

UN Allies with Civil Society to Promote Corporate Accountability: Sanctions Use of ‘Name and Shame’ and ‘Consumer Fear’ Campaigns

A 2000 study prepared by a research coordinator at the United Nations Research Institute for Social Development (UNRISD) openly recommended for the UN to ally itself with the corporate accountability movement and with global civil society (excluding the private sector) to improve the social and environmental performance of transnational companies (TNCs).

“[T]he goal of **promoting greater corporate environmental and social responsibility requires the UN to be an ally of the global corporate accountability movement**. Currently, however, the partnership approach seems to be straining rather than strengthening relations between the UN and an important sector of the NGO community.”

...It can be argued that **the political conditions for enacting statutory regulations at both national and international levels are not present**, and that in the absence of this option, it makes sense to pursue the voluntary route [through partnerships]. There may be some justification for this position although **ongoing regulatory initiatives within some countries and the European Union**, as well as debates taking place on an international code of conduct for TNCs within the United Nations Sub-Commission on the Promotion and Protection of Human Rights, **suggest that the option of binding regulations is certainly not yet off-limits**.

Today, however, **there is another force, other than state regulation, that is obliging business to act more responsibly. This has been called ‘civil regulation’, which involves changing corporate policy and practices through pressures from civil society organizations** (Murphy and Bendell, 1999). The driving force underpinning civil regulation is a global corporate accountability movement (Broad and Cavanaugh, 1999). Consisting of a myriad of civil society organizations, **this movement is placing corporations in the spotlight, detecting and publicizing abuses, threatening company reputations and demanding that they improve their social and environmental performance. Big business is having to adapt to these circumstances** although some corporations will choose to do so through fairly piecemeal changes in corporate policy and practice, and by attempting to enhance legitimacy through ‘stakeholder dialogues’, public relations exercises and other strategies of reputation management. Partnerships with organizations like the UN can be an important element in such strategies.

The UN has a choice. Either it can be a party to corporate strategies of reputation management or it can be an ally of the global corporate accountability movement and insist, in stronger terms than it has to date, that big business improve its social and environmental record. **If the UN is to be associated with the corporate accountability movement it needs to build partnerships and alliances with the environmental, human rights, consumer, labor and other groups and organizations that make up this movement.** (emphasis added)

See Peter Utting, “UN-Business Partnerships: Whose Agenda Counts?, Paper presented at seminar on “Partnerships for Development or Privatization of the Multilateral System?”, (North South Coalition, 12/8/00), at pp. 2, 13-14.

A November 2004 paper prepared by the Chief of the UN Treaty Section expressly sanctions the use of ‘name and shame’ and ‘consumer fear’ campaigns to promote corporate accountability to the greater global civil society.

“Historically, governments and international organisations were required to play the dominant role in the implementation of internationally agreed norms. Over time there was a gradual realisation that other actors needed to be engaged in this exercise and other options explored, mainly because of the political and financial limitations which have begun to constrain the actions of governments and international organisations. Resources were needed to be found elsewhere. **Accordingly, considerable effort has been expended in recent times in encouraging, non-governmental entities to become more closely engaged in giving effect to internationally agreed environmental standards. NGOs have also raised their profile in the role of contributing to the implementation of global environmental norms.**

... In addition to the initiatives undertaken by governments and intergovernmental organisations themselves, mechanisms are continuing to be developed to facilitate effective private sector responses to the growing web of international rules on the environment. Considerable effort is now being made to encourage private sector entities to play a proximate role in advancing environmental goals. **The European Union (EU) has been in the forefront of some of these initiatives.**

... **Responding to both government policy and public pressure**, major corporations in many countries, particularly in industrialised countries, have begun to pay conscious attention to international environmental standards.

... One notes that this attitude is more widespread in the European Union than elsewhere due to a history of environmental consciousness at both the social and political levels. In particular, European Community directives and legislation in individual countries have played a major role in influencing the attitudes of private sector corporations. In some instances, corporations have responded to public pressure even in the absence of legislative rules. This is a significant development since decisions of major corporations have wide implications in the contemporary world, including on government policies.

