DEVELOPMENT OF GOVERNANCE SYSTEMS FOR

SUSTAINABLE DEVELOPMENT AND CONFLICT MANAGEMENT

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September 2008

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1. <u>INTRODUCTION</u>

It is impractical to engage everyone in an ongoing discussion of the entire world agenda. Individual governments, companies, or NGOs may wish the world well, and care on some abstract level about the extinction of black coral, or the sickening violence in Darfur. But when it comes time to allocate their scarce resources, their immediate priorities come first. Limitations on finances and management attention force us all to focus on a limited range of specific concerns.

Global processes tend therefore to be a patchwork of different clusters of governments, business, and civil society organizations focused on specific issues. There has been remarkable progress on some specific items of the agenda, where combinations of pressing events that focus world attention, exceptional leadership, and resources coincide. Unfortunately, the issues are all connected, so even when the conditions for progress exist, progress on one cluster of issues winds up being limited by stagnation on others.

A. *The Limitations of a Global Focus*

When we discuss global governance, we must not lose sight of the fact that the need for governance exists at a myriad of levels from the immediate and personal to the community, the region, the nation, and above. Success or failure at one level reinforces success or failure at other levels, making it extremely difficult to have effective global governance if the other levels are dysfunctional. If personal animosities within a tribe in Somalia create the intertribal conflict that helps makes Somalia a "failed state," then there is no way that global conferences about Somalia are going to improve this situation without action by the tribal peoples. But neither can the Somalis solve the problem on their own without external help.[1] Changing the dealings of great princes and potentates will get us nowhere if we fail to address the need for better, fairer mechanisms at the ground level.

It is imperative to remember that some of our most intractable problems come from trying to resolve issues at the wrong level, or impossibly bad coordination among different levels. One of the strongest sources of resistance to global mechanisms is the fear that it strips power from local centers where it may be more accountable, and concentrates that power in arrogant, distant, poorly understood institutions that are opaque and completely unaccountable. Only when we assure people that local decisions will remain local can we diminish this realistic fear of global institutions run amok.

Despite all the talk of a globalized world, and the reality that we do have some global issues that cannot be dealt with except by all of us together, such as global climate change or control of HIV/AIDS, most of what happens still is quite local, most of what goes wrong is local, and most of our brightest hopes are very close to home.

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[1] Ahmed, Ismail, and Reginald H. Green. "The heritage of war and state collapse in Somalia and Somaliland: local-level effects, external interventions and reconstruction". *Third World Quarterly*. 20:1, 1999. pp 113-127.

B. The Global Agenda

The closest thing we have to a relevant, broad-gauge global agenda is the idea of sustainable development.

> "If continued economic growth is necessary to reduce poverty, some suggest a choice between maintaining healthy and productive ecosystems and reducing the suffering of the poor. In trying to resolve this seeming contradiction, governments and leading thinkers have settled on giving equal weight to economic improvement of the lives of the poor and protecting the productivity of the earth's natural capital. This 'sustainable development' formulation...is as close as we have to a shared agenda for our future."[2]

The concept gained widespread currency since becoming the cornerstone of the United Nations Conference on Environment and Development (the Rio Earth Summit) in 1992,[3] where sustainable development was integral to the summit's blueprint for change, Agenda 21.[4] Then the 2002 World Summit on Sustainable Development in Johannesburg cemented the idea on the global agenda, and extended the concept beyond a marriage of poverty reduction and respecting environmental limits to include a 'third pillar' of social development.[5]

Currently, sustainable development is accepted and endorsed by virtually all the world's governments, NGOs, leading transnational corporations, and international organizations. There simply is no competing agenda with this kind of near universal endorsement, this intellectual content, and this momentum. As British environmentalist Jonathon Porritt says:

> "Sustainable development is the only intellectually coherent, sufficiently inclusive potentially mind-changing concept that gets even half-way close to capturing the true nature and urgency of the challenge that now confronts the world. There really is no alternative."[6]

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[2] Danielson, Luke. "Sustainable Development, Natural Resources, and Research". *Natural Resources and Environment.* 19:2, Fall 2004. pp 39 – 45. Quote from page 39.

[3] "Annex 1: Rio Declaration on Environment and Development". *Report of the United Nations Conference on Environment and Development.* United Nations General Assembly. http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm

[4] http://www.un.org/esa/sustdev/documents/agenda21/index.htm

[5] http://www.un.org/jsummit/index.html

[6] Dalal-Clayton, Barry, and Stephen Bass, eds, from IIED. *Sustainable Development Strategies: A Resource Book.* Organization for Economic Cooperation and Development, Earthscan Publications, 2001.

C. *From the Agenda to Action*

Moving from general principles to concrete actions is not easy, especially with such an enormous agenda of problems to solve. The immediate question therefore is how to subdivide it into manageable pieces.

The Johannesburg Summit solution was to divide it by economic sectors. This created constituencies of businesses, governments, and civil society organizations who had pressing issues in common and could create some action in their sector. In this context, 'sector' came to include not just companies making a specific product, but their suppliers, customers, governments of countries in which this activity is a major part of the economy, NGOs who focus on this industry, communities impacted by the industry, the relevant labor unions, and other affected parties.

Since its beginning, the sector system has been the basic organizational principle of the Johannesburg Summit,[7] integrated into the World Business Council,[8] the Global Compact,[9] the Global Reporting Initiative,[10]and a variety of other structures. Much of the 'action' on global governance, and the solid steps forward, are in these sector-specific processes. In other words, global governance has become, in many ways, *sector governance*. Sector governance then further arranges itself into a sort of hierarchy:

ENGAGEMENT FOR GLOBAL GOVERNANCE			
LEVEL	**GUIDING DOCUMENTS**	**TYPICAL PARTICIPANTS**	**PURPOSE**
GLOBAL	Agenda 21; Johannesburg Declaration; Global Compact Policy Framework for Investment	UN Secretariat OECD World Bank Group WBCSD IUCN	Establishing framework for sustainable development
SECTORAL	ICMM Charter	UNDP	Reorienting the world mining and

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[7] A detailed analysis of the Summit organization can be found at their website, www.earthsummit2002.org, particularly at www.earthsummit2002.org/ic/process.html and www.earthsummit2002.org/msp/index.html

[8] wbcsd.org/templates/TemplateWBCSD1/layout.asp?type=p&MenuId=NzU&doOpen=1&ClickMenu=LeftMenu

[9] http://www.unglobalcompact.org/

[10] http://www.globalreporting.org/ReportingFramework/SectorSupplements/

			minerals industries to conform to sustainable development principles
	GRI Mining and Metals Sector Supplement Breaking New Ground	ICMM[11] EuroMetaux Earthworks WWF IUCN[12]	
ISSUE SPECIFIC	Extractive Industries Transparency Initiative Principles[13]	World Bank Group Transparency International Global Witness Mining Companies	Developing workable rules to limit secret payments to government and government officials at all levels, tackling the corruption issue
FOCUSED PROCESS	The Dialogue Mining Group[14] of Peru	Peruvian Finance Ministry and Ministry of Energy & Mines Ciudadanos al Día[15] Buenaventura[16] Newmont[17]	"Provide practical experience in capacity building for stakeholders and generate trust among them"[18] in an attempt to prevent and control corruption in the mining sector in Peru

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[11] International Council on Mining and Metals www.icmm.com

[12] International Union for the Conservation of Nature: www.iucn.org

[13] EITI Principles can be found at: http://eitransparency.org/eiti/principles

[14] DeEchave, Jose. "Dialogue Processes: Evolution and Stages" *Conflict, Consensus, and Dialogue in the Mining Sector.* Published by the Mining Policy Research Initiative and the Internation Development Research Center, 2004.

[15] An NGO that focuses on government transparency. See http://www.ciudadanosaldia.org/

[16] Grupo Buenaventura: http://www.buenaventura.com/

[17] Newmont Mining owns the largest gold mine at Yanacocha in Peru. www.newmont.com/en/

[18] Page 4, "Dialogue Processes: Evolution and Stages"

These 'sector dialogues' are not always formally organized or institutionalized, nor are there always formal links between one level and another. By and large dialogues do not have offices, charters, personnel, or the like.[19] Some examples of dialogue include:

> The dialogue among large mining companies, through the ICMM, environmental groups, the IUCN, and indigenous peoples' groups, over mining in forest reserves and protected areas.

> The dialogue among information technology companies, cell phone makers, automobile makers, and civil society organizations about the extent to which information technology can substitute for physically moving people around, in light of the environmental impacts of transportation.[20]

> Academic institutions, international organizations, technology services, and governments are engaged in a dialogue surrounding the South-to-North 'brain drain', the extent to which it is harmful to countries losing qualified professionals, and possible methods for slowing it.[21]

2. THE MAJOR GROUPS OF ACTORS

Discussing important actors like "transnational corporations" and "governments" as if they were monolithic blocs oversimplifies and misleads. It is precisely because there are so many quarrels and differences within these putative groups that they have trouble coalescing and moving forward.

The majority of the world's people and interest groups lack the internal organization and/or resources to effectively engage in amorphous global processes. As a result, the "voices of the poor" and a lot of other voices are not much heard in global decision-making.[22] Imbalance of access is critical to understanding global governance and certain sources of conflict and violence for various reasons:

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[19] This may be one of their weaknesses. Unless there is a designated secretariat to set meetings, clear calendars, and build agendas, the process may very well die.

[20] The WBCSD has a sector project entitled "Sustainable Mobility". See:
wbcsd.org/templates/TemplateWBCSD1/layout.asp?type=p&MenuId=MTQ0&doOpen=1&ClickMenu=LeftMenu

[21] The World Banks's Trade and Development Series has compiled a certain amount of information on the Brain Drain dialogue. The report is: "International Migration, Remittances, and Brain Drain"
http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/TRADE/0,,contentMDK:20792154~isCURL:Y~menuPK:56102 7~pagePK:148956~piPK:216618~theSitePK:239071,00.html#new_pubs

[22] The *Voices of the Poor* series gives a good grasp of this issue. *Voices of the Poor: Vol. 1: Can Anyone Hear Us?*, *Vol 2: Crying out for Change*, and *Vol. 3: From Many Lands*, World Bank Publications.
See also: Norris, Pippa. *Digital Divide: Civic Engagement, Information Poverty, and the Internet Worldwide.* Cambridge University Press, 2001.

