

Corporate Accountability: Is Self Regulation the Answer?

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The globalization of trade and investment flows has been paralleled by the emergence of Codes of Conduct. Although the first corporate code of conduct was created by the International Chamber of Commerce (ICC) in 1949, the 1990s witnessed a plethora of voluntary codes and corporate social responsibility (CSR) guidelines. There is no consensus on the precise definition of a code of conduct. Codes can range from one-page broad statements to detailed benchmarks and guidelines on how to conduct business practices globally. Voluntary approaches are based either on a self-regulation model or a co-regulation one between firms, citizen groups, and governments.

It is important to underscore that voluntary approaches did not emerge in a vacuum. Their emergence has more to do with a change in the paradigm of how global capital should be governed. Voluntary approaches, such as the OECD Guidelines on Multinational Corporations, were a direct response to UN initiatives in the 1970s to regulate the activities of TNCs. However, it needs to be emphasized that, unlike the UN initiatives, the OECD Guidelines were not aimed at protecting national sovereignty or addressing developmental concerns of the host countries, but at circumventing the UN initiatives.

The deregulation and 'free market' environment of the 1980s gave greater legitimacy to the self-regulation model embedded in the Anglo-Saxon business tradition. Many developed countries, particularly the US, encouraged TNCs to adopt voluntary measures rather than enacting and enforcing strict laws governing their activities and behavior. The argument against regulation was based on the belief that TNCs would undertake greater social and environmental responsibilities through voluntary measures.

In the late 1980s, campaigns launched by NGOs and consumer groups brought significant changes in the public perception of corporate behavior, which in turn facilitated the further proliferation of voluntary initiatives. Campaigns in the developed countries focusing on popular consumer brands such as Nike and Levi's brought to public notice some of the appalling working and environmental conditions in some of these companies' overseas production sites. Realizing that bad publicity could seriously damage corporate and brand reputations and that their products could face consumer boycotts, many corporations suddenly started adopting codes of conduct and other CSR measures. Since the early 1990s, the majority of voluntary measures have been undertaken by individual corporations. US-based corporations were the first to introduce codes of conduct with jeans manufacturer Levi's adopting one in 1992.

Pressures generated by the 'ethical' investor community and other shareholders also contributed to the proliferation of voluntary measures.

Given that there is often a considerable discrepancy between a corporation undertaking to follow a voluntary code and its actual business conduct (e.g., Nike), many critics argue that CSR measures have become corporate public relations tools used to create a positive corporate image. In today's competitive world, a positive image as a responsible company adds significant value to a company's business and reputation and

helps it manage various risks. Thus, the growing popularity of voluntary measures in recent years has not ended debates on how to regulate TNC corporate behavior.

TYPES OF CODES

Over the years, a variety of codes of conduct governing whole corporate sectors have emerged. Some of those to emerge from international organizations include the International Labor Organization's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy; the OECD Guidelines on Multinational Enterprises; UNCTAD's Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices; the Food and Agriculture Organization's Code on the Distribution and Use of Pesticides; and the World Health Organization/UNICEF Code of Marketing Breast Milk Substitutes. Business associations have also drawn up codes, such as the US Chemical Manufacturers Association's Responsible Care Program and the International Chamber of Commerce's Business Charter for Sustainable Development. A diverse range of players have been involved in the development of voluntary codes of conduct. These include corporations, business associations, NGOs, labor unions, shareholders, investors, consumers, consultancy firms, governments, and international organizations.

Broadly speaking, codes of conduct can be divided into five main types: specific company codes (for example, those adopted by Nike and Levi's); business association codes (for instance, ICC's Business Charter for Sustainable Development); multi-stakeholder codes (such as the Ethical Trading Initiative); inter-governmental codes (for example, the OECD Guidelines), and international framework agreements (such as the International Metalworkers Federation agreement with DaimlerChrysler).

Despite their diversity, the majority of codes of conduct are concerned with working condition and environmental issues. They tend to be concentrated in a few business sectors. Codes related to labor issues, for instance, are generally found in sectors where consumer brand image is paramount, such as footwear, apparel, sports goods, toys, and retail. Environmental codes are usually found in the chemicals, forestry, oil, and mining sectors.

Codes vary considerably in both their scope and application. Very few codes accept the core labor standards prescribed by the ILO. Although codes increasingly cover the company's main suppliers they tend not to include every link in the supply chain. Codes rarely encompass workers in the informal sector even though they could form a critical link in the company's supply chain. In terms of ensuring compliance, only a small proportion of codes include provisions for independent monitoring.

