

'TAMING THE CORPORATE LEVIATHAN': THE PROSPECTS OF THE UNITED NATIONS GLOBAL COMPACT AS AN ENFORCEABLE INTERNATIONAL MECHANISM OF CORPORATE SOCIAL RESPONSIBILITY

- Arindrajit Basu *

"[The corporation] is a pathological institution, a dangerous possessor of the great power it wields over people and societies." – Joel Bakan¹

1. INTRODUCTION

As aptly stated by Joel Bakan, due to their large annual turnovers² and transnational presence, multinational enterprises (hereinafter 'MNEs') exercise an inordinate amount of influence and tremendously impact government policies, human rights³, environment and the day-to-day lives of many people residing and working in the countries they operate in.⁴ Yet, until very recently, MNEs operating in developing countries felt no need to seriously consider the human rights violations by their operations or that of their subsidiaries, because they were largely immune from any adverse repercussions.⁵

This immunity has been diluted by the recent trend of increasing consumer awareness,

*Student, 3rd Year, BA LLB, West Bengal National University of Juridical Sciences, Kolkata.

¹ Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (Random House, 2004) 2.

² Ilias Bantekas, *Coca Cola Company, The Coca Cola Company Announces Second Quarter and Year-To-Date 2003 Results* <<http://www2.coca-cola.com/presscenter/earnings07172003.html>> accessed 17 July 2014; The World Bank Group, *World Development Indicators Database* (World Bank Report, 2003) <<http://www.worldbank.org/data/databytopic/gdp.html>> accessed; Ilias Bantekas, 'Corporate Social Responsibility in international law' (2004) 22 *BUIJL* 309, 310.

³ Ken-Saro-Wiwa, 'Shell pays out \$15.5m over Saro-Wiwa killing' (*The Guardian*, 9 June 2009) <<http://www.theguardian.com/world/2009/jun/08/nigeria-usa>> accessed 26 October 2014.

⁴ Michael Krauss, 'Ecuador, Chevron and Steven Donziger: The travesty described in detail' (*Forbes*, 9 August 2014) <<http://www.forbes.com/sites/michaelkrauss/2014/09/08/ecuador-chevron-and-steven-donziger-the-travesty-described-in-detail/>> accessed 26 October 2014.

⁵ Donald J Smythe, 'The Rise of the Corporation, the Birth of Public Relations and the Foundations of Modern Political Economy' (2011) 50 *Washburn LJ* 635.

galvanised by the increasing influence of the media on daily lives, a rapid advancement in tele-communications, including the use of Internet with consequent dissemination of information regarding corporate practices.⁶ This could potentially cause a paradigm shift in the current state of affairs. Consumer practice has been predicated on the methods which corporations use to manufacture their goods and the impact their operations may have on third-parties.⁷

This paper analyses the possibility of a scenario where, as a result of this increasing public pressure and consumer activism fuelled by an active media and participation of bodies such as Non-Governmental Organisations (hereinafter 'NGOs'), the MNEs are compelled to self-regulate. This voluntary self-regulation of a corporation's practices is known as corporate social responsibility (hereinafter 'CSR')⁸. The concept of CSR has its origins in 'stakeholder theory' which states that corporations owe duties not just to their shareholders, consumers and investors but also to all other 'stakeholders', who are people or communities that may be directly or indirectly affected by their actions.⁹ However, this self-regulation can only happen if consumers are able to judge the viability of the practices undertaken by corporations. Parameters of corporate conduct set in international guidelines such as the United Nations Global Compact (hereinafter UNGC)¹⁰, the ILO Tripartite Declaration¹¹ and the Organisation for Economic Co-operation and Development (hereinafter 'OECD') Guidelines¹², if utilised effectively could potentially serve as powerful tools that could enable consumers to understand corporate behaviour. This mechanism can only function effectively if the standards of corporate reporting ensure that the stakeholder is able to engage with the corporation

⁶ Don Tapscott & David Ticoll, 'The Naked Corporation: How The Age of Transparency Will Revolutionize Business' (Free Press 2003) 68, 73.

⁷ Opinion Research Corporation International, '2002 Cone Corporate Citizenship Study' (Executive Summary, July 29 2002) <http://www.coneinc.com/Pages/pr_13.html> accessed 25 October 2014.

⁸ Jenifer Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International law* (Cambridge University Press 2006) 54, 62.

