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## **"The United Nations and Transnational Corporations"**

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## 1. Power shift: The United Nations and business

The United Nations has a long, yet inconsistent, record of dealing with transnational corporations (TNCs).<sup>1</sup> In 1974 the G77<sup>2</sup> initiated the establishment of the Commission on Transnational Corporations (CTC) by the ECOSOC to draft a convention for international controls of TNCs. In 1992 the US and other OECD governments succeeded in having the CTC dissolved and the negotiations on the TNC convention stopped. Since then the UN's relationship with TNCs has completely changed.

The Global Compact initiative of UN Secretary-General Kofi Annan became a symbol for the UN's change of policy. Kofi Annan was not only lauded for his fresh approach to revitalize a United Nations system, which continued to be under-financed and blocked by fading multilateralism, and to reorganize its historically difficult relationship with business, but he was also heavily criticized for the alleged submission of the world organization to commercial interests. This paper will review the changing relationship of the UN with TNCs, focusing on Kofi Annan's Global Compact initiative, and ask two questions: How did this remarkable political shift come about, keeping in mind the largely hostile relationship of the United Nations with the private sector up to the early 1990s? What can this shift tell us about the power of TNCs in global politics?

In the following section of this paper the theoretical and conceptual framework will be introduced. It is inspired by neo-Gramscian theory. Section three deals with the history of the UN's relationship with business from the 1960s to the early 1990s. In section four the UN's remarkable shift to a business-friendly approach will be analyzed. It will be argued that the Global Compact initiative is the keystone of the new policy. Section five includes an evaluation of the present UN-business relationship in terms of power and neoliberal hegemony.

My analysis is based on two books entitled "Privatization of World Politics" (2001) and "Corporations in Global Politics" (2004) which I had the pleasure to co-edit with Tanja Brühl, Tobias Debiel, Heidi Feldt, Brigitte Hamm, and Jens Martens.<sup>3</sup> The two books include a series of cases studies. Based on these cases studies we discussed the scale and scope of private actors' influence in global governance, and more specifically the role of private corporations. In the first book we concluded that private actors, especially transnational corporations, have indeed become more visible in world politics, suggesting that their power vis-à-vis state actors has grown significantly. We argued, that private actors, NGOs as well as TNCs, can indeed make some positive contributions to global politics, but we also stressed, that their ac-

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<sup>1</sup> In this paper, conforming with the United Nations use of the term, transnational corporations are defined as "enterprises which own or control production or service facilities outside the country in which they are based" (United Nations. Secretary-General, 1995)

<sup>2</sup> The Group of 77 or G77 was founded in 1964 by developing countries to collectively represent their interests in UNCTAD and other UN institutions, cf. Behrens/Hummel/Scherrer 2005: 179-180.

<sup>3</sup> Brühl/Debiel/Hamm/Hummel/Martens 2001; Brühl/Feldt/Hamm/Hummel/Martens, 2004.

tivities basically need to be (re-)embedded politically and legally in order to be acceptable to world society. In the second book we focused on the role of business in global governance. We found that business is both an actor as well as an object of global governance and that there are very diverse forms of regulatory arrangements. While we acknowledged the distinctive competences and responsibilities of business actors for advancing sustainable development and human rights, including social rights, we also concluded that compulsory, sanctionable and transparent corporate accountability is not only needed but also feasible.

## **2. Theoretical concepts: social forces, hegemony and world order**

In the 1980s and early 1990s Robert Cox, Stephen Gill and others reconceptualized the question of power and world order by introducing Antonio Gramsci's thinking into the analysis of International Relations (IR). Neo-Gramscians account for the dialectics of world order, or rather world orders. They do not treat world orders as given or inevitable, but rather as the result of the permanent reconstruction of "hegemony" and "counter hegemony" in terms of economic, political and discursive social forces. From the Neo-Gramscian perspective the power of transnational corporations vis-à-vis the United Nations, being part of the internationalized state, must be interpreted as a political project of specific political forces in a specific historical context.<sup>4</sup> The following analysis is based on this neo-Gramscian framework which I think is particularly suited to help us understand the political power of business and more specifically the political, economic, and discursive conditions for the UN's shift to a business friendly approach.

### **2.1 The neo-Gramscian concept of social forces with particular reference to ideas**

Cox criticizes mainstream (realist) IR scholarship for focusing too narrowly on what he calls problem-solving theory:

"It takes the world as it finds it, with the prevailing social and power relationships, and the institutions into which they are organised, as the given framework for action. The general aim of problem-solving is to make these relationships and institutions work smoothly by dealing effectively with particular sources of trouble."<sup>5</sup>

Cox contrasts problem-solving theory with "critical theory",

"... critical in the sense that it stands apart from the prevailing order of the world and asks how that order came about. Critical theory, unlike problem-solving theory, does not take institutions and social and power relations for granted but calls them into question by concerning itself with their origins and how and whether they might be in the process of changing.... Critical theory is theory of history in

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<sup>4</sup> For basic texts and concepts of the neo-Gramscians cf. Murphy/Tooze 1991; Gill 1993; Cox/Sinclair 1996; Gill 2003. I have summarized my own understanding of neo-Gramscianism in Hummel 2000: chapters 2 and 3.

<sup>5</sup> Cox 1981: 128-9

the sense of being concerned not just with the past but with the continuing process of historical change."<sup>6</sup>

In order to devise a critical theory of world order Cox distinguishes three social forces: material capabilities (or modes of production), political institutions, and ideas. In analyzing world orders, economic power would be the control of national and global production processes, political power would be the control of national and international state institutions, and discursive-ideational power would be the control of national and transnational political discourses. In order to understand the dynamics of world orders, these social forces should not be analyzed in isolation of each other, i.e. as independent variables, but rather in their interdependent and dialectical interrelationships. This means that on the one hand the production process provides the resources for political power and pre-determines social interests, but on the other hand the production process depends on the provision of a legal framework and a functioning state and therefore can be changed politically. Likewise, on the one hand, political power can manipulate the political discourse, but on the other hand, political identities are formed, and can be changed, by ideas. Finally, economic power, by providing the material base for society in general and the intellectuals and the media in particular, can translate into discursive power, but on the other hand the economy depends on social capital, such as interpersonal networks, social trust and innovative thinking, and thus might be redesigned according to changing discourses and new ideas. However, Neo-Gramscianism still is a materialist approach because the starting point of Neo-Gramscian analysis will always be the way human beings organize the production and reproduction of their existence.<sup>7</sup>

## 2.2 Hegemony

The focus of Neo-Gramscian power analysis is the concept of hegemony. Cox argues that effective world power is not primarily based on brutally forcing the ruled to obey the rulers. Coercive dominance would be costly to sustain, and could not be expected to be stable, for a long time. Rather, hegemony should be understood primarily as the unquestioning acceptance of a given social and political order by those living in this order, securing "conformity of behavior in most people most of the time."<sup>8</sup> Hegemony can be achieved, if, and as long as, the hegemonic social groups accomplish a sufficient degree of social compromise and credibly justify their rule by referring to universally binding values:

"If they reflect a hegemony, ... institutions and ideologies will be universal in form, i.e. they will not appear as those of a particular class, and will give some satisfaction to the subordinate groups while not undermining the leadership or vital interests of the hegemonic class."<sup>9</sup>

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<sup>6</sup> Cox 1981: 129.

<sup>7</sup> cf. Overbeek 2004: 3.

<sup>8</sup> Cox 1996a: 127.

<sup>9</sup> Cox 1996a: 133.

Taking into consideration the comprehensive concept of social forces, hegemony cannot be based on economic or political or discursive power alone, or as Cox puts it:

"Hegemony at the international level is thus not merely an order among states. It is an order within a world economy with a dominant mode of production which penetrates into all countries and links into other subordinate modes of production. It is also a complex of international social relationships which connect the social classes of the different countries. World hegemony can be described as a social structure, an economic structure, and a political structure; and it cannot be simply one of these things but must be all three. World hegemony, furthermore, is expressed in universal norms, institutions, and mechanisms which lay down general rules of behavior for states and for those forces of civil society that act across national boundaries, rules which support the dominant mode of production."<sup>10</sup>

Politically institutionalized hegemony, even if untouched politically, will be undermined by changing economic conditions or changing values and discourses. Likewise, seizing political power alone does not guarantee hegemony. It has to be supplemented by the corresponding control of material as well as the discursive forces. The neo-Gramscian concept of hegemony also differs from mainstream IR in its evaluation of the use of violence. The open use of violence does not indicate overwhelming power but rather a legitimacy crisis of the established order. On a global scale hegemony cannot be reduced to the distribution of power in an international system. A hegemonic world order has to be based on the control of political institutions as well as the control of material production and the achievement of a prevailing world view.

