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CORPORATE SOCIAL RESPONSIBILITY FOR INTERNATIONAL BUSINESS

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The recent proliferation of corporate social responsibility (CSR) codes and standards has been matched only by the boom in writings on the subject.[1] This paper will focus mainly on the interaction between these codes and formal legal requirements, at national and international levels. It starts from the perspective that the recent spate of voluntary corporate codes for TNCs must be understood in the context of the changing environment for FDI, including shifting patterns of national and international regulation. Hence, although corporate codes have a legitimate place, it suggests that they should be more firmly anchored within a broader regulatory framework which establishes obligations as well as rights for business. This could be based on new approaches to combining binding `hard’ law with non-binding `soft’ law standards, notably through a Framework Convention.

I. BUSINESS RIGHTS AND RESPONSIBILITIES

International business in various forms has a long history, and even the currently dominant form of the Transnational Corporation (TNC) goes back to the end of the 19th century. However, it is only since the 1960s that there has been an increasing tension between the global reach and visibility of TNCs and the dualist hierarchy of national-international law. This regards corporations as formally private legal persons, and hence subjects of national law, while international law directly binds only states. However, the size and importance of TNCs made them a prime target for regulation, in both home and host states. This exposed them to multiple and sometimes conflicting regulatory requirements, which came to the fore in the 1960s. In a period of lively debate a variety of proposals were put forward. Perhaps most radically, George Ball, a US under-Secretary of State and UN representative (later Chairman of Lehman Brothers International), proposed the `denationalization' of TNCs. He argued that a supranational citizenship for TNCs should be provided by treaty, since in his view the pragmatic policy followed by TNCs of obeying local laws in each country where they operate would not resolve the `inherent conflict of interest between corporate managements that operate in the world economy and governments whose points of view are confined to the narrow national scene’ (Ball 1967, 1975).

Ball's proposal remained an abstract one, and instead a more piecemeal approach was adopted. Pressures to adopt global standards of responsibility for TNCs were generally channeled into the formulation of non-binding Guidelines or Codes by intergovernmental organizations (UNCTAD 1996). Some had a broad scope, such as the ILO Tripartite Declaration of 1977, the OECD Guidelines of 1976, and the aborted UN Code of Conduct for TNCs; others a more specific regulatory focus, such as the Set of Principles for the Control of Restrictive Business Practices of

1980; and some were aimed at specific industry practices, such as the WHO's Baby-Milk Marketing Code of 1981 (Picciotto 1999; Richter 2002).

Not surprisingly, the impact of these instruments greatly depended on the effectiveness of the mechanisms for monitoring and ensuring compliance, and especially on the strength of social pressures brought to bear mainly through civil society organizations (trade unions and other social movements). Too often the fact that they were not legally binding was used to justify a failure or even refusal to back up these codes with adequate procedures for monitoring compliance or dealing with alleged violations. Thus, `non-binding’ was assumed to mean `aspirational’, which is not at all the same thing.

In the meantime, states sought to define and assert their sovereignty to regulate economic activities taking place within their national jurisdiction. Capital-importing host states, especially the developing countries (many of which had recently gained political independence), sought to attain economic independence by asserting their right to control foreign investment. This was most strongly expressed in the Charter of Economic Rights and Duties of States (CERDS) of 1974. Article 2(a) of the CERDS asserts the primacy of national jurisdiction and denies the existence of any obligation to grant `preferential’ treatment to foreign investment. This expressed the formal right of states to assert total regulatory power over economic activity within its borders, including acquiring or limiting ownership rights.

Not surprisingly, international investors and their home states became wary of the intentions of host states. Bilateral Investment Agreements (BITs) emerged as a means of providing basic guarantees. However, on the whole they did not restrict the direct regulatory powers of host states. Most BITs permit the host state to regulate entry, impose ownership limitations or conditions, and specify performance requirements (Dolzer & Stevens 1995). Indeed, one analyst has described them as embodying `nationalism behind a liberal façade' (Vandevelde 1998a; see also Vandevelde 1998b). This explains the willingness of developing countries to negotiate such agreements, since they continued to consider controls over inward investment important to ensure that it contributes to economic development, as evidenced in the success of the East Asian developing countries, including China.

