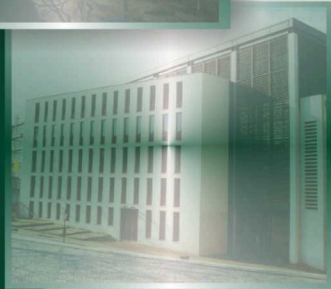




Martin-Luther-Universität
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Beiträge zum Transnationalen Wirtschaftsrecht

Herausgegeben von:
Prof. Dr. Christian Tietje
Prof. Dr. Gerhard Kraft
Prof. Dr. Rolf Sethe

Karsten Nowrot
The New Governance Structure
of the Global Compact -
Transforming a "Learning Network" into a
Federalized and Parliamentarized
Transnational Regulatory Regime

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The New Governance Structure of the Global Compact

Transforming a “Learning Network” into a Federalized
and Parliamentarized Transnational Regulatory Regime

By

Karsten Nowrot

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Transnational Economic Law Research Center
Faculty of Law, Martin-Luther-University Halle-Wittenberg

Karsten Nowrot, LL.M. (Indiana) is senior lecturer and research fellow at the Transnational Economic Law Research Center (Director: Prof. Dr. Christian Tietje, LL.M.) at the Faculty of Law of the Martin-Luther-University Halle-Wittenberg, Germany.

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Institut für Wirtschaftsrecht
Forschungsstelle für Transnationales Wirtschaftsrecht
Juristische Fakultät
Martin-Luther-Universität Halle-Wittenberg
Universitätsplatz 5
D-06099 Halle (Saale)
Tel.: 0345-55-23149 / -55-23180
Fax: 0345-55-27201
E-Mail: ecohal@jura.uni-halle.de

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A. Introduction*

“Much has been achieved, but much more needs yet to be done. In important respects, our journey has only just started. [...] I have asked John Ruggie, my Special Adviser for the Global Compact, and Georg Kell, Executive Head of the Global Compact Office, to coordinate an intensive consultation process and to come back, no later than twelve months from now, with recommendations that reflect your best ideas.”¹

Based on this statement included in his closing remarks delivered at the Global Compact Leaders Summit in New York at the United Nations Headquarters on 24 June 2004, UN Secretary-General *Kofi Annan* initiated a discussion and drafting process that resulted in the most profound changes in the governance structure of this initiative since its operational commencement on 26 July 2000.

This contribution is not only intended to provide an overview and evaluation of the Global Compact’s new institutional components and integrity measures, but also to stimulate a discussion of the possible implications for the overall understanding of this initiative resulting from the recent modifications, endorsed by the UN Secretary-General on 12 August 2005 and announced by the Global Compact Office on 6 September 2005.² Thereby, it will be argued that in light of the recently introduced structural changes – already being qualified as a “constitutional milestone in the evolution of the Global Compact” by the Global Compact Office³ and leading, *inter alia*, to a parliamentarization as well as federalization of this initiative – the Global Compact has not only entered into a new phase of operation but has also fundamentally altered its underlying steering philosophy by being transformed from an experimental dialogue forum and learning network for the improvement of corporate social responsibility⁴ into a normatively relevant transnational regulatory regime for the promotion and protection of global public goods.⁵

* The contribution is dedicated – on the occasion of his 70th birthday on 3 November 2005 – to Prof. em. Dr. iur. Dr. h.c. mult. *Jost Delbrück*, LL.M. (Indiana), to whom I’m deeply grateful and indebted, in addition to countless other favours, for introducing me to the study of international law as a value-oriented normative order and to the increasingly important functions exercised by non-state actors therein.

¹ Addressing Business Leaders at Global Compact Summit, Secretary-General Says Experience Shows that Voluntary Initiatives ‘Can and Do Work’, UN Press Release SG/SM/9387 of 24 June 2004.

² See “New Governance Framework Announced”, Press Release by the Global Compact Office of 6 September 2005, available on the Internet under: <www.unglobalcompact.org/content/NewsEvents/governance_pr.htm> (visited on 25 October 2005).

³ *Ibid.*

⁴ On this characterization of the Global Compact’s previous purpose and structure see, e.g., Cooperation between the United Nations and All Relevant Partners, in Particular the Private Sector, Report of the Secretary General, UN Doc. A/56/323 of 28 August 2001, paras. 84, 86; *Ruggie*, Journal of Corporate Citizenship 5 (Spring 2002), 27 (32 *et seq.*); *Ruggie*, Global Governance 7 (2001), 371 *et seq.*; *von Schorlemer*, in: *von Schorlemer* (ed.), Praxishandbuch UNO, 507 (520 *et seq.*); *Blanpain/Cobucci*, Globalization of Labour Standards, 23; *Nelson*, Building Partnerships, 144 *et seq.*; *Pies/Sardison*, in: *Homann et al.* (eds.), Wirtschaftsethik der Globalisierung, 177 (182); *Adam*, in: *ibid.*, 197 (200); *Brinkmann/Pies*, Der Global Compact, 5; *Hamm*, in: *Hamm* (ed.),

For this purpose, the paper has been divided into three main parts. Following an introductory overview of the background and of the first phase of development since the Global Compact's initiation in January 1999 (Part I), the contribution will give in Part II a descriptive analysis of the drafting process and major innovations of the new institutional governance structure and integrity measures. Finally, in Part III, the reasons for and the implications resulting from these organizational, procedural and substantive changes for the future orientation of the Global Compact will be evaluated.

B. The First Phase of Development: "Entrepreneurial Growth"

By now one of, if not even the most well-known initiative aimed at the improvement of corporate social responsibility on the international level, the United Nations Global Compact and its origins – in light of the ever-growing literature on this project – hardly requires anymore any detailed introduction.⁶ Its origins are in a personal initiative of UN Secretary-General *Kofi Annan*, publicly proposed in a speech at the World Economic Forum in Davos on 31 January 1999.⁷ After emphasizing the progress already being achieved in the cooperation between the United Nations and the business community since 1997, *Kofi Annan* continued his speech with the by now already famous words: "This year, I want to challenge you to join me in taking our

Public-Private Partnership und der Global Compact, 17 (18 and 34 *et seq.*); *Rieth*, Die Friedens-Warte 79 (2004), 151 (154 *et seq.*); *Nowrot*, *ibid.*, 119 (135 *et seq.*).

⁵ Generally on the notion of global public goods see only *Kaul/Grunberg/Stern*, in: *Kaul/Grunberg/Stern* (eds.), *Global Public Goods*, 2 *et seq.*; *Kaul/Kocks*, in: *Brunnengräber* (ed.), *Festschrift Altvater*, 39 *et seq.*; *Drahos*, *Journal of International Economic Law* 7 (2004), 321 *et seq.*, each with further references.