> **Ill informed decision-making results in bad decisions.** Indigenous populations, such as the "Pygmies" of the Congo or certain tribes of the Brazilian Amazon, have known how to harvest the rainforest sustainably for centuries. Despite their lack of doctoral honors, they are the ultimate experts. But most 'global decision makers' fail to consult them.[23]

> **The struggle to be heard has a tremendous influence on governance.** Much of the turbulence in global governance is a result of people whose interests are not represented attempting to find some way to have a say.

> **Legitimacy and Surrogates.** If the President of South Africa, the Secretary General of ICEM, or the CEO of General Electric show up at an international meeting, no one questions their right to speak for their citizens, members, or company. Someone appearing as the representative of 'all' the world's indigenous peoples may have questionable legitimacy. Developed country NGOs have served well as advocates for the poor, but until the poor speak for themselves, there will always be a legitimacy question.[24]

> **Conflict.** We believe giving aggrieved people access to the process of governance is probably the most important single step in reducing the potential that the conflict will lead to violence.

Simplification is necessary to make the complex reality of world governance comprehensible. For this reason we talk about governments, transnational corporations, civil society organizations, and international organizations as major participants in world governance. But if we forget that this leaves out most of the people in the world – or worse, become complicit in their exclusion because it makes our model tidier – we quickly become part of the problem rather than the solution.

A. Governments and Global Governance

There is a tendency in some quarters to write national governments out of global governance.

Some NGOs and community activists are frustrated at the unwillingness of governments to move faster to implement and enforce environmental controls or to respect human rights. They may see building global governance as an opportunity to exclude 'corrupt and inefficient' government. Business leaders conditioned to believe that the state is pernicious, and frustrated by the manifold capacity deficits of government in developing countries, may see excluding government as a key to an ideal world without government incompetence and red tape. There is thus a potential for an alliance of predominantly 'northern' TNCs, and predominantly 'northern' NGOs to enforce their shared values on the governments of the global South.

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[23]"Congo's Forests: Our Forests, Our Future!". *The Magazine of Belgium Development Cooperation*. June 2007. http://www.btcctb.org/doc/UPL_2007081410413416455.pdf
Reichel-Dolmatoff, Gerardo. 1999. "A Well-Adapted Life". Pages 41-46. Place, Susan E, ed. *Tropical Rainforests: Latin American Nature and Society in Transition.* Revised and updated edition. Scholarly Resources Inc: Delaware, 2001.

[24] This is also true of foundations and funders, who are almost all in the north. Developing country groups may appreciate the resources that help them get messages across, but there is often a price: it is the foundation's message that they need to repeat, not their own.

Still others argue that if nation states participate in setting global rules, then those rules may be challenged before the WTO as violating GATT principles.[25] GATT does not prohibit discriminatory private decisions, but does prohibit discriminatory conduct by states.

However, others believe that:

> Governments are necessary to maintain order and enforce nonviolent resolution of disputes;

> Where states 'fail,' violence often reigns supreme, and reestablishing the state is seen a necessary requisite for peace;[26]

> Governments can be the principal purveyors of violence, the principal promoters and customers of the arms trade, and the principal backers of armed groups on the territories of rival governments; and that

> As unrepresentative as government may sometimes be, it has more potential to be accountable than do TNCs or institutions like the WTO or World Bank.

Including government in initiatives together with other kinds of actors is not easy. Government is acutely conscious of its special role, its legitimacy, and its prerogatives. It is very difficult for an elected Minister to sit down on a basis of equality with "two youths with a website."

The lack of "joined up government"[27] means that the message one gets when engaging with government depends on which *part* of government we are talking with. To some extent this is natural: different ministries have different constituencies and orientations. But most governments have considerable trouble bringing the disparate viewpoints together into a coordinated policy and enforcing it internally. The poorer a government is, and the less capacity it has, the greater the problem can be. The worst cases may be where the military and the police are part of what is not 'joined up," i.e. are resistant to direction from the civilian branches of government.[28]

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[25] Conroy, Michael. Branded!: How the 'Certification Revolution' is Transforming Global Corporations. New Societies Publishers, June 2007.

[26] "The role of state failure as cause and consequence of conflict and civil war has highlighted the importance of governance in establishing peace, pursuing state reconstruction and avoiding conflict in the first place." Page 3 Brinkerhoff, Derick W. "Rebuilding Governance in Failed States and Post-Conflict Societies: Core Concepts and Cross-Cutting Themes". *Public Administration and Development*. Vv25, 2005, pp 3-14. Wiley InterScience On-line.

[27] Coined by Tony Blair, this phrase is the idea that different departments in a single government ought to work together in a highly coordinated fashion. "So What Is Joined-Up Government?" Special Report, *e-cyclopedia,BBC*. Nov 23, 1998. http://news.bbc.co.uk/2/hi/special_report/1998/11/98/e-cyclopedia/211553.stm

[28] "Too High a Price: The Human Rights Cost of the Indonesian Military's Economic Activities". *Human Rights Watch*. June 2006. http://hrw.org/reports/2006/indonesia0606/

GOVERNMENT GROUPS		
Grouping	**Number of Countries**	**Comments**
The G-8[29]	8	The Group of 8 (G-8), is an international, more-or-less informal forum for eight leading governments (US, UK, Russia, Japan, Germany, France, Italy, Canada) to discuss, in yearly meetings, issues of global and mutual concern. In 2008, the European Union participated as a formal 9th 'country', with the same rights as the other G8 members.
The OECD[30]	30	The Organization for Economic Cooperation and Development, comprised of countries that share the values of free-market economy and democracy, gathers statistics, analyzes economic trends, and forecasts economic development, creating a forum for these governments to discuss common problems and coordinate policies.[31]
The HIPC countries	41	The Heavily Indebted Poor Countries are those countries with such extreme levels of poverty and debt that the IMF[32] and World Bank[33] have agreed to provide them with debt relief.
The G-77[34]	130	The Group of 77 is "the largest intergovernmental organization of developing states in the United Nations, which provides the means for the countries of the South to articulate and promote their collective economic interests and enhance their joint negotiating capacity on all major international economic issues within the United Nations system".
UN Security Council[35]	5 + 10	The Security Council consists of 5 permanent members (US, UK, Russia, France, China), the only members with veto power, and 10 non-permanent members who participate for 1 year terms.
UN General Assembly[36]	192	The General Assembly consists of all the members of the UN, and it is the main deliberative UN body.

The frustrating task of trying to get consensus among 200 governments, especially when many are perceived to be internally divided, slow to act, and needing external financial resources to participate,

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[29] http://www.g8summit.go.jp/eng/

[30] www.oecd.org

[31] http://www.oecd.org/pages/0,3417,en_36734052_36734103_1_1_1_1_1,00.html
[32] http://www.imf.org/external/np/exr/facts/hipc.htm

[33]http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTDEBTDEPT/0,,contentMDK:20260411~menuPK:64166739~pagePK:64166689~piPK:64166646~theSitePK:469043,00.html

[34] www.g77.org

[35] www.un.org/sc

[36] www.un.org/ga

means that much of the government-to-government decision-making tends to gravitate to the smaller "clubs" whose members are the "real players" – the G-8, the OECD, the Security Council.[37]

But the current areas of conflict tend to be in the countries at the other end of the spectrum – the HIPC, for example. So unless we want to pursue a "top down" approach in which the solutions are cooked up outside the conflict regions and imposed by external forces, we need to engage precisely with some of the weakest and least capable governments.

B. The private sector, especially TNCs

Despite all the talk of "stateless" transnational corporations, companies still have national identification. The British government takes sides when the BP/TNK joint venture partners feud[38] and so do the Russians; and when CNOOC, tries to acquire another company, it matters a great deal to both the U.S. and the Chinese governments.[39]

The deep identification of transnationals with their countries of origin creates some of today's opportunities for progress. Royal Dutch Shell is based in European countries that have a free press, inquiring reporters, and a vibrant civil society. When the Nigerian government, tiring of Ogoni activism, hung Ken Saro-Wiwa,[40] one result was a colossal set of traumas for Shell.[41] Blacklisted by NGOs and global opinion formers, Shell embarked on a profound internal examination of business practices, which included a $4.5 million commission that assessed the environmental needs, community outreach, and

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[37] There is a school of thought that believes that organizations like the G8 and the OECD, need to take the lead in dealing with conflict, because they have the resources and the organizational capacity that the little players lack. One proponent of this idea is former World Bank official Paul Collier.
Collier, Paul. *The Bottom Billion: Why the Poor Countries Are Failing and What Can Be Done About It.* Oxford University Press, 2007. Page 185.

