

Corporate (Social) Responsibility as an Arena for Partnered Governance: From the Business to the Public Policy Case¹

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Both the political movement towards deregulation and privatisation, as well as increased globalisation, would seem to indicate increasing freedom for business and a limited role for the state. This development is often termed neo-liberalist. Yet, following the neo-liberalist wave of the 1980s and early 1990s, over the last decade, there has been an increasing focus on social issues, political reactions to globalization and excessive deregulation. As a result, the issue of corporate (social) responsibility (C(S)R) has risen steadily higher on the international agenda².

In this context there has been considerable debate about *the business case* for corporate responsibility. Arguments for why firms should take extended social and environmental responsibility have been developed from numerous points of view, including how CR might enhance conflict management; facilitate reputation building; stimulate development of industrial clusters or support risk management and so on. Given that CR also contributes to social and environmental responsibility in the global economy, it also raises the possibility of partnered government-industry governance. In other words, there should also be a *public policy case* for CR, especially for advanced welfare nations, which largely fail to impose what they see as acceptable social and environmental standards on the global economy through conventional regulation. Systematic analysis of *the public policy case* for CR is far less extensive in the literature than that of the business case, however.

While some argue that CR is by definition entirely a business matter, international organisations, confederations and many nation states have been actively involved in promoting, supporting, facilitating and incorporating CR into their regulatory agenda. Some of the most well known initiatives are:

- The OECD guidelines for multinational companies
- The UN's Global Compact
- New social and environmental legislation at the national level
- Socially responsible investment initiatives from financial institutions
- Successful launches of campaigns for sustainable development and human rights by civil society or non-governmental organisations.

The evidence of extended incorporation of CR into public governance practice in many ways contradicts the conception of CR as solely a business matter and underlines the

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² The term CR (corporate responsibility) as used in this paper also includes CSR (corporate social responsibility). The two terms are used interchangeably in practice and in the literature in this field.

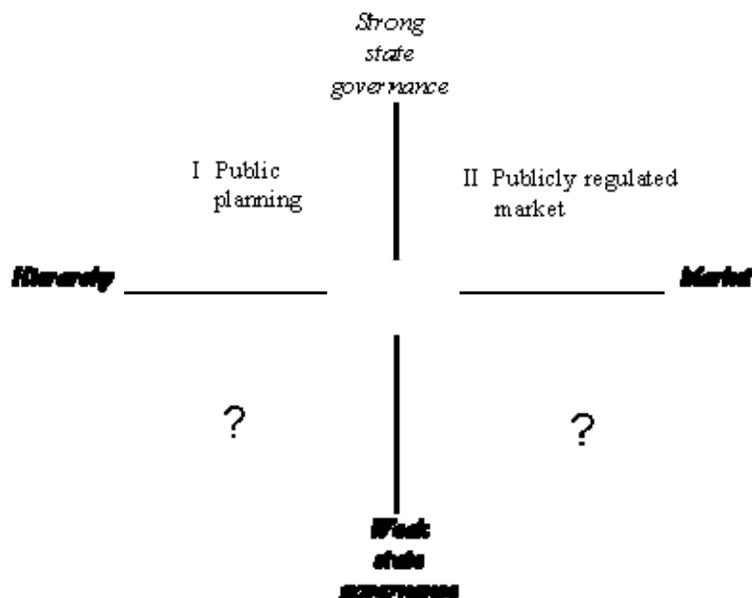
need for serious analysis of the public policy case. By highlighting the specific characteristics of CR-oriented public governance and juxtaposing them with more traditional regulatory approaches, this paper will highlight some of the issues, challenges and policy tools associated with this regulatory orientation. Through stylized examples the paper also illustrates how CR-oriented public governance, interfacing with CR-oriented business strategies may play itself out in the global economy.

Governance under Strong and Weak Public Regulation and the Problem of Collective Action in the Global Economy

Much of the debate on regulation in the 1980s and early 1990s was framed in plan versus market terms (Stigler 1975) and arguments were advanced on a wave of neo-liberalism for shifting ever larger parts of the economy into a competitive market-based mode of operation (Kahn 1998, Ogas 2001). A new regulatory agenda emerging prominently in the late 1990s and early 2000s focused more on the governability dimension, as such focusing on regulatory challenges and approaches in situations where traditional state governance is weak (Vig & Axelrod 1999; Brown Weiss and Jackson 2001).

The extended regulatory debate may be graphically displayed in a two-dimensional matrix. The old plan versus market debate is displayed along the horizontal dimension, while the vertical dimension allows us to explore market and hierarchy based regulation/governance under respectively strong and weak public governance (Midttun 1998) (Figure 1). The matrix highlights the implicit assumption of recursion to strong governance in the traditional deregulation debate, both in the market and hierarchy case. It also highlights the fact that there is a set of regulatory challenges where this assumption does not hold, thus providing a broader and more realistic conceptualization of governance and regulatory challenges under globalization with limited democratic-authoritative regulatory control.

Figure 1
Governance, Adding a New Dimension



Given that the globalization of the economy is accompanied by a limited capacity to develop parallel global governance through democratically or intergovernmentally mandated institutions and agreements, we are left with the fundamental problem of collective action, as indicated by the question marks in quadrants III and IV in Figure 1. In a classical analysis of the collective action problem, Mancur Olson (1965) showed that in a situation where a public good - such as social and environmental responsibility in the global economy - is available irrespective of each actor's contribution, each actor has a rational incentive to free-ride, i.e. to leave the costs of providing the public good to other actors. However, if each actor succumbs to this temptation, as indeed he must if he is to act in his own rational self-interest, then the public good will not be provided at all. Clearly, many international regulatory discourses, where there is no institutional basis for authoritative control, also reach such a conclusion³.

³ Russell Hardin (1982) has argued that the logic underlying Olson's theory of collective action is identical to that of a N-Person Prisoner's Dilemma, where the strategy of not contributing toward the cost of a public good dominates the strategy of paying for it, in the sense that no matter what other firms, or states do, any particular firm will be better off if it does not contribute. On the other hand, Ford Runge (1984) (following A.K Sen) has argued that what appears to be a prisoner's dilemma proves on closer inspection to be an "assurance problem", but with similar problems of collective action and lack of authoritative governance. According to this theory, the group member (i.e. firm or government) does not withhold its contribution to a public good based on rational calculation of the costs and benefits involved - such as in a Prisoner's Dilemma Game - but, rather, does so because it is unable to obtain the necessary assurance that other firms or governments will contribute their fair share.