⁶ For detailed and updated information on the Global Compact see its website under: <www.unglobalcompact.org/Portal/Default.asp?> (visited on 25 October 2005); from the numerous contributions in the literature see, e.g., *Sethi*, *Setting Global Standards*, 110 *et seq.*; *Meyer/Stefanova*, *Cornell International Law Journal* 34 (2001), 501 *et seq.*; *Kell/Levin*, *Business and Society Review* 108 (2003), 151 *et seq.*; *Rieth*, *Zeitschrift für Wirtschafts- und Unternehmensethik* 4 (2003), 372 *et seq.*; *Rieth*, in: *Schirm* (ed.), *New Rules for Global Markets*, 177 *et seq.*; *von Schorlemer*, *Internationale Politik* 58 (No. 7, 2003), 45 *et seq.*; *Fitschen*, *Der "Global Compact" als Zielvorgabe*, 1 *et seq.*; *Fitschen*, in: *Hamm* (ed.), *Public-Private Partnership und der Global Compact*, 40 *et seq.*; *Wagner*, in: *Ohr* (ed.), *Globalisierung*, 217 *et seq.*; *McIntosh/Thomas/Leipziger/Coleman*, *Living Corporate Citizenship*, 127 *et seq.*; *Kell*, *Journal of Corporate Citizenship* 11 (Autumn 2003), 35 *et seq.*; *Zammit*, *Development at Risk: Rethinking UN-Business Partnerships*, 70 *et seq.*; *Zumach*, *Vereinte Nationen* 50 (2002), 1 *et seq.*; *Wolf*, in: *von Schorlemer* (ed.), *Praxishandbuch UNO*, 225 *et seq.*; *Blüthner*, in: *Hobe* (ed.), *Kooperation und Konkurrenz*, 72 *et seq.*; *Blüthner*, in: *Nettesheim/Sander* (eds.), *WTO-Recht und Globalisierung*, 313 (315 *et seq.*); *Blüthner*, *Welthandel und Menschenrechte*, 493 *et seq.*; *Weiß*, *MenschenRechtsMagazin* 7 (2002), 82 *et seq.*; *Brühl/Liese*, in: *Albert et al.* (eds.), *Festschrift Brock*, 162 (167 *et seq.*); *Hamm*, in: *Klein/Volger* (eds.), *Bilanz ein Jahr nach dem Millennium*, 49 *et seq.*; *Fonari*, in: *Fonari* (ed.), *Menschenrechts-, Arbeits- und Umweltstandards*, 19 *et seq.*; *John*, in: *ibid.*, 155 *et seq.*; *Heydenreich*, in: *ibid.*, 163 (169 *et seq.*); *Reder*, in: *ibid.*, 173 *et seq.*; *Berg*, in: *Holtbrügge* (ed.), *Festschrift Welge*, 399 (404 *et seq.*); *Henderson*, *Misguided Virtue*, 71 *et seq.*; *Hocking/Kelly*, in: *Cooper et al.* (eds.), *Enhancing Global Governance*, 203 (217 *et seq.*).

⁷ See, however, with regard to a number of preparatory meetings since 1997 between the Secretary-General as well as other representatives of the United Nations especially with *Maria Cattau* of the International Chamber of Commerce *Tesner*, *The United Nations and Business*, 35 *et seq.*; *Kell*, *Vereinte Nationen* 47 (1999), 163 (164 *et seq.*); *von Schorlemer*, in: *von Schorlemer* (ed.), *Praxishandbuch UNO*, 507 (510 *et seq.*); *Paul*, in: *Brühl et al.* (eds.), *Privatisierung der Weltpolitik*, 104 (113 *et seq.*).

relationship to a still higher level. I propose that you, the business leaders gathered in Davos, and we, the United Nations, initiate a global compact of shared values and principles, which will give a human face to the global market. [...] Specifically, I call on you – individually through your firms, and collectively through your business associations – to embrace, support and enact a set of core values in the areas of human rights, labour standards, and environmental practices. [...] I believe what I am proposing to you is a genuine compact, because neither side of it can succeed without the other. Without your active commitment and support, there is a danger that universal values will remain little more than fine words [...].”⁸

The Global Compact, which entered into its operational phase at a meeting of the UN Secretary-General with the presidents and chief executive officers of forty-four transnational enterprises – among them representatives of *ABB*, *DaimlerChrysler*, *DuPont*, *Nike*, *UBS* and *Volvo* – on 26 July 2000 in New York, had, based on its self-perception as frequently reiterated also by *Kofi Annan*,⁹ at least in the first phase of its development not considered itself to be a code of conduct nor any other type of regulatory regime for the respective non-state actors from the private business sector.¹⁰ Rather, the Global Compact was intended to be a pragmatic and practice oriented¹¹ dialogue and learning forum with the aim of incorporating in particular transnational enterprises in the work of the United Nations in order to effectuate the realization of community interests by way of cooperative efforts of this international organization

⁸ UN Press Release SG/SM/6881 of 1 February 1999.

⁹ See as early as the speech given by the UN Secretary-General at the *Svenska Dagbladet's Executive Club* in Stockholm on 25 May 1999, UN Press Release SG/SM/7004 of 26 May 1999 (“The Global Compact is not a code of conduct.”); see also, e.g., the speech given by *Kofi Annan* at the World Economic Forum in Davos on 28 January 2001, UN Press Release SG/SM/7692 of 29 January 2001 (“The Compact is not a regulatory regime or a code of conduct, but a platform for learning and sharing lessons about what works and what doesn’t.”); the speech given by *Kofi Annan* on the occasion of the launching of the Global Compact in Egypt on 9 February 2004, UN Press Release SG/SM/9152 of 9 February 2004 (“The Compact is a voluntary initiative. It relies on the vision and commitment of leaders in the private sector to make its principles an integral part of their day-to-day operations. Its mechanisms are not regulation, sanction or confrontation – but rather dialogue, learning and projects. Instead of interpreting existing norms and regulatory frameworks, the Global Compact focuses on finding practical solutions.”); as well as the speech given by the UN Deputy Secretary-General, *Louise Fréchette*, at a reception of the United States Council for International Business in New York 12 October 2004, UN Press Release DSG/SM/234 of 13 October 2004 (“The Compact is not a compulsory code of conduct.”).

