

THE GLOBAL COMPACT – FACT OR FICTION?

JOHN PACE*

On 31 January 1999, Kofi Annan, the Secretary-General of the United Nations, delivered a speech before the World Economic Forum, Davos, in which he launched what was to become known as “the Global Compact”. In this speech, the Secretary-General challenged the business community to observe nine principles. These nine principles are:

Human Rights

- Principle 1* Businesses should support and respect the protection of internationally proclaimed human rights within their sphere of influence;
- Principle 2* Make sure that they are not complicit in human rights abuses.

Labour Standards

- Principle 3* Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4* the elimination of all forms of forced and compulsory labour;
- Principle 5* the effective abolition of child labour; and
- Principle 6* eliminate discrimination in respect of employment and occupation.

Environment

- Principle 7* Businesses should support a precautionary approach to environmental challenges;

* Visiting Fellow, University of New South Wales; Australian Human Rights Centre.

Principle 8 undertake initiatives to promote greater environmental responsibility; and

Principle 9 encourage the development and diffusion of environmentally friendly

On 26 July 2000, the Global Compact's operational phase was launched at the UN Headquarters in New York at a meeting, chaired by the Secretary-General, which brought together senior executives from some 50 major corporations and the leaders of labour, human rights, environment and development organizations.

The official UN Website describes the Global Compact as "a network. At its core are the Global Compact Office (at UN Headquarters) and four UN institutions: the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Environment Programme (UNEP), the International Labour Organisation (ILO) and the United Nations Development Programme (UNDP). The Global Compact involves all the relevant social actors: governments, who defined the principles on which the initiative is based; companies, whose actions it seeks to inform; labour, in whose hands the concrete process of global production takes place; civil society organizations, representing the wider community of stakeholders; and the United Nations, the world's only truly global political forum, as an authoritative convener and facilitator."

The Global Compact is not a multilateral agreement; it is based on unilateral commitment and related self-regulation. The basis of the Global Compact is therefore different from that underlying international institutional arrangements; these result from an inter-governmental agreement or from a decision of an inter-governmental institution and are based on the exercise of an act of State sovereignty. The Global Compact shares the same objectives of the inter-governmental system, and indeed seeks to build on the purposes and principles of the institutions that make up the UN system, and principally those of the OHCHR, UNEP and ILO. There is therefore a necessary complementarity of objectives between the Global Compact and the United Nations system.

The Global Compact may also be said to be inspired by the principle of corporate social responsibility,¹ which manifests itself in a wide

¹ Global Compact WebPage < <http://www.unglobalcompact.org> >, at "Overview":

"United Nations Secretary-General Kofi Annan first proposed the Global Compact

range of activities, from sponsoring local soccer teams, to major projects involving considerable resources.

The activities of the business private sector, and in particular the multinational corporations, have never been considered compatible with international human rights standards, for a variety of reasons. Until the Secretary-General's speech in 1999 in Davos, international business and international standards on human rights, including labour and environment followed independent courses. They did not meet – at least not in a positive sense. Many will surely recall the negative context in which the activities of multinational corporations were held in the colonisation, decolonisation, and post-decolonisation periods in the last century. Traditionally, the activities of the private sector – at least as far as the multinationals are concerned – were held to be an obstacle to the efforts of the international community aimed at defining and implementing common standards on human rights, including labour and the environment.

For the same reason, the launching of the Global Compact in 1999 gave rise to much scepticism, criticism and outright hostility in some quarters, and especially among the non-governmental community in developing countries. The demonstrations against the World Economic Forum, as well as the criticism of the procedures and practices of World Trade Organisation are symptomatic of this continuing hostility to these institutions that – rightly or wrongly – are held as the epitome of the unjust nature of the international economic and social order. The fact that the Global Compact is a

in an address to The World Economic Forum on 31 January 1999. Amid a backdrop of rising concerns about the effects of globalization, the Secretary-General called on business leaders to join an international initiative - the Global Compact - that would bring companies together with UN agencies, labour, non-governmental organizations and other civil-society actors to foster action and partnerships in the pursuit of good corporate citizenship."