Cox conceptualizes history as the succession of hegemonic and non-hegemonic "historical structures":

"Historical structures ... are persistent patterns of human activity and thought that endure for relative long periods of time. They are the result of collective responses to certain common problems ... which become congealed in practices, institutions and intersubjective meanings for a significant group of people. These practices and meanings in turn constitute the objective world for these people. These structures are historical because they come into existence in particular historical circumstances and can be explained as responses to these circumstances. Similarly, they are transformed when material circumstances have changed or prevailing meanings and purposes have been challenged by new practices."<sup>11</sup>

Thus, historical structures, as the specific configuration of economic, political and discursive forces, constitute the framework for action.<sup>12</sup>

These structures are historical in the sense, that they are permanently changing and that they are potentially changeable. They are always marked by contradictions and are being challenged by opposing social forces. Hegemony can never be regarded as a given and has to be reconstructed permanently. Here Cox turns from structure to agency. Hegemony has to be

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<sup>10</sup> Cox 1996a: 137.

<sup>11</sup> Cox 1996b: 514.

<sup>12</sup> Mittelman 1998.

(re)constructed consciously by political action. Referring to Gramsci, Cox uses the concept of "historical blocs" for the material, political and discursive configuration of hegemonic projects, which are organized by "organic intellectuals". Social forces can turn into hegemonic forces if the leading social groups succeed in establishing a "historical bloc" by bringing their interests "into harmony" with those of subordinate social groups and "incorporate these other interests into an ideology expressed in universal terms."<sup>13</sup> "Organic" intellectuals are people who perform intellectual and political leadership roles for a historic bloc on a long-term, or relatively permanent, base and become an integral part of that bloc.<sup>14</sup>

Neo-Gramscians think that "neo-liberal globalization", having succeeded "Fordism", is constituting the contemporary hegemonic historical structure.<sup>15</sup> Of course, both are based on a capitalist mode of production. But while Fordism was marked by mass production and mass consumption, welfare nationalism and the Bretton Woods system as expressions of "embedded liberalism",<sup>16</sup> and the discourse of modernization, the main elements of neo-liberal globalization are the establishment of globalized production<sup>17</sup> and "casino capitalism",<sup>18</sup> the formation of transnational elite networks<sup>19</sup> and global governance, and the diffusion of the ideology of privatization and liberalization, most notably the "Washington consensus"<sup>20</sup> prevailing among key international financial and economic institutions.

### **2.3 International organizations and hegemony**

International organizations are part of both Fordism and neo-liberal globalization and perform important functions for the establishment and maintenance of world hegemony. Cox, who collected first-hand experience with international organizations when he worked for the ILO, mentions several

".. features of international organization which express its hegemonic role ... (1) the institutions embody the rules which facilitate the expansion of hegemonic world orders; (2) they are themselves the product of the hegemonic world order; (3) they ideologically legitimate the norms of the world order; (4) they co-opt the elites from peripheral countries; and (5) they absorb counter hegemonic ideas."<sup>21</sup>

International organizations can best support the hegemonic order when they do not appear as instruments of the dominant states or dominant social groups but as autonomous institutions. Neo-Gramscian concepts of the state could be applied to international organizations, as they

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<sup>13</sup> Cox 1996a: 133.

<sup>14</sup> Cox, 1996a: 132-3.

<sup>15</sup> Gill 1993, 1995; Scherrer 2004.

<sup>16</sup> Ruggie 1982.

<sup>17</sup> Bernard 1994.

<sup>18</sup> Strange 1986, 1998.

<sup>19</sup> Van der Pijl 1995, 1998.

<sup>20</sup> Gills/Philip 1996; Hummel 2005.

<sup>21</sup> Cox 1996a: 137-8.

are manifestations of the internationalized state. However, for lack of space this argument cannot be elaborated here. It may suffice to stress that international organizations cannot be treated as unitary actors. The politics of international organizations is linked, directly or via international competition, to the transnational struggle between different social forces. As for the topic of this paper, Bull and others write,

"A neo-Gramscian perspective ... avoids unduly sharp distinctions between states and private actors and seeks to understand how current changes affect and are affected by changes in the states. ... the inclusion of the private sector is precisely a process in which the role and organization of multilateral institutions are redefined, and the outcome of such processes depends on the results of internal struggles between actors with different interests."<sup>22</sup>

In any case, the constitution of a new global hegemony requires much more than the control of international organizations. For example, in the 1970s the national developmentalist forces of the South, in spite of their control, by their majority of votes, of the UN General Assembly and other UN organizations, did not succeed in achieving a *New International Economic Order*. In Neo-Gramscian terms, they had gathered (some) political power, but lacked the economic and discursive powers to implement the desired order, let alone turn it into a new hegemony.

### **3. The historical legacy of UN-business relations**

#### **3.1. International organizations and business**

The history of the relationship between (global) international organizations and business arguably started with the establishment of the International Labour Organization (ILO) in 1919, initiated by US president Woodrow Wilson. Reacting to the Russian revolution, the ILO was supposed to achieve minimum social standards among the industrialized countries and thereby to diffuse the revolutionary zeal of the working classes. In the 1920s and 1930s, the ILO passed international conventions and recommendations to the member states to outlaw forced labor, to protect the health and safety of the workers and to establish unemployment insurance. ILO's most remarkable feature is its tripartite structure: each member state is not only represented by government officials but also by representatives of national employers' associations and trade unions (to be designed by the respective government). At the same time, private international business associations were founded, most importantly the Paris-based International Chamber of Commerce (ICC).<sup>23</sup>

The world economic crisis of the 1930s resulted in major economic, political and discursive changes. As a result, during the 1930s and 1940s, the governments of many industrialized countries turned to economic planning and direct state control of parts of the national economy, including the selective nationalization of corporations. After World War II, the Marshall

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<sup>22</sup> Bull/Bøås/McNeill 2004: 490-491.

<sup>23</sup> Hummel 2004: 25.

Plan for the reconstruction of European economies was based on active government involvement in the economy, to be succeeded later by successive liberalization. In 1961, this organization was converted into the Organization for Economic Cooperation and Development (OECD).<sup>24</sup> Despite the successive liberalization of private business and private foreign investment, most notably in the United States and the United Kingdom, the international economic order of the 1960s and 1970s was still based on nationally "embedded liberalism".<sup>25</sup> The regulation of private corporations remained the responsibility of the national government concerned.

In 1945 the United Nations system was founded on an inter-governmental base. Its member-states, among them the socialist countries, had not granted it permission to regulate international business. The UN was only allowed to enter into consultative arrangements with "non-governmental organizations".<sup>26</sup> An International Trade Organization, which would have had some competences regarding the policies of host nation states towards TNCs as well as the conduct of TNCs themselves, could not be established in the 1940s due to the non-ratification of the Havana Charter by the US Congress. Koenig-Archibugi comments on the competences of the planned ITO which would have been compatible with Fordism:

"What is remarkable is that the provisions concerning host-nation policies were weaker than those regulating restrictive business practices on part of TNCs. This asymmetry was due to concerns about restrictive practices, and specifically about international cartels, that stemmed from the interwar experience. The opposition of business actors to these provisions was a contributing factor in the failed ratification of the charter."<sup>27</sup>

As a result, whereas international trade and finance were governed by international regimes based on the GATT, the OECD, the IMF and the World Bank, foreign direct investment and transnational corporations were not. The reason for the lack of TNC regulation, however, was not a lack of international disputes. For example, the growing presence of US-based "multinational corporations" in Western Europe became a hot issue in the political discourse of the 1960s. Servan-Schreiber, in his 1967 bestseller "Le défi américain" (The American Challenge),<sup>28</sup> attacked the selling out of the European economy to "foreign" US investors. He called for a restrictive treatment of US foreign direct investment as well as for an active European industrial policy in order to regain and sustain the competitiveness of European companies. In the 1970s, the neocolonialist activities of "multinational corporations" came under attack. Among the most prominent cases were the role of ITT in the violent coup d'état against Chile's leftist Allende government<sup>29</sup> and the collaboration of companies with the South African apartheid system.

