

Viewpoint

Civil Society Hearing “Whose Partnership for Whose Development?: Corporate Accountability in the UN System beyond the Global Compact”

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This hearing is concerned with how the United Nations system might promote corporate accountability (CA), and how current approaches, centred on the Global Compact, public-private partnerships and corporate social responsibility (CSR), cannot meet this challenge. How then do we move “beyond the Global Compact”, as suggested in the title of this hearing?

The panelists have each focused on different aspects of corporate practice, public policy and governance arrangements that need to be reformed or transformed. And they have identified some current reform initiatives where civil society advocacy might yield results. In these brief closing remarks, I would like to highlight a number of institutional developments and forms of regulatory politics that are essential in strategies to promote corporate accountability, but which are somewhat different to those associated with CSR.

Before doing so, however, we should remind ourselves what corporate accountability means. Like CSR, there are various definitions, but for the “movement” of activists and academics concerned with taming corporate capitalism it seems to suggest four things:

First, that we can't rely on companies to put their own house in order through self-regulation and voluntary initiatives, or on a combination of CSR and minimalist regulation. As evidenced by recent cases of companies such as BP, Siemens and KPMG that had a high profile in CSR circles, companies and managers are simply under too much pressure to cut costs; compete and maximize profits in ways that inevitably generate perverse social, labour, environmental, governance and fiscal effects; as well as to seek out new frontiers where regulations and rights can be ignored.

Second, in view of this situation, companies must be held to account. This implies not just responsibility but some sort of obligation to answer to others through, for example, mandatory reporting and disclosure, as well as more effective independent monitoring and auditing.

Third, companies that fail to comply with agreed standards must incur some sort of penalty or cost. This contrasts sharply with CSR practice where such costs are often limited to the

reputational arena, or where there is impunity. This implies not only that new regulations and laws may be needed but that regulatory and legal institutions must have the capacity to implement existing standards and prosecute malpractice.

Fourth, victims of corporate wrong-doing must be able to channel grievances, settle disputes and seek redress.

The corporate accountability agenda that has developed since the World Summit on Sustainable Development in 2002 is, then, quite different to the CSR agenda that took-off internationally around the time of the Earth Summit ten years earlier.

Let's turn now to what needs to be done to overcome the limitations of the approach that is symbolized by the Global Compact. I say "symbolized" because any criticism people might have of the Global Compact is really a criticism of CSR, i.e. that:

- it provides ample space for companies to engage in window-dressing and to cherry pick among standards;
- it is characterized by weak implementation of agreed standards throughout corporate structures and supply chains;
- reporting standards and procedures are weak;
- there are no significant penalties for non-compliance;
- global corporations gain undue influence in the public policy arena and unfair competitive advantages through their association with the United Nations and public-private partnerships; and
- key issues that explain why corporate capitalism and its institutions fuel underdevelopment or unsustainable development are often ignored.

There are also concerns that CSR in general, and the Global Compact in particular, are a means of diverting attention from harder regulatory alternatives. It should be noted that the Global Compact explicitly states that it is not intended to displace other regulatory approaches. But in some sense, the Global Compact has become "the only game in town", given its considerable success in expanding the number of participating companies, spreading the word about CSR and partnerships throughout the world, and in demonstrating a remarkable capacity to convene corporate, political and civil society leaders.

To go beyond this approach, various paths need to be pursued simultaneously.

The first involves the "hardening" or "ratcheting-up" of voluntary initiatives. To some extent this is already happening, largely in response to criticism and civil society pressures. CSR standard-setting, reporting and monitoring institutions have evolved and matured through time, and complaints procedures are gradually being developed. Even the Global Compact, which has often claimed to be nothing more than a forum for learning and dialogue, has been nudged in this direction. Companies must now report on progress; they are rendered "inactive" if they fail to report; a mild complaints procedure was introduced last year, and most recently, an external review procedure has been established for the "Communications on Progress" that companies must submit. These mechanisms need to be tried and tested to prove their worth, but at least on

paper, such reforms suggest a slight shift in the pendulum away from self-regulation toward corporate accountability.

The second path involves expanding the body of national, regional and international norms and law related to corporations. International law is now going beyond a focus on state actors and, as the lawyers say, is “fixing” increasingly on corporations. There has been a proliferation of so-called international “soft” law, involving declarations, resolutions, guidelines, and codes related to corporate activities. At the national level we see, in some countries, laws mandating various forms of reporting and disclosure. But while the body of standards and laws has expanded, there are still major weaknesses in regulatory capacity of both states and civil society organizations, including trade unions. It is perhaps this feature of the neoliberal paradigm, namely the weakening of state regulatory capacity and basic labour rights, that requires the most urgent attention.

The third involves enhancing the ability of victims of corporate wrong-doing to use the existing regulatory or legal infrastructure to settle disputes and seek redress. This is occurring in countries such as the United States and the United Kingdom where cases have been brought against companies for wrongs committed abroad, or in India through Public Interest Litigation. The Aarhus Convention allows NGOs in countries that host TNCs to obtain information about their environmental performance.