"The Secretary-General understood that while corporate citizenship - also referred to as "corporate responsibility", "sustainable growth", and the "triple bottom line", among other terms - was emerging as a business trend, there existed no international framework to assist companies in the development and promotion of global, values-based management. By rooting the Global Compact in internationally accepted principles, participants could feel confident that their actions were being guided by values that are universally supported and endorsed"

“voluntary corporate citizenship initiative” and is based on the principle of self-regulation is another criticism of its true nature. The Global Compact has come in for some severe criticism.²

² See for instance, “Globalisation and the United Nations” (International Forum on Globalisation) – A brief history of corporate vs citizen power under the UN (<www.portoalegre2003.org>),

“Undermining the UN’s Original Mandate and Authority: The Global Compact. Now more than ever, the world needs to charge a reformed UN with the strengthened mandate to resubordinate the BWIs. The new political context resulting from globalization, where corporations can exercise great power over national governments, may also require that an empowered UN contain an additional binding code of conduct for global corporations.

“Most people do not know that under the existing UN system, there is already a world class set of human rights (the Covenant on Economic, Social, and Cultural Rights and the Covenant on Civil and Political Rights), labor rights (the hundreds of agreements of the International Labor Organization), and environmental protections (hundreds of international environmental agreements). The problem is that, although governments approved many of them years ago, they have largely failed to ratify and implement these rights domestically. Energy needs to be focused on getting all national governments to implement the standing conventions and treaties to which they have already agreed. The role of the UN should be to, where needed and agreed, enforce those obligations for the global common good.

“Yet with the existing set of peoples’ rights already negotiated and agreed to internationally by governments under UN auspices, Secretary General Kofi Annan has now undermined the UN’s own accomplishments by issuing a set of voluntary and unenforceable principles called the Global Compact. When understood in this historical context, Annan’s recently unveiled deal between himself, some of the world’s largest corporations, and a few hand-picked “representatives” of civil society, is nothing more than a feeble and cynical attempt to diffuse the backlash to global corporate power that was so evident on the streets of Seattle. The Global Compact ignores the original mandate of the UN, legitimizing the corporate highjack of peoples’ protections chartered under the UN some fifty years ago. Today, the World Bank, International Monetary Fund, and World Trade Organization institutionally subordinate the citizens’ rights embodied in the UN. This is why people must begin to focus on the relationship of the BWIs to the UN system, with a view to resubordinating the BWIs back to their original and rightful place.”

See also at the same source: Walden Bello, “From Melbourne to Prague” *The Davos Process II: Coopting the United Nations*.

“As important as the rhetoric in the Davos response is the process of bringing people onto the bandwagon. This would be achieved through dialogue, consultation, and the formation of “partnerships” between TNCs, governments, the United Nations, and civil society organizations.

“The UN was a piece of cake. Discussions with Secretary General Kofi Annan produced the “Global Compact” that has become the centerpiece of the United Nations’ Millennial Celebrations. Signed by 44 TNCs, the Compact has been

The purpose of this presentation is to assess whether the Global Compact is indeed necessary and/or useful in the realisation of international standards on human rights, including labour and the environment, or whether it is simply a futile exercise which serves big business in its pursuit of maximum profits regardless of these standards, if not to their detriment.

In introducing the initiative, the Secretary-General had stated that:

"globalisation is a fact of life ...but I believe that we have underestimated its fragility. The problem is: the spread of markets outpaces the abilities of societies and their political systems to adjust to them, let alone to guide the course they take. History teaches us that such an imbalance between the economic, social and political worlds can never be sustained for very long."

A report published in July 2002 by the UN's Global Compact Office further elaborates on the purpose of the Global Compact:

"As the global era of interdependence accelerates its pace and complexity, the need for effective cooperative responses to common economic and social problems becomes more compelling. To make globalisation both more stable and inclusive, the Secretary-General challenged the private

promoted by Annan as a major step forward for it supposedly commits its signatories to respect human, labor, and environmental rights and provide positive examples of such behavior. To many NGOs, on the other hand, the Global Compact is turning out to be one of the UN's biggest blunders for the following reasons:

"Despite a Compact provision that membership in the Compact will not be given to business entities complicit in human rights violations, the founding membership includes the worst corporate transgressors of human rights, environmental rights, and labor rights: Nike, Rio Tinto, Shell, Novartis, and BP Amoco.

