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Corporate Social Responsibility

The Corporate Governance of the 21st Century

Edited by
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INTERNATIONAL

This focus on governments has resulted in a debate where some argue that a transnational company cannot raise human rights issues because that would have detrimental effects on the possibilities of the company to do business in the country in question. This is of course an argument that cannot be swept aside completely. But there are ways to address this dilemma also. We should remember that there are multinational companies that have been severely criticized, and probably also suffered economically, because of lack of observation of human rights, labour and environmental standards.

Another concern expressed by corporate lawyers is that companies might be held liable for the behaviour of their contractors and subcontractors. In my view this is not so, at least not because of the Global Compact. Furthermore, and more importantly, there should be means of dealing also with this problem. In particular, one could stipulate in the contracts (where appropriate also with reference to subcontractors) standards that the companies engaged must honour. Indeed, more and more companies are considering their supply chains in the broadest sense, and asking their business partners to uphold similar principles.

J. MATERIAL AVAILABLE

As already mentioned, there is a very useful website to assist all interested.¹³ It is strongly recommended that corporate lawyers and other interested visit this website, which contains extensive material which is constantly updated. Also, in case the need arises to present the matter e.g. at a board meeting there is even a PowerPoint presentation that can be used for the purpose.

Chapter 16

PROMOTING CORPORATE RESPONSIBILITY: THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

Donald J. Johnston

A. CORPORATE RESPONSIBILITY AND THE INTERNATIONAL ECONOMY

International investment by multinational enterprises is at the heart of the current debate on globalization. The Monterrey Conference and the Johannesburg Summit in 2002 called attention to the importance of responsible international business for spreading the benefits of globalization more widely. The 2003 G8 Summit Declaration underscored the importance of 'fostering growth and promoting a responsible market economy'. The Declaration explicitly cites the OECD Guidelines for Multinational Enterprises and commits the G8 to work with interested countries to create an environment in which 'business can act responsibly'.

Thirty-eight governments – from the 30 OECD members and from 8 non-members¹ – have adhered to the OECD Guidelines for Multinational Enterprises, a government-backed code of conduct for international business. Today they are exploring how the Guidelines can best contribute to improving the functioning of the global economy and to promoting corporate responsibility. The Guidelines are recommendations by the 38 governments on business conduct covering such areas as human rights, labour relations, environment, combating corruption and consumer protection. Observance of these recommendations is voluntary for business, but the adhering governments make a binding commitment to promote them among multinational enterprises operating in or from their territories. In making this commitment, governments aim to 'to strengthen the basis of mutual confidence between enterprises and the societies

¹ The eight countries are Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania and Slovenia.

¹³ See note 8.

many local networks exist, some of them similar to what has been developed at the global level. This activity is greatly encouraged and supported by the Global Compact Office.

F. THE ADMINISTRATION OF THE GLOBAL COMPACT

As mentioned, the Global Compact was launched at the initiative of the Secretary-General of the United Nations. To administer the initiative, a Global Compact Office was established at the UN Headquarters. It is financed by governments and is working within the framework of the United Nations and in accordance with its goals.

The Compact is furthermore supported by four UN core agencies, namely the Office of the High Commissioner for Human Rights, the International Labour Organization, the United Nations Environment Programme and the United Nations Development Fund. However, this does not mean that other UN agencies are excluded from participation. To provide strategic advice to the Secretary-General there is also an Advisory Council, composed of personalities from business, labour, civil society and academia. Further information about the administration of the Compact appears on its website.

G. THE GLOBAL COMPACT AND CSR

One question that is often asked is why a company that has already established its own code of conduct should participate in the Global Compact. The answer is very simple: such codes are extremely important. And companies that have demonstrated leadership and made changes in their policies should be commended. However, such codes are typically quite narrow in focus, often leaving out important issues such as human rights. The purpose of the Global Compact is however different: it seeks to add new dimensions to good corporate citizenship by creating a platform – based on universally accepted principles – to encourage innovation, in particular, through new initiatives and partnerships with civil society and other organizations.