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<sup>24</sup> Hummel 2004: 25.

<sup>25</sup> Ruggie 1982.

<sup>26</sup> Charter of the United Nations, Article 71.

<sup>27</sup> Koenig-Archibugi 2004: 247.

<sup>28</sup> Servan-Schreiber 1967.

<sup>29</sup> A detailed description of the ITT case can be found in Litvin 2003.

### 3.2 Drafting an UN Code of Conducts for TNCs

While European countries did not bring the issue of TNC control before the United Nations, the G77 did. The G77 wanted to increase its bargaining power vis-à-vis foreign investors and prevent anti-governmental activities of TNCs.<sup>30</sup>

Initiated in 1972 by a proposal of Chile's Allende government, the ECOSOC and the Secretary-General finally set up an information and research Centre for Transnational Corporations in August 1974. In December 1974, the Economic and Social Council of the United Nations, by resolution 1913 (LVII), established an intergovernmental Commission on Transnational Corporations (UNCTC) as an advisory body. The main task for the Commission was to draft a code of conduct for TNCs plus other international arrangements for banning illicit payments in international commercial transactions and for international standards of accounting and reporting.<sup>31</sup> On the initiative of the G77, the General Assembly passed the *Charter of Economic Rights and Duties of States* on 12 December 1974, stating, inter alia, that

"(a) Each State has the right to regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment.

(b) Each State has the right to regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, cooperate with other States in the exercise of the right set forth in this subparagraph."<sup>32</sup>

The G77, controlling the majority of the votes in the United Nations, obviously had the political power to put the regulation of TNCs on the political agenda. But the idea of a legally binding code of conduct for TNCs was never accepted by the political and economic élites of the OECD countries and was fiercely opposed by business, liberal economists and the mainstream media. Negotiations in the UNCTC on the code of conduct started in 1977. They continued for over a decade, but in the end the code was never finalized.

At least the OECD governments felt compelled to react to the establishment of the UNCTC. In 1976 the OECD passed the *Declaration and Decisions on International Investment and*

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<sup>30</sup> Koenig-Archibugi 2004: 247.

<sup>31</sup> UNCTAD: The United Nations Centre on Transnational Corporations (<http://unctc.unctad.org/asp/index.aspx>, viewed 17 November 2005)

<sup>32</sup> Article 2(2) of the Charter of Economic Rights and Duties of States. UN GA Resolution 3281 (XXIX) of 12 December 1974.

*Multinational Enterprises*.<sup>33</sup> The Declaration included *Guidelines for Multinational Enterprises*, a set of strictly voluntary recommendations for TNC business ethics, covering employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. Governments committed themselves to promote the guidelines among TNCs based in their countries. Besides, the 1976 Declaration confirmed the principle of national treatment of FDI and asked governments for cooperation in the resolution of conflicts regarding TNCs and in making international investment incentives and disincentives transparent.

In 1977 the ILO passed the *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*. It covers, inter alia, the respect for the freedom of association, the right to organize, the right of collective bargaining, and the principle of equal opportunity and treatment, as well as the provision of healthy and safe working conditions. The *Tripartite Declaration* is based on ILO conventions which are legally binding for the state parties to it only. Generally speaking, the Declaration, endorsed by employers, trade unions and government, and backed by the world-wide membership of the ILO, is "essentially promotional in character".<sup>34</sup> The coverage and political support of the *Tripartite Declaration* is technically broader than in the case of the OECD Guideline, but, as a recent UNHCR study puts it, "in practice, at least the company coverage of the two might in fact be more similar given the concentration of foreign direct investment in and between the States adhering to the OECD Guidelines."<sup>35</sup> According to Koenig-Archibugi neither the OECD guidelines nor the Tripartite Declaration of the ILO "was of much consequence to the actual regulation of TNCs."<sup>36</sup>

With the rise of neo-liberal globalization in the 1980s the negotiations on an international regime for TNCs began to stagnate. On the one hand, environmental NGOs hoped that environmental regulations for TNCs could be included in UNCTC's draft code of conduct, but on the other hand the US government and the International Chamber of Commerce pressured for the dismantling of the UNCTC.<sup>37</sup> Boutros Boutros-Ghali, shortly after taking office as Secretary-General of the United Nations in 1992 and just prior to the Rio conference, closed the Centre on Transnational Corporation and finally transferred the secretariat of the UNCTC to UNCTAD.<sup>38</sup> Instead of a binding and monitored code of conduct for TNCs, UNCED passed Agenda 21, which promoted voluntary business self-regulation.

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<sup>33</sup> "The OECD term MNE is generally interchangeable with the UN's TNC (transnational corporation)"; cf. Crean 1980.

<sup>34</sup> United Nations High Commissioner on Human Rights, 2005: 8.

<sup>35</sup> United Nations High Commissioner on Human Rights, 2005: 8.

<sup>36</sup> Koenig-Archibugi 2004: 247.

<sup>37</sup> Clapp 2005.

<sup>38</sup> Paul 2001: 111-112; UNCTAD, 2005. On 14 July 1994 the ECOSOC, by resolution 1994/1, decided to transform the Commission on Transnational Corporations into a Commission of UNCTAD.

The Rio Earth Summit did not only mark the end of intergovernmental efforts to regulate TNCs, but also the beginning of a more direct and intensive participation of transnational business organizations in global politics, most notably by the Business Council for Sustainable Development which later merged with a similar ICC initiative to form the World Business Council for Sustainable Development (WBCSD).<sup>39</sup> The annual World Economic Forum (WEF) in Davos became a prime forum for CEOs and political leaders to meet.<sup>40</sup>

## 4. A new UN-business relationship: The Global Compact

### 4.1 Threatening hegemony: The battle for an international foreign investment regime

Intergovernmental negotiations for an international regime to regulate foreign direct investment (FDI) continued throughout the 1990s. Now the issue was not host nation control of TNCs but comprehensive liberalization of investment rules and protection of investors from costly, or restrictive, state regulations. Most remarkably, the negotiation forum shifted from the United Nations to the World Trade Organization (WTO) and the OECD.

The 1994 WTO agreements included an agreement on *Trade Related Investment Measures* (TRIMs). The TRIMs agreement, due to opposition from developing countries, did not ban national FDI regulations but linked them to the general WTO principle of national treatment for imports from WTO member states and restricted performance requirements. Although the agreement on TRIMs was a big step towards completely liberalizing FDI, representatives from OECD countries and TNCs complained that it did not move far enough.<sup>41</sup>

On request from the US government the OECD launched negotiations on a *Multilateral Agreement on Investment* (MAI) in 1995.<sup>42</sup> The draft MAI included provisions that would have mandated "national treatment" of all types of FDI, i.e. foreign companies would have had to be treated "no less favorable" than national companies, including public companies. In effect, no sector of the economy, including public services, would have been exempted. The draft MAI would have mandated governments to compensate foreign investors for any actual or potential losses of profit by government action, legislation or judicial decision. MAI would have set up a dispute settlement mechanism for corporations to sue foreign states directly. Most remarkably, US negotiators demanded extensive exemptions from the MAI rules for the United States. The negotiations were held confidential, but in early 1997 draft copies of the MAI were leaked to the public. NGOs launched a massive campaign against the MAI. In October 1998 the negotiations collapsed when the French government withdrew.<sup>43</sup>

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<sup>39</sup> Koenig-Archibugi 2004: 248-249, Clapp 2005.

<sup>40</sup> Van der Pijl 2001: 97.

<sup>41</sup> Davis/Bishop 1998.

<sup>42</sup> Walter 2001; Davis/Bishop 1998; Engelös et al., 1998.

