

GLOBAL COMPACT: A CRITIQUE OF THE U.N.'S "PUBLIC-PRIVATE" PARTNERSHIP FOR PROMOTING CORPORATE CITIZENSHIP

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INTRODUCTION

"[The idea that the] U.N. needs business and business needs the U.N. . . . is as relevant today as it was six years ago."¹

The United Nations (U.N.)² and corporations³ are two major global actors which for some time now have been facing a crisis – a crisis about their place, role, relevance, goodwill, and legitimacy in an ever-changing world order. The crisis is triggered, among other events, by

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1. Secretary Kofi Annan speaking at the inaugural meeting of the Global Compact Board on June 28, 2006. Global Compact Office, *Final Report: Inaugural Meeting of the Global Compact Board* 4 (2006), http://www.unglobalcompact.org/docs/about_the_gc/final_rep_board030806.pdf [hereinafter COMPACT BOARD MEETING REPORT].

2. Secretary Kofi Annan, in a recent report, acknowledged that the "[e]vents in recent years have also led to declining public confidence in the United Nations itself." The Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, ¶ 10, delivered to the General Assembly, U.N. Doc A/59/2005 (Mar. 21, 2005), available at <http://daccessdds.un.org/doc/UN.DOC/GEN/N05/270/78/PDF/N0527078.pdf?OpenElement> [hereinafter *In Larger Freedom*]. The most recent example is the U.N.'s inability to act faster to end hostilities between Hezbollah and Israel. The Secretary General reported having said that "the widely perceived delay in drafting a resolution had 'badly shaken' global faith in the U.N." *U.N. Vote Backs Lebanon Ceasefire*, BBC NEWS, Aug. 12, 2006, available at http://news.bbc.co.uk/1/hi/world/middle_east/4785001.stm. See also ANTONIO CASSESE, INTERNATIONAL LAW 336-37 (2d ed. 2005). On reforming the U.N., see *In Larger Freedom*, supra note 2, 39-52; Anne-Marie Slaughter, Note and Comment, *Security, Solidarity, and Sovereignty: The Grand Themes of U.N. Reform*, 99 AM. J. INT'L L. 619 (2005); Yehuda Z. Blum, Note and Comment, *Proposals for U.N. Security Council Reform*, 99 AM. J. INT'L L. 632 (2005); Thomas M. Franck, *Agora: Future Implications of the Iraq Conflict: What Happens Now? The United Nations after Iraq*, 97 AM. J. INT'L L. 607 (2003).

3. The corporate crisis is caused, among others, by what I call "two interrelated sets of corporate failures." The failure of BCCI, Enron, Worldcom, HIH, One Tel, Ansett, etc., represents the first set of corporate failures, that is, the failure to respect duties primarily towards shareholders. The second set of corporate failures, on the other hand, signifies the failure of corporations to take into the interest of stakeholders and community, namely, human rights, labor rights, and the environment.

the end of the Cold War,⁴ rise of the U.S. empire,⁵ constant conflicts, the spread of free market ideology, globalization,⁶ and a consequent reorientation in the role of states.⁷ This article, however, is not an exploration of the crisis outlined above, or even of the triggering events. Rather it seeks to critique the U.N. Global Compact, a “public-private” partnership⁸ initiated primarily by two tormented, but indispensable, global institutions: the U.N. and corporations.⁹

Through this partnership the U.N. hoped to expand its reach from

4. Friedman writes: “The Cold War had been a struggle between two economic systems – capitalism and communism – and with the fall of the [Berlin] wall, there was only one system left. . . .” THOMAS L. FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE GLOBALIZED WORLD IN THE TWENTY-FIRST CENTURY* 49 (2005).

5. See generally NOAM CHOMSKY, *HEGEMONY OR SURVIVAL: AMERICA’S QUEST FOR GLOBAL DOMINANCE* (2003); *AMERICA UNRIVALED: THE FUTURE OF THE BALANCE OF POWER* (G. John Ikenberry ed., 2002); ANDREW J. BACEVICH, *AMERICAN EMPIRE: THE REALITIES AND CONSEQUENCES OF U.S. DIPLOMACY* (2002); Chandra Muzaffar, *A Global Empire Is In the Making: The First Global Empire in History* (Dec. 30, 2005), available at <http://www.globalpolicy.org/empire/analysis/2005/1230militarypower.htm> (last visited Oct. 30, 2006).

6. Although a precise definition of “globalization” is not possible, it is about interdependence, interconnectedness, and the movement of products, services, money, people, ideas, technology, culture, etc. in a speedy, efficient way and with minimum restrictions. See generally FRIEDMAN, *supra* note 4.

7. Anderson points out “the changing perception of the state from a redistributive forum to a mechanism for ensuring, through a procedural rule of law, the efficient functioning of the market economy.” Gavin W. Anderson, *Social Democracy and the Limits of Rights Constitutionalism*, 17 CAN. J.L. & JURIS. 31, 58 (2004); see also Saskia Sassen, *What’s Wrong With International Law Scholarship?: The State and Economic Globalization: Any Implications for International Law?*, 1 CHI. J. INT’L L. 109 (2000) (arguing that economic globalization, rather than merely resulting in decline of states, is a transformative process that reconfigures states’ power and repositions their work); see generally Alfred C. Aman, Jr., *The Globalizing State: A Future-Oriented Perspective on the Public/Private Distinction, Federalism, and Democracy*, 31 VAND. J. TRANSNAT’L L. 769 (1998).

8. The U.N. has adopted the following broad, general definition of partnership: “Partnerships are defined as voluntary and collaborative relationships between various parties, both State and non-State, in which all participants agree to work together to achieve a common purpose or undertake a specific task and to share risks and responsibilities, resources and benefits.” The Secretary General, *Enhanced Cooperation Between the United Nations and All Relevant Partners, in Particular the Private Sector*, ¶ 8, delivered to the General Assembly, U.N.Doc. A/60/214 (Aug. 10, 2005), available at <http://daccessdd.un.org/doc/U.N.DOC/GEN/N05/457/06/PDF/N0545706.pdf?OpenElement>. The report also classifies partnerships with the U.N. into different categories based on function/purpose. *Id.* at ¶ 11.

9. The Secretary General highlighted why the U.N., despite imperfections, is vital. Kofi Annan, *Our Mission Remains Vital*, WALL ST. J., Feb. 22, 2005, available at <http://www.un.org/News/ossg/stories/sg-22feb2005.htm> (last visited Oct. 30, 2006). Cassese also observes that “over the years the U.N. has proved indispensable.” CASSESE, *supra* note 2, at 338. Regarding the indispensability of corporations, see *infra* note 11.

states to non-state actors and in that process revive and reinvent its relevance on the global stage.¹⁰ This U.N. partnership with private non-state actors also became imperative because the U.N. could neither fulfill its ambitious goals under the U.N. Charter nor could the objective of ensuring a sustainable and inclusive globalization be achieved solely with the support of states.¹¹ At a wider level, the “public-private” partnership represented a deviation in the generally state-centric nature of international law:¹² it not only reflected the growing influence of non-states actors such as multinational corporations (MNCs)¹³ in international law making,¹⁴ but might also be interpreted as an incremental step towards their recognition as subjects of international law.¹⁵

10. Nolan writes: “Constantly battling its critics, which label it bureaucratic, old-fashioned and ineffective; the U.N. is once again trying to reinvent itself. As part of the process to streamline and modernize the organization, Secretary-General Kofi Annan is reaching out, beyond its nation state members, to non-state actors, particularly corporations, to help address human rights issues.” Justine Nolan, *The United Nations' Compact with Business: Hindering or Helping the Protection of Human rights?*, 24 U. QUEENSLAND L.J. 445, 445 (2005).

11. Secretary General admits: “States, however, cannot do the job alone. We need an active civil society and a dynamic private sector.” *In Larger Freedom*, *supra* note 2, at 6. “Partnering with business and civil society... has turned into a necessity for the United Nations in order to ‘get the job done.’” JAN MARTIN WITTE & WOLFGANG REINICKE, BUSINESS UNUSUAL: FACILITATING UNITED NATIONS REFORM THROUGH PARTNERSHIPS ix (2005), available at http://globalpublicpolicy.net/businessU.N.usual/down/files/Report_in_full.pdf. See also Surya Deva, *Sustainable Good Governance and Corporations: An Analysis of Asymmetries*, 18 GEO.INT’L ENVTL. L. REV. 707, 712-14 (2006) (arguing why the involvement of corporations is indispensable for promoting human rights and sustainable development); Nolan, *supra* note 10, at 445-46.

12. “The first salient feature of international law is that most of its rules aim at regulating the behavior of States, not that of individuals. States are the principal actors on the international scene.” CASSESE, *supra* note 2, at 3.

13. MNCs is used here broadly to include all variations such as transnational corporations (TNCs) or multinational enterprises (MNEs). See PETER MUCHLINSKI, MULTINATIONAL ENTERPRISES AND THE LAW 12-15 (1995); CYNTHIA DAY WALLACE, LEGAL CONTROL OF THE MULTINATIONAL ENTERPRISE (1982).

14. Sands observes: “If the private sector is to have rights and obligations under international instruments, on what basis can they be excluded from the law making process, or the traditional inter-governmental arrangements for dispute settlement? ... [A]s the activities of the private sector are directly affected by international laws they can legitimately expect to play a greater role in international affairs, and in international law making.” PHILIPPE SANDS, LAWLESS WORLD: AMERICA AND THE MAKING AND BREAKING OF GLOBAL RULES 19 (2005).

15. For a discussion of why MNCs should be considered subjects of international law, see NICOLA JAGERS, CORPORATE HUMAN RIGHTS OBLIGATIONS: IN SEARCH OF ACCOUNTABILITY 19-35 (2002); Surya Deva, *Human Rights Violations by Multinational Corporations and International Law: Where from Here?*, 19 CONN. J. INT’L L. 1, 48-56

Corporations, on the other hand, must have found the offer of partnership for corporate citizenship quite tempting given a renewed focus on social responsibilities of corporations.¹⁶ In addition, corporations perhaps might have thought that an association with the U.N. in this partnership could somewhat soften the resistance that they were facing from anti-capitalism, anti-WTO and anti-globalization movements.¹⁷ In sum, this partnership was a “win-win” situation for both the actors;¹⁸ both the U.N. and business needed each other badly. This is what the opening remark of U.N. Secretary General Kofi Annan sums up.

The Global Compact is one of the many private-public, local-global, municipal-extraterritorial and voluntary-obligatory initiatives that aim to define as well as promote social responsibilities of corporations. The idea for such a Compact is rooted in an address by the U.N. Secretary General Kofi Annan to the World Economic Forum in Davos on January 31, 1999.¹⁹ He challenged business leaders to embrace core principles in the areas of human rights, labor, and the environment.²⁰ The Compact was officially launched in New York on

(2003).

16. The precise nature of corporate social responsibilities has been one of the most contentious issues. The roots of the debate go back to the famous Berle-Dodd exchange in the early 1930s. Adolph A. Berle, Jr. *Corporate Powers as Powers in Trust*, 44 HARV. L. REV. 1049 (1931); E. Merrick Dodd, Jr., *For Whom Are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145 (1932). Joseph also refers to the “four waves” of corporate human rights scrutiny, out of which the first one – related to consumers’ right to safe products – predates 1990s. Sarah Joseph, *Pharmaceutical Corporations and Access to Drugs: The “Fourth Wave” of Corporate Human Rights Society*, 25 HUM. RTS. Q. 425, 426 (2003); see also C.A. Harwell Wells, *The Cycles of Corporate Social Responsibility: An Historical Retrospective for the Twenty-first Century*, 51 KAN. L. REV. 77 (2002).

17. Bhagwati argues that people believed MNCs as “the principal beneficiaries, and the main agents . . . of this socially destructive globalization.” JAGDISH BHAGWATI, IN DEFENSE OF GLOBALIZATION ix (2004). Much earlier, Vernon wrote that “[t]he multinational enterprise has come to be seen as the embodiment of almost anything disconcerting about modern industrial society.” RAYMOND VERNON, STORM OVER THE MULTATIONALS: THE REAL ISSUES 19 (1977).

18. “Partnerships like the Global Compact creates a win-win situation for governments, civil society and the private sector.” Betty King, *The U.N. Global Compact: Responsibility for Human Rights, Labor Relations, and the Environment in Developing Nations*, 34 CORNELL INT’L L.J. 481, 483 (2001).

19. Press Release, Secretary-General, Secretary-General Proposes Global Compact on Human Rights, Labour, Environment, in Address to World Economic Forum in Davos, U.N. Doc. SG/SM/6881 (Feb. 1, 1999), available at <http://www.un.org/News/Press/docs/1999/19990201.sgsm6881.html> (last visited Oct. 30, 2006).

20. *Id.* A new principle related to “anti-corruption” was added in June 2004. See *infra* note 38.

July 26, 2000.²¹ Since then the Global Compact has constantly evolved and grown, so much so that today it is acclaimed as “the world’s largest and most widely embraced corporate citizenship initiative”²² and hailed as “one of the Secretary General’s most significant achievements.”²³

In this background, this article aims to critically evaluate the evolution of, and the progress made by, the Global Compact in making participant corporations “embrace, support and enact” the ten Compact principles. Part I offers insights into the evolution of the Global Compact by critically reviewing the major milestones reached in the last seven years – from the backing of U.N. General Assembly resolutions to the integrity measures, the Shanghai Declaration, the principles for responsible investment, and the new governance framework. Part II elaborates the argument why the Global Compact is still too compact to be termed global in the true sense. The compactness of the Compact is highlighted with reference to two aspects: the general and limited scope of its ten principles and the extent of (non)response as well as (non)seriousness shown by corporations towards the Compact. It is argued that the ten principles are too compact to offer any real guidance to corporations about their social responsibilities. On the other hand, a survey of the Global Compact participants reveals regional imbalance as well as a high percentage of non-communicating participants, which in turn question the *globalness* of the Compact. This part also investigates the extent to which the world’s top corporations – represented in Fortune Global 500 and Financial Times Global 500 – have shown interest in embracing the Global Compact. Part III examines some major deficiencies of the Global Compact which seriously undermine its efficacy, e.g., directional uncertainty, lack of enforcement and independent monitoring, potential for misuse as a marketing tool, and amorphous role of states. Part IV sums up the finding of this article and also outlines some challenges that the Compact Office should try to overcome in order to secure the future of this “public-private” partnership for corporate citizenship.

