

THE GLOBAL COMPACT, ENVIRONMENTAL PRINCIPLES, AND CHANGE IN INTERNATIONAL ENVIRONMENTAL POLITICS

AFSHIN AKHTARKHAVARI*

Unlike rules, international lawyers commonly ignore the potential that environmental principles have to create change in international law and politics. Transnational actors do not easily conform to abstract and open-textured environmental principles because they do not prescribe a specific way of behaving and compliance with them is difficult to enforce. The Global Compact initiative of the United Nations relies on principles to create a regime applying to transnational corporations. It is structured around encouraging corporations to socially learn rather than to comply with norms. In this context environmental principles within the Global Compact have the potential to create significant change in international politics but one that is better assessed in terms of how they frame ideas during the interactions of participants and stakeholders within the regime. This interplay between environmental principles and the social influence of ideas is an important steering mechanism for the kind of learning that potentially is taking place within the Global Compact. It also distinguishes the Global Compact from other attempts to consider the role of internationally developed voluntary codes as a common frame for multinational corporations to self-regulate themselves. Notably, it highlights an important role and function for environmental principles, which are often discounted in their potential to contribute to change at the international level.

I. INTRODUCTION

In December 2005, the 191 Member States of the United Nations General Assembly (UNGA) officially endorsed the Global Compact (GC) initiative that the former Secretary-General, Kofi Annan, established within his office in 2000.¹ In a much generalized but useful summary of its mission, the GC seeks to establish “corporate citizenship among companies” in the world.² The GC is now a complex

* BSc/LLB, LL.M., Ph.D. Senior Lecturer, Griffith Law School. I wish to thank Professor Donald Rothwell for his comments on earlier versions of this paper.

1. United Nations, General Assembly, *Towards Global Partnerships*, U.N. GAOR, 62d Sess., Agenda Item 61 at 3, U.N. Doc A/C.2/62/L.33/Rev.1 (Dec. 3, 2007); GEORG KELL, UNITED NATIONS GLOBAL COMPACT OFFICE, LETTER TO GLOBAL COMPACT STAKEHOLDER 1, (2006) available at http://www.unglobalcompact.org/docs/about_the_gc/stakeholder_letter_2006.pdf.

2. MCKINSEY & COMPANY, ASSESSING THE GLOBAL COMPACT'S IMPACT 2 (2004), available at http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2004_06_09/imp_ass.pdf. This study is a “comprehensive impact assessment” of the GC that was commissioned by the Global Compact Office (GCO) in 2004 and completed on May 11, 2004. It does not actually define what it understands “corporate citizenship” to mean in the context of the GC. On this point, see Surya Deva, *Global Compact: A Critique of the U.N.'s “Public-Private” Partnership for Promoting Corporate Citizenship*, 34 SYRACUSE J. INT'L L. & COM. 107, 111-113 (2006) (discussing the possible definitions

initiative that is coordinated by the Global Compact Office (GCO) and is part of the Secretary-General's Office at the United Nations (UN).³ As of September 2007, the GC had 4600 participants and stakeholders from around 120 countries in the world.⁴ This compares with 2900 participants and stakeholders in March 2006 when the GCO last reported on the growth of the initiative.⁵ This is not to suggest that the GC is without its challenges or criticisms.⁶ The "symbolism of the Global Compact's creation and its established brand as a major initiative of the Secretary-General" is, however, "surprisingly influential."⁷

The core idea behind the GC initiative is to establish a set of ten principles that aim to influence the values of corporations in relation to human rights, labor, the environment, and corruption, and "give a human face to the global market."⁸ The environmental principles that are a part of the GC are listed as: the precautionary approach to environmental challenges; promoting greater environmental responsibility; and encouraging the development and diffusion of environmentally friendly technologies.⁹ In 2004, McKinsey & Company were

of "corporate citizenship" and "corporate social responsibility"). For the use of this terminology, refer to the recent report produced by the GCO and the Barcelona Centre for the Support of the Global Compact on Loack Networks, BARCELONA CENTER FOR THE SUPPORT OF THE GLOBAL COMPACT, LOCAL NETWORK REPORT, (UN Global Compact Office 2007) available at http://www.unglobalcompact.org/docs/news_events/8.1/LNReport_FINAL.pdf [hereinafter LOCAL NETWORK REPORT]. Others have summarized the purpose of the GC in different ways. For instance, King has suggested that "in its simplest form" it is about the "dissemination of and adherence to good business practices." Betty King, *The UN Global Compact: Responsibility for Human Rights, Labor Relations, and the Environment in Developing Nations*, 34 CORNELL INT'L L.J. 481, 482 (2001).

3. The review and actual changes to the GC framework are good illustrations of this complexity. See KELL, *supra* note 1, at 2.

4. LOCAL NETWORK REPORT, *supra* note 2, at 15. *But cf.* David Weissbrodt, *Business and Human Rights*, 74 U. CIN. L. REV. 55, 70 (2005) (asking "[w]hat about the other 59,000 companies that are not covered by the Global Compact?").

5. KELL, *supra* note 1.

6. See Deva, *supra* note 2, at 128-29; See also Maria Gjøllberg & Audun Ruud, *The U.N. Global Compact—A Contribution to Sustainable Development?*, 7 (Ctr. for Dev. and Env't, Univ. of Oslo, Working Paper No. 1/05,2006); See also David M. Bigge, *Bring on the Bluewash: A Social Constructivist Argument Against Using Nike v Kasky to Attack the UN Global Compact*, 14 INT'L LEGAL PERSP. 6, 12-14 (2004), (summarizing the major early criticisms of the GC, particularly in relation to companies and human rights).

7. MCKINSEY & COMPANY, *supra* note 2, at 13. It is arguable that its success is partly because many corporations use the GC as a branding exercise and for networking opportunities. For instance, in a report compiled in 2007 by the GCO, it was noted that 63% of the 400 companies surveyed indicated that they had joined the GC to increase trust in their company. This is compared to 52% highlighting the fact that they wanted to address humanitarian concerns. U.N. GLOBAL COMPACT OFFICE, U.N. GLOBAL COMPACT ANNUAL REVIEW 2007 LEADERS SUMMIT 9, 11 (2007), available at http://www.unglobalcompact.org/docs/news_events/8.1/GCAAnnualReview2007.pdf [hereinafter ANNUAL REVIEW 2007].

8. Press Release, Secretary General Proposes Global Compact on Human Rights, Labour, Environment, in address to World Economic Forum in Davos, U.N. Doc. SG/SM/6881 (Feb. 1, 1999), <http://www.un.org/News/Press/docs/1999/19990201.sgs6881.html>.

9. U.N. Global Compact, *The Ten Principles*, <http://www.unglobalcompact.org/AbouttheGC/TheTENPrinciples/index.html> (last visited Nov. 15, 2008). The other seven principles of the GC are: (1) "Businesses should support and respect the protection of internationally proclaimed human rights";

commissioned by the GCO to complete an “impact assessment” of the GC initiative.¹⁰ This study singled out as the main focus for its empirical investigations the adoption by companies of the nine principles as they were in 2004.¹¹ It found that in the four years since its establishment, the:

Global Compact has had noticeable, incremental impact on companies, the UN, governments and other civil society actors and has built a strong base for future results. The Compact has primarily accelerated policy change in companies, while catalyzing a proliferation of “partnership projects,” development-oriented activities that companies undertake with UN agencies and other partners. The Compact has also developed a solid participant base and local network structure, establishing itself as the largest voluntary corporate citizenship network of its kind.¹²

Figure 1, which is from the McKinsey & Company study, provides more perspective on these comments in that 51% of those surveyed said that the GC initiatives helped them to make the decision to engage with the principles easier as opposed to initiating their interest in them. Despite this, the study highlights that the principles used by the GC have the potential to socialize individual actors into changing their preferences in some way.

(2) “make sure that they are not complicit in human rights abuses”; (3) “Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining”; (4) “the elimination of all forms of forced and compulsory labour”; (5) “the effective abolition of child labour”; (6) “the elimination of discrimination in respect of employment and occupation”; and (10) “Businesses should work against corruption in all of its forms, including extortion and bribery.” *Id.*

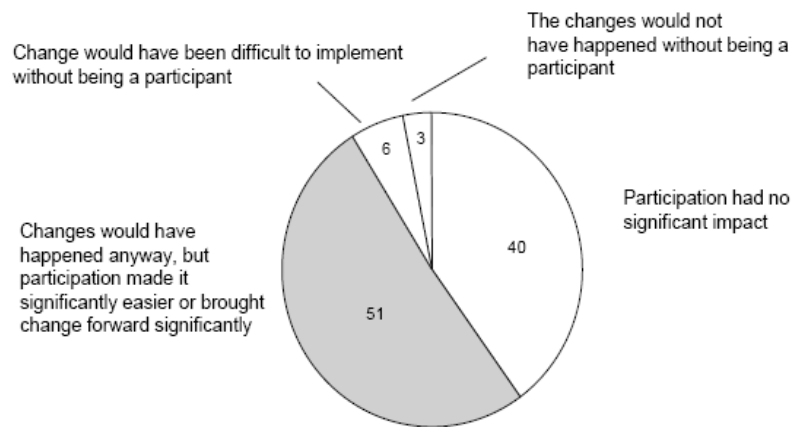
10. MCKINSEY & COMPANY, *supra* note 2, at 1.

11. A tenth principle dealing with anti-corruption was added to the other nine in 2004. *See* U.N. Global Compact, *Transparency and Anti-corruption*, <http://www.unglobalcompact.org/abouttheGC/thetenprinciples/anti-corruption.html> (last visited November 15, 2008). As a secondary focus, the study by McKinsey & Company also examined the “increased efficacy of the UN through a more collaborative approach to the private sector, support for governments seeking to spur a more effective role of business in society, and the convening of a unique multi-stakeholder network.” MCKINSEY & COMPANY, *supra* note 2, at 2.

12. MCKINSEY & COMPANY, *supra* note 2, at 2. They also note criticisms, such as that the “inconsistent participation and divergent and unmet expectations limit the impact on companies and continue to threaten the Compact’s long-term credibility with participants.” *Id.* at 2.

Figure 1 Impact of Global Compact on Company Reform¹³

Percent of company respondents*
 Were any of these [policy] changes helped by your organization's participation in the Compact?



* Percent of respondents who indicated some change made since joining Compact (who made up 67% of total)

Source: Survey of GC participants

For most of the survey respondents who report that their companies made changes to implement the Compact's principles, participation in the Compact accelerated, rather than instigated the change.

The difficulty of studying principles by simply asking whether companies or other stakeholders have complied with or internalized them is that it is easy to ignore the abstract and open-textured nature of these norms.¹⁴ Whether corporations have been socialized into adopting them does not actually mean that different corporations associate with the norm in the same way. In other words, we are no better off knowing what function or role norms play within the Global Compact itself because of the variety of different ways that companies can interpret them.

Instead of assessing the significance of the principles in terms of how well actors comply with them or feel obligated to change their behavior based on their normative pull, this article takes a different perspective on such issues.¹⁵ It

13. *Id.* at 4.

14. An alternative criticism of the McKinsey & Company study might relate to how it singled out the impact that the principles of the GC had on the corporations and stakeholders without taking into account other international initiatives. See also William Meyer & Boyka Stefanova, *Human Rights, the UN Global Compact, and Global Governance*, 34 CORNELL INT'L L. J. 501, 504 (2001) (discussing the abstract nature of the human rights provisions of the GC in the context of other measures internationally).

15. The ability of the GC to encourage compliance with its principles has already been studied by others. Importantly, see VILJAM ENGSTRÖM, REALIZING THE GLOBAL COMPACT (U. Helsinki Faculty of Law 2002); Meyer & Stefanova, *supra* note 14; Elisa Morgera, *The UN and Corporate Environmental Responsibility: Between International Regulation and Partnerships*, 15 REV. EUR. CMTY. & INT'L

examines whether the GC framework coordinated through the GCO is potentially changing and instantiating a collective culture globally whereby environmentally conscious approaches to consumption and production constitute the way corporations will view their relationship with nature.¹⁶ This is not a normative argument about whether the initiative is good or bad for the environment, but rather an expression of the kind of deeper cultural change in international politics that this initiative potentially is creating if it continues to develop.¹⁷ It is argued that in this sense the role and function of environmental principles within the GC is better assessed in terms of how they frame ideas during the interactions of participants and stakeholders within the regime. This interplay between environmental principles and the social influence of ideas is an important steering mechanism for the kind of learning that potentially is taking place within the GC. It also distinguishes this discussion from other attempts to consider the role of internationally developed voluntary codes as a common frame for multinational corporations to self-regulate themselves.¹⁸

This article begins by describing the GC, highlighting the way some of the initiatives of the GCO give structure to the engagement of corporate participants and stakeholders. The GC was selected for this study because, through it, transnational and other kinds of corporations directly and diffusely engage with each other and stakeholders at the international level using environmental principles. It is also because it embeds the principles within an institutional structure that relies more on social influence than coercive mechanisms that emphasize immediate gains. The environmental principles of the GC are examined as abstract and open-textured norms. The article then argues that collective learning is in fact possible for multinational corporations at the international level. It examines what it means for them to instantiate a collective culture of responding in an environmentally responsible way to consumerism and production. The following sections discuss two different social processes facilitated by the GC to influence corporations to act in a way that will instantiate the collective learning of a culture of stronger environmental stewardship by corporations. This article concludes by discussing how, through social influence, environmental principles

ENVTL. L. 93 (2006). Gjølborg & Ruud have also observed based on interviews with some Norwegian members of the GC that the companies felt they would "benefit from the legitimacy of the UN/GC while the voluntary nature and the abstract ten principles of the GC" would "make it hard to evaluate compliance." Gjølborg & Ruud, *supra* note 6, at 12.