¹⁰ See also for example Cooperation between the United Nations and All Relevant Partners, in Particular the Private Sector, Report of the Secretary General, UN Doc. A/56/323 of 28 August 2001, para. 86; *Kell/Ruggie*, in: Drache (ed.), *The Market or the Public Domain?*, 321 (323); *Ruggie*, in: *Auswärtiges Amt* (ed.), *Viertes Forum Globale Fragen*, 35; *von Schorlemer*, in: *von Schorlemer* (ed.), *Praxishandbuch UNO*, 507 (521); *Tesner*, *The United Nations and Business*, 53; *Wagner*, in: *Ohr* (ed.), *Globalisierung*, 217 (225); *Kleel/Klee*, in: *Behrent/Wieland* (eds.), *Corporate Citizenship*, 39 (45); *Hummel*, in: *Brühl et al.* (eds.), *Unternehmen in der Weltpolitik*, 22 (30); *Nourot*, *Die UN-Norms*, 22.

¹¹ See thereto especially the remarks by the UN Secretary-General during a meeting with presidents and chief executive officers of corporations in Davos on 25 January 2004, UN Press Release SG/SM/9135 (“There are plenty of fora where lawyers can argue about language. The Compact is not one of them. It is about getting the job done through dialogue, learning and projects. This exclusive focus on the practical side is not always easily understood by those whose profession is to interpret the nuances of words. But I know business leaders understand the importance of action.”).

and these increasingly influential private actors.¹² In line with its character as “an open and voluntary corporate citizenship initiative”,¹³ the Global Compact also concerning its approach to law-realization¹⁴ generally “does not ‘police’, enforce or judge the behaviour of companies”¹⁵ but rather relies for the implementation of its aims on “different types of engagement opportunities for its participants”, among them being the forming of networks, as well as the initiation of dialogues, learning fora and partnership projects.¹⁶

With regard to its substantive orientation, the Global Compact is designed to require participating companies to promote, in the course of their business activities as well as by way of other joined and individual initiatives, to the advancement of ten principles in the areas of human rights, environmental protection, labour and social rights as well as anti-corruption. In the field of international human rights, participating companies agree to “support and respect the protection of internationally proclaimed human rights (Principle 1), as well as to ensure that “they are not complicit in human rights abuses” (Principle 2). Concerning the realization of international labour and social standards, the Global Compact asks the individual business actors to “uphold the freedom of association and the effective recognition of the right of collective bargaining” (Principle 3), to contribute to the “elimination of all forms of forced and compulsory labour” (Principle 4), to the “effective abolition of child labour” (Principle 5), as well as to the “elimination of discrimination in respect of employment and occupation” (Principle 6). In the realm of the international protection of the environment, companies being members of this initiative “should support a precautionary approach to environmental challenges” (Principle 7), are encouraged to “undertake initiatives to promote greater environmental responsibility” (Principle 8), and are asked to “encourage the development and diffusion of environmentally friendly technologies” (Principle 9).¹⁷ These original nine principles were, on the occasion of the

¹² On this characterization see already the references given *supra* in note 4.

¹³ See thereto the analysis prepared by the UN Global Compact Office and the OECD Secretariat: “The UN Global Compact and the OECD Guidelines for Multinational Enterprises: Complementarities and Distinctive Contributions” of 26 April 2005, para. 3, available on the Internet under: <www.oecd.org/dataoecd/23/2/34873731.pdf> (visited on 25 October 2005); see also, e.g., *Kofi Annan’s* message to the Global Compact Regional Conclave in Jamshedpur, India, on 8 March 2005, UN Press Release SG/SM/9753 of 8 March 2005 (“a voluntary corporate citizenship initiative based on universal values”).

¹⁴ On the notion of ‘law-realization’ as being distinct from the considerably narrower term ‘law-enforcement’ see *Tietje*, Normative Grundstrukturen, 132 *et seq.*; *Tietje*, Internationalisiertes Verwaltungshandeln, 264 *et seq.*, each with further references.

¹⁵ See the analysis prepared by the UN Global Compact Office and the OECD Secretariat: “The UN Global Compact and the OECD Guidelines for Multinational Enterprises: Complementarities and Distinctive Contributions” of 26 April 2005, para. 26, available on the Internet under: <www.oecd.org/dataoecd/23/2/34873731.pdf> (visited on 25 October 2005).

¹⁶ *Ibid.*, para. 21.

¹⁷ On the underlying motivation for the selection of these original nine principles of the Global Compact see the speech of the UN Secretary-General on the occasion of the 50th anniversary of the Massachusetts Institute of Technology in Cambridge on 11 October 2002, UN Press Release SG/SM/8432 of 11 October 2002 (“I picked these areas because I was worried by a severe imbalance in global rule-making: while there are extensive and enforceable rules for economic priorities such as intellectual property rights, there are few strong measures for equally vital concerns such as human rights and the environment.”).

“Global Compact Leaders Summit” in New York on 24 June 2004,¹⁸ supplemented with the proposition that the participating companies “should work against all forms of corruption, including extortion and bribery” (Principle 10).¹⁹

Concerning its institutional and participatory structure, the network established by the Global Compact in the first phase of its development consisted of the Global Compact Office, the so-called “Global Compact Inter-Agency Team” formally established on 10 December 2004 and comprising of six participating UN agencies,²⁰ as well as – from January 2002 until its dissolution in June 2004 – the Global Compact Advisory Council.²¹ Already from the start of this initiative in the year 1999, the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Environment Programme (UNEP) and the International Labour Organization (ILO) are members of the Global Compact. This “Inter-Agency Group” was joined by the United Nations Development Programme (UNDP) in 2000, by the United Nations Industrial Development Organization (UNIDO) in spring 2003 for the purpose of meeting the needs of small and medium enterprises, as well as – following the addition of the tenth principle in June 2004 – by the United Nations Office on Drugs and Crime (UNODC).²²

Furthermore, the Global Compact network includes more than 120 national and international business associations such as the *International Chamber of Commerce*, the *International Organization of Employers*, the *African Business Roundtable*, the *Prince of Wales International Business Leaders Forum* and the *World Business Council on Sustainable Development*, ten international and national labour organizations like, for example, the *International Confederation of Free Trade Unions*, the *International Metalworkers’ Federation* and *Union Network International*, more than one hundred NGOs,

¹⁸ See thereto Final Report on the Global Compact Leaders Summit, Report by the Global Compact Office of 8 October 2004, available on the Internet under: <www.unglobalcompact.org/content/NewsDocs/Summit/summit_rep_fin.pdf> (visited on 25 October 2005).

