Raising the Bar? Non-State Actors and Global Business Regulation

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1. Social Regulation as Contestation and Collective Action
   The evolving portfolio of civil society action
   The rise of the ‘Corporate Accountability Movement’
2. New Regulatory Governance: Non-state and Multistakeholder Initiatives
3. Achievements and Limits
4. Future Directions & Challenges

Social Regulation .... broadly defined

- **Regulation**: norms, standards, rules which aim to control or shape behaviour of specific actors in specific ways

- **Social regulation**:
  - Regulation driven by social actors (groups, movements, non-state actors)
  - Regulation that promotes social development (improvements in well-being, rights, social relations and institutions)

- **Regulatory functions**: pressuring companies, framing agendas through discursive struggle and advocacy, designing standards and rules, promotion, oversight (MRV), grievance procedures, redress, assessment, review.
Social Regulation & Civil Society Action: 1980s and into the 90s

- weakened trade unions, rise of NGOs & new social movements/concerns (deforestation, socio-environmental disasters (Bhopal, Exxon-Valdez, anti-sweatshop, child labour)
- confrontational tactics & campaigns targeting selected global corporations (e.g. Nestle, Shell, Monsanto, Rio Tinto, Nike, McDonalds), products and industries (infant formula, logging, mining, oil, pesticides/agribusiness, apparel, sports footwear);
- Social economy initiatives: ATOs, organic agriculture
- Rise of service delivery NGOs; early NGO/business collaborations & dialogues around codes of conduct and partnerships
- Rise of mainstream CSR ‘movement’ (service delivery NGOs/consultancies and corporations and business associations.
- Reaction to CSR: “Greenwash”
The Rise of the Corporate Accountability Movement

- Critical of ‘corporate-led globalization’, the growing imbalance between corporate rights and obligations under economic liberalization, and self-regulation & voluntary CSR initiatives
  - Mainstream CSR was seen as: piecemeal picking and choosing of standards, inherently weak in terms of compliance and proliferation of codes of conduct, weak measurement and disclosure, double standards & “greenwash” & legitimizing neoliberalism.

- ‘Corporate accountability’, as a concept emphasizes
  - An obligation to answer to different stakeholders
  - To incur some sort of penalty in case of non-compliance
  - The right to remedy/redress

- ‘Corporate accountability’ tactically and strategically emphasizes
  - Voluntary initiatives with “teeth” (effective MRV)
  - Bringing back public regulatory governance, the state and law
  - Hybrid regulation that combines private and public governance
  - Effective non-judicial and judicial grievance procedures
  - Structural change & redistribution (income, value, power)
Towards Eclectic & Hybrid Action: from mid 1990s

CAM emerges as a significant regulatory force, employing diverse tactics: contestation, providing expertise, assessments, advocacy, collaborative governance, bargaining, and operating at multiple scales

- Ongoing glocal protest: e.g. Wal-Mart, G8, Monsanto; mining, agribusiness, apparel & sportswear companies
- Monitoring & naming and shaming: (e.g. Minewatch, Oilwatch, BankTrack, Project Underground)
- Organizing public campaigns & lobbying governments (e.g. PWYP, CORE)
- Consumer power, boycotts and buycotts
- Shareholder activism
- Generating expert knowledge (e.g. critical research; evaluations of sectors, companies and standards initiatives)
- Participation in knowledge and policy networks/epistemic communities (e.g. OECDWatch-OECD Guidelines, Amnesty International – “Ruggie process”)
- Participation in governance structures of IGO and MSI initiatives, e.g. UN Global Compact, EITI, Kimberley Process, ISO
- Standard-setting & MRV (GRI, ETI, FLA, FLO, WRC)
- “Mature industrial relations” & IFAs (Chiquita, IKEA, Carrefour)
- Redress (ATCA, OECD Guidelines, PIL (India), Permanent Peoples Tribunals (Latin America)
The Institutionalization of CSR, Corporate Accountability (and Fair Trade)