16. For a different consideration of this question in the broader context of sustainable governance, see Surya Deva, *Sustainable Good Governance and Corporations: An Analysis of Asymmetries*, 18 GEO. INT'L ENVTL. L. REV. 707 (2006).

17. For other attempts to situate the work of the GC in international relations topics, see Meyer & Stefanoya, *supra* note 14. See also, Bigge, *supra* note 6, at 7-8 (attempting to situate the GC within social constructivist work in international relations).

18. On corporate responsibility through codes of conduct, see Sean D. Murphy, *Taking Multinational Corporate Codes of Conduct to the Next Level*, 43 COLUM. J. TRANSNAT'L L. 389 (2005); Elisa Westfield, *Globalization, Convergence, and Multinational Enterprise Responsibility: Corporate Codes of Conduct in the 21st Century*, 42 VA. J. INT'L L. 1075, 1090 (2002); Ilias Bantekas, *Corporate Social Responsibility in International Law*, 22 B.U. INT'L L.J. 309, 322 (2004); DEBORAH LEIPZIGER, *THE CORPORATE RESPONSIBILITY CODE BOOK* (2003).

can help instantiate a collectively understood culture that moves away from excessive consumerism and production. This type of change deeply influences the nature of international cooperation amongst states and corporations, as well as normative developments in the system.

II. THE GLOBAL COMPACT, THE UNITED NATIONS, AND ENVIRONMENTAL PRINCIPLES

As far back as 1974, the UN, through the Commission on Transnational Corporations, took initiatives to develop a Code of Conduct for transnational corporations to establish a legal framework of some form to regulate what they do.¹⁹ It has been argued that the "UN's attempt to regulate transnational companies through its Code of Conduct produced 20 years of debate and negotiations, but yielded no results."²⁰ The failed attempts to agree on how to manage corporations are seen as the reason for an absence in the international political economy literature of discussions of codes of conduct for transnational corporations of any sort between the 1980s and 1990s.²¹ Only in the late 1990s, with the resurgence of discussions on corporate responsibility built around the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights,²² did UN bodies develop a renewed interest in international codes of conduct. The GC initiative needs to be viewed in this

19. See U.N. DEP'T OF ECON. AND SOC. AFFAIRS, THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS 33-34, U.N. Doc. ST/ESA/11 (1974), available at <http://unctc.unctad.org/data/e74ii6a.pdf>. The Commission on Transnational Corporations was asked by UN ECOSOC to "evolve" a "set of recommendations, which, taken together would represent a code of conduct for governments and TNCs to be considered and adopted by the Council." On this topic, see Barbara Frey, *The Legal and Ethical Responsibilities of Transnational Corporations in the Protection of International Human Rights*, 6 MINN. J. GLOBAL TRADE 153, 166 (1997); Sidney Dell, *The United Nations Code of Conduct on Transnational Corporations, in EFFECTIVE NEGOTIATION: CASE STUDIES IN CONFERENCE DIPLOMACY* 53 (Johan Kaufann, ed. 1989). Peter T. Muchlinski, *Attempts to Extend the Accountability of Transnational Corporations: The Role of UNCTAD, in LIABILITY OF MULTINATIONAL CORPORATIONS UNDER INTERNATIONAL LAW* 97 (Menno T. Kamminga & Saman Zia-Zarifi, eds., 2000).

20. Georg Kell, *The Global Compact, Selected Experiences and Reflections*, 59 J. BUS. ETHICS 69, 73 (2005).

21. Kathryn Sikkink, *Codes of Conduct for Transnational Corporations: The Case of the WHO/UNICEF Code*, 40 INT'L ORG. 815 (1986).

22. See the 2003 revised version, UN ESCOCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (August 13, 2003). Although this initiative has so far failed, the ideas contained within the UN Norms on the Responsibilities of TNCs contributed, for instance, to a consultation paper that the Office of the High Commissioner for Human Rights and the GCO produced in conjunction with the 2005 Business Leaders Initiative on Human Rights. BUSINESS LEADERS INITIATIVE ON HUMAN RIGHTS, UNITED NATIONS GLOBAL COMPACT, AND OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, A GUIDE FOR INTEGRATING HUMAN RIGHTS INTO BUSINESS MANAGEMENT (2005) available at http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/guide_hr.pdf. For a discussion of the UN Norms and Responsibilities of TNCs in terms of the role of the UN and states in developing it, see Larry C. Backer, *Multinational Corporations, Transnational Law: The United Nations' Norms on the Responsibilities of Transnational Corporations as a Harbinger of Corporate Social Responsibility in International Law*, 73 COLUM. HUM. RTS. L. REV. 287, 288 (2006).

context, particularly its adoption of the softer approach through the ten principles mentioned earlier. The overall mission and objectives of the GC are defined broadly as follows: “[To] be the world’s most inclusive voluntary initiative to promote responsible corporate citizenship, ensuring that business, in partnership with other societal actors, plays its essential part in achieving the United Nations’ vision of a more sustainable and equitable global economy.”²³

Two objectives which the GCO seeks to pursue in giving shape to this mission are stated as:

- Making the Compact and its principles on human rights, labor, environment, and anti-corruption an integral part of business operations and activities everywhere.
- Encouraging and facilitating dialogue and partnerships among key stakeholders in support of the ten principles and broader UN goals, such as the Millennium Development Goals.²⁴

The mission statement and the objectives of the GC confirm the fact that it seeks to do more than just identify ten principles with which corporations must comply. Although at first glance the GC initiatives appear to be a code of conduct or a “third-party” “principled code,”²⁵ the broader governance framework,²⁶ which is coordinated by the GCO, is also relevant when it comes to differentiating this initiative from others at the international level—such as the *Guidelines for Multinational Enterprises*.²⁷ This is important because the GCO seeks to involve corporations in its work in direct and diffuse ways rather than assume that they are passive recipients of an international code of practice. It is therefore this broader framework established by the GC that engages and manages the external relations of corporations with other participants, stakeholders, and the ten core principles as the pivot around which the governance structure of the GC is built.

The GC has sought to develop from the beginning as an initiative with a variety of different participants and stakeholders. It brings transnational and other kinds of corporations together with UN agencies, labor, civil society organizations, and governments in an effort, to use the words of the GCO itself, “to advance universal environmental and social principles in order to foster a more sustainable

23. U.N. GLOBAL COMPACT OFFICE, WHAT IS A LOCAL NETWORK? 1, http://www.unglobalcompact.org/docs/networks_around_world_doc/What_is_a_Local_Network.pdf (last visited Oct. 31, 2009).

24. United Nations, *supra* note 1.

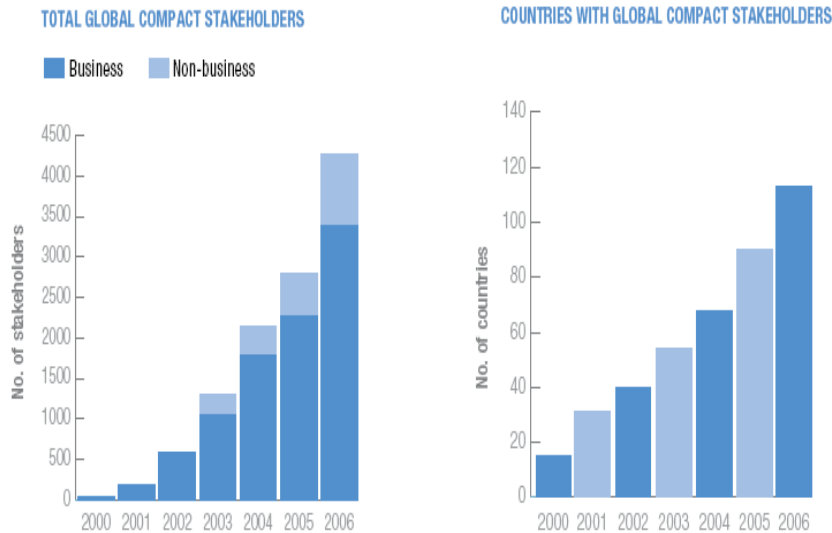
25. See, Christopher Wright & Alexis Rwabizambuga, *Institutional Pressures, Corporate Reputation, and Voluntary Codes of Conduct: An Examination of the Equator Principles*, 111(1) BUS. SOC. REV. 89, 93 (2006).

26. The term “governance framework” was more recently coined by the GCO to describe the range of activities that it coordinates to “foster greater involvement in, and ownership of, the initiative by participants and other stakeholders.” ANNUAL REVIEW 2007, *supra* note 7, at 16.

27. THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES (OECD 2008), available at <http://www.oecd.org/dataoecd/56/36/1922428.pdf>.

and inclusive world economy.”²⁸ Corporations are referred to as participants in the GC and as of 2007 over 3,000 corporations from 116 countries were members of the GC.²⁹ The term “stakeholder” refers to anyone else who is a member of the GC.³⁰ Figure 2 represents the increasing percentage of non-business stakeholders in the GC initiative. It also suggests that the multi-stakeholder approach has developed across the globe, given that the increase in both business and non-business participation matches the increase in the number of countries involved in the GC. Although in a useful critique of this development, it has been suggested that there is a regional imbalance in both participants and stakeholders in the GC.³¹ Figure 3 represents the diversity of the stakeholders other than corporations that have engaged with the GC initiative. This suggests that the engagement of non-business stakeholders with the GC is very diverse and potentially strong as a result.

Figure 2 Stakeholders in the Global Compact³²

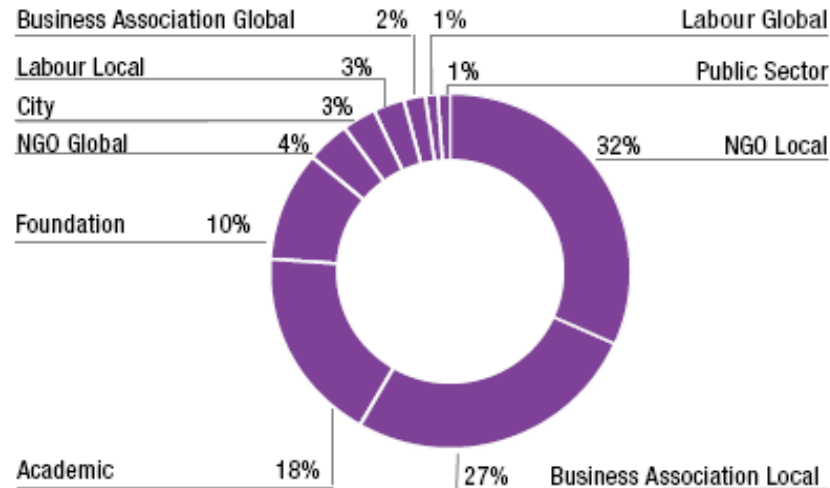


28. U.N. GLOBAL COMPACT OFFICE, THE UNITED NATIONS GLOBAL COMPACT: ADVANCING CORPORATE CITIZENSHIP 1 (UN Global Compact Office 2005) available at http://www.unglobalcompact.org/docs/about_the_gc/2.0.2.pdf.

29. ANNUAL REVIEW 2007, *supra* note 7, at 8.

30. Surya Deva, *Global Compact: A Critique of the U.N.'s "Public-Private" Partnership for Promoting Corporate Citizenship*, 34 SYRACUSE J. INT'L L. & COM. 107, 115 (2006) (discussing the obligations of a "stakeholder").

31. *Id.* at 134–36.

Figure 3 Non-Business Participants by Type³³

The GCO spearheads the GC. It is located within the executive office of the Secretary-General of the United Nations because of the way it networks itself through various “core agencies” of the UN.³⁴ The placement of the GC within the UN means that it is ultimately backed by states. In fact, Kell identifies some governments as playing a very strong role in the formation of the GC.³⁵ Their continuing involvement with the GC has been characterized as auxiliary in nature “through outreach support, advocacy, and funding.”³⁶ In an official communication from the GCO, the role of states is also described as giving the “essential legitimacy and universality to the principles of the Compact.”³⁷

The GCO has identified three ways that it seeks to engage with corporate participants, the range of stakeholders represented in Figure 3, agencies of the UN, and the ten core principles of the GC.³⁸ They include: (1) getting commitment from the leadership of companies who are participants of the GC; (2) developing and

32. ANNUAL REVIEW 2007, *supra* note 7, at 7.

33. *Id.* at 13-15.