It may be argued, however, that underdeveloped public regulation in the global market economy does not only reflect a collective action problem, but also conflicts of interest between the rich North and poorer South, where countries in the latter may see it in their interest to pursue growth without strong social or environmental restrictions. Countries in the North, on the other hand, would like to see their higher social and environmental standards prevail. The discrepancy between Northern and Southern interests is likely to be a transitory phenomenon, however. As Southern countries develop, they acquire new priorities on a par with the North. Furthermore, it may be in the interest of Southern economies to make quantum leaps straight into new and cleaner technologies, without following the North's rather poor social and ecological example during the late 19th and early 20th centuries. This technological leapfrogging could, in fact, revise positions and dictate a more socially and environmentally advanced Southern agenda.

The Case for Self-regulation in Industrial & Civil Society

One way to fill the regulatory vacuum and solve the collective action problem, as well as a possible conflict of interests, under weak public governance in a globalizing economy (squares III and IV in the matrix), has been recursion to corporate-led self-regulation or purely corporate-focused CR. In line with the well known Coase theorem⁴, this position argues that social and environmental spillovers from economic activity can be internalized through bilateral negotiation between the firm and its stakeholders.

The classical formulation of the Coase theorem assumes that appropriate property rights are allotted to representatives of all resources involved and that these representatives are subsequently able to negotiate adequate restrictions on negative spillovers. Once such property rights were established, this model would effectively individualize social and environmental responsibility and thereby overcome the collective action problem. However, the collective action problem remains with respect to establishing such rights on a global scale and a vast literature following Coase's launch of his theory has also pointed out the considerable challenge of how to deal with the tremendous transaction costs associated with asserting them on an individual basis.

Reinterpreting Freeman's well known stakeholder theory of business strategy in a Coasian regulatory/governance perspective may, however, provide a new conceptual framing which makes the Coasian self- governance model more applicable in a global

While the two interpretations differ with respect to the underlying basic actor orientations - the Prisoner's Dilemma assumes a basic egoistic orientation whereas the assurance game assumes a basic collective orientation - they both highlight the basic collective action problem.

4) In essence, the theorem states that in the absence of transaction costs, all government allocation of property rights is equally efficient, because interested parties will bargain privately to correct any externality (Coase 1960).

This theorem, along with his 1937 paper on the nature of the firm which emphasises the role of transaction costs, earned Coase the 1991 Nobel Prize in Economics. The Coase theorem is an important basis for most modern economic analyses of government regulation, especially in the case of externalities. Since the 1960s, a voluminous literature on the Coase theorem and its various interpretations, proofs, and criticism has developed and continues to grow (http://en.wikipedia.org/wiki/Coase_theorem)

economy. Freeman (1994), Fombrun (1996) and others have eminently displayed how a modern communicative society may bestow de facto bargaining power, similar to “Coasian” property rights, on social and environmental stakeholders, given their ability to inflict reputation damage through media exposure on modern, vulnerable, brand-oriented business. The firm may thus find itself implicitly bound to a social contract that demands excessive environmental and social restraints on, or reorientation of, its business practice, far beyond the minimalist effective regulation in the global economic arena. Active NGOs, voicing social and environmental concerns that resonate with public sentiment, may acquire a compelling force, giving them a strong negotiating position, particularly when amplified through public communication in the media. Given their multinational presence and organisation, they may often orchestrate crossovers between national jurisdictions so as, in some cases, to effectively impose advanced welfare state regulation on corporate strategies in developing countries. Media exposure of commercial strategies involving poor labour conditions and violation of human rights may resonate very badly with public opinion in the home country of the multinational corporation responsible. Pressure may eventually be mobilized on the firm to set corporate standards far above standards and practices set in the host country by ordinary legislatively based public regulation.

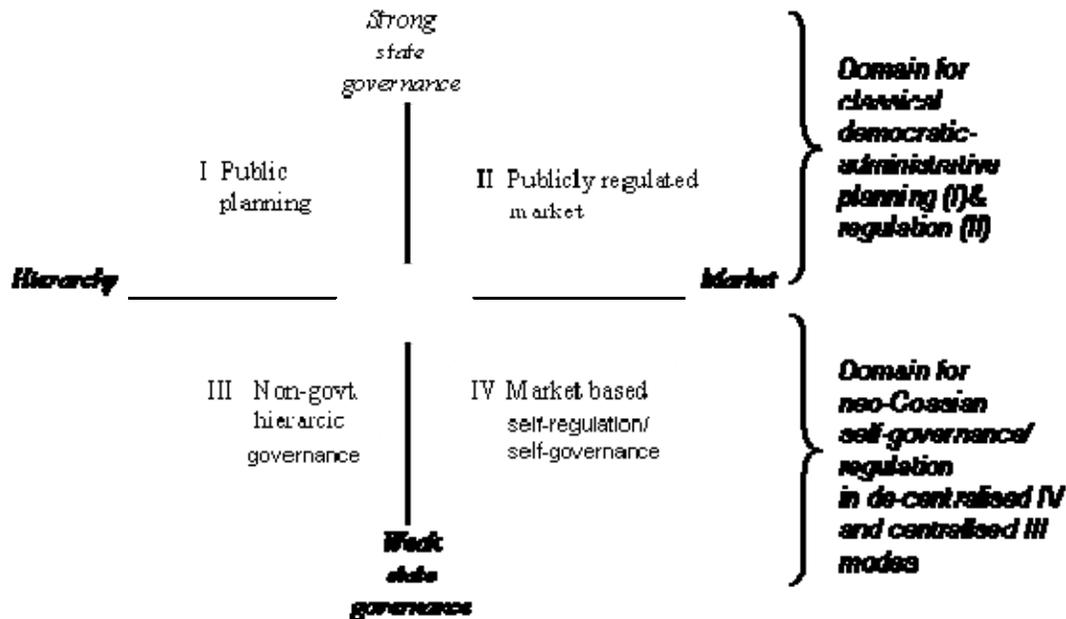
Thus, in the stakeholder-oriented neo-Coasian interpretation, regulation/governance under weak state governance becomes a domain primarily for private business and civil society self-governance/self-regulation, acting either in a decentralised competitive mode (IV), where individual firms bargain with their direct stakeholders, or in a coordinated mode (III), where a whole industry relates to specialized stakeholder organizations and develops industrial codes or practices that industry itself polices among its members. Coasian bargaining thus becomes a substitute for authoritative state regulation, although in an extended “neo-Coasian” mode, where NGOs and civil society, in line with Freeman’s (1994) stakeholder theory, acquire “legitimacy rights” that provide them with their bargaining position (Figure 2).

The widening of the Coasian model to include “legitimacy rights”, in addition to property rights, makes it far more applicable and realistic. Linked to the idea of a social contract (Rousseau, 1762), the public “sentiment” or norms with wide public appeal, become a point of reference for public debate, which in today’s world is predominantly channelled through and catalysed by the media. By projecting themselves as credible custodians of specialized parts of this public agenda, international NGOs acquire moral “bargaining rights” on the public’s behalf, without the extensive formalities of political and legal procedure necessary to establish property rights. This “bargaining right” may be far more flexibly applied to corporations across national jurisdictions than current national law as it provides a threat of brand damage through media exposure, possibly followed by protest actions, which corporations clearly wish to avoid.