During the 1980s, however, pressure grew for countries wishing to attract investment to adopt a completely `open door' policy, and to abandon access controls, ownership restrictions, and performance requirements. This stance was embodied in the US model BIT of 1980, which required pre-entry National Treatment (although this was subject to specific exclusions in actual treaties negotiated). Capital-importing countries continued to resist these pressures, and rejected suggestions that a multilateral investment treaty be included in the Uruguay Round of trade negotiations which resulted in the establishment of the WTO. However, the negotiation of BITs gathered momentum in the 1990s (UNCTAD 1998), and some of these treaties conceded pre-entry National Treatment.[2]

In the meantime, the attempt to develop a multilateral agreement on investment (eventually known as the MAI) shifted from Geneva to Paris, where the negotiations were hosted by the OECD, only to be abandoned in failure after three years in 1998. It was apparently a surprise to some that even developed countries, which account for the bulk of international investment, and are generally both exporters and importers of capital, failed to agree a strong investment liberalization and protection standard. However, a major reason for the difficulties encountered between the negotiating governments, exacerbated by the criticisms from an internationally-organised campaign and articulated by their increasingly concerned domestic constituencies, was the realization of the potentially far-reaching deregulatory impact of this type of treaty. This resulted in growing lists of national exclusions, as well as more general carve-outs in the agreement itself, negating its intended purpose of establishing a high level of market access and investment protection (Picciotto 1998). At the same time the eruption of the financial crisis in Asia in 1997, spreading also to Russia, drew attention to the dangers of rapid liberalization of investment flows.

The slogan `No Rights without Responsibilities', adopted by campaigners against the MAI (Mabey 1999, 65), encapsulated the criticisms levelled by many observers of the emerging regulatory framework for international investment. The pressures towards economic globalization were resulting in legally binding restrictions on national state regulatory powers. These entailed not only the removal of border controls on admission of investments, but also granting foreign investors legal rights to challenge domestic laws by alleging de facto discrimination, or on the grounds of the taking of a property right. The increase in these legal challenges, brought under both BITs and NAFTA’s chapter 11, demonstrated the willingness of some investors to devote large resources by resorting to international law to block or overturn national state actions.

Yet international law had developed few if any instruments governing the responsibilities of international business. Only in 1997 did the OECD agree a treaty to combat bribery of foreign public officials, although a draft had been developed through the UN in 1979 (UNCTAD 1996, I-103). The bulk of the instruments developed since the 1970s to establish standards of responsibility for international business not only remained non-binding in form, but were generally supported by weak mechanisms for monitoring compliance. This was the background to the emergence in the late 1990s of corporate codes.

II. CORPORATE CODES: EFFECTIVE TOOL OR PR HYPE?

The sudden spate of adoption of corporate codes from the mid-1990s took many by surprise, and raised new questions for both critics and defenders of big business. The mantra of liberalization suggested that if business were left free to pursue profit, economic growth and social development would follow. Yet here were companies voluntarily committing themselves to a wider range of social and environmental goals. It was quickly apparent, however, that this did not originate from simple altruism on the part of their directors, but from an awakened awareness of the importance of the firm's image to its customers, workforce, and investors. Reputational damage could quickly hit bottom-line profits, while investment in social responsibility could reap long-term benefits.

Some learned this lesson with a dramatic suddenness. A notable case in point was Royal Dutch Shell, which in 1995 suffered a double blow. The company's decision to end the life of its Brent Spar oil platform by sinking it in the North Sea was exposed to the media spotlight by a dramatic stunt by Greenpeace, although the activists' denunciation of Shell’s environmental irresponsibility was later felt to have been exaggerated. On the other side of the world, a campaign by the Ogoni people in the Niger delta, culminating in the Nigerian government's putting to death of nine of their leaders including the writer Ken Saro-Wiwa, drew the world's attention to the company's apparent indifference to the environmental damage and social deprivation which its highly profitable activities did nothing to alleviate, and seemed indeed to exacerbate. By April 1998, the firm produced the pioneering Shell Report 1998, subtitled *Profits and Principles - Does There Have to be a Choice?,* which stated it was `about values. It describes how we, the people, companies and businesses that make up the Shell Group, are striving to live up to our responsibilities - financial, social and environmental'. These were the three dimensions of the so-called `triple bottom line' of sustainable development, against which Shell proclaimed that all companies would soon be expected to account for their activities. Shell went even further in recasting its annual report for 2000 entirely in terms of of social responsibility and health, safety, and the environment (Williams 2000).

