Trade, Sustainability and Global Governance

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I. INTRODUCTION

The theme of this volume addresses one of the central challenges of the 21st century. As United Nations Secretary-General Kofi Annan put it in his celebrated report to the Millennium Summit: "The founders of the United Nations set out to promote social progress and better standards of life in larger freedom—above all, freedom from want and freedom from fear. In 1945, they could not have anticipated, however, the urgent need we face today to realize yet a third: the freedom of future generations to sustain their lives on this planet."[1]

Achieving that freedom requires that we learn to govern better, and that we learn how better to govern together. Specifically, it requires that we devise innovative ways to bridge two kinds of global governance gaps proliferating around us. One consists of the gaps between the scope and complexity of the challenges we face, including environmental threats, and the institutional means through which we strive to deal with them.

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1. KOFI ANNAN, WE THE PEOPLES: THE ROLE OF THE UNITED NATIONS IN THE 21ST CENTURY 55 (2000).

The other concerns a growing imbalance in global rulemaking. Those rules that favor global market expansion have become more robust and enforceable in the last decade or two—intellectual property rights being a prime example. But rules intended to promote equally valid social objectives, be they poverty reduction, labor standards, human rights or environmental quality, lag behind and in some instances have actually been weakened.

I propose to make three arguments in this introductory essay. The first two will be brief: I want to caution *against* taking the popular short cut of closing environmental governance gaps: linking environmental standards to trade agreements. And I want to make the case *for* working to strengthen the global environmental regime—which, in turn, has to mean rebuilding a more robust domestic constituency, as the collapse of Kyoto indicates.

Then I want to describe in somewhat greater detail Kofi Annan's Global Compact, which enlists the global business community, together with NGOs and international labor, in promoting environmental principles as well as labor standards and human rights. The message of that case is that the governance battle cannot be won unless it is based on new forms of social engagement that involve all the relevant social actors, and that the business community potentially is an important carrier of change.

II. THE TRADE/ENVIRONMENT LINKAGE

When Secretary-General Annan announced the Global Compact, he expressed concern about the growing practice of linking environmental standards to trade negotiations and agreements, including in the World Trade Organization. This practice poses enormous dangers to developing countries, he warned. Even when it is well intended—which is not always the case—legislative bodies in the wealthy countries, and the tit-for-tat of international trade politics, are highly likely to turn these linkages into outright protectionism, with the poor countries being the main victims. Very careful safeguards would have to be devised to avoid that outcome, and neither activists nor legislatures show much interest in devising them.

Adding insult to potentially serious injury, there is no conclusive evidence that trade is the main or even a major source of environmental degradation in poor countries, despite individual horrors we may have seen with our own eyes or anecdotes that are recycled on anti-globalization websites. The best econometric research simply has failed to confirm any race-to-the-bottom theory. Indeed, a recent study co-authored by my colleague Jeffrey Frankel shows that trade has beneficial consequences for a majority of the seven measures of environmental quality examined, and is statistically insignificant in relation to the others.[2] In no case was there evidence of significant negative consequences. The positive effects of openness to trade on the environment come via economic growth. People really do have preferences for a cleaner environment as their income levels rise, though policy intervention, of course, is required to supply it.

In sum, it would appear that those who advocate trade-environment linkages act on one of the following three bases: self-interest, as in the case of industrialized country unions seeking to protect jobs; misinformation, which is probably true of much of the public; or strategic behavior—activists and entrepreneurial politicians latching onto the trade regime to advance environmental objectives because it has greater reach and bite than the environment regime.

Self-interested behavior is defensible but we should label it for what it is. Misinformation should be corrected. But those who merely seek strategic advantage must face up to the possibility that their actions are detrimental to both poverty reduction in the developing world *and* the environmental sustainability that comes along with it.

III. STRENGTHENING THE ENVIRONMENT REGIME

Annan's preferred alternative—and mine—is to strengthen the global environment regime. He included an environment chapter in his Millennium Report as a wake-up call to governments; not once, in eighteen months of preparing for the Summit, did they express a desire to address environmental issues! As a fitting celebration of progress since Stockholm in 1972 and Rio in 1992, Annan also urged that those states whose ratifications are needed to bring the Kyoto Protocol into effect do so before Johannesburg. And he drew attention to what may well be the most pressing environmental problem in poor countries—lack of access to safe

2. JEFFREY A. FRANKEL & ANDREW K. ROSE, IS TRADE GOOD OR BAD FOR THE ENVIRONMENT?: SORTING OUT THE CAUSALITY (forthcoming).

drinking water and sanitation, the cause of 80 percent of all diseases in the developing world.