34. These include the Office of the High Commission for Human Rights (OHCHR), the International Labor Organization (ILO), The UN Environment Programme (UNEP), the UN Development Programme (UNDP), the UN Industrial Development Organization (UNIDO), and the UN Office on Drugs and Crime (UNODC). *Id.* at 16; Kell, *supra* note 20, at 75.

35. Kell, *supra* note 20 at 74 (noting that the United Kingdom, Sweden, Norway, and Germany provided practical and financial support in forming and initially developing the GC).

36. Georg Kell & David Levin, *The Global Compact Network: An Historic Experiment in Learning and Action*, 108(2) BUS. SOC. REV. 151,153 (2003).

37. U.N. GLOBAL COMPACT OFFICE, THE UNITED NATIONS GLOBAL COMPACT: ADVANCING CORPORATE CITIZENSHIP 4 (UN Global Compact Office 2005) available at http://www.unglobalcompact.org/docs/about_the_gc/2.0.2.pdf.

38. ANNUAL REVIEW 2007, *supra* note 7, at 9-10.

implementing policies relating to the ten core principles and ensuring that the relevant people at the grassroots engage with them; and (3) ensuring that participants communicate their progress in relation to the principles.³⁹ The GCO has a variety of established practices that seek to enhance the engagement of the different groups with the core principles. To help develop and implement policies, two strategies supported by the GCO stand out.

The first is the establishment of the GC Local Networks (GCLN), which are defined as “clusters of participants who come together to advance the Global Compact and its principles at the local level.”⁴⁰ The GCO has managed to establish a very large number of GCLN to support its work within countries around the world.⁴¹ Since 2000, when the first four GCLN were established, they have now multiplied to over sixty-one with another twenty-five apparently in development.⁴² In an overview of GCLN, the GCO has said that they are meant to be “moving innovative solutions upstream for global replication and multiplication, or... taking global dialogue issues down to the level of implementation.”⁴³ This means that GCLNs help companies to implement the ten core principles and to facilitate their reporting obligations as participants in the GC.⁴⁴

The second strategy is the idea that the GCO supports the learning process for all involved through a variety of activities such as conferences and workshops that seek to enhance the understanding of participants and stakeholders in relation to the core principles.⁴⁵ Through these activities, the GCO has, for instance, published a number of case studies and analysis to enhance the engagement of different groups.⁴⁶ Other UN agencies have also worked with stakeholders to develop materials to support the learning environment for corporations. For instance, in 2005, the UNDP, along with the Danish Ministry of Foreign Affairs, produced a practical guide for companies operating in developing countries.⁴⁷ The guide aimed to assist companies with implementing the principles into their business operations in developing countries. Although the initiatives in this area appear very strong, whether or not corporations actually engage with the learning process is yet to be tested empirically.⁴⁸

39. *Id.* at 9.

40. LOCAL NETWORK REPORT, *supra* note 2, at 8.

41. *Id.* at 15.

42. *Id.* at 5-6.

43. *Id.* at 8.

44. *See* LOCAL NETWORK REPORT, *supra* note 2, at 25.

45. *Id.*

46. *See* U.N. GLOBAL COMPACT OFFICE, EXPERIENCES IN MANAGEMENT FOR SUSTAINABILITY (2003), available at http://www.unglobalcompact.org/docs/news_events/8.1/exp_man.pdf; *See also* U.N. GLOBAL COMPACT, FROM PRINCIPLES TO PRACTICE (2003), available at http://www.unglobalcompact.org/docs/news_events/8.1/princ_prac.pdf.

47. KPMG, IMPLEMENTING THE UN GLOBAL COMPACT: A BOOKLET FOR INSPIRATION (2005), available at http://www.unglobalcompact.org/docs/news_events/8.1/dk_book_e.pdf.

48. Gjølberg & Ruud, *supra* note 6, at 11-12 (discussing the hesitation of corporations to engage in the GC learning process).

An important dimension of engaging corporations with other participants and stakeholders is the requirement that all corporations produce an annual Communication on Progress (COP) which they must share with stakeholders and also post on the official website of the GC.⁴⁹ As a voluntary and non-legally binding arrangement, the reporting process of the GC is the only compulsory aspect of membership for corporations. To remain an “active member” of the GC, a corporation must submit its COP annually.⁵⁰ A COP must contain a statement that shows the continued support of the corporation for the core principles, describes what actions they have taken to implement the principles and whether they have engaged in partnership projects that support the goals of the UN more generally, and indicates how they have succeeded in meeting their goals using indicators or metrics available to them.⁵¹ The GCO has reported that it has made 600 companies “inactive” for not having submitted their COP in the manner required by the GCO.⁵² The main reason given for deactivating the membership of companies who do not report is to maintain the integrity of the initiative.⁵³ June 2005 was the first time that all corporations who had been members of the GC for more than two years had to officially report.⁵⁴ The GCO reported that 87% of the 102 Global 500 companies had reported.⁵⁵ However, only 25% and 11% of the medium-sized and small companies, respectively, had reported in 2005.⁵⁶ The reporting carried out by the larger companies is impressive to say the least. What it says about smaller and medium sized companies is that the benefits of membership might not warrant the need to support the GC’s initiatives. Alternatively, the costs of reporting might be high. Whatever the reason, it appears that the types of corporations reporting are predominantly the larger transnational corporations, which might benefit from the kind of citizenship that is established through the GC.

A. Environmental Principles of the Global Compact

A study by the Trade Committee of the Organization for Economic Cooperation and Development (OECD) in 2000 compared 246 voluntary codes of conduct that corporations of the OECD’s twenty-nine member states could adopt.⁵⁷

49. U.N.GLOBAL COMPACT OFFICE, POLICY FOR “COMMUNICATION ON PROGRESS (COP)” 2-3 (2009), available at http://www.unglobalcompact.org/docs/communication_on_progress/COP_Policy.pdf [hereinafter POLICY FOR COP]; U.N. GLOBAL COMPACT, LEADING THE WAY IN COMMUNICATION ON PROGRESS 4 (2006), available at http://www.unglobalcompact.org/docs/communication_on_progress/4.3/leading_the_way.pdf [hereinafter LEADING THE WAY].

50. This requirement kicks in two years after joining the GC, ANNUAL REVIEW 2007, *supra* note 7, at 51.

51. POLICY FOR COP, *supra* note 49.

52. ANNUAL REVIEW 2007, *supra* note 7, at 51.

53. POLICY FOR COP, *supra* note 49, at 2–3.

54. U.N. GLOBAL COMPACT, THE GLOBAL COMPACT COMMUNICATION ON PROGRESS: A STATUS REPORT AND RECOMMENDATIONS FOR IMPROVEMENTS 1 (2005), available at http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2005_07_15/statrep_cop2.pdf.

55. *Id.* at 5.

56. *Id.*

57. Trade Committee and the Committee on International Investment and Multinational Enterprises, *Codes of Corporate Conduct: Expanded Review of their Contents 2* (Org. for Econ. Co-

The study found that “environmental stewardship” was “one of the most heavily cited of the areas in the extended inventory.”⁵⁸ It noted that 145 out of the 246 codes dealt with environmental issues, and twenty-four were exclusively dedicated to them.⁵⁹ However, given that a majority of these 246 codes discussed in the Codes of Corporate Conduct Study are developed by companies themselves, or by associations of various kinds, it is fair to presume that they deal with either product or process standards.⁶⁰ Research suggests that directly regulating particular activities of transnational corporations is achieved more effectively through “narrowly defined issues” within codes of conduct.⁶¹ This suggests that, although there is nothing novel about another voluntary code, the fact that the GC adopts just three environmental principles to apply to corporations is somewhat unique.

Much has been made of the inability of the general and short statements that make up the principles of the GC to provide a detailed and potentially useful frame for regulating corporate activities.⁶² This is the case even amongst participants of the GC who have commented on how the brevity of the principles has little effect in terms of regulating what they do.⁶³ The principles of the GC have been referred to by those involved in its design as aspirations,⁶⁴ or shared values.⁶⁵ The GC's documents themselves refer to the principles as a value-based platform.⁶⁶ Whether or not they are aspirations or values of transnational or local corporations is an empirical question that does not seem as important as identifying how they might function as abstract and open-textured norms within the GC framework.

The three principles as abstract and open-textured norms rely on international environment law, defined broadly, for their meaning. Based on the origin of the three environmental principles, it is apparent that the GC constructed these principles in an abstract and open-textured way. The three principles are drawn from the 1992 Rio Declaration on Environment and Development,⁶⁷ and Agenda

operation and Dev., Working Paper No. 2001/6, 2001), [hereinafter Trade Committee] available at <http://www.oecd.org/dataoecd/57/24/1922656.pdf>.

58. *Id.* at 8.

59. *Id.*

60. The distinction between product and process standards is from Philipp Pattberg, *The Influence of Global Business Regulation: Beyond Good Corporate Conduct*, 111 BUS. SOC. REV. 241, 244 (2006); Trade Committee, *supra* note 57, at 5 (identifying that 48% of the voluntary codes were developed by companies; 37% through associations; 13% as partnerships of stakeholders; and 2% by international organizations).

61. Sikkink, *supra* note 21, at 816.

62. See Murphy, *supra* note 18, at 425; Klaus M. Leisinger, *Opportunities and Risks of the United Nations Global Compact*, 11 J. CORP. CITIZENSHIP 113, 114, 116 (2003); Deva, *supra* note 2, at 129–33.

63. Gjøølberg & Ruud, *supra* note 6, at 14–16.

64. John G. Ruggie, *Reconstituting the Global Public Domain—Issues, Actors, and Practices*, 10 EUR. J. INT'L REL. 499, 516 (2004).

65. Kell & Levin, *supra* note 36, at 152.

66. U.N. Global Compact, *supra* note 9.

67. Conference on the Environment and Development, Rio De Janeiro, Braz., June 3–14, 1992, *Report of the United Nations Conference on Environment and Development*, U.N. Doc. A/CONF.151/26 (Aug. 12, 1992); See David Wirth, *The Rio Declaration on Environment and Development: Two Steps Forward and One Back, or Vice Versa*, 29 GA. L. REV. 599 (1995)

21,⁶⁸ which were developed for the United Nations Conference on Environment and Development (UNCED).⁶⁹ As a result, the GC uses ideas from within the broader international environmental legal framework that states have been responsible for developing since 1992 in applying the environmental principles to corporations.

The differences between the three principles are noteworthy. Principle 7 of the GC requires that “business should support a precautionary approach to environmental challenges.”⁷⁰ The fact that the GC adopted the term “precautionary approach” from Principle 15 of the Rio Declaration, instead of the term “precautionary principle,” which is also commonly used in the general literature,⁷¹ suggests that it sought to draw on the legitimacy of the document for the origin of the norm.⁷² The more detailed definition of the precautionary approach in Principle 15 of the Rio Declaration is also used in the GC documents to support the abbreviated way that it is stated as Principle 7 of the GC itself.⁷³ Put in this way,

(commenting on the Rio Declaration); Ileana M. Porras, *The Rio Declaration: A New Basis for International Cooperation*, in GREENING INTERNATIONAL LAW 20 (Philippe Sands ed., 1993); Marc Pallemarts, *International Environmental Law From Stockholm to Rio: Back to the Future?*, in GREENING INTERNATIONAL LAW 1, *supra*.

68. See U.N. DEP'T OF ECON. AND SOC. AFFAIRS, AGENDA 21, [hereinafter AGENDA 21] available at <http://www.un.org/esa/sustdev/documents/agenda21>. AGENDA 21 was designed to clarify the scope of the environmental principles in the Rio Declaration but also contained principles of its own right. NICOLAS DE SADELEER, ENVIRONMENTAL PRINCIPLES: FROM POLITICAL SLOGANS TO LEGAL RULES 312 (2005).

69. U.N. Global Compact, *Environment*, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/environment.html> (last visited Nov. 15, 2008) (listing the environmental principles and describing their origins); See David Freestone, *The Road from Rio: International Environmental Law after the Earth Summit*, 6 J. ENVTL. L. 193, 209-16 (1994) (discussing the impact of the United Nations Conference on Environment and Development from the perspective of environmental norms).

70. U.N. Global Compact, *supra* note 69.

71. Importantly, Art. 14 of the 2003 revised version of the *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* adopts the term “precautionary principle.” U.N. ECOSOC 55th Sess., 22d mtg., U.N. Doc E/CN.4/Sub.2/2003/12/Rev.2 (Aug. 26, 2003).