Before moving on to Part I, let me offer a definitional signpost and a caveat for readers. Although the Global Compact seeks to promote responsible corporate citizenship, it does not define “corporate

21. About the Global Compact, <http://www.unglobalcompact.org/AboutTheGC/index.html> (last visited Oct. 30, 2006).

22. Global Compact Office, *The United Nations Global Compact: Advancing Corporate Citizenship* 1 (2005), http://www.unglobalcompact.org/docs/about_the_gc/2.0.2.pdf. [hereinafter ADVANCING CORPORATE CITIZENSHIP].

23. COMPACT BOARD MEETING REPORT, *supra* note 1, at 2.

citizenship.”²⁴ Several other similar terms such as “corporate social responsibility” (CSR),²⁵ “corporate accountability,”²⁶ “sustainable business,” and “triple bottom line”²⁷ are also in voyage. These terms by and large denote a common idea that demands a reorientation in the *place* and *role* of corporations within society.²⁸ Although no consensual definition of CSR or corporate citizenship is available,²⁹ seemingly these two are used interchangeably. It is possible, however, to draw at least two distinctions between CSR and corporate citizenship. First, whereas the CSR discourse is concerned primarily with the nature, extent, and implementation of corporate responsibilities, corporate citizenship additionally involves a strategic focus from the standpoint of corporations.³⁰ Second, CSR is essentially about the responsibilities

24. Even the definition provided in Black’s Law Dictionary – “corporate status in the state of incorporation” – bears little resemblance to how this term is generally understood. BLACK’S LAW DICTIONARY 364 (8th ed. 2004).

25. “Corporate social responsibility” is generally taken to mean the responsibilities of a corporation towards its stakeholders and communities in which it operates. *See, e.g.*, JAMES E. POST ET AL., BUSINESS AND SOCIETY: CORPORATE STRATEGY, PUBLIC POLICY, ETHICS 56-77 (9th ed. 1999).

26. Nolan draws a distinction between “corporate accountability” and other terms such as CSR or corporate citizenship in that the former “implies commitment, legal responsibility and mechanisms that allow for enforcement of human rights.” Nolan, *supra* note 10, at 448.

27. This implies that the success of a corporation should not be judged merely on the basis of its financial output but also by its environmental and social performance.

28. Corporations, for example, are no longer expected to behave as only wealth maximization entities.

29. “The history and contours of the academic debate about corporate social responsibility – what it is, to whom it is owed, and how it should be policed – is both long and well known.” Larry Catá Backer, *Multinational Corporations, Transnational Law: The United Nations’ Norms on the Responsibilities of Transnational Corporations as a Harbinger of Corporate Social Responsibility in International Law*, 37 COLUM. HUM. RTS. L. REV. 287, 298 (2006). “The current corporate social responsibility . . . agenda is immature, though the issue that it is concerned with are as old as human endeavor.” HALINA WARD, SWEDISH PARTNERSHIP FOR GLOBAL RESPONSIBILITY, LEGAL ISSUES IN CORPORATE CITIZENSHIP 1 (2003), available at http://www.iied.org/SM/CR/documents/legalissues_corporate.pdf. Wells also thinks that these debates “rarely seem to go anywhere.” C.A. Harwell Wells, *The Cycles of Corporate Social Responsibility: An Historical Retrospective for the Twenty-first Century*, 51 U. KAN. L. REV. 77, 78 (2002). These observations are similar to the one written in 1980: “Extensive debate has resulted in little agreement among defenders and opponents of the MNCs in the developing world.” Joseph LaPalombara & Stephen Blank, *Multinational Corporations and Developing Countries*, 34 J. INT’L AFF. 119, 119 (1980).

30. Boston College’s Center for Corporate Citizenship, for example, says the following on its website: “Corporate citizenship is *the business strategy* that shapes the values underpinning a company’s mission and the choices made each day by its executives, managers and employees as they engage with society.” Center for Corporate Citizenship at Boston College, *What is Corporate Citizenship?*, <http://www.bcccc.net/index.cfm?fuseaction=Page.viewPage&pageId=567&nodeID=1&pare>

that corporations should/must have towards their stakeholders. But as "citizenship" implies not only duties but also rights and privileges of citizens,³¹ the idea of corporate citizenship should a priori also include rights and privileges that corporations should enjoy.³² In short, as compared to CSR, the term "corporate citizenship" is wider and it puts more emphasis on strategy-cum-practice aspects of business.

Finally, a brief caveat is required because one may ask what is new in this "public-private" partnership as the U.N. "has a history of interacting with business".³³ The Compact Office sums up what sets apart the current partnership from previous such attempts:

The Global Compact is also a historic development in terms of transforming the relationship between the U.N. and the private sector. During and well after the Cold War environment, the U.N. and the international business community often had a strained relationship. Interventionist and ill-fated attempts by the U.N. to regulate business practices, commodity prices, and technology transfers alienated much of the international business community.³⁴

I. CRITICAL INSIGHT INTO THE COMPACT'S PROGRESS SINCE DAVOS

In the last seven years, the Global Compact has constantly evolved

ntID=473 (last visited Nov. 1, 2006) (emphasis added). The website also identifies four core principles of corporate citizenship: "minimize harm, maximize benefit, be accountable and responsive to key stakeholders, and support strong financial results." *Id.*

31. "Citizenship" is defined as: "The *legal link* between an individual and a particular state . . . under which the individual receives certain rights, privileges, and protections in return for allegiance and duties." DAVID M. WALKER, THE OXFORD COMPANION TO LAW 220 (1980) (emphasis added). See also 7 WORDS AND PHRASES 287 (perm. ed., 1979).

32. Corporations are already claiming the protection of "human" rights. See *Autronic AG v. Switzerland*, App. No. 12726/87, 12 Eur. H.R. Rep. 485 (Eur. Court of H.R.); Michael K. Addo, *The Corporation as a Victim of Human Rights Violations*, in HUMAN RIGHTS STANDARDS AND THE RESPONSIBILITY OF TRANSNATIONAL CORPORATIONS 190 (Michael K. Addo ed., 1999). See generally Jens David Ohlin, Note, *Is the Concept of the Person Necessary for Human Rights?*, 105 COLUM. L. REV. 209 (2005).

33. Nolan, *supra* note 10, at 454. Sagafi-nejad also notes that the U.N. has had "an ebb-and-flow relationship" with MNCs. Tagi Sagafi-nejad, *Should Global Rules Have Legal Teeth? Policing (WHO Framework Convention on Tobacco Control) vs. Good Citizenship (UN Global Compact)*, 10 INT. J. OF BUS. 363, 375 (2005). See also *infra* note 198.

34. ADVANCING CORPORATE CITIZENSHIP, *supra* note 22, at 2. Secretary Kofi Annan in a recent report submitted to the General Assembly noted: "For the first time in over 60 years of United Nations history, we are making business and other social actors vital partners in pursuit of our goals." *Report of the Secretary General on the Work of the Organization*, Suppl. 1, A/61/1 (Aug. 16, 2006), 45, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/461/94/PDF/N0646194.pdf?OpenElement> (last visited Dec. 4, 2006) [hereinafter *Report of the Secretary General*].

and made commendable progress on several fronts. This part first describes what the Global Compact *is* as well as what it *is not*, and then outlines the significant milestones that the Compact has reached since it began its journey in January 1999.

A. *Proposing the Idea of the U.N.'s Revival at Davos*

As pointed out before, with the launch of Global Compact, Secretary General Kofi Annan sought to revive and reinvent the relevance of the U.N.,³⁵ especially in the field of promoting corporate social responsibilities. Annan observed: "I see the Compact as a chance for the U.N. to renew itself from within, and to gain greater relevance in the 21st Century by showing that it can work with non-state actors, as well as states, to achieve the broad goals on which its members have agreed."³⁶ Initially, the Global Compact consisted of nine principles in the areas of human rights, labor, and the environment.³⁷ On June 24, 2004, during the Global Compact Leaders Summit, a tenth principle

35. An editorial in Christian Science Monitor described the Compact as Kofi Annan's "most creative reinvention" yet of the U.N.. Editorial, *A New Global Compact?*, CHRISTIAN SCI. MONITOR (Boston), Sept. 8, 2000, at 10, *quoted in* John Gerard Ruggie, *Symposium: "Trade, Sustainability and Global Governance": Keynote Address*, 27 COLUM. J. ENVTL. L. 297, 301 (2002).

36. Global Compact Office, *The Global Compact: Report on Progress and Activities 3* (2002), http://www.iccwbo.org/home/global_compact/ProgressReport%20July%203.pdf (last visited Oct. 26, 2006) [hereinafter COMPACT PROGRESS REPORT]; *see also* Adelle Blackett, *Symposium: Globalization, Accountability, and the Future of Administrative Law: Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct*, 8 IND. J. GLOBAL LEGAL STUD. 401, 443 (2001); *see generally* Witte & Reinicke, *supra* note 11.

37. The *original* language of the nine principles was as follows:
Human Rights – Business is asked to: 1. Support and respect the protection of international human rights within their sphere of influence; and 2. Make sure their own corporations are not complicit in human rights abuses.
Labour – Business is asked to uphold: 3. Freedom of association and the effective recognition of the right to collective bargaining; 4. The elimination of all forms of forced and compulsory labour; 5. The effective abolition of child labour; and 6. The elimination of discrimination in respect of employment and occupation.
Environment – Business is asked to: 7. Support a precautionary approach to environmental challenges; 8. Undertake initiatives to promote greater environmental responsibility; and 9. Encourage the development and diffusion of environmentally friendly technologies.] Quote, should be indented.

Global Compact Office, *Guide to the Global Compact: A Practical Understanding of the Vision and Nine Principles* 14, <http://www.asria.org/ref/library/csrguidelines/lib/gcguide.pdf> (last visited Oct 26, 2006) [hereinafter GUIDE TO THE GLOBAL COMPACT]. The change in the language of Principles 1 and 2 is worth noting. *See infra* note 55 please verify that all cross-referencing is correct. For example, this should be "56". I believe it was all right in my manuscript.

related to “anti-corruption”³⁸ was added after extensive consultation with all the participants.³⁹ It is claimed that the ten principles enjoy “universal consensus and are derived from” the Universal Declaration of Human Rights, the International Labour Organisation Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and the U.N. Convention Against Corruption.⁴⁰

The Global Compact is a multi-stakeholder initiative involving diverse actors such as governments, companies, labor and civil society organizations, and the U.N.⁴¹ To participate in the Compact, the Chief Executive Officer of the organization must send a letter “to the U.N. Secretary-General expressing support for the Global Compact and its principles.”⁴² The participant is also expected to set in motion changes to its business operations, publicly advocate the Compact and its principles, and publish an annual sustainability report regarding the steps taken to implement the principles.⁴³

The Global Compact “in its simple form is the dissemination of and adherence to good business practices.”⁴⁴ It calls upon business enterprises to “embrace, support and enact, within their sphere of influence, a set of core values” in the four covered areas: human rights, labor, environment, and anti-corruption.⁴⁵ The ten principles of the Global Compact are quite ambitious in their scope and try to “fill a void between regulatory regimes, at one end of the spectrum, and voluntary

38. It reads: “Businesses should work against all forms of corruption, including extortion and bribery.” About the Global Compact, The Ten Principles, Anti-Corruption, <http://www.unglobalcompact.org/AbouttheGC/TheTENPrinciples/anti-corruption.html> (last visited Nov. 10, 2006).

39. Global Compact Office, *Preliminary Report on the Global Compact Leaders Summit 1* (2004), <http://www.pactoglobal.org.br/doc/summit%20report.pdf> (last visited Oct. 26, 2006).

40. The Ten Principles of the U.N. Global Compact, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> (last visited Oct. 26, 2006) [hereinafter *The Ten Principles*].

41. Georg Kell, *The Global Compact: Origins, Operations, Progress, Challenges*, 11 J. CORP. CITIZENSHIP 35, 37-39 (2003).

42. MINISTRY OF FOREIGN AFF. OF DENMARK & U.N.D.P., IMPLEMENTING THE U.N. GLOBAL COMPACT: A BOOKLET FOR INSPIRATION 7 (2005), available at http://www.unglobalcompact.org/docs/news_events/8.1/dk_book_e.pdf.

43. *Id.*

44. King, *supra* note 18, at 482. Ruggie also thinks that the Compact “is intended to identify, disseminate and promote good practices based on universal principles.” Ruggie, *supra* note 35, at 301.

45. The Ten Principles of the U.N. Global Compact, *supra* note 40.

codes of industry conduct, at the other.”⁴⁶

The Compact pursues two “complementary goals”: first, making efforts to internalize the Compact principles as part of business strategy and operations and second, facilitating “co-operation and collective problem-solving between different stakeholders.”⁴⁷ At a wider level, the vision of the Global Compact is “to promote responsible corporate citizenship so that business can be part of the solution to the challenges of globalization,” e.g., good corporate citizenship could contribute to establishing a “more sustainable and inclusive global economy.”⁴⁸ If the Compact is able to engage corporations in overcoming the side effects of globalization,⁴⁹ it should automatically establish the relevance of the U.N., especially amidst people who feel let down by their respective governments.

The Global Compact seeks to achieve its objectives by the following four engagement mechanisms: *leadership* (promoting initiatives supporting the Global Compact at all levels); *dialogues* (engaging in policy dialogues with all concerned stakeholders); *learning* (enabling dissemination of best business practices through sharing of “examples” and “case studies”); and *outreach/network* (providing action platforms, including promotion of public-private partnership projects).⁵⁰

It should also be noted that the “Global Compact is not a regulatory instrument – it does not ‘police,’ enforce or measure the behavior or actions of companies.”⁵¹ It is not even a “benchmarking system that measures good and bad.”⁵² Since the Compact is a “learning dialogue and a platform of action,”⁵³ it relies on a range of unconventional means and strategies to promote respect for its principles, e.g., principle-based change; risk management; public accountability; the enlightened self-interest of companies; sharing good

46. COMPACT PROGRESS REPORT, *supra* note 36, at 4.

47. Kell, *supra* note 41, at 36.

48. About the Global Compact, *supra* note 21.

49. See, e.g., JANET DINE, COMPANIES, INTERNATIONAL TRADE AND HUMAN RIGHTS 126 (2005). Bhagwati, however, argues that “globalization has a human face” already. BHAGWATI, *supra* note 17, at x.

50. Kell, *supra* note 41, at 36-37, 39-40. See also COMPACT PROGRESS REPORT, *supra* note 36, at 4-6.

51. About the Global Compact, *supra* note 21.

52. PriceWaterhouseCoopers, *The U.N. Global Compact: Moving to the Business Mainstream, An Interview with Georg Kell*, CORP. RESP. REP., Winter 2005, available at http://www.unglobalcompact.org/docs/news_events/9.5/pwc_int_2005.pdf (last visited Sept. 27, 2006) [hereinafter *An Interview with Kell*].