⁹ Archie B Carroll & Ann K Buchholtz, *Business & Society: Ethics, Sustainability and Stakeholder Management* (9th edn, Cengage Learning 1994) 70.

¹⁰ UN Global Compact, 'The Ten Principles' (United Nations Global Compact, 2000) <http://www.unglobalcompact.org/Portal/?NavigationTarget=/Roles/portal_user/aboutTheGC/nf/nf/theNinePrinciples> accessed 25 October 2014.

¹¹ ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (4th edn, 2006) <http://www.ilo.org/empent/Whatwedo/Publications/lang-en/docName-WCMS_094386/index.htm> accessed 27 October 2014.

¹² Organisation of Economic Co-operation and Development, *The OECD Guidelines for Multinational Enterprises 19, OECD Doc OECD/GD (97)40 (2000)* <<http://www.oecd.org/dataoecd/56/36/1922428.pdf>> accessed 26 October 2014.

and analyse, through these reports, whether the parameters of acceptable conduct have been lived up to.

This paper does not advocate complete de-regulation of corporations by government or suggest that attempts to bring corporations within the purview of international law should be dispelled with. It solely seeks to answer two central questions: Whether flexible guidelines such as the UNGC can contribute to increased corporate accountability, particularly with respect to the actions of multinationals in Less Economically Developed Countries (hereinafter 'LEDCs')? If so, what enforcement mechanisms, particularly reporting standards and other associated stakeholder initiatives, should be used to supplement them? The paper will be accordingly divided into three parts.

1. Part I will discuss the flaws that have been witnessed with other mechanisms which attempted to regulate corporate behaviour and establish a need for the concept of CSR in the present day.
2. Part II will analyse provisions of the United Nations Global Compact and evaluate its applicability in the present day scenario.
3. Part III will discuss how the theoretical constructs in the UNGC can be implemented most effectively through reporting standards such as the Global Reporting Initiative.

The UNGC has been chosen as a case study because it is the most wide-reaching CSR mechanism today with over 8,000 signatories¹³ and has established a concrete framework, at least at a theoretical level, for the rules devised therein to be implemented and engaged with. Likewise, the GRI was chosen because their guidelines have come to become universally accepted standards of reporting that could be utilised to monitor and regulate corporate conduct.

2. THE NEED FOR CORPORATE SOCIAL RESPONSIBILITY

The need for corporate social responsibility stems from the relatively unsuccessful outcomes of other attempted methods of regulating corporate activity. First, the rise of multinational corporations towards the end of the twentieth century coincided with the global liberalization of trade and commerce.¹⁴ This meant that LEDCs suffering

¹³ United Nations Global Compact, 'UN Global Compact Participants' (United Nations Global Compact, 24 June 2014) <<https://www.unglobalcompact.org/ParticipantsAndStakeholders/Index.html>> accessed 26 October 2014.

¹⁴ Smythe (n 5).

from external debt, high levels of unemployment and a lack of financial capital saw the influx of MNEs into their countries as a necessary and highly profitable source of foreign investment.¹⁵ A lack of effective legislative, regulatory and judicial mechanisms in these LEDCs, coupled with rampant corruption in their administrations, has given MNEs *carte blanche* authority to operate in these host states (countries of operation), where they abuse their position due to the low chances of effective prosecution or detection.¹⁶

Second, courts in the parent state have generally abstained from prosecuting MNEs by referring to the doctrine of *forum non-conveniens* ('forum not agreeing').¹⁷ The use of the Alien Tort Claims Act, 1798¹⁸ [hereinafter 'ATCA'] in the United States (hereinafter 'US'), which gives US courts the jurisdiction to hear aliens for the violations of human rights in foreign territory, could mark a positive trend towards corporate accountability in the parent state (country of origin).¹⁹ Starting with *Filartiga v. Pena-Irala*²⁰, which was decided in 1980, the United States Supreme Court found that the ATCA enabled US courts to hear claims by aliens brought before it for violations of international law. This essentially implied that the courts of the United States could serve as a forum for adjudicating disputes with regard to human rights abuses committed on foreign soil. In this case, a Paraguayan citizen was allowed to sue the policeman who was accused of torturing his son to death. The court used customary international law to justify torture as a private cause of action. Similarly, in *Sosa v. Alvarez-Machain*²¹, the Court held that violation of a norm of international law that was specific, universal and obligatory could serve as a cause of action under ATCA. The court took a great step forward in *Sarei v. Rio Tinto*²², which held that in cases where the defendant is a multinational corporation, it is not necessary for the company to have its headquarters in US. The establishment of a branch or office of the company was sufficient. Further, in

¹⁵ Bantekas (n 2); Vivien A Schmidt, 'The New World Order, Incorporated: The Rise of Business and the Decline of the Nation State' (1995) 125 *Daedalus* 75.