Shell's experience showed that it was not enough for a firm, especially a large TNC, to manage its operations simply in compliance with the law, and leave it to governments to deal with social issues in the public interest. The decision to sink the Brent Spar complied with all the regulations agreed among the states bordering the North Sea. The failure of oil wealth to benefit ordinary people especially in the oil-producing regions in Nigeria could be attributed to the distribution formula which allocated the bulk of revenues to the central government, where it was dissipated in corruption (Frynas 2000, Wheeler et al. 2002). None of this protected the company from consumer boycotts and loss of employee morale resulting from damage to its reputation. As one commentator put it, `close observers of Shell have said the company's reaction to those crises was not that they were temporary unpleasantries to be weathered but truly corporate culture-altering events that shook the staid old giant to its core' (Williams 2000).

Shell's experience was replicated by other companies sensitive to consumer concerns and reliant on brand-names, for example in the apparel industries and retailing. High-profile campaigns on US campuses targeted firms such as Nike and The Gap for their use of supply-chain sub-contractors employing workers who were often under-age and in sweatshop conditions. Incidents such as the fire in 1993 at the Kader toy factory in Thailand which supplied major toy companies, and videos showing children in Pakistan's Sialkot stitching footballs with a FIFA label prior to the 1996 World Cup, were used by international trade union organizations to highlight breaches of international labour standards (Justice 2002). Firms found that the brand-names trusted by consumers which were often their most significant asset could quickly be endangered by campaigns which revealed the `labour behind the label' (Klein 2000).

Within a short space of time many companies and industrial associations had adopted voluntary codes. An OECD study collected some 246 codes, about half of which were issued by individual firms, and some 40% by associations, the remainder mainly by stakeholder coalitions and NGOs (OECD 2000). They generally dealt with matters of concern to consumers, such as labour and environmental standards, as well as compliance with law, and issues of potential risk to the firm, such as bribery and corruption. There were, however, considerable variations both of subject matter and of style, especially in the degree of specificity.

This revival of interest in establishing global standards of corporate responsibility once again drew in intergovernmental organizations. Thus, UN Secretary-General, Kofi Annan, in a speech to the World Economic Forum, Davos, on 31 January 1999, challenged world business leaders to `embrace and enact', both in their individual corporate practices and by supporting appropriate public policies, nine universally agreed values and principles derived from UN instruments, which were embodied in a UN Global Compact (www.unglobalcompact.org). However, this initiative was in turn criticized by activists as no more an attempt to lend the legitimacy of the UN to corporate public relations hype (TRAC 2000). The International Labour Organization has also become involved, especially in relation to labour standards, and has established a business and social initiatives database (www.ilo.org/basi).

The private and voluntary nature of these initiatives raised two central questions. These were the rather haphazard and selective content of the codes, and the lack of effective implementation mechanisms or procedures for monitoring compliance. Thus, an analysis by the ILO of labour-related content in approximately 215 codes showed that the majority (especially of enterprise-drafted codes) used self-defined standards; reference to national law was relatively frequent especially in relation to wage levels; but no more than one-third referred to international labour standards even in general terms, and only 15% (almost exclusively those developed with trade union or NGO involvement) referred to freedom of association and/or collective bargaining (ILO, 1998, para. 46ff). The OECD study showed only 13% of the codes referring to labour issues mentioning ILO standards, and 30% freedom of association (OECD 2000, paras. 18-19).