To the extent that environmental and social governance in the global economy is not only a collective action problem, but also involves conflicting interests between the richer North and the poorer South, neo-Coasian self-regulation introduces rivalry between Southern and Northern firms. However, unlike international, intergovernmental negotiations, industrial negotiation over self-regulatory measures does not take place with reference primarily to national publics/constituencies, but rather to constituencies

(customers, NGOs and public opinion) in an international arena, where a race to the bottom is presumably harder to justify.

Figure 2
Regulatory modes and mode of interest configuration



The Public Governance/ Regulatory Case

Even if “neo-Coasian” self-governance/regulation provides a “civilizing” influence on several areas of the global economy, one can hardly argue that it completely solves the collective action and the conflict of interest problem, given the highly divergent social and environmental standards of the present time. In the search for solutions to further diminish the governance gap, a natural field of investigation is whether self-regulatory efforts may be supplemented by creative intervention by Government in spite of the limited control that it may exercise beyond its national borders. Government would, in this case, be acting in a semi-authoritative mode, using its legitimacy and resources to reach out beyond its territorial domain and beyond the often minimalist international conventions that constitute the framework for an international economic order. Such semi-authoritative governance/regulation might entail attempts to reach out beyond national borders to influence global industry, but could also imply influencing domestic industry with obvious exit options to play a more socially and environmentally responsible role. This would entail an interesting blend of public regulation and private corporate responsibility strategies, which can be termed “*partnered governance*”.

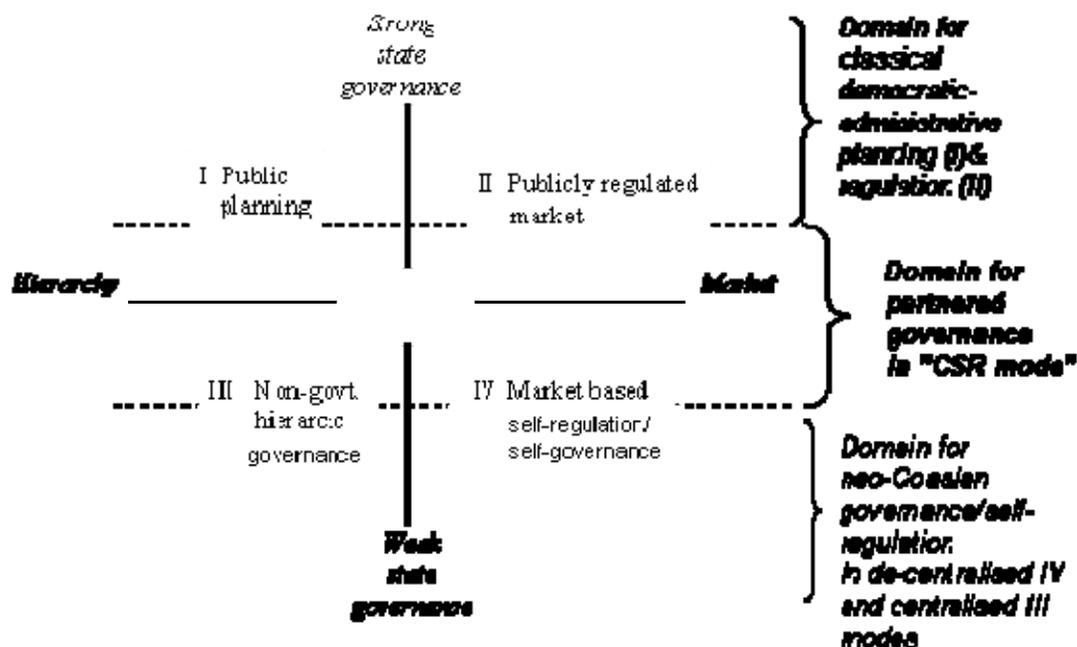
The motivation for nation-states with advanced social and environmental regulation to move into this “messy” governance/regulatory terrain, lies in their interest in levelling the global playing field, towards their higher standards. Similarly, companies with a home base in such states may have a competitive advantage under advanced

regulatory standards and would hence prefer their home country standards to be replicated worldwide. Pressured by internationally oriented NGOs, they may therefore find a common interest in partnered governance if this has some promise of success.

The adoption of such governmental practices provides an interface between authoritative regulation and self-regulation/governance. In terms of our model, it could be described as a new intermediary governance layer between authoritative governance and pure business self-regulation. Such governmental intervention beyond the domain of authoritative control could facilitate CR-oriented self-regulation by adding democratic legitimacy or by providing other critical elements such as information disclosure that can potentially trigger self-regulation and pool common resources (Figure 3). Partnered governance could thus unleash considerable governance synergies.

Figure 3

Interfaces between authoritative, self-regulative and partnered governance



Partnered governance in the CR mode has several similarities with so-called neocorporatist governance, where political consensus around major economic initiatives was negotiated in a tripartite setting between authoritative representatives of the state, labour and capital owners (Schmitter 1981, Streck & Schmitter 1985). Consensusbuilding in such tripartite arenas were in many countries seen as preferable to unilateral government legislation. However, the national context of negotiations implied that there was potentially a fallback position to strong state governance. Furthermore, the tripartite negotiations included labour as an equal stakeholder in line with industry. Both these characteristics are different in the case of partnered governance in the CR modus, where

the global economy context limits the recursion to strong unilateral state governance, and where the influence of labour is far more indirect (Midttun et al 2005 and 2006).

From a socio-economic perspective, partnered governance and the distinction between governance under strong and weak public authority can be related to social rule systems theory (Burns and Flam 1987). As a parallel to the matrix above, the rule systems theory integrates in one conceptual framework informal rules, unwritten and implicit, as in square IV and in part also in III, and formal rule-making and regulation as in squares I and II. In rule systems terms, each of the squares of the matrix implicitly or explicitly defines roles or role-sets and actors occupying different positions in the matrix are, in Burns' and Flam's terminology, governed by role-specific grammars.

The Burns and Flam rule systems approach highlights the interplay between three bases for governance: persuasion, sanctioning based on power and legally based sanctioning. Persuasion involves social processes of communication, argument, appeals to ideology, norms and beliefs. Sanctioning power involves the social processes of social action and control, using control over or access to power resources. Legally based sanctioning power involves legal authority and/or legally specified forms of negotiation and contracts.

It is the ability to blend different forms of rules and authority, thereby strengthening its outreach, that characterizes *partnered governance*. Legal sanctions that in the context of weak governance are not themselves sufficient may, for instance, trigger industrial action and sanctions based on commercial power, which in turn deliver on policy goals. Alternatively, persuasive argumentation in the public media may promote conversion either into legal action or into economic power through shifts in industrial strategy.