<sup>43</sup> Walter 2001: 61.

The defeat of the MAI marked a "watershed"<sup>44</sup> in the formation of a fast growing movement against neo-liberal globalization. In 1999, the MAI protests turned into the Seattle movement, when police violently battled mass demonstrations in the streets of Seattle during the ministerial conference of the WTO. This meeting failed to open a new round of trade liberalization talks. From the "battle of Seattle" to the protests against the G7 meeting in Genoa in summer 2001 almost any convention of the G7, the WTO, the IMF or the EU, as well as annual the World Economic Forum meetings, was accompanied by mass demonstrations on the streets of the respective meeting site. In France parts of the globalization critics, calling for a Tobin tax on speculative currency transactions, formed Attac, which grew into an international network of "altermondialist" groups. Starting from 2002, the "altermondialist" movement, including groups from the North and the South, started to meet in large numbers in the annual World Social Forums, to be held as a counter-events to the World Economic Forums.

#### **4.2 Supporting hegemony: The corporate social responsibility discourse**

When neo-liberal globalization came under attack, the concept of *Corporate Social Responsibility* (CSR) seemed to offer an opportunity for relegitimizing liberalization and privatization and thus reconstructing the discursive hegemony of neo-liberal globalization. The concept of CSR had been invented in the 1950s. Originally, *social responsibility* appealed only to the social conscience of businesspeople personally rather than to the role of the company.<sup>45</sup> During the 1960s and 1970s, when public calls for legal and political control of business conduct became widespread, *corporate social responsibility* was advertized as a means not only to overcome implementation deficits of legal regulations, but also to improve business compliance with public demands beyond what was legally required.<sup>46</sup> In the 1970s, the concept of *corporate social responsiveness* was coined. It emphasized a proactive approach to social demands by strategic management, to be measured by *corporate social performance*.<sup>47</sup>

In the 1980s, debates about the scope of corporate governance centered around the *stakeholder* concept. According to Freeman's influential definition, a stakeholder is "any group or individual who can affect or is affected by the achievement of the organization's objectives."<sup>48</sup> The question was whether management of a company should orientate itself only to increasing the profits for its investors, i.e. shareholders, or to what degree a company had the responsibility to respect the interests of the interests of its stakeholders as well, among them its employees, customers, suppliers, communities, and more generally the environment around and the society as a whole. Recently, practitioners also used the term *corporate citi-*

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<sup>44</sup> Walter 2001: 72.

<sup>45</sup> The beginning of the debate was marked by Howard R. Bowen's "landmark" book *Social responsibilities of the businessman* (1953), cf. Carroll 1998: 268-269; Valor 2005: 192.

<sup>46</sup> Valor 2005: 192;

<sup>47</sup> Valor 2005: 193.

<sup>48</sup> Freeman 1984, as quoted in Vernon 2005: 193.

*zenship*. Implicit in this term is the view that a private corporation has a social status equivalent to a person, including rights and duties.<sup>49</sup>

The concept of corporate social responsibility can support and strengthen neo-liberal privatization, de-regulation and liberalization by complementing them with social responsiveness. First, CSR includes *some* substantial contributions to society and does not deny that there have been problems with *individual* companies. But it deflects public attention from the need for politically determining the extent of redistribution and fair shares and for understanding the structural causes of globalization problems. Second, CSR would not be effective politically as a mere PR exercise, so it usually has to include some monitoring mechanisms. Here, CSR privileges market pressures, professional auditing, and control by selected shareholders over legal requirements, judicial checks, and parliamentary control.<sup>50</sup> Besides, market pressures are imperfect, as Valor rightly argues, because consumers, workers and other stakeholders "have incorporated ethical values in their economic decisions only partially and selectively."<sup>51</sup> Private auditing is limited to an economic perspective and fragmented into a multitude of competing performance measurements.<sup>52</sup> Third, CSR subordinates social goals to profit-making imperatives. CSR is often justified as serving the long-term interests of business. But this means that, as a principle, social goals must be compatible with profit-making. In the short term, however, "... managers have shown their reluctance to sacrifice profits in favor of the common good."<sup>53</sup>

#### **4.3 Building hegemony: Kofi Annan's Global Compact initiative**

During Boutros Boutros-Ghali's term as Secretary-General of the United Nations, the United Nations were not fully supportive of neoliberal globalization yet. UN agencies like UNDP and UNICEF kept on vigorously criticizing neo-liberal structural adjustment policies because of their devastating social effects. In a major speech at Oxford University on 15 January 1996, Boutros-Ghali even advocated global taxes as a means to alleviate the financial crisis of the United Nations.<sup>54</sup> Following the Rio Earth Summit, the United Nations conducted a series of world conferences on human rights, population, social development and women's rights, each with a large participation by NGOs and extensive media coverage.

In January 1997 Kofi Annan, a long time UN bureaucrat, succeeded Boutros-Ghali as UN Secretary-General. In order to revitalize the ailing world organization, he promised to fundamentally reform management of the United Nations and to open the UN for a closer partner-

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<sup>49</sup> Valor 2005: 193.

<sup>50</sup> Blowfield 2005: 184.

<sup>51</sup> Valor 2005: 204

<sup>52</sup> An OECD survey published in 2000 inventoried 246 codes (as quoted in Ruggie 2003).

<sup>53</sup> Valor 2005: 204

<sup>54</sup> Paul 2001: 112-113.

ship with business. The "intellectual leadership"<sup>55</sup> for the Secretary-General's new course was provided by Harvard professor John G. Ruggie, whom Annan appointed as Assistant Secretary-General and chief adviser for strategic planning in 1997. Ruggie became the "the architect of the Global Compact", as Koenig- Archibugi called him.<sup>56</sup> Very soon, UN agencies like UNICEF, UNDP, UNHCR and UNESCO started partnership projects with private corporations or business foundations.<sup>57</sup> Annan himself regularly met with top business leaders. The new course of the Secretary-General culminated in his famous speech at the World Economic Forum in Davos on 31 January 1999.

In his address to the Davos meeting Kofi Annan invited business leaders to join efforts with the UN and initiate a global compact of shared values and principles, which should "give a human face to the global market."<sup>58</sup> Business should "embrace, support and enact a set of core values in the areas of human rights, labour standards, and environmental practices." Annan, referring to the opposition against neo-liberal globalization, said that he had chosen these three areas "... because they are ones where I fear that, if we do not act, there may be a threat to the open global market, and especially to the multilateral trade regime". Annan added that in return for business support, the United Nations would "help make the case for and maintain an environment which favors trade and open markets". In another speech in May 1999 the Secretary-General clarified that "... the Global Compact is not a code of conduct."<sup>59</sup>

The Global Compact started as a private initiative of Kofi Annan who was not acting on his official mandate as Secretary-General. However this distinction was blurred in public perception and the Global Compact initiative actively generated the image of an UN backed initiative. Amid initial hesitation from business and skepticism from NGOs the Global Compact was officially launched in a meeting in New York in July 2000. The initial membership was about 50 companies plus several stakeholders from trade unions, NGOs and UN agencies.<sup>60</sup>

The Global Compact is a global CSR initiative, based on voluntary business membership, including some stakeholders from labor organizations, civil society and UN agencies. The Global Compact initially was based on nine principles to which a tenth principles was added in 2004 (box 1). The principles were selected by the Secretary-General from international conventions which already reflected a global consensus. A company wishing to enter the Global Compact must continue to indicate its support for the principles of the Compact and its intention to implement them. In order to do so the CEO of the company has to send a letter to the Global Compact office.<sup>61</sup> In 2003 an annual "Communication on Progress" was intro-

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<sup>55</sup> Bull/Bøås/McNeill 2004: 485.

<sup>56</sup> Koenig-Archibugi 2004: 255.

<sup>57</sup> Bennis 2001.

<sup>58</sup> Secretary-General Proposes Global Compact on Human Rights, Labour, Environment, in Address to World Economic Forum in Davos, UN Press Release SG/SM/6881, 1 February 1999.

<sup>59</sup> UN Press Release SG/SM/7004, 25 May 1999, quoted in Judge 2000: 296.

<sup>60</sup> Hamm 2002: 28.