... **Reasons for the Conversion! Faith or Necessity?**

The reasons for the gradual conversion of the decision makers of some private sector institutions to adopting environmental friendly policy approaches are interesting given their traditional focus on profits and the obsession with year end bonuses. **The message that civil society groups and academics have been preaching for some time, that non-compliance with global environmental standards carries financially negative consequences, may be getting through finally. In fact, non-compliance with global environmental standards may actually result in the loss of profits and bonuses and this has been a powerful element in focusing the minds of those making critical corporate decisions.**

Undoubtedly, the growing environmental political activism worldwide which has increasingly become more results oriented has been a critical factor. This tendency is likely to gather further momentum rather than diminish in the future.

... **The continuing pressure exerted by civil society lobby groups has had a significant impact.** Groups such as Greenpeace, WWF, Rainforest Action Network (RAN) and Sierra have continued to highlight corporate shortcomings and attract public attention to these. **The naming and shaming approach adopted**

by such pressure groups has had a critical impact in some cases. It could be assumed that the negative publicity would harm not only the image of a company, but also its earnings. The environmental lobby group Friends of the Earth published a report (Beyond the Shine – The Other Shell Report) on the environmental damage that the installations of Royal Dutch Shell were causing in Sakhalin in East Russia, Nigeria and in Texas. This report tends to contradict some of the claims publicly being made by Shell. Television images of prominent individuals cutting up their credit cards issued by Citibank at the instigation of RAN may have had an impact on this bank's decision to enter into a "common understanding of key global sustainable development issues". Home Depot changed its wood sourcing policies following a campaign carried out by environmental groups including RAN.

Another significant and often ignored factor in the changing attitudes of the corporate sector is that many of yesterday's green activists are in pin stripes today working in banks, other financial institutions and law firms – one famous activist from the past is now a minister of foreign affairs. Unlike the executives of yesteryear, it is no longer necessary to convince these younger individuals of the worth of the environmental cause. **Having grown up experiencing environmental activism, both directly and indirectly, they are already converted and only need encouragement in incorporating environmental principles into their decision making processes.**

... The peer pressure factor is important not only among individuals working in the corporate sector but among corporations themselves. When a major corporation subscribes to global environmental standards, it is not uncommon for others to follow. **No company wishes to be left behind or be identified as being socially irresponsible. There is also the fear of losing a carefully cultivated corporate image.** "The truth is that companies adopt green practices for lots of reasons.... **And they care about their reputations, which is why corporate campaigns by the likes of RAN, Greenpeace, and Friends of the Earth have an impact**". **Corporations are extremely conscious of their public image as a negative image could impact on sales and profits.**

Shareholder pressure is a key factor influencing corporate compliance with global environmental standards. Encouraged by civil society groups, many companies have had shareholder resolutions tabled – over 300 in the US in 2002. The Financial Times estimates that those requesting sustainability reports relevant to their investment activities receive about 20% of the votes at annual meetings of shareholders. This is a percentage of shareholders that a company could not ignore other than at its own peril.

Actual litigation encouraged by environmental and other civil society groups has begun to play an important role in influencing corporate attitudes towards the environment...Such litigation is time consuming and costly. Where the damage is clear, the plaintiffs are certain, responsibility could be traced, jurisdictional issues could be determined within a recognised framework, and the legal rules are clear, litigation involving breaches of environmental norms may proceed in a predictable manner. However, given the unchartered nature of some of the issues in the environmental area, litigation might provide an interesting challenge to lawyers. The clarification of the legal rules may take time and in many instances, **a project could be held up for years by litigation.**

... The possibility of **shareholder litigation against directors for acting culpably by not taking adequate action to avoid climate change related consequences** of their actions has also been raised.

... **Projects could be closed down for contravention of environmental rules or by endless protests. These would impact negatively on the profitability of a corporation.**

... What does this all mean? A clear likelihood of cost overruns. Essentially, elements that impact on the bottom line – on profits and bonuses.

... It is probably premature for environmental activists to declare victory in their efforts to encourage environmental responsibility in the decision making processes of private sector corporations. Much more work needs to be done” (emphasis added).

See Palitha T.B. Kohona, “Implementing Global Environmental Standards – The Emerging Role of the Non-State Sector”, *Environmental Law and Policy Journal*, Vol. 34, No. 6 (Nov. 2004), at pp. 256-265. (“This paper was developed on the basis of a presentation made to the Summer Institute of UN Studies at Columbia Law School on the theme Global Issues Facing the United Nations: Legal, Humanitarian and Political Perspectives, June 7 – 18, 2004”).