53. *Id.*

practices; partnerships, etc.⁵⁴

B. Progress Since Davos

Many aspects of the Global Compact have changed from the time it started its journey in Davos; the key concepts, modalities for implementation and the governance framework of the Compact are still in the process of evolution,⁵⁵ the original language of its principles has been changed,⁵⁶ and a new principle related to anti-corruption has been added. Because the Compact has undergone "intense experimentation,"⁵⁷ there is also an iota of uncertainty associated with its working. Although it is not possible to discuss all the progress steps here, some notable landmarks are noted below.

1. Backing of U.N. General Assembly Resolutions

Among other things, the globalization of trade and terrorism has exposed the limitations of the predominantly state-centric nature of the U.N. and gaps in international law generally. One reason that led to this inadequacy is that non-state actors—and not states—are key players in both trade and terrorism.⁵⁸ The other important variable is that states, even if they act in cooperation, alone lack the required capacity to handle global problems, or to ensure the realization of human rights⁵⁹

54. *Id.*

55. For example, the Global Compact Advisory Council was formed in Jan. 2002. Press Release, Secretary-General, Secretary-General to Convene First Meeting of Global Compact Advisory Council at Headquarters 8 January, U.N. Doc. Note 5705 (Jan. 8, 2002), available at <http://www.un.org/News/Press/docs/2002/note5705.doc.htm> (last visited Oct. 30, 2006). Recently, new governance framework has been proposed. See THE GLOBAL COMPACT, THE GLOBAL COMPACT'S NEXT PHASE (2005), http://www.unglobalcompact.org/docs/about_the_gc/2.3/gc_gov_framework.pdf.

56. For example, Principle 1 initially provided that the world business should "support and respect the protection of international human rights within their sphere of influence." GUIDE TO THE GLOBAL COMPACT, *supra* note 37, at 14. It now reads: "Businesses should support and respect the protection of internationally proclaimed human rights." The Ten Principles of the U.N. Global Compact, *supra* note 40. Two differences are noteworthy. First, the phrase "within their sphere of influence" is removed from principle 1 and added as a qualifier to all the ten principles. *Id.*; GUIDE TO THE GLOBAL COMPACT, *supra* note 37, at 14. Second, "international human rights" is qualified by "proclaimed," implying thereby that some international human rights are not official, or publicly declared to be so. The Ten Principles of the U.N. Global Compact, *supra* note 40.

57. Kell, *supra* note 41, at 36.

58. See Surya Deva, *From 3/12 to 9/11: Future of Human Rights?*, 39 ECON & POL WKLY 5198 (2004).

59. King, for example, argues: "Protecting human rights everywhere is too big a job for governments alone. To be successful we need partners . . . we need the corporate players in the global market place to ensure the access to economic, social, and cultural rights." King,

and the eight U.N. Millennium Development Goals.⁶⁰ U.N. General Assembly Resolution 55/215 tries to respond to some of these challenges by stressing the need for partnerships between the U.N. member states and the private sector.⁶¹ Among others, such a partnership “between the U.N. (the global political system) and the TNCs (the global economic system)” is also required to sustain globalization by overcoming its socio-economic imbalances.⁶² The Global Compact certainly provided a successful example of a much desired public-private partnership, for which it legitimately claims pride.⁶³

Three subsequent resolutions of the General Assembly further support and endorse the Compact model of partnership. Resolution 56/76 encourages “the private sector to accept and implement the principle of good corporate citizenship” and also underlines “the fact that cooperation between the United Nations and all relevant partners, in particular the private sector, shall serve the purposes and principles embodied in the Charter of the United Nations.”⁶⁴ Resolution 58/129 builds on this premise and encourages the private sector “to take into account not only the economic and financial, but also the developmental, social, human rights, gender and environmental implications of their undertakings.”⁶⁵ It is also stressed that such

supra note 18, at 483.

60. A recent General Assembly resolution underlined “the fact that cooperation between the United Nations and all relevant partners, including the private sector, shall serve the purposes and principles embodied in the Charter of the United Nations and can make concrete contributions to the realization of the Millennium Development Goals.” G.A. Res. 60/215, Preamble, U.N. Doc. A/RES/60/215 (Mar. 29, 2006). *See also Report of the Secretary General, supra* note 34, at 45. The Millennium Development Goals are available at <http://www.un.org/millenniumgoals/> (last visited Oct. 27, 2006) [hereinafter U.N. Millennium Development Goals].

61. G.A. Res. 55/215, U.N. Doc. A/RES/55/215 (Mar. 6, 2001), <http://daccessdds.un.org/doc/U.N.DOC/GEN/N00/572/05/PDF/N0057205.pdf?OpenElement> (last visited Oct. 28, 2006). *But see* Alexis M Taylor, *The U.N. and the Global Compact*, 17 N. Y. L. SCH. J. HUM. RTS. 975, 980-83 (2001). He concludes: “The question remains as to whether the U.N. has exceeded Charter-based limitations of working towards world peace through the promotion of globalisation and the Global Compact.” *Id.* at 983.

62. David M. Bigge, *Bring on the Bluewash: A Social Constructivist Argument Against Using Nike v. Kasky to Attack the U.N. Global Compact*, 14 INT’L LEGAL PERSP. 6, 10 (2004).

63. “The Global Compact is also a historic development in terms of transforming the relationship between the United Nations and the private sector.” ADVANCING CORPORATE CITIZENSHIP, *supra* note 22, at 2.

64. G.A. Res. 56/76, ¶¶ 6, 8, U.N. Doc. A/RES/56/76 (Jan. 24, 2002), <http://daccessdds.un.org/doc/U.N.DOC/GEN/N01/490/02/PDF/N0149002.pdf?OpenElement> (last visited Oct. 27, 2006).

65. G.A. Res. 58/129, ¶ 11, U.N. Doc. A/RES/58/129 (Feb. 19, 2004).

partnerships “should focus on the achievement of concrete results” and should be founded on the purposes and principles of the U.N. as outlined in the Charter.⁶⁶ The clearest endorsement of the Global Compact and its techniques is provided by the recent General Assembly Resolution 60/125.⁶⁷ The resolution not only “encourages responsible business practices, such as those promoted by the Global Compact” but also “encourages the Global Compact Office to promote the sharing of best practices and positive action through learning, dialogue and partnerships.”⁶⁸

These resolutions legitimize the working of the Global Compact and the U.N.'s engagement with non-state “private” actors. This should also encourage more and more corporations to join the initiative.

2. Integrity Measures for Brand Management

The Global Compact Office is concerned about the “brand management” of its initiative,⁶⁹ and therefore, has taken integrity measures to ensure that participants do not misuse the name or goodwill of the Compact.⁷⁰ Three measures deserve special mention.⁷¹ First, the Compact participants are expected “to communicate annually to all stakeholders their progress in implementing the GC principles.”⁷² Should a participant fail to do so “for two years in a row, that participant would be labeled ‘inactive’ on the Global Compact website.”⁷³ Because of its special importance, the policy regarding Communication on Progress (COP) has been dealt with in more detail in

<http://daccessdds.un.org/doc/U.N.DOC/GEN/N03/502/32/PDF/N0350232.pdf?OpenElement> (last visited Oct. 27, 2006).

66. *Id.*

67. G.A. Res. 60/215, *supra* note 60.

68. *Id.*

69. *An Interview with Kell, supra* note 52. This is again emphasized during the inaugural meeting of the Global Compact Board. *Compact Board Meeting Report, supra* note 1, at 8-10.

70. United Nations Global Compact, *Note on Integrity Measures, available at* http://www.unglobalcompact.org/AboutTheGC/gc_integrity_mesures.pdf (last visited Nov. 7, 2006) [hereinafter *Global Compact Note on Integrity*].

71. The integrity measures have three essential elements: “i) the Communication on Progress (COP) policy; ii) the Global Compact brand and logo policy and iii) the complaint process.” *Compact Board Meeting Report, supra* note 1, at 8.

72. *Global Compact Note on Integrity, supra* note 70, at § 3.

73. *Id.* In fact, the Global Compact Office has now started listing companies as “inactive” if they fail to submit a COP within three years of joining the Global Compact, or within two years of submitting their last COP. “Inactive Participants”, *available at* http://www.unglobalcompact.org/CommunicatingProgress/inactive_participants.html (last visited Nov. 27, 2006).

the next section.

Second, the Compact Office has formulated and released a Logo Policy that specifies permissible and non-permissible uses of the logo.⁷⁴ Under the Policy, the Compact Office “permit[s] its participants and other stakeholders to use the Global Compact logo only in the context of their activities promoting the Global Compact and its goals, but not in any manner that suggests or implies that the Global Compact Office has endorsed or approved of the activities, products, and/or services of the organization, or that the Global Compact Office is the source of any such activities, products, and/or services.”⁷⁵ In short, the participants are not allowed to use the Compact logo to gain purely commercial or economic benefits.

Finally, a complaint process has been put in place. If “a complaint of systematic or egregious abuse is found not to be prima facie frivolous,” the Global Compact Office will forward the complaint to the concerned participating company with a request to respond in writing “directly to the complaining party, with a copy to the Global Compact Office.”⁷⁶ The Compact Office could also provide guidance and assistance to the participating company concerned “to remedy the situation that is the subject matter of the complaint in order to align the actions of the company with its commitments to the Global Compact principles.”⁷⁷

3. COP Policy

The COP policy, which is part of the Compact’s integrity measures, was introduced in January 2003. “Companies are asked to communicate publicly on their progress through major medium[s] of communication, such as annual reports or websites, allowing stakeholders to evaluate the companies’ commitment to the Global Compact.”⁷⁸ If a company does not publish a sustainability or annual report, the COP should be communicated through other channels – such as “websites, press releases, official statements, company notices” – in

74. United Nations Global Compact, *The Global Compact Logo Policy*, available at http://www.unglobalcompact.org/AboutTheGC/gc_logo_policy.html (last visited Nov. 1, 2006) [hereinafter *Policy on the Use of the Global Compact Name and Logos*].

75. *Id.*

76. United Nations Global Compact, *Integrity Measures*, <http://www.unglobalcompact.org/AboutTheGC/integrity.html> (last visited Nov. 1, 2006).

77. *Id.*

78. United Nations Global Compact, *Notable Communications on Progress*, http://www.unglobalcompact.org/CommunicatingProgress/cop_practice.html (last visited Nov. 1, 2006) [hereinafter *Communications on Progress*].

which stakeholders would “expect to read about the company’s major economic, social and environmental engagements.”⁷⁹ The Compact participants are also expected to post on the Global Compact website an electronic version of their COP, along with a URL link to the web page where the document is available.⁸⁰ Even small and medium scale enterprises are encouraged to submit COPs, though in their case COPs need not be as exhaustive or detailed as expected from MNCs.⁸¹

The Compact website offers guidelines on how to comply with the annual requirement of submitting COPs⁸² and also lists some of the notable COPs.⁸³ Regarding each of the ten principles, the reporting should keep in mind the four components: commitment, systems, action, and performance.⁸⁴ The Compact Office has released a practical guide that illustrates how these four components could be reported regarding each of the ten principles and also provides tips on how to find evidence that demonstrate the progress made on the Compact principles.⁸⁵

The COP Guidelines lay down that a COP should include the following three elements.⁸⁶ First, a *statement* of continued support for the Global Compact from the Chief Executive Officer, Chairman or other senior executive. The requirement that such a statement must come from a senior representative is emphasized to signify that “the Global Compact is considered a commitment deserving of the highest level of attention.”⁸⁷ Second, a *description* of practical actions that participants have taken to implement the Compact principles during the previous fiscal year. Undoubtedly, ongoing corporate actions might be necessary to implement the Compact principles.⁸⁸ Even so, the COPs

79. United Nations Global Compact, *A Practical Guide to Communication on Progress*, at 5, available at http://www.unglobalcompact.org/docs/communication_on_progress/4.3/pock_guide.pdf (last visited Nov. 1, 2006) [hereinafter *A Practical Guide to Communication on Progress*].

80. *Id.*

81. *Id.* at 6.

82. United Nations Global Compact, *Global Compact Guidelines for “Communication on Progress,”* available at http://www.unglobalcompact.org/CommunicatingProgress/cop_guidelines.pdf (last visited Nov. 1, 2006) [hereinafter *Global Compact Guidelines for “Communication on Progress”*].

83. *Id.*

84. *A Practical Guide to Communication on Progress*, *supra* note 79, at 8.

85. *Id.* at 8-9.

86. *Global Compact Guidelines for “Communication on Progress,” supra* note 82.

87. *A Practical Guide to Communication on Progress*, *supra* note 79, at 4.

88. During an interview, Norman Walker, Head, Human Resources, Novartis International said: “I can’t say we will meet all of our requirement[s] today. It’s a journey we have started with the purpose of seeing that our standards are achieved.” Tavis, *infra*

should identify yearly achievements, for “yearly actions signify a commitment to continuous improvement.”⁸⁹ Third, the *measurement* of outcomes or expected outcomes using, as much as possible, indicators or metrics such as the Global Reporting Initiative Guidelines.⁹⁰ Instead of merely describing a policy or program, the performance should be measured and expressed in quantitative terms.⁹¹

4. *New Governance Framework*

In order to strengthen the quality, integrity and governance components of the Global Compact, a new framework was approved by the U.N. Secretary General in August 2005.⁹² This was considered necessary because “with more than 2,400 [now more than 3,600] participants worldwide and nearly 50 country networks, the Global Compact has reached a stage of maturity and scope that demand greater focus, transparency, and sustained impact.”⁹³ It is proposed that the governance functions will be shared by (i) Triennial Global Compact Leaders Summit, (ii) Global Compact Board, (iii) Local Networks, (iv) Annual Local Networks Forum, (v) Global Compact Office, and (vi) Inter-Agency Team.⁹⁴

There will, however, be no change in the Global Compact’s founding principles, mission, objectives, open-voluntary nature of the initiative, and the leadership model.⁹⁵ Corporations must have found this announcement reassuring given the fear that the Compact might turn into a regulatory instrument, or that the Compact Office might get tough on free riders.

It may be worthwhile to detail the composition of, and expectations from, the Compact Board. The Board will consist of twenty members from four constituency groups: business, civil society, labor, and the

note 133, at 742.

89. *A Practical Guide to Communication on Progress*, *supra* note 79, at 4.

90. Global Reporting Initiative, *Sustainability Reporting Guidelines 2002*, available at http://www.globalreporting.org/guidelines/2002/gri_2002_guidelines.pdf (last visited Nov. 1, 2006).