"The Compact will provide a great public relations venue for these corporations to promote a clean image very different from the reality since compliance with the Compact will be self-monitored and no sanctions exist for violating the Compact's principles.

"The Corporations will be able to use the UN logo as a seal of corporate responsibility, thus appropriating the UN's image of international civil service "not only for short-term profit but also for the long-term business goal of positive brand image."

sector to enhance its commitment to the public interest... The Compact seeks to make globalisation more equitable – and thus more sustainable – for the vast numbers currently excluded from the international market place.”

Again, addressing an audience of international business leaders in April 2002, the Secretary-General explained:

“I see the Compact as a chance for the UN to renew itself from within, and to gain greater relevance in the twenty-first century.”

That the Global Compact presents a formidable challenge is perhaps an understatement, and the immensity of the objective it seeks to achieve cannot be calculated. It implies a modification in the traditional view that business thrives when it maximizes profits by suggesting that this maximisation should henceforth be above a threshold set by norms and standards established by the inter-governmental community over decades and with very active participation, influence and input of civil society. By implication, the Global Compact proposes to add the private sector to the traditional actors in the formulation and implementation of human rights standards.

In the time since its inception, and more precisely, since the official launch on 26 July 2002, the Global Compact initiative has been the subject of activities at the national level in no less than 43 countries – and the number of countries continues to expand. Wide as the range may be in geo-political terms, these activities have yet to acquire substantive depth. Most of these activities – perhaps understandably – are aimed at introducing the concept of the Global Compact in various communities. The activities at the international level include the establishment of an Advisory Council, which convened for the first time on 8 January 2002. The members of the Advisory Council were asked by the Secretary-General to address four priorities:

- (1) Safeguard the integrity of the initiative,
- (2) Serve as advocates of the Compact,
- (3) Provide expertise, and
- (4) Offer advice on policy and strategy.

So far, a large number of companies have signified their

participation in the Global Compact;³ the number of trade unions and non-governmental organisations is less^{4,5}.

The General Assembly of the United Nations has also supported

³ The following is taken from the Global Compact Official WebSite:

Participating Companies:

Below is a list of companies that are participating in the Global Compact. To be considered a "participant", and have its name posted on the website, a company must submit an Example of how it is integrating one or more of the nine principles into its business operations.

There are two requirements for participation in the Global Compact -a letter of intent from the company CEO to the Secretary-General, and the annual submission of efforts undertaken to advance the Compact's nine principles. The list below provides the names of the companies that fulfilled these requirements in 2001.

As of January 2002, companies who send a letter to the Secretary-General and submit an example through the new on-line template will be added to this list:

ABB	Hindustan Organic Chemicals Ltd.
Aluminium Bahrain	H&M Hennes & Mauritz AB
Amazon Caribbean Guyana	Indian Oil Corporation
Aracruz	ISS
Aventis	Junyao Group
BASF	Ketchum
Bayer AG	Kikkoman Corporation
BMW	LUCITÀ
Bohica Medical (SME - Australia)	Martha Tilaar Group
BP	Morley Fund Managment
BT	PT Mega Kelola Promoindo (SME - Indonesia)
Business Research & Development Initiative	National Thermal Power Corporation
Cargo Lifter AG	Natura Cosméticos S/A
China Petroleum and Chemical Corporation	Nexen
Cisco Systems	Nike
Credit Suisse Group	Nogatec International
DaimlerChrysler	Novartis
Deloitte Touche Tohmatsu	Now for Future Pty Ltd
Deutsche Bank	Organizações Globo
Deutsche Telekom	Pearson plc
DuPont	Placer Dome
Electricité de France (EDF)	Power Finance Corporation
Ericsson	PT Mega Kelola Promoindo
Eskom	Pulsar Informatica Ltd.
Esquel	Regis Engineering (SME - Tanzania)
France Telecom	Reputation Qest
Gerling Group	Rio Tinto
	SAP