¹⁹ With regard to the reasons for adding this tenth principle to the Global Compact see the opening remarks of the UN Secretary-General at the Global Compact Leaders Summit in New York on 24 June 2004, UN Press Release SG/SM/9383 of 24 June 2004 (“You felt, and I agreed, that corruption so profoundly corrodes sound business practice and good governance, and thus our ability to realize the other nine principles, that it uniquely deserved to be added to the commitments on which our Compact is founded.”); as well as the respective closing remarks by *Kofi Annan*, UN Press Release SG/SM/9387 of 24 June 2004 (“As a result, the Compact is now better positioned to address one of the most pernicious obstacles to growth and development, and to cooperate more intensively with groups such as Transparency International.”); on this summit as well as the respective supplementation of the Global Compact’s underlying principles see also *Rieth*, *Die Friedens-Warte* 79 (2004), 151 *et seq.*

²⁰ For a more detailed description of the purposes and decision-making processes within the Global Compact Inter-Agency Team see especially “Terms of Reference for the Global Compact Inter-Agency Team” of 10 December 2004, available on the Internet under: <www.unglobalcompact.org/content/NewsDocs/tor_iateam_fin.pdf> (visited on 25 October 2005).

²¹ On the purposes and activities of the Global Compact Advisory Council, which comprised of representatives of companies, trade unions and NGOs, as well as on the reasons for its dissolution see, e.g., *Hamm*, in: Hamm (ed.), *Public-Private Partnership und der Global Compact*, 17 (22 *et seq.*); *von Schorlemer*, in: von Schorlemer (ed.), *Praxishandbuch UNO*, 507 (529 *et seq.*); *Rieth*, *Die Friedens-Warte* 79 (2004), 151 (156 *et seq.*).

²² See thereto the information on the Internet under: <www.unglobalcompact.org/Portal/?NavigationTarget=/roles/portal_user/aboutTheGC/nf/nf_2/theNinePrinciples> (visited on 25 October 2005).

among them the *World Wide Fund for Nature*, *Amnesty International*, *Transparency International* and *Oxfam*, two academic institutions – the *NPTI-National Power Training Institute* and the *Universidad Nacional de Villa Maria* –, the six cities of Bath, Jinan, Melbourne, Nuremberg, Porto Alegre and Plock in accordance with the Global Compact Cities Program launched in 2003, as well as – since the commencement of this possibility in June 2004 – thirteen stock exchanges, among them the *Jakarta Stock Exchange*, the *Istanbul Stock Exchange* and the *Deutsche Börse*.²³ While the Global Compact is thus open to sub-state units such as cities, states itself are not able to participate in this initiative.²⁴ Nevertheless, it has been recently stressed by the Global Compact Office that “governments exercise de facto oversight of the Global Compact Office through the General Assembly”.²⁵ After the United Nations, the most important participants are, however, the currently already more than 2300 transnational and national enterprises from more than 80 countries that have send the required letter to the UN Secretary-General expressing their support for the Global Compact and the realization of its principles.²⁶

Far from qualifying as a singular initiative, the Global Compact even at the time of its foundation was only one, albeit important and probably most well-known component of a larger more general shift in the at times rather stormy liaison between the United Nations and the private business sector. While in the year 1945 the creation of this international organization still received strong support by companies and business associations,²⁷ already from the 1950s onward the relationship deteriorated to a point of what has been characterized in the legal literature as being close to open hostility²⁸ following the creation of UNCTAD in 1964²⁹ and the subsequent well-known discus-

²³ For a complete and frequently updated list of all participating institutions see the information on the Internet under: <www.unglobalcompact.org/Portal/?NavigationTarget=/roles/portal_user/aboutTheGC/nf/nf_2/theNinePrinciples> (visited on 25 October 2005).

²⁴ See, e.g., *von Schorlemer*, in: von Schorlemer (ed.), *Praxishandbuch UNO*, 507 (540).

²⁵ See “The Global Compact’s next phase” of 4 May 2005, at 5, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/HowToParticipate/govern_dispap.pdf> (visited on 25 October 2005); generally on the role of states in the functioning of the Global Compact see also *Fitschen*, in: Hamm (ed.), *Public-Private Partnership und der Global Compact*, 40 *et seq.*; *Kell*, *Journal of Corporate Citizenship* 11 (Autumn 2003), 35 (37).

²⁶ A complete list of all participating companies can be found on the Internet under: <www.unglobalcompact.org/Portal/?NavigationTarget=/roles/portal_user/aboutTheGC/nf/nf_2/theNinePrinciples> (visited on 25 October 2005).

²⁷ See only *Klee/Klee*, in: Behrent/Wieland (eds.), *Corporate Citizenship*, 39 (42); as well as *Tesner*, *The United Nations and Business*, 9, who cites an excerpt from a telegram sent in July 19945 by *Philip D. Reed*, chairman and CEO of *General Electric*, to the United States Senate Foreign Relations Committee prior to the Senate’s ratification debate in which he wrote: “We believe that no finer nor more fruitful gesture could be made toward its successful implementation than for the Foreign Relations Committee and subsequently the Senate itself to ratify the Charter unanimously.”

²⁸ With regard to this perception see, e.g., *Martens*, *Vereinte Nationen* 52 (2004), 150 (151); *Tesner*, *The United Nations and Business*, 12 *et seq.* (“From Partnership to Cold War”); *Klee/Klee*, in: Behrent/Wieland (eds.), *Corporate Citizenship*, 39 (42); for a more comprehensive analysis of the relationship between the United Nations and private corporations until the 1980s see also *Dell*, *United Nations and International Business*, 12 *et seq.*

²⁹ See especially the respective characterization given by *Tesner*, *The United Nations and Business*, 16 (“There was no direct participation of private enterprise in UN development policy, and the era that opened with the creation of UNCTAD in 1964 would rule out such partnership for another decade.”).

sions on the establishment of a so-called “New International Economic Order”³⁰ which was in particular also aimed at limiting the economic and political power of transnational enterprises,³¹ a development which found its most prominent expression in the for various reasons unsuccessful deliberations on the adoption of a “United Nations Code of Conduct on Transnational Corporations” in the years 1975 to 1992.³²

Although some improvements in the relations between the United Nations and the private business sector were already visible in the beginning of the 1990s,³³ one can readily agree with the view frequently expressed in the literature that it was only *Kofi Annan’s* assumption of office as UN Secretary-General on 1 January 1997 which marked the decisive turning-point in this connection.³⁴ As early as his speech at the World Economic Forum in Davos on 1 February 1997, *Annan* announced that “[s]trengthening the partnership between the United Nations and the private sector will be one of the priorities of my term as Secretary-General”.³⁵ In the following year, the Secretary-General already stated that although the United Nations and the private economic sector “are still overcoming a legacy of suspicion”, it is obvious that “[a] fundamental shift has occurred. The United Nations once dealt only with governments. By now we know that peace and prosperity cannot be achieved without partnerships involving governments, international organizations, the business community

