoping to gain from the meeting? Does the group risk being

manipulated by the industry? Is there a risk that the group's positive image will rub off on an unethical company? Is there a risk that the company will use the group's participation in the 'dialogue' to discredit other groups?

- Will it take up a major part of a group's energy, move public issues behind closed doors, shift balances of power in favour of corporate interests, or compel the group to trade off its essential demands so as to achieve 'consensus'?
- Has the group considered the alternatives? Instead of a closed meeting with industry, what about panel discussions and public hearings? What about continuing to build coalitions with other groups and raising more public awareness of the problem? Would the public interest be better served by trying to influence other actors and legislation?
- If the group decides to turn down the offer of a meeting, does it have the resources to publicise its reasons for doing so? Otherwise, the company or business association may disparage the group as troublemakers who are not prepared to answer industry questions.
- If the group does decide to engage in talks with industry, who will define the agenda? Who is involved in the discussion? Who selects the participants? Who moderates the discussion?

Where does the discussion take place? Who takes the minutes of the meeting? Will differing and contradicting positions be noted? Does the group have to promise to keep the meeting and its contents confidential? How will the discussion be documented for the public? Can the group reassess continuously the usefulness of the discussions? Is the group prepared to break them off if the process conflicts with their mandate to advocate public concerns?

- After the meeting, can the group publicise the content of the meeting independently of the other parties? Can the group follow up on any agreements made? Does the group have the capacity to find out – and respond if needs be – if its participation at the meeting has been misrepresented by any of the other parties? Can the group counteract a potential shift in the balance of power through image transfer and the discrediting of other groups?

**Sources:** Bentele, G., Steinmann, H., and Zerfass, A., (eds.) *Dialogorientierte Unternehmenskommunikation: Grundlagen – Praxiserfahrungen – Perspektiven*, VISTAS, Berlin, 1996; Richter, J., *Dialogues or Engineering of Consent?* forthcoming 2002; and reflections with Jörg Schaber and others.

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It is time to rekindle efforts to regulate transnational corporations internationally. Governments and intergovernmental agencies should support those civil servants involved in regulatory activities at the national and international level. They should reach out to and co-operate with citizen groups and networks working for corporate accountability. They should avoid entering into arrangements which conflict with the regulatory and policy mandate of their agencies. These include inviting corporate leaders to set their own rules and standards under the aegis of the UN, forging secretive agreements with business leaders at private meetings, and accepting corporate offers to provide and fund corporate staff to work in public agencies.

What is needed at all levels of society – from citizen groups to leading political figures – is not just pragmatism but also far-sighted vision, clear analysis and courageous action to bring about meaningful corporate accountability.