So, basically, the Global Compact is a voluntary corporate citizenship initiative with two main objectives: to mainstream the nine principles in business activities around the world and to catalyze actions in support of United Nations goals.

The obvious conclusion is that those who advise companies and, in particular, transnational companies must have a clear understanding of these interrelationships and that the business community has an important role to play here.

H. THE GLOBAL COMPACT AND CORRUPTION

Already at the outset, questions were raised regarding the need for a principle-based approach to fighting corruption within the framework of the Global Compact. This issue was revived after the signing of the United Nations Convention against Corruption in Merida, Mexico on 9 December 2003.⁹

⁹ <http://www.unodc.org/unodc/en/corruption.html>.

Against this background the Secretary-General started in January 2004 consultations with participating companies to solicit their views regarding a potential introduction of a tenth principle against corruption.¹⁰ A formal letter was sent to all participants seeking their views. The Secretary-General stressed that the adoption of such a principle would only occur if there was broad-based support, and that such an addition would be exceptional in nature. The consultation process concluded on 7 May 2004.¹¹

Based on the results of the consultation process, the Secretary-General formally proposed to a Global Compact Leaders Summit, held in New York on 24 June 2004, the following principle against corruption:

'Business should work against corruption in all its forms, including extortion and bribery.'

With the Secretary-General's announcement to the summit, this principle, the tenth principle, was adopted.¹²

I. THE ROLE OF THE LAWYER

Needless to say lawyers, and in particular those who serve as corporate counsel, have an important role to play in relation to the Compact. One can take human rights as a point of departure even if the argument could be made equally for labour and environment. Lawyers also have a special responsibility in society. It is of particular importance that they are familiar with the international obligations that their country has undertaken at the international level, i.e. vis-à-vis other states, and contribute to the fulfilment of such obligations.

Naturally, a corporate counsel's main responsibility is to his or her client. But the two responsibilities may not necessarily conflict. On the contrary! The matters that the Compact focuses on are often given prominent attention in the media and public discussion. Ultimately, companies will be assessed by public opinion. And, as we know, in the public debate the agenda is often set by non-governmental organizations. It is therefore important that companies are proactive in the fields that the Compact encompasses also in their own interest.

It is said that corporate lawyers are concerned that by joining the Global Compact, companies might be held accountable if they do not meet the standards. I do not believe that this is so, since the Compact is not a legally binding instrument. Rather, the principles are aspirational in nature. We should also remember that human rights protection is an obligation mainly for governments vis-à-vis their citizens and those who reside in their countries.

¹⁰ http://www.unglobalcompact.org/Portal?NavigationTarget=/roles/portal_user/dialogue/Dialogue/nf/nftransparency.

¹¹ http://www.unglobalcompact.org/init/servelet/prt/prtroot/com.supportals.km.docs/unge_hml_content/NewsDocs/result%20consultation.doc.

¹² In his closing remarks at the Summit, the Secretary-General said: 'Today we added a tenth principle to the Compact, to combat corruption. The extensive consultation that you went through to arrive at this amendment not only showed that an overwhelming majority of participants wanted to strengthen the Compact in this way; it also was an exemplary deliberative process. As a result, the Compact is now better positioned to address one of the most pernicious obstacles to growth and development, and to cooperate more intensively with groups such as Transparency International'.

- Is expected to publish in its annual report or similar document a description of the ways in which it is supporting the Global Compact and all its nine principles.

