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When the World Rules Corporations: Pathway to a Global Corporate Charter

THE ASCENT OF TRANSNATIONAL CORPORATIONS poses fundamental questions of accountability, regulation and democratic process. Although their footprints cross continents, TNCs still operate under legal licenses granted by national or state authority. In order to rectify the incongruence between global impacts and state control, and to align corporate behavior with social and ecological purpose, we propose a World Corporate Charter Organization. By defining the obligations of TNCs, global charters would balance the current emphasis of international institutions, such as the World Trade Organization, on TNC rights. With public concern about corporate power on the rise, the moment is propitious for establishing transnational governance of transnational corporations, a precondition for attaining just and sustainable societies.

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In recent decades, the gap has widened between the imperative of sustainable development and the governance capacity of international institutions. Climate change, trade, and finance exemplify global issues that require coordinated solutions beyond the reach of our state-centric political order. We need a new generation of institutions to help guide our interconnected world toward a just and sustainable future. A priority, and perhaps precondition, for such global governance structures is the development of mechanisms for regulating transnational corporations (TNCs).

Over the past half century, the reach and impact of TNCs have soared, with 75,000 firms now operating in all sectors of the world economy. The revenues of many companies exceed \$100 billion per annum, with \$300 billion no longer rare and \$500 billion on the horizon. Of the largest economies in the world, approximately half are corporations rather than countries. The scale and influence of TNCs thus create an urgent need to address the question of global governance of such organizations. In the twenty-first century, the disjuncture between far-flung international impacts and feeble international accountability has become a glaring incongruity that demands redress.

We need new mechanisms for harmonizing TNC conduct with the overarching aims of environmental resilience, poverty alleviation and economic stability. Currently, international bodies such as the World Trade Organization and International Intellectual Property Organization protect the rights of TNCs; it is time to create global institutions for defining and enforcing their obligations to both the billions of people whose lives and livelihoods are affected by TNCs and to the whole global ecosystem on which all life depends. The World Corporate Charter Organization concept we advance here is one such governance innovation.¹

Imagining a Global Corporate Charter

The year is 2020. Nearly a decade of effort by a broad-based coalition of selected governments, enlightened TNCs, NGOs, labor organizations and community sustainability councils has led to the creation of the World Corporate Charter Organization (WCCO). WCCO has emerged as the authoritative body for granting global charters to TNCs, defined as commercial enterprises operating in multiple countries with revenues exceeding \$US 1 billion per annum. The global charter, which complements rather than supplants national charters and local enforcement mechanisms, is granted for 10 years. Renewal is subject to review and confirmation of a TNC's adherence to its charter obligations. The charters build on national and local regulatory and oversight regimes, thereby ensuring that TNCs adhere to an integrated set of rules that span various geographic scales.

Although WCCO charters remain voluntary, their numbers are rapidly expanding, driven by a combination of government mandates and incentives, the lure of competitive advantage, and NGO and consumer pressure, all underpinned by a broad movement of global citizens that is spurring a redefinition of societal expectations of business. In this context, negotiations have begun among G-20 members to create an international treaty that would transform the WCCO into a legally-binding regime for TNC regulation. The BRIC nations (Brazil, Russia, India, China) are playing a pivotal

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role in shaping the architecture of the enforceable global regulatory regime that now is within reach.

WCCO is governed by a multistakeholder board composed of a diverse group of directors who act as individuals, not as formal representatives of organizations. The Board's composition reflects a varied range of stakeholder interests – employees, managers, community, suppliers, investors, and consumers, along with advocates for human rights, environmental sustainability and future generations. Expertise in all aspects of TNC operations and impacts is included. Board committees mirror the range of WCCO responsibilities: charter content, approval, renewal, and enforcement, plus a governance committee to ensure that WCCO itself adheres to the spirit and letter of its own charter.

In sharp contrast to most national charters that contain little more than the name and address of the company, corporate directors, and the number and classes of shares, the WCCO charter is built on the premise that TNCs, as a condition for operating in the global arena, have an obligation to define and pursue a self-declared social mission. That purpose must be aligned with principles of sustainable development, specifically the widely accepted norms represented in the Earth Charter, Global Compact, International Labor Organization and the Global Reporting Initiative.

