

# Rethinking Business Regulation

*From Self-Regulation to Social Control*

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## Acronyms

<b>AA</b>	AccountAbility
<b>ACTA</b>	Alien Torts Claims Act
<b>AIDS</b>	acquired immunodeficiency syndrome
<b>CCC</b>	Clean Clothes Campaign
<b>CEO</b>	Chief Executive Officer
<b>CORE</b>	Corporate Responsibility Coalition
<b>CSR</b>	corporate social responsibility
<b>ETI</b>	Ethical Trading Initiative
<b>FLA</b>	Fair Labor Association
<b>FWF</b>	Fair Wear Foundation
<b>HIV</b>	human immunodeficiency virus
<b>ILO</b>	International Labour Organization
<b>IUF</b>	International Union of Food and Allied Workers
<b>ISO</b>	International Organization for Standardization
<b>NGO</b>	non-governmental organization
<b>NIE</b>	new institutional economics
<b>NIEO</b>	New International Economic Order
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PRTR</b>	Pollutant Release and Transfer Register
<b>SA</b>	Social Accountability
<b>SAI</b>	Social Accountability International
<b>SME</b>	small and medium-sized enterprise
<b>TNC</b>	transnational corporation
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNRISD</b>	United Nations Research Institute for Social Development
<b>US</b>	United States
<b>WHO</b>	World Health Organization
<b>WRC</b>	Worker Rights Consortium
<b>WSSD</b>	World Summit on Sustainable Development

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## Summary/Résumé/Resumen

### **Summary**

One of the greatest challenges in the contemporary era of globalization and economic liberalization is how to ensure that the freeing-up of markets and the increasing dominance of transnational corporations (TNCs) in global trade, investment and value chains do not undermine patterns of development that are socially inclusive and ecologically sustainable. Several decades ago, many policy makers, activists and scholars looked to the state to protect against the perverse effects of markets and the concentration of capital. With the rise of neoliberal orthodoxy in the 1970s, perversity was not only downplayed in certain circles but also associated more with “state failure”. Markets, it was assumed, could be kept in check largely by a minimalist state and corporate self-regulation. A discourse and a set of policies, practices and institutions associated with corporate social responsibility (CSR) gained ground in the 1980s and went global in the 1990s. This CSR agenda centred heavily on the promotion of voluntary initiatives to minimize malpractice or improve social, environmental and human rights dimensions of business performance, as well as on the regulatory role of non-state actors in standard-setting and implementation.

This paper examines contemporary aspects of business regulation associated with CSR with a view to understanding its considerable influence in business, civil society, governmental and multilateral circles; as well as to assessing its potential to counter the perverse effects of economic liberalization and corporate-led globalization, and reassert social control over markets. Section 1 describes the increasing role of both private and non-governmental authority in the social regulation of business, and how the CSR agenda has evolved to embrace a broader range of issues and practices. Section 2 examines the gradual hardening of regulatory approaches, from softer voluntary initiatives that characterized corporate self-regulation to “co-regulation” and multistakeholder initiatives; and, more recently, the renewed attention to legalistic approaches within the emerging corporate accountability agenda.

Section 3 focuses on the potential for regulating business through forms of “articulated regulation”, a term used to refer to the coming together of different regulatory approaches in ways that are complementary and synergistic, or less contradictory. While this is an important feature of the emerging corporate accountability agenda, it has received little attention in conceptual and strategic thinking. Four forms of articulated regulation are identified. They include complementarity between different non-governmental regulatory systems, the interface between confrontational and collaborationist forms of civil society activism, linkages between voluntary and legalistic approaches or public policy, and greater policy coherence at both the micro level of the firm and the macro level of government and international policy.

As a basis for understanding and assessing the potential and limitations of ratcheting-up and scaling-up CSR and corporate accountability, the paper considers, in section 4, the theory and practice of progressive institutional reform. The discussion focuses on the way in which different elements and contexts related to crisis, agency, ideas, institutions and structure intervene and interact to explain processes of institutional change, and how these aspects have shaped the CSR and corporate accountability agendas.

This discussion cautions against broad generalizations about the future trajectory of CSR and corporate accountability, noting that outcomes are likely to vary considerably in different enterprise, industrial, societal and capitalist settings. The concluding section does suggest, however, that the major obstacles confronting these different agendas are structural and political. Referring to three periods in the twentieth century when more socially sensitive forms of corporate capitalism emerged, the analysis suggests that the structural and political conditions that were conducive to such developments are far less in evidence today. Indeed, while the mainstream CSR agenda has amassed considerable political momentum, its proponents generally ignore the extent to which the scaling-up and deepening of CSR confronts

a contradictory macroeconomic environment. The corporate accountability movement, for its part, attempts to address these structural issues but confronts the major political challenge of not only overcoming powerful opposition but also building alliances and networks within and across societal groups and regions.

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## **Résumé**

Comment faire pour que la libéralisation des marchés et la prédominance de plus en plus marquée des sociétés transnationales (STN) dans les chaînes de valeur, le commerce et les investissements mondiaux ne fragilisent pas des modes de développement qui sont facteurs d'intégration sociale et écologiquement durables? C'est là l'un des grands défis qui se posent à l'époque contemporaine de la mondialisation et de la libéralisation économique. Voilà plusieurs décennies, responsables politiques, militants et universitaires étaient nombreux à attendre de l'Etat une protection contre les effets pervers des marchés et la concentration du capital. Avec la montée de l'orthodoxie néolibérale dans les années 70, ces effets pervers ont été non seulement minimisés dans certains milieux mais encore attribués à "l'échec de l'Etat". Un Etat minimaliste et l'autoréglementation des entreprises étaient censés suffire largement à contenir les marchés. Le discours de la responsabilité sociale des entreprises (RSE), avec toutes les politiques, pratiques et institutions qui lui sont associées, a peu à peu gagné du terrain dans les années 80 pour s'étendre au monde entier au cours de la décennie suivante. Le programme de la RSE compte essentiellement sur des initiatives volontaires pour faire reculer les mauvaises pratiques ou améliorer les résultats sociaux et environnementaux des entreprises et leur respect des droits de l'homme ainsi que sur le rôle de régulation que peuvent jouer des acteurs autres que l'Etat dans l'élaboration de normes et leur mise en application.

Ce document étudie les aspects contemporains de l'encadrement des entreprises qui sont liés à la RSE, afin de comprendre l'influence considérable qu'elle exerce dans le monde des affaires, la société civile et les milieux gouvernementaux et multilatéraux, et d'évaluer dans quelle mesure elle peut combattre les effets pervers tant de la libéralisation économique que de la mondialisation entraînée par les grandes sociétés, et rétablir un contrôle social sur les marchés. La section 1 décrit la part croissante que prennent des instances privées et non gouvernementales à l'encadrement social des entreprises et montre en quoi le programme de la RSE a évolué pour recouvrir aujourd'hui tout un éventail de questions et de pratiques. La section 2 étudie le durcissement progressif des démarches d'encadrement et le passage de l'autoréglementation des sociétés, dont les initiatives volontaires étaient peu contraignantes, à la "co-réglementation" et aux initiatives multipartites et, récemment, l'attention portée à nouveau aux démarches légalistes avec l'émergence d'un mouvement tendant à obliger les entreprises à rendre des comptes.

Dans la section 3, l'auteur s'interroge sur ce que l'on peut attendre de diverses formes d'"encadrement combinatoire", expression employée pour désigner l'utilisation complémentaire et synergique ou moins contradictoire, de diverses démarches d'encadrement. S'il s'agit là d'un élément important du programme de ceux qui veulent obliger les entreprises à rendre des comptes, il a peu retenu l'attention au niveau conceptuel et stratégique. L'auteur distingue quatre formes d'encadrement combinatoire. Elles font se compléter différents systèmes non gouvernementaux d'encadrement, associent confrontation et collaboration, les deux attitudes fondamentales de la société civile militante, démarches volontaires et recours à la loi ou à la politique publique, et entraînent une plus grande cohérence des politiques tant au micro-niveau, celui de l'entreprise, qu'au macro-niveau, celui du gouvernement et de la politique internationale.

Pour comprendre et analyser le potentiel et les limites de toute démarche tendant à responsabiliser les entreprises au plan social et à les obliger davantage à rendre des comptes,

l'auteur étudie, dans la section 4, la réforme progressive des institutions sous l'angle théorique et pratique. Il traite de la manière dont interviennent et se conjuguent divers éléments et contextes liés à la crise, à la participation, aux idées, aux institutions et aux structures pour expliquer certaines évolutions des institutions et s'intéresse à la façon dont ces aspects ont façonné les programmes à la fois de la RSE et de ceux qui réclament des entreprises comptables de leurs actes.

Cet examen met en garde contre une généralisation excessive lorsqu'il s'agit de définir la trajectoire que les deux mouvements devraient suivre à l'avenir, en relevant que les résultats risquent de varier considérablement selon les entreprises, les branches d'industrie, le contexte sociétal et capitaliste. La dernière section, cependant, laisse à penser que les principaux obstacles auxquels se heurtent les deux mouvements sont structurels et politiques. Evoquant trois périodes du XXème siècle où l'on a vu apparaître des formes de capitalisme d'entreprise plus sensibles aux besoins sociaux, l'auteur suggère que les conditions structurelles et politiques qui étaient favorables à ce genre d'évolution sont loin d'être réunies aujourd'hui. En fait, si le programme dominant de la RSE s'est rallié des appuis politiques considérables, ses défenseurs ne veulent généralement pas admettre à quel point l'environnement macroéconomique est contraire à son élargissement et à son approfondissement. Le mouvement qui plaide pour des entreprises comptables de leurs actes tente de s'attaquer à ces questions structurelles mais doit relever un défi politique de taille puisqu'il doit non seulement venir à bout d'une puissante opposition mais aussi former des alliances et des réseaux à l'intérieur des groupes sociaux et des régions comme entre eux.

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### **Resumen**

Uno de los grandes desafíos en la era contemporánea de la mundialización y la liberalización económica reside en cómo asegurar que la apertura de los mercados y el creciente dominio que ejercen las empresas multinacionales (EM) sobre el comercio, las inversiones y las cadenas de valor en todo el mundo no socaven los patrones de desarrollo socialmente incluyentes y ecológicamente sostenibles. Varias décadas atrás, muchos responsables de la formulación de políticas, activistas y académicos veían en el Estado la protección contra los efectos perversos de los mercados y la concentración de capital. Con el surgimiento de la ortodoxia neoliberal en los años 70, esa perversidad no sólo fue minimizada en ciertos círculos, sino relacionada en mayor medida con el "fracaso del Estado". Se suponía entonces que los mercados podrían mantenerse ampliamente bajo control por medio de un Estado minimalista y la autorregulación de las empresas. Un discurso y un conjunto de políticas, prácticas e instituciones asociados con la responsabilidad social empresarial (RSE) ganaron terreno en los años 80 y se hicieron del escenario mundial en los 90. La agenda de RSE se centró fundamentalmente en la promoción de iniciativas voluntarias para reducir al mínimo la mala praxis o mejorar las dimensiones sociales, ambientales y de derechos humanos del desempeño de las empresas, así como en la función de los actores no estatales para establecer e implementar las normas.

