
Labour Standards through International Organisations

The Global Compact in Comparative Perspective*

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How can international organisations be used to encourage basic labour standards in globalised production processes? Recent experience suggests that international organisations might contribute importantly to bridging the gap between activists, firms and governments, and yet there is little agreement on either the appropriate enforcement mechanism or right institutional home for such standards. This paper looks at four possible devices by which international organisations might facilitate international labour standards and assesses their relative merits. Three of these draw on models already in use by the World Trade Organisation, the International Labour Organisation and the International Organisation for Standardisation, respectively. The fourth, the United Nations Global Compact, represents an innovation that borrows aspects of each of the first three. The Global Compact takes from the WTO approach the idea that monitoring functions should be done by those with an interest in finding violations; from the ILO it inherits a set of legitimised standards to give it content; and from the ISO it borrows the principle of voluntarism that allows it to avoid relying on governments at all. By combining attention to self-interest and to legitimacy in a novel way, the Global Compact represents the most promising avenue for institutionalising labour standards in the global economy.

- Global Compact
- Legitimacy
- United Nations
- Corporate social responsibility
- Labour standards
- World Trade Organisation
- International Labour Organisation
- International Organisation for Standardisation

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FROM THE STREETS OF SEATTLE, DAVOS AND GENOA TO THE CORPORATE boardrooms of the world, there is today an increasing realisation that labour standards in the global economy have become politically powerful. This is evident in the success of pressure groups in organising consumer boycotts, bad publicity, and shareholder interest in the working standards for firms' employees in distant lands, as well as in the growing number of corporations with self-administered codes of conduct. Industries as diverse as apparel, diamonds and coffee are being significantly affected, perhaps even revolutionised (in the diamonds case), under the influence of the 'new international politics' of NGOs (non-governmental organisations) and activists. We increasingly hear calls for international organisations to add new, or strengthen existing, regulations on conditions of work. How might this be done? How has it been tried in the past?

This paper examines four devices by which international organisations might be enlisted to play a constructive role in bridging the gap between the twin forces of the 'anarchist turtle people' and the 'merchants of global capitalism'. Three of these are well known already because they are currently in use by international organisations in other areas (specifically, the ILO [International Labour Organisation], the WTO [World Trade Organisation] and the ISO [International Organisation for Standardisation] respectively). The fourth, the UN's Global Compact, is new and borrows elements from the previous three, but applies them in innovative ways. Of the first three, the first (represented by the ILO) consists of legal instruments monitored or enforced by states over their own territories. These instruments are conventional treaties which create legal obligations on governments through explicit consent and national ratification. The second embeds rules in an international organisation such as the WTO and makes monitoring the business of one's partners in the organisation. The third aims at firms directly and takes the form of voluntary codes of conduct adopted by the managers of the enterprises, often under pressure from shareholders or consumers.

While the four need to be considered as alternative possible means to the same end, they operate on distinct logics and with very different mechanisms of power. As a result, they have distinct strengths and weaknesses and so stand as 'ideal types' of modes of regulation in global governance. In what follows, I spell out these strengths, weaknesses and differences, singling out the Global Compact for the most attention. I also examine the logic of extending reach of the WTO and the ISO into conditions of work. This has been suggested by some activists and merits critical scrutiny. The next section examines the problem of regulating the behaviour of firms in the current world system before turning to the mechanics of the first three approaches. The Global Compact is then introduced and the intriguing complexities of its design contrasted with the first three. In conclusion, I suggest that the novel juxtaposition of self-interest and legitimacy in the Global Compact makes it the most promising of the four models.

International responsibility for labour conditions

The popular image of the firm escaping regulation in this age of globalisation is common, but highly contestable. In fact, as state-centric critics do not hesitate to point out, the legal structures of sovereignty empower states to regulate companies within their territories regardless of whether the firm is foreign or domestic in its ownership (for example, Krasner 2001; Micklethwait and Wooldridge 2001; Wolf 2001). This is solidly among the basic tasks and prerogatives of states. Notwithstanding the rhetoric of 'globalisation', the legal right of host states to apply their laws over foreign-owned firms is well established, even to the point of securing the right of the state to expropriate

foreign firms (subject to compensation and procedural conditions) (see, for example, Harris 1997). Increasingly, the legal regime governing transnational corporations is one of ‘national treatment’—that is, the requirement that governments apply the *same* regulations to all firms in their jurisdiction regardless of the nationality of their ownership. While this may weaken some states’ efforts to protect local industries from the competition of foreign direct investment, it strengthens the overall legal convention that states have authority over firms. Thus, transnational firms are not lacking regulation by states, but under the traditional doctrine of sovereignty this is entirely regulation under the national purview of the host state.