¹⁶ Bantekas (n 2) 310-311.

¹⁷ *Piper Aircraft Co v Reyno* 454 US235 [1981]; *Re Union Carbide Corp Gas Plant Disaster at Bhopal, India* in December 1984 634 F Supp (SDNY1986).

¹⁸ [1994] 28 USC, s1350.

¹⁹ *Doe v Unocal Corp*, 963 F Supp 880 (CD Cal 1997); Steven R Ratner, 'Corporations and Human Rights: A theory of legal responsibility' (2001) 111 *Yale LJ* 443,459; Kathryn L Boyd, 'Collective Rights Adjudication in US Courts: Enforcing Human Rights at the Corporate Level' (1999) *BYUL Rev* 1139.

²⁰ *Filartiga v Pena-Irala* [1980] 630 F 2d 876 (2d Circ).

²¹ *Sosa v Alvarez-Machain* [2004] 542 US 692.

²² *Sarei v Rio Tinto* [2008] USCA (9th Circ).

*Bauman v Daimler Chrysler*²³, the court evolved two tests to assess the case for personal jurisdiction over a corporation where the defendant is a subsidiary accused of committing human rights violations in foreign territory. The first test, known as the 'alter ego' test hinged on proving parental control over the subsidiary in question and that there is sufficient evidence to show that they are not separate entities. The second test, known as the 'agency test' was based on proving that the services rendered by a subsidiary in their country of operation were of 'special importance' to the parent company, and the absence of such a subsidiary would impede the functioning of the parent company significantly. The satisfaction of either one of these tests was sufficient for the court to exercise its jurisdiction over a claim raised through ATCA. However, the court took a giant leap backward in 2013 when it declared in *Kiobel v Royal Dutch Petroleum*²⁴ that only claims with respect to human rights violations committed within U.S. territory or on the high seas, could be entertained under the ATCA. Further, apart from the European Union (hereinafter 'EU'), where claims by aliens can be admitted in the European Court of Human Rights through Article 6 of the European Convention on Human Rights²⁵, no other jurisdiction does have ATCA-like provisions in their municipal law, thereby fettering global corporate accountability through this route.²⁶

The construct of international law has also failed to regulate corporations as only states are subjects of international law and bear obligations under treaty or customary international law. International legal personality must be predicated on precise legal capacity stemming from customary international law or binding treaties.²⁷ This has enabled MNEs to take advantage of the 'state veil' and evade the provisions of international law as they are non-state actors whose misconduct is attributable to the host state.²⁸ Further, given that only states can be parties to a dispute at the International Court of Justice, prosecution for violations of multilateral instruments can only be done effectively if the host state is able and willing to prosecute them, which has not been the

²³ *Bauman v Daimler Chrysler* [2011] No 07-15386 DC No CV-04-001194-RMW.

²⁴ *Kiobel v Royal Dutch Petroleum* [2013] 133 SCt 1659.

²⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos 11 and 14, 4 November 1950, ETS 5.

²⁶ Saulius Katuoka & Monika Dailidaitė, 'Responsibility of Transnational Corporations for Human Rights Violations: Deficiencies of International Legal Background and Solutions Offered by National and Regional Legal Tools' (2012) 19 *Jurisprudence* 4, 1301, 1303.

²⁷ *ibid.*

²⁸ Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (2nd edn, Clarendon Press 1995) 50.

case.²⁹ Recently, scholars³⁰ have advocated extending the duties emanating from international law to non-state actors. However, in order to use international law as a means of increasing corporate accountability, not only should all duties and obligations be directly affixed upon corporations but also an enforcement mechanism must be made available. The 1998 International Criminal Court Statute³¹ does hold individuals responsible for violations of the crimes contained therein. The enforcement of the provisions of the statute is done either through the domestic courts or the International Criminal Court itself. This enables the casting of legal personality on the individual perpetrators. In the absence of a treaty that directly casts such duties and obligations on corporations in the present scenario, there is no enforcement mechanism that furthers the cause for corporate accountability via the international law route.