The fourth path, involves connecting the issue of corporate performance with economic policy. The signals and incentives that companies are receiving from governments often encourage them to externalize costs; transfer risk to employees and suppliers; avoid taxes through regulatory loopholes, transfer pricing and off-shoring; and seek out new frontiers around the world or along supply chains where regulatory institutions and labour rights are weakest.

A fifth path involves forms of activism that vary to some extent from those that characterize CSR, where considerable attention has been focused on strengthening NGO-business relations or partnerships, and “stakeholder dialogues”. The difference relates not only to the types of issues and demands, but also to patterns of social mobilization. Modes of organizing and mobilizing associated with “transnational” or “multi-scalar” activism, which involve linking organizations and networks at local, national, regional and international levels, are particularly important, and have played a key role in efforts to prosecute corporate wrong-doing, as well as in campaigns where activists “name and shame” companies. Multi-scalar approaches are also a prominent feature of the strategies of Global Union Federations, several of which have signed Framework Agreements with TNCs, that extend union/company relations beyond the local and national levels to the global level. Civil society organizations, operating at different levels, must also focus on reconnecting with local and national governments, to develop complementarities and synergies in regulatory capacity.

Last but not least, the process of change requires keeping the institutional and policy agenda alive with ideas for reform or more fundamental restructuring of development models. In this respect, it is important that civil society organizations engage actively with the UN business and human rights agenda that involves the work of the Secretary-General’s Special Representative on Business and Human Rights, and the Norms on the Responsibilities of TNCs and Other Business

Enterprises with regard to Human Rights. Whilst declared a “distraction” by the Special Representative, the standards and mechanisms proposed in the Norms – i.e. monitoring, reporting and redress – have considerable backing within civil society, and some aspects of the Norms are even being tested by a groups of global companies.

Other ideas that have emerged in the past should also be kept alive, such as that of expanding the remit of the International Criminal Court to address corporate crimes; setting up new UN activities including institutions information systems on corporate accountability initiatives and laws, as well as on business practices associated with maldevelopment; new institutions such as a Special Rapporteur on TNCs, or a Corporate Accountability Convention or Organization; the (re)chartering and down-sizing of corporations; a set of Civil Society Rules for TNCs,; or even revisiting the principle of limited liability.

In this hearing we are supposed to be focusing on the role of the UN in the field of corporate accountability. But we also need to consider whether civil society is up to the challenge. Is there the capacity among NGOs and trade unions to operationalize or activate complaints procedures, such as those that exist at least on paper in the OECD Guidelines on Multinational Corporations? Will NGOs test the new Global Compact complaints procedure? Serious doubts indeed exist about their capacity to do so, but perhaps more significant is a bigger question: Can civil society organizations, and NGOs in particular, forge the types of alliances necessary to really exert pressure for change? Despite advances in networking and transnational activism, civil society is often fragmented, with too many internal divisions – between large and small, between North and South, between NGOs and trade unions. In contrast to the labour movement, NGOs and their networks are often distanced from parliamentarians, political parties and mainstream democratic politics. Civil society, then, as much as the UN and national governments, also needs to face up to key challenges if progress on the corporate accountability front is to be made.

Regarding the United Nations, from my perspective as a social science researcher, a central issue relates to the need for the UN to recoup its capacity for so-called “critical thinking”. This involves questioning dominant policy approaches and, patterns of development, and exposing power relations ; exposingand injustice, and identifying the winners and losers of development policies and processes,; and imagining and proposing alternatives.

A large project on the history of ideas in the United Nations, the UN Intellectual History Project, has recently documented numerous instances where individuals and agencies associated with the UN have exercised bold intellectual leadership, questioned conventional wisdom, and promoted ideas and policies associated with alternative visions of development and harder regulation of powerful interests. Notable examples include , whether this be UNCTAD’s questioning of North-South relations in the 1960s, the ILO’s focus on “basic needs” in the 1970s; UNICEF’s critique of structural adjustment in the 1980s; the rights-based perspectives of the Human Development Report, or of the High Commissioner for Human Rights’ in the late 1990s; and more recently, the World Health Organization taking on the tobacco companies.

The Global Compact and much of the UN today, largely ignores critical thinking. Instead there is a tendency to focus narrowly on learning about best practices. i.e. trying to identify the positive things that big business does, and disseminating this information in the hope that such practices

will be replicated elsewhere. This, of course, is an essential activity for international development organizations, but it should not be at the cost of other types of analysis and learning, which are needed to understand the other half of the story – if not the main story – that we have heard about during this hearing. There is a danger, then, that best practice learning is marginalizing, if not stifling, critical thinking.

The Global Compact states that it is a learning forum, and international development agencies increasingly refer to themselves as “knowledge agencies”. If they are really to fulfil this role, then the nature of learning, and the choice of academic disciplines, institutions and experts engaged in learning networks, need to change.

Thank you.