From a public governance perspective, the emerging government engagement beyond territorial control and formal international agreements and its interplay with industrial self-regulation links up with a broader approach of "smart" and multi-dimensional regulation (Ayres & Braithwaite 1995; Brown Weiss 2001) A central argument for such approaches is that the use of multiple rather than single policy instruments and a broader range of regulatory actors will often produce better regulation, since this introduces a far more imaginative, flexible and pluralistic approach than has so far been adopted in most jurisdictions (Gunnigham, Grabonsky and Sinclair 1998; Baldwin, Scott and Hood 1998).

CR-oriented, semi-authoritative partnered governance may provide a contribution towards solving problems of collective action in a globalizing economy in several fields: by unleashing creativity and creating synergy with industrial strategies; by mobilizing industrial implementation capacity; and by government following industry in making social and ecological demands on their own supply chain.

Unleashing Creativity and Creating Synergy with Industrial Strategy

The strength of the CR-oriented model of partnered governance is that it unleashes industrial creativity both in policy formation and in policy implementation. Although government does not have the unilateral control assumed under traditional regulation, the partnership may provide invaluable learning and outreach into new regulatory domains. Furthermore, the fit with industrial programmes that follows from governance in a

partnership mode may potentially secure synergies between industrial strategy and public policy.

Implementation

By helping to mobilize the implementation capacity behind international agreements, CR-oriented partnered governance may help to “harden” the impacts of soft law. While such laws may be mandated by international organisations with high legitimacy, they frequently lack administrative resources to back efficient implementation, particularly in those regions that need it most. By stimulating active industrial engagement through the new CR-oriented partnered governance menu, public policy may increase its operative outreach and soft law agreements may become considerably harder.

Government taking new activities into consideration

Another strength of the CR-oriented model of partnered governance is that it enables the utilization of multiple sides of public organisations for regulatory purposes. By copying the CR management model of private business (management of supply chains through procurement policy), public authorities may use the vast volume of public sector procurement to exert de facto governance/ regulatory pressure towards social and environmental responsibility on its suppliers. The direct effects of such strategies are vast and the indirect effects formidable. Furthermore, public action in this field may also support extensive parallel private industrial action and thereby achieve a much larger momentum.

Case Illustrations

The following examples illustrate partnered governance in three different configurations, illustrating some of the variety in this field. In all cases, CR initiatives have been launched in response to challenges voiced in the public arena, supplemented in some cases by direct pressure from industrial contractors. The interface between industrial CR and public governance differs in the following manner:

- In the forest and paper & pulp industry, partnered governance has emerged in regulatory competition with NGO-driven certification schemes, thereby dramatically increasing the volume of forest under certification.
- In the case of the Extractive Industries Transparency Initiative, partnered governance is woven into an intricate web of public, industry and civil society initiatives to “clean up” large scale economic transfers by bringing them under transparent public accounting and channelling them into public use.
- The Ethical Trading Initiative is an example of partnered governance in so far as industrial contracting is used as a vehicle for implementing good labour conditions, largely defined by standards set through public policy in international conventions. Furthermore, the initiative is strongly government endorsed and to a large part financed by public budgets.

The following case illustrations are presented without in-depth analysis, our aim here being to outline the main socio-political and economic configurations. Each case presents the socio-political context, the core focus of the initiative and its evolution over time. We then review how the initiatives affect industrial behaviour and finally discuss what light core elements of each case cast on the concept of partnered governance.

Partnered Governance under Regulatory Competition in the Forest and Paper & Pulp Industry

Context

Partnered governance intervention in the forestry and paper & pulp industry has arisen in response to challenges to traditional business practices in the media and public debate on issues ranging from environmental topics such as biodiversity and certification of timber to human rights and corruption. The Forestry and paper & pulp industry has been seen as one of the main forces behind the reduction of forests, as well as the loss of biological diversity which is considered to be one of the most serious global environmental issues.

As a result of active NGO engagement, public concern has also been translated into demands from industrial customers such as printers and publishing houses. The sustainable management of raw and semi-processed inputs are considered an important part of their corporate responsibility as they are vulnerable to public opinion and exposed to strong NGO pressure to monitor their supply chains. Furthermore, criticism not only affects the industry itself, but also the financial institutions behind it. A report entitled “How World Bank Group failed to protect forests and forest peoples rights” by a coalition of different NGOs focusing on environmental issues provides evidence for the view that the World Bank Group contributes to the damage of the world’s forests (Rain Forest foundation 2006).

A characteristic feature of the new regulatory initiatives within the forest and paper & pulp industry is the competition between NGO and industrial interests. Faced with ambitious NGO initiatives, the industry association has sought to develop an alternative standard for self-regulation, while individual firms have bowed to overwhelming societal pressure and chosen the pragmatic option of adapting to both standards selectively.

This case thus highlights how buyer pressure and NGO-driven regulatory initiatives may trigger government- partnered industrial self-regulation to enhance improved environmental and social performance. In this instance, government and industrial governance initiatives are driven by market demand and societal demand voiced by non-governmental actors. Yet government and industrial engagement in response to regulatory competition, has been instrumental in moving industrial practice forward substantially.

Evolution of the Regulatory Initiative

The NGO initiative to establish the Forest Stewardship Council (FSC) and its offer of certification of sustainable and ecologically sound forestry was driven, in part, by the failure of an intergovernmental process to agree on a global forest compact. Established in 1993 (Forest Stewardship Council home page) to drive forward an agenda for sustainable forestry, the FSC developed a set of *principles* and *criteria* for forest management that address legal issues, indigenous rights, labour rights, multiple benefits and environmental impacts relating to forest management (FSC, 2006).

The scheme met with critical opposition from leading forest industry groups, often in alliance with host/home governments. Although they shared some basic ecological concerns with the FSC, in their view the FSC was making unrealistic demands which would impede efficient forestry practices. The forest industry, in close collaboration with home-base governments, responded with a set of CR-based regulatory initiatives to establish more "realistic" standards for sustainable forestry.

In North America, the Sustainable Forest Initiative (SFI) program was adopted by the Trade association for wood, paper and wood products (AF&PA) in 1994, and as a testament to the association's strong commitment to the goal of sustainable forestry, participation in the SFI program became a condition of membership for AF&PA. Since 1994, AF&PA has asked 17 members to leave the association for failing to meet the SFI Standard (SFI standard 2006). Similarly, in Scandinavia a government-partnered industrial standard for the Norwegian forest industry was developed under the heading "living forest" initiative.