It is interesting to note that various types of codes have gradually evolved in response to developments in the governance of TNCs. When the limits of self-regulatory voluntary codes adopted by companies became apparent in the late 1990s, the focus shifted to co-regulation in the form of multi-stakeholder initiatives (MSIs) under which corporations, NGOs, labor unions, and even governments draft and monitor codes. Unlike company codes, MSIs address a vast range of issues and provide independent monitoring mechanisms and, therefore, are increasingly viewed as a credible alternative. MSIs are set up as non-profit organizations consisting of coalitions of companies, labor unions, and NGOs that develop specific standards. Some MSIs (such as Social Accountability International) have developed elaborate guidelines under which they certify that a

company complies with the standards. Initiatives such as the Ethical Trading Initiative and the Clean Clothes Campaign are increasingly seen as progressive MSI models by both corporations and NGOs.

International Framework Agreements also emerged in the late 1990s. More than 30 have been signed since 1999 in a variety of sectors, including mining, retailing, telecommunications, and manufacturing. The framework agreement signed between the International Federation of Building and Wood Workers (IFBWW) and Swedish retailing giant IKEA in 2001 is an example. An Agreement is negotiated between a transnational company and the trade unions of its workforce at the global level. It is a global instrument with the purpose of ensuring fundamental workers' rights in all of the TNC's locations as well as those of its suppliers. A Framework Agreement includes special reference to international labor standards and follows similar structure and monitoring procedures to those of MSIs. Since they are negotiated on a global level and require the participation of trade unions, International Framework Agreements are considered preferential instruments for dealing with the issues raised by globalization of investment flows by many social movements.

OECD GUIDELINES

In 1976, the OECD adopted a declaration on International Investment and Multinational Enterprises under which these Guidelines were included. Although legally non-binding, the Guidelines have been adopted by the 30 member-countries of the OECD and 8 non member-countries (Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, and Slovenia). Thus, the coverage of the Guidelines is vast, and most big TNCs fall under their remit. Addressed to businesses, the Guidelines provide voluntary principles and standards to encourage companies to follow responsible business practices. The stated objectives of the Guidelines are to ensure that TNCs operate in harmony with the policies of host countries and make positive contributions to them. Compared with company codes, the issues covered under the Guidelines are wide-ranging; they include employment and labor relations, environment, information disclosure, combating bribery, consumer interest, science and technology, competition, and taxation.

The Guidelines have been reviewed and revised five times in 1979, 1982, 1984, 1991 and 2000. After the 1991 review, a new chapter on Environmental Protection was added, while implementation procedures and supply-chain responsibilities on TNCs were included after the most recent review in 2000.

Even though the OECD does not provide any independent monitoring and verification processes for the Guidelines, it does mandate signatory countries to set up a National Contact Point (NCP) to deal with the promotion, management, interpretation, and dispute settlement of the Guidelines. Since 2000, more than 70 complaints regarding violations of the OECD Guidelines have been filed by several labor unions and NGOs at various NCPs. But very few complaints have succeeded to date, indicating the inherent weakness of this institutional mechanism. A number of reports by NGOs and labor unions have highlighted the technical and administrative ineffectiveness and inability of NCPs to handle complaints against TNCs. The Guidelines' confidentiality clauses and lack of transparency further restrict their use in creating public awareness on complaint cases.

Some NGOs consider the Guidelines a potentially powerful tool to put pressure on TNCs that they believe are violating social and environmental norms. There is no denying that, compared to individual company or business association codes, OECD Guidelines have better value because of governmental involvement, but they are still voluntary and non-binding in nature. The Guidelines do not confer any rights on citizens in the signatory countries to take legal action against TNCs for not implementing them. In the long run, a strategy exclusively based on filing complaint cases will not be sufficient to hold TNCs accountable to the general public for their actions.

THE ILO TRIPARTITE DECLARATION

The policy measures implementing the ILO's labor principles for TNCs are mainly contained in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Adopted in 1977, the Declaration is voluntary in nature, despite efforts made by labor unions to make it legally-binding. Concerned with employment policy, job security, and health and safety issues, the Declaration calls upon governments, employers, labor unions, and TNCs to work towards the realization of economic and social development. It calls for formulating appropriate national laws and policies and recommends the principles to be implemented by all concerned parties. It seeks to promote consistent standards for both domestic and international corporations. In addition, the Declaration makes specific reference to the United Nations Universal Declaration of Human Rights, International Covenants adopted by the UN, and the Constitution of the ILO.