³⁰ From the numerous literature see generally on this issue only *Bedjaoui*, *New International Economic Order*, 19 *et seq.*; *Makarczyk*, *New International Economic Order*, 23 *et seq.*; *Agrawala*, in: *Snyder/Sathirathai* (eds.), *Third World Attitudes*, 379 *et seq.*; *Tomuschat*, in: *Bernhardt* (ed.), *E.P.I.L.*, Vol. III, 578 *et seq.*; on the general dismissal of this project in light of the decisions adopted at UNCTAD IX in Midrand/South Africa in April and May 1996 see, e.g., *Tietje*, in: *Tietje* (ed.), *Internationales Wirtschaftsrecht*, § 1, para. 56; *Melchers*, *Vereinte Nationen* 44 (1996), 147 *et seq.*

³¹ On this central aspect of the „New International Economic Order“ see for example *Heinz*, in: *Wolfrum/Philipp* (eds.), *United Nations*, Vol. 2, 749 (756); *Schreuer*, in: *Hummer* (ed.), *Paradimenwechsel*, 237 (238 *et seq.*); *Wohlmuth*, in: *Däubler/Wohlmuth* (eds.), *Transnationale Konzerne*, 123 *et seq.*; *White*, *ICLQ* 24 (1975), 542 (544 *et seq.*).

³² For the latest version of the draft code of conduct prior to the termination of the project see Draft Code of Conduct on Transnational Corporations, UN Doc. E/1990/94 of 12 June 1990; on the drafting history of this code of conduct see also, e.g., *Feld*, *Multinational Corporations*, 35 *et seq.*; *Acquah*, *International Regulation*, 108 *et seq.*; *Fatouros*, in: *Horn* (ed.), *Legal Problems*, 103 *et seq.*; *Petersmann*, in: *Dicke* (ed.), *Foreign Investment*, 310 (323 *et seq.*).

³³ For a vivid example see UN General Assembly Resolution 49/130 “Integration of the Commission on Transnational Corporations into the Institutional Machinery of the United Nations Conference on Trade and Development”, UN Doc. A/RES/49/130 of 19 December 1994 (“Bearing in mind the work of the Commission on Transnational Corporations over its past twenty sessions and that, in recent years, the activities of the Commission have placed greater emphasis on the contribution of transnational corporations to economic growth and development [...] as well as the fact that *this shift* [...]”) (emphasis added); generally on this changing perception see also *Vernon*, *In the Hurricane’s Eye*, 5 *et seq.*; *Winter*, in: *Winter* (ed.), *Umweltverantwortung multinationalen Unternehmen*, 3 (6 *et seq.*); *Scherer*, *Multinationale Unternehmen*, 101 *et seq.*; *Koenig-Archibugi*, in: *Held/Koenig-Archibugi* (eds.), *Global Governance*, 110 (117 *et seq.*); *Bull/Boås/McNeill*, *Global Governance* 10 (2004), 481 (484 *et seq.*).

³⁴ On this perception see, e.g., *Tesner*, *The United Nations and Business*, 31; *Martens*, *Vereinte Nationen* 52 (2004), 150 (151); *Rieth*, *Die Friedens-Warte* 79 (2004), 151 (165); *Kleel/Klee*, in: *Behrent/Wieland* (eds.), *Corporate Citizenship*, 39 (43); *Paul*, in: *Brühl et al.* (eds.), *Privatisierung der Weltpolitik*, 104 (113).

³⁵ UN Press Release SG/SM/6153 of 31 January 1997.

and civil society. In today's world, we depend on each other. The business of the United Nations involves the businesses of the world."³⁶

Since 1997 this "fundamental shift" or, in the words of the UN Secretary-General, "turning-point in history"³⁷ has manifested itself in various forms of what have been called "global partnerships".³⁸ In a quantitative sense, the most notable development in this connection is the initiation of various "UN-Business Partnerships" which by now can be found in virtually all areas of activity of this international organization.³⁹ Among these partnership programs – since 17 July 2000 being based on the "Guidelines for Cooperation between the United Nations and the Business Community" issued by *Kofi Annan*⁴⁰ – are, to mention but two examples,⁴¹ the *Global Alliance for Vaccines and Immunization*, founded in 2000 at the initiative of, *inter alia*, the World Bank, the WHO, UNICEF, Ghana, Cambodia, France, Norway, the University of Gothenburg, the *Institut Pasteur*, the *Bill and Melinda Gates Foundation*, the *International Federation of Pharmaceutical Manufacturers and Associations* (IFPMA), and the transnational enterprises *Merck & Co., Inc.*, *Sanofi Pasteur*, *Chiron Vaccines* and *Berna Biotech AG*,⁴² as well as the *Tour Operators Initiative for Sustainable Tourism Development* that has as its members for example UNEP, UNESCO, the World Tourism Organization, as well as business enterprises such as *LTU-Touristik GmbH*, *Thomas Cook*, *TUI Group*, *Premier Tours* and *First Choice*.⁴³

³⁶ See the speech of *Kofi Annan* at the World Economic Forum in Davos on 31 January 1998, UN Press Release SG/SM/6448 of 30 January 1998.

³⁷ See the speech of the UN Secretary-General at the World Economic Forum in New York on 4 February 2002, UN Press Release SG/SM/8115 of 4 February 2002 ("I think we all have a sense today of having come to a turning-point in history. [...] Business cannot afford to be seen as a problem. It must, working with government, and with all the other actors in society, be part of the solution.").

³⁸ See thereto GA Res. 55/2, United Nations Millennium Declaration, UN Doc. A/RES/55/2 of 18 September 2000, paras. 20, 30; GA Res. 55/215, Towards Global Partnerships, UN Doc. A/RES/55/215 of 6 March 2001; GA Res. 56/76, Towards Global Partnerships, UN Doc. A/RES/56/76 of 24 January 2002; GA Res. 58/129, Towards Global Partnerships, UN Doc. A/RES/58/129 of 19 February 2004.