91. *See Id.*

92. United Nations Global Compact, *The Global Compact’s Next Phase 1*, available at http://www.unglobalcompact.org/docs/about_the_gc/2.3/gc_gov_framework.pdf (last visited Nov. 1, 2006) [hereinafter *The Global Compact’s Next Phase*].

93. United Nations Global Compact, *Global Compact Governance*, http://www.unglobalcompact.org/AboutTheGC/stages_of_development.html (last visited Nov. 1, 2006).

94. *Id.* *See also The Global Compact’s Next Phase*, *supra* note 92, at 6.

95. *The Global Compact’s Next Phase*, *supra* note 92, at 2.

U.N..⁹⁶ Apart from three ex-officio members coming from the U.N. (Secretary General, Head of the Compact Office and Chair of the Global Compact Foundation), eleven will come from business, four from civil society and two from labor.⁹⁷ Thus, the dominance of corporations in the Board is apparent.⁹⁸ The Compact Board will provide “ongoing strategic and policy advice” to the corporate citizenship initiative, including by “making recommendations to the Global Compact Office, participants and other stakeholders.”⁹⁹ It will also be “encouraged to assist in raising funds and contributions in kind for global events, activities and the publication of tool kits.”¹⁰⁰ The Board will hold an annual formal meeting but “the constituency groups will be expected to interact with the Global Compact Office on an ongoing basis.”¹⁰¹

On April 20, 2006, the U.N. Secretary General appointed business, labor and civil society leaders from around the world to serve on the Global Compact Board.¹⁰² The inaugural meeting of the Board was held on June 28, 2006, in which Kofi Annan committed to encourage his successor to endorse and support the Global Compact.¹⁰³

5. *Global Compact Foundation*

Although the Global Compact has received an endorsement from the U.N. General Assembly through various resolutions, it “receives almost no funding from the regular budget of the United Nations.”¹⁰⁴ Consequently, in order to meet its costs of activities such as events, meetings, publication, translation and tools, the Global Compact Office, on April 19, 2006, launched a non-profit foundation, the Foundation for the Global Compact.¹⁰⁵ The Foundation has been authorized to raise funds on behalf of the Compact Office.¹⁰⁶ The Foundation will seek

96. *Id.* at 6.

97. *Id.* at 7.

98. See Nolan, *supra* note 10, at 465.

99. *The Global Compact's Next Phase*, *supra* note 92, at 6.

100. *Id.*

101. *Id.*

102. Press Release, United Nations Global Compact, Secretary-General Appoints Global Compact Board (Apr. 20, 2006), available at http://www.unglobalcompact.org/NewsAndEvents/news_archives/2006_04_20.html (last visited Nov. 1, 2006).

103. *Compact Board Meeting Report*, *supra* note 1, at 2, 5.

104. Foundation for the United Global Compact, *Frequently Asked Questions*, <http://www.globalcompactfoundation.org/faq.htm> (last visited Nov. 1, 2006).

105. Foundation for the United Global Compact, *Index*, <http://www.globalcompactfoundation.org/index.htm> (last visited Nov. 1, 2006).

106. Foundation for the Global Compact, *Purpose*,

voluntary contributions from the Compact participants and other stakeholders.

To safeguard the integrity of the Global Compact, “funds raised through the Foundation will not be used to pay the salaries of Global Compact staff. The Foundation will also not exert any influence on Global Compact Office strategy and operations.”¹⁰⁷ It is encouraging that the Compact Office is aware of the problems associated with such a mechanism of fund raising. But still, it may be desirable to draw a detailed funding policy to preserve the integrity and independence of the initiative.

6. *Shanghai Declaration*

Another step in the evolution process of the Global Compact was the 15-point Shanghai Declaration.¹⁰⁸ The Declaration was approved on December 1, 2005 by international business leaders and representatives of government and civil society at the close of the Global Compact Summit in Shanghai.¹⁰⁹ Out of fifteen points, whereas the first five reiterate the “role of business in society,” the next eight points canvass the “actions for responsible business.”¹¹⁰ The last two points of the Declaration elaborate the “role of governments.”¹¹¹ Of these fifteen points, a few more significant ones may be noted here. First, it is emphasized that despite the “globalisation of business,” the expansion of markets around the world remains “an uneven and fragile process” and therefore, universal principles should be embedded in the marketplace “for creating more robust and equitable markets.”¹¹²

Second, points four and five of the Declaration together charter a *double barrel* – having both positive and negative elements – “business case” for being responsible corporate citizens.¹¹³ In sum, good

<http://www.globalcompactfoundation.org/about/purpose.htm> (last visited Nov. 1, 2006).

107. Press Release, Foundation for Global Compact, Foundation for the Global Compact Launched (Apr. 19, 2006), available at http://www.globalcompactfoundation.org/news/releases/launch_press_release170406.pdf (last visited Nov. 1, 2006).

108. U.N. Global Compact Summit, Shanghai, Nov.30-Dec.1, 2005, *Shanghai Declaration*, http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2005_12_01b/shanghai_declaration.pdf (last visited Sept. 22, 2006) [hereinafter *Shanghai Declaration*].

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* ¶¶ 1, 2.

113. *Id.* ¶¶ 4, 5. For “business case,” see generally Scott Greathead, *The Multinational and the “New Stakeholder”*: Examining the Business Case for Human Rights, 35 VAND. J.

corporate citizenship is presented not only as a business opportunity to gain and maintain competitive advantage in market settings, but also as an important strategy for risk management.¹¹⁴

Third, the Declaration reaffirms the importance of corporations forming alliances, partnerships and collaborative efforts with like minded businesses and other societal organs.¹¹⁵ Corporations also “commit to become proactive in critical areas where our voices and competencies can substantively contribute to the solutions of priority challenges, such as HIV/AIDS and other critical health concerns, and community engagement for sustainable and long-term development.”¹¹⁶ Although not expressly mentioned, the “priority challenges” seemingly refer to the U.N. Millennium Development Goals.¹¹⁷

Fourth, the Shanghai Declaration also outlines corporate expectations from governments in promoting the corporate citizenship initiative. Since “the rule of law, and transparent and predictable regulatory efforts” are necessary to sustain good corporate initiatives, the governments are asked to “actively encourage principled corporate practices and promote accountability and transparency.”¹¹⁸ Governments, in addition, are requested to “provide for and strengthen a multilateral trading system . . . [and] further improve the international financial regime.”¹¹⁹ The Declaration, therefore, is not merely about corporate social responsibilities. By expressly including corporate expectations from governments, the Shanghai Declaration also testifies

TRANSNAT'L L. 719 (2002); David Monsma & John Buckley, *Non-Financial Corporate Performance: The Material Edges of Social and Environmental Disclosure*, 11 U. BALT. J. ENVTL. L. 151 (2004); Joshua A. Newberg, *Corporate Codes of Ethics, Mandatory Disclosure, and the Market for Ethical Conduct*, 29 VT. L. REV. 253 (2005). See also European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, *The Business Case for Diversity: Good Practices in the Workplace* (2005), available at http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/events/busicase_en.pdf; SANJAY SHARMA & MARK STARIK, *STAKEHOLDERS, THE ENVIRONMENT, AND SOCIETY* (Sanjay Sharma & Mark Starik eds., 2004).

114. *Shanghai Declaration*, *supra* note 108, ¶¶ 4, 5. The Executive Head of the Global Compact Office made the risk management justification more explicit in an interview: “[T]he whole issue is ultimately one of *risk management*. More companies are seeing that getting it wrong can be very costly. They are seeing that if they make a mistake on the environmental front, on the social front, on workplace issues, such as sweatshops – you name it – the costs can be huge.” *An Interview with Kell*, *supra* note 52 (emphasis added).

115. *Shanghai Declaration*, *supra* note 108, ¶¶ 7,8.

116. *Id.* ¶ 13.

117. U.N. Millennium Development Goals, *supra* note 60.

118. *Shanghai Declaration*, *supra* note 108, ¶ 14.

119. *Id.* at ¶ 15.

to the growing leverage of corporations vis-à-vis states.

7. *Compact Quarterly*

In January 2005, the Global Compact launched the *Compact Quarterly*, an electronic journal that “endeavors to provide Global Compact participants, stakeholders and observers with a range of thought-provoking articles, interviews, and updates on topics related to the initiative, as well as to corporate responsibility in general.”¹²⁰ The *Compact Quarterly* replaces the Global Compact E-Newsletter. The journal is published in an electronic form, but a printed compendium will be produced at the end of each year. Although a printed format could be needed to reach those stakeholders who do not have access to the internet, efforts should still be made to ensure that the printing and distribution is in conformity with Principle 8 of the Compact.¹²¹

8. *Engagement with Academic Partners*

On March 29, 2006, the Compact Office sent a letter to open a consultation, which lasted until June 30, 2006, with its academic partners.¹²² The consultation focused on the “(1) mission of academic institutions within the Global Compact; (2) range of activities they should embrace to advance its goals; (3) conditions and procedures for participation; and (4) a proposal on the future governance of the Academic Network.”¹²³

The Compact Office’s initiative to engage with academic community and educational institutions is laudable. Academia could play a vital role in spreading a critical understanding of the corporate citizenship initiative through education, research and writing. In addition, if the curricula in business, management, and law schools are aligned with the agenda of corporate citizenship, they could provide critical training to current and future corporate executives.¹²⁴ By

120. COMPACT QUARTERLY, *available at* <http://www.enebuilder.net/globalcompact/index000118654.cfm> (last visited Mar. 31, 2006).

121. Principle 8 reads: “Businesses should undertake initiatives to promote greater environmental responsibility.” United Nations Global Compact, Principle Eight, *available at* <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle8.html> (last visited Oct. 30, 2006).

122. Letter from Georg Kell, Executive Head, U.N. Global Compact Office, Office of the Secretary-General to the Academic Community (March 29, 2006), *available at* http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/fff/ac_netw_032006.pdf (last visited Oct. 30, 2006).

123. *Id.*

124. Notably, academic institutions have agreed to develop Principle for Responsible

providing such training, educational institutions could fill in an existing fundamental gap that does not allow a proper balancing between wealth maximization and promotion of human rights by corporations.¹²⁵ Finally, this engagement should provide impetus to the *humanization* of corporate law by infusing corporate human rights responsibilities into it.¹²⁶

9. *Principles for Responsible Investment*

On April 27, 2006, Secretary General Kofi Annan launched principles for responsible investment (PRI), which have been signed by the heads of leading institutional investors from sixteen countries, representing more than \$2 trillion in U.S. assets.¹²⁷ The process of drafting PRI was coordinated by the Global Compact along with the U.N. Environment Program Finance Initiative. There are in total six principles which specify multiple actions regarding each of the principles.¹²⁸ In sum, participating investors are expected to incorporate “environmental, social, and corporate governance (ESG) issues” into their investment analysis, decision making, and policies.¹²⁹ Participants should also seek disclosure on ESG issues from entities in which they invest, promote the implementation of principles within the industry, and report on the progress made towards implementing these

Business Education. “Academic Institutions Agree to Develop Principles for Responsible Business Education,” available at http://www.unglobalcompact.org/NewsAndEvents/news_archives/2006_10_26.html (last visited Dec. 4, 2006).

125. See Surya Deva, *Corporate Code of Conduct Bill 2000: Overcoming Hurdles in Enforcing Human Rights Obligations Against Overseas Corporate Hands of Local Corporations*, 8 NEWCASTLE L. REV. 87, 110-11 (2004) [hereinafter *Corporate Code of Conduct Bill 2000*].

126. See, e.g., Corporations Act, 2001, §§ 299(1)(f) and 1013D(1)(I), (Austl.) available at http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172; Company Law Reform Bill, 2005, §§ 156(3)(d), 390(4), HL Bill 34, available at <http://www.publications.parliament.uk/pa/ld200506/ldbills/034/2006034.pdf>. See also Deva, *supra* note 11, at 731-33, 748-49.

127. Press Release, United Nations, United Nations Secretary-General Launches ‘Principles for Responsible Investment’ (Apr. 27, 2004), available at http://www.unglobalcompact.org/NewsAndEvents/news_archives/2006_04_27.html. (last visited Nov. 1, 2006). See also U.N.PRI.org, <http://www.unpri.org/> (last visited Nov. 1, 2006).

128. U.N. Global Compact & U.N. Environment Program Financial Initiative, *Principles for Responsible Investment*, at 6-7, available at http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2006_04_27/pri_brochure.pdf (last visited Oct. 31, 2006) [hereinafter *Principles for Responsible Investment*].

129. *Id.* at 6.

principles.¹³⁰

Because PRIs are voluntary and aspirational, no regulatory or legal sanctions follow on non-compliance, although “reputational risks” may result.¹³¹ It is noteworthy that the PRI are underpinned by the “business case” hypothesis,¹³² in that they are “based on the premise that ESG issues can affect investment performance and that the appropriate consideration of these issues is part of delivering superior risk-adjusted returns.”¹³³ However, as I have argued elsewhere, the business case hypothesis should be accepted with some caution.¹³⁴

II. REVIEWING THE SCOPE AND PROGRESS: STILL TOO COMPACT TO BE GLOBAL?

The Compact Progress Report,¹³⁵ various case studies¹³⁶ or examples by companies,¹³⁷ and a report on impact assessment prepared by McKinsey & Co.¹³⁸ document the progress as well as the outreach that the Global Compact has achieved since its inception. However, it is argued that the Compact is still too compact to be considered truly global, the compactness being in terms of the general language and limited scope of its principles, and the extent of (non)response or

130. *Id.*

131. *Id.* at 10.

132. See Greathead, *supra* note 113; Monsma, *supra* note 113; Newberg, *supra* note 113; European Commission, *supra* note 113.

133. *Principles for Responsible Investment*, *supra* note 127, at 8.

134. See Deva, *supra* note 11, 745-47.

135. COMPACT PROGRESS REPORT, *supra* note 36, at 10-30. See also Kell, *supra* note 41, at 41-45.

136. See THE GLOBAL COMPACT LEARNING FORUM, FROM PRINCIPLE TO PRACTICE (2006), available at http://www.unglobalcompact.org/docs/news_events/8.1/princ_prac.pdf (last visited Oct. 31, 2006). The report contains a disclaimer that it is “intended strictly as a learning document and should not be interpreted to indicate either effective or ineffective practices.” *Id.* See also Lee A. Tavis, *Novartis and the U.N. Global Compact Initiative*, 36 VAND. J. TRANSNAT’L L. 735 (2003).

137. See, e.g., Association for Sustainable & Responsible Investment in Asia, *Guide to the Global Compact: A Practical Understanding of the Vision and Nine Principles*, available at <http://www.asria.org/ref/library/csrguidelines/lib/gcguide.pdf> (last visited Oct. 31, 2006) [hereinafter *Guide to the Global Compact*].