The ILO has established a bureaucratic system to implement the Declaration. Investigations are carried out by the ILO secretariat, which sends a questionnaire to governments to complete in cooperation with employers and employees. The secretariat then compiles various national reports that it presents to the Board of Directors of the Committee on Multinational Enterprises. The national reports are usually vague with no reference to any specific TNC. Attempts made by labor unions for strict implementation procedures of the Declaration have not yielded any results so far.

In addition to the Tripartite Declaration, several other conventions and labor standards adopted by ILO have a direct bearing on the operations of TNCs. For instance, the Declaration on Fundamental Principles and Rights at Work adopted in 2000 seeks the contributions of TNCs to achieve basic labor rights, including freedom of association and the right to collective bargaining.

UN GLOBAL COMPACT

Launched in 2000, the Global Compact is a recent initiative by the UN aimed at engaging TNCs to support and implement ten principles covering human rights, labor, environmental protection, and anti-corruption. These principles are derived from the UN Universal Declaration on Human Rights, the ILO's Declaration on Fundamental Principles of Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption. The stated goal of the Global Compact is to create "corporate citizenship" so that business can become part of the solution to the challenges of globalization.

To date, nearly 1,200 companies (both domestic and transnational) have indicated their support for the Global Compact in addition to some international business associations, labor union bodies, and NGOs. The Global Compact runs a small secretariat, liaising with other UN agencies. Companies join this initiative by sending a letter of commitment to the UN Secretary-General. Each year, the company is expected to publish in its annual report a description of the methods through which it is supporting the principles of the Global Compact.

While some NGOs have welcomed the Global Compact as a forum to engage with the corporate world, critics have expressed their apprehensions that it would be largely used as a public relations tool by TNCs. Some of their concerns cannot be overlooked. Firstly, no one can deny that the Global Compact is a purely voluntary initiative. Secondly, there are hardly any effective mechanisms in place to ensure that companies comply with its ten principles. In other words, there are no monitoring and accountability mechanisms. It is for the company to decide which principles they wish to abide by in which of their activities. Thirdly, there is no procedure to screen companies - several TNCs that have long been charged with environmental and human rights abuses in host countries have joined the Global Compact (such as Nike, Royal Dutch Shell, and Rio Tinto).

Critics also fear that initiatives like the Global Compact would further increase corporate influence within the UN system in terms of policy advice. Little wonder that many critics see the initiative as more of an image-building exercise ("blue-washing" after the blue of the UN logo) than an attempt to improve social and environmental standards on the ground.

THE LIMITS OF VOLUNTARY APPROACHES

Voluntary approaches have several inherent weaknesses and operational difficulties, some of which are summarized here. First, as discussed above, corporate codes are purely voluntary, non-binding instruments. No corporation can be held legally accountable for violating them. The responsibility to implement the code rests entirely on the corporation. At best, corporations can be forced to implement codes only through moral persuasion and public pressure.

Second, despite being in existence for many years, the number of companies adopting such codes is still relatively small. Moreover, corporate codes are limited to a few sectors, particularly those in which brand names are important in corporate sales, such as garments, footwear, consumer goods, and retailing businesses. A large number of other sectors remain outside the purview of corporate codes.

Third, many codes are still not universally binding on all the operations of a company, including its contractors, subsidiaries, suppliers, agents, and franchisees. Codes rarely encompass the workers in the informal sector, who could well be an important part of a company's supply chain. Further, a company may implement only one type of code, for instance, an environmental one, while neglecting other important codes related to labor protection, and health and safety.

Fourth, corporate codes are limited in scope and often set standards that are lower than existing national regulations. For instance, labor codes recognize the right to freedom of association but do not provide the right to strike. In many countries, such as India, the right to strike is a legally recognized instrument.

Fifth, the mushrooming of voluntary codes in an era of deregulated business raises serious doubts about their efficacy. There is an increasing concern that corporate codes are being misused to deflect public criticism of corporate activities and to reduce the demand for state regulation of corporations. In some cases, codes have actually worsened working conditions and the bargaining power of labor unions. Moreover, increasing numbers of NGO-business partnerships established through corporate codes and CSR measures have created and widened divisions within the NGO community and sharpened differences between NGOs and labor unions. Voluntary codes of conduct can never substitute for state regulations. Nor can they substitute for labor and community rights. At best, voluntary codes can complement state regulations and provide an opportunity to raise environmental, health, labor, and other public interest issues. □□□