En este documento se analizan los aspectos contemporáneos de la regulación de las empresas asociadas con la RSE con miras a comprender su considerable influencia en los negocios, la sociedad civil, los gobiernos y los foros multilaterales. También se evalúa su potencial para contrarrestar los efectos perversos de la liberalización económica y una mundialización liderada por las empresas y reafirmar el control social sobre los mercados. En la sección 1 se describe el creciente papel tanto de la autoridad privada como de la autoridad no gubernamental en la regulación social de las empresas, y la forma en que la agenda de RSE ha evolucionado para abarcar una gama más amplia de temas y prácticas. En la sección 2 se examina el endurecimiento gradual de las propuestas regulatorias, al pasar del punto más blando con las iniciativas voluntarias que caracterizan la autorregulación empresarial, a la "corregulación" y

las iniciativas de múltiples partes interesadas y, más recientemente, la renovada atención que se presta a los enfoques legalistas en la nueva agenda de rendición de cuentas de las empresas.

La sección 3 se dedica a estudiar las posibilidades de regular los negocios por medio de formas de “regulación articulada”, término utilizado para referirse a la unión de distintos enfoques regulatorios de forma complementaria y sinérgica, o menos contradictoria. A pesar de que ésta es una característica importante de la agenda de rendición de cuentas de las empresas que está emergiendo, ha recibido poca atención en las reflexiones conceptuales y estratégicas. Se han identificado cuatro modalidades de regulación articulada: la complementariedad entre diferentes sistemas regulatorios no gubernamentales, la interacción entre las formas de activismo de la sociedad civil (confrontación y colaboración), los vínculos entre los enfoques voluntarios y legalistas o la política pública y una mayor coherencia de las políticas tanto al nivel micro de la empresa como al nivel macro del gobierno y la política internacional.

Para comprender y evaluar el potencial y las limitaciones del incremento y mejoramiento de la RSE y la rendición de cuentas de las empresas, se analizan en la sección 4 del documento la teoría y práctica de una reforma institucional progresiva. El debate se centra en la forma en que elementos y contextos diferentes relacionados con la crisis, la participación, las ideas, las instituciones y la estructura intervienen e interactúan para explicar los procesos de cambio institucional y cómo estos aspectos han dado forma a las agendas de RSE y de rendición de cuentas de las empresas.

En esta reflexión se advierte contra las generalizaciones sobre la trayectoria futura de la RSE y la rendición de cuentas de las empresas, al señalar que los resultados probablemente varíen en grado considerable conforme al entorno empresarial, industrial, social y capitalista. Sin embargo, en la sección dedicada a las conclusiones, se indica que los principales obstáculos que confrontan estas distintas agendas son estructurales y políticos. Al referirse a tres períodos del siglo XX en que surgieron formas socialmente más sensibles del capitalismo empresarial, el análisis sugiere que las condiciones estructurales y políticas que condujeron a esos acontecimientos entonces son mucho menos obvias hoy en día. En efecto, aunque la agenda principal de RSE ha cobrado un considerable impulso, sus proponentes por lo general ignoran en qué medida el mejoramiento y la profundización de la RSE enfrentan un entorno macroeconómico contradictorio. Por su parte, el movimiento de rendición de cuentas de las empresas intenta abordar estos problemas estructurales, pero tiene ante sí el gran desafío político de no sólo superar una poderosa oposición, sino además establecer alianzas y redes dentro y entre grupos sociales y regiones.

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## Introduction

The significant changes in state-market relations that have characterized the contemporary era of globalization and economic liberalization are particularly evident in the arena of corporate social responsibility (CSR). Here we see “softer”, voluntary approaches to business regulation being promoted in an attempt to improve aspects of company performance that relate to social and sustainable development and human rights. Such approaches are often designed by business interests and non-governmental organizations (NGOs), and couched in a discourse that proclaims their superiority in relation to legalistic, “harder” approaches involving state actors.

It would be wrong, however, to regard this apparent transfer of regulatory authority from state to non-state actors as simply part of a broader trend of “deregulation” promoted by neoliberalism. What has occurred is a more complex process of “re-regulation”, where the rolling back of the state in certain areas of the economy and the freeing-up of markets have gone hand in hand with the strengthening of governmental and intergovernmental rules to protect, for example, certain types of property rights, international trade and investment, and the environment (Braithwaite and Drahos 2000). Important differences in the trajectory and content of regulatory reform and approach are also apparent under different varieties or models of capitalism, North and South,<sup>1</sup> as well as in specific country and industry contexts. Furthermore, deregulation at the national level is sometimes accompanied by new or strengthened forms of regulation at local and regional levels.

In the field of CSR, re-regulation is associated with the changing character of institutional forms that have characterized the rise of private authority in recent decades (Cutler et al. 1999; Haufler 2001). Since the late 1990s, in particular, there has been a gradual scaling-up and ratcheting-up of standards and implementation procedures related to CSR, with regulatory authority being assumed to a greater extent by NGOs and multistakeholder institutions or public-private partnerships, practising so-called civil regulation and co-regulation.<sup>2</sup> These “collective” or more “socialized” forms of private authority (O’Rourke 2003) are increasingly supported by governments and intergovernmental organizations. More recently still, civil society and public authorities are demanding corporate accountability through regulatory arrangements that go beyond conventional voluntary approaches by, *inter alia*, placing greater emphasis on corporate obligations, legalistic approaches and some form of punishment in cases of non-compliance.<sup>3</sup>

This paper examines the theory, practice and prospects of re-regulation associated with corporate accountability and the ratcheting-up of CSR. Section 1 examines the shift toward non-governmental regulatory systems and multistakeholder initiatives,<sup>4</sup> identifying some of their achievements and limitations. Section 2 describes the emerging corporate accountability agenda, highlighting its distinctive features and specific initiatives. Section 3 introduces the notion of “articulated regulation”, which refers to the coming together of different regulatory approaches in ways that are complementary and synergistic, and suggests that a potentially fruitful area for policy intervention lies at the interface between soft and hard, and voluntary and legalistic, approaches. Articulated regulation also refers to the dual presence of forms of activism involving confrontation and collaboration, as well as greater policy coherence at both the micro level of the firm and the macro level of government and international policy. While the terrain of articulated regulation is an important feature of the emerging corporate accountability agenda, it has received little attention in conceptual and strategic thinking.

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<sup>1</sup> Hall and Soskice 2001; Huber 2002; Whitley 2000; Woo-Cummings forthcoming.

<sup>2</sup> Murphy and Bendell 1997, 1999; Hanks 2002; Utting 2002a; Zammit 2003.

<sup>3</sup> Bendell 2004; Broad and Cavanagh 1999; Newell 2002.

<sup>4</sup> The term “multistakeholder initiatives” is often used to refer to voluntary CSR initiatives where two or more stakeholders, actors or interest groups cooperate in the design and application of standards. Such stakeholders often include companies, industry associations, NGOs, trade unions, government agencies and international organizations. Multistakeholder initiatives are sometimes legally constituted as not-for-profit organizations, with different interests and actors being represented in their governance structures.

As a basis for understanding the potential and limitations of the ratcheting-up and scaling-up of CSR and corporate accountability, section 4 looks at the theory, dynamics and history of progressive institutional reform. The discussion focuses on the way in which different elements related to crisis, agency, ideas, institutions and structure intervene and interact to explain processes of institutional change; how these aspects have shaped the CSR and corporate accountability agendas; and what they tell us about the possibilities for transforming the canvas of fragmented, experimental and fledgling initiatives into a more generalized feature or variant of “stakeholder capitalism”.<sup>5</sup>

## **1. A Rapidly Evolving Agenda**

Private regulation related to CSR has evolved considerably over the past two decades. When the contemporary CSR agenda took off, particularly in the build-up to and aftermath of the 1992 Earth Summit in Rio de Janeiro, it centred very much on a limited range of environmental and social initiatives; a small group of global brand name corporations, often reacting defensively to activist pressures; and a few management tools, innovations and concepts. These included, for example, selected improvements in environmental management systems, eco-efficiency, and self-prescribed and self-monitored company or industry-based codes of conduct.

Today we see more companies and industries involved, more issues on the agenda, and some transnational corporations (TNCs) and organized business interests not simply reacting to pressure but being more proactive, and attempting to apply CSR principles, policies and practices more systematically throughout corporate structures. The range of CSR interventions has broadened to include stakeholder dialogues, external monitoring and verification, “triple bottom-line” reporting and accounting,<sup>6</sup> certification and labelling, and public-private partnerships. And CSR policies and practices are reaching deeper into TNC supply chains.

The CSR agenda has also incorporated a growing number of elements associated with the international rights-based agenda, notably labour rights. Particular issues of global concern such as HIV/AIDS and violent conflict, are also being addressed. More recently still, CSR is being linked explicitly to the global poverty reduction agenda, as attention focuses on how TNCs and other companies can alleviate poverty at the so-called bottom of the pyramid.<sup>7</sup>

Also evident are new institutional arrangements involving various forms of non-governmental regulatory action where civil society organizations not only attempt to exert pressures on business through confrontational activism but work collaboratively with companies, business associations, and governmental and intergovernmental organizations through various types of partnerships and service delivery activities. Increasingly, NGOs are taking the lead in organizing, or are participating in multistakeholder initiatives associated with standard-setting, company reporting, monitoring, certification and learning about good practice (Utting 2002a, 2004).

Such initiatives include:

- certification schemes, for example, the International Organization for Standardization (ISO) 14001 (environmental management standards), the Fair Labor

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<sup>5</sup> The term “stakeholder capitalism” is usually employed to characterize a “European” model where the interests of labour and social dialogue feature more prominently, as compared to an “Anglo-Saxon” (United States and United Kingdom) model, which is thought to place more emphasis on the interests of shareholders. In the context of this paper, the term is used more loosely as a convenient label to describe any model that in given historical contexts is noted for its social and redistributive features as in the case, for example, of early twentieth century “Fordism” in the United States, post-Second World War social democracy in Europe, and the so-called corporate social welfare model in East Asia.

<sup>6</sup> The term “triple bottom-line” refers to social, environmental and economic aspects of business performance (Elkington 1997).

<sup>7</sup> See Prahalad (2005); United Nations Development Programme (UNDP) Commission on the Private Sector and Development (2004); World Commission on the Social Dimension of Globalization (2004); and United Nations Millennium Project (2005).

Association (FLA) and Social Accountability International's (SAI) SA8000 (labour standards), and the Forest Stewardship Council (sustainable forest management);

- global framework agreements, where international trade union organizations negotiate accords with global corporations that agree to apply certain standards throughout their global structure (for example, agreements between the International Union of Food and Allied Workers/IUF and Chiquita and Danone);
- standard-setting and monitoring schemes associated with anti-sweatshop initiatives such as the Clean Clothes Campaign (CCC), the Global Alliance for Workers and Communities,<sup>8</sup> and the Worker Rights Consortium (WRC); and
- initiatives that emphasize stakeholder dialogues and learning about good practice, such as the United Nations Global Compact (promoting 10 principles derived from international labour, environmental, human rights and anti-corruption law), the Global Reporting Initiative (promoting sustainability or triple bottom-line reporting), the Ethical Trading Initiative (ETI; promoting social standards throughout supply chains), and AccountAbility's AA1000 (promoting social and ethical accounting).