Finally, empirical studies³² show that the traditional 'command and control' regulation also faces various challenges when attempting to bring about corporate accountability. Concerns raised by various commentators include arguments revolving around delays in responding to new harms and changing expectations, a lack of workable enforcement measures and inefficiency in assessing compliances.³³ The most significant problem of this form of regulation was the imposition of uniform 'one-size fits all' rules on all corporations regardless of the socio-economic conditions a firm was working in.³⁴ This mandatory imposition had two related problems. First, the obligations were 'bolted onto'³⁵ companies, which meant that certain MNEs might have had to alter their business strategy to comply with the norms. Second, due to their rigid nature, firms started to engage in minimum technical compliance to these rules without striving towards developing practices within their capabilities that were more sustainable.³⁶ The other extreme option of leaving MNEs to self-regulate on ethical grounds without

²⁹ The International Court of Justice (1945) Art 35(1), 33 UNTS 993.

³⁰ Beth Stephens, 'The Amoralism of Profit: Transnational Corporations and Human Rights' (2002) 20 Berkeley Journal of Intl Law 45, 84; Steven R Ratner, 'Corporations and Human Rights: A theory of legal responsibility' (2001) 111 Yale LJ 443, 459-470.

³¹ United Nations: Rome Statute of the International Criminal Court (July 17, 1998) 37 ILM 999UN DocA/CONF183/9.

³² David Hess, 'Corporate Social Responsibility and The Law' in Jose Allouche (ed), Corporate Social Responsibility (Palgrave Macmillan Publishers 2006).

³³ *ibid*; David Hess, 'The Three Pillars of Corporate Social Reporting as New Governance Regulation: Disclosure, Dialogue and Development' (2008) 18 Business Ethics Quarterly 4, 447, 458.

³⁴ Jenifer Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International law* (Cambridge University Press 2006) 54-62.

³⁵ Maike J Scholmerich, 'On the impact of corporate social responsibility in the light of Sen's capability approach' (2013) 2 Asian J Bus Ethics 1, 2.

³⁶ David Hess (n 32) 4, 447, 453, 458.

any form of intervention was also dismissed because private players can never be expected to weigh public interest over private needs in the absence of active public involvement that compels them to do so.³⁷ CSR, through consumer-fuelled regulation, could develop a mechanism that plugs some of these gaps and compels companies to devise sustainable economic practices that are 'built in'³⁸ to their long-term strategy. We need to bear in mind that the fundamental problem with this type of self-regulation is asymmetrical distribution of information. The firm will always know more than the associated stakeholders about its practices, and if harmful practices are going undetected, it will have no incentive to report. Hence, the efficacy of this mode of regulation hinges on how expediently it can remove this asymmetry and detect instances of non-disclosure or disguised disclosure. The UNGC and its associated Global Reporting Initiative (hereinafter 'GRI') have the potential to develop into a mechanism that fulfils this purpose.

3. A THEORETICAL FRAMEWORK FOR CORPORATE SOCIAL RESPONSIBILITY: THE UNITED NATIONS GLOBAL COMPACT

The UNGC was launched in 2000 as a multilateral scheme that sought to develop sustainable business practices across the globes.³⁹ The most integral part of the scheme was the ten business principles which corporations were expected to voluntarily adhere to.⁴⁰ These directory principles⁴¹ are derived from the principles espoused in international instruments such as the Universal Declaration of Human Rights (hereinafter 'UDHR')⁴² and the Rio Declaration⁴³. Along with these principles, the UNGC has also published a set of guidelines that describes steps through which the goals enshrined in these

³⁷ Lester M Salamon, 'The New Governance and the Tools of Public Action: An Introduction' (2001) 28 Fordham Urb LJ 1611, 1635.

³⁸ Scholmerich (n 35) 1, 2.

³⁹ United Nations Global Compact, 'Overview of the UN Global Compact' (United Nations Global Compact, 22 April 2013) <<https://www.unglobalcompact.org/AboutTheGC/index.html>> accessed on 23 October 2014; Andrea Rasche & Sandra Waddock, 'Global Sustainability Governance and the UN Compact: A rejoinder to Critics' (2014) 122 JBus Ethics 209

⁴⁰ UN Global Compact (n 10).

⁴¹ *ibid.*

⁴² Universal Declaration of Human Rights (1948), GA Res 217, UN GAOR, 3d Sess, Preamble, UN Doc A/810.