72. There are a variety of different views on the difference between a precautionary principle and a precautionary approach. See Jacqueline Peel, *Precaution—A Matter of Principle, Approach or Process?* 5 MELB. J. INT. LAW 483 (2004). As to the concept of the precautionary principle, See Arie Trouwborst, *The Precautionary Principle in General International Law: Combating the Babylonian Confusion*, 16 REV. EUR. COM. & INT. ENV. LAW 185, 186-87 (2007); ARIE TROUWBORST, PRECAUTIONARY RIGHTS AND DUTIES OF STATES (2006).

73. Principle 15 of the RIO DECLARATION states that:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

U.N. Conference on Env't & Dev., *Rio Declaration on Environment and Development*, UN Doc. A/CONF 151/26, 31 ILM 874 (June 13, 1992) [hereinafter *Rio Declaration*] available at <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163>. This exact definition is also adopted by the GC as the definition of the precautionary approach for businesses. See U.N. Global Compact, *The Ten Principles—Principle 7*, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle7.html> (last visited Nov. 15, 2009).

the precautionary approach appears more as a heuristic device that is stated in an abstract way as one of the GC principles. As a heuristic device, it refers to an articulation of an established set of ideas, which are stated in more open-textured fashion in Principle 15 of the Rio Declaration.

Principle 8 of the GC requires that “businesses should undertake initiatives to promote greater environmental responsibility.”⁷⁴ Unlike the precautionary approach, this principle is extracted from Chapter 30 of Agenda 21, which is more generally dedicated to the role of businesses and industry.⁷⁵ First, the GC draws from two different places to develop the potential intersubjectivity around the vague idea of assuming greater environmental responsibility.⁷⁶ The GC refers to Chapter 30.26 of Agenda 21 which requires that transnational corporations:

[s]hould ensure responsible and ethical management of products and processes from the point of view of health, safety and environmental aspects. Towards this end, business and industry should increase self-regulation, guided by appropriate codes, charters and initiatives integrated into all elements of business planning and decision-making, and fostering openness and dialogue with employees and the public.⁷⁷

Secondly, the documents of the GC refer to Principle 2 of the Rio Declaration, which requires that states take “responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”⁷⁸ The combination of these two very different expectations means that Principle 8 is still very open-textured and vague despite the connections that the GC tries to develop between it and international environmental soft law more generally. This is because the link it has with the Rio Declaration and Agenda 21 are constructed without them being apparent, as is the case with the precautionary approach, for instance. The lack of an apparent intersubjective framework means that the vagueness inherent in the concepts in Principle 8 has different functional implications for social learning than Principle 7.

Principle 9 requires that “business should encourage the development and diffusion of environmentally friendly technologies.”⁷⁹ Given the reliance of the other two principles on Agenda 21 and the Rio Declaration, this principle appears to have been directly adapted from Principle 9 of the Rio Declaration, which requires that:

States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through

74. U.N. Global Compact, *The Ten Principles—Principle 8*, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle8.html> (last visited Nov.15, 2009).

75. *Id.*

76. *Id.*

77. AGENDA 21, *supra* note 68, at ¶ 30.26.

78. *Rio Declaration*, *supra* note 73.

79. U.N. Global Compact, *The Ten Principles—Principle 9*, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle9.html> (last visited Nov. 15, 2008).

exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.⁸⁰

The idea that states should adopt the “best available technology” or “best practical means” for doing something is a common requirement of many multilateral agreements, and therefore more could have been added to the provisions of these principles had the GC chosen to do so.⁸¹ Compared with Principles 7 and 8, this principle is arguably more defined but still remains open textured in the direction it gives to actors.

This discussion highlights the possibility that these environmental principles, which have developed out of qualitative concepts like “precaution” or “responsibility,” might encourage a range of actors with a variety of beliefs to internalize their meaning for themselves. Actors have different values and beliefs behind why they might protect and preserve the natural environment and resources. These values and beliefs elicit not only different responses from actors, but the depth of reaction to the same problem might also vary significantly.⁸² For instance, a state might preserve a rainforest for its biodiversity but may also do so because of the aesthetic, spiritual, historical, or symbolic value that it has for all or particular parts of its current or future population. The diversity of values in the context of a regime like the GC, where corporations and other stakeholders like governments, civil society, and labor organizations are involved in different ways is bound to be significant.

Additionally, the GC has generated principles in terms that presume their relevance for what corporations might value. This suggests that identifying what relevance the principles have for corporations is in itself a function of the GC governance framework rather than something to be presumed. It also means that to view the GC environmental principles as a norm that requires compliance constitutes approaching their role and function in potentially unproductive ways. In fact, Kell and Ruggie, as two main architects and drivers of the GC, have noted that it was not designed as a code of conduct. They write that: “Instead, it is meant to serve as a framework of reference and dialogue to stimulate best practices and to bring about convergence in corporate practices around universally shared

80. *Rio Declaration*, *supra* note 73.

81. See Convention on Long-Range Transboundary Air Pollution art 6, *opened for signature* Nov. 13, 1979, T.I.A.S. No. 10,541, 1302 U.N.T.S. 217 (entered into force Mar. 16, 1983) (requiring that states adopt the “best available technology”); The United Nations Convention on the Law of the Sea art. 194, *opened for signature* Dec. 10, 1982, S. Treaty Doc. No., 103-39 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994) (requiring that states adopt what are practically the best available means at their disposal to prevent, reduce, and control pollution of the marine environment). Other treaties reference the principles in water pollution agreements. See Convention of the Protection and Use of Transboundary Watercourses and International Lakes, *opened for signature* Mar. 17, 1992, 31 I.L.M. 1312 (entered into force Oct. 6, 1996); Convention for the Protection of the Marine Environment of the North-East Atlantic, *opened for signature* Sept. 22, 1992, 31 I.L.M. 1069 (entered into force on Mar. 25, 1998) [hereinafter *OSPAR Convention*].

82. This point has been used for criticizing the use of abstract principles within the GC framework. See Deva, *supra* note 2, at 129-33.

values.⁸³ In other words, the participation of corporations is important for creating meaning from the environmental principles used in the GC and it cannot be presumed that they are values to which corporations naturally relate.

The relevance of the abstract and open-textured style of Principles 7, 8, and 9 in the GC as discussed can also be contextualized by comparing them with other voluntary codes developed internationally for transnational corporations. For instance, the OCED Guidelines also provides recommendations for how international businesses should conduct themselves in relation to a range of areas, including the protection of the environment.⁸⁴ In comparison, for instance, the OECD Guidelines do not use an abstract abbreviation of the precautionary principle but instead define it in full and in a way that has subtle and important differences to Principle 15 of the Rio Declaration.⁸⁵ In other words, they seek to specify in a more precise way how the precautionary principle has to be interpreted by the international business community. This does not appear to have provided effectively for the application of the precautionary principle to corporations, as is apparent for instance in the issues raised during the 2004 Annual Meeting which reviewed the OECD Guidelines.⁸⁶ This is because certain concepts—like risk—are open textured and potentially applicable to all sorts of instances of corporate activity. More importantly, what constitutes an acceptable approach to risk was identified as important for the public sector to define rather than individual corporations, which might vary significantly in their approaches.⁸⁷ It appears from

83. Georg Kell & John Ruggie, *Global Markets and Social Legitimacy: The Case for the "Global Compact"* 8(3) TRANSNAT'L CORPS. 101, 104 (1999).

84. In particular, Ch. 5 of the *OECD Guidelines* provides eight different, fairly detailed recommendations for international business. The Org. for Econ. Cooperation & Dev. [OECD], *The OECD Guidelines for Multinational Enterprises: Text, Commentary and Clarifications*, at 28-29, OECD Doc. DAF/IME/WPG(2000)15/FINAL (2001).

85. The *OECD Guidelines* provides that:

Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimize such damage.

Id. at 28.

86. OECD DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS, ROUNDTABLE ON CORPORATE RESPONSIBILITY: ENCOURAGING THE POSITIVE CONTRIBUTION OF BUSINESS TO ENVIRONMENT THROUGH THE OCED GUIDELINES FOR MULTINATIONAL ENTERPRISES—SUMMARY OF THE ROUNDTABLE DISCUSSION (June 16, 2004), www.oecd.org/dataoecd/54/24/33805553.pdf. See also Elisa Morgera, *An Environmental Outlook on the OECD Guidelines for Multinational Enterprises: Comparative Advantage, Legitimacy, and Outstanding Questions in the Lead Up to the 2006 Review*, 18 GEO. INT'L ENVTL. L. REV. 751 (2006) (discussing the environmental provisions of the OECD Guidelines).

87. In the report of the 2004 meeting it was noted that:

[W]hereas the question of where to draw the line between government and corporate responsibility is an important cross-cutting issue, it is, particularly pertinent in the context of risk management. As a corporate representative said, few, if any activities are risk-less and so it is unrealistic to expect companies to shun all environmental risks. This is one reason why companies cannot be left alone managing risk; there needs to be a degree of involvement on the part of government and civil society to discuss *inter alia* what constitutes acceptable risk levels.

OECD DIRECTORATE, *supra* note 86, at 8.

this that spelling out particular formulations of the ideas contained within abstractly defined environmental principles does not necessarily predispose them to being applied more easily by corporations.

The next section discusses the potential of corporations to actually share a culture at the international level, one which values anything in particular that is traditionally of concern to the public at large and to states in particular. This argument seeks to position the environmental principles as norms that have significance for how corporations might be learning to collectively identify with a particular culture rather than to regulate how they should act in particular ways.

III. COLLECTIVE LEARNING THROUGH THE GLOBAL COMPACT

An important criticism of the GC discussed above relates to whether the objectives of the UN expressed through the principles and the GCO can be reconciled with the needs and preferences of private enterprise.⁸⁸ As an alternative, Ruggie has argued that, although the principles established as part of the GC were developed by states, their adoption by corporations suggests that they are also able to “encompass the sphere of transnational corporate activity.”⁸⁹ Part of the difficulty with this debate is the presumption that the principles are values and that the GC is being built on a value-based platform. As discussed above, the environmental principles of the GC are open-textured or abstract norms that require actors to engage with them in order to create meaning from them.

The important question seems to be whether corporations are capable of “genuinely political activity” within the international order, either within or “apart from” the system of states.⁹⁰ States engage in politics because they might be trying to solve cooperation problems by creating norms and transacting together. Ideational and normative structures develop, for instance, out of needing to solve issues that require the cooperation of actors such as preventing the depletion of the ozone layer. Whether the direct or diffused interactions of corporations with each other are capable of generating shared culture or intersubjectivity is an important issue. The potential of abstract and open norms like environmental principles to generate meaning for a group of corporations should not necessarily be presumed.

Traditionally, it has been the ability of corporations or civil society organizations to pressure states, intergovernmental negotiations, and international agencies that has dominated research agendas.⁹¹ This research agenda is a reflection of a dominant and persistent ideology that still sees states as “the

88. See ENGSTRÖM, *supra* note 15, at 46-48.

89. Ruggie, *supra* note 64, at 516.

90. *Id.* at 502. See also Paul Wapner, *Politics Beyond the State: Environmental Activism and World Civic Politics*, 47(3) WORLD POLITICS 311 (1995) (for a discussion of world civil politics as practiced by NGO's, TEAG's & environmental activists and how this discussion is relevant to the study of world politics). Some have in fact turned these issues around and have investigated the potential role of private actors to compensate for the lack of initiative shown by states to fix or provide public goods, See Christoph Knill & Dirk Lehmkuhl, *Private Actors and the State: Internationalization and Changing Patterns of Governance*, 15 GOVERNANCE 41 (2002).

91. See, e.g., MARGARET KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998).

primary form of political organization.”⁹² There are different ways in which the role of transnational corporations and civil society organizations are being rationalized within the international order in relation to public matters like the environment. Wapner, in 1995, developed the idea of “world civic politics” to argue that, at the international level, there was political activity apart from the state.⁹³ A second idea points out that there are “deeper processes of globalization at work that are producing a disengagement of law and state.”⁹⁴ This liberates other entities, including individuals and transnational corporations, to have a significant say in the processes of globalization.⁹⁵ Importantly, Cutler has argued that the main problem with questions about the political activity of entities like transnational corporations is that “conventional theories of international relations and international law are incapable of capturing” private authority.⁹⁶ She argues that the “analytical, theoretical and ideological orientations” of these disciplines render such authority “non sequitur.”⁹⁷ In the case of many approaches to international relations, states are still the primary actors responsible for change within the international order.⁹⁸ Public international law is even more explicitly state-centric, as it provides that only states can create law.⁹⁹ These ideas suggest the potential difficulty with transnational corporations shaping their own collective understanding of culture or norms relating to public issues.¹⁰⁰

There is also the challenge of basing discussions of the political activities of corporations around norms. This is captured by Sol Picciotto, who highlights the “complex and multi-layered interactions between laws, codes and guidelines, operating locally, nationally, transnationally, regionally, and internationally.”¹⁰¹ Santos also makes similar points in stating that: “Our... life is constituted by an intersection of different legal orders, that is by interlegality. Interlegality is the...