[38] BP/TNK is an extremely productive, profitable oil company jointly run by BP of Britain and four Russian billionaires. However, it is currently facing considerable turmoil, involving the governments from both countries. Stott, Michael. "Fate of TNK-BP joint venture lies in a Russian tussle". *International Herald Tribune*, July 7, 2008. http://www.iht.com/articles/2008/07/07/business/bp.php

[39] "...real or imagined national security factors may adversely affect energy industry acquisitions, as illustrated by the recent failed acquisition of Unocal by China's state-controlled CNOC Ltd." From:
Risman, Lawrence J. "Energy Policy Act of 2005: Who is Left Behind?" *Global Energy Decisions.* 2005.
http://www.globalenergy.com/BR05/BR05-energy-policy.pdf

[40] "Ken Saro-Wiwa [was] a Nigerian activist who claimed that the regime of dictator Sani Abacha and Royal Dutch/Shell together were complicit in oppressing his Ogoni tribe. Though it was not apparent at the time, Saro-Wiwa's death -- by hanging, at the hands of Abacha's forces -- sparked what might be considered the contemporary corporate social responsibility movement." Bart Mongoven, *A Death in Nigeria: Ken Saro-Wiwa and the CSR Movement.* Stratfor, PUBLIC POLICY INTELLIGENCE REPORT, Nov 9, 2005.
http://www.utexas.edu/conferences/africa/ads/1322.html

[41] The judicial killings of the Ogoni activists coincided with the firestorm set off by Greenpeace's occupation of Shell's abandoned Brent Spar oil storage platform. This made 1995 even more difficult for Shell.
http://www.britannica.com/EBchecked/topic/78827/Brent-Spar

stakeholder communication. The most tangible result was the complete revision of their Business Principles to include sustainable development.[42]

But this connection is also a fundamental cause of the lack of the 'level playing field.' Overseas investors from some countries, like the BRIC countries,[43] do not face this same sort of social check and balance mechanism, whether the issue is environment, corruption, or human rights. Western business executives see China's policy of "no strings attached" to aid or trade[44] as a serious commercial threat.[45] While the policies of Russian, Indian, and other 'emerging' overseas investors are not as blatantly contrary to western views, they are not too far behind.

Many northern NGOs feel threatened as well because China's official position is that human rights and environmental problems are relative, and that sovereign nations should be free to define abuses and solutions in their own ways.[46] As the Sierra Leonean ambassador in Beijing observed, the result of this position is that Chinese corporations "just come and do it. We don't hold meetings about environmental-impact assessment, human rights, bad governance and good governance...Chinese investment is succeeding because they don't set high benchmarks."[47] NGOs see this concept, so very different from the general western perspective, as a distinct lack of regard for any 'good governance' policies that threatens to undo decades of painfully slow progress in human rights, democracy, and environmental protection.[48]

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[42] Wheeler, David, et al. "Shell, Ogoni, and Nigeria: A Study in Unsustainable Development: I – III". *Sustainable Development Journal.* 2001. Wiley Interscience.

[43] BRIC countries refer to a set of emerging international players – while the name came from "Brazil, Russia, India, and China," there are other countries in this alignment.

[44] "The only countries where China has become the pre-eminent ally and commercial partner are those that have been ostracized by the West, such as Myanmar and Sudan. In both places China's diplomatic support and investment has made it easier for nasty regimes to defy international pressure. And in both places China's pay-off comes in the form of natural resources." From: "China's Quest for Resources: No Strings – Why Developing Countries Like Doing Business with China" *The Economist.* March 13, 2008.

[45] "China-Africa Relations: Two Perspectives". *National Public Radio: Day to Day.* Speakers: Donald Straszheim and Adama Gaye. February 2, 2007.

[46] S Gupta, Internal Research Report for SDSG (unpublished), July 2008.

[47] Behar, Richard. "Special Report: China in Africa (Part 2) Mozambique: A Chain Saw for Every Tree". *Fast Company.Com.* http://www.fastcompany.com/magazine/126/mozambique-a-chain-saw-for-every-tree.html?page=0%2C1 Page 2.

[48] Chinese multinationals have also become very close to the government of Robert Mugabe in Zimbabwe and the government of Equatorial Guinea, whose President, Teodoro Obiang Nguema Mbasogo, is notorious, *inter alia*, for his founding of a state religious cult in which he is worshipped as a god. "Most domestic and international observers consider his regime to be one of the most corrupt, ethnocentric, oppressive and undemocratic states in the world." http://en.wikipedia.org/wiki/Teodoro_Obiang_Nguema_Mbasogo
"Mugabe signs aid deal with China" http://news.bbc.co.uk/2/hi/africa/4713961.stm
"China, Equatorial Guinea vow to enhance economic co-op". http://www.fmprc.gov.cn/zflt/eng/zxxx/t217757.htm

including the emerging countries does have the potential for a more 'level' playing field and set of rules that can reduce human rights abuses and violence. It also has the potential to become protectionist, on at least three fronts: the 'established' vs. the 'emerging' investors, the big versus the small, and the rich versus the poor:

1. Do we try to include the Chinese, Indians, Russians and other 'emerging' investors in the developing international system of standards? Or do we use it to keep them out until they conform to western values?

2. TNCs are more organized to engage on a global level than are the medium, small, mainly national enterprises that provide the vast bulk of world employment and livelihoods. Some countries from the developing world fear that all the talk of global standards of governance is a cloak for developing a system that only the big can comply with, a global 'Wal-Mart code' closing down all the main street shops in the world, all in the name of environment, human rights, and preventing conflict.[49]

3. There is also a realistic concern that such a system of rules will result in a net wealth transfer from the poor to the rich, particularly if the poor lack any voice in its formation.

The enormous and growing economic power of transnational corporations plus the political power of their host states motivates many developing countries to form their own national companies in sectors like oil and gas, mining, and water supply. It continues to make nationalization attractive to many in the developing world.[50] One of the fundamental tensions affecting the business sector today is that the pendulum, which swung very far away from state run enterprises in the 1980s and 1990s, may be swinging back,[51] much to the alarm of those who were convinced the danger of nationalization had forever passed.[52]

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[49] "Are private sector standards a barrier to trade?" June 7, 2008.
http://www.unctad.org/Templates/Page.asp?intItemID=4285&lang=1

[50] General Pinochet, who undid almost all the nationalizations undertaken by his socialist predecessor, and one of the world's great exponents of privatization, never privatized the Chilean state copper company, CODELCO. This is also a key issue for Iraq's future. See: http://www.iraqupdates.com/p_articles.php/scat/43

[51] The most prominent example is the Chavez government's treatment of Exxon and other multinationals in Venezuela, which is widely admired in some circles in Latin America and elsewhere. See "OPEC Supports Venezuela in dispute against Exxon Mobil", *People's Daily Online*, March 6, 2008, http://english.peopledaily.com.cn/90001/90777/90852/6367600.html
See also "London Court Rules in Favor of Venezuela in Dispute with Exxon," March 18, 2008, http://www.venezuelanalysis.com/news/3283

[52] The desire for a higher level of nationalization and national autonomy is a large part of what led Bolivia, Nicaragua, and Venezuela to leave the International Center for Settlement of Investment Disputes (ICSID). As Foreign Direct Investment increases, the ICSID has seen a sharp increase in disputes, followed closely by an increase in countries threatening to leave ICSID.
Weisbrot, Mark. "A New Assertiveness for Latin American Governments". *Center for Economic and Policy Research*. June, 2007. http://www.cadtm.org/spip.php?article2618

At least 'Western' transnational corporations[53] are generally convinced of the value of stronger global governance, for a variety of reasons. The first major motivator is the 'level playing field,' meaning that their susceptibility to the pressures of civil society will be less of a liability because those pressures will apply to everyone. Increasingly, western TNCs are concerned lest their competitors take 'short cuts' that they cannot, in areas like public association with authoritarian governments, child labor, repression of local complaints, environmental abuse, corruption of local officials, arming militias, etc.

Multinationals are not only restrained from practices they might pursue directly; they are increasingly under pressure related to activities of suppliers or subcontractors. No one ever accused DeBeers of cutting the hands off small children who refused to work in diamond pits, but the fact that they were buying diamonds, even indirectly, from people who did, caused the company quite enough damage.[54] The fact that some of the alleged labor abuses were by Nike subcontractors rather than Nike itself didn't mean that the public let Nike escape responsibility.[55] Nokia wound up under pressure because independent artisanal miners of coltan, used in cell phone capacitors, invaded the last reserves of the mountain gorilla.[56]

The demand for supply chain assurance[57] gives TNCs motive to make sure their competitors are also required to comply, which only global governance can achieve. But even if standards equalize the competition among TNCs, there are plenty of other competitors that escape these standards:

> Privately held 'shadow companies,' such as those who now run much of the world shipping business,[58] the unidentified companies that are now said to produce as much as a quarter of Indonesian coal,[59] and most of the fleet of illegal 'drift netters.'[60] These companies face little public pressure, because no one knows who they are or how to put pressure on them.

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[53] And a few other countries with free press and active civil societies, such as Japan and Australia.

[54] Karon, Tony. "Why DeBeers Wants You 'Blood-Diamond'-Savvy". *Time.* July 13, 2000. http://www.time.com/time/nation/article/0,8599,49841,00.html

[55] NikeWatch, at Oxfam Australia: http://www.oxfam.org.au/campaigns/labour/

[56] Essick, Kristy. "Guns, Money, and Cell-Phones". *The Industry Standard Magazine.* June 11, 2001. http://www.globalissues.org/article/442/guns-money-and-cell-phones

[57] The idea that every step in the supply chain, from the suppliers of all the raw materials that go into the final product to the manufacturers of the final product itself, conform to standards.

[58] Langewiesche, William. *The Outlaw Sea: A World of Freedom, Chaos, and Crime.* North Point Press, 2004.

[59] Krismantari, Ika. "Government rues illegal coal export". *The Jakarta Post.* March 14, 2008. http://www.thejakartapost.com/news/2008/03/13/government-rues-illegal-coal-export.html

[60] 'Drift-netters' are the poachers of the high seas, who employ nets over 30 miles long and catch, along with legitimate fish, a large variety of species that they shouldn't.
See: http://www.cbc.ca/canada/story/2007/09/28/illegal-driftnet.html

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> Companies located in countries where there isn't an active civil society, communication is not free, and there is no free press to mobilize opinion.

> State owned companies.

> 'Home country' companies, who are not international players and hence not required to meet international standards.

A second major motivator for the transnational companies to want more stable governance is making markets more efficient. Even companies who profess to despise government regulation usually are quite content with a government that prevents people from stealing their merchandise, has honest mechanisms to pursue people who don't pay their debts or flout contractual obligations, and has a banking system in which depositors get their money back. There are still many places in the world that lack this kind of stable and orderly market condition.[61]

Transparency is a closely related issue. Where the weights and measures are not fair, where sellers habitually lie about their merchandise with no adverse consequences, and where accounting standards are invented daily, the cost of due diligence becomes overwhelming and makes doing business nearly impossible.