Serendip Productions (SME - Pakistan)	Tata Iron and Steel Company
Shell International Ltd.	Telenor ASA
Skanska AB	Translation City
Ssovitek Design (SME - Uganda)	Transnational Supply & Service
Standard Chartered Bank	Trimtab Management Systems
Statoil	UBS AG
ST Microelectronics	Unilever
Storebrand	Volvo
Suez	William E. Connor & Associates
Yawal System (SME - Poland)	

⁴ The following organisations are listed under "Labour" in the Global Compact WebSite:

- The International Confederation of Free Trade Unions (ICFTU), with approximately 156 million members (organised in 221 national trade union centres from 148 countries and territories).
- International Federation of Chemical, Energy, Mine and General Worker's Union ICEM
- Union Network International UNI
- Trade Union Advisory Committee TUAC
- IMA

⁵ The following is taken from the official Global Compact WebSite:

"...

"Civil society organizations have been an integral part of the Global Compact since its creation. Their perspectives, expertise and partnership-building capabilities are indispensable in the evolution and impact of the Global Compact.

Human Rights:

Amnesty International
 Human Rights Watch
 Lawyers Committee for Human Rights

Environment:

World Wide Fund for Nature (WWF)
 The World Conservation Union (IUCN)
 World Resources Institute
 International Institute for Environment and Development
 Conservation International

Development, Others:

Regional International Networking Group
 Global Reporting Initiative (GRI)
 Transparency International
 The Save the Children Alliance
 SA 8000
 Global Sullivan Principles
 The Copenhagen Centre
 European Business Campaign 2005 for CSR
 International Center for Alcohol Policies (ICAP)
 GoodCorporation
 International Telecommunication Academy

the Global Compact.⁶ It may indeed be said from the foregoing that the Global Compact has been a worthwhile initiative. On the other hand the Global Compact needs to be approached with caution. In the first place, the corporate culture of maximisation of profits is still regarded as over-riding any other value in many corporations. Several have yet to declare their support and adherence to the Global Compact. Secondly, among those who have expressed a commitment to the Global Compact, there are several who have yet to make this commitment meaningful in a real, working sense. Thirdly, the composition of large corporations, made up of multiple business units makes it virtually impossible for the commitment made by the top directorate to translate itself in practical action on the ground; many such business units, are autonomous and not bound by the commitment made by the top direction. Fourthly, making the commitment is always tempting for its public relations potential, with the risk that the Global Compact serves as a convenient advertising tool to the detriment of any meaningful action.

The Advisory Council is established to address several of these risks, and it is comforting to note that the UN is not unaware of the ever-present risk of hijacking the excellent principles which the Global Compact is intended to bring to the corporate sector.

If the Global Compact is to prove a worthwhile initiative, it requires constant monitoring to keep it relevant and effective. At the UN level, this monitoring is entrusted to the UN's Global Compact Office at UNHQ, located close to the SG, who continues to follow the evolution of the Global Compact initiative closely. The principal UN institutions associated with the Global Compact do not appear to have dedicated the priority that the Global Compact needs and deserves.

Since this Conference specifically focuses on human rights the first two of the nine principles are of particular relevance to us

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⁶ See UN document A/56/323; and General Assembly resolution 55/215

today. In order to better appreciate the initiative, it is relevant to take a closer look at the role of the OHCHR in the development of the Global Compact. This Office has an over-arching responsibility for human rights in the UN system.

The role played by OHCHR thus far, in connection with the development of the Global Compact appears somewhat limited; the Office has produced very little beyond a couple of reports and speeches by the High Commissioner.⁷ Is this symptomatic of the gap that still separates human rights realities and the noble ideals of the Global Compact? Is it because the UN system is perhaps not yet ready to grapple with the challenge presented by the Global Compact? Is it because the Global Compact is no more than the product of wishful thinking?