<sup>61</sup> Global Compact Office 2005a; Williams 2004: 763.

duced. Now participating companies were expected to report actions taken in support of the Global Compact principles and made the report public on the Global Compact website.<sup>62</sup> As a principle, corporations of any size can join the Global Compact. However, Ruggie set an ambitious target for membership of 1,000 major companies to be reached within the first three years of the Global Compact.<sup>63</sup>

### **box 1: The Global Compact's ten principles**

The Global Compact seeks to foster a more beneficial relationship between business and societies, paying particular attention to the world's poorest people. The initiative seeks to contribute to more sustainable and inclusive global markets by embedding them in shared values. Importantly, the Global Compact's ten principles in the areas of human rights, labour standards, the environment and anti-corruption *enjoy universal consensus*. They are derived from the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption.

The Global Compact asks companies to embrace, support and enact, within their spheres of influence, the following principles:

#### **Human Rights**

Principle 1: Business should support and respect the protection of internationally proclaimed human rights, and

Principle 2: make sure that they are not complicit in human rights abuses.

#### **Labour**

Principle 3: Business 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: the elimination of discrimination in respect of employment and occupation.

#### **Environment**

Principle 7: Business should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

#### **Anti-Corruption**

Principle 10: Business should work against all forms of corruption, including extortion and bribery.

**source:** Global Compact Office: The United Nations Global Compact: Advancing Corporate Citizenship. New York, June 2005, emphasis in original

<sup>62</sup> Global Compact Office 2005a: section 3.6.

<sup>63</sup> Statement of Ruggie on 13 October 2000, as quoted in: Judge 2000: 296.

The Global Compact seeks to "mainstream universal principles in business activities around the world and to catalyze actions in support of UN goals."<sup>64</sup> Ruggie and Annan designed the Global Compact as a "learning network", through which companies could share best practices for implementing the principles into corporate management, thereby encouraging other companies to follow. Unlike a code of conduct, the Global Compact explicitly lacks any sanctioning mechanisms. The learning process is supported by specific "policy dialogues", which should generate shared understandings among companies about what constitutes a socially responsible posture in specific circumstances, for examples when operating in conflict areas. Finally, business collaborates with UN agencies in "partnership projects".<sup>65</sup>

Organizationally, the Global Compact is a decentralized network, based on company activities, partnership projects and regional, national and sectoral initiatives. The network is coordinated by an office in New York which was set up by the Secretary-General with nominal financing from the Secretary-General's trust fund. Further funding came from governments donations.<sup>66</sup> In addition, the Global Compact office entered into formal partnerships with UN agencies. In January 2002 Kofi Annan established an Advisory Council for the Global Compact with a membership of 17 high-ranking individuals. Ten members are businessmen, two are trade unions representatives, the remaining five include NGOs activists and John Ruggie, the intellectual mastermind of the Global Compact. Five permanent representative from UN member states get invited as observers.<sup>67</sup> To Brigitte Hamm the establishment of the Council was "essential" for the success of the Global Compact in terms of governance and membership.<sup>68</sup>

#### **4.4 Winning hegemony: The success of the Global Compact**

Five years after its establishment, the Global Compact turned out to be a success story for its initiators in terms of participation and reputation. However, the Global Compact has a mixed record in terms of policy effects. The success of the initiative necessitates the introduction of new governance structures with potentially far-reaching implications. Moreover, the reputation of the compact has to be protected by quality control measures.

As of 17 November 2005 the Global Compact website listed 2,351 corporations of varying size, sectoral orientation and geographical base plus 114 business associations and 4 stock exchanges as members on the Global Compact (box 2). The compact's membership has become truly global, since only about half of the participating corporations (1,190) is based in OECD countries. Geographically, 920 companies listed on the Global Compact website are

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<sup>64</sup> McKinsey and Company 2004..

<sup>65</sup> Tesner/Kell 2000: 53; Ruggie 2001: 371-378; Ruggie 2003.

<sup>66</sup> McKinsey and Company 2004: 1.

<sup>67</sup> Hamm 2002: 22-23.

<sup>68</sup> Hamm 2002: 24.

based in the European Union, 81 in the United States, and 39 in Japan. Among corporation from non-OECD countries, 427 are from major Latin America countries<sup>69</sup>, 117 from the Philippines, 102 from India, and 52 from China. The compact enjoys the enthusiastic support of top business associations such as the International Chamber of Commerce (ICC) and the World Business Council on Sustainable Development (WBCSD). In mid 2005, local Global Compact networks existed in over 50 countries.<sup>70</sup> A McKinsey team concluded in their survey of the Global Compact that participation from non-OECD countries is closely linked to the existence of local networks.<sup>71</sup>

## **box 2: Participants in the Global Compact network (November 2005)**

### **business**

- **2,351 corporations** (as of 17 Nov 2005) of varying size, sectoral orientation and geographical base;
- 4 stock exchanges plus 9 more "exploring partnerships with the Global Compact" (last update 10 Sept 2004);
- 114 Business Associations, mostly local (last update 7 Sept 2004).

### **stakeholders**

- 6 UN agencies: Office of the High Commissioner for Human Rights (OHCHR), International Labour Organization (ILO), United Nations Environment Programme (UNEP), United Nations Development Programme (UNDP), United Nations Industrial Development Organization (UNIDO, since spring 2003), United Nations Office on Drugs and Crime (since June 2004) (last update 7 Sept 2004);
- 10 labour organizations (last update 23 Sept 2004);
- 175 civil society organizations, mostly national and regional (last update 4 Oct 2005) plus 4 academic partners and 6 cities and communities (last update 7 Sept 2004).

**source:** Global Compact Website ([www.unglobalcompact.org](http://www.unglobalcompact.org))

Stakeholder participation seems to be sufficient to credibly cover all principles but still low enough to be manageable. As top representative of labor it includes the International Confederation of Free Trade Unions. Human rights, environmental concerns and anti-corruption are being advocated by NGOs of great renown such as Amnesty International, Human Rights Watch, Oxfam, The Save the Children Alliance, Transparency International, The World Conservation Union (IUCN) and the World Wide Fund for Nature (WWF). In addition, six UN agencies are linked to the Global Compact

Participation of US companies, however, especially of major corporations, is still comparatively low. The reluctance of US companies to join does not indicate disagreement with the

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<sup>69</sup> Argentine, Brazil, Chile, Colombia, Ecuador, Mexico, Peru, Venezuela.

<sup>70</sup> United Nations High Commissioner on Human Rights 2005.

<sup>71</sup> McKinsey and Company 2004: 11.

Global Compact's basic idea. The main reason for not becoming a member of the compact seems to be fear of litigation. These fears are not without justification, most notably since the California Supreme Court decided in May 2002 that a NGO activist may sue Nike company for falsely advertising its social image. In September 2003, Nike settled the case with a payment of US\$ 1.5 million to the Fair Labor Organization.<sup>72</sup> Because of these litigation fears, the American Bar Association drafted a standard entry letter for US companies willing to join the Global Compact which they can use to preclude subsequent litigious claims.<sup>73</sup> The McKinsey review of the Global Compact mentions two more obstacles, namely "concern among these companies about the implications of the Compact's labor rights provisions, and a relatively lower assessment of the potential benefits of association with the UN." The report hastens to add that these obstacles are both "outside the Compact's sphere of influence."<sup>74</sup>

Reputation was a another concern for the initiators of the Global Compact, as NGO critics suspected that "companies most eager to join [would be] those tainted by bad press and in need of a good public image".<sup>75</sup> This would obviously have constituted a major disincentive for socially responsible companies to join the compact. However, such a negative selection of Global Compact membership did not happen. Williams, for example, mentioned, that "compact member companies not based in the U.S. include five of the top ten Fortune Most Admired Companies (outside the U.S.): BMW, Nokia, Nestle, BP, and Royal Dutch/Shell Group."<sup>76</sup>

The status of the Global Compact with respect to the United Nations was problematic, as it was initiated as a private initiative of the Secretary-General, not as an official United Nations activity. In resolution A/Res/56/76 of 24 January 2002, the General Assembly endorsed the Global Compact,<sup>77</sup> but also made it clear that the principles and approaches that govern partnerships with the private sector should be built on the foundation of the Charter of the United Nations. In its resolution A/Res/58/129 of 19 December 2003 the General Assembly expected a positive contribution of partnerships with business for achieving internationally agreed development goals, including the *Millennium Development Goals*. The General Assembly regularly put the issue on its agenda and requested the Secretary-General to report on the "enhanced cooperation between the United Nations and all relevant partners, in particular the private sector".<sup>78</sup> In short, UN member states let Kofi Annan's Global Compact initiative go on, but kept an watchful eye on it.