Within this context of domestic rights of sovereign states, there exists an equally long history of attempts at the international *co-ordination* of the regulation of transnational firms. The enduring need to co-ordinate results from the well-known problems of regulatory competition, jurisdiction shopping and the ‘race to the bottom’. These, along with the possibility of free-riding by states, threaten either (or both) the ability of pro-standards jurisdictions to make their laws ‘stick’ domestically, or the pursuit of a universal doctrine of fundamental rights for individuals. Co-ordination among states has been tried in a number of forms and in a number of institutional settings. The three models discussed below operate quite differently from one another in that their target audiences are different, their legal bases are different, and the incentives they use to generate compliance are different.

Treaty-based international instruments: the ILO model

The main international organisation concerned with the conditions of work is the International Labour Organisation, which was originally established at the Treaty of Versailles and ‘refounded’ in 1946 as part of the United Nations. The ILO attempts to influence domestic labour standards in member states by writing individual standards which, once adopted as ‘conventions’ of the ILO, can then be ratified by member states. Once ratified, they enter the domestic law of the country and become (theoretically) actionable under domestic law as the legal rights of workers. Member states have the freedom to adopt or reject each convention as an independent piece of legislation with no presumption that the entire *corpus* of conventions is in any way binding. The United States, for instance, has ratified 14 conventions, of which 12 are in force (as of July 2001), out of a body of some 180 conventions.¹ The most recent American ratification was of Convention 176, concerning labour conditions in mines, which requires that national authorities provide basic regulations protecting the health and safety of mine workers. Eight of the 180 conventions constitute what the ILO calls the ‘fundamental human rights’ of workers: these include the abolition of child and forced labour, the right to organise unions, and the elimination of discrimination in employment.

Each ILO convention is an independent treaty, meaning that the responsibility for enforcing it (and therefore for enforcing the aggregate body of labour standards that they together represent) is clearly the responsibility of the national government. The ILO does not enforce from the centre; its post-ratification role is merely to require certain kinds of reporting on implementation and to investigate specific complaints. In this, the ILO follows, and is the heir to, the model set out by the very earliest concerns in European ‘international society’ for the conditions of work in foreign countries. The first connections between trade and labour conditions were made by social reformers in Europe in the mid-19th century. According to Leary:

¹ Data from the ILO website, <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>, accessed 13 July 2001.

Labor law reformers in Europe ran up against the concern that the enactment of domestic laws prohibiting child labor or shortening hours of work would result in a competitive disadvantage in relation to other countries with lower standards. Their response was to urge the adoption of treaties establishing common labor standards which, it was hoped, would be ratified by all European industrialized countries, as well as the establishment of an international organization to supervise the treaties (Leary 1996: 183).

The ILO model rests on what we might call a ‘conventional’ state-centric model of international governance. It creates new institutional options for states, that is, to adopt or ignore a convention, and leaves compliance and enforcement largely in the hands (and courts) of the individual state. We would expect states to ratify and enforce the conventions only when they feel it is in the national interest to do so. This fits quite comfortably into our traditional understanding of state-sovereignty and the place of international organisations: the latter are effective where it is in states’ interests to respect them, and not elsewhere, and states ultimately make unconstrained decisions about these interests.

International organisation-centred instruments: the WTO model

In recent years, it has become common to hear calls for international standards to be applied to the production of traded goods. This narrows the focus from the ILO’s effort to set standards for all work by including only work that leads to traded commodities but takes advantage of the well-worked-out international institutions in that area. This approach relies on a different justification and a different legal implementation than does the ILO approach.