- Beyond codes of conduct, self-regulation & inactive IGO processes and institutions
- New ‘non-state’ & multistakeholder standards-based initiatives
  - Leading roles of ‘private’ and ‘civil’ actors
  - Multi-stakeholder dialogue and governance structures
  - A more systematic approach to the design and application of standards
  - Strengthening and integrating different regulatory functions: design, promotion, MRV, assessment, complaints procedures
  - Closer co-operation among non-state regulatory actors and institutions, as well as with governments and IGOs
New Standards-Based Initiatives

• 1993: Forest Stewardship Council (FSC)
• 1995: ISO 14001 (environmental management)
• 1997: Global Reporting Initiative (GRI);
  Social Accountability (SA) 8000
  Marine Stewardship Council (MSC)
  EurepGAP/GlobalG.A.P.
  Atlanta Agreement on Child Labour
  Fair Labelling Organizations International (FLO)
• 1998: Ethical Trading Initiative (ETI)
• 1999: Fair Labor Association (FLA)
• 2000: UN Global Compact
  Worker Rights Consortium
  OECD Guidelines on MNEs revised
• 2002: Extractive Industries Transparency Initiative (EITI)
• 2009: Kimberley Process (conflict diamonds)
• 2010: ISO 26000, update of OECD Guidelines for MNEs
Types of MSIs

• **Global or multi-sectoral focus**
  – UN Global Compact, Ethical Trading Initiative, Global Reporting Initiative, ISO 14001, ISO 26000, OECD Guidelines for MNEs

• **Sectoral/industry focus**
  – Forest Stewardship Council, MSC, Global GAP

• **Single-issue focus**
  – Atlanta Agreement (child labour), EITI (corruption), Kimberley Process (conflict diamonds)

• **Rights-based focus**
  – International Framework Agreements, WRC, PPTs

• **Fairtrade / agroecology focus**
  – Fairtrade International, Comercio Justo Mexico, WFTO, IFOAM
Abbott & Snidal’s Governance Triangle

Multiple configurations of actors in governance structures
So what?

- What should we make of all this from a normative perspective of inclusive, sustainable & rights-based development?

- What capacity? Whose agenda counts? What sort of development is being promoted, and for whom?
1. Filling institutional gaps or ‘failures” in contexts of globalization: states, IGOs, and trade unions
2. Changing nature of the state: “competition” (Cerny); regulatory (Braithwaite)
3. Shift from government to governance (Rosenau) & networking (Keohane): multi-playered and multi-layered governance
4. Rise of cosmopolitanism (Held) & ‘post-political’ discourse and practice (Mouffe) involving dialogue, collaboration and partnership
5. Collaborative governance under conditions of increasing complexity and risk (Beck, Freeman) & rise of epistemic communities (Haas)
6. Embedded liberalism as a response to contradictions of liberalization (Ruggie)
7. New forms of contentious politics (Klein, Conroy), ‘double movement’ (Polanyi) & counter-hegemonic globalization (Evans)
8. Rise of professionalized service-delivery NGOs (Elkington)
9. Elite and activist responses to limits of self-regulation and codes of conduct
10. The growing ‘market for virtue’ (Vogel)
11. New forms of ‘hegemonic’ politics (a la Gramsci) (Levy)
12. Micro corporate control: the need for corporations to control global value chains & protect brands (Sum)
13. Macro capitalist control: the need to find a stable post-Fordist regulatory or co-ordination regime (Zadek, Jessop and Sum)
The multiple factors that explain the rise of new business regulation suggest that multiple actors, interests, agendas and approaches are involved:

- **Multiple actors**: states (north and south), IGOs, lead corporations in value chains, business associations, SMEs, service delivery NGOs, advocacy NGOs, trade unions, social movements
- **Different regulatory approaches**
  - CSR, (e.g. UNCG, GlobalG.A.P, ISO26000, GRI)
  - ‘Corporate accountability’ (e.g. FSC, WRC, IFAs)
  - ‘Social economy’ (FLO, IFOAM, WFTO)
- **Different macro-agendas**:
  - Co-ordination/legitimization/corporate or ‘hegemonic’ control which can reinforce Neoliberalism and/or promote Embedded Liberalism
  - Rights-based/redistributive, ‘social control’, Alter-Globalization
- The field and specific institutions are contested & up for grabs
- MSIs are constantly evolving; ratcheting-up and down
The MSI Balance Sheet: Achievements