Finally, there is the question of stability of investment conditions. Investors, especially long term investors, make some fairly difficult evaluations of the potential profitability of their ventures. If a company makes a decision today to begin a major new mining project, it will be something like six to eight years, before there is any production and revenue. It will probably be at least fifteen years before the capital investment of something around a billion dollars is recovered, and maybe twenty before there is a considerable profit.

If in this time period the conditions of investment change dramatically – there are tax increases, or expensive new environmental requirements, or the government insists on becoming a joint venture partner without contributing any money – the investment may be jeopardized in its entirety.

C. *Civil Society*

Civil society organizations, like governments and businesses, operate on all possible scales from the very local to worldwide. They are incredibly numerous and diverse, and play a variety of useful and necessary roles. They have helped compensate for the manifold failings experienced by traditional government in the wake of the forces of globalization, and build the encouraging trend toward democracy and recognition of human rights. They have been the advocates for the poor, and those excluded from dialogue.

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[61] A foreign mining company in one of the Central Asian republics reported that the only way that it could get needed supplies to its mine site was to weld the supplies inside rail cars behind steel plates, and to have a substantial contingent of Special Forces troops aboard each train, armed and ready to shoot. This certainly increases the cost of doing business.

They also, like the other players, range in quality from the brilliantly managed to the adequate, to the regrettable. Because of their diversity and independence, they have been slow to develop means for distinguishing the good performers from the hopeless.

Among their key strengths are:

> Their ability to **focus public attention** on problems and injustices over a period of time. The human rights movement as it is today simply would not exist without Amnesty International, or Human Rights Watch, or Global Witness, and dozens of national and local counterparts.

> Their agility and ability to **capitalize on specific events**. NGOs are extremely adept at using events from Bhopal,[62] or the Exxon Valdez Oil Spill,[63] or the Amoco Cadiz,[64] or Baia Mare,[65] or a long list of other disasters to get their message to the public. In the absence of strong global institutions capable of setting an agenda, the global agenda is set by those capable of galvanizing public attention, and this has to a remarkable extent been NGOs. They are considerably better at effective messaging than their corporate counterparts.

> **Their credibility.** McDonald's could have stopped buying chicken fed on Amazon rainforest soy crops and moved to a different supplier by partnering with some paid commercial consulting firm. This might have been a smart and worthy move. But the company would never have captured anything like the value it got from working with Greenpeace, especially after years of confrontation and lawsuits.[66]

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[62] "On the night of Dec. 2nd and 3rd, 1984, a Union Carbide plant in Bhopal, India, began leaking 27 tons of the deadly gas *methyl isocyanate*. None of the six safety systems designed to contain such a leak were operational, allowing the gas to spread throughout the city of Bhopal. Half a million people were exposed to the gas and 20,000 have died to date as a result of their exposure. More than 120,000 people still suffer from ailments caused by the accident and the subsequent pollution at the plant site..."
"What Happened in Bhopal?" http://www.bhopal.org/whathappened.html

[63] On March 24th, 1989, the *Exxon Valdez* oil tanker ran aground on the Alaskan coast, spilling 11 million gallons of oil onto the beaches and contaminating nearly 1,300 miles of shoreline. A cleanup was attempted, but after 4 years the effort, involving 10,000 workers, 1,000 boats, 100 aircraft, and $2.1 billion, was called off. Although it is not in the top 50 biggest oil spills, it is certainly one of the most environmentally damaging.
http://www.evostc.state.ak.us/

[64] Another extremely large oil spill off the coast of Brittany, France. The *Cadiz* dumped over 1.6 million barrels of oil into the sea and polluted 200 miles of coastline. http://www.incidentnews.gov/incident/6241/

[65] On January 30, 2000, a 25-meter section of a retaining wall for the tailings pond of a gold and silver mine in Baia Mare, Romania, broke. "10,000 cubic meters of tailings, including 50 to 100 tons of cyanide...entered the Sasar River and made its way into the Somes River, which crosses into Hungary, then entered the Tisa River and the Danube...killing tens of thousands of fish and other wildlife and poisoning drinking water". See: Argeseanu, Solveig. "Incident, Accident, Catastrophe: The Baia Mare Cyanide Spill" *Paper presented at the annual meeting of the American Sociological Association, Hilton San Francisco & Renaissance Parc 55 Hotel, San Francisco, CA, Aug 14,* 2004 http://www.allacademic.com/meta/p_mla_apa_research_citation/1/0/9/1/8/p109181_index.html

[66] In 2003, Greenpeace began exposing the extent of the Amazon deforestation and looking for culprits. Amazon farmers were clearing the rainforest to plant soy, which then went to feed vast chicken farms, which were then bought by chain restaurants to make Chicken Nuggets. Greenpeace targeted McDonalds in its campaign, as the

The environmental organizations are perhaps the most organized on a global level. They have a unique forum and coordinating body in the International Union for the Conservation of Nature (IUCN), also known as the World Conservation Union.[67] Its immense organizational structure and decades of experience make it the perfect forum for UN agencies, governments, NGOs, and businesses to come together to find viable solutions to conservation and ecological sustainability challenges.

While there is no counterpart of IUCN for the human rights organizations, there is high level coordination among the leading global NGOs targeting the issue. NGOs have created an NGO Working Group on the UN Security Council which monitors and to a certain extent even influences the workings of the council and coordinates information and action amongst its 30 members, who include such influential giants as Amnesty International, Human Rights Watch, Médecins Sans Frontières, and OXFAM International, among others.[68]

D. The Others

There are other social actors and forces that do not fit neatly into the government-industry-civil society mold, but which play a critical role in building governance.

> The news and information media: the credibility of information from sources perceived as independent is important to giving the other actors some shared information base, which is vital in allowing differing groups to communicate.

> Academic and research institutions: often perceived as independent of the forces in conflict and thus able to get an audience for their ideas that crosses the lines of social cleavage.

> Indigenous Organizations, which generally do not like being called 'civil society.'

> Labor Unions, which share interests with both management and NGOs, and therefore can be a useful bridge in any dialogue.

3. THE GOVERNANCE FRAMEWORK AT THE GLOBAL LEVEL

At the most general level of global governance are those principles and institutions designed for broad, worldwide application.

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most high-profile client, and McDonald's, realizing the extent of the problem and feeling the pressure from civil society, teamed up with Greenpeace to halt its trade in products from the deforested Amazon. An excellent summary of the relationship can be found here: Kaufman, Marc. "New Allies on the Amazon: McDonald's, Greenpeace Unite to Prevent Rainforest Clearing". *Washington Post.* April 24, 2007. http://www.washingtonpost.com/wp-dyn/content/article/2007/04/23/AR2007042301903.html
The Greenpeace website also contains large amounts of information and press about their campaign against, and then with, McDonalds. http://www.greenpeace.org/international/footer/search?q=McDonalds

[68] "NGO Working Group on the Security Council". *Global Policy Institute.* March 2008. http://www.globalpolicy.org/security/ngowkgrp/index.htm

A. The Global Compact

The Global Compact is a United Nations initiative.[69] The Compact grew out of a 1999 speech by Kofi Annan in which he suggested that to make globalization more equal and inclusive, businesses needed to act in accordance with certain universal principles.[70] Annan suggested nine principles. There are now ten, in the areas of human rights, the environment, labor, and anti-corruption.[71] The goal of the Compact is to mainstream the principles into businesses world-wide, through facilitation and engagement programs, in an effort to build trust and social capital in sustainable markets.

The Global Compact Board, chaired by the United Nations Secretary-General, is designed as a multi-stakeholder body. While the core revolves around the UN, as the convener and facilitator, it also includes businesses, governments, labor, and civil society organizations. The Compact's main focus is business behavior. Over 4300 businesses, through local and global associations or independently, participate in the GC, by embracing, supporting, and enacting the 10 principles.

Because the Compact is a voluntary initiative, it relies almost entirely on public accountability and transparency, which is where civil society organizations have their biggest role. There are 40 global and 582 local NGOs currently participating in the Compact, together with 36 labor unions and 248 academic institutions.

Governments can also participate in all levels of the Compact, since in many cases their cooperation is essential for effective and meaningful active implementation of the principles. Participating governments foster enabling environments where responsible business practices are supported and encouraged.[72]

Despite these measures to help legitimize the GC, it has its fair share of critics and failures.[73] In an attempt to boost its reputation, the GC implemented a 'delisting' policy to help increase the credibility of the enlisted countries. Since the policy was put into effect in January 2008, 630 companies have already been delisted and 184 more are soon to follow.[74]

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[69] See http://www.globalreporting.org/Home

[70] Ethical Corporation, Feb. 25. 2003. http://www.ethicalcorp.com/content.asp?ContentID=403

[71] http://www.unglobalcompact.org/AbouttheGC/TheTENPrinciples/index.html

[72] Al Khalifa, S.E. Sheikha Hayarashed. "Chairperson's Summary of Ministerial Roundtable on the Role of Governments in Promoting Responsible Corporate Citizenship". *United Nations Global Compact Leaders Summit*, July 6, 2007. http://www.unglobalcompact.org/docs/summit2007/Role_of_Governments_Chairs_summary.pdf

[73] For a scholarly assessment of some of these critiques, see Williams, Oliver F. "The UN Global Compact: The Challenge and the Promise" *Business Ethics Quarterly*. 14:4, 2004. 755-774.

