

World Transnational Corporation Regulatory Authority – A proposal from civil society to make corporations and governments accountable for corporate malfeasance

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This issue commentary introduces a proposal –in development– for true and direct democratic practice by making governments implement the World Transnational Corporation Regulatory Authority (WTNCRA). This concept has previously secured citizen support for provisional inclusion in the Simultaneous Policy (Simpol); which is being developed through a direct-democracy process and aims to deliver social justice around the world, resolve global problems and regulate the economic power of international capital for the good of all.

The WTNCRA provides a vehicle to exercise direct democracy from the bottom up. It seeks to make corporations accountable to civil society for the impact of their activity as well as governments for regulating business practice. People can submit formal complaints against any corporation on behalf of global, national or local communities through public petitions, and bring prosecution through the International Criminal Court (ICC), which would have the power to impose penalties on companies for their corporate malfeasance or on governments for failing to meet their regulatory responsibilities.

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Nonetheless, this proposal still needs to devise a way for people to have access to the ICC, for currently its mandate does not include corporate malfeasance. Moreover, it is not recognised by all States, including prominently the United States, the country with the largest number of global corporations.

The WTNCRA makes clearly evident the need of civil society for direct access to international judicial institutions empowered to penalise corporations for their customary and ubiquitous corporate malfeasance. The logical next step is for civil society to devise a specific strategy to force governments to agree on expanding the jurisdiction of the ICC to the prosecution of corporate malfeasance and on allowing society to file formal complaints against corporations and against States refusing to enforce existing agreements. The WTNCRA also exposes the great limitations of representative democracy and the urgent need for society to achieve true and direct democratic practice in a variety of ways such as the one advanced by this proposal.

❖ Introduction

The Simultaneous Policy campaign brings people together around the world to propose, develop and vote on the policies they wish to see introduced to address global problems. In the annual vote in 2008, the issue voted to be the second most important facing the planet was the power of transnational corporations (second to climate change). The second most popular policy was for a World Transnational Corporation Regulatory Authority (after the 'Contraction and Convergence' proposal for addressing climate change). The text of this proposal is given here. Feedback on it is welcomed for its further development.

As well as providing a democratic space for the people of the world to decide the policies they wish to see implemented, the Simultaneous Policy campaign has a strategy to achieve implementation of these policies. Campaign supporters call on their leaders to pledge to implement the policies, once finalized, alongside other governments, when all, or sufficient, governments have made the same pledge. Simultaneous implementation is designed to remove the fear of first-mover disadvantage and will enable the introduction of a coherent set of policies capable of addressing the problems the world faces. It is not an alternative to other campaigns, but a parallel strategy with the potential to introduce the changes we need, not just those that will be tolerated by vested interests. There is no charge to join the campaign. Simply sign up as a Simultaneous Policy Adopter at <http://www.simpol.org/>

The more people who join the campaign, the better representative the democratic process and the more likely politicians will make the pledge to implement the Simultaneous Policy, bringing us closer to the point when suddenly the obstacles to action have disappeared.

This policy suggestion arises from public meetings held by the Cambridge SP Adopters' Group (CAMSPAG) since 2002, on a variety of topics such as 'Making all trade Fair Trade' and 'Holding corporations accountable'. SimpPol-UK also held a policy forum at the House of Commons on the same topic with the Coordinator of CAMSPAG. The discussion has also been informed by proposals made by George Monbiot in his book 'The Age of Consent' for an International Fair Trade Organisation to replace the World Trade Organisation.

The proposals for a world regulatory authority and the creation of 'globally incorporated companies' appear in a chapter in the book entitled: "Global obligations for the right to food" published in January 2008. This book arises

from a project led by Professor George Kent of the University of Hawaii, with the authors forming a Task Force of the UN System Standing Committee on Nutrition. The book argues that the global community of nation states has a responsibility under existing human rights instruments to act collectively to ensure the right to food. The chapter on transnational corporations by the proposer of this policy suggestion, argues that current forms of regulations by individual governments and voluntary agreements (specifically the UN Global Compact and the OECD Guidelines for Multinational Enterprises) are failing to provide the protection necessary.