Many of these initiatives have addressed some of the more obvious limitations inherent in corporate self-regulation. To some extent, certain schemes are conducive to democratic governance by engaging a broader range of actors or stakeholders in consultative and decision-making processes. They have also contributed to harmonizing standards and implementation procedures, and to imposing some order on what was becoming a confusing array of codes of conduct. And they have tried to encourage companies to internalize social and environmental standards more systematically throughout their corporate structures. As a result, CSR initiatives are penetrating deeper into TNC supply chains as opposed to remaining at the level of parent firms and affiliates. Multistakeholder initiatives have also played a key role in the evolution of the CSR agenda, as described above, where an increasing number of issues are being placed on the CSR table (Haufler 2004). The early focus on working conditions, for example, has been complemented by greater attention to labour rights such as freedom of association and collective bargaining. Procedural aspects have also been improved with companies having to accept independent monitoring as opposed to relying exclusively on internal monitoring or no monitoring at all; and they are having to measure concrete changes in performance.

To some extent, therefore, multistakeholder initiatives involve a ratcheting-up of standards and a slight hardening of the soft voluntarism that characterized the early experience of CSR, which centred on corporate self-regulation. Indeed, some see company participation in such initiatives as indicative of a particular stage of an evolutionary learning and implementation curve. According to Zadek, CSR companies tend to move through various stages, described as "defensive", in which they deny they are part of the problem; "compliance", in which they adopt a policy which is seen as a cost; "managerial", in which the issue is embedded in their core management processes; "strategic", where addressing the issue is seen as good for business; and "civil", where they encourage their peers to also address the issue. One of the ways they operationalize this latter stage is by participating in multistakeholder initiatives (Zadek 2004).

More generally, multistakeholder initiatives can be seen as important elements in the new institutionalism and the drive for "good governance" that are core features of the post-Washington Consensus, where it is increasingly recognized that there is a need for institutions that can minimize the perverse social, environmental and developmental effects of open markets, economic liberalization and corporate globalization.

In practice, some multistakeholder initiatives are more effective than others in relation to different regulatory functions. O'Rourke has placed non-governmental systems of labour regulation on a spectrum, "from purely 'privatized' regulation...to more 'collaborative' regulation, to more 'socialized' regulation" (O'Rourke 2003:19–20). The "privatized" variant, for

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<sup>8</sup> This initiative was terminated in 2004.

example, is likely to facilitate easy access to the factory floor and to managers in order to obtain and disseminate information. The “collaborative” system may be more effective at supply chain monitoring and in convincing global corporations of the need to gradually raise the bar in terms of standards and compliance. And the “socialized” system may facilitate easier access to workers and local stakeholders, be more transparent in terms of public disclosure, and be freer to expose malpractice in the public domain.

While addressing some of the limitations that characterize company self-regulation, multistakeholder initiatives yield, in fact, a very mixed scorecard, reflected in the following traits. First, they involve only a small fraction of the world’s 61,000 TNCs, nearly one million affiliates and several million suppliers.<sup>9</sup> For example, by late 2004, 37 corporations were in the ETI, while 15 were participating actively in the FLA. The world’s largest CSR-related certification scheme, namely that which certifies the application of ISO (14001) standards related to environmental management systems, involved approximately 90,000 facilities (not all companies) by December 2004. This represents a small proportion of TNC affiliates and suppliers worldwide. Furthermore, while ISO 14001 certification continues to expand at a healthy rate, it is notable that the rate of expansion is far less than that achieved for quality management certification under the ISO 9000 series.<sup>10</sup>

Many of the companies involved, however, are among the world’s largest. The United Nations’ Global Compact, for example, has enlisted the support of 98 of the Global Fortune 500 companies.<sup>11</sup> But the participation of a global player in a multistakeholder initiative or its engagement with the CSR agenda should not be taken to mean that CSR practices have been internalized throughout the corporate structure or, indeed, that participation signifies a major change in corporate performance related to social, environmental and human rights aspects. In reality, CSR practices often remain limited to specific ad hoc interventions. This is apparent in relation to the Global Reporting Initiative, where by August 2005, 707 companies claimed to be using one or some of the reporting guidelines but only 68 were using them more systematically. It is also apparent in relation to the reporting on CSR best practices by companies involved with the Global Compact. Indeed, a 2004 evaluation of the Global Compact carried out by McKinsey and Company found that membership of the compact stimulated only 9 per cent of the participating companies to take actions that they would not otherwise had taken had they remained outside the initiative.<sup>12</sup> In the vast majority of cases (91 per cent), companies were doing things they would have done anyway (51 per cent), albeit more efficiently or quickly, or had remained largely inactive (40 per cent). So while some CSR commentators like to describe CSR as stool with three legs that symbolise financial, social and environmental objectives, in reality the legs are quite uneven, rendering the stool somewhat less steady than may appear at first sight.

Bringing more and more issues under the rubric of CSR can be regarded as a sign of growing responsiveness to development concerns, but it has inevitably complicated the task of ensuring that such standards are applied in practice. As noted by the International Labour Organization (ILO):

The broad range of issues covered by such ‘standards’ as the ISO model and the AA1000 framework raises a familiar problem of lack of rigour and sharpness. This may be lessened by approaches that are more focused on labour standards per se, such as the Fair Labor Association...and Social Accountability International (ILO Socio-Economic Security Programme 2004:355).

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<sup>9</sup> For data on the number of TNCs and TNC affiliates, see UNCTAD (2004).

<sup>10</sup> Whereas 90,000 entities obtained ISO 14001 certification during the scheme’s first 10 years of existence, the corresponding figure for ISO 9000 certification of approximately 410,000 facilities was nearly five times greater (see ISO 2004, 2005).

<sup>11</sup> In September 2005, the total number of companies participating in the Global Compact was 2,236.

<sup>12</sup> Of this 9 per cent, two-thirds (6 per cent) replied that “change would have been difficult to implement without being a participant” while one-third (3 per cent) replied that “the change would not have happened without being a participant” (McKinsey and Company 2004).

The report goes on to note that CSR reporting initiatives have made less progress on some labour- and work-related issues, including equal remuneration, job security and disciplinary practices (ILO Socio-Economic Security Programme 2004:356).

Second, the procedures adopted by certain schemes to encourage compliance with the standards they promote often remain weak. Others may be stronger on aspects to do with monitoring and verification but tend to engage very few companies. The Global Compact and the Global Reporting Initiative, for example, rely heavily on dialogue and best practice learning, and do not monitor compliance. ISO 14001 certification indicates whether or not a company has in place elements of an environmental management system, not whether it has actually improved its environmental impacts (Krut and Gleckman 1998). Schemes, such as the WRC and the CCC, adopt more rigorous monitoring procedures but directly engage far fewer companies.

Third, some schemes tend to be fairly exclusionary, top-down and technocratic. The voluntary approaches they promote are often packaged in a discourse that frowns upon “command and control” regulation, which is deemed unworkable, too slow or outmoded. In contrast, voluntary approaches tend to be portrayed as innovative, pragmatic, consensual and modern. In a similar vein, various forms of protest and confrontational activism, which have played a crucial role in improving corporate social and environmental performance, are deemed to be somewhat ideological or passé (SustainAbility 2003).

The tendency to marginalize the role of public policy and to emphasize the role of selected actors and institutions in the promotion of socially responsible business partly explains the minimalist role often assigned to local and national institutions in developing countries in the design and implementation of CSR standards (Kemp 2001; Ascoly and Zeldenrust 2001). While some multistakeholder approaches have governance structures that are genuinely participatory, others have not. Key actors or stakeholders, notably workers or trade unions, and relevant interest groups in developing countries, are sometimes poorly represented and relatively voiceless in the Northern-centric consultation and decision-making processes that often characterize multistakeholder initiatives (Bendell 2004; Utting 2002a).

Fourth, some schemes have not seriously addressed the question of what impact CSR is having on developing countries and the possible tensions and contradictions between CSR and development.<sup>13</sup> It is often assumed that anything that involves improved social and environmental standards in TNC supply chains or small and medium-sized enterprises must be good for development. But this “do-gooding” or “win-win” approach can ignore key development issues, priorities and realities in developing countries; certain stakeholders; and the fact that raising social and environmental standards implies costs that may constrain enterprise development and employment generation, and that CSR supply chain management may be a way for TNCs to pass costs on to suppliers. It also tends to ignore more fundamental structural issues associated with corporate power and certain competitive and fiscal practices of TNCs that are implicated in the broader problem of underdevelopment.

## 2. Corporate Accountability

The above discussion suggests that two of the fundamental problems confronting the corporate social responsibility agenda involve the regulation question and the development question. The former is being addressed, to some extent, by the emerging corporate accountability “movement”, made up primarily of NGOs, trade union organizations, networks and scholars, but also certain mainstream political and business actors and institutions. Whereas the CSR movement of the 1980s and 1990s was led mainly by business organizations and NGOs, now Northern governments and international organizations are more involved.

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<sup>13</sup> Blowfield 2004; Kabeer 2004; UNRISD 2004.

The process of ratcheting-up voluntary initiatives, or the gradual hardening of softer approaches, has recently entered a new phase. This involves an approach to regulation that emphasizes not only more effective codes of conduct, monitoring, reporting and certification systems but also recourse to public policy and law. This new approach is encapsulated in the term “corporate accountability”. The concept of corporate accountability is different to the conventional notion of CSR, where the keywords are self-regulation, voluntarism and ethical responsibility. Corporate accountability implies “answerability”, or an obligation to answer to different stakeholders, and some element of “enforceability”, where non-compliance results in some sort of penalty (Newell 2002; Bendell 2004). It also implies “applicability” or “universality”, in the sense that CSR standards apply to a far broader range of companies, rather than simply to those individual companies that choose to adopt voluntary initiatives (Dwight Justice, cited in UNRISD 2004). Some strands of the corporate accountability movement are concerned with mechanisms that not only hold corporations to account but also curb the concentration of corporate power.<sup>14</sup>

In recent years, there has been a wave of international agreements, proposals and campaigns associated with corporate accountability. Many of these initiatives are led by civil society organizations.

- Friends of the Earth International proposed that the 2002 World Summit on Sustainable Development (WSSD) consider a Corporate Accountability Convention that would establish and enforce minimum environmental and social standards, encourage effective reporting and provide incentives for TNCs taking steps to avoid negative impacts. The proposal was not accepted by the summit, but some of the language was included in the WSSD Plan of Implementation.
- Several trade union and non-governmental organizations in the United States have launched the International Right to Know campaign to demand legislation that would oblige US companies or foreign companies traded on the US stock exchanges to disclose information on the operations of their overseas affiliates and major contractors.
- The International Forum on Globalization has advocated the creation of a United Nations Organization for Corporate Accountability that would provide information on corporate practices as a basis for legal actions and consumer boycotts. Christian Aid has proposed the establishment of a Global Regulation Authority that would establish norms for TNC conduct, monitor compliance and deal with breaches. Others have called for the reactivation of the defunct United Nations Centre on Transnational Corporations, some of whose activities were transferred to the United Nations Conference on Trade and Development (UNCTAD) a decade ago.
- There have been calls, particularly in the United States, for the “re-chartering” of corporations, to revive a system whereby states granted corporations a charter. This license to operate stipulated certain responsibilities and obligations and, periodically, had to be renewed.
- In the United Kingdom, over 100 civil society, party political and other organizations have joined the Corporate Responsibility Coalition (CORE), which is calling for mandatory triple bottom-line reporting; legal liability for human rights and environmental abuses committed by UK companies abroad; and extending the director’s duties so that they take into account not only the impact of decisions on shareholders but also on other stakeholders.
- Various NGOs and lawyers have called not only for extending international legal obligations to TNCs in the field of human rights but also bringing corporations under the jurisdiction of the International Criminal Court.
- In 2002, a coalition of civil society organizations and the financier, George Soros, launched the Publish What You Pay Campaign, which calls for a regulatory approach to ensure that extractive companies in the oil and mining industries disclose the net amount of payments made to national governments.