It was not to be. Northern interest in the South's lack of access is no higher today than it was at the time of the Summit, demonstrating yet again that while Northern pollution is deemed to be everybody's problem, the pollution of poverty, as Indira Gandhi called it thirty years ago, belongs only to the poor themselves. As for the Kyoto Protocol, the United States will not ratify it anytime soon, if ever.

UNEP—the one global body entrusted with the world's environment problems—still has an annual budget half the size of Tokyo's fire department, and no prospects of fundamental change. Proposals abound for a new global environmental authority, but it is not at all clear how or why the creation of a new international superstructure would compensate for the self-evident lack of political will.

So let me refocus the issue. The collapse of the Kyoto protocol was probably "over-determined," as the Marxists used to say. But the ease with which the Bush administration was able to dismiss it without suffering any domestic political consequences also must reflect some serious shortcomings in the environmental movement itself, and how politically weakened the domestic environmental constituency has become.

Here is one possible answer. Perhaps that movement has relied too heavily in recent years on techniques that short-circuit the political process and bypass the people: endless legal maneuvering; pushing international negotiations that have no prayer of being ratified by the Senate; playing the trade-linkage card; and organizing direct action against corporate actors based only in part on their environmental culpability, but more typically on the vulnerability of their corporate brand.

All the while, an explosion of flag-draped SUVs has helped drive energy efficiency in the United States to its lowest level in a generation.

If all politics is local, as Tip O'Neil famously said, all international politics begins at home, and it has to have popular roots to succeed. If we don't have a stronger global environment regime today, it may be because the domestic environmental movement has failed to sustain and regenerate those roots. It would seem to follow that we won't get one—global environmental authority or no—unless and until that changes.

IV. THE GLOBAL COMPACT

I now turn to the Global Compact, described by a Christian Science Monitor editorial as Kofi Annan's "most creative reinvention" yet of the United Nations.[3]

The Compact enlists the global business community itself as a potential agent of change. Business has the global reach and resources but it lacks the incentives and the legitimacy to play a governance role. Hence, the Compact seeks to embed the behavior of business in the universal principles of the United Nations—in cooperation with labor and civil society, as well as national and local authorities. In short, it seeks to weave a web of values around the global marketplace.

The Compact is not itself a regulatory instrument; it is a social learning network. It is intended to identify, disseminate and promote good practices based on universal principles.

The Compact encompasses nine such principles, drawn from the Universal Declaration of Human Rights, the International Labor Organization's Fundamental Principles on Rights at Work and the Rio Principles on Environment and Development.[4] The relevant UN agencies—Office of the High Commissioner for Human Rights, International Labor Organization and the UN Environment Program—are partners in this venture, as well as labor, represented by the International Confederation of Free Trade Unions, and a dozen or so transnational non-governmental organizations active in the three areas.

Companies are challenged to act on the nine principles in their

3. *A New Global Compact?*, CHRISTIAN SCI. MONITOR, Sept. 8, 2000, at 10. For a good introduction, *see* http://www.unglobalcompact.org. *See also* John Gerard Ruggie, *The Theory and Practice of Learning Networks: Corporate Social Responsibility and the Global Compact*, 5 J. CORP. CITIZENSHIP 37 (2002).

4. The nine principles are: (1) support and respect for the protection of internationally proclaimed human rights; (2) non-complicity in human rights abuses; (3) freedom of association and the effective recognition of the right to collective bargaining; (4) the elimination of all forms of forced and compulsory labor; (5) the effective abolition of child labor; (6) the elimination of discrimination with respect to employment and occupation; (7) a precautionary approach to environmental challenges; (8) a greater environmental responsibility; and (9) encouragement of the development and diffusion of environmentally friendly technologies. THE GLOBAL COMPACT (1999), *available at* http://www.unglobalcompact.org/un/gc/unweb.nsf/content/thenine.htm.

own corporate domains, moving towards "good practices" as understood by the broader international community, rather than relying on their often superior bargaining position vis-à-vis national authorities, especially in small and poor states, to get away with less.

Since a kickoff event in July 2000, nearly 400 companies worldwide—based in Europe, the United States, Japan, Hong Kong, India, Brazil and elsewhere—have expressed their commitment to engage in the GC. The target is 1,000 firms within three years.

Specifically, companies are asked to undertake three commitments:

> To advocate the Compact and its 9 principles in mission statements, annual reports and similar public venues, on the premise that their doing so will raise the level of attention paid to, and the responsibility for, these concerns within firms;
>
> To post on the GC website at least once a year the concrete steps they have taken to act on any or all of the 9 principles, discussing both positive and negative lessons learned;
>
> To join with the UN in partnership projects of benefit to developing countries, particularly the least developed, which the forces of globalization have largely marginalized.[5]

In partnership with UNDP, the Global Compact is being "taken local" in some two-dozen countries during an initial pilot phase, in many instances countries where multi-stakeholder collaboration of this sort has been alien.