[74] "UN Global Compact Delists 630 Members". June 30, 2008.
http://www.environmentalleader.com/2008/06/30/un-global-compact-delists-630-members/

B. *The Global Reporting Initiative*

The Global Reporting Initiative had its origins in the North American non-profit CERES Coalition,[75] but became independent, with support from UNEP, in 2001.[76]

> "GRI is a worldwide, multi-stakeholder network. Business, civil society, labor, investors, accountants and others all collaborate through consensus-seeking approaches to create and continuously improve the Reporting Framework."[77]

> "The Global Reporting Initiative's (GRI) vision is that reporting on economic, environmental, and social performance by all organizations is as routine and comparable as financial reporting. The Sustainability Reporting Framework - of which the Sustainability Reporting Guidelines are the cornerstone - provides guidance for organizations to use as the basis for disclosure about their sustainability performance, and also provides stakeholders a universally-applicable, comparable framework in which to understand disclosed information. The Reporting Framework facilitates transparency and accountability by organizations – companies, public agencies, non-profits - of all sizes and sectors, across the world."[78]

It is rapidly moving to a more rigorous and detailed set of implementation guidelines called the "G3 Guidelines,"[79] which are now followed by 330 companies.[80]

GRI is moving toward independent verification of reports on an audit model; it currently has several recognized levels of checking of reporting that includes third party checking, which a considerable number of companies are now beginning to do.

C. *The Equator Principles*

Of the initiatives we discuss, this one probably has the broadest reach, the greatest level of detail, and the most bite.

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[75] http://www.ceres.org/NETCOMMUNITY/Page.aspx?pid=705&srcid=705

[76] http://www.globalreporting.org/AboutGRI/WhatWeDo/OurHistory/

[77] http://www.globalreporting.org/Home

[78] Ibid.

[79] http://www.globalreporting.org/ReportingFramework/G3Guidelines/

[80] http://www.globalreporting.org/GRIReports/2008ReportsList/

The Equator Principles originated from World Bank policies. There has always been concern that the Bank employs a 'top down' approach that does not involve the poor in making decisions about projects that are supposedly for their benefit.[81] This has led to countless controversies and a long series of 'confessions' and regretful memoirs by former Bank officials and others.[82] One highly influential controversy was the Narmada Dam Project in India, which involved uprooting communities and resettling over 320,000 people, most of them poor.[83] The Bank was forced by the repeated complaints to form an independent review of the project, the Morse Commission.[84] At the same time, an internal task force was examining the quality of the loan program in general.[85] The findings and recommendations of the Wapenhans Report and the Morse Commission[86] led to the creation of a quasi-independent Inspection Panel[87] and the establishment of the Safeguard Policies.[88]

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[81] This history began with Bruce Rich's book, which laid the foundation.
Rich, Bruce. *Mortgaging the Earth: The World Bank, Environmental Impoverishment, and the Crisis of Development*. Boston, Beacon Press, 1994.

[82] Some of the most well-known are: Easterly, William. *The White Man's Burden*. New York; Penguin Press, 2006; Easterly, William. *The Elusive Quest for Growth*. Cambridge, MA; MIT Press, 2002; Griffiths, Peter. *The Economist's Tale: A Consultant Encounters Hunger and the World Bank*. Zed Books, 2003; Perkins, John. *Confessions of an Economic Hit Man*. Berrett-Koehler Publishers, 2004; Stiglitz, Joseph. *Globalization and its Discontents*. W.W. Norton and Co, 2003.

[83] The Narmada Dam controversy began in the 1980's and revolves around the government plan to build 3,165 dams, most small, some medium, a few large, along the Narmada River in India. The costs and benefits of the dams, especially the 30 giants, are highly debated. The main argument for the dams is that they would be able to provide water for areas prone to drought and electricity to large parts of the country. The opposing side, initially composed of groups of people who would be displaced by the dams and now including a large number of experts, NGOs, and grassroots movements, believes that the dams could never achieve what the dam proponents claim and would only result in lost livelihoods, thousands of displaced peoples, destroyed ecosystems, and continued drought. The 22-day fast of Medha Patkar, the leader of the largest coalition against the dam project, created a high enough level of awareness around the project to be a major impetus for the World Bank's creation of its independent review, the Morse Commission. www.narmada.org

[84] Shihata, Ibrahim Fi.I. *The World Bank Inspection Panel*. Oxford University Press, 1994. Pages 9-13.

[85] Ibid., pages 6-8

[86] Ibid. The Morse Report was presented in June, 1992, and the Wapenhans Report in November, 1992.

[87] The function of the Inspection Panel is "to address the concerns of the people who may be affected by Bank projects and to ensure that the Bank adheres to its operational policies and procedures during design, preparation and implementation phases of projects." World Bank Inspection Panel Website: About Us:
http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,menuPK:64129249~pagePK:64132081~pi PK:64132052~theSitePK:380794,00.html

[88] The Safeguard Policies provide standards for dealing with the following areas: Use of Country Systems, Environmental Assessment, Natural Habitats, Forests, Pest Management, Physical Cultural Resources, Involuntary Resettlement, Indigenous Peoples, Safety of Dams, and finally, International Waterways.
http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,menuPK:584441~pagePK:6 4168427~piPK:64168435~theSitePK:584435,00.html

IFC began to apply a more rigorous review. Many of the private banks with which the IFC works found it useful to tell their troublesome external critics, such as Rainforest Action Network or Greenpeace, that they were following 'IFC standards.' This meant that IFC not only did the social and environmental due diligence at no cost to its partners, but the partners could use IFC participation as 'cover' when criticized. The IFC's Safeguard Policies[89] thus became the "common currency" for bank due diligence, and answered the need of the private banking community for a common checklist and analytic approach. Indeed, many banks started to use these tools even when there was no Bank participation.

The Equator Principles represent a formalization of this state of affairs. Under the Equator Principles,[90] participating financial institutions agree to a set of ten principles,[91] which incorporate most of what the IFC was applying to their loans. The Equator Principles are perhaps the most effective set of rules for managing foreign investment projects that has yet been developed. They cover a wide range of issues from protecting natural habitats and conducting environmental assessments to issues closely related to conflict, such as forcible relocation of populations and protection of indigenous populations.[92] Now, some 60 financial institutions,(including a few insurance companies)[93] from 24 countries, who together provide 71% of the total project finance debt in emerging market economies, are now participating.[94] Significant discussions of ways to provide independent or third party verification of compliance are starting to emerge.

The issues with Equator are many. The main problem is that enormously important policies in human rights, indigenous-majority relations, environmental conservation, biodiversity, etc, are being set by a 'Congress of Banks,' unaccountable to anyone. They are enforced by banks, with virtually no oversight or transparency. There are significant concerns expressed by developing countries that this system is inhibiting their ability to set and enforce their own policies.

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[89] The IFC Safeguard Policies were updated in 2006 to the Policy on Social and Environmental Sustainability, the Disclosure Policy, and the Environmental and Social Review Procedure. These policies still include the same basic World Bank Safeguard Policies, organized slightly differently.
http://www.ifc.org/ifcext/sustainability.nsf/Content/EnvSocStandards

[90] www.equator-principles.com

[91] http://www.equator-principles.com/documents/Equator_Principles.pdf

[93] Ibid.

[93] Ibid.

[94] "Equator Principles Celebrate Five Years of Positive Environmental Impact and Improved Business"
http://www.allbusiness.com/trade-development/economic-development-emerging-markets/10188401-1.html

D. The Millennium Declaration and the Millennium Development Goals

The United Nations Millennium Declaration,[95] and the Millennium Development Goals (MDGs), also set out some specific benchmarks and guidance, and are a part of the framework relevant to our concerns.

"The MDGs are eight goals to be achieved by 2015 that respond to the world's main development challenges. They are drawn from the actions and targets contained in the Millennium Declaration that was adopted by 189 nations and signed by 147 heads of state and governments during the UN Millennium Summit in September 2000. The eight MDGs break down into 21 quantifiable targets that are measured by 60 indicators."[96]

E. The OECD Policy Framework on Investment

The Policy Framework for Investment "represents the most comprehensive multilaterally-backed approach to date for improving investment conditions. It addresses some 82 questions to governments in 10 policy areas to help them design and implement good policy practices for attracting and maximising the benefits of investment. The PFI is based on the common values of rule of law, transparency, non-discrimination, protection of property rights in tandem with other human rights, public and corporate sector integrity, and international co-operation."[97]

It is based on the concept that "[a]ttracting investment is not an end in itself, but rather a means to sustain growth and development.... Just as a narrowly defined investment policy is not the best way to attract business investment, a poorly conceived investment attraction strategy may create incentives which distort business decisions, and in some cases even deter private investors."[98]

4. THE GOVERNANCE FRAMEWORK AT THE SECTORAL LEVEL

There are so many sectors, and so many activities in these sectors, that a comprehensive catalogue of governance initiatives at the sectoral level is impractical in a paper of this type. We will therefore simply give some examples. We will look at different kinds of processes, starting with attempts at broad,

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[95] http://www.un.org/millennium/declaration/ares552e.htm "We believe that the central challenge we face today is to ensure that globalization becomes a positive force for all the world's people. For while globalization offers great opportunities, at present its benefits are very unevenly shared, while its costs are unevenly distributed." There is an explicit commitment to "resolution of disputes by peaceful means and in conformity with the principles of justice and international law..."

[96] http://www.undp.org/mdg/basics.shtml

[97] The Policy Framework for Investment, http://www.oecd.org/dataoecd/40/25/37408438.pdf

[98] http://www.oecdobserver.org/news/fullstory.php/aid/1673/

sector-wide engagement that covers the whole range of identifiable social, economic and environmental concerns in the sector.

A. Sectoral Engagement

There have been several attempts to develop processes that had the potential for some form of broad sectoral understandings that would be a framework for governance capable of dealing with multiples issues. Some examples include:

i. The Forest Dialogue and the Forest Stewardship Council.

In the late 1980's the pressing need to protect the earth's forests led groups in various countries to begin consulting each other on possible solutions, including accreditation and certification schemes. In 1990 a group of timber traders, social activists, and environmental NGOs met in California, unified by "the need for an honest and credible system for identifying well-managed forests as acceptable sources of forest products."[99] The meeting was inconclusive, although the group did settle on a name: Forest Stewardship Council.