⁴³ Rio Declaration on Environment and Development, UN Conference on Environment and Development (1992), Annex I, Agenda Item 21, at 8-11, UN Doc A/CONF151/26 (Vol I).

principles can be attained.⁴⁴ Corporations that sign the Global Compact become a certified 'UNGC company' and are subsequently required to publish a 'Communication on Progress' (hereinafter "COP") report that shows measures they have undertaken to comply with the guidelines set in the ten principles.⁴⁵ The UNGC also calls for participation from other stakeholders, including non-governmental organisations, members of civil society and academic institutions, to review and vet the COP report.⁴⁶ After the vetting process, the corporate participants are given an 'Active' or 'Advanced' rating based on the level with which they have demonstrated compliance with the objectives of the Compact and the principles enshrined therein.⁴⁷

The principles, when read along with the guidelines, form a cohesive set of parameters that could be used to monitor the actions of MNCs. Most of the guidelines associated with each principle list fairly concrete steps that the corporations could take to adhere to the principles. However, these guidelines are not absolutely rigid, and companies could adapt them to the social context in which they are operating, in order to incorporate them within the usual business practices of the firm.

Principle 5 of the UNGC, which deals with the abolition of child labour, is an example which shows us how the flexibility of these guidelines is a benefit.⁴⁸ The International Labour Organisation's (hereinafter 'ILO') Minimum Age Convention⁴⁹ calls for the fixing of a minimum working age at around 15. MNEs working in LDCs find this difficult to implement because child labour is an essential source of family income.⁵⁰ Eliminating this labour from the factories operated by them could force the children to work in the informal sector under even more precarious working conditions or cause great economic hardship to the family. Here, reading principles along with the Guidelines may serve as more appropriate indicators of desired corporate conduct. Principle 5 of the UNGC states that "businesses should uphold the effective abolition

⁴⁴ 'Guide to the Global Compact: A Practical Understanding of the Vision and Nine Principles' (UN Global Compact, 2002) 51 <http://www.unglobalcompact.org/content/Public_Documents/gcguide.pdf> accessed 26 October 2014.

⁴⁵ UN Global Compact, 'How are COPs used?' (United Nations Global Compact, 20 March 2013) <https://www.unglobalcompact.org/COP/analyzing_progress/index.html> accessed 25 October 2014.

⁴⁶ UN Global Compact' (n 10).

⁴⁷ UN Global Compact (n 45).

⁴⁸ UN Global Compact (n 10), Principle 5.

⁴⁹ Convention Concerning Minimum Age for Admission (1976), Art 2 (3).

⁵⁰ Iftikhar Ahmed, 'Getting Rid of Child Labour' (1999) 34 EPW 2, 1815-1816; OP Maurya, 'Child Labour in India' (1999) 36 IJIR 4, 492,499; UN Global Compact, The Ten Principles (n 183) Principle 5.

of child labour.”⁵¹ The guidelines associated with the principles suggest steps that companies should take to achieve the goal set out in Principle 5. These steps encourage companies to “be aware of regions, sectors, economic activities where there is a greater likelihood of child labour, [engage in] development and implementation of mechanisms for the detection of child labour, and in communities, encourage and assist in launching supplementary health programs for children removed from dangerous work and provide medical care.”⁵² The guidelines set out a framework for the development of company policy with regard to the abolition of child labour. The nature of ‘health programs’ or ‘identification measures’ used to detect and deal with child labour can be devised by a company according to its capabilities. The company would have to demonstrate in the COP report, measures it has taken to eliminate child labour and justify how they are in line with the guidelines provided by the UNGC.⁵³

At this juncture, it is imperative that we dispel the notion that the concept of the UNGC is flawed in its entirety. The first major objection is the fact that participation in the Compact is voluntary and currently comprises of a relatively small number of firms⁵⁴ (8,000 in 2014⁵⁵ out of 82,000 transnational corporations⁵⁶). Further, critics claim that the Compact only attracts firms with a poor social and environmental image that desire to lend UN legitimacy to their actions.⁵⁷ The first concern is fallacious because the UNGC was instituted only 15 years back and getting 8000 signatories on board is impressive.⁵⁸ Greater public awareness about the UNGC and its principles through a protracted coverage by the international media and enhanced reporting standards will lead to a more rapid increase in the number of participants. Further, Perez Batres⁵⁹ argues that widespread public acknowledgment of the UNGC and its principles gives signatories of the UNGC competitive advantage over firms that are not, due to their improved public image, thereby incentivizing more firms to join. Further, initiatives

⁵¹ United Nations Global Compact, Principle 5.