92. Ruggie, *supra* note 64, at 502.

93. Wapner, *supra* note 90. *See also* Ruggie, *supra* note 64 (considering this idea in the context of the GC).

94. A. Claire Cutler, *Private International Regimes and Interfirm Cooperation*, in *THE EMERGENCE OF PRIVATE AUTHORITY IN GLOBAL GLOBAL GOVERNANCE* 23, 33 (Rodney H. Bruce & Thomas J. Biersteker eds., 2002).

95. *See* BOAVENTURA DE SOUSA SANTOS, *TOWARD A NEW LEGAL COMMON SENSE* 181-82 (2d ed., LexisNexis Butterworths 2002) (discussing how these transnational identities are affecting and deepening the process of globalization through their global influence).

96. CUTLER, *supra* note 94, at 2.

97. *Id.*

98. *See* Ronen Palan, *Recasting Political Authority: Globalization and the State*, in *GLOBALIZATION AND ITS CRITICS: PERSPECTIVES FROM POLITICAL ECONOMY* 139, 140 (Randall Germain ed., 2000).

99. For instance, the I.C.J. only recognizes the role of civilized nations in creating general principles of law. *See* Statute of the I.C.J. art. 38(1)(c) (1946).

100. For a good survey and examination of the role of “multinational enterprises” in governance, *see* Lee Tavis, *Corporate Governance and the Global Social Void*, 35 *VAND. J. TRANSNAT'L L.* 487 (2002).

101. Sol Picciotto, *Introduction: What Rules for the World Economy?*, in *REGULATING INTERNATIONAL BUSINESS: BEYOND LIBERALIZATION* 17 (Sol Picciotto and Ruth Mayne eds., 1999), (citing Scott H. Jacobs, *Regulatory Co-operation for an Interdependent World: Issues for Government*, in *Regulatory Cooperation for an Interdependent World*, OECD, Paris (1994)).

key... post-modern conception of law.”¹⁰² These ideas suggest that, even if we are able to observe change in corporate behavior toward a more socially responsible approach, ascertaining its cause in a complex world is difficult if not impossible. On the other hand, Cutler has argued in her scholarship on private authority that “the mercatocracy [actually] functions to provide a unity of purpose and a coherence in regulation...”¹⁰³ She suggests that this is “obscured by notions of pluralistic or fragmented governance.”¹⁰⁴ That is, concepts and ideas used in public international law make the mercatocracy appear more fragmented and pluralistic than they are.¹⁰⁵ Cutler’s views imply that the approaches of corporations to issues are not that seemingly fragmented to prevent its study or even to suggest that they can potentially instantiate cultures of particular kinds.¹⁰⁶ The issue of concern is more in terms of the indeterminate nature of how corporations come to prefer certain things, as highlighted by Santos and Sol Picciotto in the above references to their work, rather than whether they can collectively identify with something in particular.

A. Engagement and the Instantiation of a Collective Culture Through the Global Compact

It is therefore arguably important to consider why corporations might work together or participate in collectively organized initiatives, as well as whether they can or will engage in political activities at the international level—in other words, why corporations might wish to interact directly or diffusely through, for instance, the GC. In a 2007 study, McKinsey & Company, who interviewed around 391 chief executive officers (CEOs) and top executives of corporations who were at that time participants in the GC, noted the following: “Most businesses are facing overwhelmingly large ESG issues that span regions and industries, and threaten their long-term viability. More and more, businesses are collaborating to level the playing field—working in multi-sector partnerships with civil society organizations, governments, and each other.”¹⁰⁷ This comment highlights both the pressure to take responsibility for environmental stewardship and the need to level the playing field as reasons why corporations might collaborate through the GC. McKinsey & Company also asked leaders within corporations to select “developments linked to accelerated global patterns of growth as the three most

102. BOAVENTURA DE SOUSA SANTOS, *supra* note 95, at 473.

103. CUTLER, *supra* note 94, at 31.

104. *Id.*

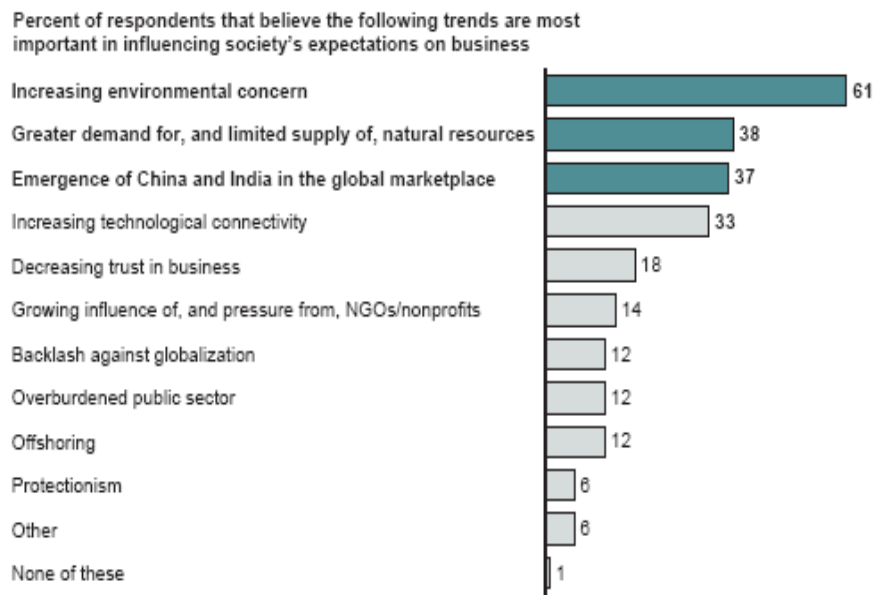
105. *Id.*

106. See Peter T. Muchlinski, “Global Bukowina” Examined: Viewing the Multinational Enterprise as a Transnational Law-Making Community, in GLOBAL LAW WITHOUT A STATE 79-108 (Gunther Teubner ed., 1997).

107. MCKINSEY & COMPANY, SHAPING THE NEW RULES OF COMPETITION: UN GLOBAL COMPACT PARTICIPANT MIRROR 2, 24 (2007), available at http://www.unglobalcompact.org/docs/summit2007/mckinsey_embargoed_until020707.pdf. The abbreviation ESG used in this quote refers to “environmental, social and governance,” *id.* at 6. In this same study, McKinsey & Company report that 95% of the 391 CEOs of companies they spoke to “agreed that society has greater expectations for business to take on public responsibilities than it had 5 years ago,” *id.* at 7.

important trends that are influencing society's expectations on businesses."¹⁰⁸ From their responses, represented in Figure 4, corporations understand the severity of the pressure on them to deal with environmental concerns. In this same 2007 study, McKinsey & Company also reported that many of the corporate leaders they surveyed indicated that they viewed the GC as "one example of a coalition organized around a wider set of ESG issues."¹⁰⁹ Arguably, the GC is seen, amongst other things, as giving corporations the chance to establish a level playing field in terms of the social responsibility that is increasingly called for.

Figure 4 Trends influencing society's expectations of business¹¹⁰



Source: Feb 2007 McKinsey survey of 391 UN Global Compact participant CEOs

Whether this belief is driven by "microeconomic imperatives," or whether it emerges from a sense of wanting to take socially and environmentally responsible actions cannot easily be separated.¹¹¹ From the beginning, however, the UN partnership with corporations through the GC was driven by the ideology that free

108. *Id.* at 10.

109. *Id.* at 24. There are many other ways to conceptualize why corporations might choose to join the GC. For instance, during an interview Norwegian companies said that the GC gives their companies "a 'social licence to operate'; It is beneficial to the companies' reputation management, brand image, employee satisfaction, recruitment, stakeholder relations, customer satisfaction etc." Gjølborg and Ruud, *supra* note 6, at 11.

110. MCKINSEY & COMPANY, *supra* note 107, at 11.

111. *See*, Kell, *supra* note 20, at 74.

trade and open markets would be enhanced through more socially responsible behavior.¹¹² That is, the GC sought to encourage changes in the way money was made rather than to create growth by adopting restrictions on corporate behaviour.¹¹³ This rhetoric plays itself out in a variety of ways within the work of the GC. For instance, the GCO has encouraged corporations to place importance on the cost-effectiveness of protecting the environment. In one of its guides to the GC, it has suggested that the precautionary approach to doing business means avoiding damage to the environment because it is cheaper than remedying it in the future.¹¹⁴ They note that an investment in environmentally safer production methods saves money in the long term.¹¹⁵

The culture the GC is seeking to promote appears to encourage an approach to markets that is encapsulated by ideas developed within ecological economics.¹¹⁶ According to Daly, who is arguably amongst the pre-eminent scholars in this field, sustainable or ecological economics is based on distinguishing between the ideas of development and growth.¹¹⁷ Daly has written that:

To grow means to “increase naturally in size by the addition of material through assimilation or accretion.” To develop means “to expand or realize the potentialities of; to bring gradually to a fuller, greater, or better State.” When something grows it gets bigger. When something develops it gets different. The earth ecosystem develops (evolves), but [it] does not grow. Its subsystem, the economy, must eventually stop growing, but can continue to develop. The term “sustainable development” therefore makes sense for the economy, but only if it is understood as “development” without growth.¹¹⁸

112. ENGSTRÖM, *supra* note 15, at 11. Engström notes that this dimension of the GC has been criticized as giving in to the realpolitik of the balance of power internationally. *Id.* at 11. See in particular the comment from the former UN Secretary-General Kofi Annan in his statement at the launch of the GC in 1999 suggesting that the UN should “help make the case for and maintain an environment which favours trade and open markets.” Press Release, Secretary General, Secretary-General Proposes Global Compact on Human Rights, Labour, Environment, U.N. Doc. SG/SM/6881(Feb. 1, 1999), available at <http://www.un.org/News/Press/docs/1999/19990201.sgsm6881.html>.

113. ENGSTRÖM, *supra* note 15, at 11.

114. U.N. GLOBAL COMPACT OFFICE, GUIDE TO THE GLOBAL COMPACT: A PRACTICAL UNDERSTANDING OF THE VISION AND NINE PRINCIPLES 54 (2002), available at <http://www.cosco.com/en/pic/research/7573381391844063.pdf> [hereinafter GUIDE TO THE GLOBAL COMPACT].

115. *Id.*

116. This discussion aims to illustrate the idea of a cultural shift rather than defend it. As a result, the discussion of ecological economics is not particularly detailed. For more information, see e.g. Herman Daly, *Sustainable Growth: An Impossibility Theorem*, in VALUING THE EARTH 267 (Herman Daly and Kenneth Townsend eds., 1993), available at <http://dieoff.org/page37.htm>; JOSEPH R. DESJARDINS, ENVIRONMENTAL ETHICS: AN INTRODUCTION TO ENVIRONMENTAL PHILOSOPHY 87 (Thomson Wadsworth 4th ed. 2006). For an insightful and powerful critique, see MARK SAGOFF, PRICE, PRINCIPLE, AND THE ENVIRONMENT 177-200 (2004).

117. See DESJARDINS, *supra* note 116, at 87; see also Daly, *supra* note 116.

118. Daly, *supra* note 116, 267-68.

To illustrate, ecological economics can usefully be contrasted to alternative ideological approaches to consumption and production. The first of these is the traditional market economics model, which deals with the allocation of resources by giving priority to those who are willing to pay the most for them.¹¹⁹ Also, whether a particular resource is developed and distributed is based simply on conceptions of consumer demand for that resource.¹²⁰ In contrast, through ecological economics, the use of resources is “only at a rate that can be sustained over the long term and one that recycles or reuses both the by-products of the production process and the products themselves.”¹²¹ Amongst other things, a culture driven by the ideas behind ecological economics would, for instance, not produce goods simply because there is consumer demand for them. The production of particular goods would be limited by the potential renewal of those natural resources needed for the process.¹²²

An alternative ideological and cultural approach to ecological economics examines the lifestyle that society is seeking to sustain while we become more aware of the impact we have on the environment and our resource use. Ecological economics is critical of the idea of sustaining our current consumption and production patterns.¹²³ One approach comes from Sagoff, who criticises the emphasis on “scarcity and overconsumption.”¹²⁴ His arguments are complex, and a summary would not do justice to them. This approach is based on a critique of using the concept of scarcity to drive our understanding of consumption and production in ecological economics because we then value nature as a resource.¹²⁵ Instead, Sagoff emphasizes spiritual, aesthetic, and ethical approaches to valuing goods, nature, and the environment.¹²⁶ These alternative approaches to ecological economics are presented here to illustrate the other end of the spectrum on which the standard model of market economics lies.