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<sup>14</sup> See, for example, International Forum on Globalization (2002) and Broad (2002).

- In 2003 the Tax Justice Network was formed to address trends in global taxation that have negative development impacts, notably tax evasion and avoidance through transfer pricing and off-shore tax havens, and tax competition between states that reduces their ability to tax the major beneficiaries of globalization.

Governmental, regional and multilateral institutions have promoted various initiatives, including the following:

- A UK law requires pension funds to report on social and environmental aspects. In early 2005, the Labour government published a draft “corporate manslaughter” bill which, if passed, would hold companies criminally liable for deaths arising from gross negligence on the part of senior management. The French government requires all nationally listed corporations to report on a range of sustainability issues. The Danish Ministry of Social Affairs has developed a social index, which can be used by companies to obtain an “S-label”.
- The European Parliament passed a resolution in 1999 calling for a code of conduct for European TNCs operating in developing countries, and in 2002 the European Commission presented a strategy to promote CSR.
- The United Nations Sub-Commission on the Promotion and Protection of Human Rights adopted, in 2003, the draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regards to Human Rights, which require approval by the Commission on Human Rights to become international law. In 2005, the commission passed a resolution to appoint a Special Representative of the UN Secretary-General to continue the process of dialogue on this issue.
- The Guidelines on Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD) were strengthened in 2000, in part by enhancing the role of “national contact points”, which constitute a form of complaints procedure.

While some of these initiatives attempt to strengthen voluntary approaches, in the main they imply that the rights and freedoms of companies must be balanced not just by responsibilities and voluntary initiatives but also by obligations. In this sense, the concept of corporate accountability has affinities with that of citizenship and is useful for rectifying narrow interpretations of the concept of “corporate citizenship”. This is used by many in the CSR community either as a synonym for CSR or to refer to the balancing of corporate rights and (voluntary) responsibilities, rather than the balancing of rights and (legal) obligations. While standard-setting and other regulatory action related to CSR are often undertaken by self-appointed entities whose accountability to external agents may be very limited, the theory and practice of corporate accountability highlights issues of legitimacy and democratic governance, including the question of who decides and who speaks for whom. It also focuses attention on complaints procedures or complaints-based systems of regulation that facilitate the task of identifying, investigating, publicizing and seeking redress for specific instances of corporate malpractice. As discussed below, this is an alternative or complementary approach to regulatory systems that involve broad but relatively superficial systems of reporting, monitoring, auditing and certification.

Corporate accountability also suggests that if CSR is to be meaningful and really work for development and democratic governance, then it is not enough for companies to improve selected aspects of working conditions or environmental management systems, and to engage in community projects and corporate giving. Structural and macro-policy issues also need to be addressed, including, for example, perverse patterns of labour market flexibilization and subcontracting that can result in the deterioration of labour standards and labour rights in developing countries (Cappellin and Giuliani 2004; Arora and Sood forthcoming); corporate taxation and transfer pricing practices that deprive developing country governments and economies of essential resources (Riesco forthcoming); the concentration of economic power in large companies and their competitive advantage over small enterprises and infant industries

(van Tudler 2002; Zammit 2003); and the political influence of TNCs and business-interest lobbies (Bhagwati 2004; Balanyá et al. 2000).

While the emerging corporate accountability agenda attempts to address head-on the regulation question associated with CSR, namely, the concern that CSR standards and initiatives apply to relatively few companies and are poorly implemented, what is less clear is whether it addresses the development question, an issue which is discussed in the final section.

### **3. Articulated Regulation**

An important contribution of some of the analysis, activism and policy proposals associated with co-regulation and corporate accountability is that they go beyond the conventional polarized debate about the virtues and limitations of voluntary versus mandatory approaches. This debate has been useful for demystifying the somewhat utopian and feel-good discourse of win-win scenarios and “partnerships” that embellishes CSR and fails to problematize sufficiently the role of TNCs in global governance and development. It has also been useful in highlighting the tensions and trade-offs between different regulatory approaches, and in reminding the critics of corporate globalization of the regulatory limitations—past and present—of both state and multilateral institutions. But the polarized nature of the debate has diverted attention away from the interface of so-called soft and hard, or voluntary and legalistic approaches, which is potentially a fruitful area for regulatory intervention. If co-regulation refers to the coming together—through multistakeholder initiatives, participatory decision-making processes and partnerships—of different actors to facilitate the design and implementation of standards, what might be called “articulated regulation” refers to the coming together of different regulatory approaches in ways that are complementary, mutually reinforcing and synergistic, or less contradictory. Some of the discussion and proposals related to corporate accountability centre on more complex or pluralistic institutional arrangements that occupy this terrain.

This section discusses four forms of articulated regulation. The first three relate to regulatory approaches that explicitly aim to promote CSR and corporate accountability. They involve complementarity between different non-governmental regulatory systems; the interface between confrontational and collaborationist forms of civil society activism; and linkages between voluntary and legalistic approaches or public policy. The fourth aspect relates to the question of policy coherence, and the need to minimize the contradictions between regulatory approaches associated with very different reform agendas.

This discussion is not meant to suggest that other regulatory approaches are inconsequential or unnecessary. It merely suggests the need to think beyond the voluntary versus binding, soft versus hard dichotomy, and to expand, in a sense, the notion of co-regulation, which has focused primarily on the articulation of actors—for example, business interests, NGOs and multilateral organizations—usually for the purpose of designing and implementing voluntary initiatives or public-private partnerships.

#### ***Articulating non-governmental systems of regulation***

The first type of articulated regulation involves complementarities between different forms of private and non-governmental authority. O’Rourke and others have examined the need and scope for building complementarity between the different emerging systems of non-governmental labour regulation (O’Rourke 2003; see also Sabel et al. 2000). As noted above, some multistakeholder initiatives are more effective than others in relation to different regulatory functions. The notion of articulated regulation, then, relates partly to “connecting these initiatives in some inter-operable way [that] might help to overcome the challenges of access, scope and credibility” (O’Rourke 2003).



Complementarity within non-governmental systems is particularly important in relation to trade unions and NGOs. Despite some progress in terms of dialogue and collaboration via certain multistakeholder and other initiatives, there is still considerable tension between some trade union organizations and NGOs that are working with companies and multistakeholder initiatives to promote labour standards and rights. Much of this tension revolves around trade union concerns that many NGOs are largely unaccountable, are not legitimate representatives of workers, and that the CSR initiatives and processes they propose are largely detached from democratic processes and public policy, or deflect attention from fundamental issues such as the denial of labour rights in China and other countries (UNRISD 2004; Utting 2002a). Some NGOs, for their part, tend to regard trade union structures as ossified, corrupt and patriarchal. Certain multistakeholder initiatives such as the WRC and the CCC have promoted more collaborative relationships and forms of participation.

One particular area where the complementarity and interoperability of non-governmental systems needs to be strengthened relates to complaints procedures. In the debate about CSR and its capacity to regulate corporate behaviour, considerable attention has focused on developing standards and systems related to monitoring, verification and reporting. While this focus has played an important role in highlighting the limits of internal monitoring and the need for hard data, more systemic approaches and independent verification, the NGOs and companies involved face the somewhat daunting task of gathering information and checking on the implementation of numerous standards contained in codes of conduct and certification guidelines throughout vast corporate structures and ever-lengthening global supply chains. Given the scale and international reach of TNC activities, the costs involved, and the reliance on commercial auditing techniques and analytical frameworks that often ignore the root causes of non-compliance and fail to obtain reliable information from workers and managers, mainstream monitoring and reporting often simply scratch the surface (Maquila Solidarity Network 2005; O'Rourke 2000). The cost and complexity of such "extensive" approaches seriously compromise their feasibility and scaling-up (Utting 2002a).

A complementary regulatory arrangement involves strengthening more "intensive" approaches involving various forms of complaints procedures or complaints-based systems of regulation. Rather than trying to span a broad spectrum of TNC activities, complaints procedures enable different types of stakeholders and entities to identify specific abuses or instances of malpractice. Numerous types of institutions can and do function on the basis of complaints procedures. Trade unions, for example, often take action when a company is in breach of a specific component of a collective bargaining agreement. Watchdog NGOs, ombudsman-type institutions, the judicial process and the investigative media also function on the basis of complaints procedures. In 2000, the OECD strengthened its Guidelines for Multinational Enterprises and national complaints procedures. Some of the non-governmental regulatory institutions, such as the WRC and the CCC, function wholly or partly on the basis of complaints procedures, and other multistakeholder initiatives, such as the FLA, have adopted such processes. This approach is also envisaged in the draft UN Norms on the responsibilities of TNCs referred to above.

The methods, procedures and types of informants used may vary considerably. Whereas the FLA, for example, works more with commercial auditing firms and managers, the WRC engages workers and local organizations. As noted above, each approach has its advantages and limitations, but they can be complementary. An evaluation of the involvement of both these schemes in investigating complaints at a Honduran factory owned by the Canadian company, Gildan Activewear, led the Maquila Solidarity Network to conclude that rather than seeing these two approaches as incompatible, they can be complementary and mutually reinforcing: "This is not meant to suggest, however, that the best elements of each initiative should be incorporated into one institution, since it is the interaction between the two initiatives that often produces the positive outcomes" (Maquila Solidarity Network 2005:12). It is this philosophy that to some extent lies behind the Joint Initiative on Corporate Accountability and Worker

Rights, an initiative that aims to test a variety of approaches to the implementation of codes of conduct (Maquila Solidarity Network 2005).<sup>15</sup>

### ***The confrontation-collaboration nexus***

The notion of articulating different forms of non-governmental regulation can also be applied to the interface between formal non-governmental regulatory systems involving standard-setting and related operational activities, and the informal realm of social activism or “street regulation”. The dynamism and effectiveness of particular CSR initiatives is often linked to this dual presence of “collaboration” and “confrontation” (Bendell and Murphy 2002; Utting 2005). Whereas collaboration can serve to construct a roadmap for reform and institutionalize the reform process, confrontation is often crucial for generating the political will needed to change the status quo, and keep the reform process “honest” and dynamic. Confrontational activism, including various types of protest, campaigns, watch-dog activities and “naming and shaming”, remains a key driver of voluntary initiatives, despite the tendency of some CSR leaders and practitioners to argue that social militancy is a thing of the past and that stakeholder dialogue and partnerships are the key for advancing the CSR agenda. It is the co-existence of these two forms of civil society regulatory action that often accounts for the ratcheting-up and scaling-up of particular multistakeholder initiatives. Sustained “anti-” movements, such as the anti-sweatshop and anti-logging campaigns, are particularly important in this regard, and partly explain the dynamism and uptake of schemes associated with the FLA and the Forest Stewardship Council (Conroy 2002).

### ***Voluntary and legalistic approaches***

A third form of articulated regulation refers to the arena where voluntary and legalistic approaches or public policy interact in a complementary or synergistic way.<sup>16</sup> This may occur in numerous ways, as is apparent in the following examples.