A typical WCCO charter comprises five parts. The **Mission Statement** declares the corporate mission and articulates its compatibility with and linkages to the principles of sustainable development. Some statements are quite general – “respect all applicable international social and environmental norms” – while others focus on particular lines of business: “defeat HIV/AIDS,” “empower the disadvantaged through IT,” “be the global leader in sustainable mobility systems.” All mission statements refer to the corporation's commitment to protect and advance the interests of its stakeholders.

The **International Norms** section describes how the corporation will align its strategy, policies and practices with generally-accepted norms for human rights, anti-corruption, labor practices, community impacts and environmental standards. The WCCO provides guidance on norms that qualify as “generally-accepted” at the global level.

The **Ownership** component addresses how the corporation's ownership structure aligns with its mission. These structures include various approaches such as weighting voting rights in favor of long-term shareholders, channeling a fraction of profits to a non-profit entity that over time secures controlling shares in the corporation, and granting share ownership to communities where corporate impact is great.

The **Governance** section specifies how the corporation advances its mission through specification of the duties and composition of the corporate board of directors, forms of stakeholder engagement, mechanisms for representing the interests of future generations, and internal reward and incentive systems.

Last, the **Accountability** section delineates the corporation's processes for regular public disclosure of its sustainability performance, along with mechanisms for receiving and integrating feedback from the organization's stakeholders.

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The charter is subject to enforcement through regular evaluation by WCCO to ensure that interpretation and implementation meet the obligations embodied in the charter. Major reviews are conducted at the time of the ten-year charter renewal, with an interim review after five years, to ensure that the corporation complies with its commitments. Failure to adhere to the charter’s provisions is cause for revocation, following a grace period for corrective action.

Precedents and Prospects

Voluntary global norms for TNCs have been championed by national governments, multilateral organizations, business associations, individual companies and NGOs. For their part, the TNCs have various motivations for adopting voluntary approaches, including the perceived commercial advantage of differentiating their products and services among “conscious consumers”; media revelations and NGO campaigns that expose environmental or human rights violations; and longstanding company culture of social responsibility often built on family legacy. However, despite some notable successes and incremental improvements, voluntary norms have failed to yield results commensurate with the scale and complexity of the sustainability imperatives facing the world today.

In the mid-1970’s, the UN Center for Transnational Corporations (UNCTC) launched a process for creating an international Code of Conduct. Two decades and thousands of pages later the effort ceased in the face of strong opposition from business. In 2000, the UN launched the Global Compact (UNGC), an initiative dedicated to advancing ten principles for responsible business practices that now claims over 5000 endorsers. In 2007, the UNGC released the Geneva Declaration, signed by CEOs from leading global corporations, affirming the urgent need to increase the commitment of businesses to address poverty, income inequality, and quality of work. In 2008, the UN Human Rights Commission issued a report on the relationship of corporations to human rights that emphasized monitoring, due diligence and adjudication mechanisms. Meanwhile, the Organisation for Economic Co-operation and Development (OECD) has issued Guidelines for Multinational Corporations and Principles of Corporate Governance.²

These and other voluntary initiatives have served as laboratories for experimentation in global control of TNCs. Still, their aggregate impact continues to fall well short of achieving the dramatic reductions in environmental impact and elimination of abusive labor practices and human rights violations that are central to the sustainability agenda. The challenge for the WCCO will be to transcend these initiatives in a gradual shift from a voluntary to a legally binding regime over the next decade. Though not a panacea, the chartering system would be an important step in closing the governance gap between TNC impacts and TNC accountability.

From Imperative to Action

The success of this groundbreaking effort will rest with sharpening public aware-

ness and mobilizing support for the need for such a global governance institution as a precondition for sustainable development. In an age of globalization, the notion that nation-states are the exclusive source of legitimate corporate control is an idea whose time has passed. Even with such recognition, however, the details of how to move toward a WCCO remain an open question.