To this author, the last item is of particular interest, since this was an idea that he advocated already in June 1998 when he was asked to challenge a Workshop on the topic 'Is the Business of Human Rights also the Business of Business'.⁷

3. Labour

As it appears, internationally recognized labour standards, including the fundamental rights are part of the nine principles of the Compact. These standards are developed in a process in which business and labour play critical and central roles. However, labour plays a role that is different from those of business and other elements of civil society. This is the reason why labour is treated as a separate actor in the Compact. Of particular interest is here that labour has a distinct role in ILOs supervisory procedures designed to ensure that agreed labour standards are implemented at the national level. Furthermore, it is important in this context to refer to the practice of solving issues of interest to the Compact through collective bargaining agreements. This is common practice in many countries and is now also expanding at the global level. A number of framework agreements have been concluded between major companies and the international trade union bodies.

4. Civil Society

Important actors in the Global Compact are also organizations from the civil society. They provide valuable assistance by lending credibility and social legitimacy to the efforts, and they can often help by solving problems and explaining the Compact's operations in more general contexts. These organizations participate both in the dialogue and as project partners. However, equally important is their advocating the nine principles to larger audiences and challenging business both locally and at the global level to take a stand on the issues that the Compact is concerned with.

5. Others

There are also institutions with expertise in the areas of human rights, labour and the environment that can contribute to the activities of the Compact. Many such institutions have also made important contributions. Academic institutions and think tanks are among the participants, and there is an Academic Network that plays a catalytic role in the Compact's operation by preparing business case studies and commentaries on examples, and by undertaking research on global corporate citizenship.

⁷ http://www.un.org/law/counsel/english/address_06_26_98.pdf.

E. HOW DOES ONE PARTICIPATE?

First, reference should be made to the extensive information on participation in the Global Compact which is available on the Compact's website.⁸ The information is directed not only to business but also to non-governmental organizations and other non-business participants.

With respect to substance, as previously said, the Compact and its principles must be translated into business strategies and operations. Obviously, the responsibility for this activity rests with each participating company. But in order to further advance the goals of the Compact the actors are encouraged to work together through dialogue, learning and projects at all levels.

1. Dialogue

The Global Compact Office stresses that dialogue is central in order to achieve mutual understanding and joint efforts among business, labour and non-governmental organizations in solving key challenges of globalization. The Office maintains that in this effort to influence policy-making and the behavior of all stakeholders the outcome is threefold: products that can engender changes in policy frameworks, encompassing both incentive structures and regulatory mechanisms; products that can influence the actual behaviour of participants; and collective action by like-minded actors working together.

2. Learning

The Compact's Learning Forum has three specific goals: to identify critical knowledge gaps and to disseminate information; to communicate good practices and cutting-edge knowledge to participants; and to foster accountability and transparency through its web portal that should both facilitate dialogue and enable web links to relevant public documents. An important ingredient is the sharing of experiences in the form of presentations, examples or case studies both at meetings and on the Compact's website.

3. Projects

As already emphasized, an important goal of the Compact is to provide opportunities for the poor. A means to this end are Partnership Projects. The Compact's website is therefore open to participating companies, labour and civil society organizations who want to share such experiences with others. In case there are UN organizations with relevant operational capacities and competencies, the Compact Office offers support by facilitating access to them.

4. Networks

An important element in the work of the Global Compact is the development of networks at the regional, national and local levels. Of particular interest is that

⁸ <http://www.unglobalcompact.org/Portal/Default.asp>.

C. THE PRINCIPLES

The principles upon which the Global Compact is based are taken from the areas of human rights, labour and the environment. These principles are derived from three documents that have been adopted by states by consensus and thus enjoy universal support, namely:

- The Universal Declaration of Human Rights¹
- The International Labour Organization's Declaration on Fundamental Principles and Rights at Work²
- The Rio Declaration on Environment and Development³

The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values within these three areas. The principles are as follows:

*Human Rights*⁴

- *Principle 1:* Businesses should support and respect the protection of internationally proclaimed human rights; and
- *Principle 2:* make sure that they are not complicit in human rights abuses.

*Labour Standards*⁵

- *Principle 3:* Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- *Principle 4:* the elimination of all forms of forced and compulsory labour;
- *Principle 5:* the effective abolition of child labour; and
- *Principle 6:* the elimination of discrimination in respect of employment and occupation.

