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Human Rights, the UN Global Compact, and Global Governance†

William H. Meyer* & Boyka Stefanova**

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Introduction

The new Global Compact proposed by Secretary General Kofi Annan seeks to improve corporate responsibility in the areas of human rights, labor standards, and environmental protection. As such, the Global Compact is a new effort that has been added to a long list of activities at the local, national and international levels to make transnational corporations (TNCs)¹ better corporate citizens. In this article, the authors put the

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1. The terms “multinational corporation,” “transnational corporation,” and “multinational enterprise” are used interchangeably in the more recent literature. Although this paper treats these terms as functional equivalents, we will employ “transnational corporations” as a way to stress the importance of cross-border activities of global firms. The former UN Commission and Center on Transnational Corporations, established in 1974 under the auspices of the Secretary General, made a distinction in the terminology, based on the concepts of “multinational” versus “transnational,” to denote an emphasis on the multinational character of operations and/or ownership, as compared to an emphasis on cross-border investment and transactions. This distinction is no longer essential. Further, the Organisation for Economic Co-Operation and Development (OECD) has assumed that the key concept with respect to multinational firms is the global reach of their strategies and operations. The analytical distinction between host and home countries is now almost obsolete. The OECD employs the term “Multinational Enterprises” (MNEs) and defines the latter to comprise “companies or other entities whose ownership is private, state or mixed, established in different countries and so linked that one or more of them may be able to exercise a significant influence over the activities of others and, in particular, to share knowledge and resources with the others,” in ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, THE OECD GUIDELINES

Global Compact into a larger empirical and theoretical context. This article discusses the Global Compact (GC or Compact) in relation to similar efforts in other quarters, and then ties these various political and legal activities to larger issues raised by theories of international relations. Over the past two decades, international relations (IR) theory has become increasingly occupied by studies of international regimes and global governance. To gain an understanding of the GC's potential for success, we must think of the Compact as a case study for the IR theory topics of international regimes and global governance.

This article is divided into four parts. First, the article considers whether or not the Global Compact might have any impact on the behavior of TNCs. Perhaps the GC, despite its noble intentions, is doomed to failure. The authors find hope for the GC's potential for a positive impact from some of the evidence provided in prior empirical studies on the relationship between TNCs and human rights. A short summary of these studies leads to Part II. The second section of this paper will address a question raised at the 2001 Cornell Symposium on the Global Compact: is the Compact's voluntary regulatory approach the best or most efficient way to foster morally responsible corporate behavior?

Part III of this article focuses on TNCs and labor rights through the lens of IR theory. Is there now, or will there be in the future, a global regime for TNCs and labor rights? Alternatively, do IR theories of global governance better inform our understanding of international efforts such as the GC? In the conclusion of this paper, we look ahead to what may come next in the areas of TNCs, labor rights, and environmental rights. Part IV offers speculations on future reforms in these areas.

I. Prior Studies on TNCs and Human Rights

Panelists at the Cornell Symposium on the Global Compact were asked if the Compact's opt-in, self-regulatory approach is the best means for improving global corporate conduct. However, this question presupposes a prior issue. Do we have reason to believe that the Global Compact will have any impact whatsoever on the behavior of private corporations? Many

FOR MULTINATIONAL ENTERPRISES, Introduction, para. 8 (1976), available at <http://www.itcilo.it/english/actrav/telearn/global/ilo/guide/oced.htm#Introductin> (last visited Oct. 7, 2001). See also the subsequent revisions of the Guidelines, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, OECD DECLARATION AND DECISIONS ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES, 1991 REVIEW (1992; 1997). For a discussion of the problems of definition of the term "multinational corporations" see PETER MUCHLINSKI, MULTINATIONAL ENTERPRISES AND THE LAW 12-15 (1995). For a detailed discussion of the theoretical research on TNCs, see MARK CASSON, MULTINATIONAL CORPORATIONS (1990); RHYS JENKINS, TRANSNATIONAL CORPORATIONS AND UNEVEN DEVELOPMENT: THE INTERNATIONALIZATION OF CAPITAL AND THE THIRD WORLD (1987). For a working definition and discussion of related issues in international political economy, see ROBERT GILPIN, THE POLITICAL ECONOMY OF INTERNATIONAL RELATIONS, 231-262 (1987). For recent data on the global operations of TNCs see UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, WORLD INVESTMENT REPORT 2000: CROSS-BORDER MERGERS AND ACQUISITIONS AND DEVELOPMENTS (2000).

private businesses consistently resist the best efforts of national governments to force them to improve their compliance with labor standards and environmental regulations. Perhaps the GC will fare no better. On the other hand, one can be a little more optimistic about the GC's hopes for success by looking carefully at the full range of empirical studies completed to date, studies that detail the connections between TNCs and human rights.

The results of these empirical studies are mixed, to say the least. Most of the research tries to identify whether TNCs have had a positive or a negative impact on civil-political rights and socioeconomic welfare in Third World nations. Quantitative studies of aggregate data from over 50 Third World nations by Meyer have found that, at the broadest international level, increased investment by TNCs is associated with improved levels of civil rights and better economic welfare across developing nations.² Case studies by Spar and others have also found improvements in TNC treatment of their labor forces when businesses are compelled by the "spotlight effect" to clean up their act. The spotlight effect kicks in when media pressure or consumer boycotts single out TNC violations of labor rights (such as child labor used by Nike and Reebok to produce soccer balls in Pakistan). Subsequent efforts by TNCs to improve their public images force corporations to "export human rights" with a switch to better labor standards.³ Perhaps the Global Compact could be used to enhance the spotlight effect.

Another set of studies has shown the opposite to be true in too many cases. A follow-up study by Smith et al. questions the ability to generalize from Meyer's results.⁴ Smith's team, like Meyer, also analyzed aggregate data from scores of less developed countries (LDCs), and their results ran counter to Meyer's conclusions. Smith's team found an inverse correlation in their data between TNC investment and indicators of human rights in LDCs. Meyer also presented case studies that found consistent patterns of rights violations by TNCs in Latin America and Asia.⁵

This is not the time or the place to try to make sense of these conflicting empirical studies.⁶ We can postulate a potential positive impact by the

2. William H. Meyer, *Human Rights and MNCs: Theory Versus Quantitative Analysis*, 18 HUM. RTS. Q. 368 (1996) [hereinafter Meyer, *Human Rights and MNCs*]. Meyer's 1998 work also shows a positive correlation between foreign economic aid and better human rights in the Third World. See WILLIAM H. MEYER, *HUMAN RIGHTS AND INTERNATIONAL POLITICAL ECONOMY IN THIRD WORLD NATIONS: MULTINATIONAL CORPORATIONS, FOREIGN AID, AND REPRESSION* 113-139 (1998) [hereinafter MEYER, *POLITICAL ECONOMY*].