Generally speaking, the idea that people in any society would accept restrictions on their consumer preferences is visionary, given current standards of living in the developed world in particular. This suggests that the structural power of the kind of culture for which ecological economists argue is yet to dominate general consumption and production patterns around the world. Although there will be natural exceptions, the culture defended by traditional market economics is generally taken for granted. More importantly, it is difficult to see how corporations will support an alternative culture to consumerism. In fact, it was argued back in 1962 that our corporations were not designed or created to support social responsibility for protecting the environment.¹²⁷ Fitzmaurice has also argued

119. DESJARDINS, *supra* note 116, at 87.

120. *Id.* at 87–88.

121. *Id.* at 88.

122. *Id.*

123. *Id.* at 89.

124. *Id.* at 90; *See e.g.*, SAGOFF, *supra* note 116, at 175.

125. DESJARDINS, *supra* note 116, at 90.

126. SAGOFF, *supra* note 116, at 1-3.

127. MILTON FRIEDMAN, CAPITALISM AND FREEDOM 133-36 (49th anniversary ed., 1962).

that environmental norms have not had much of a binding influence on the transnational mercatocracy.¹²⁸

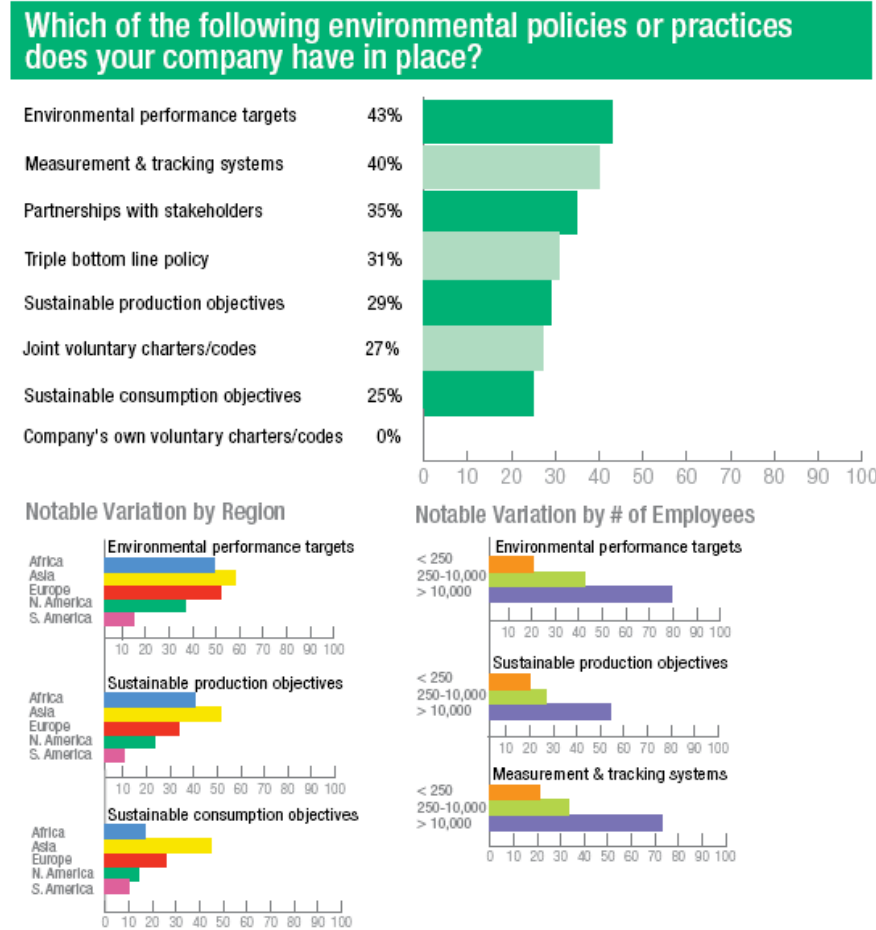
The point being made here is that a corporation's preferences and wants vary significantly from those of other actors, whose deeper values and beliefs are not entirely shaped by approaches to consumption and production. For corporations to adopt preferences in favor of environmental ideals that protect future generations, or for them to restrain how they respond to potential consumer demands, is in itself a normative shift in behavior. This is because the more familiar environmental concerns of corporations are with liabilities and damage to current populations rather than restraining production on the basis of the belief that it is better for the environment. The suggestion, therefore, that corporate behavior and culture could change as dramatically as required by ecological economics is difficult to foresee.

This discussion does not suggest that the shift in culture or the way corporations view and approach their business is likely to be swift. The instantiation of a particular culture is in itself a collective learning experience. It is arguable that corporations are beginning to take steps to instantiate a collective culture globally where the approaches of ecological economics within business might become the norm rather than the exception. In a survey of 400 companies completed by the GCO in 2007, it was illustrated that an important proportion of the businesses surveyed had some kind of environmental policies or practices in place.¹²⁹ The findings are presented in Figure 5.

128. Malgosia Fitzmaurice, *The Contribution of Environmental Law to the Development of Modern International Law*, in *THEORY OF INTERNATIONAL LAW AT THE THRESHOLD OF THE 12TH CENTURY: ESSAYS IN HONOUR OF KRYSZTOF SKUBISZEWSKI* 909 (Jerzy Makarczyk ed., 1996).

129. ANNUAL REVIEW 2007, *supra* note 7, at 9, 33. From the 400 companies that responded to the GCO survey, 28% had more than 10,000 employees; 41% had between 250 and 10,000 and 32% had fewer than 250 employees. *Id.* at 9.

Figure 5 Implementation of Environmental Policies and Practices by Corporations Across Countries and Regions¹³⁰



According to the research presented in Figure 5, a significant proportion of those corporations that have adopted environmental policies or practices have more than 10,000 employees, which often means that they are large transnational corporations.¹³¹ This is important because of their capacity to locate production across national borders, to trade across frontiers, exploit foreign markets, and organize managerial structures in a way that affects the international allocation of resources.¹³² Also, because the production and distribution networks of transnational corporations usually span across many jurisdictions, they are more

130. *Id.* at 33.

131. *Id.*

132. ENGSTRÖM, *supra* note 15, at 5; see also PETER T. MUCHLINSKI, MULTINATIONAL ENTERPRISES AND THE LAW 15 (Oxford University Press 2nd ed., 2007) (1995).

likely to have an influence on a variety of different stakeholders.¹³³ As a result, a shift in the practices of transnational corporations is likely to be a much stronger instantiation of an emerging global culture driven by an ecological approach to issues of production and consumption.

In the 2007 McKinsey & Company report referred to earlier in relation to Figure 4,¹³⁴ it was noted that “many CEOs recognize the underlying tension between business models wedded to increasing patterns of consumption, and the reality of limited natural resources.”¹³⁵ The findings of the McKinsey & Company report and those of the GCO discussed above strongly suggest that companies have started to rethink their approach to how they drive consumption of certain goods and their involvement in the extraction of natural resources for their production. This discussion does not suggest that the GC can of itself achieve the cultural shift of corporations taking ecological approaches to consumption and production. In fact, given the earlier references to the work of Santos and Sol Picciotto, it would be inaccurate to identify a likely cause for such a cultural shift in the global patterns of growth. Despite this, the framework of the GC and the environmental principles within it can potentially shape and manage the interactions of corporations, particularly the 100-plus transnational corporations which are members of it, to instantiate or provide support for the development of such a cultural shift. For instance, the diffusion of ideas amongst corporations and the type of identity that the COP policy of the GCO creates are potentially capable of establishing an important measure for instantiating a collective culture at the international level.

IV. DIFFUSION AND SOCIAL INFLUENCE IN THE CONTEXT OF THE GLOBAL COMPACT

Not all ideas relating to how corporations should behave are socially influential enough for them to be adopted or internalized. The scholarship on social learning and socialization in international relations has developed a focus on the concept of diffusion because it explains one of the reasons why actors might internalize particular ideas or intersubjective structures like norms.¹³⁶ The diffusion of ideas, things, practices, norms, or policies is another way of referring to a process whereby innovations are “communicated... over time among members of

133. ENGSTRÖM, *supra* note 15, at 5. *See also*, MUCHLINSKI, *supra* note 132, at 15. *See*, DAVID HELD, ANTHONY MCGREW, DAVID GOLDBLATT & JONATHAN PERRATON, *GLOBAL TRANSFORMATIONS: POLITICS, ECONOMICS AND CULTURE* 237 (1999) (discussing the role of transnational corporations and global production).

134. MCKINSEY & COMPANY, *supra* note 107, at 11.

135. *Id.* at 13.

136. Kai Alderson, *Making Sense of State Socialization*, 27 *REV. INT'L STUDIES* 415, 424-25 (2001). On the idea that international organizations teach and diffuse norms, *see* Martha Finnemore, *International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy*, 47 *INT'L ORG.* 565, 585-86 (1993); Alexandru Grigorescu, *European Institutions and Unsuccessful Norm Transmission: The Case of Transparency*, 39(4) *INT'L POLITICS* 467, 467 (2002). For a more general review of diffusion in the context of international relations, *see* Emily Goldman & Leslie Eliason, *Introduction: Theoretical and Comparative Perspectives on Innovation and Diffusion*, in *THE DIFFUSION OF MILITARY TECHNOLOGY AND IDEAS* 1, 11-22. (Emily Goldman & Leslie Eliason eds., 2003).

the social system.”¹³⁷ Not all ideas that are diffused, however, are subsequently adopted or utilized in particular instances.¹³⁸ Becoming aware of an idea does not necessarily suggest that actors will adopt or internalize it within their practices.¹³⁹

The idea that actors like corporations might emulate or model themselves on what they see in others is a concept used in the scholarship on diffusion to describe how ideas spread across the globe.¹⁴⁰ The main rationale for emulating someone or modelling what they do is the importance often placed on ideas that are readily available and have been tried elsewhere to solve or deal with similar problems or issues.¹⁴¹ Braithwaite and Drahos distinguish modelling (or emulation) from imitation by suggesting that it is a process with cognitive content because ideas are communicated to others using words or images.¹⁴² As a result, emulation might mean that a policy will only be used to shift agendas rather than that actors will do exactly what others have done in the past.¹⁴³

Emulating or modelling as a social process is even more likely to be the case when actors like corporations exist in a competitive global business environment. Although Ikenberry, in the following quote, is writing about states, the ideas share a degree of resonance with transnational and other corporations:

It appears that emulation will be most pervasive when international competition is most intense, inasmuch as competition provides a powerful incentive to monitor and respond to innovations developed abroad. In cases of intense competition, the costs of failing to innovate are highest. Moreover, the diffusion of policy practices is most likely to occur when states share underlying cultural or social settings (although a

137. See EVERETT ROGERS, *DIFFUSION OF INNOVATIONS* (4th ed.1995), quoted in Helge Jørgens, *Governance by Diffusion: Implementing Global Norms Through Cross-national Imitation and Learning*, in GOVERNANCE FOR SUSTAINABLE DEVELOPMENT: THE CHALLENGES OF ADAPTING FORM TO FUNCTION 246, 252 (William Lafferty ed., 2004).

138. This conceptual distinction is emphasized by Goldman & Eliason, *supra* note 136, at 12. Goldman & Eliason point to the following research as shaping this idea that they summarize in their work: Colin Bennett, *How States Utilize Foreign Evidence*, 11(1) J. PUB. POLICY 31, 32-33 (1991); Colin Bennett, *What is Policy Convergence and What Causes It?* 21 BRIT. J. OF POL. SCIENCE 215, 222-23 (1991); Colin Bennett, *Understanding Ripple Effects: The Cross-National Adoption of Policy Instruments for Bureaucratic Accountability*, 10(3) GOVERNANCE 213, 214 (1997).

139. Bennett, *How States Utilize Foreign Evidence*, *supra* note 138, at 32-33 (arguing that there is a difference between “knowledge of a foreign program, utilization of that knowledge, and the adoption of the same program”).

140. On emulation and diffusion, see in particular John Ikenberry, *The International Spread of Privatization Policies: Inducements, Learning, and Policy Bandwagoning*, in THE POLITICAL ECONOMY OF PUBLIC SECTOR REFORM AND PRIVATIZATION 88, 90 (Ezra Suleiman & John Waterbury eds., 1990). On modelling and diffusion, see JOHN BRAITHWAITE & PETER DRAHOS, GLOBAL BUSINESS REGULATION 539 (2000).

141. Kurt Weyland, *The Diffusion of Innovations: A Theoretical Analysis*, paper presented at the 97th annual meeting of the American Political Science Association, Boston, (Aug. 29 – Sept. 1, 2002), quoted in Jørgens, *supra* note 124, at 252.