138. McKinsey & Co., *Assessing the Global Compact’s Impact 2*, 9 (2004), http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2004_06_09/imp_ass.pdf (last visited Oct. 31, 2006). The report concludes that “the Global Compact has had noticeable, incremental impact on companies, the U.N., governments and other civil society actors” and that it has “built up a solid participating case and strong local network structure”. *Id.* at 2, 9. The report, however, also acknowledges that the Compact has acted “primarily as an accelerator and facilitator of action, rather than the dominant force for change” in companies’ actions, behavior or action. *Id.* at 3-5.

(non)seriousness of corporations. This part examines the two-fold compactness of the Global Compact.

A. Compact, General and Vague Principles

In order to keep it simple and attractive for corporations,¹³⁹ the ten principles of the Global Compact are basically “one-liners,”¹⁴⁰ at best an example of a “minimalist code” of corporate conduct.¹⁴¹ Therefore, the principles hardly provide adequate and concrete guidance to corporations about the conduct expected from them:¹⁴² “Many of the [Global Compact’s] principles cannot be defined at this time with the precision required for a viable code of conduct.”¹⁴³ The generality-cum-vagueness of the Compact principles is counter-productive from the perspective of both sincere and insincere corporate citizens. The language of these principles is so general that insincere corporations can easily circumvent or comply with them without doing anything to promote human rights or labor standards.¹⁴⁴ On the other hand, even a sincere corporate citizen like Novartis finds the language too general to be implemented: “The generality of the Global Compact principles needed to be particularized for the specific Novartis environment as a first step in implementation.”¹⁴⁵ A certain level of generality or

139. “Participating companies have lauded the voluntary approach and vague principles. In a recent *Financial Times* article, a Volkswagon executive posited the benefits of nine principles that are ‘easy to grasp and communicate. . . and there is no strict code of conduct.’” Bigge, *supra* note 62, at 11 citing Hugh Williamson, *Signing Up to Corporate Citizenship*, FINANCIAL TIMES (U.K.), February 12, 2003.

140. David Weissbrodt, *Business and Human Rights*, 74 U. CIN. L. REV. 55, 66 (2005) (indicating that the Global Compact “contains ten short sentences.”).

141. Sean Murphy concedes that “[a] minimalist code for codes might look something like the U.N. Global Compact, simply calling for MNCs to adhere to codes that address certain core issues, such as labor, human rights, environmental harm, and corruption.” Sean D. Murphy, *Taking Multinational Corporate Codes of Conduct to the Next Level*, 43 COLUM. J. TRANSNAT’L L. 389, 425 (2005).

142. See generally, Klaus M. Leisinger, *On corporate Responsibility for Human Rights*, available at http://www.novartisfoundation.com/pdf/leisinger_contribution_hr_business.pdf (last visited Oct. 30, 2006). Leisinger argues that “ambiguous terms are used that are given a variety of meanings by society’s different stakeholders.” *Id.* at 7. See also Nolan, *supra* note 10, at 460 (“[T]he Compact does little to advance the debate toward clarifying what the key human rights issues are for business.”).

143. Ruggie, *supra* note 35, at 304. For example, “no consensus exists on what ‘the precautionary principle’ is.” *Id.*

144. A.A. Fatouros argues that “[a] text referring to a course of conduct in broad terms sets few actual limits on the freedom of those it seeks to regulate . . .” A. A. Fatouros, *On the Implementation of International Codes of Conduct: An Analysis of Future Experience*, 30 AM. U. L. REV. 941, 955 (1981).

145. Tavis, *supra* note 136, at 740. Again, “[t]he Global Compact is not specific in its seventh principles, asking firms to ‘[s]upport a precautionary approach to environmental

flexibility in guiding principles of any international initiative is a desirable virtue,¹⁴⁶ but not if it could be taken to include or exclude anything as per the individual corporate convenience.

Let us consider the language of some of the Compact principles. Principle 1 provides that, “businesses should support and respect the protection of internationally proclaimed human rights.”¹⁴⁷ This principle, thus, does not elaborate on what such “internationally proclaimed human rights” are and what actions “supporting” and “respecting” of such rights would entail. Similarly, a mere statement that businesses should “make sure that they are not complicit in human rights abuses”¹⁴⁸ does not provide much help to corporations. What amounts to complicity in a given business scenario has proved a complex area that requires careful exploration.¹⁴⁹ Leisinger, for example, asks: “[I]n what cases does a company become ‘complicit’ in human rights abuses through its normal business activities? What kind of proximity to abuses by the state, by terrorists, by individuals, or by other companies would justify the negative judgment of being complicit in human rights violations? These questions are answered in many ways by different stakeholders”¹⁵⁰

The Compact Office though has tried to infuse some certainty into the principles by elaborating some key terms used herein. For example, *Implementing the Global Compact: A Booklet for Inspiration* explains three types of complicity: direct, beneficial and indirect.¹⁵¹ Companies are advised to “actively avoid all kinds of direct and indirect complicity.”¹⁵²

challenges.” *Id.* at 743.

146. “The Global Compact is very flexible in practice and can be adapted to the situation and reality of the individual company. The company decides for itself in which way and how fast it will implement the Global Compact. It means that the company decides for itself what to prioritize, where to concentrate its efforts and which methods to employ.” MINISTRY OF FOREIGN AFFAIRS OF DENMARK AND U.N.D.P., *supra* note 42, at Cover Page

147. The Ten Principles, *supra* note 40.

148. *Id.* at Principle 2.

149. John Gerard Ruggie rightly argues that “no consensus exists, even among advocates, on where to draw the boundaries around corporate ‘non-complicity’ in human rights abuses.” Ruggie, *supra* note 35, at 304. See also Andrew Clapham and Scott Jerbi, *Categories of Corporate Complicity in Human Rights Abuses*, 24 HASTINGS INT’L & COMP. L. REV. 339 (2001); Anita Ramasastry, *Corporate Complicity: From Nuremberg to Rangoon: An Examination of Forced Labor Cases and Their Impact on the Liability of Multinational Corporations*, 20 BERKELEY J. INT’L L. 91 (2002). The U.N. Special Representative on Business and Human Rights has been requested to investigate this issue. See Business & Human Rights Resource Centre, <http://www.business-humanrights.org/Gettingstarted/U.N.SpecialRepresentative> (last visited Oct. 31, 2006).

150. Leisinger, *supra* note 142, at 3.2

151. MINISTRY OF FOREIGN AFFAIRS OF DENMARK & U.N.D.P., *supra* note 42, at 10.

152. *Id.*

The Booklet also provides a test to do a self-evaluation of complicity. A company in doubt should ask: "What would be the effect on violations if our company or other similar companies did *not* participate in the activity in question or did *not* work with the partner in question?"¹⁵³ Although the three types of complicity are defined quite broadly, the application of suggested test may produce narrow results. Let us hypothetically apply the test to the controversial role of Yahoo, Microsoft, Google and Cisco in regards to internet censorship in China.¹⁵⁴ Arguably, by applying the test, all four corporations could come to the conclusion that irrespective of their role there would be censorship and control over what internet users might surf in China. So, they are not complicit in the instant internet censorship. If the test brings such a result, then it is perhaps not satisfactory.

The stand taken by BHP regarding the obligation flowing from Principle 3 of the Compact – which lays down that "businesses should uphold... the effective recognition of the right to collective bargaining" – further illustrates how fragile the Compact principles are. Even though the plain text of this provision should *prima facie* require BHP (or any corporation for that matter), which has committed to support and advance the Compact principles, to institutionalize "collective bargaining,"¹⁵⁵ BHP continues to require its *new* employees to sign individual contracts.¹⁵⁶ In fact, BHP disputes that concerned Principle directs "that employment be based on collective bargaining."¹⁵⁷ What makes the matter worse is that even the Global

153. *Id.* (emphasis in original).

154. See AMNESTY INTERNATIONAL, UNDERMINING FREEDOM OF EXPRESSION IN CHINA: THE ROLE OF YAHOO!, MICROSOFT AND GOOGLE (2006), available at http://www.amnestyusa.org/business/_Undermining_Freedom_of_Expression_in_China.pdf (last visited Nov. 7, 2006); HUMAN RIGHTS WATCH, "RACE TO THE BOTTOM": CORPORATE COMPLICITY IN CHINESE INTERNET CENSORSHIP (2006), available at <http://www.hrw.org/reports/2006/china0806/china0806webwcover.pdf> (last visited Nov. 7, 2006); Surya Deva, *Yahoo! Free Speech in China*, ONLINE OPINION (Feb. 22, 2006), available at <http://www.onlineopinion.com.au/view.asp?article=4178> (last visited Nov. 7, 2006).

155. The Ten Principles, *supra* note 40, at Principle 3.

156. See Correspondence between the Australian Council of Trade Unions (ACTU), BHP & The Global Compact Office: available at <http://www.cfmeu.asn.au/mining-energy/policy/GC071103.pdf>; <http://www.cfmeu.asn.au/mining-energy/policy/GC110803.pdf> (last visited Oct. 31, 2006). The BHP, in fact, claims that it offers a "choice," even to its new employees. *Id.* ("But new employees have a choice. If they want to join BHP Billiton, they can apply to join but we do require them to sign the individual contract.").

157. Letter from BHP to ACTU (June 16, 2003) (on file with author). See also Letter from BHP to Mr. Kofi Annan (June 17, 2003), available at <http://www.bhpbilliton.com/bbContentRepository/Policies/LettertoKofiAnnanUnitedNation>

Compact Office seems to agree with this (mis)interpretation of Principle 3 by BHP.¹⁵⁸ Bigge rightly points out that “the Global Compact relies on language rather than action, hoping to change the frames of the construct rather than force companies to adhere to externally-imposed rules.”¹⁵⁹

Also, we may recall that the Compact principles are subject to a general rider, that is, companies need to take measures only “*within their sphere of influence*.”¹⁶⁰ What constitutes the “sphere of influence” of a given corporation, though fundamental to the efficacy of Compact principles, is a matter of uncertainty and speculation. For example, will it include the subsidiary and affiliate concerns of a parent corporation? Furthermore, will it include the supply chains of a corporation? If yes, to what extent? Point twelve of the Shanghai Declaration seems to address this issue vis-à-vis the supply chains as corporations agree to “ensure that supply chain capacities are built to effectively implement the U.N. Global Compact.”¹⁶¹ But the extent to which corporations would go to ensure that their supply chains have the required capacity to implement the Compact principles is still to be seen. Also, it cannot be said with certainty whether all the subsidiaries of a parent corporation will be treated as entities within the sphere of influence of the parent. Logically, they should be so treated.

Undoubtedly, in order to remedy the deficit of generality and vagueness of principles, the Compact Office is constantly offering various tools, publications, and guidance notes on its website.¹⁶² Some

s170603.pdf (last visited Oct. 31, 2006). Notably, BHP relies upon an official document released by the Global Compact Office itself to undermine the obligation related to collective bargaining in Principle 3. See *Guide to the Global Compact*, *supra* note 37, at 30-32.

158. See Letter from George Kell, Executive Head of Global Compact, to Ian Wood, Vice President BHP Billiton (Dec. 1, 2003) (on file with author), available at <http://www.bhpbilliton.com/bb/sustainableDevelopment/policiesAndKeyDocuments.jsp> (follow “United Nations’ Letter 1 December 2003” hyperlink) (last visited Nov. 2, 2006) (“The Global Compact does not prescribe any particular form of workplace arrangements. Hence, we do not expect participants to change their industrial relations framework as a result of signing on to the Global Compact.”).

159. Bigge, *supra* note 62, at 11.

160. The Ten Principles, *supra* note 40 (emphasis added).

161. Shanghai Declaration, *supra* note 108, ¶ 12. Klaus Leisinger concurs: “For most of the companies that have signed on to the U.N. Global Compact, the sphere of influence extends beyond the factory site and includes immediate business partners and suppliers.” Leisinger, *supra* note 142, at 14. During the recent Global Compact Board meeting, one member also noted “the importance of encouraging participants to embed the Global Compact into their supply chains.” COMPACT BOARD MEETING REPORT, *supra* note 1, at 4.

162. United Nations Global Compact, Global Compact Tools and Publications, http://www.unglobalcompact.org/NewsAndEvents/recent_publications.html (last visited

of these guiding techniques, especially the company examples or case studies, might prove useful, but it requires further investigation and empirical research on how effective these means would be in providing guidance to corporations in actual, complex business situations.

B. *Extent of Corporate (Non)Response and (Non)Seriousness*

In order to judge the response and “on paper” seriousness¹⁶³ of corporations towards the Global Compact, this section analyzes the available data on three counts. First, apart from looking at the regional distribution of the Compact participants (*see infra* Chart 1), the total number of Compact participants is contrasted with the total number of MNCs and their subsidiaries. This should help in appreciating whether the Global Compact is really global in terms of its participants.

Second, a simple hypothesis is invoked to measure the extent of (non)seriousness shown by the Compact participants. If a participant fails to develop even a COP, it could not be serious about embracing the Compact principles.¹⁶⁴ Fourteen countries from six continents are selected through purposive sampling.¹⁶⁵ The percentage of “non-communicating” participants in these fourteen countries is compared with the total number of participants from such countries (*see infra* Chart 2). In addition, the data of fourteen countries’ non-communicating participants is compared with the global average of non-communicating participants (*see infra* Chart 3). March 18, 2006 was the cut off date for collecting the data. To see if there is any significant fluctuation in the percentage of total or non-communicating

Oct. 26, 2006).

163. Many corporations might not show seriousness even on paper or online. For example, Cisco has not bothered to update information on its webpage related to the Compact in view of the addition of the tenth principle. *See* Cisco, U.N. Global Compact, http://www.cisco.com/web/about/ac227/about_cisco_corp_citi_global_compact.html (last visited Oct. 26, 2006).

164. During the inaugural meeting of the Compact Board, the Executive Director of the Global Compact Office pointed out that participants face important hurdles in developing COP, e.g., “the fact that many companies in non-English speaking regions are unsure of what the COP policy asks.” COMPACT BOARD MEETING REPORT, *supra* note 1, at 9. One simple response to such hurdles is that only those corporations should decide to participate which understand, or are ready to make sincere efforts for such an understanding, what the Compact entails. In addition, a useful suggestion was, in fact, advanced at the Board’s meeting itself. Namely, that “non-reporters” could be divided into those who failed to report for no good reason (insincere ones) and those who have not reported because of genuine difficulties (sincere ones). *See id.* at 10.