*Environment*⁶

- *Principle 7:* Businesses should support a precautionary approach to environmental challenges;
- *Principle 8:* undertake initiatives to promote greater environmental responsibility; and
- *Principle 9:* encourage the development and diffusion of environmentally friendly technologies.

For the purposes of the present brief overview, it is not necessary, nor is it possible, to go into detail about the contents of the principles. In subdivision J, reference is made to material that contains extensive explanations of what these principles represent and the reasons why they are included in the Compact.

¹ <http://www.un.org/Overview/rights.html>.
² <http://www.ilo.org/dyn/declaris/DECLARATIONWEBINDEXPAGE>.
³ <http://www.un.org/esa/sustdev/documents/agenda21/index.htm>.
⁴ <http://www.unglobalcompact.org/content/AboutTheGC/TheNinePrinciples/humanrights.htm>.
⁵ <http://www.unglobalcompact.org/content/AboutTheGC/TheNinePrinciples/labour.htm>.
⁶ <http://www.unglobalcompact.org/content/AboutTheGC/TheNinePrinciples/environment.htm>.

D. THE ACTORS

The purpose of the Compact is to involve all actors concerned. First and foremost, governments are concerned, since they are the ones who define and adopt the principles on which the Compact is founded. Next comes business, since the purpose of the Compact is to influence business. Another obvious actor is labour, since labour is the focus of several of the principles and is engaged in the process of global production. Civil society and the United Nations itself are other important actors.

1. Governments

The Global Compact is sometimes criticized for attempting to shift the responsibility for the observation of international commitments from governments to business. It is therefore important to stress at the outset that the primary responsibility for the principles rests with governments. First, governments provide the necessary legitimacy and universality to the principles of the Compact. All of the underlying documents have been adopted under the auspices of intergovernmental organizations. Consequently, implementation of the principles must be based on and take place within the standard legal framework at the national level. Hence, it is for governments to support the implementation of the Compact at the global and national levels.

As the system has developed, governments seek to support the Compact at the national level, in particular, in the formation of networks. They are also encouraged to establish policies to advance the purposes of the Compact. At the global level, governments engage with the Secretary-General to develop the Compact and to engage other actors in the work.

2. Business

With respect to business, it is important to stress that the Compact is a voluntary initiative with the purpose of promoting responsible global corporate citizenship. One of the fundamental ideas is that business leaders should be brought together to build a movement that is strong enough to support the ideals of the Compact. *Therefore, a crucial precondition for a successful work within the Compact framework is that the Chief Executive Officer, and the Board of Directors are behind the Compact.* It is from them that the initiative to join the Compact must emanate.

In the words of the Global Compact Office, the company that has committed itself to the Compact and is principles:

- Must set in motion changes to business operations so that the Global Compact and its principles become part of strategy, culture and day-to-day operations;
- Is expected to publicly advocate the Global Compact and its principles via communications vehicles such as press releases, speeches, etc.; and

the tasks set before them and their subordinates. The Caux Round Table has, therefore, borrowed a page from business: management by objective. The CRT Principles for Business have been converted into management objectives suitable for executives in companies large and small. Corporate boards of directors, chief executive officers, and line managers all can now more easily and reliably become successful stewards of sustainable business value. Results of operations can be monitored against strategic and tactical risk profiles and for positive or negative contributions to various value drivers in the zones of capital factors, conversion of capital into product or services, the quality and price point of product and services, and customer satisfaction and loyalty.

Where risks or negative detractions from value are detected, changes can be made to improve enterprise results, lower risks, and enhance overall value. Improvement flows from present results to assessment, reflection, action, and better results in a continuous process. Implementing a comprehensive improvement process will bring a company more and more into effective alignment with the CRT Principles for Business and the practices of moral capitalism.