- International soft law, which is the basis of many CSR standards, may be non-binding but nevertheless carries moral authority. It is applicable to a broad universe of agents (for example, all governments or corporations), and may encourage or require national governments to incorporate its provisions in legislation at the national level. This has occurred to some extent, for example, in the case of the international code of conduct related to the marketing of breastmilk substitutes.
- Hard law may demand voluntary approaches, for example, requiring companies to be more transparent and to report on their social or environmental performance but not specifying what that performance should be. If performance standards are found to be low, then it is up to such actors and entities as civil society organizations and movements, the media and public opinion to expose, name and shame or otherwise bring pressure to bear on a company to improve its performance. Pollutant Release and Transfer Registers (PRTRs), which impose reporting obligations on companies producing toxic substances, now exist in certain countries, as well as internationally through the PRTR Protocol signed in 2003.
- Other laws, related, for example, to freedom of association and freedom of information, pave the way for CSR by creating an enabling institutional environment, which safeguards and facilitates the role of actors and organizations that can exert pressures on companies, such as trade unions, NGOs and the media.
- Forms of “negotiated agreements”, which are sometimes used in the field of waste management and others areas of environmental protection, establish legally grounded objectives or targets, and involve some element of sanction in cases of non-compliance, but they grant the companies involved the flexibility to decide how to comply in the most cost-effective way (Hanks 2002).

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<sup>15</sup> A pilot project is being organized in Turkey, involving the CCC, ETI, FLA, WRC, SAI and the Fair Wear Foundation (FWF) (Maquila Solidarity Network 2005).

<sup>16</sup> Gunningham and Sinclair 2002; UNRISD 2004; Utting 2002a.

- The mere threat of mandatory regulation, at both national and international levels, has long been a crucial driver of voluntary CSR action and soft law.
- Public policy can promote voluntary initiatives through market-based incentives associated, for example, with taxation, subsidies and credit (Welford 2002). Indeed, the so-called corporate social welfare model that emerged in East Asia in the decades that followed the Second World War – where many large corporations assumed limited but important welfare functions – was premised on a compromise where selected corporations received tangible economic benefits in return for a degree of corporate welfare provisioning.
- Stock market regulations can require all listed companies to adopt CSR standards. The listing of certain South African companies, for example, on the New York Stock Exchange appears to have prompted some improvements in corporate social and environmental performance in South Africa. And in the country itself, the Johannesburg Stock Exchange now requires listed companies to adhere to the King Report's Code of Corporate Practice and Conduct (Fig et al. 2003; ILO Socio-Economic Security Programme 2004).
- CSR standards may be incorporated into contracts of different types, for example, agreements related to international investment and trade (UNCTAD 2003) or contracts with Chief Executive Officers (CEOs), which specify the use of CSR indicators in performance reviews and the calculation of bonuses.<sup>17</sup>
- Voluntary initiatives that are derived from international law or are adopted by democratically elected governments or intergovernmental processes are often considered to have greater legitimacy and carry more legal weight (Bernstein and Cashore 2004). This point is often emphasized by those in the legal community, as well as by some trade union organizations that are concerned about the increasing role of largely unaccountable NGOs in designing labour standards (UNRISD 2004).
- Voluntary schemes like the Global Compact may be weak in terms of compliance mechanisms and have sometimes been used to fend off legalistic approaches. On one level, however, they can be said to articulate voluntary and legalistic approaches, given the fact that they promote principles derived from international law and reinforce the notion that international human rights law applies not only to states but also to corporations.
- Articulation may be sequential, with voluntary initiatives paving the way for harder or legalistic initiatives once a particular standard gains broader "cultural" acceptance, is internalized by business and other actors, and when coalitions of organizations and actors backing the ratcheting-up of standards or legalistic approaches expand, sometimes with the support of certain business interests. This is evident, for example, in the case of the Publish What You Pay Campaign and the emergence of a group of companies and business-interest organizations supporting the proposed UN Norms on the Responsibilities of TNCs and Other Business Enterprises with Regard to Human Rights.
- Articulation applies more generally to the interface between CSR and public governance, and the need to recognize that voluntary approaches often work best "where government and the public sector is effective, predictable and clear...where citizens and workers are empowered and human rights are respected; and where principles and institutions of justice...public participation and access to information are all recognized" (Halina Ward quoted in UNRISD 2004).

### ***Policy coherence***

The above forms of articulated regulation relate to approaches concerned explicitly with improving social, environmental and human rights aspects of company performance. The need to articulate regulatory systems is also apparent in another sense. Companies attempting to engage with the CSR agenda are typically enmeshed in two very different regulatory environments, one involving norms, rules and institutions that promote social and environmental protection; and another associated with a variety of incentives and pressures

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<sup>17</sup> See, for example, the commentary on the Norwegian company, Statoil, in ILO Socio-Economic Security Programme (2004:357).

aimed at enhancing or securing conditions for profitability and growth through cost-reduction, deregulation and flexibilization. These two environments are in constant tension and, in some respects, are contradictory. This, of course, reflects the age-old tension between commodification, accumulation and efficiency, on the one hand, and social protection and equity, on the other hand, that has characterized development under capitalism. In certain historical contexts, however, as argued in the final section of this paper, such contradictions have been managed through forms of articulated regulation that enable social and economic policies to be mutually reinforcing or at least less contradictory.

A fourth arena of articulated regulation, then, relates to the need for policies to work in tandem rather than against each other, or to constitute enabling rather than disabling environments for institutional reforms associated with the ratcheting-up and scaling-up of CSR and corporate accountability. Such “policy coherence” is required both at the micro level of the firm and the macro level of government and international policies. The ratcheting-up and scaling-up of CSR and corporate accountability policies and practices currently confront two fundamental contradictions. Firstly, TNC affiliates and suppliers in global value chains are often confronted by seemingly contradictory policies of parent companies or large buyers, which insist on higher environmental and labour standards and compliance with codes of conduct, on the one hand, but simultaneously impose tough contract conditions that squeeze margins and delivery schedules, increasing the intensity of labour and overtime, on the other hand. Secondly, government and international policy often talk the talk of social and sustainable development but walk the walk of macroeconomic and other deregulatory policies that may inhibit growth, small enterprise development and infant industries, and result in the deterioration of labour standards and the environment, particularly in developing countries.

While such contradictions are, to some extent, features of certain patterns of capitalist development, they can be modified and managed in ways that are less contradictory. In relation to contradictions at the level of the firm it is important, for example, for companies

- to get CSR out of the ghetto of an individual office or unit, or even the mindset of a particular CEO, and attempt to mainstream or internalize CSR culture and policies throughout the corporate structure;
- to introduce CSR criteria into incentive systems; and
- not simply to impose tougher CSR conditions on suppliers but share responsibility for the costs involved, and ensure that CSR initiatives translate into productivity gains (Utting 2003; Zadek 2004).

In relation to the macro contradictions, particularly important are policies, laws and civil society campaigns related to rights-based approaches to development, social justice, tax justice, greater “policy space” for developing countries,<sup>18</sup> more equitable North-South trade relations, and the democratization of international institutions. But policy coherence must also address the contradictions mentioned above between CSR and corporate accountability initiatives that aim to raise labour and environmental standards and economic development in developing countries. Proponents of these approaches need to be more sensitive to the developmental implications of their proposals and initiatives, and to recognize that efforts to improve standards in developing countries need to be accompanied by—and should not contradict—efforts to enhance the capacity and competitive position of local firms, to create a more equitable playing field internationally, and to realize the principle of “special and differential treatment” for developing countries.

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<sup>18</sup> The term “policy space” refers to the notion that developing country governments should have more space to design policies attuned to local and national concerns, priorities, and economic, political and institutional realities, rather than be subservient to standardized policy prescriptions that emanate from international financial institutions and donor governments.

## 4. Understanding the Potential and Limits of Progressive Institutional Reform

Why are we seeing an apparent ratcheting-up of standards, and regulatory authority being increasingly assumed by civil society organizations and multistakeholder entities? Are the limitations that characterize multistakeholder approaches and non-governmental regulatory systems likely to be overcome? And should we expect to see any significant progress on the CSR and corporate accountability fronts, in terms of these ad hoc initiatives and fledgling approaches becoming a more generalized feature or variant of stakeholder capitalism?

To answer these questions it is necessary to say something about the theory of institutional change and to weigh up the different factors and forces that shape institutional outcomes and trajectories of change. This requires looking at the way in which multiple factors and contexts associated with injustice or crisis, and the role of “agency” and organized interests, as well as ideas, institutions and structures intervene and interact. This type of analysis brings us, of course, to the age-old question that has preoccupied social scientists regarding the relative weight that should be accorded to structure and agency, social constructivism and realism, ideas and interests, social learning and societal pressures, and the relationship between them.<sup>19</sup> A thorough examination along these lines is obviously beyond the scope of this paper but it is important to refer to each of these sets of factors and determinants for three main reasons. First, because there is a tendency within the field of CSR and corporate accountability for different actors and perspectives to overstate the relative importance of one or other determinant to the exclusion of others. Second, the analysis of CSR is often compartmentalized in particular disciplines and subdisciplines, and different schools of thought often talk past, rather than to, each other. Third, a consideration of each aspect tells us something useful about the substance and limits of CSR and corporate accountability, and their transformative potential.

### *Crisis and agency*

A useful starting point is Polanyi’s notion of the need for markets to be embedded in institutions that mitigate their negative social and environmental impacts, and his analysis of the “double movement”. This suggested that the crude liberalization and excessive reliance on the self-regulating market that characterized late nineteenth-century globalization, generated perverse social conditions, and a social and political reaction that resulted in the re-embedding of markets through various institutional and political arrangements (Polanyi 1957). From this perspective, voluntary initiatives, corporate self-regulation and certain forms of non-governmental regulatory action can be seen as part and parcel of broader efforts to promote “embedded liberalism” (Ruggie 2003), or as important elements of a new social compact adapted to contemporary globalization (Hopkins 1999), where openness of markets is secured on the basis of a compromise involving CSR.

In fact CSR responds to a dual crisis. One relates to a crisis of the dominant model of accumulation and social protection that characterized early and mid-twentieth-century industrial capitalism, which is often referred to as Fordism (Jessop 1999; Lipietz 1992). The other relates to the crisis of development that affects the global South, elements of which have been exacerbated or projected onto the world stage in the contemporary era of globalization.

In the 1980s and 1990s, a series of events and conditions contributed to the reality or perception that contemporary patterns of capitalist development and economic liberalization were fuelling crises of various sorts. These included signs of environmental crisis related to deforestation, pollution, global warming and ozone depletion; the human and developmental costs of structural adjustment programmes and “the race to the bottom”; persistent mass poverty and the growing gap between rich and poor; the explicit character of corporate greed and

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<sup>19</sup> Hall 1993; Ruggie 1998; Bøås and McNeill 2004.

conspicuous consumption; the growing imbalance between corporate rights and obligations; and a series of high profile cases involving corporate crime or abusive practices.<sup>20</sup>

New social movements and transnational activism focused the spotlight on global corporations and demanded institutional reforms. NGOs proliferated during these decades and an increasing number began to engage with CSR issues and companies themselves. These agents of change, however, assumed certain characteristics that shaped their approaches and the nature of their demands and proposals. Compared to corporatist entities such as trade unions, which had been one of the principal change agents of previous decades, NGOs were relatively weak and fragmented. Nor were they empowered through their relations with political parties, as the labour movement had been. And the types of demands they put forward as well as their tactics were conditioned by the tendency for many NGOs to become more involved in service delivery, consultative and commodified activities. There was, in fact, a blurring of the distinction between an important strand of “civil society” and “business”.