At the 1992 Rio Earth Summit, environmental and social NGOs pressed for governments to take binding legal measures to stop deforestation, destruction of traditional livelihoods, and loss of biodiversity. While they were unable to get governments to take such a step, they did succeed in drawing focused international attention to the issue. Finally, in 1993 a group of 150 social, economic, and environmental stakeholders, representing loggers, foresters, environmentalists, and sociologists from 26 countries, gathered in Canada to elect the first FSC Board of Directors.[100] Their mission was to "change the dialogue about and the practice of sustainable forestry worldwide."[101]

The initiative has grown enormously since then, and it currently has regional offices in 46 countries that provide standard setting, trademark assurance and accreditation services for companies and organizations worldwide.[102] It places its certification symbol only on an extremely wide range of products, when those products come from forests that are "managed to meet the social, economic and ecological needs of present and future generations."[103] There are now approximately 7,500 companies, from every point of the forest supply chain, whose products are FSC certified. The FSC manages a worldwide, multi-stakeholder-based certification and accreditation system.

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[99] From: www.fsc.org

[100] http://www.fsc.org/history.html

[101] http://www.fscus.org/about_us/

[102] http://www.fsc.org/about-fsc.html

[103] Ibid.

The FSC principles and criteria for certification are very broad and applicable to all forest types, creating a framework specific regions use to develop more detailed and localized standards, which then have to be approved by FSC and certified by independent FSC-accredited certifiers (e.g. SmartWood Program and the Scientific Certification System).[104]

The initiative is not without problems and critics. The certification process is costly, but certified products are not more expensive, which means that the producers, not the consumers, are the ones carrying the costs of certification and all the improved practices that certification implies. The result is that small businesses have the potential to lose money in getting certified, with little incentive to do so. It is difficult for artisanal and communal foresters to get certified, so the process has potential to exclude small community businesses from the market.[105]

ii. The World Commission on Dams.

"In April 1997, with support from the World Bank and the IUCN - The World Conservation Union, representatives of diverse interests met in Gland, Switzerland to discuss the role of large dams in development in light of reactions to a pertinent report by the Operations Evaluation Department (OED) of the World Bank."[106] Dam building was under increasing challenge as local people resisted relocation, the environmental costs were recognized as enormous, and the development benefits were increasingly questionable.[107]

The Commission was a carefully crafted multi stakeholder process to define the future of dam building in development. It attempted to do both research and dialogue, and aimed at building consensus among traditional World Bank advocates of dam building to create hydropower revenues, developing country governments (who often favored dams), local indigenous and poverty communities (who mostly opposed dams), environmental groups, TNCs who design, build and equip dams, and others interested on the future of dams and dam building.

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[104] Cauley, Henry, et al. "Forest Stewardship Council Forest Certification". *Conservation Biology*. 15:2, April 2001. Page 311.

[105] Taylor, Peter Leigh. "In the Market But Not of It: Fair Trade Coffee and Forest Stewardship Council Certification as Market-Based Social Change". *World Development*. 33:1, 2005. Science Direct. pp129-147.

[106] "The breakdown of dialogue on the construction of dams worldwide - between NGOs, the private sector, governments and international organisations such as the World Bank - was imposing considerable costs on all parties. The World Bank and the IUCN realised that no group involved in the conflict could resolve the stalemate alone." http://www.dams.org/

[107] Turaga, Uday. "Damming waters and wisdom: protest in the Narmada River Valley". *Technology in Society*. v22, 2000. pp237 – 253. See also the "Development of Destruction?" discussion in the book:
Rich, Bruce. *Mortgaging the Earth: The World Bank, Environmental Impoverishment, and the Crisis of Development*. Boston; Beacon Press, 1994. Pages 9-15.

The Commission created a helpful platform for airing the deep concerns of those affected by dam building, and developed a widely praised model for decision making on dam projects. Some of the major developing country governments who supported dam building and some of the interested private sector failed to engage as deeply as they might have with the Commission process, and devoted considerable energy to trying to prevent Bank adoption of its recommendations. While the Commission did not create permanent institutional arrangements, and the Bank did not formally adopt all of its recommendations, its report, DAMS AND DEVELOPMENT,[108] has had considerable influence on policy.

iii. The Mining Minerals and Sustainable Development Project.

Unlike the other processes listed, which came mainly from civil society organizations and international institutions, the MMSD Project was started by companies. It had its origins in the desire of industry leaders to build a better framework of governance around mining and minerals, and preserve the industry's social license to operate. It was organized through the World Business Council on Sustainable Development, and headquartered at the International Institute for Environment and Development,[109] a British research and advocacy organization. It was designed for a broad engagement of stakeholders in the sector in the principal mining and metal consuming areas of the world. It also resulted in a considerable body of research publications.[110]

Given its industry origins, much of civil society was slow to engage in this discussion. MMSD achieved relatively deep engagement of industry and of the governments of countries in which mining and minerals are a key element of the economy, as well as mine labor. Major environmental organizations were very much in the discussion, but until the very end, participated through informal surrogates rather than directly.

The MMSD recommendations are a basis for the program and principles of the International Council on Mining and Metals, a new industry organization created to carry forward the work of MMSD. Like the World Commission on Dams, MMSD has not led to an overall structure for improved governance in the sector, but has led to key advances on specific issues, and has established a base line of good practice. Since the MMSD project ended, there have been a series of efforts to advance on specific issues, including continued work toward some form of certification scheme.[111] MMSD's final report, BREAKING

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[108] http://www.dams.org/report/

[109] http://www.iied.org/

[110] See www.iied.org/mmsd/

[111] For a detailed account of this project see: "Mining, Minerals, and Sustainable Development History Project" at *Global Public Policy Institute*.
http://www.gppi.net/research/mining_minerals_and_sustainable_development_history_project/
Also see "Architecture for Change: An Account of the Mining, Minerals, and Sustainable Development Project History", by Luke Danielson and Caroline Digby, available at www.iied.org/mmsd/

NEW GROUND, is available online,[112] together with several dozen subsidiary publications on specific topics.[113]

iv. The Extractive Industries Review.

The World Bank Group, which had been heavily criticized for its support of oil, gas, and mining projects, and for their adverse effects on the poor and on the environment, agreed to an independent review of its activities in this sector. The Review was headed by Dr. Emil Salim, former State Minister for Population and Environment of Indonesia, and featured a worldwide consultative process.[114]

It focused heavily on hearing the concerns of affected communities and campaigning NGOs and achieved less engagement with national government or industry. Its final report is STRIKING A BETTER BALANCE.[115] Some of the Review's recommendations have had considerable influence and others have been rejected. The EIR did not lead to the creation of any ongoing institutional presence.

The results of these efforts are still being evaluated.[116] But the exciting idea is that we have already created what Wolfgang Reinicke calls 'public policy networks' consisting of governments, industry organizations, civil society and others, who can through dialogue gradually sort out the pressing issues in their sectors.[117] In the process, they may slowly begin to look less like herds, and more like institutions. And as common understanding is reached, the specifics of those understandings will, Reinicke believes, slowly seep into legislation, company practice, regulations, industry codes and the like, creating an understood base line of performance even where there may not be some overall sectoral charter.

This process could also someday lead to a 'sectoral council' for each world economic sector, which would be capable of setting up mechanisms to deal with individual sets of issues, anticipating problems, and building sets of increasingly rigorous standards.

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[114] The Review's activities are fully described at www.ifc.org/eir

[115] Full title is: STRIKING A BETTER BALANCE – THE WORLD BANK GROUP AND EXTRACTIVE INDUSTRIES: THE FINAL REPORT OF THE EXTRACTIVE INDUSTRIES REVIEW.   Available for download: ww.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/FinalManagementResponse/$FILE/finaleirmanagementresponse.pdf

[116] The four listed are not of course the only such examples. There are many more: the Marine Stewardship Council (www.msc.org) and WBCSD's work on sustainable mobility (www.wbscd.org), and sustainable development and the cement industry (www.wbscdcement.org) are some further, if somewhat less ambitious, efforts.

[117] Reinicke, Wolfgang. "Global Public Policy Networks". *Brookings Review.* 21:2, Spring 2003. pp18-22.

B. More Detail on Governance: the Mining and Minerals Example

It is misleading to talk about "global decision making," since there is no one who has the requisites for making or enforcing decisions on behalf of everyone. There is no neat, tidy bundle of standards for sector governance in areas relevant to our concerns. A real global governance organization would need a few minimum essential qualities that no one has:

> Legitimacy as a global decision maker;

> An independent source of revenues;

> A set of rules, norms, of standards to define acceptable and unacceptable performance;

> Some credible method of determining compliance and noncompliance with the rules;

> Some set of consequences, incentives for complying, or power to enforce decisions. [118]

Without these, "world governance" is often no more than herds of organizations milling about with little order, occasionally coalescing on some idea and trying to make it work. Sometimes this process achieves something. To look at development of governance in greater detail, it is necessary to examine specific sector where the process *has* achieved something, which is why we have chose mining and minerals. This sector has long been a leader in its attempts at stronger global governance.

All of what follows is weak in one or more of the above attributes. Yet what we see are definitely pieces that could be assembled into a bigger, more comprehensive, and more effective system, made more rigorous, more transparent, more verifiable and with stronger incentives for compliance. [119]

These pieces, as partial and imperfect as they are, have in fact made a difference in performance in the sector. It may be, as Steve Bass has suggested,[120] that they have mainly driven better performance for those who are already the best, and that they have had precious little effect on the poor performers. But they are what we have as a world, and most of us think they are better than the alternatives: the economic Wild West, or Wolfgang Langewiesche's dark vision of the *Outlaw Sea*,[121] in which private enterprise becomes so unidentifiable, so portable, and so unconcerned about image that it escapes public pressure, government controls and NGO campaigns, in a spiraling race to the bottom.

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[118] See L. Danielson "Evolution of Global Standards in the Extractive Sector: The Growing Role of the World Bank Group". Page 200.

[119] They could also, under other circumstances, fall apart and leave little behind.

[120] See Stephen Bass, *Certification's Impact on Forests, Stakeholders, and Supply Chains*. May 2001.