The European Programme for the Endorsement of Forest Certification schemes (PEFC) was established in 1999 as an umbrella organisation for certification, in close cooperation with national legal systems. PEFC is a global umbrella organisation for the assessment of and mutual recognition of national forest certification schemes developed in a multi-stakeholder process. These national schemes build upon the inter-governmental processes for the promotion of sustainable forest management, a series of on-going mechanisms supported by 149 governments in the world covering 85% of the world's forested area.

The differing origins and objectives of each scheme have led to differences not only in the contents of the standards, but also in administration of the rule-systems. As noted by Olivier (2006), the SFI program relies on certifiers whose independence and professional competence is assessed through the existing U.S. national accreditation system, whereas the FSC has an internal accreditation process designed to operate under the jurisdiction of the FSC Board of Directors. In line with the emphasis by the FSC on rewarding exemplary forestry in the market place, it has more explicit restrictions on intensive management, plantations and genetically modified crops (GMCs). While the FSC will certify landowners on condition they meet certain criteria over time, the SFI program requires landowners to comply with the SFI Standard before certification.

Industrial Behaviour

Leading firms in the forest and wood processing industry have generally taken a pragmatic position on extra-legal regulation. They relate to both the NGO and Government-partnered industry standards and seek to bridge the span between ideals and

reality by flagging adherence in principle, but adopting pragmatic adjustment and gradual implementation in practice.

Abitibi-Consolidated, a global leader in newsprint and uncoated ground wood papers as well as a major producer of wood products, provides an example of this pragmatic approach to sustainable forest management. To publicly demonstrate its commitment and achievement in Sustainable Forest Management, Abitibi-Consolidated has chosen a two-tiered strategy. As part of its mainstream operation it has developed an environmental management system (EMS) for each of its Canadian woodland operations and has these certified through a rigorous third-party audit (Abitibi annual report 2005). Abitibi implements the widely recognized Canadian Standards Association (CSA) SFM standard for their Canadian operations, and the Sustainable Forestry Initiative (SFI) standard for their U.S. operations. In addition, it has also been considering using the Forest Stewardship Council (FSC) standard, but only with respect to the Canadian Boreal forest, where the FSC standard is to be tested in one of Abitibi-Consolidated's woodland divisions.

Norske Skog, a major global player in the paper market, has also found it necessary to make use of internationally recognised certification to systematise and document its work in the environmental field both for internal and external use. Norske Skog has chosen to use the ISO 14001 standard⁵ and all certificates are provided by an independent third party. In addition, Norske Skog applies the "Programme for the Endorsement of Forest Certification" (PEFC) to ensure that the timber comes from sustainable forestry. It also supplements this with timber certified under the Forest Stewardship Council (FSC). However, not all countries can offer such certification and Norske Skog therefore also has to secure sustainable forestry in other ways (Norske Skog Environmental Report 2004).

Discussion

As previously mentioned, a characteristic feature of the new regulatory initiatives within the forest and paper & pulp industry is the competition between NGO and industrial interests. As noted by Olivier (2006) competing regulatory initiatives ultimately arise from the political differences that separate environmental groups from forest owners and industrial organizations. The green movement tends to regard certification as a mechanism to reward (through continued market access) only the very best forest management and to promote an ideal of forest management that mimics natural processes and preserves so-called old growth. They promote a vision of a single, internationally harmonized system of forest certification requiring forest owners to comply with very high standards of forestry performance. This is essentially the approach adopted by the FSC.

By contrast, Olivier (2006) notes that industry and forest owner groups in partnership with host governments tend to regard certification as a mechanism to promote progressive, step-wise, improvement in forest management. They also believe certification should provide an effective marketing tool to promote the environmental benefits of wood. The PFEC, for instance, represents government and industry positions

⁵ ISO 14001 is a standard for environmental governance

and a gradualist approach, including national industrial initiatives that seek to codify extra-legal rule-making adapted to local conditions. The Nordic forest certification schemes are an example of some of the earliest schemes to be endorsed by the PFEC.

It would therefore seem reasonable to draw the conclusion that regulatory competition has produced higher level regulation, or higher levels of environmental and social quality in the forest industry, than under conventional authoritative regulation in the current global economy, one of the reasons being that producer countries have been disciplined by commercial buyers abroad and NGOs. Even if competition with respect to rule-making hegemony has led the two parties to adopt elements of each other's schemes, the regulatory competition has, to some extent, led to market-segmentation between standards focusing respectively on basic regulation (for industry/government initiatives) and high end regulation (NGO initiatives). They therefore maintain separate implementation systems, which is clearly less cost-effective for the firms involved.

At the same time, even the high end FSC scheme depends to some extent on supplementary industrial engagement. While a critical review of both the FSC and industry-led approaches (Gulbrandsen 2005) points out that the FSC has a greater capacity than the forest owner-dominated scheme to enhance environmental protection in forestry, it also concludes that effective implementation of non-state forest governance schemes requires national forest law enforcement. One could therefore argue that although the government-partnered industrial certification is less ambitious than the NGO-led FSC, the engagement of industrial actors and government agencies has provided forest certification on a much greater scale than would otherwise have been possible.

Partnered Governance in Upstream Petroleum Industry: The Extractive Industries' Transparency Initiative

Context

New partnered governance initiatives have been launched in the extractive industries to meet the challenges to traditional regulation and business practices, particularly in the interface between multinational petroleum companies and resource-rich developing states. To quote the Financial Times (18.03.2005) "Extractive industries have long been criticised for perpetuating the "resource curse" - distorting the economy and propping up corrupt and autocratic governments that exploit their control of the revenues to keep themselves in power." This was the immediate background for the Extractive industries' Transparency Initiative (EITI), launched in 2002 in Johannesburg at the World Summit on Sustainable Development. The initiative aimed to promote greater transparency around the large scale money-transfers taking place in the petroleum and mining sectors (EITI 2006).

Core Focus

This case highlights how the EITI weaves several modes of governance into a powerful web of partnered governance:

- Large western multinational companies are jointly supporting the demand to publish money streams from their own extractive activity to the treasury in host countries, as a result of strong pressure from interest organisations and public opinion.
- Host countries are taking on obligations to publish the money streams in the public sector, many as a result of considerable pressure from international organisations such as the World Bank, donor countries and others, but also motivated by the need for inner administrative reform.
- Civil society organisations have been actively promoting the EITI both with the government of their home countries and with authorities and foreign countries. The latter often with considerable difficulty.
- Financial investors, including many of the large fund managers, have generally taken a more active attitude to free flow of information, transparent governance and corporate social responsibility.

Breakthroughs on the issues listed above imply a breakthrough for open information and responsible economic governance, as laid out in a number of international conventions.