V. LEARNING FORUM

The Global Compact is not without critics. The major criticism, leveled by the anti-globalization front, has been for what it is *not*: a regulatory arrangement, specifically a legally binding code of conduct with explicit performance criteria and independent monitoring of company compliance.

So how does the GC propose to induce corporate change?

Its core is a learning forum. Companies submit case studies of what they have done to translate their commitment to the GC principles into concrete corporate practices. This occasions a dialogue among GC participants from all sectors—the UN, business, labor and civil society organizations. The aim of this dialogue is

[5] Ruggie, *supra* note 3.

to reach socially more inclusive definitions of what constitutes good practices than any of the parties could achieve alone. Those definitions, together with illustrative case studies, are then publicized in an on-line information bank, which will become a standard reference source on corporate social responsibility.

The hope and expectation is that good practices will help drive out bad ones through the power of dialogue, transparency, advocacy and competition.

Why did the Secretary-General choose this approach rather than propose a regulatory code, complete with monitoring and compliance mechanisms? First, the probability of the General Assembly's adopting a meaningful code anytime soon approximates zero. The only countries eager to launch such an effort at this time are equally unfriendly to the private sector, human rights, labor standards, and the environment.

Second, the logistical and financial requirements for the UN to monitor global companies and their supply chains, let alone small and medium-sized enterprises at national levels, far exceed its capacity. For example, Nike, whose past labor practices have made it a frequent target of protesters, has more than 750 suppliers in 52 countries, and it is at the lower end among comparable firms in the number of factories as a fraction of its revenue base.[6] When it comes to effective regulation, there simply is no substitute for stronger national action.

Third, any UN attempt to impose a code of conduct not only would be opposed by the business community, but also would drive progressive business leaders, who are willing to engage with the Compact, into a more uniform anti-code coalition.

But these strictly pragmatic reasons imply that a learning-based approach is merely a second-best solution. In fact, a far stronger

6. The following thought experiment illustrates the full magnitude of the task. A Hong Kong-based firm currently performs social audits ("Social Accountability 8000") for a number of United States specialty and retail chains that source their products in China. It employs approximately 250 field technicians to monitor the production of $1 billion in products. If we were to multiply that ratio for all United States consumer product imports, the field staff requirement would amount to 55,000 technicians. Already, that is larger than the worldwide staff of the entire United Nations and all of its specialized agencies combined. However, we would still need to add to this number coverage for consumer product imports into all other countries, in addition to global imports from the extractive industries. The scale is mind-boggling. The escalating costs of monitoring Central American suppliers experienced by The Gap, a large clothing chain, is reported in Leslie Kaufman & David Gonzalez, *Labor Standards Clash With Global Reality*, N.Y. TIMES, Apr. 24, 2001, at A1.

intellectual case can be made for it.

Many of the GC's principles cannot be defined at this time with the precision required for a viable code of conduct. No consensus exists on what "the precautionary principle" is—that in the face of environmental uncertainty the bias should favor avoiding risk—even though it was enshrined at the 1992 Rio Conference. Similarly, no consensus exists, even among advocates, on where to draw the boundaries around corporate "non-complicity" in human rights abuses. Accumulated experience—through trial, error, and social vetting—will gradually fill in the blanks. The GC learning forum can provide that experience.

Moreover, the extraordinary pace of change in corporate strategies, structures and production processes makes it exceedingly difficult to specify *ex ante* the full range of performance criteria and desired practices that a code should include. No "freeze frame" could keep pace. In contrast, the GC learning forum helps companies to internalize the relevant principles so that they can shape and reshape corporate practices as external conditions change, potentially triggering an ongoing "ratcheting up" of performance. Employees are turning out to be vital allies in this process.[7]

The open-network architecture of the Compact also has great potential to generate positive spin-offs. For example, the Compact has triggered several complementary regional, national, and sectoral initiatives. Typically, they take a subset of interested GC participants beyond its minimum commitments. For example, Norway's Statoil and the International Federation of Chemical, Energy, Mine and General Workers' Unions recently reached an agreement, within the GC framework, whereby Statoil will extend the same labor rights, as well as health and safety standards, to all overseas operations that it applies in Norway—including Vietnam, Venezuela, Angola, and Azerbaijan.[8]

Likewise, a number of initiatives intended for other purposes have associated themselves with the GC. Such business groups as

7. A number of participating companies have set up internal websites or other discussion forums enabling employees to comment on company practices in relation to the Global Compact. A corporate-led Scandinavian workshop on diversity in the workplace resulted from such an internal website. On "internal branding" of this sort, *see* Bernard Stamler, *Companies Are Developing Brand Messages as a Way to Inspire Loyalty Among Employees*, N.Y. TIMES, July 5, 2001, at C5.