3. See Debora L. Spar, *The Spotlight and the Bottom Line: How Multinationals Export Human Rights*, 77 FOREIGN AFF. 7 (1998).

4. Jackie Smith et al., *Human Rights and the Global Economy: A Response to Meyer*, 21 HUM. RTS. Q. 207 (1999).

5. Meyer, *Human Rights and MNCs*, *supra* note 2. For a detailed account, see MEYER, *POLITICAL ECONOMY*, *supra* note 2, at 141-195.

6. For a discussion of how these conflicting results make sense and are indeed to be expected given the complex realities of TNCs and human rights, see William H. Meyer, *Confirming, Infirmiting and 'Falsifying' Theories of Human Rights: Reflections on Smith, Bolyard, and Ippolito Through the Lens of Lakatos*, 21 HUM. RTS. Q. 220 (1999).

Global Compact without trying to settle the debate raised by prior research. The relevant points from prior empirical studies for any discussion of the impact of the Global Compact are twofold: (1) results from the anti-TNC camp indicate that violations of rights and environmental degradation often occur at the hands of TNCs; (2) however, results from the pro-TNC camp indicate that corporations do not always violate human rights and environmental regulations. Therefore, there is reason to hope that the Compact could reward the behavior of responsible TNCs, while shaming at least some of the irresponsible TNCs into better promoting human rights.

II. Is the Global Compact the Best Way?

This question is almost impossible to answer. In order to know whether the Global Compact is the best or the most efficient way to improve corporate behavior, one would first have to be able to identify and isolate the impact of the GC on TNCs. The impact of the GC would then have to be separated from the impact of other efforts to improve TNC behavior, and the relative impact of the GC versus non-GC efforts would have to be measured. We will not attempt anything like that in this article. Indeed, such a study is most likely an impossible task. What we can do is compile a representative listing of the many things that have been done, and are being done, to bring TNCs into better compliance with international labor standards. The Global Compact is just one of many attempts to improve labor standards. The GC may be one of the best ways, but it is just one among many efforts. A brief review of the range of such efforts will show that the Global Compact is a necessary, but not sufficient, condition for making reluctant TNCs better global citizens. This summary of attempts to improve TNC behavior will be divided according to different "levels of analysis." Three standard levels of analysis used in IR theory are the international level, the regional level, and the national level. The summary begins with a review of efforts at the international level.⁷

A. International Efforts That Complement the Global Compact

When Kofi Annan first proposed the Global Compact in 1999, many efforts were already underway to force socially responsible behavior on reluctant TNCs. At the global level, some of these movements have been promoted by international organizations such as the International Labor Organization (ILO), the International Monetary Fund (IMF), and the World Bank. In 1998, the ILO released a Declaration on Fundamental Principles and Rights at Work. The ILO Declaration created a set of global labor standards as universal principals of human rights. These standards would require TNCs to observe freedom of association, nondiscrimination,

7. The summary that follows is not meant to be a comprehensive listing of all previous efforts to improve corporate social responsibility. Rather, this discussion focuses on those efforts that we take to be most important and representative of the overall (combined) efforts by international organizations, nongovernmental organizations, and national governments.

and the right to collective bargaining.⁸ The ILO Declaration prohibits use of forced labor and child labor. The IMF and the World Bank have also moved toward establishing standards for labor rights as new elements of loan conditionality.

Enforcement of social standards through conditionality principles is now taking place at the IMF and the World Bank. Some labor standards are more eligible for consideration by the World Bank (e.g., child labor, prohibition of forced labor, equal opportunity), while others (e.g., freedom of association) are less susceptible. The International Financial Corporation (IFC), a member of the World Bank Group, has set certain standards related to child labor and the environment. TNCs that participate in IFC development projects are expected to observe these standards and practices. Because of their power-based structure, these international financial institutions do not need a new, formal international agreement to legitimize such actions. An enforcement mechanism is already in place, tied to the principal of conditionality. Even without outright coercion, recipient countries and participating TNCs are being encouraged to improve their labor standards. Despite their neoliberal economic bias, the IMF and the World Bank are directly involved in upgrading the social environment of developing countries. The new commitment by the World Bank to structural social reforms—including “good government,” poverty reduction, and an end to child labor—shows that the Bank has increased its attention to social issues and no longer has a single-minded focus on macroeconomic efficiency criteria. IMF and World Bank policies to promote workers’ rights through their program-based lending are viable ways to radically upgrade labor standards at the global level.

The UN has also fielded initiatives to promote corporate social responsibility that are independent of, and parallel to, the Global Compact. For example, the UN Subcommission for the Protection and Promotion of Human Rights has developed its own detailed draft code of conduct for businesses that is far more rigorous than the GC.⁹

Another process at work at the international level is highlighted by Bhagwati’s work on “harmonization.” The upward harmonization of international labor standards is predicted by economic theories of public goods. The demand for harmonization as identified by Bhagwati is based on the assumptions of fair trade, fair competition, and a need to conform to certain formal arrangements in order to achieve increased benefits.¹⁰ The

8. INTERNATIONAL LABOR ORGANIZATION, DECLARATION OF FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK (1998), available at <http://www.ilo.org/public/english/standards/decl/declaration/text/index.htm> (last visited Oct. 6, 2001).

9. See UNITED NATIONS, CHARTER-BASED BODIES LITERATURE DATABASE, PROPOSED DRAFT HUMAN RIGHTS CODE OF CONDUCT FOR COMPANIES (United Nations, Working Paper, 25 May 2000), available at <http://www.unchr.ch.huridocda/huridocds.nsf> (last visited Oct. 5, 2001); see also Morton Winston, Amnesty International and the UN Global Compact (2001) (unpublished paper presented at the Cornell International Law Journal Symposium) (on file with author).

10. FAIR TRADE AND HARMONIZATION: PREREQUISITES FOR FREE TRADE? (Jagdish Bhagwati & Robert E. Hudec eds., 1996).

normative component of harmonization theory reveals an upward, rather than downward, convergence of labor standards. The economic logic of upward harmonization is connected to the existence of different jurisdictions that prevent the automatic market clearance mechanism from achieving economies of scale or uniformity of standards at the global level. Different regulations lead to externalities, materialized in absolute or relative losses of welfare and suboptimal public policy choices. As Bhagwati points out, harmonization does not directly negate such externalities, because transborder spillovers (e.g., failures, increased transaction costs, deterioration of standards) continue to exist. Thus the purpose of harmonization at the international level is not to provide a uniform economic environment, but to “prevent a jurisdiction from deliberately taking advantage of externalities by lowering its standards to impose costs on others while reaping benefits. The harmonization argument is perhaps strongest in the context of protecting international public goods.”¹¹ Even though Bhagwati’s examples refer to environment-related public goods, this argument can also be used with respect to labor standards. Labor standards are public goods that are provided (in most cases) by a domestic regulatory actor—i.e., national governments.