As regards implementation, the bulk of corporate codes rely on internal follow-up and monitoring (OECD 2000, para.85). Even where there is provision for external involvement, for example in third-party or industry-association codes, critics have raised serious doubts as to whether this is genuinely independent. Lack of effective implementation was the main reason for refusal of trade unions and some NGOs to join the US Fair Labor Association (Jenkins 2002, 24). Private management consultants have of course been quick to offer their services for compliance auditing, but doubt has been cast on both their independence and competence (LARIC 1999, O'Rourke 2002). On the other hand, NGOs have been wary of being drawn into this role, for fear of becoming co-opted and merely lending their legitimacy to corporate public relations (Kearney 1999). The ILO's survey document raised the possibility of its adopting a proactive role, towards both specification of the content of codes and verification procedures (ILO 1998, para. 138), but in practice it has adopted the minimalist alternative of providing advice and information (ILO 2003).

The self-selected nature of the content, and the lack of independent external implementation or monitoring mechanisms, inevitably generate scepticism about the value and effectiveness of corporate codes. Although serious study of the effects of codes is still in its infancy, there is some evidence that firms adopting a code do not perform any better against benchmarks relevant to that code's standards.[3]

Public scepticism of corporate codes has been further fuelled by the startling revelations of unscrupulous behaviour on a massive scale by senior managers, following the dramatic collapses of corporate giants such as Enron and WorldCom and the crash which followed the dotcom bubble. The enquiries into Enron, for example, revealed that a combination of financial engineering and sophisticated tax avoidance enabled it to declare in its financial statement between 1996 and 1999 net income of $2.3bn, but losses for tax purposes of $3bn (McIntyre and Nguyen 2000; US Congress 2003, p.6). Significantly, only one of the codes analysed in the OECD study mentioned taxation (OECD 2000, para.29). This loss of public confidence in corporate management has so far led mainly to proposals to strengthen corporate governance mechanisms, especially in the USA.

III EMBEDDING VOLUNTARY CODES IN LAW

Much of the discussion of corporate codes is based on the assumption that by definition they exist outside or beyond law. Their advocates stress that their strength lies in their voluntary character, which gives them the flexibility to be tailored to the characteristics and circumstances of the business, and to raise standards by encouragement and self-generated commitment, as opposed to the rigidity and instrumentalism of externally-imposed and bureaucratically-enforced law. Corporate critics and sceptics, on the other hand, challenge the effectiveness of self-selected and self-monitored standards.

On closer examination, this sharp distinction between voluntary codes and binding law can be seen to be inaccurate, undesirable and unnecessary. Codes entail a degree of formalization of normative expectations and practices and, even if they do not directly take the form of law, they may have indirect legal effects. The challenge is to design a framework or architecture which can combine the strengths of corporate codes and formal law. Codes may have legal effects in a number of ways.[4]

Firstly, they may be enforceable through private law. For example, they may constitute or form part of contractual agreements. This may be the case where a firm formulates a code for its business networks, for example a brand-name retailer for its sub-contractors and suppliers, or a major oil company such as Shell for its retail outlets. Typically, companies have in practice preferred to avoid such effect, by specifying that such codes are not intended to be formally legally binding. However, it is also generally made clear that if identified breaches of the code are not followed up by remedial action, they would lead to non-renewal of commercial contracts (Fridd & Sainsbury 1999, p.231). In addition, obligations to facilitate monitoring of compliance may form part of the formal commercial contract. Associational and Third-Party codes are also likely to have effect as contractual arrangements, under which participating firms may be entitled to certification (which can be used in their product and brand-name marketing) provided the agreed monitoring mechanisms verify that they comply with the provisions of the Code.

This flexible relation between formally binding legal obligations and more specific standards which in practice determine when to invoke the law is a familiar concept. It has long been known that breaches of formal contractual obligations in business agreements are often dealt with flexibly (Macauley 1963). Hence, the formally non-legal status of supply-chain codes should not in itself be a concern, unless it is a signal that the code is not intended to be taken seriously.