⁵² UN Global Compact (n 44).

⁵³ UN Global Compact (n 45).

⁵⁴ S Prakash Sethi and Donald H Schepers, ‘United Nations Global Compact: The Promise-Performance Gap’ (2014) 122 J Bus Ethics 193,194.

⁵⁵ UN Global Compact (n 13).

⁵⁶ UN Conference On Trade and Development (Unctad), World Investment Report, Annex I (2014).

⁵⁷ Sol Picciotto, ‘Rights, Responsibilities and Regulation of International Business’ (2003) 42 Colum J Transnat’l L 131,142.

⁵⁸ *ibid* (n 10).

⁵⁹ Perez Batres, ‘Institutionalizing sustainability: an empirical study of corporate registration and commitment to the United Nations global compact guidelines’ (2005) 19 Journal of Cleaner Production 8, 843-851.

such as the UNGC have a significant consensus-building and engagement function, which critics tend to ignore. Such consensus-building is significant, particularly in nations such as China and India, where the CSR agenda is still in the making. The UNGC framework facilitates learning and improvement by enabling corporations to interact with each other and thereby arrive at satisfactory rules of corporate conduct within the framework of the ten principles. Participation does not mean that all participants will immediately be able to alter their strategy to bring them in line with the ten principles. It rather implies that the corporation is willing to make an attempt. Zadek's 2004 study⁶⁰ on Nike's association with the UNGC is one such example. The second concern is also invalid because one of the core principles underlying the UNGC as well as CSR is the self-regulation of business practices by firms which were indulging in harmful behaviour in the past. The guidelines contained in the UNGC facilitate this cleansing and thus encourage such firms to join them.

A further concern is that the UNGC may only be effective when regulating MNEs which produce consumer goods and are hence dependent on consumers for their profits. Companies engaging in non-consumer oriented activities, such as drilling oil, do not face the same forms of pressure.⁶¹ While this criticism is valid to a certain extent, we must also understand that a better utilization of the principles of the UNGC will also make shareholders and investors more aware of the actions of the MNEs they are investing in.⁶² As public image may be a concern for these shareholders, they may put pressure on the companies to comply with the guidelines.⁶³

The third major concern is the relative flexibility of these guidelines when compared with traditional 'command-and-control' regulation which gives companies the benefit of doubt when attempting to justify policy within the parameters of a certain principle.⁶⁴ A solution to this legitimate issue lies in developing more efficient corporate reporting standards, which not only enable corporations to disclose all their practices under the auspices of the UNGC but also subject them to greater scrutiny in order to ensure their credibility.

⁶⁰ Simon Zadek, 'The Path to Corporate Responsibility' (2004) 82 Harvard Business Review 12, 125-32.

⁶¹ Arvind Ganesan, 'Human Rights, the Energy Industry, and the Relationship with Home Governments' in Asbojn Elde (eds), Human Rights and the Oil Industry (Interstetia 2007).

⁶² Tapscott and Ticoll (n 6).

⁶³ Jenifer Zerk, Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International law (Cambridge University Press 2006) 101-140.

⁶⁴ Jette Steen Knudsen, 'Which Companies Benefit Most from UN Global Compact Membership' European Business Review (November 24, 2011) <<http://www.europeanbusinessreview.com/?p=3167>> accessed 26 October 2014.