International trade connects the production and consumption of goods across borders. This transfer of the very essence of standards—the way they are provided and consumed—becomes the point of reference for the detection and reduction of externalities. Harmonization at the international level, pursued by states through formal or informal multilateral processes or through unilateral standard setting, are two ways by which a government might provide the necessary public goods. The case of the determination of standards through coalition formation¹² is a viable alternative—reflected in regional codes of conduct (see below) or in industry-wide, private, standard-setting arrangements. Such shared practices are becoming increasingly common for a number of industries, and within more and more geographic regions. The distinction between public goods versus “restricted-use” (or “club”) goods with respect to labor standards relates to the costs involved and their ultimate allocation, depending on who the provider is. Standards (in this respect) represent costs (or a policy that imposes additional costs) to domestic firms; their purpose is to correct an externality. By correcting that externality, an improvement in domestic welfare is achieved—i.e. higher labor standards are beneficial. The costs of correction, however, need to be offset (Rodrik, quoting Freeman, suggests they should be offset by taxation: a country can, therefore, “buy” higher labor standards).¹³ Obviously, it is the workers themselves who ultimately

11. David W. Leebron, *Lying Down with Procrustes: An Analysis of Harmonization Claims*, in *FREE TRADE AND HARMONIZATION: PREREQUISITES FOR FREE TRADE?*, *id.* at 55.

12. For example, by means of voluntary industry-based, or individual company codes of conduct. Leebron has referred to similar efforts as “private” harmonization. *Id.* at 93.

13. Dani Rodrik, *Globalisation and Labour, or: If Globalisation Is a Bowl of Cherries, Why Are There So Many Glum Faces Around the Table?*, in *MARKET INTEGRATION, REGIONALISM, AND THE GLOBAL ECONOMY* 117, 128-132 (Richard Baldwin et al. eds., 1999).

bear the costs. Empirical studies have observed that a correlation between higher labor standards and labor costs is especially true for labor-intensive industries (the most common type in Third World nations), unless the costs are offset by increases in productivity. Increases in productivity are more likely in the case of capital-intensive industries (not as relevant to most developing countries).¹⁴ Such theoretical assumptions have been verified by some of the relevant empirical research, including case studies.¹⁵

B. Regional Efforts That Supplement the Global Compact

Hopes for the international success of the Global Compact are also stimulated by the many efforts already taking place in various regional settings. When the United States, Canada and Mexico entered into the North American Free Trade Agreement (NAFTA), side agreements on labor standards and environmental protection were added by the Clinton administration. These NAFTA protocols on labor and the environment created no new international standards. Rather, they simply require each member state to vigorously enforce their own (preexisting) labor and environmental laws.¹⁶ NAFTA also grafts new regional dispute panels on top of the national means of enforcement. The side agreement on labor (the North American Agreement on Labor Cooperation) created a labor grievance system and national committees in each country known as the National Administrative Offices (NAOs). NAOs receive complaints of unfair labor practices from labor unions and other nongovernmental organizations (NGOs). Petitioners are free to bring their complaints before the NAO of any of the three states. Each NAO has the power to investigate complaints, and if necessary, impose trade sanctions for violations of labor laws, violations of child labor prohibitions, failures to meet minimum wage requirements, or failures to meet occupational health and safety standards.¹⁷

NAFTA created a similar process for environmental regulation and enforcement. The North American Agreement on Environmental Cooperation (NAFTA's side agreement on the environment) created a Commission on Environmental Cooperation (CEC). The CEC has its headquarters in Montreal and contains cabinet-level environmental officials from each of the three states. Individuals and NGOs can file complaints before the CEC. The CEC then has the power to manage a lengthy review and dispute settlement process. There are many problems with the CEC process, including its glacial pace and its weak enforcement powers. However, in theory it does have the power to impose fines on any of the three parties to NAFTA for failures to enforce their environmental laws. We must hasten to add that any fines would be levied against the government of the offending

14. *Id.* at 130.

15. See, e.g., C. Foster Knight, *NAFTA Promises Payoff in Environmental Benefits*, F. APPLIED RES. & PUB. POL'Y, Summer 1995, at 29.

16. All three countries, including Mexico, have very good environmental protection and labor laws "on the books". Most problems arise primarily due to lack of enforcement (especially in Mexico).

17. For more on the NAOs, including specific cases brought before these dispute panels, see MEYER, *POLITICAL ECONOMY*, *supra* note 2, at 141-195.

TNC. The CEC does not have the power to impose fines directly against a TNC that violates environmental laws.¹⁸

On the other side of the Atlantic, the European Union (EU) has also taken regional steps to promote labor rights and corporate social responsibility. Within its program under the Generalized System of Preferences¹⁹ (GSP), the EU has created a unique incentive scheme that extends economic preferences to developing nations that have upgraded their labor rights and environmental regulations.

The current GSP scheme for the European Union dates back to 1994.²⁰ The basic legislation was subsequently revised by Council Regulation 2820/98 of 21 December 1998.²¹ The key features of the EU's GSP include tariff modulation, country-sector graduation, and special incentive arrangements. The special incentive provisions, operational as of 1998, refer to labor rights and environmental protection. Special trade arrangements are given to countries that comply with ILO Conventions Nos. 87 and 98 concerning the rights to organize and bargain collectively, and No. 138 with respect to the minimum age for employment. The incentives for environmental protection apply to products originating in tropical rain forests,²² and are granted to countries that enforce legislation incorporating the standards of the International Tropical Timber Organization.

In order to take advantage of the incentive arrangements, Third World governments must implement and monitor compliant legislation, and provide full disclosure of any sectoral restrictions that must be detailed by production sector (Article 11). The Republic of Moldova has become the first beneficiary of the arrangements concerning labor rights for its exports to the EU.²³ Identical procedures—of national certification, monitoring, and administrative cooperation—are applicable to the special incentives concerning environmental protections.

Such social and environmental incentives, while based on initial certification, are not automatic or permanent. They are contingent upon constant monitoring procedures and administrative cooperation between the beneficiaries and EU authorities. Thus the monitoring procedures under both the social and the environmental incentive clauses provide consistency and prevent sectoral exceptions, especially as far as labor rights are concerned. The latter observation is highly relevant to TNC production in

18. *Id.* at 172. For more on the CEC, including specific cases and other weaknesses in the system, see *id.* at 171-73.

19. See the detailed discussion of U.S. policy in Section C below for a description of GSP programs. GSP programs are a component of the UNCTAD institutional framework.

20. All GSP schemes represent extensions of the multilateral liberalization under the WTO system. The schemes are regarded as complementary to WTO instruments, and foster the integration of the developing countries into the world economy.

21. 1998 O.J. (L 357) 1-13; 1998 O.J. (L 189) 13.

22. 1998 O.J. (L 357) 6 (Art. 9, in accordance with Annex VIII).

