



## World Development Movement Discussion Paper

### DEVELOPING ALTERNATIVES

Towards an international framework for regulating transnational corporations

*The following is a summary of WDM's thinking on developing alternatives to current trade and investment agreements. It is a discussion paper intended to contribute to and spur-on debate and we would warmly welcome any comments.*

The size and power of multinational corporations is increasing rapidly. So too are the abuses they commit on people around the world. Meanwhile, the ability of governments to influence their operations is decreasing almost as fast. Nowhere is this more apparent than in the negotiations around the World Trade Organisation where governments' right to regulate corporations is being further eroded.

The most powerful, and by now most tedious, tool in the armoury of liberalisation is the argument that there is no alternative. This pitiful myopia is no longer acceptable, and it is up to us to demonstrate the multitude of alternatives.

Globalisation has two components. There is the advance in technology which has caused increasing interconnectedness between peoples of the world, which may not be reversible but which is also not necessarily undesirable. But then there is also liberalisation which is the pernicious part of globalisation and which is nothing more than a simplistic ideology entirely reversible by political will. It is liberalisation which has 'freed' markets for the domination of the powerful and withered governments of their ability to pursue social goals. So, we must prove there are alternatives to liberalisation.

#### **Developing alternatives**

Truth is messier than fiction. The dogma of the free market is simple but false. The alternatives are many, diverse, and sometimes true. However there are some basic principles on which we can agree:

- The aim is to promote the welfare of all people not just the few
- The free market fails to do this
- The solution is to bring economic activity under democratic control.

The alternatives start with a new understanding of the role of economic activity. The Agreements and dispute settlements at the WTO make clear that free trade is given higher priority than the welfare of citizens, consumers or the environment. But liberalisation goes further, ensuring that every aspect of society is organised in a way which promotes the pursuit of corporate profit. Governments are no longer expected to govern in the interests of their citizens, their prime task is the pursuit of free market economic growth.

We are witnessing *Corporatisation* of the global economy where societies are rearranged to further the pursuit of profit. Governments should make rules for corporations. Instead, increasingly corporations are dictating the rules to governments. The challenge is to reverse this. Economic activity should serve the needs of the community.

WDM's proposal for a regulatory framework focuses on legal enforcement as the most plausible way of bringing corporate activity to account. National and international legal systems should bring corporate activity under the rule of law so that it meets the priorities and needs of communities. Essentially, corporations have no God-given right to exist. They should be legally recognised or incorporated only when they comply with basic standards of operations as laid down by governments.

This is of course only one small part in a movement for alternatives which spans from local exchange trading schemes (LETS) to direct action on the streets of Seattle.

### **An International Framework for Regulating Corporations**

Twenty years ago the Brandt report received widespread acclaim. Its recommendation that "effective national laws and international codes of conduct are needed to ... provide a framework for the activities of transnational corporations" is even more true today. Yet any such discussion has been pushed firmly off the agenda. WDM intends to revive the debate with a specific proposal.

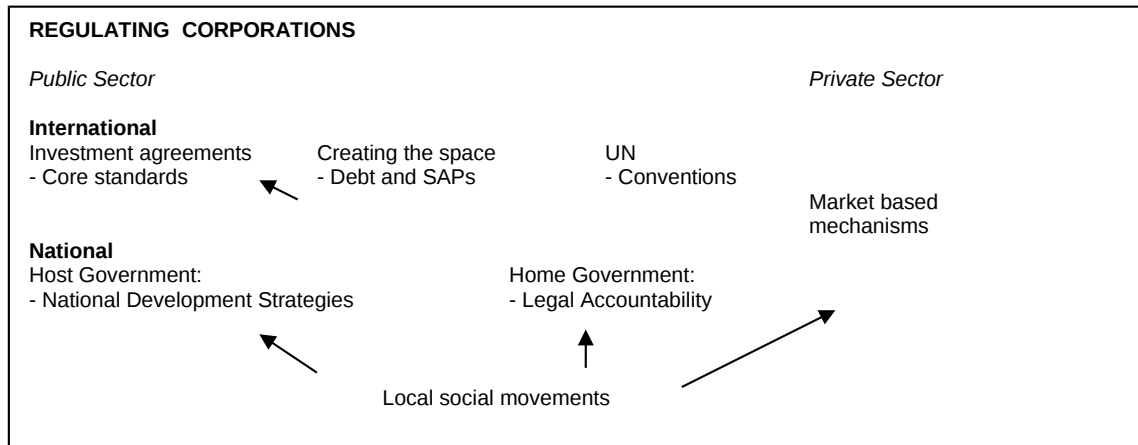
The proposed framework seeks to remove the worst excesses of multinationals, but crucially it goes beyond that to take the first step in seeking to redefine the relationship between corporations and society.