On justification, two kinds of argument can be made in defence of adding labour standards to the international trading regime. First, it is often argued that substandard labour laws in export industries (or weak enforcement of decent laws) are a form of subsidy in that they reduce labour costs in production and therefore allow ‘unfair’ competition in international markets. Labour laws need standardising, therefore, in order to create the ‘level playing field’ required for comparative advantage to efficiently allocate production and trade. Failing to do so distorts trade patterns and has a negative effect on global output. The second argument, based on humanitarian concerns, gets to the same conclusion but by a different path. It suggests that free trade should not work to the detriment of those working in export industries in poor countries—cheap labour may be the basis of the comparative advantage of these countries, but this should not be *unnaturally* cheap labour. Allowing consumers in rich countries to benefit from lower prices due to artificially depressed wages among the poor smacks of exploitation, and may undermine the rhetorical appeal of free-trade ideology.

It is worth noting that neither justification makes recourse to a rhetoric of universal human rights. If our interest in labour standards is to defend the human rights of workers, on the assumption that below-minimum work conditions are an affront to those rights, then it is difficult to defend limiting regulation solely to traded goods. Where universal human rights are the principle at stake, the remedy should be more universal than can be achieved through the regime of trade laws.²

On implementation, the most popular candidate venue for institutionalising these rules is the World Trade Organisation (for a well-argued example, see Morici undated).

2 Of course, the frequency with which the trade-regime remedy is attached to rhetoric of a universal-human-rights problem probably reflects an instrumental or strategic calculation on the part of activists that the trade regime might be the easiest to influence. In practice, then, it may make sense for these activists to start with an assault on the trade regime and then with any gains made from there move on to other sectors of the economy.

The appeal of adding labour standards to the WTO is obvious: the WTO is a strong intergovernmental organisation with a clear mandate to review domestic regulation in member states and issue legally binding remedies when states violate the set of agreed-upon rules. This appears to satisfy the institutional structure that many labour-standards advocates seek. Adding new rules to this set (perhaps, for instance, on hours of work or the right to unionise) seems a smaller task than creating an entirely new organisation and might be able to take advantage of the unusually strong dispute-settlement mechanisms already built into the WTO.

Doing so, however, will require navigating extremely rough political and legal waters. At Seattle, one of the crucial controversies between the US and the developing countries was US President Clinton's desire to begin negotiating a labour-standards protocol for the WTO. This disagreement inside the meeting rooms might well have eventuated in the collapse of the talks, even had the disagreements on the street not forestalled them. The complaints of poor, exporting nations cast the labour standards issues as a cover for either Western protectionism or Western neo-imperialism, and have yet to find a coherent response among pro-standards activists and governments.

In addition to the opposition presented by many WTO member countries, the project of adding labour standards to the world trading system faces a difficult legal problem. The traditional interpretation of GATT (General Agreement on Tariffs and Trade) law is that countries may not discriminate among trading partners on the basis of the domestic production processes used in those countries. In other words, differences in *how* goods are produced in two exporting countries are not relevant—as long as the products are the same good (in law, they are 'like products' under GATT Article I.1) they must be accorded the same treatment. Differences in process and production methods (PPM) cannot be used as justification for violating the most-favoured-nation principle. This issue was highlighted in the controversy over the *Tuna/Dolphin* cases under GATT: US regulations gave differential treatment to imported tuna depending on the fishing methods by which it was caught, either with dolphin-friendly or dolphin-unfriendly nets. The GATT panels brought to hear complaints against the US famously disagreed: summarising, Cameron and Campbell say: 'the Panels reasoned that tuna caught using fishing methods which incidentally kill dolphins are like products to tuna caught using "dolphin friendly" fishing practices' (Cameron and Campbell 1998: 229, 214). The US regulations were disallowed (although the Panel reports were never adopted) and the legal hurdle to PPM was made explicit.

This presents a problem for those advocating the inclusion of labour standards to the GATT/WTO legal regime. Domestic labour conditions and laws would seem to fall under the heading of PPM—they are part of the domestic 'background' to the production of a good, just as is the choice of machinery in the factory or the land-use laws in the jurisdiction. Differences in this background from place to place cannot be used at the WTO to argue that the goods are not 'like products'. Therefore, to begin to allow trade discrimination on that basis would mean overturning decades of GATT legal interpretation and would also open up significant new controversies unrelated to labour standards. Defining 'like products' has never been easy, and it would become much more difficult if PPM arguments were allowed (von Moltke 1998; Arden-Clarke 1998). On the other hand, though, it appears that the WTO has come to recognise some of the difficulties that strict adherence to its PPM avoidance creates (in environmental concerns, particularly) and the more recent *Shrimp/Turtle* case may hint at a softening of position.³ While