23. Commission Regulation 1649/2000 of 25 July 2000 Granting the Republic of Moldova the Benefit of the Special Incentive Arrangements Concerning Labour Rights, 2000 O.J. (L 189) 13.

developing nations. On the one hand, the EU's incentive scheme has a direct disciplinary effect. On the other hand, it promotes interaction between states and corporations and is likely to lead to a sustained upgrading of labor and environmental conditions in developing countries.

An organization that unites the EU with the U.S., Canada and Japan is the Organization for Economic Cooperation and Development (OECD). The OECD is a transregional body that has developed its own programs to enhance corporate social responsibility. The OECD has promulgated a set of Guidelines on Multinational Enterprises (or MNEs; for the sake of consistency, we will continue to refer to MNEs in this article as TNCs).²⁴ The OECD created no enforcement mechanism to go along with its Guidelines.²⁵ Compliance with OECD documents by TNCs is voluntary. How-

24. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES, REVISION 2000 (2000), available at <http://www.oecd.org//daf/investment/guidelines/mnetext.htm> [hereinafter *The Guidelines*], do not require a legal definition of the term "multinational enterprise", to which they are applied. The Guidelines represent:

[R]ecommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. The *Guidelines* aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises.

Id. For a recent account by the OECD Secretariat with respect to the Guidelines see ARGHYRIOS A. FATOUROS, THE OECD GUIDELINES IN A GLOBALIZING WORLD (7 OECD Working Paper 66, 1999, DAF/IME/RD (99)3, Feb. 17, 1999), available at <http://www.oecd.org//daf/investment> (last visited Oct. 7, 2001). For a complete edition of The Guidelines, including commentary on their scope and nature, see OECD WORKING PAPERS, THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES (OECD, DOC. OCDE/GD(97)40, 1999). The revised OECD Guidelines for Multinational Enterprises were adopted by the governments of the 30 Member countries of the OECD and Argentina, Brazil and Chile on the occasion of the OECD's annual Council meeting at ministerial level in Paris on 27 June 2000. Following the completion of the revision, the Committee on International Investment and Multinational Enterprises (CIME) issued as a working document the relevant texts with respect to the update. See *The OECD Declaration and Decisions on International Investment and Multinational Enterprises: Basic Texts*, DAF/IME(2000)20 (Nov. 9, 2000).

25. See Organisation for Economic Co-Operation and Development, *OECD Principles of Corporate Governance*, SG/CG(99)5 (Apr. 19, 1999), available at <http://www.oecd.org//daf/governance/principles.htm> (last visited June 27, 2001) for a detailed list of the standards, which represent a set of non-binding principles and embody the views of Member countries on this issue. The Principles:

focus on governance problems that result from the separation of ownership and control. Some of the other issues relevant to a company's decision-making processes, such as environmental or ethical concerns, are taken into account but are treated more explicitly in a number of other OECD instruments (including the Guidelines for Multinational Enterprises and the Convention and Recommendation on Bribery) and the instruments of other international organisations.

Id. The principles refer to the management of the firm, while incorporating structural factors and the relevance of public policy for microeconomic decision-making. Thus, the principles need to be analytically and substantively distinguished from the Guidelines on MNEs. *The Guidelines* are non-binding recommendations to enterprises, made by the

ever, the Guidelines have a unique importance because they promote direct involvement by TNCs, and they seek to avoid double standards with respect to labor rights and the environment. They constitute an attempt to apply home-country labor standards (those that apply to TNCs operating within OECD states) to all TNC activities around the globe (both inside and outside of OECD territory). The Guidelines are also important because they provide a link between the state and the corporate level—through the establishment of National Contact Points in each home country.²⁶ The OECD also encourages NGO participation in this process. By providing for the involvement of NGOs, mainly in regard to the tasks of monitoring and reporting, the National Contact Points can help establish a domestic regulatory control system that reaches beyond the borders of the home country and extends outward over the TNCs' global operations.

The OECD approach seeks to link its member states to various non-state actors, and then promote corporate social responsibility via mutual participation. By setting behavioral standards for corporations that are based on the principle of home-country control, and by encouraging industry-based codes of conduct, the OECD approach enhances the importance of social responsibility criteria in the global operations of TNCs. In this respect, the OECD system reflects a key element of the Global Compact. An effective labor rights regime will work only if there is a commitment to it by many actors operating at different levels in the international system. This realization is reflected in the United Nations initiative for a Global Compact on human rights, labor, and the environment. The main task of the GC initiative is to put a human face on globalization through shared values and principles. The sustained support on behalf of UN agencies for incorporation of labor and environmental standards into business practices underlines the need to integrate the TNCs themselves as sources of leadership. The logic of the Global Compact thus points not only to a call for increased social responsibility on the part of corporations, but also to their legitimate role as participants in the maintenance of the regime.

C. National Policies and Transnational Activism

Advanced industrialized nations are adopting new unilateral policies to promote corporate social responsibility. Unsatisfied with the pace and scope of these national efforts, transnational activists have developed their own

thirty-three governments that adhere to them. Their aim is to help TNCs operate in harmony with government policies and with societal expectations.

26. The National Contact Points are established under the responsibility of governments. The institutions hosting them vary according to domestic public policy choices. Although the Guidelines set criteria and recommendations with respect to their operation, the National Contact Points differ also according to the scope of activities in which they engage. This lack of uniformity, however, should not be considered as a disadvantage. National Contact Points serve as a forum for public discussion and provide transparency and access for non-state actors (NGOs and citizens). Thus, they can be seen as a first step to resolve issues with respect to TNCs' global operations within the home-country, i.e., at the national level. For a detailed discussion of the mechanism of operation of the National Contact Points, see *The Guidelines*, *supra* note 24, at 12, 54-59 (Annex 3) for a list of established National contact points by country.

arsenal of tactics to target irresponsible businesses. A brief review of these national and transnational efforts will conclude our summary of efforts outside the Global Compact, and lead to our consideration of corporate social responsibility within the context of IR theory.

Both the U.S. and the EU have imposed economic sanctions for violations of labor rights under their GSP programs. The GSP (or Generalized System of Preferences) provides tariff-free access to markets in the developed countries for selected goods originating from developing nations. The U.S. Congress amended America's GSP program in 1984 to attach new human rights conditions that Third World nations must meet to qualify for GSP trade advantages. To be a beneficiary of the U.S. GSP, a country must be "taking steps to afford workers internationally recognized workers' rights, including freedom of association, the right to organize and bargain collectively, freedom from forced labor, a minimum age of work for children, and acceptable conditions at work relating to hours, wages and health and safety."²⁷

An example of American economic sanctions under these provisions of the GSP would be the case of Chile. Chile was excluded from the GSP program in 1987 because of violations of workers' rights under Pinochet's dictatorial regime. This action was "an important element in putting pressure on Chile at the time of the ending of the Pinochet government."²⁸ Of course, such pressure under the GSP is only an indirect means to punish corporations that ignore labor rights. The sanctions are imposed against a nation in hopes that the targeted government will then put pressure on businesses (perhaps through new legislation) to improve working conditions. This indirect approach is similar (in that respect) to the use of NAOs and the CEC under NAFTA.