WDM has developed an International Framework for the Regulation of Multinationals.<sup>1</sup> This includes the following elements:

- Core to the proposal is a new type of international agreement defining acceptable behaviour for multinational corporations.
- National governments remain a key part of the equation, both host and home governments.
- While voluntary codes are ultimately limited in their value they still have a role to play in setting best practice and in putting issues on the political agenda.

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<sup>1</sup> Full details are available in *Making investment work for people* WDM 1999.



### An Alternative International Agreement

The purpose of both the failed Multilateral Agreement on Investment, and the WTO, is liberalisation. Any alternative agreement must start instead from the opposite objective of ensuring that economic activity meets the needs of society. The proposal in this paper focuses on the need to regulate multinational corporations to this end.

The legal and political worlds are still organised around the concept of the nation state, while corporations flow around the world operating at an international level above the realm of governments. The challenge is to design a regulation mechanism that can deal with the global nature of corporations while still recognising, and bolstering, the legal sovereignty of national governments.

As one possible part of the solution, WDM proposes an agreement under which companies are themselves responsible for meeting basic standards and can be directly sanctioned if they transgress. Governments would continue to own the agreement, delegating enforcement to an international commission.

- The proposed core standards are based on already agreed international standards. They cover the areas of: basic human rights; core labour standards; consumer protection; the environment; local communities; business practices and sovereignty.<sup>2</sup>
- Alongside the core standards should be further developed standards on corporate behaviour. These would cover restrictive business practices including price fixing and transfer pricing. They would also lay out standards of transparent reporting.

Some advantages of such an agreement:

<sup>2</sup> A full list of the core standards and corresponding international agreements is available from WDM.

- A key distinction from existing international arrangements is that *companies* as well as states would have responsibility for complying with the standards, and could be sanctioned if they fail. Until now such agreements have put the onus on states to comply, and to enforce the standards on multinationals even though some companies are now larger and more powerful than many Third World states.
- Many of the concerns surrounding previous attempts to introduce a 'social clause' into trade talks are avoided. Punishing companies, rather than governments, removes the danger that enforcing basic standards will be used as a way to restrict imports from the Third World. Moreover the content of the core standards is taken from existing agreements which have already been signed by the majority of governments; they include protection of governments' rights to pursue their own development strategies.
- Under the enforcement mechanism outlined below, governments would still own the agreement rather than losing control to an international body.
- The proposal also recognises that corporations will not invest, particularly in the Third World, without some basic guarantees which would be included in the agreement.

As always, the hurdle is one of political will rather than technical solutions. WDM is proposing an enforcement mechanism as a way to demonstrate that it is possible. But what is important are the principles rather than the actual form.

Governments would delegate to an international Core Standards Commission the ability to monitor the activities of transnational corporations either registered in their jurisdiction or operating on their soil.<sup>3</sup>

Where countries have ratified the core standards, they will be enshrined in national law. The Commission will act on behalf of the victims in taking a company to the local courts. In some cases states have signed conventions but not yet put them into national law. In such cases the Commission could only register the abuse. This would in itself serve as a deterrent and provide information for other prospective host countries.

Another alternative mechanism would be to withhold investor protection under international agreements from any transnational found in breach of the standards.<sup>4</sup>

The proposed international agreement on investment is intended to play a complementary role to the existing UN codes and conventions which already exist in specialised areas such as breast-milk substitutes, pesticides and core labour standards. The proposed agreement has a broader coverage than any of these conventions, but also crucially tries to hold multinationals directly accountable whereas most UN agreements leave enforcement to individual governments.

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<sup>3</sup> Higher standards can be expected of TNCs than of local firms. The OECD already attempts a definition of multinational enterprises.

<sup>4</sup> Proposed by Sol Picciotto, University of Lancaster, UK

WDM's proposal for an international investment agreement acts as a first step. If implemented fully it could potentially provide a way of substantially reducing the power of multinationals, which would in turn create more political space for states and civil society to act. It is important that it includes not just the element of minimum standards but also the rules which would shape the form of corporations in the future.

### National Governments

One of the most damaging effects of globalisation has been the withering of the nation states' ability to act. International regulation should not obscure the remaining ability of governments to regulate transnational companies themselves.

Transnational corporations are still registered in one country and local law can be used there to hold them accountable. In the UK, recent legal cases and the review of Company Law have both provided avenues for change.