8 *Statoil Signs Agreement with ICEM*, EUROPE ENERGY, Mar. 30, 2001, at 578.

the International Chamber of Commerce, Prince of Wales Business Leadership Forum, International Organization of Employers and World Business Council for Sustainable Development support the GC and promote its principles in various ways. Perhaps the most unusual of these partnerships is with the multi-stakeholder Committee for Melbourne, which is incorporating the GC into the strategic plan it is developing for that Australian city, and asking companies located there to internalize the nine principles.[9]

Finally, the accumulation of experience within the Global Compact is itself likely to lead to a desire for greater codification, benchmarking and moving from "good" to "best" practices—including by industry leaders wanting to protect themselves against any possible competitive disadvantage. Laggards will have a harder time opposing actual achievements by their peers than *a priori* standards. And so this experiment in social capital formation may have built into it an evolution toward harder legal forms.

VI. THE BUSINESS OF BUSINESS

By now, many of you may be asking how realistic this scheme is and why business would want to participate, apart from wrapping itself in UN blue. The fact is, different businesses engage for different reasons.

The most basic rationale is the protection and promotion of a company's brand in the face of new social expectations. Increasingly, as a result of changed consumer expectations and activist pressure, it pays for companies to do "good" things—and to be seen to do them.

Some companies have done "bad" things in the past, they have paid a price in public embarrassment and perhaps even diminished sales or stock values, and they now want to pursue a different path. Think of Nike, or Shell. Others want to make sure they don't repeat errors committed by their peers; BP is working hard in Angola to avoid Shell's errant ways in Nigeria.

Some companies have come to view global corporate social responsibility ("CSR") as a natural extension of CSR in their home countries, as one of the rules of the game in the new global mar-

[9] Committee for Melbourne, *Current Projects; United Nations Global Compact, at* http://www.melbourne.org.au/projects.asp?id=38.

ketplace. It is probably no coincidence that the earliest of the first movers to support the Global Compact were companies based in Scandinavia.

Still others—particularly companies in cutting edge industries, where attracting absolutely the best personnel worldwide is the key to success—have found that they cannot sufficiently motivate the very best people with monetary rewards alone. In these cases, more elevated social purposes are becoming part of corporate culture.

In the environmental area, companies have discovered entirely new profit centers and developed entirely new businesses in response to the quest for greater "ecoefficiency": squeezing more use out of raw materials in the production process, as well as out of its waste byproducts. The somewhat broader concept of life-cycle management—expanding the search for these efficiencies further upstream and downstream—is also beginning to take root.

One of the biggest surprises in the Global Compact is the large number of developing country companies that have engaged in it: from Brazil, India, Thailand and elsewhere. Again, each has its own reason, but one common explanation is their apparent belief that to become a serious global player it is not enough to have only Harvard Business School management skills; it is also necessary to have a visible corporate social responsibility profile.

Finally, business has collective interests that are furthered by adopting an active global CSR posture. Quite simply, the more effective the CSR, the less the pressure will be to accomplish the same ends by other—and potentially far less friendly—ways. The alternatives include, of course, the trade-environment linkage I addressed earlier.

In short, *business* created the single global economic space; business can and must help sustain it. And corporate social responsibility—through the Global Compact or some other vehicle—offers one viable and vital approach.

VII. CONCLUSION

Sustaining our common future, I suggested at the outset, requires that we learn to govern better, and that we learn how better to govern together. Effective governance, in turn, requires a viable social base.

The Global Compact is a modest effort—small and partial by any standard. I have used it for illustrative purposes not because it answers all our prayers, but because it *is* illustrative: it is a prototype.

In addition to being a learning forum for identifying and promoting good practices in the areas of environment, labor standards and human rights, it is also an institutional learning forum in global governance. It seeks to weave universal principles into the global market place, and it brings together all the relevant actors in doing so: governments, who defined the principles on which the initiative is based; companies, whose practices it seeks to shape; labor, in whose hands the concrete work of global production takes place; NGOs, reflecting the wider community of stakeholders; and the United Nations, the world's only truly global political entity. And it has built into it, as I have indicated, a dynamic which, in specific instances along the way, can be expected to yield "harder law" products.

The stakes are high. To succeed, we need to abandon old habits—ideational and institutional—and try new approaches. The Compact is not the only way forward. But its strengths and weaknesses need to be better understood by analysts and activists alike because we hardly have a surplus of means by which to meet the challenge of closing global governance gaps in the years ahead.