142. BRAITHWAITE & DRAHOS, *supra* note 140, at 25.

143. Bennett, *What is Policy Convergence and What Causes It?*, *supra* note 125, at 221.

highly competitive environment might serve to transcend obstacles presented by divergent cultural or societal circumstances).¹⁴⁴

In a competitive environment, corporations are likely to be looking for ideas and innovations that might enhance their goals and objectives. Given that corporations generally aim to increase their annual profits, a competitive environment would strongly favor emulating successful initiatives or modelling themselves to be like their peers.¹⁴⁵

This is not to suggest that competition and the pressure for corporations to emulate or model themselves on success have to be viewed in one-dimensional terms. The pressure to be more socially responsible in protecting the environment from harm and depletion of natural resources is also likely to influence corporations to emulate others who have done this successfully.¹⁴⁶ As a result, companies feeling pressure from shareholders, consumers, distributors, or the general public would identify with other corporations who have strongly performed in taking responsibility toward environmental stewardship. This suggests that they are more likely to emulate or model themselves on others because their competitive position in the market could easily be impacted in the long run if they do not take appropriate steps in this direction.

Modelling or emulating what others do is also more about identifying with others than simply making a rational choice to pursue a particular end.¹⁴⁷ This idea can be illustrated by reference to a study of Samarco Salvamar (which produces iron ore pellets), published through the GCO.¹⁴⁸ The authors of the study note that in 1990 the company analyzed 250 profitable corporations and selected twenty-five to emulate or on which to model its own operations.¹⁴⁹ Samarco Salvamar developed projects and integrated management models into its practices, including environmental ones, by drawing from the experiences of the twenty-five companies it had selected for study.¹⁵⁰ This suggests that, although Samarco Salvamar was rational in how it approached its operations, its decisions were constructed by what it observed in the twenty-five corporations it studied.

The potential for ideas to diffuse amongst corporations who are participants in the GC is likely to be strong. This is because of the pressure they must feel not only to perform competitively to increase profits, but also to act in more socially responsible ways—particularly in relation to the environment. The demonstration of successful innovations in relation to environmental initiatives that can generate income for corporations is likely to have an important causal effect on them. There are at least three arguments as to how corporations, as participants of the GC, are

144. Ikenberry, *supra* note 140, at 103, *quoted in* Goldman & Eliason, *supra* note 136, at 15–16.

145. BRAITHWAITE & DRAHOS, *supra* note 140, at 539.

146. *See* discussion *supra* Figure 4 (summarizing some of the findings of the 2007 McKinsey & Company report, particularly in relation to the pressures on CEOs to be socially responsible).

147. BRAITHWAITE & DRAHOS, *supra* note 140, at 30.

148. Cláudio Bruzzi Boechat & Fundação Dom Cabral, *One Company, One Idea: Samarco Salvamar Project*, in *EXPERIENCES IN MANAGEMENT FOR SUSTAINABILITY*, *supra* note 46, at 37, 37–38.

149. *Id.* at 38.

150. *Id.*

likely to increase the potential for the diffusion of ideas through emulation or modelling because of the social influence that others might have directly or diffusely on the participants.¹⁵¹

1. In the 2007 survey completed by the GCO, it was reported that 63% of the companies that had joined the GC did so to encourage the general public to “increase trust” in them.¹⁵² In addition, 53% were there to network with others.¹⁵³ This compares with 20% who wanted to improve their market access to their business.¹⁵⁴ This suggests that the potential of social influence during their interactions in any GC initiatives is more likely than not because otherwise their engagement with others might prove counterproductive. For instance, misrepresentations by companies might lead certain stakeholders like NGOs to label them as blue-washing their image, which might in turn impact their image internationally.¹⁵⁵
2. The GCO has reported that, in 2007, 69% of their participants were actively communicating with them on the progress they were making toward implementing the core principles of the GC.¹⁵⁶ As previously discussed,¹⁵⁷ these reports are publicly available for comments from GC stakeholders, and are published on the official Web site of the GC for the general public to view. Competitors of corporations that submit a COP can easily view their reports and assess how they perform in terms of implementing the environmental principles.
3. Some corporations themselves take an active role within the GC framework in diffusing ideas and innovations that are consistent with the core principles. For instance, the BMW Group has put itself forward to share its work through case studies on how its operations and those of its subsidiaries implement the GC principles.¹⁵⁸ A case study produced by Designworks, a subsidiary of BMW in the United States, highlights its sustainability management system. It points out that it produced the study to “share its practices with other

151. This is not to suggest that there are not any other opportunities for diffusion of ideas and innovations within the GC framework. These are just three important ones that an analysis of the GC framework reveals as potentially useful for the purposes of diffusion.

152. ANNUAL REVIEW 2007, *supra* note 7, at 11.

153. *Id.*

154. *Id.*

155. Bigge, *supra* note 6, at 7.

156. ANNUAL REVIEW 2007, *supra* note 7, at 51.

157. See MCKINSEY & COMPANY, *supra* note 2.

158. The first case study was produced by the Center for Responsible Business at the University of California, Berkeley. Kellie McElhaney, Michael Toffel & Natalie Hill, *Designing Sustainability at BMW Group: The Designworks/USA Experience 2* (Ctr. for Responsible Bus., Univ. of Cal., Working Paper No. 4, 2002), available at <http://www.haas.berkeley.edu/responsiblebusiness/documents/BMW.pdf>. The second report is part of a case study series produced by the Global Compact Office, *From Principles to Practice*, *supra* note 46, at 1.

companies interested in the Global Compact.”¹⁵⁹ Importantly, in another case study, a medium-sized company in Poland, Yawal System, highlighted how showing leadership had potential to contribute to diffusion. Yawal System sees the dissemination of “information and experiences gained with other local companies” as acting in an environmentally responsible way.¹⁶⁰

In these direct and diffuse interactions that corporations might have with others, the role and function of principles as part of the social process of diffusion, and the emulation or modelling of what some do, become more apparent. Ideas or innovations are more socially influential and will potentially diffuse across the GC framework because they are meaningful to actors who might view them through the cognitive frame established by either the abstract nature of the principles or because they fit within their understanding of the qualitative dimensions of the open-textured concepts in the principles. The social responsibility of corporations for the environment is bound to be a relative rather than an absolute idea for corporations, given their limited practices in this area as discussed earlier in this chapter.¹⁶¹ As a result, they are more likely to engage with ideas and innovations that fit within a cognitive frame that establishes a level playing field for themselves and their peers. This doesn't suggest that the environmental principles of the GC harmonize or necessarily bring about a convergence of practices.¹⁶² Actors who actively engage with the principles give meaning to them by adopting practices that are more consistent with their own corporate image and profile. The cognitive frame established by the principles is more likely to cause a range of ideas and innovations that might suit a greater diversity of corporations to emulate than if rules and standards, which are more defined, were used as part of the GC. In fact, it has been suggested that “diffusion appears far less deterministic and much more vulnerable to local conditions than the systemic view suggests.”¹⁶³ That is, the practices of corporations are less likely to imitate the exact ideas and innovations that others promote, yet remain within the frame established by environmental principles. This potentially engages a greater diversity of participants in a process that is no less likely to instantiate a collective culture of the kind described above.

It is possible to illustrate the strength and significance of this interplay between environmental principles and diffusion in terms of how it promotes a diversity of social practices through two different examples of innovative practices of corporations. Both of these examples fit within the frame vaguely established by Principle 8 relating to corporations taking responsibility for the environment.

159. *Id.* at 15.

160. U.N. GLOBAL COMPACT OFFICE, *supra* note 114, at 61.

161. *See* discussion *supra* Part 3 and Figure 5.

162. Although this article discusses diffusion in the context of collective culture and learning, it must be pointed out that this is not the same as suggesting that corporations, through the GC, are harmonizing their approaches to environmental issues. Harmonization assumes that all actors will internalize the same norm, which means the same things to all of them. Given the need for actors to participate in generating meaning from environmental principles, this article does not argue that corporation's views are being harmonized by them.

163. Eliason & Goldman, *supra* note 136, at 8.

These two examples have been distributed through one of the structured learning environments created by the GCO.

The first is in a case study distributed by the GCO relating to British Petroleum (BP), which in 1998 committed itself to reducing Greenhouse Gas Emissions (GGE) to 10% below 1990 levels by 2010.¹⁶⁴ Each of the Business Units (BU) of BP are given annual emission allocations. In 2000, one of its BU upgraded its activities, which would cause it to exceed its allocated GGE. It bought allowances from another BU of BP that had recently upgraded a furnace, which had given it some spare allowances.¹⁶⁵ In this example, the potential for growth did not push BP to adopt an alternative preference of increasing its GGE.

In a different case study, also distributed by the GCO, Eskom (the largest supplier of electricity in Africa) is noted in 2000 to have introduced a demand-side management (DSM) system giving customers the option to use less electricity during peak periods and to save money as a result.¹⁶⁶ With drops in consumption, this would significantly delay the need for Eskom to upgrade its networks and build additional power plants.¹⁶⁷ Eskom established a DSM department to educate the community about the potential to consume electricity in a sustainable way.¹⁶⁸ In reducing electricity consumption, Eskom also reduced the total GGE from power stations.¹⁶⁹ The environmental gains from this initiative would have been significant, given that the electricity sector in 2003 contributed to 15% of South Africa's gross domestic product.¹⁷⁰ Its corporate identity would probably have matured into a consumer-oriented transnational corporation. Other corporations may not only model themselves on Eskom when faced with problems that require financial solutions, but might proactively consider developing practices that would enhance their market presence.

Comparing the above two examples highlights the different approaches taken to reducing GGEs. Although their reasons for doing so were different, both companies are able to claim greater relative responsibility for protecting the environment. BP made internal changes to the way it managed its business units whereas Eskom sought to change consumer demand for its products. This suggests that both activities would be meaningful to different corporations because Principle 8 is able to accommodate a variety of ways in which ideas might diffuse across to other corporations who, like them, are seeking to modify their practices.

Some might argue that the cognitive frame is too broadly established through the environmental principles because they encourage diffusion that might be only

164. GUIDE TO THE GLOBAL COMPACT, *supra* note 114, at 62.

165. *Id.*

166. M. Moshoeshoe & D. Sonnenberg, *Eskom and the Flexible Hot Water Load Management Control System*, in EXPERIENCES IN MANAGEMENT FOR SUSTAINABILITY, *supra* note 46, at 65, 66-67.

167. *Id.* at 72-74.

168. *Id.* at 66.

169. Cornis Van Der Lugt, *Introduction*, in EXPERIENCES IN MANAGEMENT FOR SUSTAINABILITY, *supra* note 46, at 5, 9.

170. Moshoeshoe & Sonnenberg, in EXPERIENCES IN MANAGEMENT FOR SUSTAINABILITY, *supra* note 166, at 72.

weakly connected to the kind of stewardship that matters for protecting the environment and depletion of natural resources. That is, corporations might use the breadth of the principles to legitimize emulating practices that are less costly to them. In the context of collective learning of a new culture described above, this is not necessarily an issue for a longer term view of the kind of role or function that environmental principles play within the GC. This argument, however, doesn't deal with the potential that the specific properties of innovations have to cause diffusion of certain ideas and innovations.¹⁷¹ That is, the presence of certain characteristics in ideas and innovations predisposes them to being more easily diffused than others. In this way, environmental principles are able to frame certain types and kinds of ideas that more actors want to emulate or model themselves on. The example discussed in this next section relates to this point because it shows how the characteristics of an idea can socially influence others not just because they are cognitively framed by the environmental principles of the GC.

A. Separating Innovation from the Local Context

It has been argued that diffusion is most successful when policy innovations can be separated from the "specific national contexts in which they evolved."¹⁷² This is likely to be even more important in the case of the GC, which engages corporations from 116 countries around the world.¹⁷³ In such cases, the ideas in themselves can socially influence corporations whether or not they are financially beneficial to them in the short term. For instance, this can be seen through a number of case studies conducted for the purposes of distributing them through the GCO, where there are strong references to transnational and other kinds of corporations working with external stakeholders like consumers, non-governmental organizations, and local communities. For instance, Skanska (a Swedish construction company), when operating in Sri Lanka, realized that its success in achieving compliance with ISO 14001 meant that it had to run "awareness-training program for all employees from the beginning of the project."¹⁷⁴ However, in the same case study Skanska is criticized by comments

171. See Jorgens, *supra* note 13737, at 254-55. The following are important for diffusion:

- (1) the existence of international or transnational channels of communication through which information on policies in other political constituencies can be communicated;
- (2) the specific properties of policy innovations;
- (3) the specific structure of the problem that a given policy innovation is expected to deal with; and
- (4) the national capacities for adopting particular policy innovations.

172. Jorgens, *supra* note 13737, at 256; See also Paul DiMaggio & Walter Power, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147, (1983); David Strang & John Meyer, *Institutional Conditions for Diffusion*, 22 THEORY AND SOC'Y 487, 491 (1993).