These questions need to be answered to help us in determining whether, indeed, the Global Compact belongs to the realm of fact or of fiction. To answer these questions, it is relevant to place it in the context of the evolution of the work of the UN in the area of human rights.

According to the Global Compact, principles one and two state that

“businesses should support and respect the protection of internationally proclaimed human rights within their sphere of influence” and “make sure that they are not complicit in human rights abuses.”

Which are the “internationally proclaimed human rights” that businesses are to “support and respect,” and what is “their sphere of influence”?

What are the “human rights abuses” that businesses are to “make sure that they are not complicit in”?

The internationally proclaimed human rights may be said to consist of the International Bill of Human Rights, and the international conventions that have been drawn up within its overall ambit. Of these conventions, there are six conventions that envisage a mechanism for monitoring States parties’ conduct in carrying out their international obligations incurred as a result of

⁷ OHCHR reports and info on HC’s activities

ratifying these conventions.⁸ States are required to submit reports on measures they take to carry out their international obligations at the national level. States have primary responsibility for the protection of the individuals in their jurisdiction. The subject of international human rights law is the individual, and the State has the primary responsibility for the protection of his/her rights as spelled out in international human rights law. Since businesses are not States, they do not have to report to any supervisory body, and therefore the Global Compact asks businesses to support – presumably to support the protection of the individual. This is confirmed by Principle 2 which asks businesses to “make sure” that they are not complicit in human rights abuses. Again, therefore, the test is the protection of the individual. It may be deduced from this, that businesses will need to give priority to the protection of the individual and in so doing, it is conceivable that they might run into problems with Governments, on whom they depend for their business to function.

The United Nations has seen a distinct evolution in the drawing up of the international human rights norms; their implementation has followed a similar pattern. Since the World Conference on Human Rights – the second human rights conference in the history of the UN – in 1993, the work of the UN in human rights witnessed a dramatic acceleration. It will be recalled that this work, which was initiated with the drafting and adoption of the Universal Declaration of Human Rights in 1948, had been painfully slow in developing the network of international human rights law (the International Bill of Human Rights being the core of this network). The international convention on human rights that was to be the back-bone of international human rights law as a binding international instrument to have legal effect on States who ratified it, barely survived the drafting process – indeed did not survive at all as one convention. In 1952, the UN had to – artificially – divide human rights into two groups (Economic Social and Cultural, on one hand and Civil and Political on the other), and to draft a Covenant on each group of these rights, and even then the drafts were not completed until 1966.

⁸ The ICCPR is monitored by the HRC, the ICESCR is monitored by the CESCR, the Convention Against Torture is monitored by the CAT, the CEDAW is monitored by the CEDAW, and the CRC is monitored by the CRC.

Another ten years passed before the thirty-five ratifications were received which enabled them to come into force (in 1977). It therefore took thirty years before the treaty implementation procedures, conceived in 1948, were to start functioning.

This long process is illustrative of the low level of the international political will when it comes to making international human rights norms meaningful in day-to-day realities. For a number of reasons, and principally owing to the changing configuration of UN membership due to the de-colonisation process, the UN developed other tools in addition to the system of implementation of international human rights norms through conventions; the shift, as of 1967,⁹ to ad hoc inquiry of specific situations – now known as the “extra-conventional” or “special procedure” system which buttresses the conventions and which enables the CHR to look into certain situations directly. This in turn led to the development of the idea of technical assistance in human rights, and extra-budgetary resources were authorised as of 1987, as was the development of training and educational materials shortly thereafter. We thus saw the emergence of a ‘prevention’ approach to the implementation of international human rights norms, in addition to the ‘protection’ that had been the main thrust of the earlier years.

But this work was carried out in a context of compartmentalisation. The international system concentrated on individual sectors, without any real interaction among the various institutions. Human rights work in the Commission on Human Rights, other than standard-setting, was largely focused on civil and political rights and isolated from the work on economic and social rights undertaken elsewhere in the UN system.

It was this system that gradually generated a movement towards mainstreaming, and in the eighties, we saw the emergence of terms such as “good governance” and “sustainable development”, indicating the need to address development within an overall human rights context.