[121] See Langewiesche, William. *The Outlaw Sea: A World of Freedom, Chaos, and Crime*. North Point Press, 2004.

C. Multi-actor Benchmarks

Some of the initiatives that we have already discussed are excellent examples of multi-actor initiatives as well. The MMSD project and the Extractive Industries Review are examples. Here are a few more:

i. Global Reporting Initiative

While all companies participating in the GRI follow the basic G3 Guidelines for reporting, as we discussed in Section 3, individual sectors have begun to develop sector-specific guidelines to supplement the basic requirements.[122] The mining and minerals sector has been one of the most active participants in the GRI process, and as such it was one of the first sectors with its own supplement, which has a Final Version (an update from the Pilot Version) scheduled for effective release in 2009.[123] Most major mining and minerals companies now do sustainability reporting on the GRI model.

ii. Extractive Industries Transparency Initiative

Seeing corruption around the extractive industries as a growing problem and obstacle to development, former British Prime Minister Tony Blair began to promote the EITI in 2002. The heavy lifting has in part been done by the British Foreign Office and DFID, but has also included major support from the World Bank Group, and critical vision and support from the NGO community, including Transparency International,[124] which among other things publishes the Global Corruption Report.[125]

In resource-rich countries with good governance, the revenues generated from resource extraction make it back to the people in the form of development benefits, while in poorly-governed countries, high levels of corruption and disorganization mean there are few development benefits, and the country is more prone to violence.[126] This is also one explanation offered for the 'resource curse,' the growing realization that countries that rely heavily on export of natural resources tend to grow more slowly and have less equal income distribution than those that do not.

EITI considers that strengthening transparency and accountability is a key component of reducing corruption and violence by preventing government officials and their friends in industry from hoarding

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[122] http://www.globalreporting.org/ReportingFramework/SectorSupplements/

[123] Although it was not the first of the 12 sectors to release a Pilot sector supplement, the mining and metals sector is the first to have a Final version planned. The only other sector advanced enough to begin work on a final draft is the Automotive sector, but they have yet to set a date.
www.globalreporting.org/ReportingFramework/SectorSupplements/MiningAndMetals/MiningAndMetals.htm

[124] http://www.transparency.org/

[125] http://www.transparency.org/news_room/in_focus/2008/gcr2008

[126] http://eitransparency.org/eiti/summary

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the wealth without improving the country. The initiative focuses on the extractive sector since it sees a substantial link between the sector and the problems – including violence -- that plague developing countries.[127]

iii. Voluntary Principles on Human Rights and Security

Where local resentment toward mining is high, there are often incidents of theft of company property, sabotage, or protests regarded as illegal by local authorities. Companies have responded not only by building their own security departments, but by arming, training and otherwise strengthening local police and military units.

This close relationship between company security and national police forces has led to a number of highly publicized incidents that have seriously damaged corporate reputation, from Exxon's alleged lending of bulldozers to the military in Aceh to dig mass graves, to company complicity in torture, forced labor, and other abuses.

In 2000 the US and UK governments, with support from industry and key NGOs such as Amnesty International, began an initiative[128] to attempt to alleviate violence in developing countries in a more direct way than improving transparency. Together with leading companies from the extractive industries and human rights and corporate social responsibility organizations they created the Voluntary Principles system, which sets standards for corporate security departments and their interactions with local police and military.[129]

iv. Council for Responsible Jewelry Practices[130]

The Council is at this stage a venture of major jewelry retailers, jewelry manufacturers and wholesalers, diamond and gold companies and allied trade associations. Its purpose is to build confidence in the environmental and social integrity of the gold and diamond supply chains.[131] While the Council is an industry organization, one of its clear agendas is building support from civil society and other actors for what could turn out to be a certification system for gold and diamond jewelry.

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[127] http://eitransparency.org/eiti/benefits

[128] http://www.voluntaryprinciples.org/timeline/index.htm

[129] http://www.voluntaryprinciples.org/

[130] http://www.responsiblejewellery.com/who.htm

[131] The Council's Mission Statement suggests that:"Our objective is to promote responsible ethical, social and environmental practices throughout the diamond and gold jewelry supply chain, from mine to retail."

v. ISO

There is some promise that the International Organization for Standardization (ISO)[132] can help move into relevant areas. Indeed, it already has to some extent. The most relevant existing ISO standards are the 9000 and 14000 series standards. Because these standards have very widespread acceptance in industry, and because they do address issues of management performance in areas closely related to our current concerns, there is thought by some to be considerable room to use them for the broad uptake of standards related to human rights, conflict, transparency or violence.

5. PUTTING THIS ALL TOGETHER

It seems evident that there can be benefits to appropriate collaboration among NGOs, governments, and private companies. Each of these actors has some significant attributes that the others lack. Ideally, by pushing in the same direction, they can create structures that provide much clearer rules of the road, and a growing network of agreed upon and understood principles of governance.

A. Lack of Trust

Effective engagement is difficult, because the gulfs among the parties are enormous. One way of looking at engagement is by analogy to commercial markets. There is a proposed exchange, perhaps of credibility, which one actor has, for intellectual property, which someone else has, and money, which a third actor can provide.

In a modern commercial market, there is a considerable amount of trust among the market participants that comes from the high degree of information they have about each other, a shared experience of operating according to known rules, and ways of dealing with anyone who tries to cheat.

Contrast that to commercial exchange in the Dark Ages, where buyer and seller had to do 'due diligence' on almost every aspect of the transaction, where the other side was a party of unknown background who was as likely to steal your merchandise as pay for it,[133] and where the only guaranteed remedy against fraud is self-help.

What has been termed 'trust capital' is enormously important to any kind of modern commerce. As the level of trust falls, and the necessary 'due diligence' increases, the transaction costs escalate rapidly and at some point the transaction is no longer viable.

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[132] http://www.iso.org/iso/about.htm

[133] The modern analogies are things like doing major drug deals, or trying to buy and sell things in conflict zones, beyond the reach of the law.

This is one vision of why poor regions of developing countries are 'stuck' outside the channels of global commerce. No one trusts their banking systems to facilitate transactions. Goods are stolen any time they are not well guarded. There is no reliable system of courts and law to enforce rules.

If this is the case with commercial dealings, it is true in spades for the 'market' of public policy dialogue:

> There is deep distrust;

> The parties know almost nothing about each other; and

> The 'transaction costs' of the due diligence necessary for effective engagement are extraordinarily high.

It is not easy to convince Ken Saro-Wiwa's relatives that they are safe meeting with Nigerian government ministers, or to convince Philippine indigenous peoples that they can without fear sit down and talk with western mining companies who have been paying militias for 'security.'[134] There is a real chance that parties can lose from attempts at dialogue, and there are real reasons why they may be slow to engage, starting – but hardly ending -- with personal safety.[135]

There is a considerable experience with trying to achieve effective engagement, and a growing literature.[136] However, much of the experience is very slow to get into the literature for fairly clear reasons. The parties to the 'deal' do not want to share with the other side what were their strengths and weaknesses, or hopes and fears, as they are probably getting ready to deal with each other again on some new issue. Most people who are on the 'inside' of processes like this, except for the neutrals, are very partisan indeed. The professional facilitators, mediators, lawyers, arbitrators, or other dispute resolution professionals are very slow to talk because of professional ethics, and because their success depends on being trusted not to talk when parties share confidences with them.

With all these handicaps, we believe that there are a number of useful principles that are widely accepted.

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[134] As one example: "eleven Indonesian citizens ... are suing ExxonMobil Corporation for kidnapping, torture, and murder and other abuses, allegedly committed by security guards ExxonMobil hired from the ranks of the Indonesian military. The suit alleges that ExxonMobil hired Indonesian soldiers to provide security at ExxonMobil's natural gas facility in Indonesia, in spite of the soldiers' well-documented history of abusing Indonesian citizens, and that indeed, the soldiers ExxonMobil hired abused, tortured, and/or murdered Indonesian citizens while they were working for ExxonMobil." http://www.cmht.com/cases_exxonmobilaceh.php

[135] Jafar Siddiq Hamzah was attempting to mediate a peaceful settlement of the Aceh conflict. "Hamzah formed the International Forum for Aceh in New York...Hamzah was not in favor of the separatist movement but had sought a peaceful and democratic resolution in Aceh, his native province.
He disappeared Aug. 5 from a busy street in Medan, a city on the same island as Aceh. His badly mutilated body was found along with four others in a ravine about a month later." http://www.etan.org/news/2000b/jafar2.htm

[136] Danielson, Luke J, and Sigurdson, Glenn, eds. "Dialogue Forum Handbook".
Danielson, Luke J, and Caroline Digby. "Architecture for Change: An Account of the Mining, Minerals, and Sustainable Development Project History". *Global Public Policy Institute*. July 2006. www.iied.org/mmsd/

B. Engage at the Right Level

Engagement takes place at a series of levels, starting at the village level and working up, or starting at the level of the Global Compact and the Rio and Johannesburg declarations and moving down. A group may be very capable of engaging at one level, and not capable at all of engaging at another level.

The International Federation of Chemical, Energy, Mine and General Workers' Unions,[137] is a federation of labor organizations from 132 countries, with over 20 million members. It has officers elected by the members who speak for it with a high degree of legitimacy, and a Brussels-based staff of technical experts and policy researchers. As a consequence, ICEM has a major impact in its areas of focus, mainly at the global level.

By contrast, the livelihoods of over 13 million artisanal miners and nearly 100 million family members depend on gold panning, hand production of coal, or other artisanal mining activities.[138] Some mining countries have small syndicates or other organizations to help their artisanal miners (many of them started by women), such as the Tanzania Women Miners Association (350 miners)[139] or the Association of Zambian Women in Mining (300 members).[140] But there is very little at a global scale that represents these millions of people.[141]

If the issue is global, ICEM members are able to engage on that level, and millions of artisanal miners are not. If the issue is a dispute in a particular village in Zambia, the Association of Zambian Women in Mining may be a critical player, and ICEM may essentially be useless.