The indirect approach has also been employed by more recent legislation that prohibits imports into the U.S. of goods produced by child labor or forced labor. Senator Tom Harkin (Democrat, Iowa) sponsored a new law in 1992 to stop the importation of commodities produced by child labor. Such legislation is controversial, and has even been attacked by some child labor advocates. Passage of the Child Labor Deterrence Act allegedly led to the loss of 50,000 jobs for impoverished youth virtually "overnight."²⁹ Even if these charges are true, they hardly justify a claim that Congress should not oppose the use of child labor by TNCs. American economic sanctions that lead to unemployment for children are simply the basis of an argument in favor of increased foreign aid that targets primary education in the Third World (in tandem with any prohibitions against child labor).

In a follow-up, Representative Bernard Sanders (Independent, Vermont) drafted legislation that targeted all forms of forced labor. The 1997

27. *Working for Labor Rights: An Interview with Pharis Harvey*, MULTINATIONAL MONITOR, Dec. 1993, at 17.

28. *Id.* at 20.

29. Shahidul Alam, *The Use of Child Labor Does Not Always Violate Human Rights*, in HUMAN RIGHTS: OPPOSING VIEWPOINTS 81, 82 (Mary E. Williams ed., 1998).

Sanders Amendment to Section 307 of the 1930 Tariff Act bans importation of products made with forced labor (e.g. prison labor in China), including products made with “forced labor or/and indentured labor.”³⁰ At the broadest level, federal law also calls for economic sanctions against states that do not enforce internationally recognized worker rights for TNCs operating within their borders. For example, the 1988 Omnibus Trade and Competitiveness Act amended Section 301 of the 1974 Trade Act (now known in trade circles as “Super 301”).³¹ Failure to ensure labor rights now is considered to be an unfair trade practice under the terms of Super 301, subjecting America’s trading partners to a wide range of trade sanctions.³²

Another relatively new approach in U.S. foreign policy is more proactive. A series of media scandals in the 1990s brought attention to the use of Third World sweatshops by TNCs. High-profile celebrities like Michael Jordan and Kathie Lee Gifford were accused of profiting from sweatshops that produce the clothing they endorse for Nike and Wal Mart. This new attention to sweatshops compelled the Clinton Administration to establish the Apparel Industry Partnership (AIP) in 1996. The AIP later evolved into the Fair Labor Alliance (FLA). Both the AIP and the FLA were set up as cooperative arrangements between government, corporations, and some NGOs. They produced a code of conduct for TNCs, and a call for corporations to allow independent monitoring of their production facilities. TNCs that adopt the code and participate in the FLA are rewarded with a “no sweatshop” label for their clothing. Critics and NGOs that refused to endorse these efforts, however, see such policies as little more than a way for TNCs like Nike to gain a better public image while fooling consumers into thinking that conditions are improving for Third World labor. One critic labeled these efforts “the good housekeeping seal of approval to a kinder, gentler sweatshop.”³³

The 1990s also witnessed a trend toward TNCs developing their own (internal) codes of conduct. Under intense pressure from NGOs like Amnesty International (which drafted a model code of conduct for TNCs in 1996), corporations have pledged to uphold labor rights, practice non-discrimination in the workplace, and protect the environment.³⁴ Such promises mean little, however, unless they are translated into practice. Verification of the fact that TNCs are living up to their pledges requires independent monitoring of production facilities, a step that Nike and others

30. 19 U.S.C. § 1307 (2000). This amendment, signed into law in May 2000, states that forced labor or/and indentured labor includes forced or indentured child labor. *Id.*

31. See 19 U.S.C. § 2411 (1988) (defining policies that restrict worker rights as unfair and inequitable).

32. Pharis J. Harvey et al., *Developing Effective Mechanisms for Implementing Labor Rights in the Global Economy*, at <http://www.laborrights.org/projects/globalecon/ilrf/ilrf2b.html> (last visited Oct. 1, 2001).

33. *Anti-Sweatshop Code gets Clinton Blessing*, NEWS JOURNAL, Apr. 13, 1997, at A4.

34. For more on corporate and NGO codes of conduct, see MEYER, POLITICAL ECONOMY, *supra* note 2, at 197.

have been loath to take.³⁵

No review of efforts to promote corporate social responsibility would be complete without mention of the Battle in Seattle and other grass-roots efforts to bring TNCs to heel. A fascinating coalition of labor unions, environmentalists, consumer advocates, and Third World lobbyists has banded together and targeted TNCs, the World Trade Organization (WTO), and "globalization" as the greatest evils in the post-Cold War world. We have avoided any discussion of the WTO and labor rights to this point because that will feature prominently in our treatment of IR theory and global governance that follows. However, we must give credit where credit is due. The Seattle Coalition all but shut down the 1999 ministerial conference of the WTO with its successful use of disruptive protests. Whether you agree with their views or not, everyone must acknowledge the ability of the Seattle Coalition to successfully have their position recognized in a way that was never possible in the past. This same coalition has disrupted more recent international economic forums in Prague, Davos, and Quebec.

The Seattle Coalition is significant in much the same way as are consumer boycotts against TNCs. Both trends represent movements within civil society that bypass the normal political and legal channels for putting pressure on TNCs. Both tactics (coalition protests and consumer boycotts) have kept the issue of corporate social responsibility on the media agenda and in the public eye. Without these grass-roots movements, the media, public officials and international organizations would most likely allow the often-intractable problem of making TNCs better corporate citizens to fade from their scrutiny.

While our discussion of the multifaceted efforts to enhance corporate social responsibility has not been comprehensive (no doubt our readers can come up with other examples that we have not included), we hope it has been extensive enough to reveal the complexity of both the problem and its possible solutions. We turn now from this laundry list of socio-politico-legal-economic trends to a treatment of corporate responsibility within the context of international relations theory.

III. The Global Compact, International Regimes, and Global Governance

Much of the scholarly attention to the issue of labor rights and TNCs has revolved around the possible creation of an international "regime." The most commonly cited definition of a regime comes from IR theorist Stephen Krasner. According to Krasner, a regime consists of "[p]rinciples, norms, rules, and decision-making procedures around which actor expect-

35. Phil Berry, corporate spokesman for Nike at the Cornell symposium on the Global Compact, argued that independent monitors have their own agendas and therefore will not be allowed into Nike facilities. Instead, Nike pays for their own "monitors," leading critics to charge that no truly independent watchdogs are able to oversee treatment of labor or environmental practices by the firm.

tations converge in a given issue-area.”³⁶ Regimes are issue-specific or area-specific. For example there is one regime for trade (the WTO), and another separate regime for monetary relations (the IMF and World Bank). The most highly developed regimes include: (a) an institutional framework (e.g., an international organization); (b) a set of specific rules and norms, and; (c) a more general set of shared expectations regarding acceptable behavior. While some may see the Global Compact as a new regime (or as part of a new regime) for corporate social responsibility, the facts of the matter are more complicated than that.