Codes may also lead to legal enforcement by private parties based on national state regulatory law. For example, firms proclaiming their adherence to a code create expectations which may be legally enforceable by their customers or other stakeholders. Thus, the California Supreme Court has allowed an action to be brought against Nike for breach of false advertising and unfair competition laws. The action challenges the accuracy of the Report commissioned by Nike on compliance with its corporate code by suppliers, and used in Nike's corporate publicity, which had found no evidence of illegal or unsafe working conditions at Nike factories in China, Vietnam, and Indonesia (*Kasky v. Nike* 2002).

At the level of international law also, voluntary standards or codes can be given a legally binding status. For example, the World Trade Organization (WTO) agreements on *Technical Barriers to Trade* (TBT) and on *Sanitary and Phytosanitary Measures* (SPS) establish an obligation on states to use relevant standards developed by appropriate international organizations `as a basis for' national regulations affecting internationally-traded goods. This has the effect of converting standards developed by organizations such as the Codex Alimentarius Commission, which those bodies themselves do not regard as binding, into mandatory obligations for WTO members.

Thus, there is no rigid separation between `soft' and `hard' law, between totally voluntary codes and strictly binding laws. The interesting and important question therefore is how to construct an `architecture' of normative arrangements which can combine and integrate the two in the most fruitful manner. This requires first an analysis of the strengths and shortcomings of each, and then an evaluation of the different forms of combination.

Analysis of corporate codes, briefly surveyed above, suggests that they have two main advantages. Firstly, they can be tailored to meet the specific needs of particular businesses, and applied with awareness and sensitivity to their particular circumstances and local context. For example, rigid laws strictly applied may be a harmful way to tackle the problem of child labour in poor communities and countries. A simple prohibition against employing children below a certain age may merely result in their being excluded from relatively better-paid jobs in the formal sector and forced to resort to work which is physically and morally much more damaging. Thus, the UK's Ethical Trading Initiative (ETI) Base Code requires adherents to end new recruitment of child labour, but also `to develop or participate in and contribute to policies and programmes which provide for the transition of any child found to be performing child labour to enable her or him to attend and remain in quality education until no longer a child'. This suggests that laws should establish minimum acceptable requirements, while codes should be aspirational and aim at significant enhancement, as well as providing constructive arrangements for achieving such improvements.

The flip side of this flexibility, however, is one of the significant disadvantages of codes, their patchy and uneven content, resulting from self-selection. Hence, an important function for the broader governmental and intergovernmental codes (such as the UN Global Compact) is to provide a template of basic principles of CSR, which to some extent they are already performing. However, this has not been expressed as establishing either a basic minimum, or as taking the form of binding requirements. Thus, the flexibility and adaptability of the code format may result in firms picking and choosing from among the standards, effectively diluting them, instead of building more specific provisions and targeted programmes onto them.

This suggests that formal law could play a helpful role in defining minimum standards or templates for the content of codes. These could be amplified or specified in more detail by firms, to tailor the standards to their own circumstances. In this way, corporate codes could provide real value-added, instead of tending to dilute the standards applicable.

Legal frameworks for regulating corporate codes could be established at national, regional, and global levels. An example of a national law is the proposal submitted to the Australian Senate in 1998 for legislation to require Australian TNCs to report on their compliance with a range of defined CSR standards.[5] The rejection of this proposal perhaps indicates some difficulties with the approach it adopted. Firstly, it adopted a prescriptive approach by seeking to define directly the CSR standards on which firms should report compliance. This would tend to result in minimalism, a least-common-denominator definition of standards. For example, although the Bill did include a provision on taxation, it was limited to a duty `to comply with the tax laws in each country in which it operates'. As suggested above, a better approach would be to require firms to draw up their own codes, but based on a minimum specification. Thus, in addition to compliance with national tax laws, firms could be required to establish guidelines to prevent tax avoidance, which could be tailored to their particular type of business and their international structure. Similarly, it is better to ask firms to establish environmental impact assessment and environmental performance standards for themselves, adapted to their own business, while requiring them to be based on required minimum specifications.