Certain strands of governance theory help to explain the evolving nature of attempts to bring big business under social control. Not only the perverse effects of commodification and economic liberalization but also the perceived or real limitations of government and intergovernmental regulation fuelled the search for “third way” alternatives. Furthermore, globalization, ever-expanding value chains, increasing complexity, uncertainty and risk require institutions at multiple levels that can enhance systemic coordination and stability. Forms of multiplayered and multilayered governance, where different actors (private, civil society, governmental and intergovernmental) come together both on an organizational basis in networks, and on an ideological and ethical basis through shared values and agreed norms (Keohane and Nye 2002), appear to offer considerable potential in this regard. The political underpinnings of this approach have to do not only with the reality or threat of pressure “from below” but also new configurations of power involving multiple actors at different levels (Held 2003).

The role of agency in shaping the CSR agenda relates, of course, as much to the political strategies of corporations and business organizations as it does to civil society actors. It was the large global brand name companies that were particularly susceptible to the above pressures, and they mobilized effectively to influence, if not lead, the CSR “movement” (Utting 2005) and to shape the agenda on their terms. This leadership role—and the shift from reactive or defensive posturing to proactive engagement, noted above—can be usefully explained in Gramscian terms (Levy and Newell 2002). Throughout much of the history of capitalism, elites have attempted to rule through consensus or “hegemony”. This involves not only accommodating certain oppositional demands but also exercising moral, cultural and intellectual leadership (Utting 2002b). Such an approach is particularly obvious in the field of CSR and in relation to big business engagement with multistakeholder approaches and public-private partnerships. Through such arrangements big business has skilfully opened up or accessed another arena for shaping the public policy process (Richter 2001, 2003).

French regulation theory provides further insights into the capacity of capitalist elites and relations to adapt in socially sensitive ways in order to secure conditions for ongoing and long-term accumulation. Crucial in this regard is the role of extra-economic factors (of the type typically associated with CSR), namely institutions, shared visions, agreed standards, networks, partnerships and new modes of calculation (Jessop 1999). Some argue that the inherent tendency for self-preservation or self-reproduction through adaptation is even more ingrained. So-called autopoietic systems are said to adapt through a self-regulating mechanism, which ensures that they change largely on their own terms and resist external intervention (Jessop 1999).

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<sup>20</sup> These included, for example, the Union Carbide gas leak in Bhopal, India, in 1984; the Exxon-Valdez oil tanker disaster in 1989; deforestation or forest degradation associated with farming and forestry systems linked to McDonalds, Mitsubishi and Aracruz; environmental and social impacts, and human rights abuses, linked to mining and oil companies like Rio Tinto and Shell; and sweatshop conditions in supply chains of Nike and other companies.

Indeed, a major challenge to the corporate accountability agenda comes from certain organized business interests that have proved quite adept at mobilizing to resist certain efforts to strengthen the regulatory environment. This can be seen, for example, in the political backlash in the United States against attempts to reapply the Alien Torts Claims Act (ACTA)<sup>21</sup> (Taylor 2004). Or it can take the form of attempts to reassert the model of softer voluntary approaches and corporate self-regulation, albeit with some fine-tuning and compromises. In the realm of international policy making related to corporate regulation, the discourse and practice of voluntary initiatives is often used as a means of crowding out the consideration or adoption of other regulatory approaches.

There is nothing new in this situation. Voluntary approaches have long been a compromise solution for accommodating demands for tougher international regulation of business. During the 1970s, for example, there were increasing calls for a New International Economic Order (NIEO) and binding regulations on TNCs. Against this backdrop, the United Nations began drafting a comprehensive code of conduct for TNCs. The code process itself ran into opposition and was eventually scuppered but what did emerge was a series of international agreements in the shape and form of non-binding principles and guidelines for TNCs. These were adopted, for example, by the OECD in 1976, the ILO in 1977 and, in the 1980s, by United Nations agencies concerned with the marketing and use of specific products such as breast-milk substitutes, medicinal drugs and pesticides. More recently, the use of the soft to displace the hard was seen clearly at the WSSD in Johannesburg when business interests rallied against certain proposals for “corporate accountability”, arguing that their involvement in company reporting and public-private partnerships obviated the need for harder regulatory action. And even many of the partnership proposals that were announced at the summit have not been implemented (Commission on Sustainable Development 2004; Kaul forthcoming).

The use of the soft to fend off or dilute the hard is apparent not only in relation to legalistic approaches but even within the spectrum of voluntary initiatives. To the extent that multistakeholder initiatives represent a hardening of approach relative to corporate self-regulation, business often opposes multistakeholder initiatives, arguing that self-regulation is sufficient to meet the challenge of improving company social and environmental performance. This tactic was apparent in consultations organized by the World Health Organization (WHO) and the International Business Leaders Forum, which attempted to convince leading food and beverage TNCs that multistakeholder approaches could be useful for addressing some of the serious health and nutrition problems linked to the mass consumption of many of their products.<sup>22</sup> The response of some of the business representatives was to argue against such approaches on the basis that they could deal with problems of concern to WHO through self-regulatory approaches.<sup>23</sup> A paradoxical situation existed where even self-regulation was regarded by some participants as a fundamentally progressive step forward, given that the initial position of business had been to deny that their companies were implicated in the problematique of poor health and nutrition. By agreeing to self-regulation, companies were accepting some degree of responsibility.

A similar response is playing out in relation to the proposed UN Norms on the Responsibilities of TNCs and Other Business Enterprises with Regard to Human Rights, referred to in section 2 above.<sup>24</sup> The Norms attempt to address some of the weaknesses that characterize the Global

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<sup>21</sup> Through this law, passed in 1789, foreign nationals can bring a case to a US court for a civil wrong committed in violation of international law (Abrahams 2004).

<sup>22</sup> For an analysis of such linkages, see WHO (2003).

<sup>23</sup> The author participated in one of these consultations in 2003.

<sup>24</sup> The Norms were drafted by a working group of experts established in 1999 by the United Nations Sub-Commission on the Promotion and Protection of Human Rights, adopted in their draft form by the sub-commission in August 2003, and submitted to the Commission on Human Rights. At its meeting in April 2004, the commission referred the matter of looking into options for strengthening standards on the responsibilities of TNCs to the Office of the High Commissioner for Human Rights, which reported to the commission in 2005. At its April 2005 session, the commission called on the United Nations Secretary-General to appoint a Special Representative to organize further consultations on the issue of TNC responsibility for human rights and to report back to the commission with recommendations in 2007.

Compact and voluntary initiatives more generally, namely picking and choosing among standards, weak compliance with agreed standards, and free riders. The Norms pull together a wide range of standards that are derived from international law that applies to states, but which are commonly found in multistakeholder initiatives. And they state that all TNCs and related companies have an obligation to uphold such standards, and propose an implementation and monitoring mechanism. They push the envelope even further by stipulating “adequate reparation” in cases of stakeholders affected by non-compliance.

Some of these harder aspects were anathema to certain business interests and governments, and the 2004 session of the UN Commission on Human Rights, which considered the draft Norms, not only reminded the Sub-Commission on the Promotion and Protection of Human Rights that the Norms had no legal status and that it was not to perform any monitoring function, but also that it had never been asked to draft any such norms in the first place.<sup>25</sup> One of the reasons put forward by opponents was that they were essentially unnecessary since voluntary instruments such as the Global Compact and the OECD Guidelines on Multinational Corporations already exist. This was the position, for example, of the International Chamber of Commerce. Other business actors within the CSR community have adopted more nuanced positions. At a multistakeholder consultation on the Norms, organized by the Office of the High Commissioner for Human Rights in 2004,<sup>26</sup> several representatives of TNCs and business-interest organizations accepted that there was a need for a “Global Compact Plus”, that is, for some ratcheting-up of standards and compliance mechanisms through voluntary approaches, but that the “harder” aspects of the Norms related to monitoring and redress were unacceptable or politically a non-starter.

At the April 2005 session of the Commission on Human Rights, there was a new twist in the process of considering the Norms. A resolution, originally proposed by the United Kingdom and several other governments, was passed that omitted all reference to the Norms. These were seen as polarizing and an obstacle to achieving the type of broad-based consensus needed to move forward. It was agreed, however, to continue the dialogue on business and human rights via the appointment by the United Nations Secretary-General of a Special Representative. A block of mainly developing countries, which included South Africa, Egypt and Cuba, as well as several NGOs, pushed unsuccessfully for an amended resolution that not only acknowledged the groundwork that had already been done via the draft Norms but also incorporated references to regulatory and developmental problems associated with TNCs and corporate power.<sup>27</sup> While most governments and NGOs welcomed the appointment of a Special Representative, there were concerns that an agreement to simply keep talking and not to build on the Norms represented a step backward.

### ***Ideas, knowledge and learning***

Crisis, interest group contestation and political manoeuvring only partly explain why particular agendas and processes of institutional reform emerge. It is also important to consider other conditions and contexts related to the role of ideas, how knowledge becomes embedded, and the ways in which pre-existing institutions and structures shape the substance, scope and pace of reform.<sup>28</sup>

Concerning the role of ideas, certain terms, concepts and schools of thought have been up for grabs and have been quickly assimilated and disseminated by key actors that are shaping the CSR agenda. The speed and force with which particular ideas have informed global discourse may say as much about the consolidated and globalizing nature of so-called epistemic communities (Haas 1990), that is, the formal and informal networks through which ideas are disseminated and learning takes place, as it does about the inherent worth of the ideas

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<sup>25</sup> ECOSOC 2004.

<sup>26</sup> The meeting was attended by the author.

<sup>27</sup> The author participated in two of the meetings that considered the draft resolution.

<sup>28</sup> For a recent analysis of how modern capitalism has been shaped by the interplay of ideas, interests and institutions, see Blyth (2002). For a similar analysis related to corporate environmental responsibility, see the work of David Levy, including Levy and Newell (2002); Levy and Kolk (2002); and Levy and Egan (2003).



themselves. The notion of epistemic communities is also useful for nuancing the idea that the uptake of new thinking and policies is essentially a function of the capacity of powerful actors and institutions to impose them on others. In the field of CSR such communities are particularly strong, involving not only experts and advocates associated with civil society, business, governmental and international organizations, but also scholars in higher education, notably the field of business administration, which has expanded massively since the 1980s. The internalization of new ideas should also be analysed in the context of changes occurring in management and technocratic culture where, to some extent, reflexivity and social learning have become more prominent features of both private and public bureaucracies in the modern era of risk and complexity (Hall 1993; Ruggie 1998).

What are the sets of ideas that have shaped the mainstream CSR agenda? Particularly influential have been those associated with ecological modernization, new institutional economics (NIE), and stakeholder and organizational theory. Ecological modernization highlighted the role of technological and managerial innovations in improving the efficiency of resource use; win-win, as opposed to zero-sum, scenarios; systems-based approaches, and the capacity of existing institutions to internalize care for the environment, without fundamental restructuring (Hajer 1995). NIE emphasized the need for institutions that can minimize transaction costs (Toye 1995). These include risks to corporate reputation and sales posed by activists and “ethical consumers”, or risks and uncertainty that derive from the rapidly changing geography and structures of production and exchange in the context of globalization. Formal and informal institutions are needed to minimize such risks and to reinforce corporate control over suppliers and other stakeholders associated with global value chains. Thinking related to the concept of social capital, which emphasizes the economic benefits derived from collaborative relations and trust, reinforced this approach. CSR, multistakeholder initiatives and public-private partnerships are particularly relevant in this regard (Utting 2000, 2002b).