No distinct regime yet exists to manage labor rights and TNCs. However, the outlines of a possible regime have been noted by many observers. There are some interesting parallels between the regime already created for human rights and nation-states as compared to the normative activity surrounding TNCs. Normative regime-building, whether for states or for corporations, tends to progress through at least four stages: (1) setting standards; (2) monitoring compliance with standards and exposing abuses; (3) creation of binding legal obligations; and (4) enforcement of those binding laws.³⁷ The human rights regime for governments is based on: (1) standards set by the 1948 Universal Declaration on Human Rights; (2) monitoring of human rights abuses by the UN Commission on Human Rights plus many NGOs (Amnesty International, Human Rights Watch, etc.); (3) binding international legal obligations under the terms of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the many regional treaties on human rights (the Council of Europe, the OAS, the OAU); (4) enforcement of human rights by the regional human rights courts (in the COE and the OAS), by the special tribunals created under the Security Council (for the former Yugoslavia and for Rwanda) and, in the future, by the new International Criminal Court.³⁸

Is there now, or will there be, an international regime to govern corporate social responsibility? In regard to TNCs and labor rights, there appear to be the seeds of a nascent regime or a “framework” regime.³⁹ Standards

36. Stephen D. Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, in STEPHEN D. KRASNER, *INTERNATIONAL REGIMES* 1 (1983). For other classic texts from the regime theory literature see ROBERT O. KEOHANE, *AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY* (1984). See also John Gerard Ruggie, *International Responses to Technology: Concepts and Trends*, 29 *INT'L ORG* 557 (1975); Susan Strange, *Cave! hic dragones: A Critique of Regime Analysis*, in KRASNER, *supra*, at 337; Oran R. Young, *International Regimes: Problems of Concept Formation*, 32 *WORLD POL.* 331 (1980).

37. JACK DONNELLY, *INTERNATIONAL HUMAN RIGHTS* 3-17 (2d ed. 1998).

38. For more on regime-building for both states and corporations, see William H. Meyer, *MNCs, Globalization, and Human Rights: Activism and Research to Build an International Normative Regime*, professional paper presented at the annual meetings of the CISS/ISA, Washington, DC, 2000, available at <http://hypatia.ss.uci.edu/brysk/Meyer.html> (last visited Oct. 14, 2001).

39. The term “framework regime” is suggested in analogy to “framework convention” in GARETH PORTER & JANET WELSH BROWN, *GLOBAL ENVIRONMENTAL POLITICS* 20 (1991). For a definition of the term “generative regime”, used in a similar way, see also ORAN. R. YOUNG, *GOVERNANCE IN WORLD AFFAIRS* 31-32 (1999).

have been set by the 1998 ILO Declaration on labor rights and by the many codes of conduct that have been promulgated for TNC behavior. Monitoring and exposing abuse of labor rights by TNCs is also well underway, carried out by a host of interested NGOs (e.g., CorpWatch, Global Exchange, United Students Against Sweatshops, etc.). The Global Compact has made important contributions, both in terms of setting standards (e.g., the GC's nine principles), and in terms of monitoring those standards (e.g., the GC's website). However, this is where the similarities currently end. There are no existing international legal obligations that require cooperate social responsibility, let alone an effective way to enforce such binding legal obligations (if and when they are created). Furthermore, the issue of labor rights and TNCs may simply be too great in scope for the creation of an area-specific regime.

Consider the many efforts to promote corporate social responsibility that were reviewed in Part II of this article. These efforts cut across all of the existing regimes for trade, monetary relations, and foreign aid. Trade policy by the U.S. Congress, IMF and World Bank conditionality, economic trends toward harmonization, people in the streets of Seattle in 1999 dressed as sea turtles, consumer boycotts of irresponsible TNCs, and the Global Compact all have their roles to play in "governing" the politics of TNCs and labor rights. Political management of corporate social responsibility is too great of an undertaking, and exists at too many levels of analysis, to be properly described as regime politics. What we are witnessing in the global politics of cooperate social responsibility is more akin to what IR theorists now call "global governance."

Global governance is political management at the global level of a given area of human existence in the absence of global government. It is *global governance*, not *global government*, because there is no World State that can impose its rules and values on sovereign nation-states or renegade TNCs. Theories of global governance transcend a focus on the nation-state and the formal institutions of government. While theorists of global governance (GG) acknowledge the continued importance and power of nation-states, they also stress the rising influence of nonstate actors such as NGOs, transborder interest groups, transnational epistemic communities, and so forth. Through an interactive and multilayered process, GG is an exercise in managing an issue such as corporate social responsibility via the combined (and often conflicting) efforts of actors at the transnational, international, regional, national, sub-national, and individual levels of analysis. Indeed, theorists of GG would caution against thinking in terms of these old analytic categories (the old levels of analysis) if one seeks to understand global politics in the new millennium.

Perhaps the best known theorist of global governance is James Rosenau.⁴⁰ Rosenau suggests that we should now conceptualize global politics

40. The contested character of authority in the new international arena, and the related challenges of achieving governance, have been discussed by Rosenau in James N. Rosenau, *Global Changes and Theoretical Challenges: Toward a Postinternational Politics for the 1990s*, in *GLOBAL CHANGES AND THEORETICAL CHALLENGES: APPROACHES TO WORLD*

in terms of “spheres of authority (SOAs),” rather than in terms of the old levels of analysis.⁴¹ The old way of thinking defined the relevant political actors by means of their position within the Westphalian model of an international community of nation-states. The new way of GG thinking defines the relevant actors by means of their sphere of authority.

Take, for example, the multifaceted efforts to bring General Pinochet to justice. In the old Cold War era, butchers like Pinochet murdered thousands of innocents with absolute impunity under national and international law. In the post-Cold War era of global governance, actors operating within many distinct spheres of authority have combined their efforts, seeking to try Pinochet before a court of law. To understand the processes that may one day bring this man to account for his crimes against humanity, we must attend to the work of many different SOAs.

Some of the SOAs relevant to the new “Pinochet precedent” would include: the court of a Spanish judge that handed down the first indictment; the COE’s regional treaty on human rights that includes Spain and the United Kingdom as members; the 1948 Genocide Convention; the 1984 Convention Against Torture, including the date (1988) when the U.K. ratified that convention; legal decisions and policy statements by the British courts, the House of Lords, and the Home Secretary regarding Spain’s request for extradition (while Pinochet was in the U.K.); Amnesty International’s connection to one of the British judges; American, British and Chilean foreign policy regarding Pinochet’s claims to diplomatic immunity; and finally, the domestic politico-legal cleavages in Chile that support or oppose Pinochet. Before the Spanish judge indicted Pinochet in 1998, few thought he would ever be held accountable for his actions, and there were no effective means to try him inside Chile. After this exercise in global governance was set in motion, and although he will probably never be tried in Spain under the original indictment, there is now a viable campaign to bring him to justice in his homeland.