A principal reason for resistance to stronger systems of global governance is the perception that this will rob power from people and institutions at lower levels. People fear that national government will lose sovereignty to a "world government." They also often feel that they have more than enough trouble getting local government to listen to them. They rightly fear that if decisions are taken to distant authorities halfway around the world, what little public participation they have achieved will be lost. These are tied to other fears:

- World institutions are bound to seek some low common denominator, and be slow, ponderous, and inflexible.

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[137] www.icem.org

[138] Estimates range from 13 million to 20 million. A relatively definitive report in 2001 by MMSD estimated 13 million workers, and subsequent estimates have gone up, because evidence suggests this activity is growing rapidly wherever it exists, given the high commodity prices in the markets today.
http://www.artisanalmining.org/index.cfm?page=page_disp&pid=2015

[139] Tanzania Women Miners Association Progress Report: Nov 1997 – December 2004.
http://siteresources.worldbank.org/FSLP/Resources/TANZANIA_WOMEN.pdf

[140] "Zambian Women Make Inroads into Mining" *IDEXMagazine Online*.
http://www.idexonline.com/portal_FullMazalUbracha.asp?id=27603

[141] There are organizations like CASM (Communities and Small-Scale Mining, www.artisanalmining.org) which tries to give artisanal miners some voice, but speaks for them indirectly and it is not enough.

- Government without accountability is a threat to political, economic and other liberties, and it is hard to see how distant world organisms can be accountable or democratic.

To overcome these reasonable concerns, we need to stay focused on the idea that *better global governance does not mean that all problems need to be solved at the global level.* In fact, the best quality of governance probably comes at smaller scales: Denmark, Singapore, New England town meetings.

The vast majority of problems will have to be dealt with, as in the past, at the local or national level. We need to emphasize that in those instances when it is called for, global governance works *to strengthen,* not *to supplant,* national and local institutions.

The Jesuit Principle of Subsidiarity should be a guide:

> *Subsidiarity assumes that the agents closest to problems should not be eclipsed or by-passed by higher governmental forms. They have legitimate voice in solutions. Subsidiarity also prescribes that problems which can be handled at lower levels not go up to higher authorities, more distant from the problem. Thus, the more we see the urgent need to consolidate or grant new responsibilities to world bodies, the more it is necessary to recognize and insist on the limits of their contribution.*[142]

What determines whether something needs to be elevated to a higher level for a solution? The principal determinant is whether the key stakeholders in the problem and possible solutions can be brought to the table. If some of the stakeholders who have to be part of the solution are not present locally, then it may be necessary to move further outward from the local sphere until they can be brought into the discussion.

The Kimberley Process is an example. The problem of violence in Sierra Leone could not be solved locally, because the solution required the participation of stakeholders (e.g. foreign diamond purchasers, or governments of diamond-importing countries) who could not be brought to the table in Sierra Leone. People in Johannesburg, London, Tel Aviv, and other places had to be part of the solution, so a broader dialogue, leading to a broader governance structure, was necessary.

This experience does not mean that if there is a problem with vegetable growers providing food for local markets in Sierra Leone, we need to involve people in Johannesburg, London, or Tel Aviv. This would simply complicate the problem, and contribute little or nothing to solving it.

The perception that global governance means that someone in London will set the price of tomatoes in a local market in Africa (or California) is a major obstacle to acceptance of stronger international governance structures.

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[142] Fr. John Coleman, SJ

C. How Can Dialogue Start?

If oil and gas companies want to talk to indigenous communities in Ecuador (or anywhere else), an invitation issued by them is likely to be ignored, and any indigenous groups who do accept are likely to be attacked by other indigenous organizations.[143] Shell has invested years and millions of dollars in trying to get the Ogoni to engage with them, with extremely limited success. When the IUCN and the ICMM tried to broker dialogue among NGOs, mining companies and others about the future of mining and protected areas, one result was severe criticism of those who _did_ want to talk.[144]

The refusal to engage is not all one way. There are a considerable number of cases where industry has refused to accept or even acknowledge invitations to dialogue. The issues seem to be clear.

First, there is a real lack of suitable conveners. Where there is no trust, and the invitation is regarded with deep suspicion, it really helps if someone respected by all, and widely seen as fair, issues the invitation. Nelson Mandela has played this role in some dialogues. But there is only one Madiba. But the list of people and institutions widely regarded as fair conveners is a very short one.

One possible solution to this 'convener deficit' may be assembling a _coalition_ to act as convener. A half dozen organizations together may be able to start a process that none of them could start alone. The issue then becomes what kind of understanding they need to develop as a prerequisite to joining the coalition.

A significant issue is the 'up front' cost of this kind of coalition building, and who is available to seed this kind of process. There are a considerable number of very good ideas for dialogue that have died because (a) no one was willing to invest the resources in this kind of coalition building 'on the come,' or (b) those who were willing to invest were seen as too partisan.

Even more important may be the issue of framing the dialogue before it formally convenes. Far too often, those who are in a hurry to talk feel they do not have time for this stage. But truthfully, many experienced neutrals will report that where the issue is carefully framed, the dialogue on the 'substantive' issues is often surprisingly short and easy. And where the issues are not properly framed, even the 'low hanging fruit' can be very hard to pick.

Again, the frequent question is how to seed this process. There are institutions with serious reasons to want dialogue, and a willingness to pay to get it started. But they are seen as too partisan to seed this kind of process.[145]

> ➢ _How the issue is framed is key to the question of capacity to engage._

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[143] Ethical Corporation, http://www.ethicalcorp.com/content.asp?ContentID=3658

[144] See UNITED OUTCRY AGAINST MINING GREENWASH,
http://www.treatycouncil.org/UNITED%20INDIGENOUS%20OUTCRY%20AGAINST%20MINING%20GREENWASH,%2
0August%202002.pdf
[145] Kettering Foundation has been heavily invested in this type of activity.

If the ground rules are that the dialogue is about engineering a tailings dam at an Andean mine, and the company shows up with Bechtel[146] and the local villagers show up with a school teacher, the dialogue is not likely to work.

If the issue is instead how to respect the traditional religious view of the origins of a community whose creation myth is that the people came from and will return to the hill that the company now proposes to level, Bechtel may be a liability rather than an asset, and it is the company that has a capacity deficit.

➢ *The most difficult issue to be framed may be timing.*

Probably the most common obstacle is that one set of parties needs to get something done by a certain date, while the other does not want anything to happen until dialogue reaches a conclusion. So it is:

- The corporate representative saying "we are really happy to talk and look forward to dialogue. But you do need to understand that our loan commitment expires June 30, so you have to agree by then;" and

- The community representatives saying: "we don't want to talk unless you agree that nothing is going to be done in our community until we agree to it."[147]

➢ *How can we get all the necessary parties to the table?*

Probably the most realistic definition of a 'stakeholder' is someone who has a good chance to spoil the soup if he doesn't get what he wants. Far too often, dialogue has started without some of the parties who have a serious interest in the outcome being adequately engaged, perhaps because they are being difficult about the ground rules, perhaps because their power to create obstacles is not fully appreciated. Trying to keep someone with an obvious interest away from the table may be all that is needed to give them that power, as their exclusion *becomes* the story from a media perspective, giving them a far more visible platform than if they had been in the dialogue from the outset.

➢ *How can we remedy capacity imbalance among the participants?*

Not all the necessary participants have the same ability to engage. The most obvious example is that some have the money to travel to meetings while others don't. In the post 9-11 world, holding a meeting in North America will in and of itself exclude long lists of people.

Companies tend to have very broad access to technical expertise in a variety of fields. Communities tend to distrust company paid experts, but have no ability to acquire expertise from others they trust. Organizations that may be willing to provide some of that expertise often do so with a price, *e.g.*, they will provide an expert, but only so long as the community is 'against' the project. If the community decides that what it wants is instead help to negotiate mitigation, the expert may disappear.

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[146] Bechtel is a large engineering, construction, and project management company. www.bechtel.com

[147] The key to starting dialogue over the highly controversial plan to develop the Jabiluka uranium deposit in Australia was the declaration by Rio Tinto that it would not proceed without the consent of the aboriginal original owners of the land.

Local groups tend also to distrust anyone who is taking money from the company, or other sources seen as partisan. In very poor communities, something that does not seem to North Americans as terribly significant can be a huge issue. For example, in a community where no one has traveled further than the provincial capital, a trip to London for a meeting is something that can create terrible envy; if the company is paying the air fare, the community representative is likely to be seen as bought for that reason alone.

A modest amount of resources directed at these problems from a source regarded as 'independent' can create huge leverage. Probably the biggest needs are:

- o Some 'clean' funds to pay a professional neutral to do the issue framing necessary for success;

- o A way to find some independent expertise in relevant areas to support people who (a) feel at a severe disadvantage without it; and (b) have no way of their own to get it.

- o Some independent funding simply for costs of attending meetings or similar logistics.

Richard Sandbrook[148] developed a 60-40 formula for these purposes. In his view, the 'optics' of engagement were generally acceptable so long as (a) no more than 60% of the funding came from industry or others with an interest (e.g. the World Bank); at least so long as (b) 40% comes from an 'independent' source; and (c) the 'interested party money' is not disbursed by the interested party but through a disinterested intermediary.

D. The Opportunity

If the concept is to create engagement across lines of division to build stronger instruments of governance, we need to focus on these ideas:

- ➢ Achieving productive dialogue requires bridging some enormous chasms of distrust.

- ➢ Succeeding in this endeavor requires an up-front investment of time and money in issue framing, and achieving acceptable ground rules for engagement.

- ➢ It is often difficult to find someone capable of making this investment, because those with the resources are seen as too partisan, and their over-involvement, especially in the early stage, increases the barriers of suspicion and mistrust.

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[148] The late Richard Sandbrook, OBE, "was a social entrepreneur of the first order," and an architect of many successful global initiatives. http://www.independent.co.uk/news/obituaries/richard-sandbrook-519285.html