International and home government regulation can only curb the worst excesses of corporations. It is then up to host governments to provide their own framework to ensure that TNCs make a positive contribution to national development strategies.

Pro-poor growth is growth which provides jobs to those who need them, and pays poor producers a decent price for their produce. It is growth which ensures women as well as men receive income. It is also growth which provides sufficient income, through taxation, for the government to provide those social services which it can provide better than the market. None of this happens automatically. It requires governments to lay down certain rules or 'performance requirements' for corporations, and also that governments have economic strategies and ensure that foreign investment fits within these frameworks. This could contain many aspects including requirements on technology transfer, using local suppliers and positive net earnings of foreign exchange.<sup>5</sup>

Further space for governments to pursue such strategies would be provided by debt cancellation and an end to liberalisation conditions under IMF Structural Adjustment Programmes.<sup>6</sup>

### **The battle for ideas - the purpose of economic activity**

Behind this specific proposal lies the need to win the battle of ideas. Governments are demonstrating immense cowardice in the face of corporations. Far from seizing the initiative, they are failing to represent the interests of their citizens and are instead bowing to the power of TNCs. A downward spiral is occurring. The more powerful multinationals become, the less governments display the political will to regulate them.

<sup>5</sup> UNCTAD developed a list of 'development friendly criteria' in May 1997.

<sup>6</sup> WDM has produced a number of briefings on SAPs.

Part of the problem is that governments overestimate the importance of foreign investment and are overly scared of incurring the wrath of foreign investors. They should recognise the evidence demonstrating the actual (limited) benefits and costs.

But there is a more fundamental problem - governments have bought wholesale into the globalisation myth which raises economic growth onto a pedestal, with trade and investment liberalisation as the only path. Here a more fundamental shift in ideas will be needed.

The choice is not between meeting human rights and meeting economic priorities, as many 'alternatives' suggest. The point is that economics is a method of meeting human need. It is unfortunate that the debate between 'left' and 'right' often becomes a debate between economic and social priorities rather than a debate about forms of economics. Aristotle made the distinction between chrematistics - the business of seeking wealth and economics - the management of the home.<sup>7</sup> It is this distinction which has been lost.

### **The role of civil society and social movements**

There is a clear role for social movements in holding the state accountable for regulating corporate activity so that it meets social needs. How this is done in a way which ensures the state both reflects majority interests and protects marginalised minorities is the subject of lengthy debate elsewhere. There is a debate too on how to have a state strong enough to regulate TNCs while still being accountable to society. Globalisation has withered the state in relation to corporations, but in some ways strengthened its control over citizens in areas like 'law and order'.

Nevertheless what is clear is that governments will only successfully ensure corporations reflect the needs of society if they themselves reflect such needs.

Disaffection with the state has, however, led to a search for new democracy where citizens have more direct control over economic activity rather than having their interests mediated by the state. There have been short term successes, but there are also pitfalls.

At one extreme is the direct action which has taken place. In the UK protestors against biotech companies have destroyed GM crops, frustrated by the governments refusal to act against corporate interests. At the other end of the spectrum is the engagement by NGOs and trades unions with companies to discuss voluntary codes of conduct.

Civil society is far from monolithic and no one group can be considered representative. Technically it does after all include corporate associations. Trade unions, consumer groups or local community organisations may be

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<sup>7</sup> Thanks to Marcos Arruda for this translation.

legitimately able to negotiate with corporations on a particular issue but in doing so run the risk of legitimating their other operations.

It also runs the risk of reinforcing the market system by using it to bring about change. Consumer movements for codes of conduct have played a valuable role in the battle for ideas by raising the concept of the duty of corporations to act ethically. They will, however, always be undemocratic with those with cash having more say. Moreover, by using the market to influence corporate behaviour, they have sometimes unwittingly undermined the argument for government regulation. These alternatives must look beyond ameliorating the worst effects of corporations or even just providing them with an 'ethical' market niche.

Proposals for direct involvement by NGOs in international fora arise from an understandable deep-seated frustration at governments failing to represent their interests, but this another problem, of undermining the role of the state in bypassing their representatives rather than holding them accountable.

Social movements are also too weak to really have any control over multinationals. Ultimately the answer will be regulation by a strong and democratic state, held accountable by strong organised social movements.

Here we return to the need for radically different international agreements. There is no guarantee that governments will use the political space created by international regulation. But it would be a tragedy if social movements managed to democratise their governments only to find them constrained by international agreements liberalising trade and investment.

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**The World Development Movement (WDM) is an independent membership organisation that undertakes research and advocacy on policies to support the world's poor.**

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