3 In this case, the US treated imported shrimp differently based on whether or not the catching country had comparable laws to the US on the incidental taking of sea turtles in shrimp nets and an average rate of incidental taking that was comparable to that of the US. For commentary, see Cameron and Campbell 1998: 212-15.

still rejecting the US environmental rules in question, the *Shrimp/Turtle* case did not find the US rules to be unacceptable based on the PPM component. Instead, the US was found to be implementing the rules in a discriminatory manner: for instance, by giving some countries but not others financial and technical assistance in meeting the requirements. By staying quiet on the PPM aspect of the rules, the WTO was seen by some knowledgeable observers as implicitly accepting them (Shaffer 1999). If this is the case, then the way may be (more) open to finding room for labour standards under the GATT/WTO.

A second way to make labour-standards concerns GATT-compliant would be to prove that substandard conditions or laws are effectively a subsidy to the exporting company. This would require following the GATT's very precise subsidy language in Article XVI, which sets two tests before defining a subsidy as unacceptable: first, it must create 'material injury' to a domestic industry; and, second, it must take the form of a 'specific subsidy' of the exporting government (that is, a financial benefit to a company and cost to the government which creates advantages not available to all other companies in the country).⁴ Meeting both these conditions makes a subsidy actionable under GATT law. This raises the evidentiary bar for the state that aims to complain about poor labour standards in exporting countries: the material injury test requires that the government be able to document harm to its own industries from the foreign conditions, while the 'specific subsidy' test seems to exclude 'regulatory subsidies' (such as weak environmental rules) which do not entail a financial contribution from the government.

My point here is not that the WTO cannot, in some absolute sense, accommodate the calls for international labour standards. On the contrary, given political will it certainly could. However, as the previous paragraphs show, the WTO as presently constituted includes significant legal barriers to this extension and these would presumably have to be negotiated away among the members in some significant round of constitutional change to the organisation. This is a tall order. It is so tall, in fact, that it directs many observers, even those sympathetic to the overall project of labour standards, to suggest that the WTO is not the proper location for this new international regulation (and not incidentally, that many of the protests of the WTO annual meetings are aiming at the wrong target) (Kell and Ruggie 1999).

On the issue of enforcement, the WTO makes two significant shifts from the ILO model. The first is simply the inclusion in the organisation's charter of binding commitments and a protocol for enforcing them through the organisation itself. The second is perhaps more interesting and involves the ultimate agent of that enforcement. While the WTO itself, through its Dispute Settlement Mechanism and Panels, has the authority to make legally binding determinations of fault and liability for violations, it delegates to complaining states the job of exacting retribution from states that refuse to comply with its decisions. States may impose countervailing duties on imports from partners that violate Panel decisions, up to the value of the harm inflicted by the violation. These duties can be on goods entirely unrelated to the dispute. This places the ultimate power to enforce WTO decisions in the hands of those most likely to have an interest in seeing enforcement enacted—the harmed countries. It also creates an incentive earlier in the process for countries to investigate allegations and to lodge official complaints—this in turn presumably strengthens the whole legal regime of the dispute settlement process. Where the ILO places enforcement in the hands of the domestic government, which might well be the actor with the *least* incentive to investigate violations, the WTO gives it to the complaining government, where the incentive is presumably much greater.

4 On the subsidies code, see Jackson 1997.

Firm-centred instruments: the code-of-conduct model

Somewhat separately from both the states-based treaty approach and the international organisation-based WTO model, the field of international business standards has seen significant development of standards voluntarily adopted by individual firms or industries. These are non-legal instruments which rely on the interests of firms, rather than states, to give them effect. These interests are usually responses to market incentives: in certain market structures, non-compliance with a voluntary code can be a kind of liability, because either consumers or other firms would prefer to deal only with compliant companies. Consumers might have such a preference for ethical reasons while companies might have an efficiency motivation.

In the area of labour standards, the growth of codes of conduct has recently been reviewed in an excellent ILO Report (ILO 1998).⁵ Charting the growth of voluntary codes, originating both with NGOs or with firms themselves, the ILO finds a rapid proliferation of instruments related to working conditions since the late 1980s, and the broadening of these instruments from the original 'headquarters-only' types to much more expansive forms which cover firms' international operations and even in some cases their supplier chains (ILO 1998: paras. 28-30). The distinguishing feature of this model is that the regulations are voluntarily chosen by the firms. This implies several further features: there can be no authoritative enforcement from outside the firm for violations; investigations into allegations (whether conducted by internal or external auditors) are generally reliant on the co-operation of the firm itself; and government power is not invoked at any point in the process.