165. With the exception of Australia, it is ensured that at least two countries are chosen from each of the continents. Hong Kong and Singapore are chosen primarily because they are considered corporate hubs.

participants, the data regarding participants from fourteen countries is collected and analyzed again after four months, on July 18, 2006.

Third, an attempt is made to measure the response to the Global Compact shown by the world's top corporations, that is, those which are represented in Fortune Global 500 and Financial Times Global 500.

1. *Ever-Increasing Participants, but Still a Drop in the Ocean!*

Corporations are steadily participating in the Global Compact. The number of total participants has increased over the years: 38 in July 2000; 263 in December 2001; 721 in December 2002; 1,180 in December 2003; 2,136 in December 2004; and 2,735 in December 2005.¹⁶⁶ As of March 18, 2006, there were 2,902 participants, out of which a great majority were corporations. Both the number of participants and the rate at which the participations are increasing look impressive. However, if one looks at the total number of multinational parent corporations and their foreign subsidiaries, this rosy impression changes.¹⁶⁷ According to the 2004 figures released by the U.N.CTAD, there are 63,834 multinational parent corporations with 866,119 foreign affiliates.¹⁶⁸ From this data, one could imagine the number of total corporations in the world. For example, it is estimated that the number of active U.S. corporations alone is nearing 5 million.¹⁶⁹ So, in comparison to the potential participants in the world, the number of Compact participants is like a drop in the ocean. In fact, at this stage the Eco-Management and Audit Scheme (EMAS), a European corporate environmental responsibility initiative, has more organizations registered with it than the total number of Global Compact participants.¹⁷⁰

Before moving on the distribution of participants in terms of sector or region, another note of caution about the number of total Compact

166. United Nations Global Compact, *Advancing Corporate Citizenship in the World Economy*, available at http://www.unglobalcompact.org/docs/about_the_gc/gc_overview.pdf (last visited Nov. 9, 2006).

167. "What about the other 59,000 companies that are not covered by the Global Compact?" Weissbrodt, *supra* note 140, at 70.

168. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, DEVELOPMENT AND GLOBALISATION: FACTS AND FIGURES, U.N. Sales No. E.04.II.D.16 (2004).

169. BizStats.com, Total Number of U.S. Corporations, <http://www.bizstats.com/numbercorps.htm> (last visited Oct. 31, 2006).

170. On Sept. 15, 2006, there were 3,389 EMAS registered organizations. See EUROPA, Who Can Participate in EMAS, http://ec.europa.eu/environment/emas/about/participate/sites_en.htm (last visited Oct. 31, 2006).

participants is in place. In many cases, the figure as to the number of participants includes several corporate participants from the same group. Interestingly, though the *direct* participation of the subsidiaries of a corporate group is not prohibited, this is not something that the Global Compact requires. Once the parent corporation agrees to participate, it is assumed that all subsidiaries participate automatically. So, the number of *real* participants may be even fewer. In an answer to the question, "can company subsidiaries join the Global Compact?," the website of the Compact offers the following response:

The Global Compact applies the leadership principle. If the CEO of a company's global parent (holding, group, etc.) embraces the Global Compact by sending a letter to the U.N. Secretary-General, *the Global Compact will post only the name of the parent company on the global list assuming that all subsidiaries participate as well*. Subsidiaries that wish to directly send a letter to the Secretary-General, to underline their commitment, will be listed as participants, and are invited to become active in the Global Compact country network of their host country.¹⁷¹

Apart from the manifest justification that the Compact applies "the leadership principle," the policy of not requiring subsidiaries to sign separate support letters is perhaps driven more by pragmatism. In view of a large number of subsidiaries around the world, the task of the Compact office may become unmanageable even if a small percentage of subsidiaries start to participate in their own right. However, in achieving this practical result, the Compact sacrifices an important principle of corporate law which is quite close to the heart of corporations. It is the well established principle of "separate personality,"¹⁷² which could be bypassed by the courts only in certain exceptional situations.¹⁷³ This policy of the Global Compact, unconsciously, endorses the "enterprise principle" under which all the constituent corporations of a group are treated as one legal person provided they are part of an integral business group.¹⁷⁴ This unintended

171. United Nations Global Compact, *Frequently Asked Questions*, available at <http://www.unglobalcompact.org/AboutTheGC/faq.html> (last visited Oct. 29, 2006) (emphasis added).

172. See L.C.B. GOWER, GOWER'S PRINCIPLES OF MODERN COMPANY LAW 97-102 (4th ed. 1979); PHILLIP BLUMBERG, THE MULTINATIONAL CHALLENGE TO CORPORATION LAW: THE SEARCH FOR A NEW CORPORATE PERSONALITY 1-20 (1993); Cindy A Schipani, *Infiltration of Enterprise Theory into Environmental Jurisprudence*, 22 J. CORP. L. 599, 601-03 (1997).

173. GOWER, *supra* note 173, at 112-38; ROMAN TOMASIC ET. AL., CORPORATIONS LAW IN AUSTRALIA 2-50 (2d ed. 2002).

174. BLUMBERG, THE SEARCH FOR A NEW CORPORATE PERSONALITY, *supra* note 174, at

result should come as a bonus for those who argue for the liability of the parent corporation for the misconduct of its subsidiaries.¹⁷⁵

In terms of distribution, the Compact participants are well spread over a range of sectors.¹⁷⁶ However, as Chart 1 shows, the regional distribution of participants is highly uneven. Almost 49% of the total participants are based in Europe alone, the Americas coming distant second with 29% participants.¹⁷⁷ Out of Americas' 29% share of the total Compact participants, the percentage of North American participants is quite dismal, ranging between 5% to 8%.¹⁷⁸ Whereas Asia is the home of about 17% of the Compact participants, the share of Africa (3.45%), the Middle East (1.79%) and Australasia (0.72%) is negligible. This regional imbalance in the distribution of participants again negates the *globalness* of the Global Compact. There should be no consolation in the fact that "this reflects a general trend among similar global corporate citizenship initiatives,"¹⁷⁹ because other initiatives do not so vigorously claim a global pedestal.

viii-ix; Phillip I. Blumberg, *Asserting Human Rights Against Multinational Corporations under United States Law: Conceptual and Procedural Problems*, 50 AM. J. COMP. L. 493, 493-94 (2002) [hereinafter Blumberg, *Conceptual and Procedural Problems*].

175. For example, Blumberg, *Conceptual and Procedural Problems*, *supra* note 175, at 528-29; Deva, *Code of Conduct Bill 2000*, *supra* note 125, at 99-109. See also David Aronofsky, *Piercing the Transnational Corporate Veil: Trends, Developments and the Need for Widespread Adoption of Enterprise Analysis*, 10 N.C.J. INT'L L. & COM. REG. 31 (1985).

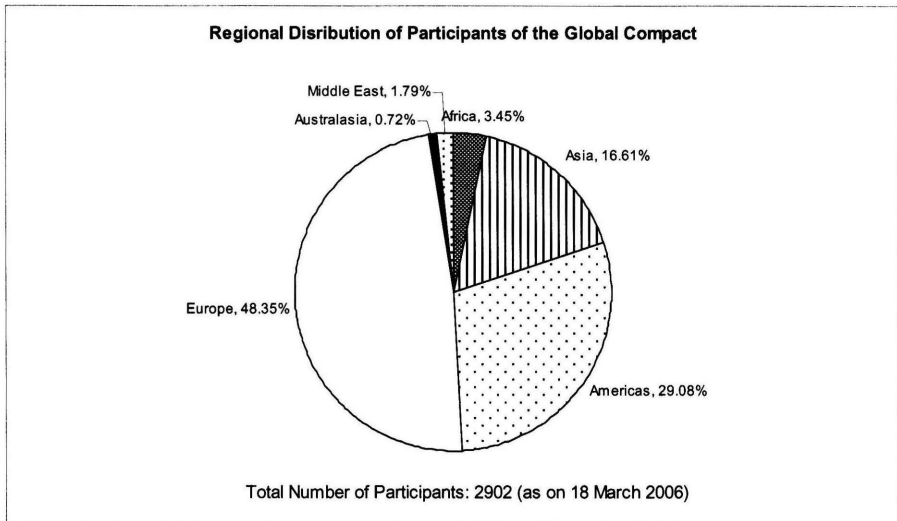
176. *Advancing Corporate Citizenship in the World Economy*, *supra* note 166, at 9.

177. *Id.*

178. *Id.* at 10; McKinsey & Co., *supra* note 138, at 10-11.

179. McKinsey & Co., *supra* note 138, at 11.

Chart 1



2. *Already "Non-communicating"?*

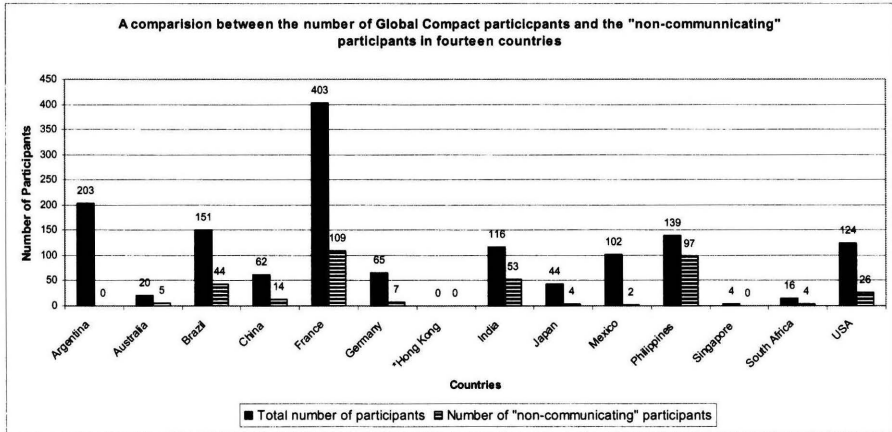
A Compact website lists a participant as "non-communicating" if it "failed to develop a Communication on Progress by the relevant deadline or has not yet provided a link to/description of their Communication on Progress."¹⁸⁰ Apparently, this is an absolute minimum that one could expect from a serious participant. Surprisingly, many Compact participants have failed to fulfill even this bare minimum. Chart 2 lists the data regarding fourteen countries from six continents. With the exception of Argentina and Singapore, there are non-communicating participants, to a varying degree, in eleven other surveyed countries. The case of Hong Kong – which is not a country but only an autonomous region¹⁸¹ – deserves a brief explanation. Although it is widely considered a center of international commerce and finance, where several MNCs have established their regional offices, not even a single Hong Kong corporation has signed to the Compact. Therefore, Hong Kong's zero percentage of non-

180. *Non-Communicating Participants*, http://www.unglobalcompact.org/CommunicatingProgress/non_communicating.html (last visited Oct. 31, 2006).

181. See YASH GHAI, HONG KONG'S NEW CONSTITUTIONAL ORDER: THE RESUMPTION OF CHINESE SOVEREIGNTY AND THE BASIC LAW (2d ed. 1999) (1997); Heng Loong Cheng, *Hong Kong SAR: Autonomy Within Integration?*, 4 UCLA J. INT'L L. & FOREIGN AFF. 181 (1999-2000); Guiguo Wang & Priscilla M.F. Leung, *One Country, Two Systems: Theory into Practice*, 7 PAC. RIM L. & POL'Y J. 279 (1998).

communicating participants is irrelevant and premature at this stage. But one could still infer from the above analysis that a sizeable number of the Compact participants do not take the Global Compact and its principles seriously.

Chart 2



* Hong Kong is taken here as a country merely to keep conformity with the data available at the Global Compact website.

The trend of non-communication participants is, however, not limited to the fourteen surveyed countries. In fact, the trend of non-seriousness reflected through non-communication is quite widespread. Out of the total number of Compact participants, almost 25% participants are listed as non-communicating.

In order to find out if the level of non-communicating participants in fourteen surveyed countries shows any pattern, the global average of non-communicating participants (24.88%) could be compared to the percentage in these countries. As one may notice from Chart 3, the percentage of non-communicating participants varies greatly from lowest being 0% in case of Argentina and Singapore to almost 70% in case of Philippines. Do we see any significant difference in data from developing and developed countries, especially because Professor Ruggie pointed out the participation of a large number of developing country companies as one of "biggest surprises in the Global Compact?"¹⁸² As compared to developed countries, are corporations

182. Ruggie, *supra* note 35, at 306. A May 2004 report also concludes: "The Compact has established a relatively strong presence in developing countries with more than half of the Compact's formal participants headquartered outside the OECD." McKinsey & Co., *supra* note 138, at 11.

from developing countries more or less serious when it comes to the implementation of the Compact principles?

Although the sample size of the survey is admittedly small, it indicates no clear trend either in developing or developed countries.¹⁸³ In comparison to the global average (24.88%), the percentage of non-communicating participants is significantly higher in some developing countries like Philippines (69.80%) and India (45.70%), but very low in Argentina (0.00%), and Mexico (1.96%). The percentage of non-communicating companies in China (22.28%), South Africa (25.00%) and Brazil (29.14%) is more or less around the global average. On the other hand, developed countries like Singapore (0.00%), Japan (9.09%) and Germany (10.77%) stand out for having a very low level of non-communicating participants in comparison to other developed countries such as the U.S. (20.97%), Australia (25.00%), and France (27.05%), which are marginally at par with the global average. Thus, there is a great divergence in the level of seriousness shown by the Compact participants, both from the developing and developed world. At the same time, it is possible to suggest, as a preliminary and tentative finding, that the percentage of non-communicating participants in developed countries is unlikely to be as high as found in two developing countries: Philippines and India.

It may also be important to note that the percentage of non-communicating U.S. corporations is lower than the global average of non-communicating companies. This might come as a surprise because the U.S. corporations companies have been at the forefront of backlash, as well as court actions, for human rights abuses.¹⁸⁴ Although the U.S. companies have been slow to embrace the Global Compact¹⁸⁵ (because of a fear of being drawn to courts for signing but not complying with the Compact principles),¹⁸⁶ it seems that those that take a plunge

183. See how this percentage changed after four months. See *infra* note 187.

184. Most of these cases have been filed under the Alien Tort Claims Act 1789 and the Torture Victim Protection Act 1991. See SARAH JOSEPH, CORPORATIONS AND TRANSNATIONAL HUMAN RIGHTS LITIGATION 16-19 (Hart 2004); Jordan Paust, *Human Rights Responsibilities of Private Corporations*, 35 VAND. J. TRANSNAT'L L. 801, 802-09, 820-25 (2002). A list of such cases is also available at <http://www.law.monash.edu.au/castancentre/projects/mchr/trans-hr-litigation.html> (last visited Nov. 5, 2006).