Evolution of the Regulatory Initiative

The EITI, initially pioneered by Transparency International and Global Witness, was later actively promoted by the UK government. It is based on a voluntary agreement aiming to increase transparency in transactions between governments and companies within the extractive industries. The UK EITI government initiative followed an unsuccessful self-regulatory initiative by BP in 2001 to publish unilaterally what they pay in taxes, fees and signature bonuses in Angola. BP's initiative was unsuccessful because Sonargol, the state oil company of Angola threatened to exclude BP from Angola, and BP subsequently only published the signature bonus mandatory under UK law.

The EITI received mixed reactions from other western countries and their multinational oil companies. The US government and US home based petroleum multinationals such as Exxon and Texaco would not support the initiative unless they received credible commitments from oil-rich nations and systematic implementation of the principles by all companies involved. Other nations, such as Norway, joined the EITI and supported the initiative both at the government and company level. The two Norwegian petroleum companies Statoil and Norsk Hydro, which are in the process of internationalizing their petroleum engagements beyond the Norwegian Continental shelf, were both developing advanced CSR programmes and were eager to support the initiative.

A significant step towards implementing the Extractive Industries Transparency Initiative (EITI) in the Republic of Azerbaijan was taken on November 24, 2004. The governmental Committee on EITI, foreign and local extractive industry companies (oil and gas) and the NGOs' Coalition for Increasing Transparency in Extractive Industries signed a Memorandum of Understanding (MOU) for implementation of EITI in the

Republic of Azerbaijan. 20 foreign and local extractive (oil and gas) industry companies, including the State Oil Company of the Republic of Azerbaijan, BP, Exxon, Statoil, Total, Lukoil, Unocal, Shell and Devon Energy have since signed the MOU (State Oil Fund 2004).

More recently, the EITI has attracted support from a number of other resource-rich developing countries – namely the Republic of Congo, Ghana, the Kyrgyz Republic, Nigeria, São Tomé e Príncipe, Timor Leste and Trinidad and Tobago. These countries have begun to interpret and implement the Principles, thus playing a pivotal role in shaping the EITI. The engagement of resource-rich developing countries has also brought the US multinationals and the US government on board. In parallel, however, some NGOs, such as Global Witness are calling for stronger mandatory engagement.

As it has evolved, the ETI has also developed fairly precise guidelines for reporting and auditing of benefit streams, including such items as royalties, profits, taxes, national state-owned company production entitlement, host government's production entitlement, other significant benefits to host governments, licence fees, rental fees, entry fees and other considerations for licences and/or concessions, bonuses (such as signature, discovery, production) and dividends (Deloitte Touche 2004).

Industrial Behaviour

The reception of the EITI in the business community has been rather mixed, ranging from positive embracement by petroleum companies with headquarters in North Western Europe to more reluctant conditional acceptance by those with headquarters in the US. BP flagged a very positive position on transparency in its 2003 Sustainability Report (BP 2003):

“BP believes that transparency is a core value of sound corporate governance, and seeks to create the level playing field for all investors that transparency will bring. BP actively supports the principles and practical application of EITI. We are working with the EITI team and host governments to launch pilots of the scheme in a number of locations.”

In a similar vein, Statoil, a Norwegian dominantly state-owned petroleum company, clearly sides with the ETI. In its 2004 Sustainability Report the company states (Statoil's Sustainability Report 2004): (kildehenvisningene kunne evt. stå etter sitatene. Den virker overflødig slik oppsettet er nå.)

“We work for increased transparency on oil and gas revenues in those countries in which we operate. Such transparency will help to improve the administration of petroleum earnings while reducing opportunities for corruption. This and subsequent editions of our sustainability report will include key figures for a number of central producing countries.”

The report provides a breakdown covering a number of financial transactions in 26 of the 29 countries in which the group operates.

The more reluctant position of petroleum companies with headquarters in the US is evident in the positions taken by Exxon Mobile and Chevron Texaco. On its 2005 homepage (Exxon Mobile 2005), the company states that:

“Exxon Mobil pays taxes and royalties to host governments in all countries where we produce oil and gas. As a private company, however, Exxon Mobil cannot account for how various governments manage this income.”

Nonetheless, the engagement of resource-rich developing countries has also brought US multinationals and the US government on board.

The EITI has also had broader industrial support outside the petroleum industry. In June 2003, the 'Investors' Statement on Transparency in the Extractives Sector' in support of the EITI was signed by 38 investors. The process was led by ISIS Asset Management, a UK-based investor with €90 billion under management, and signatories included CalPERS, Deutsche Asset Management, Dresdner RCM Global Investors, Fidelity Investments, Merrill Lynch Investment Managers, New York State Common Retirement Fund, PGGM, Schroders Investment Management and SSgA Limited. The Investors' Statement is intended to demonstrate to extractive companies and host governments that the capital markets unambiguously support the EITI principles.

Discussion

This case exhibits an interesting set of mechanisms in partnered governance: rule-making through mobilisation of NGOs and public pressure in host-countries which then extends into national politics. The EITI involved a not uncontroversial intrusion into the national politics of developing countries by activist European governments (led by the UK and also including Norway) where stimulation of democratizing processes in developing countries put host governments under dual pressure.

Ingeniously, persuasion was used in combination with economic sanctions by the World Bank and other international organisations. The NGO partnership was also critical to success by establishing the agenda and ensuring world attention. The “Publish what you pay” movement was instrumental in triggering self-regulation and recruiting inside agency within the host countries for support and local rule-making. EITI was also ingenious in staging implementation through stakeholder conferences. Here rules were disseminated with increasing precision: from EITI principles to EITI criteria.

In spite of strong engagement from activist European countries and the World Bank, it nevertheless remains to be seen how the successful expansion of signatories to EITI can be converted into significant implementation. The core elements of what is to be achieved through the initiative are clearly spelled out in the EITI criteria (EITI 2006):

1. Regular publication of all material oil, gas and mining payments by companies to governments (“payments”) and all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator’s opinion regarding that reconciliation including discrepancies, should any be identified.
4. This approach is extended to all companies including state-owned enterprises.

5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.
6. A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

However, a hard set of sanctioning mechanisms is not yet in place and there are still varying interpretations on how to proceed. Thus EITI would seem to be caught between the desire to expand the number of signatories and the potential hardship entailed for such signatories in terms of hard implementation.

Partnered Governance in the Retailing Industry, The Ethical Trading Initiative: Implementing Public Policy through Industrial Value Chains and Industrial Contracting

Context

The retailing industry, including such branches as food supply and clothing, is increasingly being challenged to take on responsibility for working conditions, human rights and safety in their value chain which often stretches back to developing countries. Targeting the end consumer, these companies are highly dependent on branding and with reputation being such a critical issue, negative press releases on practices in their supply chains can have quite a detrimental effect.

A case in point is Nike, the footwear retailer and manufacturer, which has had intense media criticism for bad working conditions in their factories in Asia. A similar criticism has been addressed to the food chain ICA Norge, which has been forced to carry out internal investigations after the press accused ICA of practicing child labour.