173. ANNUAL REVIEW 2007, *supra* note 7, at 8.

174. Hans De Geer & Daniel Stridsman, *In Search of Ecological Excellence: Skanska's Environmental Management at the Kukule Ganga Hydropower Project*, in EXPERIENCES IN MANAGEMENT FOR SUSTAINABILITY, *supra* note 46, 13, 19. For information on ISO 14001 as an environmental management tool, see International Organization for Standardization, *ISO 14000 Essentials*,

http://www.iso.org/iso/iso_catalogue/management_standards/iso_9000_iso_14000/iso_14000_essential_s.htm (last visited Nov. 15, 2008).

through interviews suggesting that “Skanska could have ensured greater credit for its environmental work had it engaged more with local communities and NGOs in dialogue.”¹⁷⁵ It cannot be assumed that corporations would necessarily pay attention to the details of this kind of case study published on the GC website. However, those interested in implementing ISO 14001 will find this criticism of Skanska useful for their own management practices.

In an alternative case study, the efforts of Shell International Ltd are highlighted by the GCO in the way it consulted with local and international non-governmental organizations and indigenous peoples during an appraisal and exploration operation in the Camisea region in Peru.¹⁷⁶ Shell also used the Smithsonian Institute, a corporate/nongovernmental organization-funded body, to conduct the biodiversity assessment required for the area.¹⁷⁷ Shell International is quoted as seeing these measures as building trust between different groups to better deal with operational issues and to make “positive contribution to conservation.”¹⁷⁸ This level of engagement with local communities is also clearly visible from other companies, such as those in the oil and gas industry whose impact on biodiversity loss is most significant.

As abstract concepts, both the precautionary approach and the need to promote greater environmental responsibility point to an episteme requiring that companies manage “human beings in their interaction with the environment.”¹⁷⁹ In the case of the precautionary principle or approach, engaging with local communities and non-governmental organizations will allow accurate environmental impact assessments to be prepared before a project begins. It will also assist with monitoring and precautionary measures to be taken during a project. In the case of the principle relating to environmental responsibility, the GCO has pointed out that corporations which have decided to adopt this principle must “contribute to environmental awareness in company locations” and “communicate with the local community.”¹⁸⁰ Agenda 21, which is referred to by the GC in giving its environmental principles a degree of intersubjectivity, confirms this view by identifying the need for business to foster “openness and dialogue with employees and the public.”¹⁸¹ From these case studies, it would not be difficult to see how corporations entering new jurisdictions could benefit from engaging with local communities, delegating responsibility for aspects of the environmental assessment work to them, and collaborating with local NGOs to ensure that appropriate precautionary measures are taken based on local know-how. Both case studies discussed above would serve as useful models for companies to consider while ensuring they engage with the environmental principles of the GC.

175. Van Der Lugt, *Introduction*, *supra* note 169, at 7.

176. GUIDE TO THE GLOBAL COMPACT, *supra* note 114, at 56.

177. *See id.*

178. *Id.*

179. Van Der Lugt, *Introduction*, *supra* note 169, at 6.

180. GUIDE TO THE GLOBAL COMPACT, *supra* note 114, at 59.

181. AGENDA 21, *supra* note 68, at ¶ 30.3, 30.26.

This discussion highlights the potential of the environmental principles to cognitively frame the advantages that come with corporations emulating or modelling themselves on what others do. The potential breadth of ideas and innovations that corporations can adopt while they remain engaged with the principles is clearly an issue. However, this notion is tempered by the idea that diffusion is in itself a much more complex process that can lead corporations to be socially influenced to adopt practices that might require more from them than if they were left to their own devices.

V. IDENTITY AND SOCIAL INFLUENCE IN THE CONTEXT OF THE GLOBAL COMPACT

In addition to diffusion, it is also arguable that, through its mandatory requirements for reporting, the GCO is also helping to define the type of social identity that some corporations might be willing to adopt as participants of the GC. Wendt, in his *Social Theory of International Politics*, describes the potential for types of identities to develop internationally.¹⁸² For instance, an agent could be typified as a corporation because of the behavioral traits that it might share with other entities like it. A type of identity exists because actors share certain characteristics with other actors, which have a social meaning in particular contexts. The social meaning of a particular type of identity may develop in a variety of ways—including, for instance, “less formal membership rules that define what counts as a type identity and orients the behaviour of [o]thers toward it.”¹⁸³ To identify something as a particular type of agent does not mean that it operates in that way under all circumstances. If a type of identity is defined culturally, then all agents including corporations can identify with different cultural forms in varying ways and at different times.¹⁸⁴ It is the cultural form that an agent takes up as its identity that also shapes its interests and preferences.¹⁸⁵

The idea that the GC seeks to create “corporate citizenship” through the UN is consistent with generating a type of a corporation that is a participant in the developing framework.¹⁸⁶ The GCO, in a 2006 study, highlighted that “the percentage of companies communicating progress increases with the length of their participation in the Global Compact.”¹⁸⁷ In this report, the GCO produces figures that show that 95% of corporations have submitted a COP when they have been participants in the GC for six years.¹⁸⁸ This is comparable to the 27% who submit a COP after having been a member of the GC for two years.¹⁸⁹ These figures suggest that membership in the GC is taken more seriously the longer the corporation

182. ALEXANDER WENDT, *SOCIAL THEORY OF INTERNATIONAL POLITICS* 225 (1999). Wendt's book is primarily concerned with states, but the theories of symbolic interactionism he draws on originate from a variety of different sources in the literature on social psychology and arguably have equal relevance to other corporate actors like transnational and other corporations.

183. *Id.* at 226.

184. *Id.* at 230.

185. *Id.* at 231.

186. On the use of the idea of “corporate citizenship,” see discussion *supra* note 2.

187. *LEADING THE WAY*, *supra* note 49, at 5.

188. *Id.*

189. *Id.*

remains a participant in the framework. It also indicates that citizenship or the type of identity for corporations seems to matter, given the higher percentage of established members completing a COP. From this, it is arguable that the COP creates a citizenship test for corporations who wish to remain active participants in the GC.

As discussed earlier in this chapter, a COP must state what a company has done in support of the GC.¹⁹⁰ It must describe practical actions it took in the reporting year to implement its core principles. It must also measure outcomes or specify what it expects them to be. Finally, the chief executive, chairman or some other senior executive of the company must cover the COP that is publicly distributed and put it on the GC website with a letter or a statement giving the GC its continuing support.¹⁹¹ For instance, in the covering letter of the COP submitted by Bharat Heavy Electricals Limited (BHEL),¹⁹² the largest engineering and manufacturing company in India, the Director for Human Resources wrote the following:

BHEL is an environment[al] friendly company in all its activities, products & services, beside[s] providing safe and healthy working environment to all its stakeholders....The company reiterate[s] its commitment to United Nation's Global Compact Programme and the set of core values enshrined in its ten principles on human rights, labour standards, environment and anti-corruption and intent [sic] to advance G.C. principles within the company's sphere of influence and has made it part of the strategy, culture and day-to-day operations.¹⁹³

It might be argued that the process of committing to the GC and having to reaffirm this annually seems like a performance. This process is important, however, in the symbolic effect it has in creating a particular type of corporation. Importantly, for companies that have set out their COP in this way it is apparent that their commitments and how they have implemented them are framed through the core principles.¹⁹⁴ What this discussion suggests is that the type of corporation that is created through the GC is managed by environmental principles, creating for them the terms of their identity within the particular framework. This type of identity is important for instantiating a collective culture that values the future through shifts in attitudes to consumerism and production.

190. In relation to the COP, see discussion *supra* note 49 and accompanying text.

191. POLICY FOR COP, *supra* note 49, at 1.

192. ANIL SACHDEV, BHEL'S COMMITMENT IN SUPPORT OF U.N.G.C. PROGRAMME (June 17, 2009), available at http://www.unglobalcompact.org/ParticipantsAndStakeholders/search_participant.html?submit_x=page (last visited Nov. 15, 2008).

193. S. K. JAIN, BHEL'S COMMITMENT IN SUPPORT OF UN'S GLOBAL COMPACT PROGRAMME (2007), available at http://www.unglobalcompact.org/data/unge_cops_resources/6D688856-BCEB-4600-AB86-3F27657C9EAB/COP.pdf (last visited Nov. 15, 2008).

194. For example, in a study compiled by the GCO to highlight samples of what other corporations do, the style of COP used by Grupo Pão de Açúcar suggests that principles shape how their reporting is done, and presumably the way their goals are also established for the following year. See LEADING THE WAY, *supra* note 49, at 18, 19.

VI. CONCLUSION: FUNCTION AND ROLE OF ENVIRONMENTAL PRINCIPLES, SOCIAL LEARNING AND THE GLOBAL COMPACT

From a survey of around 100 Fortune Global 500 companies, Ruggie notes that “companies generally do not ‘adopt’... verbatim” any of the human rights norms in voluntary codes of conduct developed internationally including the GC principles.¹⁹⁵ “Several indicated in their optional responses that[,] while they were ‘influenced by’ or ‘support[ed]’ these instruments, their policies do ‘not explicitly adhere’ to or ‘explicitly reference’ them.”¹⁹⁶ This study did not extend to the environmental principles of the instruments used for the survey, but it is highly likely that a similar response would be given for the environmental principles of the GC which, as discussed above, are abstract and open-textured. Given this possibility, an examination of the ability of environmental principles to interplay with processes that emphasize social influence might reveal more about their potential role and function within the GC framework. This is important given the success of the initiative in establishing a strong membership base amongst corporations and other stakeholders. It means that less focus needs to be placed on compliance which might discount the value of the long-term nature of collective learning and macro-cultural change in international politics, and regulation of the behavior of actors resulting from it.

Importantly, it cannot be presumed that environmental principles have established the requisite intersubjectivity to determine corporate practices. This is so particularly because the international community has not successfully engaged corporations in shaping how issues of public concern are dealt with. Despite this, the environmental principles of the GC framework might, through social influence, give corporations the opportunity to create meaning from them rather than intersubjectively share in their understanding of protecting the environment from particular patterns of consumerism or production. That is, as abstract or open-textured norms, they might not establish the precise logic for what is the appropriate thing to do; however, this does not suggest that initiatives to shift corporate approaches in favor of taking precautionary measures, for instance, are not useful. Changes in the individual preferences of corporations of whatever kind are an instantiation of an emerging culture at the international level. That is, to shift a particular cultural understanding of consumerism and production, corporations have to engage in collective learning experiences that can only begin by socializing them into changing their preferences in favor of taking initiatives toward environmental stewardship.

It is in the context of this approach to collective learning that this chapter has explored the role and function of environmental principles within the GC framework. In focusing on social practices of particular communities of actors, the particular role and function of environmental principles are more concretely

195. JOHN G. RUGGIE, HUMAN RIGHTS POLICIES AND MANAGEMENT PRACTICES OF FORTUNE GLOBAL 500 FIRMS: RESULTS OF A SURVEY 5 (2006), available at <http://www.reports-and-materials.org/Ruggie-survey-Fortune-Global-500.pdf> (last visited May 15, 2008).

196. *Id.*

defined and examined. The characterization of environmental principles as cognitively framing the diffusion of ideas and innovations, and the type of ways that corporations might identify themselves in relation to others, explains how they might collectively learn to take ecological approaches to consumerism and production.

Modelling and emulating what others do can happen because of the social influence that competition has on corporations that are judged in comparison to others like them. Also, certain ideas and innovations have greater potential to be diffused because of their particular qualities which might influence some corporations. This is because they can be abstracted from the local environment where they were learned in the first place. Environmental principles can frame how corporations might react to social influences by making certain things appear rational or useful to them. For instance, competition might be established on a more level playing field if corporations know that it is their interpretation of the three environmental principles of the GC on which they might be judged by the increasingly sensitive attitudes that the general public has to environmental stewardship. Alternatively, a particular idea might appear even more useful to a corporation that can see how the international community has come to contextualize it in terms of protecting the environment. Engaging local communities in a project and in environmental impact assessment studies, for instance, might seem even more rational or useful because it is consistent with taking a precautionary approach.

Further, the abstractness or the open-textured nature of the environmental principles means that corporations that do not identify exactly with how others view stewardship can still engage with and be part of the GC framework. The greater the number of participants who accept the citizenship test of submitting COPs will also be instantiating the cultural change discussed above. This is because of the way that the terms for the type of identity that the GC seeks to encourage emerge from the corporations interpreting the environmental principles for themselves. The public nature of the submissions of COPs exposes corporations to the social influence that others can have on them. The abbreviated and abstract presentation of the precautionary approach in Principle 7, for instance, means that stakeholders and the general public can potentially draw from a much wider range of knowledge areas to influence corporations. Similarly, the open-textured nature of the term "responsibility" in Principle 8 means that the entire gamut of Chapter 30 of Agenda21 can be deployed in ways that might help to socially influence corporations through analysis of their COPs. This is not to suggest that the environmental principles cannot provide the basis for abuse. However, by establishing the basis for their interplay with particular kinds of social influence, the GC framework provides a valuable opportunity for corporations to take seriously the idea of instantiating a culture, which may exert structural pressure on others that might never align themselves toward taking social responsibility.