Global governance is making a difference. The modalities of GG are having an impact and are transforming politics at many different levels. GG is a process that must be understood by all students of international law in the 21st century.

While the Pinochet precedent and corporate social responsibility may seem to be worlds apart, at an analytical level the two cases are remarkably similar. In both instances we can see a plethora of actors that operate in many different spheres of authority. In both cases, the interactions of

POLITICS FOR THE 1990s 1 (Ernst-Otto Czempiel & James N. Rosenau eds., 1989); JAMES N. ROSENAU, *TURBULENCE IN WORLD POLITICS: A THEORY OF CHANGE AND CONTINUITY* (1990); JAMES N. ROSENAU & MARY DURFEE, *THINKING THEORY THOROUGHLY: COHERENT APPROACHES TO AN INCOHERENT WORLD* (2000); JAMES N. ROSENAU, *ALONG THE DOMESTIC-FOREIGN FRONTIER: EXPLORING GOVERNANCE IN A TURBULENT WORLD* (1997) [hereinafter ROSENAU, *ALONG THE DOMESTIC-FOREIGN FRONTIER*]; James N. Rosenau, *Diplomacy, Proof, and Authority in the Information Age*, in *POWER AND CONFLICT IN THE AGE OF TRANSPARENCY* 315 (Bernard I. Finel & Kristin M. Lord eds., 2000).

41. ROSENAU, *ALONG THE DOMESTIC-FOREIGN FRONTIER*, *supra* note 40, at 145, 152-153, 156-159.

many players and numerous distinct SOAs combine to yield results that are probably different from what any single actor is seeking. The "outputs" of global governance are a (sometimes unpredictable) synthesis of the many separate inputs. To return to TNCs, labor rights and environmental protection, we will conclude this article by surveying the emerging trends for global governance in those areas.

IV. Conclusion: The Future of the Global Compact and Global Governance for TNCs

Global governance to improve corporate social responsibility must be a process that includes both the World Trade Organization and various non-WTO initiatives. In this conclusion, we will start by looking at proposed reforms within the WTO, and then move on to the non-WTO efforts.

In the past, the WTO could not have been expected to incorporate labor or environmental standards into its mechanisms for regulating trade. The primary objects of WTO regulation have always been *products* as defined by their physical characteristics. However, international trade regulation has recently been expanded to include *process* factors as well. Production processes, such as investment laws and intellectual property rights, are now subject to international regulation under various WTO agreements. Because environmental impact and labor relations are important components of the production process, it is legitimate to consider the extent to which they affect comparative advantage. No one who advocates WTO regulation of workers' rights believes that labor conditions across all countries must be rigidly uniform. We cannot expect minimum wages to be identical in all nations. Rather, certain basic standards for labor rights must be applied to all workers globally. Poor or abusive labor conditions should not be used as a source of comparative advantage.

Prior to the Battle in Seattle, the Clinton administration claimed it wanted to "put a human face" on the global economy. A new round of global trade talks (the Millennium Round) was proposed in Seattle. As part of the new round, the U.S. called for the creation of a WTO working group on trade and labor standards. Working groups lay the groundwork and draft resolutions for the plenary sessions of the WTO to consider. The ILO was also given observer status at the WTO as a way to increase coordination between WTO and ILO activities.

Similar reforms are being made to bring environmental concerns into the ambit of WTO authority. The U.S. is already conducting a review of the environmental consequences of the new round. The WTO has an Environment and Trade Committee that could function much like the new working group on labor, drafting new regulations that would enforce and improve existing environmental protections within member governments (similar to NAFTA's CEC). The U.S. will push to eliminate all tariffs on environmental technologies (e.g. greener industrial equipment) as a way to facilitate trade in these goods, especially exports to the developing world. The U.S. also demands that member governments be given the right to retain envi-

ronmental standards that are higher than those required by existing international agreements.

U.S. policy also favors increased "transparency" within the WTO. As stated in 1999 by Clinton's trade representative, transparency would include: rapid release of documents; enhancing the input of NGOs; allowing NGOs and other interested parties to file amicus curiae briefs at WTO dispute panels; and opening dispute settlement proceedings to public observers.⁴² Dispute panels are the heart of the WTO sanctioning process. They hand down authoritative decisions regarding trade disputes between WTO members. WTO dispute panels have the power to impose mandatory economic sanctions on noncompliant members. Dispute panels have already heard over fifty cases since the establishment of the WTO in 1995.

These dispute panels are the targets of the WTO's critics' primary concerns. In part as a response to the unrest in Seattle, the U.S. restated and emphasized its prior offer to open up the dispute panels to NGO participation. Labor and environmental groups would be given a seat at the hearings and allowed to voice their concerns. Only WTO member governments, however, have a vote in the final decisions on whether or not to impose sanctions.

Many groups came to Seattle to pressure the WTO to open its proceedings to nongovernmental labor, environmental, and Third World interests. Global Exchange, Global Trade Watch and Third World Network were among the most outspoken NGOs. Global Exchange criticized the WTO's preference for making decisions behind closed doors. Global Trade Watch fears that critics of the WTO will be either co-opted, or excluded from the decision making process. Third World Network cautioned that more liberalization of trade by the WTO would lead to political instability and economic hardships in developing nations. While these criticisms are important, and especially relevant to the WTO's track record to date, there is also much more common ground between the protestors and the positions of the OECD governments than either side seems to realize. Looking ahead to the needed reforms within the WTO, both the short term and the long term can bring important changes that could improve labor rights and environmental protection.

Over the short term, the WTO should move quickly to: set up a working group on labor rights; bring NGOs and other interested groups to the negotiating table; increase transparency by opening all WTO hearings and documents to the public. All of these things could be done almost immediately. Over the mid-term (3-5 years), and within the context of the new round, the WTO must draft an agreement on global labor standards (using the ILO 1998 declaration as a guide). At the same time, a similar agreement needs to be established for environmental standards. Over the long

42. Charlene Barshefsky, *Toward Seattle: The Next Round and America's Stake in the Trading System*, Address Before the Council on Foreign Relations (Oct. 19, 1999), at <http://www.cfr.org/public/pubs/BarshefskyQATranscript.html> (last visited Oct. 7, 2001).

term, the WTO needs to establish a grievance process for violations of labor rights and environmental destruction similar to the NAFTA mechanisms in these areas. The WTO dispute panels for labor and the environment, like the NAOs and the CEC, must also be open to individual and NGO petitions.