❖ Overview of World TNC Regulatory Authority

This new body will be responsible for ensuring that transnational corporations abide by existing human rights, environmental, labour and other relevant agreements. It will accept reports of breaches from appropriate authorities or public petition and, if it finds there is a case to answer, will bring a prosecution before the International Criminal Court. The Court will be empowered to levy fines based on annual turnover on the corporation and to award governments the right to levy punitive tariffs on the home government of the corporation for seeking an unfair competitive advantage by failing to enforce the agreements. Corporations with a turnover and geographic coverage above set minimums will be required to register as 'globally incorporated companies' and submit annual independently-audited reports of their performance against standards already agreed to in the UN Global Compact for assessment.

❖ Formation of the World Transnational Corporation Regulatory Authority

This is analogous to national regulatory authorities, such as the Office of Fair Trading or Trading Standards officers that exist in the UK to ensure businesses abide by legislation.

It is to be an autonomous body with a protected budget from the UN and a mandate to carry out investigations at the request of third parties and on its own initiative. It is also to be proactive in seeking evidence that transnational corporations are abiding by internationally-agreed standards.

A central philosophy to the formation of the Authority is that it is to take as its starting point existing agreed

international instruments in the areas of protection of human rights, the environment, labour conditions and other relevant areas.

❖ *Authority's role in investigating complaints against corporations*

The Authority will accept allegations of malpractice by any corporation or business whatever its type or size from:

- Governments
- registered non-governmental organisations
- public petition

The public petition system will be analogous to the 'civil public action' used in countries such as Brazil. If a community has a grievance against a business then it can petition the Authority by collecting signatures of people in the affected area or areas. The threshold for triggering an investigation by the Authority will need to be set.

The Authority will then appoint an investigator tasked with determining:

- if there is a case to answer
- if national measures in the affected country and the home country of the corporation provide a satisfactory means of complaint and redress
- if national measures, where available, have been used
- whether governments have failed in their responsibility to hold the corporation to account

If there is a case to answer and there is a failure at national level the investigator can pass a file to a prosecutor of the International Criminal Court, which will have its mandate extended to accept these reports and to hear cases involving transnational corporations as well as governments. If the case is being dealt with satisfactorily at national level in a reasonable time scale then the case will be monitored, but action not necessarily taken by the authority.

❖ *Authority's role in auditing company activities*

The Authority will require corporations above a set turnover and global coverage to register as 'globally incorporated companies' and submit annual independently-audited reports on their performance, both financial and against the internationally-agreed standards (this is inspired by a similar proposal from the European Parliament for a

European Incorporated Company - which has been blocked by the European Commission).

The initial requirements will be in line with the 10 points of the existing UN Global Compact, a voluntary system which invites companies to submit reports. The Global Compact is fundamentally flawed, however, as it does not require audited reports to be submitted, does not audit the reports itself and does not have a complaints or monitoring mechanism.

The Authority will have the power to investigate reports submitted and a designated member of the board of the corporation will be legally responsible for ensuring they are accurate, in the same way that it is common practice for the Financial Director to be legally responsible for financial reports.

The Authority will be empowered to levy fines itself if reports are not submitted on time and to provide a file of evidence to prosecutors of the International Criminal Court if:

- reports are not truthful or complete
- there is evidence of breaches of the agreed standards

❖ *Role of the International Criminal Court*

The prosecutor of the International Criminal Court will act like a barrister briefed by the investigators of the Authority.

Corporations will be prosecuted for breaches for redress for the affected community and for punitive fines, which are to be based on company turnover (there are examples of existing sanctions at EU and national level following this approach).

Governments will be prosecuted for seeking unfair competitive advantage by failing to enforce the agreed standards on corporations. The onus will be on the home government of the corporation to enforce the regulations. The government of the country where the offence took place may also be prosecuted, but it should be recognised that the power of such governments is sometimes limited because of the power of corporations and their home nations.

The International Criminal Court may require governments to pay redress for the affected community and punitive fines. It may also or alternatively award other governments the right to levy punitive tariffs on exports from the guilty country to recoup lost income due to the unfair trading

practice. This is similar to the enforcement mechanism used by the World Trade Organisation and found to be effective in forcing governments to change trading policies judged to be illegal under WTO agreements.

❖ *Supporting this proposal*

Those with comments on this proposal or an interest in helping to promote it can contact: mbrady@maravilha.co.uk

Useful links:

Comments can also be left on the discussion board for it in Simpol's forum at:

<http://www.simpol.org.uk/forum/index.php?board=30.0>

Also see Mike's blog:

<http://globaljusticeideas.blogspot.com/>

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Other Useful links:

<http://www.jussempor.org>

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