The second problem with national requirements is the issue of jurisdiction. A home state which requires specified standards to be complied with not only by companies incorporated under its laws or in respect of activities within its territory, but also by foreign affiliates and for activities abroad, may be accused of excessive or `extraterritorial' claims to jurisdiction. However, the law need not be blind to business reality. Obligations can clearly be placed on the parent company, and its directors, which can extend to the worldwide activities of the firm, to the extent that these activities are under their de facto control.[6] By requiring parent companies within their jurisdiction to establish CSR standards for the worldwide activities of the integrated firm, home countries would be encouraging such firms to spread best practice internationally, which could be regarded as legitimate.

Nevertheless, it would be easier and in many ways more desirable for such requirements to be agreed internationally as far as possible, so that national law can be based on international agreement. Here again, a new approach seems to be needed. Intergovernmental organisations have faced the dilemma, since the initial movement in the 1970s to develop codes of conduct for TNCs, that they have no power to create legal obligations binding directly on firms. Mainly for this reason, measures such as the OECD Guidelines for TNCs have taken the form of `recommendations jointly addressed by governments to multinational enterprises'. At the same time, they have been formulated in fairly abstract and general terms. However, it is notable that codes with a more specific focus have been more detailed and specific: a case in point is the WHO Code of Marketing of Breastmilk Substitutes. This indeed has been used by some states as the basis for national legislation. Where it has been felt necessary to establish binding legal obligations, these have been directed at states, and tend to be expressed in minimalist terms even if their focus is specific. Thus, the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) has a rather narrow scope, although it is backed up by a process of peer-review implementation.

An alternative approach could adopt the technique of a Framework Convention. This has emerged in recent years, as a means of establishing a set of objectives and principles which are binding on states, together with implementation mechanisms and processes for the formulation of more specific norms. Initiated for the purposes of developing regimes for environmental protection (such as Climate Change), the technique has been adapted by the WHO for its proposed Framework Convention on

Tobacco Control (Bodansky 1999). Its advantages are that it can establish an organisational and procedural basis to develop new standards, as far as possible through deliberative processes involving a range of civil society as well as governmental participants, providing a stronger basis for mutual trust.

A Framework Convention can also adopt a more flexible approach to combinations of hard and soft law codes. For example, it can establish legal requirements on participating states to lay down specifications for corporate codes in general terms, while providing that they should be based on appropriate internationally-agreed standards which may be developed subsequently. As explained above, the WTO agreements establish a Framework Convention in this sense, since they require states to ensure that national regulations do not create unnecessary obstacles to trade by `basing' them on internationally-agreed standards where they exist.

IV INTEGRATING CSR MEASURES WITHIN A GLOBAL RULES-BASED FRAMEWORK

The example of the WTO can also be adapted to deal with the criticism that international investment agreements are one-sided in granting significant rights to investors without any responsibilities. This has raised the question of how a better balance might be achieved in a multilateral framework for investment. A Framework Convention could provide an umbrella for a number of related agreements which would deal with both investor rights and responsibilities, combining liberalisation and regulation.

The technique of related agreements could be used, firstly, to clarify the impact of investment protection obligations on national law. As with the TBT and SPS agreements under the WTO, a presumption could be created that national measures based on internationally-agreed standards (e.g. of environmental protection, or human rights) would be valid. This would help to prevent disputes or claims based on indirect discrimination or de facto expropriation.

Secondly, international agreements and standards could be associated within a multilateral investment framework either on a required or conditional basis. Some international instruments might be considered to embody such core values and standards that they should form an essential part of the package, just as the TRIPS agreement has made acceptance of basic intellectual property rights a requirement of participation in the WTO system. This might be the case, for example, for the ILO Declaration on Fundamental Principles and Rights at Work of 1998. Other issues which might be regarded as an essential part of a multilateral investment framework, and for which multilateral agreements already exist which could be used or adapted for the purpose, include combating bribery, and cooperation in tax enforcement.[7] This model might also be an appropriate way to deal with the difficult problem of tax benefits and incentives, by associating a code on unfair tax competition, along the lines of the codes now being applied within the EU and by the OECD. Association of such agreements within a single framework would help to create public confidence that the benefits extended to investors by globalisation would be complemented by a strengthened framework of international cooperation to prevent abuse of the freedoms of the global market.