The establishment of a High Commissioner in 1994 provided an opportunity to concentrate action in human rights in a special institution. It was therefore a matter of time for the UN to address the main problem in this area, viz, the fragmentation of the

⁹ CHR resolution 2(XXIII) of.. March 1967

institutions that made up the UN system, and the isolation of the human rights programme from the rest of the system. The High Commissioner was to provide the catalyst that would re-integrate the work of the UN, consistent with the purposes and principles of the UN Charter.

In better placing the Global Compact in its true context, therefore, it is relevant to underline the importance of the SG's Reform Proposals in 1997,¹⁰ followed up by Phase II announced last September. Both stages of the proposed reform target the UN work on human rights. The first stage aimed at placing human rights at the level of all Executive Committees established under that reform,¹¹ whereas the second targets internal priorities and reforms, consistent with the inter-dependence of human rights norms.

The work of integrating the system around human rights further accelerated with the setting up of a Development Assistance Framework (UNDAF) within one of the Executive Committees, the United Nations Development Group (UNDG). UNDAF is intended to enable countries to prepare a coherent programme of technical assistance through the coordinated efforts of governments and of the UN system through consultations in the country in question and with the HQ based inter-agency teams. It is a significant improvement in the manner in which the UN system carries out its mission and consistent with the Purposes and Principles set out in the Charter, constituting the *raison d'être* of the United Nations system.

Of equal significance is the development in 1999, of the Comprehensive Development Framework by the World Bank, a formula similar to UNDAF in its basic concept of an integrated approach in addressing development needs.¹² The importance of this development is further underlined by the fact that with this approach, the World Bank had hitherto avoided involvement in human rights issues, on the grounds that its Articles of Agreement envisaged an economic – as distinct from human rights – institution.¹³

There are other, equally significant factors that show the evolution of this trend to adopt measures aimed at making the work of

¹⁰ See UN document A/51/950 of 14 July 1997

¹¹ See UN document A/57/387 of 9 September 2002

¹² World Bank CDF announcement

¹³ ADD REF RE WB IN VIENNA

individual sectors of the international system relevant to its mission under the Charter and therefore increasingly inclusive of international human rights standards. One such example is the drawing up of sizeable projects involving UNDP and OHCHR (known as HURIST or "Human Rights Strengthening")¹⁴ which envisages joint technical cooperation projects in several countries involving various "windows" aimed at strengthening governance-related institutions in recipient countries.

The years preceding 1999 saw several such steps; these steps established the intergovernmental institutions as front line actors in the process of implementation of international human rights standards, together with governments and non-governmental organisations.

It was therefore a matter of time until the opening was made to the private sector, which is now considered as the fourth actor in the human rights implementation process. The challenges to the development and implementation have been – and continue to be – formidable. On the other hand, the Global Compact should prove an important step in the process of advancing the implementation of international human rights standards, as it encompasses a sector whose activities are inexorably linked with the enjoyment of these international human rights standards. One cannot underestimate the nature of this challenge; think, for instance, of the contradiction between the tobacco industry and the right to health, indeed to life.

A crucial consideration in assessing the Global Compact is the reconciliation of the fundamental principle of State responsibility for the protection of the human rights of the individuals within its jurisdiction, with the power of the private corporate sector.

Perhaps the greatest challenge to the Global Compact is not just the private sector, but the international system itself. The human rights programme of the United Nations system is badly in need of reform, above all in the treaty implementation area. The Secretary-General, to his credit, has recognised this, and in his recent proposals has given priority to this reform. The heart of the problem this reform will face is the continuing separation in the treatment of civil and political rights from economic, social and cultural rights, which is both artificial and detrimental to the meaningful implementation

¹⁴ HURIST reference

or realisation of human rights. How could it be expected to monitor the conduct of the private sector when the mechanism for monitoring State compliance is still in such a dire need for reform?

The telling factor in determining whether the Global Compact is fact or fiction, will, ironically, come from the international human rights mechanisms themselves and the speed with which the Secretary-General's reforms are undertaken.