Core Focus

The Ethical Trading Initiative, ETI, aims to deal with these challenges in the retailing industry. The initiative grew out of an alliance of companies, trade union organisations and NGOs, committed to working together to identify and promote good labour practices. The critical areas targeted are monitoring and verification in order to create transparency and disclosure of labour management. With its central focus on international labour law and standards, including the ILO conventions, the ETI is also linked to public policy and can be seen as partnered governance with respect to implementing public policy in an international arena (EITI 2006).

Evolution of the Regulatory Initiative

The ETI, launched in the UK in 1998, included NGOs and trade union and corporate members working together to identify what constitutes “good practice” in code implementation, and then promoting and sharing this good practice (ETI homepage, 2006). The ETI identifies good practice mainly through its members’ experimental projects and research, and shares this through publications, seminars and conferences and the ETI website.

The ETI has seen considerable membership growth. In the UK, the ETI has increased its corporate membership from 12 companies in 1998 to 37 at the end of 2004. The ETI is funded by a combination of membership fees (currently comprising approx. 60% of the funding base) and a grant from the Department for International Development (40% of funding). Members also contribute in kind to the work of the ETI in terms of staff time, travel expenses, meeting facilities and so on. Similar structures were subsequently developed in other countries. In Norway, “Initiativ for etisk handel” (IEH) was founded in 2000 by the Federation of Norwegian Commercial and Service Enterprises, the Labour Union LO, Coop Norge and Church Aid. The IEH is financed by members (67% in 2005), the remaining amount coming from public funds channelled through the development organisation Norad.

The ETI embodies a duality of support and obligation in its core construction. On the one hand, membership implies that the firm seeks the competency existing in the IEH community. On the other, it implies that the firm has a binding obligation to speak openly about problems and openly report what it does. The ETI Requires all corporate members to submit annual progress reports on their code implementation activities. These reports show that significant code implementation activity has taken place, and that members’ suppliers are making concrete improvements to labour practices.

The ETI has also developed procedures for disengaging poor performers. For companies who are not meeting membership requirements, the ETI meets with senior representatives of the company to agree an improvement plan and a deadline for implementation. Companies who fail to implement such an improvement plan may ultimately be asked to leave ETI.

Underpinning all ETI’s work is the ETI Base Code and the accompanying Principles of Implementation. The Base Code consists of nine clauses which reflect the most relevant international standards with respect to labour practices. The Principles of Implementation set out general principles governing the implementation of the Base Code (ETI homepage, 2006).The Base Code and Principles of Implementation have two related functions. Firstly, they provide a basic philosophy or platform from which ETI identifies and develops good practice and secondly, they provide a generic standard for company performance.

The Ethical Trading Initiative operates in close interface with more formal governmental rule-making, including the United Nations Universal Declaration of Human Rights; the International Labour Organisation’s Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy; Guidelines for Multinational Enterprises developed by the Organisation for Economic Co-operation and Development (OECD); and the United Nations Convention on the Rights of the Child. The ETI Base Code, and the accompanying Principles of Implementation, although both negotiated and agreed by the founding trade union, NGO and corporate members of ETI,

therefore also reflect the most relevant international standards with respect to labour practices and ILO Conventions.

Industrial Practices

Large firms involved in retailing often flag extensive CSR policies and strong engagement in ethical management of their value chains. The Nike example mentioned previously is an apt one in this respect. Nike was forced to admit to sexual harassment, 72 hour working weeks and bad working conditions at their sub-suppliers in Indonesia, China, Thailand and Vietnam, factories that employ more than 300.000 people. To reduce the impact of the damage to their reputation, Nike published the names of their 700 suppliers and sub-suppliers and promised to improve the above conditions (NIKE-CSR report 2004).

The banana and fruit company Chiquita (2005) which used to be heavily criticized for poor working conditions, now also flags CSR:

“Corporate Responsibility at Chiquita is an integral part of our global business strategy. It commits us to operate in a socially responsible way everywhere we do business, fairly balancing the needs and concerns of our various stakeholders - all those who impact, are impacted by, or have a legitimate interest in the Company's actions and performance.”

Similar policies are also flagged by the clothing design and retailer GAP (2005):

“With operations around the world and stores in five countries, including every state in the U.S., Gap Inc. is committed to having a positive impact in the communities where we do business. This commitment means supporting and volunteering with organizations that address the needs of youth and neighbourhoods. It means working to ensure that the garment workers who produce our clothes are treated with dignity and respect. And it means minimizing our effect on the environment.”

Explicitly recognizing its responsibility for its suppliers, Gap states that :

“Our products are made in approximately 3,000 factories in about 50 countries. It's critically important to us that each of these factories operates ethically and fairly, and is committed to treating their workers with dignity and respect. That's why we've developed one of the most comprehensive factory-monitoring and labour-standards programs in our industry. “

Marks and Spencer (2005), another ETI member, implements its supplier policy through self-auditing:

“Supplier performance against our Global Sourcing Principles and the ETI base code is assessed through a system of audits. The majority of these audits are supplier self-assessments, although these are backed by a lesser number of Marks & Spencer and independent assessments.

Marks and Spencer claims that their greatest success comes from helping suppliers to help themselves:

“The setting up of local benchmarking groups has really helped our suppliers make improvements.”

Discussion

The Ethical trading initiative within the retailing industry highlights the challenge of complex value chain issues in an industry that is highly dependent on branding. The governance challenge is to create common labour practices in a system which often extends over several continents and across a large variety of governance and industrial styles.

Implementation takes place largely through the sanctioning power of retailing industry with access to tapping the buying power of dominant OECD markets. The combination of reputation effects and brand building gives global industrial system incentives to deliver. Through the larger retailer’s direct multinational managerial systems and contractual relations they already have essential infrastructure in place to deliver credible results beyond the reach of territorially bound national legislatures. The Ethical Trading Initiative serves to focus and strengthen these managerial and contractual practices so as to more efficiently implement international conventions on labour standards and human rights.

In a partnered governance mode, the ETI may therefore also be seen as a supplementary implementation tool for public policy in a typical “soft law” domain. The reference to intergovernmentally endorsed standards serves to legitimise the ETI at the same time as the deployment of industrial managerial and contractual resources and competencies obviously strengthens implementation of public policy. The large government contribution towards funding the ETI is also an indication of the partnering mode of this initiative.

Private/ voluntary rule-making has been accused of weak and non-transparent implementation, and the ETI initiative has therefore paid this aspect considerable attention through explicit development of principles of implementation. Critical areas include monitoring and verification, as well as transparency and disclosure, to determine and communicate whether standards embodied in the code are being achieved.

Finally ETI’s credibility as a promoter of ethical trading partly rests on its diverse membership, including companies, trade union organisations and NGOs. The two latter membership groups represent fair trade norms and ideals per se and share equal representation alongside industrial members on the ETI board.