Both agreements and non-binding standards could also be associated on a basis of reciprocal conditionality, which would provide flexibility. Thus, states could choose to extend investment protection benefits only to investors from states participating in specified agreements. Such conditionality could also be applied to enterprises, through an appropriate Denial of Benefits clause. This would permit a state to deny the benefits of investment protection to enterprises breaching specified or related standards. Thus, for example, a host state could rule out bids for licences or concessions, or cancel them, if the enterprise concerned were found to be in breach of relevant standards. Thus, a firm which breached Prior Informed Consent procedures, or provisions of the WHO Infant Formula Code, could be denied the right to bid for public contracts.

Finally, relevant agreements and standards could be associated within a multilateral framework for investment on an opt-in basis. States and enterprises could be encouraged to sign up to a range of agreements and codes as appropriate to their activities and circumstances. This would help to provide a higher visibility for positive regulatory standards, as well as helping to authenticate both those standards and their monitoring and compliance mechanisms.

CONCLUSIONS:

In the increasingly competitive world economy created by globalisation, it is tempting for individual states and enterprises to take a short-term view, and to prioritise immediate advantages or returns. This makes it all the more important to strengthen multilateral arrangements, and to find ways to harness private initiatives, while ensuring that they strengthen public capacity and operate in harmony with democratically-agreed public policies.

The various more or less voluntary social responsibility initiatives outlined above offer some advantages for economic development, but also raise some problems. Perhaps the main advantage is flexibility, since they can be adapted to the circumstances of particular firms and industries, and different host and home countries. Rather than lay down a rigid legal straitjacket, they can establish standards which are either minimum requirements or higher aspirational targets, and combine inducements with sanctions to encourage compliance. Their transnational operation can help to ensure that economic globalisation helps to spread best practices of social responsibility in business, rather than ruthless competition to maximise profits and disregard externalised social and environmental costs.

The dangers of primarily voluntarist transnational initiatives of this type are perhaps that their uneven impact may reinforce competitive disadvantages, and they may be viewed either as an imposition of foreign standards, or as a mere fig-leaf. Resolving these problems calls for responsible and cooperative relationships between states, enterprises, and the wide range of civil society organisations.

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[1] A notable recent collection is Jenkins et al. 2002

[2] By December 2000 the US had negotiated 41 such treaties, 31 of which had been ratified. Russia had not yet ratified the treaty signed in 1992, and none of the rapid-growth economies in east Asia and Latin America had ratified a BIT with the US, with the exception of Argentina (in 1991, entering into force in 1994): see http://www.state.gov/e/eb/rls/fs/1139.htm, and for an updated list www.tcc.mac.doc.gov.

[3] See notably the study by King and Lenox (2000) of the chemicals industry's Responsible Care programme.

[4] A literature survey focusing on national laws especially in Europe is provided by Jülich and Falk 1999.

[5] Parliament of the Commonwealth of Australia, draft Corporate Code of Conduct Bill (1999-2000, no. 1878), presented by Senator Bourne.

[6] This approach has been adopted by some courts in considering private law claims of liability of a parent company for injuries caused by activities carried out through foreign subsidiaries. It is much easier to accept that home country courts should have subject-matter jurisdiction if the claim is based on the direct liability of the parent (due to the knowledge of the company and its directors and managers of the dangers involved in the activity in question), rather than vicarious liability based on the ownership relation: see *Lubbe et al. v. Cape Industries* (2000). Compare also the consent decree in *The Amoco Cadiz* (1984), which implied that if a firm is operated as an integrated whole, the parent company could be presumed to have knowledge of and involvement in the activities which caused the damage.

[7] The 1988 Convention on Mutual Administrative Assistance in Tax Matters agreed in the Council of Europe and the OECD provides an existing framework for cooperation which goes beyond the minimal provisions of bilateral tax treaties. It has now been supplemented by the OECD Model

Agreement on Exchange of Information in Tax Matters, adopted as part of the drive against Harmful Tax Practices.