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<sup>72</sup> Moreover, labor and human rights activist reactivated the almost forgotten U.S. Alien Tort Claims Act (ATCA) of 1789. Based on ATCA US courts can be used as a forum for foreign individuals to sue corporations on allegations that they violated the law of nations or a treaty of the United States abroad (Chanin 2005; Collingsworth 2004).

<sup>73</sup> Williams 2004: 767.

<sup>74</sup> McKinsey and Company 2004: 11; also see Williams 2004: 758, on this issue.

<sup>75</sup> Williams 2004: 762.

<sup>76</sup> Williams 2004: 763.

<sup>77</sup> Ruggie 2003: note 65.

<sup>78</sup> United Nations. Secretary-General, 2005.

Kofi Annan set the Global Compact as terms of reference for the relationship of UN agencies with the private sector. In his guidelines for the *Cooperation between the United Nations and the Business Community* of 17 July 2000 he stated, that "the Global Compact ... provides an overall value framework for co-operation with the business community. The principles of the compact are based on intergovernmental agreements and at the same time are relevant for business. UN organizations should use them as a point of reference when choosing a business partner..." Most remarkably, Annan added one principle to the guidelines which he did not include in the Global Compact: ""Business entities that are ... involved in the sale or manufacture of anti-personnel mines or their components ... are not eligible for partnership."<sup>79</sup>

On 24 June 2004 more than 200 top managers of corporations participating in the Global Compact Leaders Summit met with representatives of UN organizations, UN member states and NGO participants of the Global Compact in New York. In preparation of this meeting the Global Compact office had commissioned McKinsey consulting company with an impact assessment of the Global Compact which was published in May 2004.<sup>80</sup> The McKinsey team reviewed the Global Compact and polled participating companies. The summary of the main results reads as follows:

"Our impact assessment has found that the Global Compact has had noticeable, incremental impact on companies, the UN, governments and other civil society actors and has built a strong base for future results. The Compact has primarily accelerated policy change in companies, while catalyzing a proliferation of 'partnership projects,' development-oriented activities that companies undertake with UN agencies and others partners. The Compact has also developed a solid participant base and local network structure, establishing itself as the largest voluntary corporate citizenship network of its kind. In addition, the mere existence of the Compact exerts a surprisingly powerful influence on companies and within the UN, empowering champions for reform. However, inconsistent participation and divergent and unmet expectations limit the impact on companies and continue to threaten the Compact's long-term credibility with participants. As it transitions from its entrepreneurial, experimentation phase to a phase of sustained growth focused on impact, the Global Compact will need to manage participants' expectations by increasing the value of participation with more targeted business-oriented engagement mechanisms, robust local networks, and effective communication and collaboration with participants and partners."<sup>81</sup>

The Global Compact turned out to be a big success in terms of organizing a global CSR business network, including partnerships with the UN. The CSR concept got an additional boost when financial investors began to adopt Corporate Social Investment (CSI) or Socially Responsible Investment (SRI) principles.

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<sup>79</sup> Section 12 of the guidelines, reprinted as United Nations. Secretary-General, 2001.

<sup>80</sup> Funding for the study was provided by five European governments and Brazil.

<sup>81</sup> McKinsey and Company 2004: 2.

However, the Secretary-General remained concerned with the credibility of his initiative, because many NGOs stayed critical of the Global Compact. For example, shortly before the Global Compact Leaders Summit convened, NGOs presented specific cases of participating companies not complying with the Global Compact principles.<sup>82</sup> But enhancing the credibility posed a major problem, exactly because the Global Compact was meant to be a voluntary initiative without sanctioning mechanism.

After the summit the Global Compact office announced that it would give "brand management" and "quality assurance" priority over the expansion of the membership.<sup>83</sup> The Secretary-General, on recommendations of the Global Compact Advisory Council, adopted formal integrity measures, including a mechanism to handle failure to communicate progress by a participating company for two years in a row and complaints about "systematic and egregious actions that undermine its commitment to, and the reputation of, the Global Compact". In such cases, the office will communicate with the company concerned in order "to remedy the situation". If unsuccessful, the Global Compact Office may designate the company concerned as "inactive" on the Global Compact website or remove it from the list.<sup>84</sup> This could be the first step toward accountability.

Another challenge for the Global Compact was the management of the large and growing number of participants. On 12 August 2005 the Secretary-General announced a new governance structure for the Global Compact to be implemented within one year.<sup>85</sup> The governance functions of the Global Compact will be shared by six institutions: a triennial Leaders Summit, a Board, Local Networks with an annual Local Networks Forum, the Global Compact Office and an Inter-Agency Team, linking UN agencies to the Global Compact. To ensure the initiative's financial sustainability, a nonprofit foundation will be established to help fund Global Compact activities like publications and events.

The Global Compact Advisory Council will be turned into a twenty-member Global Compact Board. It will be the main body for policy-making on the Global Compact. The Board will be drawn from the constituency groups – business, civil society, labour and the United Nations – as follows:

- The Local Networks and participating companies will nominate eleven members.
- Four members will come from global civil society organizations, one each from the areas of human rights, environment, anti-corruption and development (although development is not explicitly among the ten principles).
- Two members from international labour will be nominated by the ICFTU.

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<sup>82</sup> taz, die tageszeitung, 24 June 2004.

<sup>83</sup> Interview with Georg Kell, director of the Global Compact office, in: Mediengruppe Macondo 2004:17.

<sup>84</sup> Global Compact Office 2005b.

<sup>85</sup> Global Compact Office 2005a

- The Secretary-General of the United Nations, the Head of the Global Compact Office, simultaneously serving as head of the Inter-Agency Team, and the Chair of the Global Compact non-profit entity will be ex-officio Board members.

The initial members will be appointed by the Secretary-General, but subsequently the Board members will be determined by elections within groupings to three-year terms, with one-third of the seats being up for election every year.<sup>86</sup>

The implications of the Global Compact's new governance structure are remarkable and have gone unnoticed by most observers. Starting as an initiative directed by Kofi Annan personally, the Global Compact is now turning into a formal and autonomous institution. The Global Compact Office (GCO), despite all claims to stay non-bureaucratic, is on the verge of becoming a transnational organization, already placing its logo on a par with ILO, UNEP, UNDP, UNIDO and other UN agencies.<sup>87</sup> The Global Compact Leaders Summit, as an assembly of high ranking representatives, not from governments, but from global business and some stakeholders, gets elective and legislative functions. The summit members will elect the members of the Board of the Global Compact Office. The 2004 summit has already performed one important legislative act by endorsing the proposal of the Secretary-General to add anti-corruption as the tenth principle to the Global Compact. Finally, the Global Compact Board could become the world's first (partially) elected global parliament. Nowrot, a specialist on transnational economic law, also uses the term "parliamentarization":

"..the ... experiment now initiated with the creation of the Global Compact Board and the experiences gathered from its functioning in the future will undoubtedly be intensively analyzed in the literature and are almost certainly going to have important implications for the ongoing discussion especially with regard to the desirability and feasibility of parliamentarizing international governmental organizations."<sup>88</sup>

#### **4.5 Challenging hegemony: The UN Norms on the Responsibilities of Transnational Corporations**

NGOs critical of the Global Compact argue that the only way to guarantee that companies can be made accountable to sustainable and equitable development is a mandatory legal framework.<sup>89</sup> They rallied behind an initiative of an expert Sub-Commission on the Promotion and Protection of Human Rights of the United Nations Commission on Human Rights. The sub-commission consisted of independent human rights specialists. After intensive deliberations it published draft *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights* in August 2003. The "draft norms", while recognizing the states' prime responsibility for human rights protection, state that "transnational

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<sup>86</sup> Global Compact Office 2005a: section 4.7.