³⁹ For a more detailed evaluation of these partnership-programs see for example *Tesner*, The United Nations and Business, 41 *et seq.*; *Zammit*, Development at Risk: Rethinking UN-Business Partnerships, 1 *et seq.*; *Zammit*, in: *Brühl et al.* (eds.), Unternehmen in der Weltpolitik, 44 *et seq.*; *Martens*, Vereinte Nationen 52 (2004), 150 (151 *et seq.*); *Friedrich/Gale*, Public-Private Partnership, 5 *et seq.*; *Hüfner*, in: *Hamm* (ed.), Public-Private Partnership und der Global Compact, 4 *et seq.*; *Nelson*, Building Partnerships, 15 *et seq.*; *Utting*, UN-Business Partnerships, 1 *et seq.*; *Utting*, in: *Brühl et al.* (eds.), Unternehmen in der Weltpolitik, 96 *et seq.*; *Wulf*, in: *ibid.*, 122 *et seq.*

⁴⁰ Guidelines on Cooperation between the United Nations and the Business Community of 17 July 2000, available on the Internet under: <www.un.org/partners/business/otherpages/guide.htm> (visited 25 October 2005); and also reprinted in: Cooperation between the United Nations and All Relevant Partners, in Particular the Private Sector, Report of the Secretary General, UN Doc. A/56/323 of 28 August 2001, Annex III.

⁴¹ For a comprehensive enumeration of all UN-business partnerships see the information on the Internet under: <www.un.org/partners/business/index.asp> (visited on 25 October 2005).

⁴² For further details on the members and activities of the *Global Alliance for Vaccines and Immunization* see the information on the Internet under: <www.vaccinealliance.org/> (visited on 25 October 2005).

⁴³ On this initiative, also being founded in 2000, see the information on the Internet under: <www.toinitiative.org/> (visited on 25 October 2005).

Another notable “illustration of the rapidly growing partnership between the United Nations and the private sector”⁴⁴ is the activity of the Commission on the Private Sector and Development, created at the initiative of *Kofi Annan* on 25 July 2003 with the aim of working out suggestions for effectuating the contribution of private business to the improvement of economic conditions in developing countries. The seventeen members of the commission, which presented its report “Unleashing Entrepreneurship – Making Business Work for the Poor” on 1 March 2004,⁴⁵ was comprised – aside from state representatives and scientists – in majority, by representatives from transnational enterprises like *Hewlett-Packard*, *Citigroup*, *Telecel International*, *New World Investments*, *McKinsey & Company*, *Cogema*, *Statoil* and *Apax Partners*.⁴⁶ In addition, to mention but one further example, the considerable changes in the relationship between the United Nations and the private business sector became recently visible in the form of the first “Informal Interactive Hearing of the General Assembly with Non-Governmental Organizations, Civil Society Organizations and the Private Sector” which took place on 23/24 June 2005 in New York.⁴⁷ Organized on the basis of UN General Assembly Resolutions 59/145 of 17 December 2004 and 59/291 of 15 April 2005,⁴⁸ the hearing was aimed at contributing to the preparations of the “High-Level Plenary Meeting of the 60th Session of the General Assembly” from 14 to 16 September 2005⁴⁹ and included representatives of, *inter alia*, the *International Chamber of Commerce*, the *African Business Roundtable*, the *World Business Council for Sustainable Development* and the *Business Leaders Initiative on Human Rights*.⁵⁰

C. Setting the Next Stage: “Increasing Organizational Maturity”

While the United Nations Global Compact in the course of its first four years of operation had by the year 2004 – with the words of the UN Secretary-General – “become by far the world’s largest initiative promoting global corporate citizenship”⁵¹ and

⁴⁴ See the speech of the UN Secretary-General on the occasion of the creation of the Commission on the Private Sector and Development on 25 July 2003, UN Press Release SG/SM/8793 of 28 July 2003.

⁴⁵ Unleashing Entrepreneurship – Making Business Work for the Poor, Commission on the Private Sector and Development, Report to the Secretary General of 1 March 2004, available on the Internet under: <www.undp.org/cpsd/report/index.html> (visited on 25 October 2004).

⁴⁶ For detailed information with regard to the members and activities of the Commission on the Private Sector and Development see the respective website on the Internet under: <www.undp.org/cpsd/indexF.html> (visited on 25 October 2005).

⁴⁷ See thereto the information on the Internet under: <www.un.org/ga/civilsocietyhearings/> (visited on 25 October 2005).

⁴⁸ GA Res. 59/145, UN Doc. A/RES/59/145 of 13 January 2005, para. 8; GA Res. 59/291, UN Doc. A/RES/59/291 of 25 April 2005, paras. 8 *et seq.*

⁴⁹ On the results of the so-called “2005 World Summit” see GA Res. 60/1 of 16 September 2005, 2005 World Summit Outcome, UN Doc. A/RES/60/1; as well as the information on the Internet under: <www.un.org/summit2005/> (visited on 25 October 2005).

⁵⁰ For a comprehensive list of all participating NGOs and business associations see the information on the Internet under: <www.un.org/ga/civilsocietyhearings/Hearings%20Participants.doc> (visited on 25 October 2005).

⁵¹ See the opening remarks of the UN Secretary-General at the Global Compact Leaders Summit in New York on 24 June 2004, UN Press Release SG/SM/9383 of 24 June 2004.

had thereby “shown conclusively that voluntary initiatives can and do work”,⁵² it was *Kofi Annan* himself who decided⁵³ – probably sometimes in spring that same year – to initiate a discussion and evaluation process with the aim of incorporating new procedural and institutional elements into this initiative which, while at least at first sight retaining the fundamental nature of the original Global Compact, eventually led to the adoption of a fundamentally new governance structure.

I. Origins and Drafting Process

As the first notable indication for the UN Secretary-General’s intention to undertake a major revision of this initiative, the Global Compact Office in its preparations for the Global Compact Leaders Summit on 24 June 2004 requested the international management consultancy *McKinsey & Company* to undertake a comprehensive impact assessment of the first four years of operation and development since the initiative’s launch on 26 July 2000, thereby focusing on the Global Compact’s primary goal of promoting corporate citizenship among the participating enterprises as well as on the initiative’s impacts on the United Nations, civil society and governments.⁵⁴

The *McKinsey*-Report “Assessing the Global Compact’s Impact”, completed on 11 May 2004 and officially released by the Global Compact Office on 9 June 2004, found that while the Global Compact – whose “mere existence [...] exerts a surprisingly powerful influence on companies and within the UN” – “has had noticeable, incremental impact on companies, the UN, governments and other civil society actors” and “has also developed a solid participant base and local network structure, establishing itself as the largest voluntary corporate citizenship network of its kind”, at the same time “inconsistent participation and divergent and unmet expectations limit the impact on companies and continue to threaten the Compact’s long-term credibility with participants”.⁵⁵ Thus, the report emphasizes that as the initiative evolves from its “entrepreneurial phase, which has been marked by recruitment and experimentation, to a mature phase of sustained growth and impact, the Compact will need to become more effective at delivering impact through its activities”.⁵⁶

In this connection, *McKinsey & Company* recommended the Global Compact Office to address four issues, all of them being interrelated with each other: First, contrary to the *ad hoc* and experimental approach based on a “diffuse agenda” which characterized the activities undertaken in the first phase of this initiative, the Global Compact should in the future “target its business-oriented engagement to [its] different participant segments” by focussing on meetings “on discrete topics in specific locations”, thereby being able to “bring together companies based on an affinity of expectations, with separate gatherings for companies engaging for the first time with basic

⁵² See the respective closing remarks by *Kofi Annan* on 24 June 2004, UN Press Release SG/SM/9387 of 24 June 2004.