From the field of management studies emerged various concepts that have influenced CSR policy and practice. The type of systems-based management approaches and the notion of responsiveness to selected stakeholders (for example, customers) that underpinned the concept of total quality management<sup>29</sup> resonated with stakeholder theory. The latter questioned the notion that the social responsibility of an enterprise consisted solely of making money for its owners or shareholders. The critique that developed in the 1970s and 1980s emphasized the multiple responsibilities of companies beyond the purely economic, and the fact that sound or strategic management required responsiveness and accountability to a variety of stakeholders who affect or are affected by the operations of a company (Freeman 1984). Since the notion of “responsibility” relates to the realm of ethics and principles, attention soon turned to the nuts and bolts of how to improve the quality of CSR actions or “corporate social performance”, which includes not only motivating principles but also processes and observable outcomes (Hopkins 1999). Engagement with stakeholders was crucial not just for ethical reasons but for key aspects of management associated with organizational learning, knowledge management and various advantages that derive from networking (Ruggie 2001; Zadek 2001).

While these ideas challenged some aspects of neoliberal and management orthodoxy that had disregarded the reality of market failure and the complex determinants of successful enterprise, they did not really question fundamentals to do with labour market flexibilization, structural adjustment, free trade and investment, the downsizing of the state, and corporate-driven globalization. Indeed, many of the interests that support CSR—including not only business but also governments, international organizations and the growing number of NGO service providers—take as given several of the basic tenets or features of neoliberalism. The original statement by the United Nations Secretary-General at the World Economic Forum that established the Global Compact (Annan 1999), for example, called for a compact in which the United Nations would support the idea of an international trade and investment regime largely free of

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<sup>29</sup> For a discussion on the links and parallels between total quality management and CSR or “total responsibility management”, see Waddock and Bodwell (2002).

restrictions, in return for company action to adopt voluntary improvements in relation to labour, human rights and environmental standards. More recently, this vision has been reinforced by the United Nations Development Programme (UNDP) Commission on the Private Sector and Development, which also calls on corporations to engage far more proactively with local communities and enterprises (UNDP Commission on the Private Sector and Development 2004).

The ideas taken up by the corporate accountability movement, however, were somewhat different. Two strands of thinking were particularly influential: rights-based approaches to development, and anti- or alternative globalization. The former not only emphasized the recognition of human rights as an objective of development, but emphasized the key role of legal instruments at international, regional and national levels (ODI 1999). For some, rights-based approaches also included a strong political element, namely that of empowerment, or the notion that the recognition and realization of rights depended crucially on increasing the capacity of disadvantaged groups in society to exert claims on the powerful. Other challenges were posed by activists and scholars who were highly critical of dominant patterns of globalization and adhered to the slogan of the World Social Forum that “A Better World is Possible”. Those calling for a more fundamental reshaping or rolling-back of globalization emphasized the need to reassert social control over corporations via civil society, social movements, national policy and regulations, and international rules designed and implemented by democratic institutions; the downsizing or break-up of corporations; halting altogether certain economic activities that have perverse social and environmental impacts; redirecting state resources and creating a policy environment conducive to local development and small enterprises; subsidiarity; and collective property rights (Broad 2002).

### ***Structural constraints and spaces***

Civil society pressures, corporate political strategies and the role of ideas explain to a considerable extent the content and dynamics of the CSR and corporate accountability agendas and movements. Corporate engagement with the CSR agenda was relatively easy since it posed no fundamental threat to corporate interests or the dominant neoliberal macroeconomic regime. This agenda assumes that capitalism can largely reform itself through relatively minor adjustments to existing institutions.

Indeed, the pattern of institutional reform related to CSR is very much conditioned by a range of structural factors and contexts that work for and against CSR. When assessing the potential for CSR to impact business practices and improve working conditions, it is important to recognize the reality of enterprise and labour market structures. In developing countries, in particular, the bulk of labour is associated with the informal sector and most enterprise activity is associated with small and medium-sized enterprises (SMEs) that are either disconnected from, or loosely connected to, TNC supply chains (Zammit 2003).

The pressures on companies to prioritize “business-as-usual” practices and shareholder interests over other stakeholder interests are intense (Cutler 2004), and they are institutionalized in legal and incentive structures, as well as in corporate or management culture. As noted above, this often results in onerous contract conditions and pressures on suppliers. Structural conditions associated with “cheap consumerism” à la Wal-Mart also restrict the scope for expanding so-called ethical consumer markets for socially and environmentally produced products, and partly explain the stubbornness of fair trade and ethical investment markets to break out of their very niche status. Such structural constraints go some way to explaining the relatively weak uptake and implementation of many CSR initiatives, as well as the litany of cases or exposés of “greenwash”, “bluewash” and malpractice involving so-called CSR companies, leaders and organizations.<sup>30</sup>

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<sup>30</sup> “Greenwash” is defined in the Oxford dictionary as “Disinformation disseminated by an organisation so as to present an environmentally responsible image.” The term “bluewash” was coined to refer to the process of image enhancement that takes place when companies associate themselves with the United Nations (symbolized by its blue flag) (Bruno and Karliner 2000; CorpWatch 2000). In both cases, as Bruno and others point out, image enhancement often takes place against a backdrop where companies are doing little, if anything, to significantly change their relationship to society and the environment (Greer and Bruno 1996). Various

The problem, however, is not just that structural conditions impose limits on CSR, or that perversity and do-gooding coexist; it is also that the scaling-up of the CSR agenda or the process of embedding liberalism seem to be dwarfed by ongoing economic liberalization or “disembedding” of the type exposed by Joseph Stiglitz in *The Roaring Nineties* (2004), theorized by Mark Blyth in *Great Transformations* (2002) and documented empirically by the ILO (ILO Socio-Economic Security Programme 2004). Yet the scale of this disembedding is often downplayed or wished away in mainstream CSR discourse, or it is assumed that the CSR snowball, as it gathers momentum, will eventually outstrip and overtake any disembedding process.

In practice, as noted above, we do see some ratcheting-up and scaling-up of voluntary CSR standards and implementation procedures. The question that needs to be asked, however, is how does this process fare in relation to counter-trends involving ratcheting-down, that is, with policies and processes associated with economic liberalization or disembedding that can have perverse social, environmental and other developmental impacts. If one considers the pace and scale of certain policies and processes that characterize neoliberal reform, then one might be excused from concluding that any scaling-up or ratcheting-up of CSR pales in comparison. Such policies and processes include “flexibilization” of labour markets and subcontracting that often undermine labour standards and labour rights; permissive fiscal “reform” and tax avoidance and evasion that reduce corporate taxation and deprive developing country governments of revenues; and the so-called “race to the bottom” or cut-and-run tactics that see companies relocate to countries where labour costs and labour rights impose fewer constraints.<sup>31</sup>

They also include the downsizing of state institutions and the rolling-back of state services and welfare benefits. In such a context, the question to be asked of CSR is not only whether voluntary initiatives are going beyond the minimum social and environmental standards set by law, but also whether companies are filling the gaps associated with state retrenchment. Women workers in developing countries have been particularly affected by this situation. While many have entered the formal labour force in export-oriented industries in recent decades, they have enjoyed few, if any, work-related welfare entitlements. Although employment conditions in TNC affiliates and first-tier suppliers may be better than those found in other enterprises, there is little to suggest that CSR is changing a situation where “labour market flexibility and fiscal restraint....deny vast numbers of women—regardless of their employment status—a meaningful access to welfare” (Razavi et al. 2004:25).

It would be wrong to assume, however, that basic structural contexts and trends associated with capitalism and corporate globalization make a nonsense of CSR, that is, the profit motive, shareholder interests or TNC strategies are at odds with forms of do-gooding that may detract from short-term shareholder returns, contradict the tendency to externalize costs, or actually increase costs (Henderson 2001). While possibly overstated, there is some validity to the assertion, continually emphasized by CSR exponents and business leaders, that there is a business case for CSR and scope for win-win opportunities related to improved social, labour and environmental performance, on the one hand, and competitive advantage, risk and reputation management, productivity gains related, for example, to employee motivation and reduced staff turnover, and even cost reduction through aspects such as eco-efficiency, on the other hand (Porter and van der Linde 1995; Holliday et al. 2002).

As noted above, it is also wrong to assume crudely that labour and environmental conditions are particularly bad in TNC production facilities located in developing countries or even in Export Processing Zones. In terms of some indicators, such as health and safety standards, pay,

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types of award schemes, such as the Greenwash Awards, organized by CorpWatch, and the Public Eye Awards in Davos, organized by Swiss-based NGOs, identify Global Compact and other companies that continue to act irresponsibly in relation to labour, environmental, human rights and fiscal practices ([www.corpwatch.org](http://www.corpwatch.org) and [www.evb.ch](http://www.evb.ch), accessed in June 2005).

<sup>31</sup> There are concerns, for example, that such practices will escalate with the phasing out of the Multi-Fibre Arrangement in January 2005. This deregulatory measure terminates the quotas on textile imports to the United States and Europe from developing countries.

and pollution per unit of output, they are often better than those found in other enterprises.<sup>32</sup> Of greater concern in some industries and countries, is the tendency for TNCs to shed their core labour or expand production by relying more on subcontracting arrangements that are often associated with low pay, poor working conditions, and non-existent labour rights.

Just as structural factors can be invoked to explain the limits of CSR, they also explain, to some extent, the emergence and dynamism of CSR. Far from simply contradicting or constraining CSR, certain structural conditions that characterize contemporary capitalism and patterns of industrial organization actually suggest the need for institutional and management reforms of the type associated with CSR (Utting 2000). This is apparent in relation to intangible assets, global value chains, flexibilization, and the increasing number of factors and institutions that impact economic coordination systems.

Intangible assets such as brand names have increased dramatically in value. CSR is a crucial weapon to defend such brands against risks and to enhance brand value through improved company and product reputation and image (Jenkins 2002). Global value chains have lengthened and deepened through foreign direct investment, networking and subcontracting. This expansion of relations with a broader range of enterprises is partly driven by the need for greater flexibility of production systems as companies seek to adjust quickly to rapid changes in consumer demand and new market opportunities. CSR institutions such as codes of conduct, certification and labelling can play an important role in the development of collaborative relations between the firms that make up a network or commodity chain. CSR has also become a key means of ensuring that the corporate centre in these systems controls the chain and links on the periphery of that chain, through, for example, the introduction of codes of conduct, certification and other requirements in supply chain management, or acquiring additional eyes and ears, not only through NGOs and auditing firms engaged in monitoring and certification, but also through the type of global framework agreements entered into with international trade union organizations (Utting 2002a).

Given the scale and complexity of those systems, TNCs, as central players, and other organized business interests must preoccupy themselves not only with the more immediate aspects of production, marketing, costs of production, prices and profits, but also with a multiplicity of other institutions that facilitate the coordination and smooth functioning of economic systems (Shafaeddin 2004; Hall and Soskice 2001) and reduce transaction costs. Such institutions include, for example, networking, various types of alliances, partnerships, trust, multistakeholder dialogue and so forth, that is, precisely the types of institutions and relations that characterize and are promoted by CSR.