It is difficult to assess the impact these codes have on firms' behaviour. The increase in the number of codes, and the internal nature of many of them, makes it hard to measure their effects. Information is often hard to come by since the monitoring function is usually delegated within the firm and then is not well communicated to the public except when it serves the firm's needs. Anecdotal reports of these codes are now a commonplace of international news reporting (see, for example, Cowe 2001; Kaufman and Gonzalez 2001), but more formal evidence and generalisations are hard to come by. Evaluating the *content* (as opposed to the effects) of a sample of codes, the ILO found that about one-third included specific reference to existing international standards for labour, including ILO conventions themselves, and an increasing proportion include provision for external auditors, often from large commercial services firms (ILO 1998: para. 52). Further, they identified a tendency for more vertically integrated firms to be more likely than others to include provisions for external monitoring in the codes of conduct to which they subscribe (ILO 1998: para. 64).

Despite the obvious pitfalls of voluntarism and self-disclosure, we should not dismiss as entirely trivial these codes of conduct. In some situations, these codes may provide a powerful focal point or means of co-ordination among private interests where firms can 'discover' or perhaps 'create' a self-interest in regulating themselves.

This co-ordinating function is very similar to the form of inter-firm standardisation promoted more generally by the International Organisation for Standardisation (ISO).⁶ Based in Geneva, the ISO is the umbrella group for the official standards offices of 142 countries worldwide (in the US, the American National Standards Institute, ANSI, is the 'member body' of the ISO).⁷ The need for international standards in many fields is clear: international (and domestic) trade and travel are impeded by the existence of differing

5 In general, on voluntary initiatives in corporate social responsibility, see Compa and Diamond 1996 and the ILO website: <http://oracleo2.ilo.org/vpi/welcome>.

6 www.iso.ch

7 The ISO is comprised of 92 'member bodies', 39 'correspondent members', and 11 'subscriber members'. These three categories of states reflect categories of development, from highest to lowest.

national standards for everything from electrical current to credit-card size.⁸ Non-compatibility and competing standards are inefficient, but independent firms, perhaps operating in quite separate markets or industries, are not likely to come together and agree on technical specifications for the long-run benefit of all. Without central co-ordination, a classic dilemma is created: consumers and most firms would benefit from a common standard, but there are rents to be gained by being the standard-defining firm in an industry and these incentives induce competition among firms that may delay or forever impede standardisation. A central co-ordinating body can help solve these dilemmas even without any mandate to coerce those who insist on resisting the standard. It might be enough for a respected body to *declare* a standard, signalling to the market with at least some probability of success that the standard will become popular. This will encourage market incentives to uphold the standards in a self-sustaining way. Standards, as we know well from our QWERTY keyboards and VHS video recorders, do not need to be technically the most efficient in order to survive; sometimes it is enough to be first or to be big in order to be the standard-setter.⁹ Once a standard is in place, it makes less sense for a firm to produce to non-standard specifications.

To institutionalise its various standards, the ISO relies in part on old-fashioned government regulation through its national member agencies and in part on this self-reinforcing operation of focal points in the market. In this way, the ISO can avoid having to be directly concerned with enforcement and instead delegate that responsibility to states or to firms themselves.

The ISO insight is that even a gentle push, if made early enough and with an air of authority or legitimacy, can establish a common standard which market incentives will then reinforce. The efficiency gains to firms from these 'focal points' can make them self-reinforcing (Schelling 1980). There are of course significant and essential differences between the kind of standardisation promoted by ISO and the labour rules sought by popular activists. Most notably, ISO standards can, in some cases, be entirely arbitrary in the sense that they might carry almost zero political implications. For instance, there is no political impact from choosing one among many sets of dimensions for camera-film canisters (except for the 'losing' firm). By contrast, labour standards are thoroughly and inherently political, and their negotiation will always be highly contentious.