• After 2 decades of CSR: research is now shedding light on its impact from a regulatory and developmental perspective
  – Good **awareness-raising** tool to get corporations to think more systematically about social, environmental, human rights issues
  – **Institutional thickening**: CSR fills some normative & institutional gaps, (new standards, MRV, global CB)
  – **Some outcomes**, e.g. child labour, occupational health and safety (OHS), environmental management systems (EMS) in TNC affiliates and top tier suppliers; compliance with minimum wage legislation (Barrientos & Smith – ETI evaluation)
  – More **harmonization**, less profileration
  – **Ratcheting-up** (e.g. more issues (GRI); reporting (UNGC); focus on living wages (ETI, SA8000); more attention to smaller enterprises and producers (SA8000, UNGC, GRI, GlobalGAP)
  – **Hybrid regulation**: voluntary initiatives based on international law; VIs serve as benchmarks for law; more co-regulation
Limitations

- Quality of regulatory functions: weak compliance, weak certification, partial reporting, weak assessment and redress
  - e.g. commercial technical focus on outcome standards, not process rights that empower workers and transform social relations (ETI assessment)
  - setting sustainability bar too low (e.g. MSC)
  - weak monitoring and the assessment (Kimberley, UNCG, WFTO) or enforcement (EITI)
  - conflicts of interest (commercial auditing, SA8000)
  - IFAs

- Regulatory gaps & blind spots: e.g. purchasing practices and ongoing ‘race to the bottom’, labour rights, human rights, social groups, complaints procedures and redress, broader institutions and structures

- Uneven distribution of cost and risks along the supply chain
  - e.g. high costs of certification for SMEs and small producers; ongoing pressures on suppliers’ margins and lead times

- Participation: often northern-driven initiatives; limited local level credibility of sustainability
• The corporate universe: 82,000 TNCs; 810,000 affiliates; millions of suppliers

• Participation in MSI initiatives (approx)
  - UN Global Compact  6,000
  - ISO 14001       200,000
  - GRI            1,500
  - SA8000         2,500

• EITI: 10 Compliant countries of 53 ‘resource rich’ countries
• FSC: 5% of the productive forest lands
• MSC: 6% of wild fish catch
Tensions and dilemmas

- **Scale versus ‘quality’**
  - e.g. UNGC: largest CSR initiative but weak compliance and enforcement
  - GlobalGAP achieves scale but prioritizes concerns (e.g. food safety) relevant for northern consumers and retailers
  - FLO is scaling-up via partial shift from a focus on solidarity-based relations to minimum (business) standards
  - WRC: rigorous monitoring procedure but limited scale and impact

- **Raising the bar prompts a reaction**
  - e.g. growth of more ‘business-friendly’ schemes in reaction to FSC
  - slower uptake (SA8000)
  - increasing costs for SMEs prompts a ‘southern reaction’ to standards-based regulation

- **Corporate buy-in versus regulatory capture**
  - Corporate interests and influence limit change (UNGC, GRI, ISO, GlobalGAP)
  - Corporate interests (and states & IGOs) agree to higher standards but weak compliance
  - Capacity to transfer costs and risks down the supply chain
  - Social regulatory pressure is defused by partial reforms
Future directions?

- Are scale limits of private regulation being reached? (reporting, certification, monitoring capacity).
- Towards mandatory reporting?
- Institutionalization of grievance procedures (e.g. OECD Guidelines, Ruggie Business and Human Rights process)
- Will ISO26000 become a management system standard?
- Are we seeing the emergence of a system of transnational regulatory governance?
  - Key players: ISO (standards design), UNGC/IFC (global promotion), GRI (reporting), ISO (certification), OECD (global grievance procedure).
  - Labour standards delegated to ILO
  - Formal agreements and interaction between these players
- Where will things settle? Regulation for co-ordination & legitimization, or regulation for transformation?
Social regulation centred on MRV took us beyond:

1. codes of conduct and ‘trust me’ approach
   - Now need to strengthen MRV (monitoring, reporting, verification, participatory auditing, transparency, independence, assessment and review)
   - MRV + Redress (ongoing regulatory gaps: develop and strengthen grievance procedures) cf. Ruggie process on Business and Human Rights