185. As of March 18, 2006, only 124 U.S. corporations had signed to the Compact.

186. "[T]he U.S. is a very litigious society. Therefore, the challenge of getting a CEO to sign to principles is much greater than in any other culture." *An Interview with Kell*, *supra* note 52. See also McKinsey & Co., *supra* note 138, at 11. With reference to the *Unocal* case and *Sosa* case, Kielsgard shows how voluntary corporate human rights pledges could be used to impeach their conduct during legal proceedings. Mark D. Kielsgard,

generally take some steps to implement the Compact principles and avoid being listed as non-communicating.

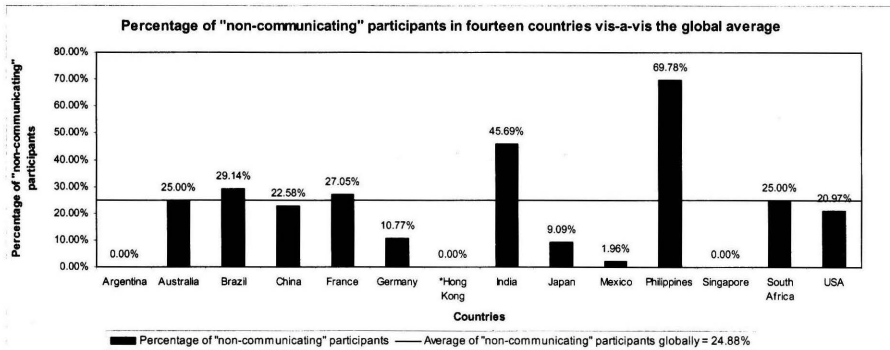
Given that almost one-quarter of the Compact participants are non-communicating, it is safe to conclude that many corporations have become party to the Global Compact either without realizing what it entails, or are consciously embracing the Compact as a public relations exercise. But why is there a great disparity in the average of non-communicating participating companies in different countries, both developing and developed? To understand reasons behind this disparity, a further in-depth investigation is required. Such investigation, among others, should focus on the general corporate culture in a given country and the level of awareness among stakeholders as to what corporations do or do not do.

In order to verify if there is a significant fluctuation in the percentage of non-communicating participants, the data from fourteen surveyed countries is analyzed again after four months, that is, on July 18, 2006. In these four months, the number of the Global Compact participants increased in thirteen countries, but still there was no participant from Hong Kong. Whereas the rise in the percentage of total Compact participants was quite marginal in Argentina (1.97%), and Philippines (2.87%), it was phenomenal in case of Mexico (91.17%), and Singapore (300.00%). Except Singapore (which maintained a clean record of 0% non-communicating participants), the percentage of non-communicating participants in other twelve countries either went up or down in this period of four months.¹⁸⁷ Whereas the percentage of non-communicating participants went up in Argentina, Brazil, China, France, South Africa and the U.S., it went down in case of Australia, Germany, India, Japan, Mexico, and Philippines. Again, no clear trend in the fluctuation of the percentage of non-communicating participants is noticeable. Nevertheless, it is entirely probable that a more detailed research with a larger sample size and longer time span might indicate a pattern.

Unocal and the Demise of Corporate Neutrality, 36 CAL. W. INT'L L. J. 185, 203-12 (2005). To overcome this corporate fear, a "litigation-proof" letter has been drafted by the American Bar Association and vetted by 20,000 business lawyers. *An Interview with Kell*, *supra* note 52.

187. Barring Singapore (which experienced no change) and Hong Kong (in which case the data is not relevant as it has no participant to date), the exact variation in the percentage of non-communicating participants in other twelve surveyed countries was as follows: Argentina (0.00% to 6.76%), Australia (25.00% to 15.38%), Brazil (29.14% to 35.76%), China (22.58% to 44.29%), France (27.05% to 34.58%), Germany (10.77% to 7.14%), India (45.69% to 42.74%), Japan (9.09% to 6.38%), Mexico (1.96% to 1.54%), Philippines (69.78% to 67.13%), South Africa (25.00% to 28.57%), and the U.S. (20.97% to 22.37%).

Chart 3



* Hong Kong is taken here as a country merely to keep conformity with the data available at the Global Compact website.

3. *Where Do the World's Top Corporations Stand?*

Finally, it may be relevant to find out how the world's largest corporations have responded to the challenge of embracing the Global Compact. A list of the world's top corporations is compiled by several financial magazines or newspapers, such as Fortune, Forbes and the Financial Times. Based on the ranking of the Financial Times Global 500,¹⁸⁸ the Compact Office takes pride in stating that 106 of the world's largest 500 companies have signed to the Global Compact.¹⁸⁹ The "CG Global 106," as the Compact's website calls them, come from twenty-five countries, directly employ around ten million people, and have a market value of about USD\$3.5 trillion.¹⁹⁰ The support of Global 106 (21.20% of the total Financial Times Global 500) to the Compact is undoubtedly an encouraging sign, also because of these companies, only one (Johnson Controls Inc.) has been listed as a non-communicating company.

In addition to the Financial Times Global 500, it is also examined how Fortune Global 500¹⁹¹ has shown an interest to participate in the

188. FT.com, Global 500, http://media.ft.com/cms/adb61f66-f7bf-11da-9481-0000779e2340,dwp_uuid=5a16620a-f178-11da-940b-0000779e2340.pdf (last visited Nov. 17, 2006).

189. Global Compact, *Economic and Social Impact of the GC Global 106*, available at http://www.unglobalcompact.org/CommunicatingProgress/global_105_ecosoc_impact.html (last visited Aug. 13, 2006). However, on August 13, 2006 a search of participants on the Global Compact's website turned up a list of only 103 companies.

190. *Id.* It is interesting to note that though 219 U.S. corporations have been listed in the FT 500, only 9 have signed to the Compact. *Id.*

191. Fortune.com, The 2005 Global 500, <http://www.jcgi.pathfinder.com/fortune/global500> (last visited Nov. 5, 2006).

U.N.'s "public-private" partnership for corporate citizenship. Since the Compact applies the leadership principle,¹⁹² a Fortune Global 500 is considered a participant to the Global Compact *only if* the parent corporation is a participant. In some cases, although the parent has not signed to the Global Compact, one or more of its subsidiaries has become a participant in its own right. For example, although Ford Motor is missing from the list of Compact participants, Ford Argentina and Ford Malaysia are parties to the Compact. Similarly, Fiat France and Fiat Argentina have signed, but not Fiat, the parent corporation. Also, GlaxoSmithKline Romania and GlaxoSmithKline Bulgaria are participants of the Global Compact, but not their UK parent.

Of these 500 corporations, 131 (about 26% of the total number) were participants of the Global Compact on March 18, 2006. Some of the prominent corporations that have embraced the Compact are: BP, Royal Dutch/Shell Group, Total, Allianz, Volkswagen, Siemens, Hewlett-Packard, Nissan Motors, Unilever, BMW, Toshiba, NEC, Nokia, Bayer, Indian Oil, Volvo, L'Oreal, Pfizer, Novartis, Coca-Cola, Cisco Systems, BHP Billiton, Lufthansa Group, Electrolux, Gap, Xerox, Hindustan Petroleum, Henkel, and Westpac Banking.

On the other hand, around 74% of the top 500 global corporations (369 corporations) have not yet become signatory to the Global Compact. Many of the world's well-known corporations are part of this missing list of Compact participants, e.g., Wal-Mart, Exxon Mobil, General Motors, Toyota Motor, Ford Motor, General Electric, Chevron Texaco, Citigroup, ING Group, Hitachi, Honda Motor, Sinopec, Samsung Electronics, Vodafone, Sony, Boeing, Procter & Gamble, Target, Dell, Johnson & Johnson, Hyundai Motor, Dow Chemicals, Microsoft, LG Electronics, Walt Disney, Canon, Mitsubishi, Motorola, PepsiCo, DuPont, Spirit, FedEx, China Life Insurance, British American Tobacco, Sharp, China Mobile Communications, Coles Myer, Hilton Group, Halliburton, Woolworths, National Australia Bank, McDonald's, Bank of China, Telstra, Chinese Petroleum, Reliance Industries, AMP, British Airways, Kingfisher, Whirlpool, and Chubb.

The objective of this survey was not to suggest that all the Compact participants *ipso facto* become good corporate citizens, or that embracing the Global Compact is the litmus test for responsible corporate conduct. Several Compact participants such as Coca-Cola, BHP, Shell, L'Oreal, and Cisco have been the subject matter of public criticism or even legal actions for their policies/actions that violate

192. *Frequently Asked Questions*, *supra* note 171.

human rights, labor standards, or pollute the environment. Conversely, even without participating in the Compact, corporations could join other initiatives and fulfill their social responsibilities in an effective manner. Rather, the objective was to measure the extent to which the world's largest corporations were buying the idea of the Global Compact.

On the basis of above findings, it can be reasonably concluded that the world's leading corporations have found joining the Compact an attractive proposition. As most of these corporations have already adopted some kind of code of conduct,¹⁹³ and may have assigned the responsibility of looking after CSR issues to someone within the organization, joining the Compact is not likely to put much additional burden on them.¹⁹⁴ Conversely, signing to the Compact provides direct access to the U.N..¹⁹⁵ Therefore, it is expected that more Global 500 corporations will become Compact participants in coming years.¹⁹⁶ The extent to which these corporations take and would continue to take the Compact commitments seriously is, however, an altogether separate issue.

III. MAJOR DEFICIENCIES OF THE GLOBAL COMPACT

In the last seven years, the Global Compact has made significant progress towards promoting awareness about the responsibilities that corporations do or should have towards society.¹⁹⁷ More than anything else, it has brought back the CSR issue to the center stage of the U.N.¹⁹⁸

193. "One would be hard-pressed to find any major corporation today that did not make some claim to abiding by a code of conduct that comprised, at least in part, adherence to human rights standards. Indeed, more often than not, such adherence to codes is trumpeted by major corporations." David Kinley & Junko Tadaki, *From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporation at International Law*, 44 VA. J. INT'L L. 931, 953 (2004).

194. Nolan writes that in its current form the Compact "is not a vehicle to push companies beyond their comfort zone. . . ." Nolan, *supra* note 10, at 447.

195. Kofi Annan implicitly conceded this: "Through the Global Compact Office, many United Nations organizations have found a new entry point for engaging businesses and improving their own ability to work with the private sector." *Report of the Secretary General*, *supra* note 34, at 45.

196. Microsoft, for example, has recently decided to participate in the Global Compact. "Microsoft Announces Participation in GC," *available at* http://www.unglobalcompact.org/NewsAndEvents/news_archives/2006_11_22.html (last visited Dec. 4, 2006).

197. "Give the Compact credit for making human rights, the environment, the rule of law and civic responsibility an essential part of doing business in an increasingly globalized economy. . . ." King, *supra* note 18, at 485.

198. Although the U.N. in 1974 had constituted a Commission on Transnational Corporations to draft an agreeable code of conduct for TNCs, the attempt failed to materialize due to various reasons and the Commission was dismantled in 1993. PETER

and has made corporations conscious about their social responsibilities. Nonetheless, the Global Compact has received (and continues to receive) mixed reactions from corporations, labor organizations, NGOs and member countries,¹⁹⁹ and its credibility as well as success are uncertain at this stage.²⁰⁰ In addition to the already highlighted generally vague nature of the Compact principles and the non-responsiveness or non-seriousness of corporations towards the Global Compact, below is a brief review of some other major deficiencies.²⁰¹

A. Directional Uncertainty

The Compact still faces a directional crisis. It is still not clear or certain what it wants to achieve and what it leaves to be achieved by other regulatory initiatives.²⁰² Despite express assertions that the Compact is neither a regulatory framework (as a substitute for government regulation or otherwise) nor “positioned to compete with other voluntary initiatives,”²⁰³ it in effect does both. The Compact not only tries to regulate (though in the disguise of voluntary self-regulation), but also seems to dwarf other similar voluntary

MUCHLINSKI, *MULTINATIONAL ENTERPRISES AND THE LAW* 593-96 (Blackwell Publishers Inc., 1995). Murphy, *supra* note 141, at 403-05; Nolan, *supra* note 10, at 454-55. Since 1993 the issues related with TNCs are dealt with by the United Nations Conference on Trade and Development (U.N.CTAD).

199. Taylor, *supra* note 61, at 980-82; King, *supra* note 18, at 481; Meaghan Shaughnessy, *The United Nations Global Compact and the Continuing Debate about the Effectiveness of Corporate Voluntary Codes of Conduct*, 2000 COLO. J. INT'L ENVTL. L. & POL'Y 159, 161, 171 (2000); Blackett, *supra* note 36, at 442. See also COMPACT PROGRESS REPORT, *supra* note 36, at 10, 25-30.

200. See William H. Meyer & Boyka Stefanova, *Human Rights, the U.N. Global Compact, and the Global Governance*, 34 CORNELL INT'L L.J. 501, 503-04 (2001). See also Letters from Lawyers Committee for Human Rights to the Global Compact Office, http://lchr.org/workers_rights/wr_other/LCHR_to_U.N._Oct_01.pdf (Oct. 25, 2001); http://www.lchr.org/workers_rights/wr_other/LCHR_to_U.N._Nov_01.pdf (Nov. 1, 2001); http://www.lchr.org/workers_rights/wr_other/joint_ltr_U.N._040703.pdf (Apr. 7, 2003) (last visited Sept. 19, 2006).

201. “In three crucial areas it appears that the Global Compact model suffers fundamental flaws . . . the lack of clarity in the content and scope of the Compact’s principles; its limited notions of accountability and transparency; and the overemphasis on the value of the voluntary approach to improving corporate behaviour . . .” Nolan, *supra* note 10, at 459. King also sums up some of the “valid” concerns raised against the Compact. King, *supra* note 18, at 482.

202. Nolan observes that the Compact “seems *clearer now* on what it is and what it is not than when it was first established . . .” Nolan, *supra* note 10, at 453 (emphasis added).

203. Kell, *supra* note 41, at 41. See also King, *supra* note 18, at 483. Blackett also argues: “[T]he Global Compact *wisely* does not try to create an all-encompassing “code;” rather, it seeks only to coexist with existing and future initiatives.” Blackett, *supra* note 36, at 444 (emphasis added).

initiatives.²⁰⁴ In fact, one of the official documents of the Compact expressly boasts of its comparative advantage vis-à-vis other CSR initiatives: "The Global Compact's comparative advantage rests in the universality of its ten principles, the international legitimacy and convening power of the United Nations, and the Compact's potential to be a truly global platform with appeal not only in industrialized countries, but also in the developing world."²⁰⁵

Recently, Secretary General Kofi Annan also emphasized this advantage: "the Global Compact has been endorsed by all U.N. member states, giving the initiative unprecedented access, including in countries where *others* have difficulty gaining access alone."²⁰⁶

B. Net Reports/COP

The Global Compact originally required that participating companies submit an annual "net report" to show their commitment towards the Compact principles.²⁰⁷ As mentioned before, since January 2003, this has been replaced with the COP.²⁰⁸ A failure to provide the COP may result in that corporation being listed on the Compact's website as a "non-communicating" participant. Though the requirement is not very onerous, about 25% of the total participants (mostly corporations) have defaulted on this requirement in such a short life span of the Compact.