⁵³ See also *Rieth*, *Die Friedens-Warte* 79 (2004), 151 (167).

⁵⁴ See *McKinsey & Company*, *Assessing the Global Compact’s Impact*, Report of 11 May 2004, at 2, available on the Internet under: <www.wbcsd.org/web/projects/advocacy/imp_ass.pdf> (visited on 25 October 2005).

⁵⁵ *Ibid.*, at 2.

⁵⁶ *Ibid.*, at 15.

approaches to corporate citizenship and others seeking advice on closing specific implementation gaps, such as human rights policy”.⁵⁷ Secondly, the report stresses the importance of further developing the local network structure of the initiative. In light of the fact that participants repeatedly pointing to locally-driven initiatives as being among the most impactful Compact activities, “the nexus of overall activity will necessarily shift from the Global Compact Office to country and regional networks” with the Global Compact Office also being advised to “shift to providing more structured, systematic guidance and support” to these country-based and regional networks.⁵⁸ Thirdly, concerning the role of the UN agencies participating in this initiative, it was emphasized that this important asset should be build on by the Global Compact to a greater effect in the next phase of its operation. This modification should not only include improved, more transparent communication between the Global Compact Office and the respective UN agencies, which, “while essential, will not, in itself, smooth over the inherent tensions that the partners’ divergent agendas bring to the collaboration”, but also formalizing the roles, responsibility and authority of the UN agencies “in administering the Compact’s programs, especially the local networks”.⁵⁹

Finally and probably of most importance for the subsequently implemented modifications, the *McKinsey*-Report advised the Global Compact to more effectively manage conflicting participant expectations. In this regard, “the Compact will need to undertake basic governance reform, to meet participant’s expectations of executing efficiency and to communicate consistently what the Compact stands for and what it offers”. While participating companies “widely expect the Compact Office to provide practical toolkits and implementation guides”, many NGO members and trade unions “challenge the Compact’s insistence on maintaining its voluntary, all-embracing approach to companies and its reluctance to take on a broader, normative or even regulatory role”. The report continues by highlighting that “[g]overnance reform will need to clarify both what Compact participation entails and what ownership participants will have over Compact decisions and directions. With the initial experimental approach to qualify control through ‘social vetting’ proving ineffective, the Global Compact Office has now moved toward a more decentralized approach, asking companies to communicate progress on implementing the Compact’s principles through the companies’ own public documents. This new approach, along with the introduction of ‘Integrity Measures’ to ensure broad boundaries of participant behavior, has the potential to improve the Compact’s reputation among both companies and other stakeholders, by streamlining requirements for companies and giving greater voice to NGO and labor concerns. Governance reform that devolves greater power and oversight responsibility to the participants themselves will also be necessary to promote ownership and diffuse criticism. The formation of a formal governing board, with representative participation from the Compact’s various stakeholders could form the basis for this new governance structure”.⁶⁰

In his comment on the *McKinsey*-Report, the Executive Head of the Global Compact, *Georg Kell*, already indicated on 9 June 2004 that some modifications of

⁵⁷ *Ibid.*, at 16.

⁵⁸ *Ibid.*, at 18.

⁵⁹ *Ibid.*, at 19.

⁶⁰ *Ibid.*, at 17 *et seq.*

the initiative might be necessary by saying: “At its core, the McKinsey study shows that the Global Compact has, overall, been a significant force for positive change. Our challenge is to address key areas identified in the report so that the Global Compact remains relevant and important. The Leaders Summit will be a perfect opportunity to do just that.”⁶¹ In line with that finding, *Kofi Annan*, on the occasion of the Global Compact Leaders Summit at the United Nations Headquarters on 24 June 2004 pointed out in his opening remarks that the four years since the Global Compact entered its first operational phase “have also brought new challenges, which we hope to begin to resolve today”.⁶² Among them were, according to the UN Secretary-General, the need for “existing commitments within the Compact [...] to be more fully integrated into mainstream business strategies and practices” as well as the want for “better articulating the ties and synergies between the global and local levels of activity in the Compact, enabling more companies, and more people, to play an effective part at the local level”.⁶³ Furthermore, *Kofi Annan* hinted at the necessity for institutional reform by emphasizing that “the Compact’s enormous potential can be fully sustained only if it has a governance structure in which leaders from all participating sectors play an active part, and which reflects the complexity of its scope and scale”,⁶⁴ a scheme, he reiterated in his closing remarks by pointing to the “immediate task ahead” of defining “the precise features of the Global Compact’s new strategic concept, and to design a new governance structure that matches its widening scope”.⁶⁵ “Reconfiguring the Compact” requires, *inter alia*, that “the primary mission of the Global Compact Office should become brand management and quality assurance” as well as that “ownership and the power of initiative must be much more broadly shared among all participants, including businesses, labour and civil society; the UN agencies that are the guardians of the principles; and the rapidly expanding family of national networks that have sprung up, almost spontaneously”.⁶⁶

In response to *Kofi Annan’s* request cited in the introduction to this contribution, *John Ruggie*, then Special Adviser to the UN Secretary-General on the Global Compact, and *Georg Kell* undertook in the following months a strategic review of this initiative based on an inclusive consultation process with Global Compact participants as well as other stakeholders. Furthermore, on 4 and 5 November 2004, the Foreign Office of the United Kingdom in cooperation with the Global Compact UK Forum hosted the conference “Putting Principles into Action” at Lancaster House in London attended by representatives of more than thirty Global Compact country networks with the aim of exploring, *inter alia*, the possibility of establishing a governance system for local networks as well as the functions of these networks in assisting compa-

⁶¹ See the respective notice by Union Network International, “McKinsey Report Highlights Impact of Global Compact” of 9 June 2004, available on the Internet under: <www.union-network.org/uniindep.nsf/0/b264a305ffce07c9c1256eb000244403?OpenDocument> (visited on 25 October 2005).