While structural arguments are often used to explain or refute the possibility of CSR, the above discussion suggests that the structural context and its relationship with CSR is far more complex, and is likely to vary in different industry and societal settings, as well as under different varieties or models of capitalism. While it does not constitute the straitjacket that some critics portray, it does constrain the room for manoeuvre. But it can also facilitate some types of movement associated with CSR.

## **Future Directions**

Let us now return to the question of what we can expect in terms of any significant advance on the CSR and corporate accountability fronts, and the institutionalization of these approaches as core components of a more generalized model of stakeholder capitalism.

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<sup>32</sup> Kabeer 2004; UNRISD 2005; Bhagwati 2004.

As a general observation, despite some signs of a reaction to CSR,<sup>33</sup> we can probably expect more of the same in terms of gradual scaling-up and incremental ratcheting-up. Corporate bankruptcy scandals and more regular exposés of greenwash and bluewash have kept the perception and reality of crisis and the abuse of corporate power very much alive. This has served to sustain the pressures on global corporations to engage with the CSR agenda and for some hardening of softer approaches. Furthermore, the CSR service industry, which includes NGOs and multistakeholder initiatives, is expanding, and a growing body of governmental, regional and intergovernmental organizations are supporting such initiatives and approaches. Indeed, CSR has become an important feature of the “good governance” and poverty reduction agendas associated with the so-called post-Washington Consensus. The learning processes and “path dependency” that characterize the CSR experience at the company and industry level also reinforce the tendency for incremental change, as does the fact that the ratcheting-up of CSR may be part and parcel of a political strategy to accommodate or fend off harder approaches related to corporate accountability and law. But it seems clear that any significant advance in relation to both mainstream CSR or the more transformative corporate accountability agenda would require a more conducive structural and political environment.

This is apparent if we look at the conditions under which more socially sensitive models of corporate capitalism emerged historically. In the case of post-Second World War social democracy in Europe, the East Asian corporate social welfare model, and early twentieth-century Fordism in the United States, different institutional contexts and combinations of structural and political elements played a key role in improving corporate social performance, at least in relation to selected industrial sectors and social groups or stakeholders.<sup>34</sup> Such elements included, for example, changes in patterns of industrial organization that required new labour relations; a “proactive” state or bureaucracy; strong labour or other social movements, or periods of militant activism; organic links between movements, citizens and political parties; relatively high rates of economic growth; and corporatist and class compromises, which explicitly or implicitly saw company initiatives to improve labour standards hinged on state incentives for particular firms and industries or relative labour peace. Also apparent is the degree of policy coherence, in the sense referred to above, where, to some extent, the macro policy environment reinforced, rather than contradicted, both state and corporate strategy concerned with social protection (Mkandawire 2004; Perret 2004). Such factors and contexts resulted in significant improvements in certain aspects of corporate social policy and performance.

The contemporary structural, political and institutional backdrop to CSR and corporate accountability appears somewhat different. Dynamic nationalist development projects and visions, in which the state plays a leading role, are few and far between; in many countries, levels of economic growth remain persistently low; and the balance of forces has shifted significantly in favour of big business, due in part to the weakening of labour movements and the increasing mobility of capital beyond national borders. Civil society activism, including that connected with CSR, is often fragmented, short-lived and disconnected from political parties. Indeed, as mentioned above, mainstream CSR discourse, practice and activism can have the effect of marginalizing and undermining the role of key social actors and institutions, such as trade unions, political parties, governments and Southern-based interests in relevant decision-

<sup>33</sup> Some suggest the need to jettison the CSR project, partly because of what are considered to be its flawed assumptions and negative impacts for individual firms in terms of cost, market access and competitiveness (Henderson 2001; The Economist 2005), as well as the fact that the privatization of regulatory authority transfers responsibility to largely undemocratic or unaccountable private and non-governmental institutions. From a developmental perspective, there are also concerns that CSR throws up barriers to trade and employment (Kabeer 2004), and ultimately enhances the competitive advantage of big business.

<sup>34</sup> The “social sensitivity” of these models was, of course, restricted in terms of geography, sectors, firms, and the types of benefits and social groups involved. Inequitable gender relations, for example, restricted women’s access to the labour market and to various social rights of citizenship (Razavi et al. 2004; Hyoungh al. 2004). Typically, the environment (and the interests of future generations) were marginalized and some of the costs of any social compromise were externalized or displaced to the developing world or unregulated arenas including the household and unpaid labour (Jessop 1999). The so-called “grand compromise” that characterized Fordism (Lipietz 1992), particularly in the United States, was a fairly narrow pact between specific sectors of business and labour. In the case of East Asia, such gains were primarily related to a small group of large corporations that needed to attract and retain skilled labour (Pempel 2002). Others groups or stakeholders, including those associated with the supply chain in developing countries, were often excluded.

making, consultative and implementation processes. And instead of being mutually reinforcing and synergistic, there are major tensions and contradictions between macroeconomic policy and social and sustainable development, or between CSR and dominant consumption patterns and corporate strategies, which are often more conducive to a race to the bottom than to raising social and environmental standards.

Another difference relates to the nature of the contemporary social compromise that conditions relations between capital and labour. Whereas CSR is often rationalized and promoted as part and parcel of a new social compromise or pact adapted to the contemporary era of globalization (Hopkins 2003; Ruggie 2003), the terms of the compromise may be less interesting or motivational from the perspective of the individual firm. The current compromise relates CSR to a set of pro-market policies favouring privatization, commodification, foreign direct investment and trade. The compromises associated with certain models of capitalism in the past seem to have had more of a pro-business focus, involving more tangible and direct benefits for individual firms or industries. While the former may create an environment conducive to TNCs in general, it is not necessarily the same as being on the receiving end of more immediate and concrete benefits.

The piecemeal nature of many CSR initiatives, and the focus on social and environmental protection, contrast with the emphasis on redistribution and a somewhat more equitable and systematic sharing of the benefits of growth and productivity that characterized earlier models of stakeholder capitalism. The experimental, ad hoc, and, often rhetorical nature of many CSR initiatives belies another important difference: under previous models, there emerged institutions that could sustain social welfare and redistributive commitments<sup>35</sup> of both the material and political kind.<sup>36</sup> It is still an open question as to whether the emerging forms of private, non-governmental or multistakeholder regulatory authority described in this paper significantly alter the prospects for social and sustainable development.

Globalization has clearly changed some of the rules of the game that govern institutional change, in particular the scope for regulating markets through national-level interventions and politics, and the possibility that liberalism could be embedded on the basis of a narrow class compromise involving factions of capital and organized labour. Other levels of intervention (international, regional and local), players and relationships have become more important, and the range of issues that need to be addressed is broader (Jessop 1999, 2001; Nettesheim 2004). But some of the features that explain the emergence of somewhat more socially sensitive models of corporate capitalism in previous historical periods remain as relevant today as they did in the past.

The challenge confronting the ratcheting-up and scaling-up of CSR is perhaps more substantive than political. Politically, the CSR movement is rather strong. Indeed, the reason CSR has been catapulted onto the world stage and become a standard feature of mainstream discourse, lies in the fact that it is being promoted by a fairly broad coalition of social forces. In fact, it has brought together the reformist wings of two of the most influential movements of modern times, namely, certain actors associated with neoliberalism and a looser melange of social forces and ideologies associated with sustainable development. Perhaps its weakest flank, politically, is that which involves the (economic) developmental constituency, comprising some Southern governments, economists and multilateral organizations. They are concerned with the protectionist, cost and employment implications of CSR, and see good government policy (social, labour market, industrial and macroeconomic) and democratic international governance—and not simply good company behaviour—as the key to improving the social conditions of workers and communities.<sup>37</sup>

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<sup>35</sup> See Mackintosh and Tibandebage (2004) and Mkandawire (2004).

<sup>36</sup> Material aspects of redistribution refer to good and services; political refers to various institutional arrangements that empower citizens and disadvantaged groups, and constrain the power of corporations through, for example, anti-trust laws.

<sup>37</sup> Bhagwati 2004; DFID 2003; Kaber 2004; UNCTAD 1999; Zammit 2003.

The major substantive weakness of the CSR agenda seems to reside in the fact that it is swimming against a strong current of neoliberal reform that promotes forms of deregulation and flexibilization—or disembedding—that often have the effect of lowering standards. Put another way, it attempts to modify relatively minor aspects of that reform project without seriously questioning its fundamentals. Whether by design or default, such fundamentals also relate to corporate power and the lobbying capacity and political influence of global corporations. In this regard, the key challenge confronting the CSR agenda appears to be its relationship to neoliberalism.

At best, CSR can contribute to raising awareness of certain social and environmental problems and serve to caution against blind faith in both market forces and state regulatory capacity. It can also reinforce some aspects of the normative culture and culture of compliance associated with rights-based approaches to development and governance (ODI 1999), and add to the pool of institutions needed to ensure that markets behave more as the servants than the masters of humanity. Furthermore, we have seen that the CSR agenda is not static, but is constantly evolving and expanding, and is characterized by the gradual scaling-up of CSR initiatives and the incremental hardening of softer regulatory approaches, which derive from societal pressures, institutionalization and social learning.

At worst, CSR involves a transfer of regulatory authority to largely unaccountable agents and renders more stable and palatable a model of capitalism that generates or reinforces widespread social exclusion, inequality and environmental degradation. The likelihood that this worst-case scenario will materialize increases in contexts where the CSR agenda marginalizes issues of empowerment, redistribution, and the crucial role of public policy and trade unions in social protection and embedded liberalism. It will also gain ground where neoliberal reform projects are being actively pursued, and where the proponents of CSR disregard the multiple developmental implications of their own reform agenda and the concentration of economic power and political influence in TNCs.

The corporate accountability movement generally pays more attention to these aspects and is, therefore, quite different. Indeed, one way of characterizing and distinguishing the CSR and corporate accountability agendas is in terms of how they relate to three of the principal reform agendas of the contemporary era, namely neoliberalism, embedded liberalism and progressive variants of alternative globalization. The CSR agenda straddles both the neoliberal and embedded liberalism camps. To the extent that it works within the framework of economic liberalization and corporate-led globalization, the agenda is more palliative than transformative. The corporate accountability agenda also has one leg in the embedded liberalism camp, as is evident in the promotion of initiatives involving standard-setting, code implementation, monitoring and certification—or ratcheted-up variants of CSR. But it has another leg grounded in the anti- or alternative globalization camp where issues of redistribution, empowerment, participation and legalistic regulation of markets and corporations assume centre stage.

As such, the corporate accountability agenda will inevitably face considerable opposition and resistance from the powers that be. In this sense, one of its main challenges is political, namely how to mobilize the social and political forces, and build the broad-based coalitions and networks required to promote progressive institutional change. This requires confronting the difficult question of alliances and compromises involving business interests, and exploring more systematically the potential for the type of complementary, synergistic and pluralistic approaches to regulation outlined above. It also requires reconnecting activism with democratic party politics and processes, and forging links between campaigns and different types of activism—notably trade unions and NGOs, as well as North and South. Moving forward in this latter regard, however, will require greater sensitivity to development issues and the views and participation of governments and civil society actors from the global South.

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