4. CORPORATE REPORTING STANDARDS: THE GLOBAL REPORTERS INITIATIVE

The success of the UNGC with regard to promoting the sustainability of corporate practices depends on the extent to which consumers are able to analyse and are made aware of the performance of the companies with regard to their principles. This can only happen through the development of stringent reporting standards and a greater awareness of the UNGC itself among consumers. Professor Carol and Beiler trace the evolution of corporate social auditing back to the 1940s.⁶⁵ This form of auditing envisioned the development of a system of reporting through which stakeholders could ascertain the contribution of a firm to the overall goals of society, such as health, education and literacy, rather than merely focusing on the traditional profit-making incentives. The second jump came in the 1950s when Howard R. Boven⁶⁶ developed a system for the evaluation of the performance of corporation against these indicators by external auditors. At this stage, however, the audit was not supposed to be made public and was only to be used by the corporation in order to ameliorate their strategies. The 1970s saw increasing tension between social auditing for public use and auditing for internal decision-making only.⁶⁷ However, the pressure for external auditing continued to rise, and finally in the 1990s, spurred by a growing rise in socially aware investors and consumers, public social auditing became the norm. It was in this climate that the organisation Coalition for Economically Responsible Economies (hereinafter 'CERES') started the Global Reporting Initiative⁶⁸ in 1997. Partly supported by the United Nations Development Program now, the GRI's objective is to develop guidelines that may aid the auditing of the economic, environmental and social performance and encourage companies to engage affected stakeholders for the purpose of chalking out more effective company policy.⁶⁹

In May 2013, the GRI issued the fourth edition of these guidelines.⁷⁰ They include certain core criteria which a company must report against, unless a company determines

⁶⁵ Archie B Carroll & George W Beiler, 'Landmarks in the evolution of the social audit' (1975) 18 Acad Mgmt J 589, 59.

⁶⁶ *ibid* 589, 594.

⁶⁷ Raymond Augustline Bauer & Dan Huntington Fenn, *The Corporate Social Audit* (Russel Sage Foundation 1972) 24, 57.

⁶⁸ Global Reporting Initiative, 'What is GRI?' (Global Reporting Initiative, 2000) <<https://www.globalreporting.org/information/about-gri/what-is-gri/pages/default.aspx>> accessed 26 October 2014.

⁶⁹ *ibid*.

⁷⁰ Global Reporting Initiative, 'G4 Sustainability Reporting Guidelines' (Global Reporting Initiative, 7 May 2013) <<https://www.globalreporting.org/resource/library/GRIG4-Part1-Reporting-Principles-and-Standard-Disclosures.pdf>> accessed 26 October 2014.

that a certain indicator is not 'material'⁷¹ to the context they are operating in. A typical report should comprise of three parts.⁷² First, the reporting company should state the basic characteristics of the organisation (e.g. size, type of operations, geographical areas of operation) which describe the sustainability issues that prevail with regard to devising their corporate strategy and describe how they devised the report by detailing, *inter alia*, the types of stakeholders engaged.⁷³ Second, the MNE should disclose the policies implemented by them to resolve the issues. Third, the company must check off certain performance criteria which are divided into sections of economic, environmental, labour practices, human rights, and society and product responsibility.

A further set of reporting principles published by the GRI is used to judge the quality of the reports.⁷⁴ The principle of 'completeness', for instance, envisages a complete representation of the organisation's actual performance. Other principles are balance, comparability, clarity, accuracy, timeliness and reliability.⁷⁵ Here, we must note that the principle of clarity requires the report to be presented in a manner that is understandable and accessible by the GRI's diverse range of stakeholders. This essentially means that the report should avoid technical terms or other jargon which stakeholders such as consumers may not be able to comprehend. Further, the GRI encourages companies to submit a self-declaration on the level with which they have complied with the reporting guidelines. These grades are referred to as "Application Levels" and range from A/A+ to denote reports that have met all required parameters to C/C+ to denote reports that only meet the bare minimum criteria stipulated by the GRI. The "+" designation can only be used when there has been external auditing of the firm's reporting standards by an academic institution or think-tank recommended by the GRI.

Apart from setting these reporting guidelines, the GRI has attempted to build a nexus with the UNGC principles. In a Publication entitled, *Making the Connection*,⁷⁶ the GRI assigns a list of disclosures that should be made when reporting under any UNGC principle. So, under Principle 5, which seeks to uphold the effective abolition of child labour, the GRI stipulates that the company should specifically disclose "operations and suppliers, identified as having risk for incidents of child labour, and measures taken to contribute to the effective abolition of child labour" in their reports.⁷⁷

⁷¹ 'G4 Sustainability Reporting Guidelines' (n 243).

⁷² *ibid* 11, 14.

⁷³ *ibid* (n 25) 454-456.

⁷⁴ *ibid* (n 67).

⁷⁵ *ibid*.

⁷⁶ *ibid* 19.

⁷⁷ *ibid*.