2. corporate self-regulation
   - Now need to reconnect with public governance and law
     - strengthening state capacity and public policy and law to facilitate scaling-up, promotion, enforcement
     - connect with inter-governmental processes & international regulation
UN-Business Relations & Regulation

- 1992  Closure of the UNCTC
- 1992  UN ‘Earth Summit’ promotes voluntary CSR initiatives
- 1992  ILO’s IPEC Programme (child labour)
- 1995  WTO treaty on food safety (SPS agreement), based on FAO/WHO Codex
- 1998  ILO’s Declaration on Fundamental Principles and Rights at Work
- 2000  Launch of the UN Global Compact (9 Principles)
- 2001  Entry into force of UNECE ‘Aarhus Convention’
- 2001  Kimberley Process endorsed by the UN General Assembly
- 2002  WSSD promotes PPPs and MSIs such as EITI
- 2003  Draft UN Norms on Business and HR; subsequently rejected.
- 2004  Global Compact introduces Integrity Measures
- 2004  Anti-corruption added to Global Compact principles
- 2005  Legally-binding WHO Framework Convention on Tobacco Control
- 2006  Principles for Responsible Investment (PRI)
- 2006  World Bank Group strengthens standards for financing of large projects
- 2007  ILO/IFC Better Work Programme
- 2008  Business and Human Rights ‘Protect, Respect and Remedy’ Framework
- 2010  Women’s Empowerment Principles (Global Compact and UNIFEM)
Developmental challenge

- Whose development? Whose vision of sustainability? Different private/non-state & MSIs support different development models
- Distribution of costs and risks along the value chain; cost reduction for small producers
- Filling Gaps & Blind Spots: e.g. labour rights, producer empowerment, artisanal mining and fishing, living wages, purchasing practices of TNCs, “sub-sub contracting”, gender issues, home workers
- Role of the developmental state (support for small-scale producers and SMEs to enhance both capacity and bargaining power); developmental welfare states (social policy)
- Transformation in structures of production, e.g. strengthening social economy rather than corporate models. Re-embedding markets and curbing the power of TNCs requires not only new institutions for corporate accountability but also alternative forms of production.
Future scenarios

1. Neoliberalism with a human face
   “New ethicalism” (Sum) complements “New constitutionalism” (Gill) to relegitimize neoliberalism

2. Weak Embedded Liberalism (CSR & MRV), institutions that can only partially hold corporations to account

3. Strong Embedded Liberalism (MRV + RR)
   - Redress (effective grievance procedures and remedy)
   - Redistribution of income, wealth, value and power
     (living wages (not only minimum wages), bargaining (not only consultation), producer empowerment and value added (not simply commodity producers), workers’ empowerment & industrial relations (not only private labour regulation)

4. Alter-globalization: new social relations & solidarity economy; deep structural change
The Political Challenge

- The trajectory of change will largely be shaped by contestation and how social forces are configured and reconfigured.
- Currently “Neoliberalism with a human face” and “weak embedded liberalism” are politically strong.
- Currently forces promoting “strong embedded liberalism” and “alter-globalization” are fairly weak and fragmented.
Rearticulate Old and New Governance

- Strengthened rights-based / empowerment-focused institutions (e.g. IFAs, WRC, some fairtrade organizations)
- More meaningful and inclusive participation (developing countries, local NGOs, subaltern stakeholders)
- Broad-based multi-scalar coalitions & networks: intra-civil society (TUs & NGOs, CSO North & South, social economy/agro-ecology and corporate accountability movements; civil society and progressive business; CSOs and programmatic political parties, states and IGOs)
- International law and oversight institutions
- Bringing the state and public policy back in: rebuilding state capacity, e.g. monitoring/ labour inspection; for scaling-up standards-based initiatives and strengthening compliance; creating enabling environment for contestation and social organization and bargaining; universal social policy (GSF/BIG)
- Active citizenship articulated to democratic politics (parties, parliaments; and reinvigorated and reformed labour movement)
• THANK YOU

For further information on UNRISD research on CSR and Business Regulation, see [www.unrisd.org](http://www.unrisd.org)

*Markets, Business and Regulation programme*

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