<sup>87</sup> Global Compact Office, 2004.

<sup>88</sup> Nowrot 2005: 20-21.

<sup>89</sup> Williams 2004: 758.

corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law"<sup>90</sup> The draft norms then specify human rights, consumer rights and environmental protection obligations, drawn from existing international human rights, labour and environmental conventions, to be applied to TNCs and add reporting, monitoring, and compensation obligations for TNCs.<sup>91</sup>

The draft norms met with heavy criticism from business circles, including the ICC, who condemned the "legalistic approach" they embodied.<sup>92</sup> In April 2004, the inter-governmental Commission on Human Rights, did not adopt the draft norms, "declaring that it had not requested them and did not endorse them."<sup>93</sup> It referred the topic to the Office of the United Nations High Commissioner for Human Rights (OHCHR), asking it to collect submissions from interested parties and compile a report about existing initiatives and standards relating to TNC responsibilities concerning human rights and compare them with the draft norms. The OHCHR report was issued on 15 February 2005. It did neither endorse nor condemn the draft norms, but just noted deep disagreements about the human rights responsibilities of TNCs.<sup>94</sup>

On 25 July 2005 the UN Commission on Human Rights passed a resolution recommending that the SG appoint a United Nations Special Representative on Human Rights and Transnational Corporations. The Special Representative has a mandate to determine human rights standards applicable to TNCs, to clarify the roles of states and corporations, to develop a human rights impact assessment methodology and to collect best practices of states and TNCs concerning this matter.<sup>95</sup> In August 2005 the Secretary-General appointed John Ruggie as Special Representative. In order to assume his new task Ruggie stepped down from his role as Special Advisor on the Global Compact.<sup>96</sup> By appointing Ruggie the Secretary-General demonstrated his willingness to continue his business-friendly policies and appeased fears within the business community of anti-business policies of the United Nations<sup>97</sup>.

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<sup>90</sup> Draft Norms, section A1.

<sup>91</sup> Weissbrodt 2004.

<sup>92</sup> Financial Times August 13, 2003; Koenig-Archibugi 2004: 258-259.

<sup>93</sup> Mendelson 2005.

<sup>94</sup> United Nations High Commissioner on Human Rights, 2005.

<sup>95</sup> United Nations. Economic and Social Council. Commission On Human Rights, 2005: Draft resolution: Human rights and transnational corporations and other business enterprises. (E/CN.4/2005/L.87, 15 April 2005, adopted by majority vote with three countries, the United States, Australia and South Africa, voting against the resolution, accusing it of having an anti-business agenda.

<sup>96</sup> Text of Daily Press Briefing by the Office of the Spokesman for the Secretary-General of the United Nations, New York, July 28, 2005, in: Federal News Service July 29, 2005.

<sup>97</sup> cf. the commentary of Thorsten Brenner in the International Herald Tribune on 18 Aug 2005.

## 5. Corporate Global Governance

In the rest of this paper I present an evaluation of the relationship between TNCs and the United Nations in terms of neo-Gramscian theory. Extending the analysis of current UN-business relations to the 1960s and 1970 makes clear, first, that this relationship has changed fundamentally and, second, how this historical change reflects the transition from Fordism to neo-liberal globalization. From a neo-Gramscian perspective, such a historical approach can generate deeper insights than the analysis of UN-business relationship in a static, ahistorical way, for example by applying game theory with fixed actors and interests or by using systems theory based on the premise of a self-sustaining system.

Fordism was marked, among others, by embedding the liberal economy into national and international regulations and responsibilities and by subordinating business interests to national interests, including European protectionism against the hegemony of US capitalism and the common Western interest to fight communist movements and the Eastern bloc. The United Nations system reflected the inter-national character of the world order of the 1960s and 1970s. In the early 1970s, the G77 governments used their political power in the United Nations in order to challenge the Western dominated world economic order, including what they regarded as neocolonialist activities of TNCs. Hegemony for the Western economic order was lost, but Western dominance prevailed thanks to superior Western economic and military power. Because of the continuing dominance of the West the initiative to draft a code of conduct for TNCs in the UNCTC faltered.

During the 1980s and early 1990s neo-liberal globalization emerged as a new hegemonic project, based on transnational social forces. The United Nations system, originally founded on a strictly intergovernmental base, was partly converted into global governance.<sup>98</sup> including direct representation of business as well as civil society interests. The neo-liberal project succeeded economically because of the "disciplinary" power of global financial markets, and politically because of the destruction of developmental nationalism in the South in the wake of the debt crisis<sup>99</sup> and the end of socialism. Fukuyama's famous *End of History* concept marked the discursive hegemony of neo-liberal globalization.<sup>100</sup>

International organizations are playing a major role in organizing neo-liberal globalization. Most prominently the *Washington Consensus* among international financial institutions and the establishment of the WTO in 1994 helped to institutionalize neo-liberal globalization. Another element was the dismantling of the remnants of the New International Economic Order initiative, like the dissolution of the UNCTC by UN Secretary-General Boutros Boutros-Ghali in 1992. Beyond the successful establishment of a new economic order, however, neo-liberal globalization is marked by social, political and environmental contradictions. Coming to

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<sup>98</sup> Gill 1994; Bull/Bøås/McNeill 2004.

<sup>99</sup> Gill 1995; Berger 2004.

<sup>100</sup> Fukuyama 1991.

terms with these contradictions poses a major challenge for reconstructing hegemony of the neo-liberal project.

Reconstructing hegemony needs agency, and here the Global Compact comes in. The leadership role of Secretary-General Kofi Annan for the successful launch of the Global Compact cannot be overestimated. US educated Annan had served in the United Nations for many years and was a high-ranking UN official during Boutros-Ghali's term as Secretary-General. He had experienced the financial crisis and marginalization of the United Nations personally. When he was elected Secretary-General of the United Nations, he was expected to reform the United Nations and restore the relevance of the world organization.<sup>101</sup> Annan "was joined by other influential leaders of UN agencies, such as Mark Malloch Brown, head of the UNDP, and Gro Harlem Brundtland, former head of the WHO."<sup>102</sup> But Annan would probably not have succeeded without the strong support of the "organic intellectuals" of global business, most notably the leaders of the ICC and the World Economic Forum. Business itself was in a process of reorganization since the Rio Earth Summit when business leaders started to get involved directly in global politics. Finally, John Ruggie proved to be an excellent choice as top advisor to the Secretary General and intellectual organizer of the Global Compact. Ruggie had done extensive research about "embedding" liberalism. The choice of a Harvard professor also reflected the hegemony of the US academic system.

The series of world conferences of the 1990s as well as the opposition against structural adjustment, WTO liberalization and the MAI initiative had galvanized a growing movement of globalization critics which culminated in the late 1990s. For Annan this constituted a window of opportunity to convince business leaders of the need for their participation in the Global Compact. One can only speculate about the fate of the Global Compact initiative had it been started after 9/11.

Business supported the Global Compact after unsuccessful initiatives for autonomously organizing CSR. There have been numerous CSR initiatives on a company, sectoral, national, regional, and global level, but they remained fragmented and often lacked credibility. The Global Compact, which is de facto linked to the "visibility, global reach and convening power"<sup>103</sup> of the United Nations, offers a forum "where some of the best members of civil society—non-government organizations, academic and public policy institutions, individual companies, business associations and labor representatives—can come together to discuss the changing role of business and its moral purpose."<sup>104</sup> There is an additional incentive to join the Global Compact for companies based in countries whose governments either are participating in the counter-hegemonic opposition against the Washington Consensus, like Brazil, Argentine or India, or who obstruct global governance, like the United States. Recently, fi-

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<sup>101</sup> Bull/Bøås/McNeill 2004: 484.

<sup>102</sup> Bull/Bøås/McNeill 2004: 485.

<sup>103</sup> Williams 2004: 771.

<sup>104</sup> Williams 2004: 771.

financial investors, especially insurance companies, pension funds and others interested in long-time stability, entered the new market for *Socially Responsible Investment* (SRI) and put additional pressure on companies to adopt CSR and join the Global Compact.