Business people are goal oriented; give them goals and incentives, and progress comes along without a second thought. This Caux Round Table self-assessment and improvement process evaluates companies on forty-nine areas drawn from the CRT Principles for Business as they impact the six stakeholder constituencies. Chart 2 presents the complete measurement matrix of the forty-nine significant zones of value enhancement and risk possibility. Each cell in the matrix demands management attention for complete stewardship of the business.

Inquiry by senior management as to whether the company has a policy for success in each cell, how each policy has been translated into goals, and what results have been achieved in reaching for those goals will provide a 360-degree survey of the corporation or the enterprise. The concerns of every stakeholder will be addressed, and fidelity to each of the CRT's recommended seven General Principles will be assessed. Shortfalls will emerge for management attention; risks will press themselves on management for reduction. Acting on its self-assessment will make the company more profitable and more socially responsible.

CONCLUSION

In the ten years since their publication, the CRT Principles for Business have remained the *only* set of principles for corporate social responsibility proposed by business leaders. The CRT Principles for Business also remain the most comprehensive principles available for business decision making, thanks to the thoroughness of their consideration of stakeholder concerns. And, finally, the CRT Principles for Business perhaps deserve special consideration for their unique ability to expressly link vertically universal ideals with the very practical decisions that regularly and systematically challenge the intellectual and ethical resources of business managers.

THE GLOBAL COMPACT

Hans Corell

A. THE BEGINNING

At the World Economic Forum in Davos on 31 January 1999, United Nations Secretary-General Kofi Annan advocated the Global Compact. As a point of departure, he proposed nine universal principles in the areas of human rights, labour and environment. Referring to these principles, he asked business leaders to contribute to a sustainable and inclusive global market. The actual launch of the Compact took place in July 2000.

Much has happened since then, and today the Compact encompasses several hundred companies and business organizations, both national and international, from all regions of the world. It also includes international trade unions or union bodies, civil society entities at the global level, business schools and UN agencies. In this context, it is also important to note that it also includes CSR organizations.

B. THE PURPOSE

The purpose of the Compact is to convince the actors on the global markets that they should rally around shared values. In order to achieve more sustainable and inclusive global markets special attention should be paid to the world's poorest people.

The Compact attempts to achieve two goals that are complementary. The first, which is of particular interest to all lawyers advising business, is to make the Compact and its principles *part of the internal strategy and operations of business*. The second goal is to engage different stakeholders and facilitate cooperation among them, in particular, when there are common problems that must be solved.

Within the Compact four key mechanisms have been developed to accomplish these goals, namely: dialogue, learning, local networks and project partnerships.

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Chapter 29 Corporate Social Responsibility in Lawyers' Firms <i>Richard Taylor and Richard Brophy</i>	433	Annex 11 UN Norms on Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights	549
Chapter 30 Corporate Social Responsibility and the In-house Counsel <i>Isaiah Odeleye</i>	447	Index	555
PART VIII - CRITICISM OF THE CORPORATE SOCIAL RESPONSIBILITY MOVEMENT			
Chapter 31 Criticism of the Corporate Social Responsibility Movement <i>Michael Hopkins</i>	473		
PART IX - CONCLUSIONS			
Chapter 32 A Few Concluding Remarks <i>Ramon Mullerat</i>	485		
PART X - ANNEXES			
Annex 1 The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy	489		
Annex 2 The Global Sullivan Principles	497		
Annex 3 The Caux Round Table Principles for Business	499		
Annex 4 Amnesty International Guidelines for Companies	505		
Annex 5 Social Accountability 8000	511		
Annex 6 OECD Guidelines for Multinational Enterprises	517		
Annex 7 The Global Compact Launched by the United Nations	527		
Annex 8 The ICC's Nine Steps to Responsible Business Conduct	529		
Annex 9 Global Reporting Initiative Guidelines	533		
Annex 10 CCBE Guide for European Lawyers advising on Corporate Social Responsibility Issues	541		