Endnote on Partnered Governance

Both the conceptual analysis and the case examples indicate that there may be a strong public policy case for partnered governance when facing the challenge of integrating social and environmental responsibility into the globalising economy.

As argued previously, both the traditional regulatory models, whether in planned economy or market regulatory mode, assume sovereign nation-state control of policy formulation as well as policy implementation and are therefore fundamentally limited to domains where government has territorial sovereignty. Public policy aspirations to

promote advanced social and environmental responsibility in the global economy, including beyond its national boundaries, therefore meets the limited territorial outreach of regulatory competency as a major obstacle.

The lack of outreach for social and environmental regulation has in many ways been aggravated by increased deregulation. The move away from a planned economy to market liberalisation entailed disembedding the economy from social and environmental concerns. The planned economy mode (square I) with directly politically controlled enterprises allowed complex goal functions that induced broad consideration of economic, social and environmental dimensions in business strategy. The regulatory model (square II) implied isolating a more focused goal-function (profit or value maximisation) at the firm level, while social and environmental responsibility was managed by public authorities through regulatory design.

Raising the Bar or Race to the Bottom

When the liberal model was internationalised beyond the nation state into a larger international arena, the regulatory design that carried social and environmental responsibility barely followed suit. At the international level, agreements and organisations such as GATT - WTO have moved profit-focused free enterprises to the front stage of the global economy, while aggregation of social and environmental concerns has been comparatively far less efficient. This discrepancy may have to do with the fact that the global aggregation of commercial free trade is driven and financed by strong business enterprises, since firms see the possibilities of exploiting the widening global free trade opportunities as a means to profit-making and global strategic positioning. Furthermore, governments have followed suit in order not to miss opportunities for their economy and national industries.

Social and environmental concerns have not had such powerful drivers behind them at the international level. While some advanced welfare states may also see social and environmental concerns as important value drivers, a number of other states, particularly among developing countries, tend to see such concerns as a competitive disadvantage and have therefore blocked such regulatory constraints from becoming common standards in the global economy.

In this perspective, partnered governance, building extensively on regulatory interfacing with industrial self-regulation, may represent a balancing factor that, to some extent, substitutes for the social and environmental regulatory deficit in the global economy. Companies pushed by domestic expectations from their home base to launch social and environmental responsibility in business operations are developing this as a competitive style in a global arena. Strategic support from governments wishing to raise the bar may help to build up momentum for governance initiatives that neither government nor advanced industry could have managed alone.

This interplay between industry, government and civil society initiatives can be seen in all our case examples. The Extractive Industries Transparency Initiative case exhibits an interesting set of mechanisms in partnered governance: rule-making through mobilisation of NGOs and public pressure in host-countries, extending into national politics. Persuasion was used in combination with economic sanctioning by the World Bank and other international organisations. The EITI also made intelligent use of staged

implementation through stakeholder conferences where rules were disseminated with increasing precision: from EITI principles to EITI criteria

In the Ethical Trading Initiative case we have seen how implementation takes place largely through the sanctioning power of retailing industry with access to tapping the buying power of dominant OECD markets. The direct multinational managerial systems and contractual relations of larger retailers provide essential infrastructure to deliver credible results beyond the reach of traditional territorially bound legislatures. In a partnered governance mode, the ETI may therefore also be seen as a supplementary implementation tool for public policy in a typical "soft law" domain. The reference to intergovernmentally endorsed standards simultaneously served to legitimise the ETI and to strengthen implementation of public policy through deployment of industrial, managerial and contractual resources and competencies.

In the forest and paper& pulp industry case, it was most likely that the regulatory competition produced higher level regulation, or higher levels of environmental and social quality in the industry than under conventional authoritative regulation in the current global economy. Although the government partnered industrial certification is less ambitious than the NGO-led FSC, the engagement of industrial actors and government agencies has provided forest certification on a far greater scale than would otherwise be possible.

In terms of rule systems theory, these cases highlight a complex spill-over between governance through persuasion, power and legal authority. Partnered governance, in this perspective, activates complementary rule-sets in several roles and contexts, with possible mutually enforcing governance effects. However, in line with (Giddens 1979), Burns and Flam stress that rule systems should not be conceived simply as social constraints or limitations on action possibilities. They are also templates and strategic guidelines for offensive policies. The EITI is, for instance, struggling to create an arena for "cleaner" access to petroleum resources, with the effect of securing competitive advantage for industry with a commitment to decent governance standards and hopefully also ploughing more economic resources back to the populations of resource-rich countries. Similarly, the ETI contributes to solving issues with important stakeholders in the home market of socially responsible companies, potentially creating a competitive advantage for "clean" value chains. The FSC also offers an new opportunity for branding quality production.

Partnered Governance: Permanence or Transition

Playing on a rich repertoire of actors, strategies and tools, partnered governance carries a promise of improved outreach for social and environmental governance in a dominantly free trade global economy. There are divided views, however on whether this is a transitory stage on the way towards more conventional regulation or whether it represents a permanent governance feature.

According to the first perspective, partnered governance is seen as a transitory phase, in which government initiatives taken to meet challenges in the global economy are a stepping stone to future strong governance in the traditional regulatory mode. The premise is that partnered governance, as it develops, feeds into more formal collective action capability, either through solid intergovernmental agreements or through the establishment of international organisations or new governance programmes in existing ones. While partnered governance plays an important role initially, it becomes superfluous and gives way to more orderly regulation in the longer run.

According to the second perspective, partnered governance may be seen as a permanent approach to global governance, supplementing minimalist common denominator agreements in formal governance mode. The lack of legitimacy for strong global regulatory interventions in a culturally and linguistically diverse world leaves little hope of reaching this point even in the medium term. Rather, the advanced social and environmental agenda will be carried more permanently by states and companies with advanced social and environmental engagements which challenge the global economy in a partnered governance mode. As we have seen in our case examples, modern media society may, under certain conditions allow such actors to promote a far more advanced policy agenda, through partnered governance, than would have been possible in a traditional regulatory mode.

Partnered governance thus becomes part of a communicative process in several international arenas with a potential to partially transcend collective action problems and interest conflicts under traditional regulation. In line with Habermas (1981), partnered governance draws on the implicit regulatory power of discursive action in a communicative media society. In line with Luhman (1982, 1990), a major argument for partnered governance is also the issue of complexity, which to some extent forces global social and ecological order to arise out of a multipolar self-governance space.

Finally, the expanded repertoire of partnered governance does not only raise the issue of new modes of state-industry cooperation, but also of extending the repertoire of governance tools. In a recent study for the World Bank, Fox et. al. (2002) have highlighted how government, under partnered governance, must supplement their traditional mandating role with facilitating, partnering, and endorsing roles.

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