The ISO has not entered into the territory of minimum labour standards for international firms. It has, however, recently broadened its scope with forays into the area of 'quality' broadly defined (the ISO 9000 initiative) and of environmental standards (ISO 14000). With these steps, the formerly behind-the-scenes and business-to-business nature of its work has shifted steadily into the public eye and into the kinds of issue normally associated with corporate codes of conduct. By the measures of international activists, these two groups of standards are extremely weak: for instance, they set no maximums on emissions or other kinds of pollution, and they delegate monitoring and enforcement to the national member-body where the firm has its operations. However, they do represent the leading edge of extending the ISO logic of self-governance in standards-making to more 'political' and controversial issue areas. If these standards are developed to the point that they include any 'bite,' it should guarantee a much higher profile for the ISO in the future.

8 On the scope of international standards, see Zuckerman 1997.

9 For a popular view, see Krugman 1994, esp. Ch. 9. For applications of the implications of standardisation to trade theory, see the essays in Krugman 1986.

The Global Compact in global governance

The Global Compact combines features of all three of these models but deploys them in a novel way. From the code-of-conduct approach it borrows the principle of voluntarism and its subsidiary effect of skipping all state-based authority. From the WTO, it borrows the notion that monitoring can or should be performed by those with an interest in finding violations. And from the ILO, it inherits the set of pre-established and (arguably) universal conventions that give it content. This amalgam is an interesting piece of constitutional design, particularly for the way that it takes advantage of the coincidence between the self-interests of the participants and the legitimacy of the UN.

The Global Compact

John Ruggie has recently provided an excellent introduction to the Global Compact in these pages (Ruggie 2002). His insights and expertise cannot be duplicated here; however, I do wish to sketch again the outlines of the Compact. The Global Compact consists of a pledge by firms to uphold nine principles of 'good corporate behaviour' (see page 34), three each on human rights, labour and the environment. In composing the standards, the Secretary-General's office sought to avoid contentious issues and concentrate on the 'universally shared values' of core human rights and environmental responsibility (Kell and Ruggie 1999).

In search of this universality, the first two principles, which concern the respect for human rights, call on companies to 'make sure their own corporations are not complicit in human rights abuses' and further to 'support and respect . . . human rights within their sphere of influence'. Principles 3 through 6, dealing with labour standards, are drawn from the ILO's own eight core labour conventions. They ask companies to eliminate forced labour, child labour and discrimination, as well as to respect rights of collective bargaining. Finally, the last three principles concern environmental responsibility and derive from the Rio Declaration of 1992. These include spreading environmentally friendly technologies and a 'precautionary' or 'environmentally responsible' culture toward environmental challenges.

These references to existing international documents were important and intentional in the design of the Compact. The choice of these instruments, as opposed to others that might be more substantive but more controversial, was to take advantage of the legitimacy they already have and so to minimise controversy over the *content* of the rules and focus attention on the *delivery* mechanism in the Compact.

Content

These commitments are written in such a way as to establish a very basic minimum standard of corporate social responsibility. In contrast to the treaty approach of ILO conventions, where states can dispense with unwelcome provisions by simply not ratifying them, the self-regulating approach of the Global Compact puts a premium on agreement and consensus—winning self-motivated compliance from agents requires that principals set rules that are likely to appeal to the 'governed'. For this minimalism, they are often derided by critics for being so low as to be useless as instruments of progressive change. While this may be true for some companies and for some jurisdictions, the voluntary and non-legal nature of the standards creates some room for provisions that could not be included in a legal regime. For instance, on human rights, principle 1 asks firms to support the protection of rights not just within their own companies but 'within their sphere of influence'. The breadth of this phrase encompasses not only the firm itself but also its subcontractors and suppliers, and so addresses the accountability gap

between the producing firm and the retailing firm. It would be extremely difficult to include this requirement in a model that was legally binding since it makes the contracting firm responsible for the actions of subcontractors over which it has no legal authority.

Delivery

The Compact includes no provision for the UN to enforce the commitments made by participating firms. Indeed, aside from emanating from a UN office, and so capitalising on the UN's stock of political capital and legitimation, the Compact has little to do with any of the principal organs of the UN. Indeed, enforceable regulations from the UN would be virtually impossible given the legal and political structures of the institution. First of all, legally, the UN has power over only its member states, not firms, and can only apply coercive sanctions when there is a threat to 'international peace and security'. Second, and more politically, creating enforceable standards for corporations is extremely controversial and any attempt to do so through the UN would almost certainly simply provide fodder to the anti-UN forces in the US and elsewhere. As Ruggie has said, 'The probability of the General Assembly adopting a meaningful code approximates zero' (Ruggie 2002: 32). For reasons such as these, the Global Compact cannot draw on the threat of legal sanction to encourage compliance and must find more subtle ways to alter incentives and therefore behaviour. In this, it faces the fundamental constitutional problem of all intergovernmental organisations: how to influence the behaviour of states in a system where states are sovereign and must consent to any limits on their freedom.