TABLE OF CONTENTS

Foreword <i>Emilio J. Cardenas</i>	xiii
About the Editor and Authors	xv
PART I – PRESENTATION	
Chapter 1 The Global Responsibility of Business <i>Ramon Mullerat</i>	3
PART II – GENERAL OVERVIEW	
Chapter 2 Business Ethics <i>Rosamund Thomas</i>	31
Chapter 3 CSR and Corporate Governance <i>Mark Walsh & John Lowry</i>	37
Chapter 4 The Soul of the Corporation <i>Gerald Mitward-Oliver</i>	61
Chapter 5 Corporate Social Responsibility and Public Policy <i>Felix Martin</i>	77
Chapter 6 Corporate Social Responsibility in a Changing Corporate World <i>Jerome J. Shestack</i>	97
PART III – THE MAIN OBJECTIVES OF CORPORATE SOCIAL RESPONSIBILITY	
Chapter 7 The Triple Bottom Line: Building Shareholder Value <i>James Roselle</i>	113
Chapter 8 Labour Standards and Corporate Social Responsibility: The Need for a Planetary Bargain <i>Michael Hopkins & Ivor Hopkins</i>	141

Chapter 9 Corporate Social Responsibility and the Environment - Our Common Future <i>Marcelle Shoop</i>	159	PART V - REGIONAL PERSPECTIVES	
Chapter 10 Corporate Social Responsibility and Human Rights <i>Josep M. Lozano & Maria Prandi</i>	183	Chapter 19 The European Initiatives <i>Jonathan Lux, Sune Skadegard Thorsen & Annemarie Meising</i>	279
Chapter 11 Corporate Social Responsibility and International Human Rights Law <i>David Kinley</i>	205	Chapter 20 A European Perspective <i>Sune Skadegard Thorsen & Annemarie Meising</i>	299
PART IV - WORLDWIDE INITIATIVES ON CORPORATE SOCIAL RESPONSIBILITY		Chapter 21 The Central Role of Lawyers in Managing, Minimizing, and Responding to Social Responsibility Risks - A US Perspective <i>Phillip H. Rudolph</i>	311
Chapter 12 The Tripartite Declaration of Principles Concerning Multinational Enterprises <i>Phillip H. Rudolph</i>	217	Chapter 22 Africa's Unique Challenge: Linking Economic Growth, Infrastructure Reforms and Corporate Responsibilities <i>Reimer Lock</i>	321
Chapter 13 The Global Sullivan Principles of Corporate Social Responsibility <i>Phillip H. Rudolph</i>	221	Chapter 23 The Japanese Perspective <i>James Brumm</i>	337
Chapter 14 The Caux Round Table Principles for Business: Decision-Making Matrix for a More Moral Capitalism <i>Stephen B. Young</i>	225	Chapter 24 Corporate Social Responsibility and Human Rights - The Ghana Experience in the Gold Mining Industry <i>Felix Ntrakwah</i>	347
Chapter 15 The Global Compact <i>Hans Correll</i>	235	PART VI - CODES OF CONDUCT	
Chapter 16 Promoting Corporate Responsibility: The OECD Guidelines for Multinational Enterprises <i>Donald J. Johnston</i>	243	Chapter 25 The History, Variations, Impact and Future of Self-Regulation <i>Phillip H. Rudolph</i>	365
Chapter 17 The UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights <i>Jakob Ragnvaldh & Paola Konopik</i>	251	Chapter 26 Some Legal Dimensions of Corporate Codes of Conduct <i>Claes Lundblad</i>	385
Chapter 18 Corporate Social Responsibility and Corporate Governance: New Ideas and Practical Applications <i>Daniel Brennan</i>	263	PART VII - LAWYERS AND CORPORATE SOCIAL RESPONSIBILITY	
		Chapter 27 Social Responsibility and the Lawyer in the 21st Century <i>Jerome J. Shestach</i>	403
		Chapter 28 Lawyers' Responsibility for Advising on Corporate Social Responsibility <i>Jonathan Goldsmith</i>	417