None of these reforms will come easily. It is important to note that the strongest political opposition to new WTO authority over labor and environmental standards comes from Third World governments. In many cases, these are the same Third World countries in which most TNCs prefer to set up their sweatshops. They are also the same countries favored by TNCs because of their lax (or nonexistent) enforcement of environmental protections. It is also worth restating that nothing proposed here would bring legal or economic sanctions directly against the TNCs themselves. The economic penalties would be imposed on national governments, with the hope that this would induce those governments to tighten their reins on transnational corporations.

Moreover, it must be understood that the WTO can not be the only regulatory mechanism with respect to labor rights. It should be regarded as one component of a comprehensive global governance structure, incorporating a large number of international organizations and transnational arrangements, with the participation of TNCs, NGOs and other nonstate actors. All of the necessary functions related to global governance can hardly be transferred to a single entity, regardless of its enforcement capacities. The comprehensive character of the issue area of labor standards makes a global governance structure, comprising different institutions with different SOAs, the only suitable and feasible way for providing international regulation.

Furthermore, the incorporation of a new Trade-Related Labor Agreement (TRLA) into the WTO would be meaningless if not accompanied by increased market access for the exports of the developing countries. The labor standards agenda has been widely criticized as a thinly disguised form of neo-protectionism. This argument remains valid, as critical sectors of world trade are still governed by specific agreements, and liberalization in these areas is far from complete. The Agreement on Textiles and Clothing (ATC) is a case in point. Developed countries have failed to accelerate either the restructuring of their textile industries or the liberalization of their imports (as called for under the ATC), while at the same time insisting on higher labor standards in the labor-intensive textile industries of the developing countries. NGOs continue to provide evidence of workers' rights abuse in the Third world and advocate sanctions. These same NGOs need to urge Western governments to at least honor their commitments under the ATC agreement, if not as a gesture of goodwill, then as a way to speed up the liberalization process and to eliminate import quotas prior to the ATC's 2005 deadline.

When sanctions are imposed in the future by the WTO under a yet-to-be-established TRLA, they need to be applied according to what we have

learned about “smart” sanctions.⁴³ Lopez and Cortright’s work on smart sanctions creates a useful model for application of penalties when there are violations of labor standards. Smart sanctions use a combination of carrots and sticks. First, smart sanctions create a “bargaining environment” within which the targeted nations/TNCs would be given both penalties (for past sins) and rewards (as behavior improves).⁴⁴ Second, smart sanctions require careful monitoring and enforcement as a way to decrease the negative impact of sanctions on third parties. The most important third parties in this case would be the labor forces. Sanctions for violations of labor rights should not be a system that indirectly worsens conditions for Third World workers (e.g., increased unemployment). Here again, the Global Compact has a useful role to play. The GC could be a vehicle for establishing a more cooperative bargaining environment (coordinating its efforts with the WTO and the ILO). The GC could also be expanded to provide some of the necessary monitoring functions. Finally, smart sanctions employ the tactic of “reverse targeting.”⁴⁵

In this case, reverse targeting would mean expanding economic contacts with TNCs that have a proven track record of corporate social responsibility.

Moving beyond the WTO, many other proposals have been advanced recently that could facilitate better global governance of TNCs. One way to build on the Global Compact would be to create a new Global Development Commission.⁴⁶ The GDC would coordinate the activities of the Secretary General, the WTO, the IMF, the World Bank, UNCTAD, and the UN Environment Programme. It would be chaired by a high-profile public figure, perhaps the Secretary General, and include the heads of all of the international organizations with an interest in social and economic development. “The commission approach appears to meet the pressing need to get some big issues on the table at the highest level. If it succeeded in making agency heads work together, as they have signally failed to do in the past, then it would make a significant contribution to coherence in international economic policy-making.”⁴⁷

Another intriguing proposal was advanced in Davos during 2001 by Jean-Francois Rischard, the World Bank’s Vice President for Europe. Rischard advocates the creation of “Global Issue Networks.”⁴⁸ Global Issue Networks would be coalitions of interested nations, private companies, and NGOs. They would set standards and use online polling via the Internet to

43. George A. Lopez & David Cortright, *Economic Sanctions and Human Rights: Part of the Problem or Part of the Solution?*, 1 INT’L J. HUM. RTS. 1, 2 (1997).

44. David Cortright et al., *Smart Sanctions: Restructuring UN Policy in Iraq*, Report to the Joan B. Kroc Institute for International Peace Studies (2001), available at <http://www.nd.edu/~krocinst/research/smartreportapril.pdf> (last visited Oct. 5, 2001).

45. George Lopez, Public Address at the University of Delaware, Mar. 12, 2001 (on file with author).

46. See Editorial, *One Way Out of the Labour Rights Mire*, WORLD TRADE AGENDA, Nov. 20, 2000, at 16.

47. *Id.*

48. David Ignatius, *Think Globally, Build Networks*, WASH. POST, Jan. 28, 2001, at B7.

“issue ratings that measure how well countries and private businesses are doing in meeting specified norms on the environment and other issues that affect the welfare of the planet,” such as labor standards.⁴⁹ One should not underestimate the power of such online publicity. For decades, international money laundering seemed to be a global problem with no solution. Then a “global issue network” was created that published the names of states that were laundering money for drug cartels and organized crime syndicates. This online (unfavorable) publicity was all that it took to force many of the most notorious havens for money laundering to change their laws, effectively outlawing the most egregious abuses.⁵⁰

Finally, a report from Human Rights Watch in December of 2000 called for the creation of an international policing agency with the resources and power to enforce global labor standards. HRW, like other critics of the WTO, believes that the WTO does not have the mandate or the ability to enforce such rules.⁵¹ According to HRW, “The current system to regulate global commerce [the WTO] leaves little or no room for human rights,” while globalization “generates human rights problems of global dimension.”⁵²

Perhaps Human Rights Watch and the many critics of the WTO are correct. What is needed at the global level in regard to corporate social responsibility is more than the WTO (or any other single organization) can provide. What is needed is a system of global governance for labor rights and environmental protection. Such a system, in our opinion, must include the WTO, but it must also go beyond future reforms within the WTO to include many additional mechanisms of global governance. The Global Compact must be one of the elements of global governance over corporate social responsibility.

49. *Id.*

50. *Annual Report 1999-2000*, Organisation for Economic Co-Operation and Development Financial Action Task Force on Money Laundering (22 June 2000), available at http://www.oecd.org/fatf/pdf/AR2000_en.pdf (last visited Sept. 8, 2001). For a more recent account of the OECD policies, see also FATF, *Annual Report 2000–2001*, available at http://www.oecd.org/fatf/pdf/AR2001b_en.pdf. For trends in OECD regulation and the record of its capacity building measures by creating broad public awareness, see FATF document releases http://www.oecd.org/fatf/FATDocs_en.htm#Annual (last visited June 27, 2001). See also David Ignatius, *Crackdown on Global Theft*, WASH. POST, Dec. 3, 2000, at B7.

51. Holger Jensen, *Sad State of Human Rights Comes Home to Roost*, NEWS JOURNAL, June 2, 2001, at A7.

52. *Id.*