On a separate level, even if this attitude of participants does change in the future and more corporations submit COPs, the real efficacy of this strategy is doubtful. Of course, it is advisable to share good corporate practices and learn from each other's experiences, because arguably good practices might help to "drive out" bad practices.²⁰⁹ But in the absence of any proper and independent monitoring of the conduct of companies, the whole exercise may often prove to be a mere ritual or

204. While assessing the impact of the Compact, McKinsey & Co. in its report of May 2004 observed: "With more than 1,100 companies formally committed to the Global Compact, the Global Compact is by far the world's largest voluntary corporate citizenship network, dwarfing other similar, voluntary initiatives, such as the Global Reporting Initiative (387 participants) and SA8000 (353 participants)." McKinsey & Co., *supra* note 138, at 10.

205. *Advancing Corporate Citizenship*, *supra* note 22, at 1.

206. *Compact Board Meeting Report*, *supra* note 1, at 4 (emphasis added).

207. Participation in the Global Compact requires that once a year the concerned company submit to the Compact's website "concrete example[s]" of how it has internalised one or more Compact principles. See COMPACT PROGRESS REPORT, *supra* note 36, at 6, 9, 19.

208. *Communication on Progress*, *supra* note 78.

209. Ruggie, *supra* note 35, at 303.

a public relations gimmick.²¹⁰ Sethi argues that “the Global Compact at best will be a good old boys club and at worst a support group in which like-minded corporations will share their experiences and encourage each other to do better next time.”²¹¹ Moreover, companies might also pick up bad practices through learning forums – how to spread the image of being a good corporate citizen while doing little to earn this label.

C. Lack of Verification and Independent Monitoring

It is a declared policy of the Global Compact that it does not provide for any recourse in case that world business leaders ignore this “moral compass,”²¹² that is, fail to embrace its principles. It is openly admitted that “the Global Compact is not a code of conduct; *monitoring and verification of corporate practices do not fall within the mandate or the institutional capability of the United Nations.*”²¹³ Dialogue with business is a central tool of the Global Compact in ensuring respect for its principles, but it is doubtful if the means employed could achieve the ends. With reference to the promotion of human rights, Alston argues:

[I]t must suffice to say that the U.N. and the various specialized agencies already have endless dialogues designed to promote policy coordination and it is difficult to see how the addition of one new one, albeit termed a Global Compact, would be more successful in relation to human rights when other dialogues have yet to be especially productive.²¹⁴

It is also likely that corporate executives will continue to resist any

210. Carolin Hillemanns, *U.N. Norms of the Responsibilities of Transnational Corporations and Other Business Enterprises With Regard to Human Rights*, 4 GERMAN LAW JOURNAL 1065, 1069 (2003), available at www.germanlawjournal.com/pdf/Vol04No10/PDF_Vol_04_No_10_1065-1080_European_Hillemanns.pdf.

211. Murphy, *supra* note 141, at 413 (quoting S. PRAKASH SETHI, *SETTING GLOBAL STANDARDS: GUIDELINES FOR CREATING CODES OF CONDUCT IN MULTINATIONAL CORPORATIONS* 120 (John Wiley & Sons, 2003)).

212. “At its core, the Compact is nothing more than a moral compass.” Kell, *supra* note 41, at 47.

213. Press Release, United Nations, Kofi Annan Enlist Corporations, Civil Society to Tackle Globalization Challenges, Note No. 91 (July 25, 2000), available at <http://www.unis.unvienna.org/unis/pressrels/2000/note91.html> (last visited Nov. 6, 2006). “The major criticism. . . [of the Compact] has been for what it is not: a regulatory arrangement, specifically a legally binding code of conduct with explicit performance criteria and independent monitoring of company compliance.” Ruggie, *supra* note 35, at 302.

214. Philip Alston, *Resisting the Merger and Acquisition of Human Rights by Trade Law: A Reply to Petersmann*, 13 EUR. J. INT’L L. 815, 837 (2002).

attempts directed at external monitoring or mandatory enforcement of the Compact principles,²¹⁵ despite the fact that external independent monitoring as well as a robust and transparent system for evaluating corporations' conduct are desirable.²¹⁶ Leisinger identifies another hurdle in institutionalizing independent verification: "who can be considered an independent juror?"²¹⁷ In terms of independence, expertise and legitimacy of potential verifiers, corporations, and other stakeholders might have divergent views. To overcome this, it is suggested that "several actors with different competencies and experience" could collaborate to verify the extent to which human rights responsibilities have been observed.²¹⁸

D. Misuse of the Compact as a Marketing Tool

It may be technically correct to argue that the Global Compact does not "endorse companies that participate in this initiative,"²¹⁹ but it is equally true that the Compact would also not stop participating companies from projecting themselves as responsible corporate citizens on account of being Compact parties. In fact, there is an apprehension that some corporations might use the Compact as a "marketing tool"²²⁰ to "bluewash" their reputation or image,²²¹ or to gain undue sympathy from consumers and prospective shareholders or employees.²²² For

215. Ruggie argues that "any U.N. attempt to impose a code of conduct not only would be opposed by the business community, but also would drive progressive business leaders, who are willing to engage with the Compact, into a more uniform anti-code coalition." Ruggie, *supra* note 35, at 303.

216. Shaughnessy, *supra* note 198, at 161; Letter from Michael Posner, Executive Dir., Human Rights First, to Kofi Annan, U.N. Sec'y Gen. (Jun. 4, 2004), available at http://www.humanrightsfirst.org/workers_rights/pdf/annan_global_compact_060404.pdf (last visited Nov. 6, 2006) [hereinafter Letter from Human Rights First].

217. Leisinger, *supra* note 142, at 12.

218. *Id.*

219. King, *supra* note 18, at 482.

220. Letter from Human Rights First, *supra* note 216, at 1.

221. Taylor, *supra* note 61, at 980; Troy Rule, *Using Norms to Change International Law: U.N. Human Rights Laws Sneaking in Through the Back Door?*, 5 CHI. J. INT'L. L. 326, 328 (2004); Blackett, *supra* note 36, at 442. Blackett argues: "Despite terms in the guidelines that suggest that corporations that are complicit in human rights abuses will not be eligible for partnership, it is not apparent that any triage has been undertaken." *Id.* at 445.

222. This concern is raised very eloquently in a recent letter written by Human Rights First to the U.N. Secretary General:

If the Global Compact is intended simply as an open forum that includes all companies, regardless of their record, then you should make this clear. This would then limit the opportunity for companies to use their participation in global Compact meetings for public relations purposes. . . . Companies that are not taking their

example, BHP – despite blatantly ignoring the mandate for “collective bargaining” – continues to represent on its website as well as in its various reports that BHP is committed to the Global Compact principles. BHP, however, is not alone being accused of bluewashing its image; it shares the dais with other well known MNCs such as Bayer, Nike, Shell, Rio Tinto, and Nestle.²²³

One major reason why corporations might easily get away with misusing their association with the U.N. Global Compact is that the Compact Office “neither regulates nor monitors a company’s submissions and initiatives”.²²⁴ In other words, there is no *effective* mechanism to differentiate real, committed participants from namesake, uncommitted participants. Even the current logo policy and integrity measures do not adequately and squarely address this issue.²²⁵

E. Amorphous Role of States

Although the Compact is not a state-focal corporate citizenship initiative, states are still one of its key stakeholders from which it requires multi-facet support.²²⁶ Blackett also suggests that it may be necessary to bring to the “fore” the role of government in implementing the Compact principles.²²⁷ But the Compact Office to date has failed to charter a proper role of states in ensuring that the Compact participants respect their commitments. On the contrary, the Shanghai Declaration indicates that corporations could use this U.N. organ to set demands for,

commitments seriously should not continue to benefit from their formal association with the Global Compact.

Letter from Human Rights First, *supra* note 216, at 1-2. In fact, the Global Compact Office also, in its letter dated June 22, 2004 to the Human Rights First, has acknowledged this “concern about the need to protect the integrity of the Global Compact.” Letter from John Ruggie & George Kell, Special Advisor & Executive Head, Executive Office of the Sec’y Gen., to Michael Posner, Executive Dir., Human Rights First (June 22, 2004), *available at* http://www.humanrightsfirst.org/workers_rights/pdf/un_response_ruggie_kell_062204.pdf (last visited Nov. 7, 2006).

223. See Bigge, *supra* note 62, at 12-13.

224. Kell, *supra* note 41, at 38.

225. See *Global Compact Note on Integrity Measures*, *supra* note 72; *Policy on the Use of the Global Compact Name and Logos*, *supra* note 74.

226. ADVANCING CORPORATE CITIZENSHIP, *supra* note 22, at 4. “Governments provide the essential legitimacy and universality to the principles of the Compact. Ultimately, implementation of the principles takes place within the legislative and regulatory frameworks developed by governments. .As legislatures, they create an enabling, legal environment in which voluntary initiatives, such as the Global Compact, play a complementary role At the national level, governments support Compact events and the formation of Global Compact country networks.” *Id.*

227. Blackett, *supra* note 36, at 444.

and exert undue influence, over states.²²⁸ Should this go too far and the business starts dictating the business of the Global Compact Office and international law generally,²²⁹ even this novel partnership might face a legitimacy crisis among states and other stakeholders.

CONCLUSION

This article has critically analyzed the evolution and progress made by the Global Compact – U.N.'s “public-private” partnership for responsible corporate citizenship. Although General Assembly Resolution 60/125 underlines “the intergovernmental nature of the United Nations,”²³⁰ it is clear that the partnership seeks to take the U.N. much beyond an inter-state institution.²³¹ The partnership, which charters an altogether new and ambitious course for the U.N., is also a testimony of the changing nature of international law, and the growing influence of non-state actors in the international arena.

The Compact should be given credit where it is due. For several reasons, the Global Compact is constantly able to attract participants from all over the world. This has, at least, created awareness among corporations to look beyond profit maximization. One cannot also deny the fact that it contributed in fostering multi-stakeholder partnerships for promoting social responsibilities of corporations.²³² More importantly,

228. The language of point 15 of the Shanghai Declaration is worth noting, especially because the Declaration was signed about two weeks before the Sixth WTO Ministerial Conference and there were grave concerns that not much progress may be made at the Hong Kong meeting:

We recognize that the wider benefits of responsible business practices can *only* materialize if Governments provide for and strengthen a multilateral trading system that is open, fair and non-discriminatory, *and if* they further improve the international financial regime by putting in place a healthy and orderly trading financial environment conducive to growth and development. *We are especially concerned that protectionism and inward-orientation could deny developing countries the ability to take full advantage of trading opportunities where they enjoy a comparative advantage.* We call upon Governments to show global responsibility by bringing the Doha round of trade negotiations to a successful conclusion – *only then can business fully contribute to poverty reduction and harmonious development.* We also call upon Governments that have not yet done so to ratify or accede to the United Nations Convention against Corruption as a matter of high priority.

Shanghai Declaration, supra note 108, ¶ 15 (emphasis added).

229. *See generally*, SHARON BEDER, *SUITING THEMSELVES: HOW CORPORATIONS DRIVE THE GLOBAL AGENDA* (2006).

230. G.A. Res. 60/215, *supra* note 60, at 1.

231. *See generally*, *Enhanced Corporation, supra* note 8, at 10, 21; WITTE & REINICKE, *supra* note 11, at vii, ix.

232. *See Ruggie, supra* note 35, at 307. However, being a multi-stakeholder forum has

the Compact – though still a work in progress – has paved the way for the U.N.'s engagement with key non-state actors to tackle pressing challenges of the 21st century. Nevertheless, as this article demonstrates, the Global Compact still has several deficits, which directly undermine its mandate of promoting responsible corporate citizenship. To sum up, the Compact principles are very general and vague. There is a major imbalance in the regional distribution of its participants, a very high percentage of participants are non-communicating implying non-seriousness and lack of commitment on their part, and the Compact framework allows insincere corporate citizens to mix with sincere ones and thus, take undue advantage of the Compact's goodwill.

Therefore, instead of congratulating itself for being the world's largest and most widely embraced corporate citizenship initiative, the Compact Office should focus on extending the reach of the initiative, but at the same time also strive for quality control. In order to influence how business is (or should be) conducted around the world, it is equally vital that not-so-good-corporations also join the initiative, because the Global Compact may not add much value if "corporations with the least need to change are the ones who join" it.²³³ It should, therefore, be a matter of concern for the Compact Office that most corporations at best found the Global Compact accelerating a policy change rather than driving new initiatives²³⁴ – implying thereby that even without embracing the Compact these corporations would have done what they are doing now.

Finally, the Compact Office has to devise means and strategies to ensure that those corporations which join the initiative fulfill their social responsibilities both in letter and spirit. For achieving this objective, it need not become an international regulatory agency.²³⁵ The Compact could continue to remain a voluntary platform for dialogue-cum-action and still make useful contributions,²³⁶ but it should ensure that only

its own hazards as "divergent and unmet expectations limit the impact on companies and continue to threaten the Compact' long term credibility with participants." McKinsey & Co., *supra* note 138, at 2.

233. Murphy, *supra* note 141, at 413.

234. McKinsey & Co., *supra* note 138, at 3-5.

235. It is suggested, somewhat rightly, that the Compact Office has no "mandate, competency, or resources to think seriously about monitoring." *An Interview with Kell*, *supra* note 52, at 2.

236. Kielsingard, for example, explores several utilities of "corporate voluntarism." Among others, he argues:

The issuance of corporate human rights policies and acquiescence to international initiatives, like the Global Compact, pledges the corporations to adhere to certain

those corporations join and remain on the platform which mean business. It is in both private and public interests that only really responsible corporate citizens are allowed to reap the benefit of keeping company with the U.N.

standards of behaviour and puts them on the record vis-a-vis their responsibility for human rights norms. If these corporations violate human rights, then the use of the company policy to impeach them, either in a public relations forum or in a lawsuit, can have a devastating impact.

Kielsgard, *supra* note 186, at 203. *But see* Bigge, *supra* note 62, at 7 (arguing that invoking participation in the Global Compact to sue companies on the grounds of fraud or false-advertising would be disastrous to the success of the Compact).