The enforcement mechanism envisioned for the Compact comes from enlisting non-governmental organisations in the tasks of information gathering and disseminating about the behaviour of participating companies. These NGOs, from large and relatively well-funded multinational groups such as Amnesty International to neighbourhood groups motivated by local concerns, endeavour to investigate the actions of participating firms and publicise both the non-compliant and the compliant. Assuming these groups are communicating with a general public that is interested in the issues, then the NGOs' function is to provide independent information that potential consumers or employees want about the firms with which they might do business. In a competitive marketplace, this should provide market-based rewards to those firms meeting the Compact's standards.

NGOs play a further function in the system, which is to give the UN itself a defence against the charge that it is providing legitimation for corporate misbehaviour. The legitimacy of the UN is at stake in the Compact in so far as it associates business enterprises with its name, and the charge of 'bluewash' has frequently been made by activist groups who are not participants in the programme.¹⁰ Having NGOs participating in the programme and vigorously pursuing examples of corporate hypocrisy allows the UN to balance itself between the firms and the activists. This permits the UN to position itself in a role that has become familiar from peacekeeping missions—the 'honest broker' between contending parties—rather than as an interested party in itself.

In the end, the intended effect of the Compact is clearly not to force companies to change their policies through binding legal obligations or through coercive regulations. Rather, it is to apply the 'soft power' of public opinion, legitimacy and consumer activism in the service of environmental and humanitarian goals. If the system works, it will be because the application of such instruments of power is sufficiently effective that it changes firms' calculations of their self-interest measured in long-run profitability.

10 For instance, 'The UN Sells Out' (*The Progressive* 2000). Many similar articles can be found in the archives of the Global Policy Forum, at www.globalpolicy.org.

An arrangement of conflicting self-interests

The Global Compact rests on an intriguing tension between the interests of business firms and the interests of activist groups. By their very participation in the programme, firms reveal that they have an interest in being seen as good corporate ‘citizens’.¹¹ If they did not have some concern with this appearance, they would not spend any energy legitimising themselves through the Compact process. On the other hand, the interests of NGOs are presumably served by finding violations (and therefore by the existence of violations to find). NGOs value the publicity that finding violations brings to them because it increases funding and rates of citizen participation. The greatest gains in publicity likely come from exposing violations or hypocrisy on the part of well-known firms. This chain of connections is exploited by the Global Compact to keep NGOs interested—it is their ‘reward’ for participating in the programme. The interests of firms, taken as a whole, are therefore opposed to the interests of NGOs, as a whole. Firms fear the publicity of exposed violations and seek the publicity of the UN’s certification, while NGOs live on exposing violations and would lose interest if none were made. Without at least occasional violations, NGOs would never see the reward of their investment of investigatory energy. It is impossible, therefore, for all parties in the Global Compact to be entirely happy with the arrangement at the same time. The self-interest of each is served by the negation of the interests of the other.¹²

This makes the Global Compact arrangement simply another expression of the familiar quandary of democratic constitutionalism: how do we get the losers of elections to agree to accept the results and refrain from overthrowing the system in favour of one that meets their interests better? One answer is to arrange elections so that there are no *permanent* winners or losers, merely temporary ones, and that losers therefore have an incentive to stay in the system for the chance to win next time (Shapiro 1996). Stated in these terms, the Global Compact offers the unhappy party the promise that, in the future, there will be rewards to be gained for enduring the current pain. For NGOs, this means the promise of future violations to discover and the attendant publicity that they bring. For the firm, however, it must mean that the loss of face from bad publicity can be more than made up by the rewards of good publicity. This depends not only on the behaviour of the firm relative to the conditions of the Compact (or more precisely, on the *perceived* behaviour of the firm), but also on the existence of consumers interested enough in the results that they reward ‘good conduct’. We have yet to see whether consumers are sufficiently interested that they will reward ‘well-behaved’ firms.

Firms, NGOs and self-interest: the new international politics?