Empirical studies on the GRI show however, that corporations have been able to dissemble disclosures by reporting favourable information under most criteria while withholding unfavourable ones.⁷⁸ They have been able to do this largely because the reports have not been scrutinized or made accessible to the public in a manner through which they can effectively engage with them.⁷⁹ Therefore, corporations seeking to improve public image by demonstrating compliance with the guidelines have felt no need to stick to the standards set by the GRI. Bansal and Clelland⁸⁰ find that firms with low performance on the environmental front (earned from negative press coverage) are able to reduce stock market risk merely by an expression of commitment to environmental goals. 'Stakeholder engagement' very often turns into the more spurious art of 'stakeholder management'. A Klynveld Peat Marwick Goerdeler survey⁸¹ of large corporations in 2005 found that only eight per cent of the corporations responded to any feedback they received from stakeholders on their reports. Therefore, essentially, instead of using dialogue to alter their strategy through interactions with stakeholders, corporations are utilising information gained through this engagement to improve their communications strategy and consequently, their profits.

This is where the media needs to aid non-governmental organisations in the analysis and dissemination of the material contained in the report. Without increased stakeholder awareness in this form, the entire concept of corporate self-cleansing dissolves into oblivion. In this scenario, the clarity principle of the GRI could be problematic. Enabling corporations to use non-technical jargon that can be more comfortably digested by non-specialists allows them to cloak some of their technical flaws in everyday jargon and escape detection. A far more efficient mechanism of moving forward would be to use NGOs and other academic analysts as intermediaries who process the reports and then make their analysis of these reports through the media in a form that they are able to understand and assimilate. It is only through this nexus between greater media coverage and more cogent reporting standards that the underlying object not just behind the UNGC or the GRI but also the foundational principles behind CSR and voluntary self-regulation as an ideology can be actualized. The implementation of these goals needs the development of multi-stakeholder initiatives that enable the consumer to

⁷⁸ Sylvie Berthelot et al, 'Environmental Disclosure Research: Review and Synthesis' (2003) 22 J Accounting Lit 1; David Hess & Thomas W Dunfee, 'The Kasky-Nike Threat to Corporate Social Reporting: Implementing a Standard of Optimal Truthful Disclosure as a Solution' (2007) 17 Bus Ethics Q5.

⁷⁹ *ibid.*

⁸⁰ Pratima Bansal & Iain Clelland, 'Talking trash: Legitimacy, Impression Management and Unsystematic Risk in the Context of the Natural Environment' (2003) 47(1) Acad Mgmt J 93.

⁸¹ KPMG, Global Sustainability Services (KPMG Survey of Corporate Responsibility Reporting, 2005) 4, 11.

process these reports and respond to them in a rational manner. Improved disclosure will lead to improved dialogue as stakeholders now have access to information that they can use for making decisions regarding corporations. Corporations will have to back their claims with real data rather than “anecdotal accounts or politically motivated claims and public relations counter-claims.”⁸² This engagement will in turn compel corporations to develop sustainable strategies that they can build into their business models, thereby ensuring that the standards contained in the UNGC are met without compromising on their profit.

CONCLUSION

This paper evaluated the prospects of a new approach to corporate accounting which focused on self-cleansing by the corporations due to increasing consumer activism. It found that this phenomenon, known as corporate social responsibility, can only function effectively if the stakeholders involved in the corporate processes are able to access and understand business processes against a set of universally accepted parameters. This is where mechanisms such as the UNGC along with reporting initiatives like the GRI can potentially be very useful. The flexibility of the guidelines mentioned in the UNGC enable the corporations to devise measures that become integral parts of their economic strategy rather than compelling them to stick to ‘one-size fits all’ standards regardless of their capabilities. This, used in conjunction with the strict reporting standards set out in GRI guidelines, could theoretically be utilized to inform the consumers about corporate action, and through engagement with the corporation, either through a boycotting of their products or otherwise, contribute to corporate accountability. However, the flexibility of these guidelines remains a cause for concern with respect to the implementation of these mechanisms. Hence, the media, coupled with other organisations such as academic institutions and think-tanks must step in and ensure that the contents of the reports are being disseminated to the public in an effective manner. Any corporation existing in the 21st century relies on public image for its profit. Instead of dismissing the notion of consumer-fuelled cleansing entirely, it is imperative that we seek to plug some of the gaps that exist with regard to its implementation and channelize consumer activism in a manner that compels MNEs to respond to it.

⁸² Archon Fung, ‘Deliberative Democracy and International Labor Standards’ (2003) 16 (1) *Governance: An International Journal of Policy, Administration, and Institutions* 51, 52.