One way to begin would be to form a Convening Group (CG) composed of individuals widely recognized for their contributions to corporate accountability at the global level.³ Within the CG, they would bring their experience, wisdom and moral suasion to bear on creating a global corporate charter process. Next, the CG would solicit contributions from key networks and leaders, and oversee drafting a Declaration of Purpose that sets forth the case for a global charter organization.

The CG might then appoint a Steering Committee (SC) to move from the conceptual stage to implementation, including introducing the Declaration of Purpose to constituencies around the world and joining with groups already linked to recognized codes and frameworks, as long as they subscribe to the Declaration of Purpose and to multi-stakeholder, transparent approaches to social change initiatives. A mid-range strategic plan would be developed to secure funding, establish the managerial structure of the incipient WCCO, and draft model templates for a global corporate charter.

After these steps are completed, the SC could proceed to organize a World Assembly on Corporate Charters with the primary goal of broadening and deepening engagement by expert and non-expert constituencies. Building on the preparatory work of the SC, the Assembly would aim to establish a common vision of corporate charters and inspire participants to carry this vision to their constituencies. Upon conclusion of the Assembly, the SC and its various working groups would finalize the charter creation process and framework, putting in place the key elements of the permanent WCCO. Concurrently, the WCCO would seek dialogue with governments to create a legally-binding charter regime within a few years of the WCCO launch.

Hardening Soft Law

The global charter concept is rooted in the conviction that control of TNCs must be aligned with their global reach, impact and influence. The multitude of voluntary initiatives on corporate accountability of the past two decades are “soft law” instruments that, while commendable, lack the muscle and enforceability of “hard law”. If the collective impact of voluntary approaches were sufficient to rectify the social and ecological imbalances facing the world, the case for a global charter would be weak. However, this is not the reality, and new planet-scale structures must evolve to fill the governance deficit.

In its first stage, the WCCO should aspire to “soft law” status by taking concrete steps to address growing concern about the chasm between the interests of global corporations, on the one side, and the public and the planet, on the other. Even in this voluntary phase, WCCO proponents inevitably will encounter public unease and political opposition to a shift in authority from the national to the global level. Indeed, it is virtually certain that a shift of this nature will trigger formidable opposition from TNCs themselves accustomed to chartering their enterprises under the lenient requirements of national systems.

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Nonetheless, the global financial crisis and ongoing ecological crisis promise to shift the political winds in favor of global institutions and agreements. For enlightened TNCs ready to position themselves at the vanguard, the WCCO will offer a mechanism for demonstrating leadership, advancing reputation and tapping the growing market for sustainable products and services. At some point the process may reach a tipping point at which governments, supported by an energized citizenry, step forward to shape an international agreement that shifts the WCCO from a de facto standard to a de jure institution.

With each passing year, it becomes clearer that standards of corporate accountability are inadequate for an emerging planetary, interconnected, and interdependent civilization. The WCCO approach offers the prospect of transforming impotent corporate charters into instruments that promote new corporate forms for the challenges of this century. The inclusive process envisioned here would herald a new era of accountable corporations functioning within an economy designed to protect the biosphere, foster solidarity and enable human fulfillment in the coming decades.

Endnotes

1. A “charter” specifies the terms governing corporate operations. Depending on national law, a charter may take the form of articles of association, articles of incorporation, company license or company registration.
2. UNCTAD, see <http://unctd.unctad.org/asp/index.aspx>; UNGC, see <http://www.unglobalcompact.org/>; Geneva Declaration, see http://www.unglobalcompact.org/docs/summit2007/GENEVA_DECLARATION.pdf; UNHRC, see <http://www.business-humanrights.org/Home>; OECD, see http://www.oecd.org/department/0,3355,en_2649_34889_1_1_1_1_1,1,00.html and http://www.oecd.org/document/49/0,3343,en_2649_34813_31530865_1_1_1_1,1,00.html.
3. The CG would be analogous to the Group of Elders recently assembled by Nelson Mandela “... who offer their collective influence and experience to support peace building, help address major causes of human suffering and promote the shared interests of humanity.” See <http://theelders.org/>

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