As I have argued above, I consider the Global Compact a big success for its initiators in terms of membership and reputation and as an important contribution to the reconstruction of neo-liberal hegemony. This success is based on sustained top level participation of corporations and business associations, the successful, but limited, cooptation of top labor and civil society representative, the streamlining of UN agencies for partnership with business and the exclusion of state interference. The Global Compact could hardly be rejected by governments because its ten principles are based on selected international conventions which express the consensus among states. The Global Compact also fits into similar initiatives for a socially softened version of neo-liberal globalization, most prominently the Post-Washington Consensus among international financial institutions<sup>105</sup> and the Millennium Development goals of the UN General Assembly.<sup>106</sup>

In order to be meaningful for reconstructing hegemony in a neo-Gramscian sense, the Global Compact should not only be judged for his political but also for his discursive effects in terms of restoring legitimacy to neo-liberal globalization. The Global Compact would not be effective as a pure PR exercise. Bluntly speaking, people have to forget about binding regulations, liability claims and taxation for TNCs and have to be made convinced that TNCs activities are completely legitimate and that there is no alternative to global Corporate Social Responsibility. I found three arguments supporting the discursive hegemony of global CSR as manifested in the Global Compact. The first argument states that multi-stakeholder initiatives should be supported, because state action is not probable. Or, as Koenig-Archibugi put it: "Where executive multilateralism has failed, societally backed multilateralism may succeed."<sup>107</sup> However, this argument ignores the fact that the Global Compact itself is based on international conventions, written, ratified and implemented by states.

The second argument is taken from the general CSR discourse and says that there is no contradiction between profit making and the common good. Therefore company support for the Global Compact can be seen as an activity in the company's economic self-interest. This kind of argumentation subordinates social responsibilities under the logic of the market and excludes social norms which might conflict with economic interests.

The third argument says that privatization of global politics should be regarded as democratization, hence there is no need for establishing democratically accountable global institutions. This is a dangerous argument for the proponents of neo-liberalism because, of course, it also legitimates the activities of private civil society organizations critical of globalization.

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<sup>105</sup> Führmann 2003; Higgott 2001.

<sup>106</sup> United Nations Development Programme 2003.

<sup>107</sup> Koenig-Archibugi 2004: 259.

To say that the Global Compact is successful does not mean to implicate that contradictions do not exist and that the initiative is stable. To the contrary, there are several structural problems concerning the sustainability of the Global Compact. First, stakeholder support is decisive for the credibility of the Global Compact. But in order to safeguard the autonomy of business, stakeholder involvement has to be limited and selective. Ruggie conceded that voluntary initiatives like the Global Compact remain fragile and cannot be viewed "as expressions of cosmopolitan democracy."<sup>108</sup> Therefore NGOs excluded from the cartel of "global corporatism"<sup>109</sup> might become more radical and turn to the altermondialist movement in order to get public attention and political influence. Ironically, this could even help the Global Compact since from the very beginning sustained public pressure was a major reason for companies to participate in the Global Compact.

Second, the Global Compact, as an independent undertaking of the Secretary-General, enhances the autonomy of the UN bureaucracy vis-à-vis the member states. In addition there is a proliferation of private funds managed by the UN Secretary-General and UN agencies, like the United Nations Fund for International Partnerships<sup>110</sup> or the trust fund for the Global Compact to be implemented by the Secretary-General. The distancing of the Global Compact initiative from direct government intervention is an important precondition for the flexibility and a major incentive for companies to join.<sup>111</sup> On the other hand the Secretary-General and the agencies of the UN basically remain dependent on UN member states. Funds from member states still constitute the prime source for the UN budget and partnerships with business do not alleviate the financial crisis of the UN. In a report to the General Assembly the Secretary-General conceded that "(...) early hopes that partnerships would generate significant new funding streams for the United Nations have largely not been fulfilled."<sup>112</sup> The United Nations also depends on member states for the selection of the Secretary-General and other top UN officials, for oversight and control of UN activities and for legally binding norms and rules. Unfortunately, for the same reasons, the United Nations remains subject to obstructive policies by important member states, too.

Third, the Global Compact has always been advertised as a voluntary initiative, as a learning forum without sanctioning mechanism. Historically, the Global Compact emerged as an attempt to protect TNCs from more stringent and binding regulations, like the UN draft norms recently, and voluntarism has been an important condition for business participation. How-

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<sup>108</sup> Ruggie 2003: conclusion.

<sup>109</sup> Ottaway 2001: 265.

<sup>110</sup> "UNFIP was set up to serve as the interface between the United Nations system and the United Nations Foundation (UNF), the public charity responsible for administering, over a period of 15 years, Ted Turner's US\$1 billion contribution in support of United Nations causes. Over the years UNFIP has expanded its functions to provide a "one-stop" service for partnership opportunities with the UN family." (United Nations Fund for International Partnerships 2004)

<sup>111</sup> Ruggie 2003.

<sup>112</sup> United Nations. General Assembly, 2005: section 12.

ever, shifting social responsibilities from states to the private sector might involve the risk of "overburdening" business with social expectations. Besides, as I have elaborated above, the good reputation of the Global Compact and its smooth operation require mechanisms for brand management and quality control of its activities and membership as well as institutionalized governance structures. This contradicts the voluntary and unbureaucratic nature of the Global Compact. It remains to be seen how the company membership will react to the new governance mechanisms introduced by the Secretary-General in August 2005.

Finally, the initiators of the Global Compact promised to restrict the Global Compact to a limited set of simply stated principles, derived from international conventions. The original set of nine principles has already been extended by anti-corruption as tenth principle. This could be a precedent for adding more principles to the list, like the Millennium Development Goals (MDGs) or the ban on anti-personnel mines. However, any attempt to limit the normative coverage of the Global Compact might give rise to criticism about its selectivity and the distortion of UN policy objectives. Bull et al, for example, state:

" There is also a risk that sectors in which there are strong private sector interests (for example, health) may be given priority over sectors in which the private sector has fewer stakes (for example, education). ... The distortion of policy priorities, here exemplified in the increased emphasis on health, may also lead to a shift in the balance between different UN agencies. ...A further claim is that cooperation with the private sector will lead to a geographical distortion. A recurrent criticism of the work to make corporations more socially responsible is that their philanthropic efforts are channeled toward areas in which they have investments."<sup>113</sup>

What is conspicuously missing from the list of norms and policy objectives are peace and poverty alleviation. Banning military procurement, for example collaboration in the production of anti-personnel mines, would offend major UN member-states. Introducing taxation for financing development, on the other hand, would not be acceptable to business.

Having said that, the conclusion is that the relationship between the United Nations and Transnational Corporations is not structurally pre-determined, but dependent on agency within historical frameworks of action, including agency in order to change these structural frameworks. Robert Cox usually distinguished three scenarios when he sketched possible future developments. This can also be applied to the topic of this paper.

A non-hegemonic scenario would mean that social forces would openly clash and that there would be no universally acceptable order. US unilateralism would be a very obvious candidate for such a scenario, as would be trade disputes after the failure of WTO negotiations, exclusive regionalism or massive consumers boycotts. In this scenario, TNCs as well as the United Nations would suffer from politicization and "securitization", as they did during the prime time of the Cold War.<sup>114</sup> A non-hegemonic scenario does not exclude dominance of

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<sup>113</sup> Bull/Bøås/McNeill 2004: 487-8.

<sup>114</sup> Williams 2003.

certain social groups or state actors, but it would lack widespread legitimacy. A counter-hegemonic scenario could mean an alternative, non-neoliberal hegemonic global order. This would not necessarily be a progressive, or altermondialist, order marked by cosmopolitan democracy, social redistribution and political control of TNCs. In principle, this could also be a religiously fundamentalist order, or an authoritarian order. The most probable future global order, however, would arguably be sustained neo-liberal globalization. The preconditions and problems of successfully reconstruct neo-liberal hegemony have been presented here. Most importantly, I think, it would require the (discursive) cooptation of NGOs to the Global Compact plus some substantial compromise by the business community in support of the Millennium Development Goals. In order to avoid free riding by companies this would also necessitate a certain degree of international regulation as well.

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