Finally, the Global Compact is potential interesting to students of international politics for the way in which it distributes authority among firms, states, international organisations and NGOs. As already mentioned, it places states very much in the background. The central players are firms and NGOs, with their competing self-interests providing the energy that motivates the system. Even the UN itself, ostensibly the centre of the

11 Although good ‘citizens’ of what community? Pursuing this line further, one might wonder how well the new rhetoric of ‘corporate citizenship’ fits with the globalised (that is, non-state-centric) nature of international labour standards. Do global standards necessarily indicate the existence of a global, non-territorial community to match? If not, then from what community do firms derive their ‘corporate citizenship’ and its obligations?

12 Of course, this takes firms and NGOs as each constituting a group. In fact, each firm has an interest in its own reputation and little concern for the reputations of unrelated companies. The same can be said of NGOs. The important point is that NGOs have an interest in finding as many violations as possible and so have institutional incentives (in the form of publicity to be gained) by investigating every firm, while every firm has an interest in avoiding all bad publicity about itself.

system, should be able to play a minimal role if the system operates as designed: it should fade into the background, like the ISO, once the nine principles of the Compact become institutionalised as focal points.

There are many ways to interpret this removal of the state from centre stage. For Coase-ian economists, it is perhaps a welcome example of how market devices can be used to replace the less efficient hands of government and bureaucrats. On the other hand, Marxist critics may see it as a product of progress by the neo-conservative movement in redefining the role of states, away from the regulation of market forces and toward simply providing the minimal structures that allow the market to operate (for example, Bourdieu 1998). It is not clear, however, that the Global Compact entails the end of state regulation of labour *in any state where that regulation now exists*: in those countries where domestic regulation is relatively strong, the addition of the Compact will not provide sufficient 'cover' should politicians want to abandon their existing rules. It is only in those cases where the domestic regulatory regime is weak, or weakly enforced, that the Compact will have its bite. Even in the strong-regime countries, however, the rise of non-state regulation is worth noting. It appears to be increasingly the case that business activity relies in part on various forms of self-regulation, and this may raise a host of complications regarding democratic accountability.

Conclusion

Students of regulation have known for a long time that the most effective mode of regulation is one that relies not on coercion for its enforcement but rather on a combination of legitimacy and self-interest (for a review, see Hurd 1999). The designers of international instruments for labour standards would do well to keep this in mind. The coercive model for international organisations on labour standards is clearly a non-starter. It would require something like a UN Security Council on labour issues with the coercive apparatus of Chapter VII of the UN Charter at its disposal.¹³ All four models discussed here attempt to harness self-interest to the purpose of standardisation, although they do it differently. This is most clear in the ISO model, where the self-interest of *firms* is enlisted, but it is present as well in the WTO and the ILO, where the self-interest of *states* is targeted. In the ILO, it is assumed that a state will sign those conventions that suit its self-interest and then create the domestic conditions needed to satisfy or implement them. The interest of states in being seen as trustworthy treaty partners will work to ensure compliance. In the WTO, self-interest is mobilised in two ways: first, the reciprocal nature of concessions creates an interest in fulfilling one's obligations in order to gain the benefits conferred by others; and, second, the dispute settlement process relies on the self-interest of harmed actors to motivate enforcement actions.

The power of legitimacy is more subtle but it is crucial to making regulation work. The Global Compact goes the furthest in attempting to harness the power of legitimacy and for this it is perhaps the most interesting and potential-laden of the four. On one level, the design of the nine principles tries to maximise the legitimacy of the standards in question. More deeply, however, the legitimacy of the UN itself is invoked, along with its associated package of symbols (including impartiality, universalism and fairness), to increase the centripetal force of the programme, drawing in both firms and activists.

Whether this innovative piece of constitutional design turns out to be fleeting or long-lasting depends on how seriously the Global Compact is taken by its stakeholders (firms

¹³ At the national level, however, coercion remains essential for regulation of firms: states retain the authority to pass regulations over firms and to use the coercive apparatus of the state for their enforcement.

and activists) and consequently how well institutionalised it becomes in the international system. This hinges on how well its framers have estimated the legitimating power of the UN and the self-interests of firms and activists. For now, the Compact stands out as an intriguing piece of constitutional design in international relations, highly suggestive of emerging trends in international politics while still building on the established foundations of 20th-century international organisations.

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