⁶² See the opening remarks of the UN Secretary-General at the Global Compact Leaders Summit in New York on 24 June 2004, UN Press Release SG/SM/9383 of 24 June 2004.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ See the respective closing remarks by *Kofi Annan* at the Global Compact Leaders Summit, UN Press Release SG/SM/9387 of 24 June 2004.

⁶⁶ *Ibid.*

nies in their implementation of the Global Compact's principles.⁶⁷ The results of this first phase of consultations with representatives from corporations, business associations, civil society groups and trade unions were incorporated by *Ruggie* and *Kell* into two documents – a discussion paper bearing the title “The Global Compact's next phase”⁶⁸ and draft note on integrity measures⁶⁹ – which were published and sent to all participants as well as other stakeholders on 4 May 2005.⁷⁰ Although the Global Compact's constituency was requested to provide comments and suggestions on the proposals with regard to a reformed governance structure as laid down in these two documents until 1 June 2005, the contents of the discussion paper and the draft note on integrity measures already very much resembled – in fact was nearly identical to⁷¹ – the final proposal for the Global Compact's next phase delivered by the Global Compact Office to the UN Secretary General on 1 July 2005 and subsequently endorsed by *Kofi Annan* on 12 August 2005 as the new governance structure of the Global Compact to be implemented in the course of the next twelve months.

II. The New Governance Structure

The Global Compact Office first emphasizes in its report “The Global Compact's Next Phase”, published on 6 September 2005, that “several core elements” of this initiative – among them the Global Compact's ten principles, its objectives, the emphasis on leadership commitment as well as its character as a “non-bureaucratic, open and voluntary initiative engaging a wide spectrum of participants across the globe” – remain unchanged.⁷² Nevertheless, the current reconfiguration, in parts already implemented since December 2004, resulted in profound changes which can be broadly categorized as either belonging to the realm of institutional innovations or being concerned with the improvement of the Global Compact's integrity measures.

⁶⁷ See thereto the respective conference report, available on the Internet under: <www.societyandbusiness.gov.uk/pdf/London_Networks_Conference_Report_FinalVersion.pdf> (visited on 25 October 2005).

⁶⁸ The discussion paper is available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/HowToParticipate/govern_dispap.pdf> (visited on 25 October 2005).

⁶⁹ The draft note on integrity measures is available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/HowToParticipate/dr_integrity.pdf> (visited on 25 October 2005).

⁷⁰ See Global Compact News Release „Global Compact Enters Next Phase in Governance Review“ of 4 May 2005.

⁷¹ One exception is the envisioned establishment of a “Global Compact Secretariat” comprising of the Global Compact Office and the Inter-Agency Team which was – without assigning any specific functions to this entity – included in the discussion paper of 4 May 2005, but has apparently been abandoned in the course of subsequent discussions. On the proposal see the discussion paper “The Global Compact's next phase” of 4 May 2005, at 8, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/HowToParticipate/govern_dispap.pdf> (visited on 25 October 2005).

⁷² See the report by the Global Compact Office “The Global Compact's Next Phase” of 6 September 2005, paras. 2.1 *et seq.*, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005).

1. *Institutional Innovations: Towards Parliamentarization and Federalization of the Global Compact*

While the Global Compact expressly commits itself to retain a “light, non-bureaucratic“ governance framework,⁷³ the organizational innovations have led or will lead respectively to the establishment of a variety of new entities thereby considerably strengthening the institutional structure with the aim of improving the opportunities for all categories of participating actors to take part in the exercise of this initiative’s governing functions, thereby intending to increase the necessary acceptance of this steering mechanism among its members.⁷⁴

a) *Parliamentarization: Global Compact Board and Leaders Summit*

In conformity with the respective proposals already included in the *McKinsey Report*,⁷⁵ this more formalized and representative-oriented governance approach finds its most notable expression in the creation of a Global Compact Board as the new permanent⁷⁶ representative “organ” of this initiative.

The Global Compact Board will consist of twenty members – all of them intended to come from the most senior level within their respective organization – representing the four main constituency groups of the Global Compact: the United Nations, business, civil society and labour.⁷⁷ The United Nations are represented by the Secretary-General, the Head of the Global Compact Office and the Chair of the planned Global Compact Foundation,⁷⁸ all of them being members of the Board *ex officio*. The Executive Heads of the participating UN agencies are only granted observer status, with their “Inter-Agency Team” being represented on the Board by the Head of the Global Compact Office. The other seventeen seats on the Board are assigned to eleven members from the business community, from the second term on to be nominated by the Local Networks and the participating enterprises, four members representing global civil society organizations in the areas of human rights, environment, anti-corruption and development, as well as two members from international

⁷³ *Ibid.*, para. 4.1.

⁷⁴ Generally on the close connection on the domestic as well as international level between an improved participation in the creation and administration of steering mechanisms and the enhanced acceptance of their governing tasks among the actors concerned see, e.g., *Charney*, in: Ku/Weiss (eds.), *Towards Understanding Global Governance*, 55 (58); *Schulze-Fielitz*, in: Dose/Voigt (eds.), *Kooperatives Recht*, 225 (228); *von Bogdandy*, *Gubernative Rechtssetzung*, 69 *et seq.*; *Duruigbo*, *Multinational Corporations*, 127; *Morlok*, *VVDStRL* 62 (2003), 37 (53); *Michael*, *Rechtsetzende Gewalt*, 209 *et seq.*; *Kolvenbach*, *ZGR* 15 (1986), 47 (48).

⁷⁵ McKinsey & Company, *Assessing the Global Compact’s Impact*, Report of 11 May 2004, at 17 *et seq.*, available on the Internet under: <www.wbcd.org/web/projects/advocacy/imp_ass.pdf> (visited on 25 October 2005).

⁷⁶ The qualification as a “permanent” entity distinguishes the Global Compact Board from the other representative body, the Global Compact Leaders Summit which, being the “plenary organ” of the Global Compact, convenes only on a triennial basis.

⁷⁷ See thereto the report by the Global Compact Office “The Global Compact’s Next Phase” of 6 September 2005, paras. 4.5 *et seq.*, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005).

⁷⁸ On the envisioned Global Compact Foundation see also, *supra*, under Part C.II.1.c).

labour subsequently to be selected by the International Confederation of Free Trade Unions (ICFTU).⁷⁹ For the first transitional period, these members representing business, civil society and labour will be initially appointed by the Secretary-General for a one-year-term. At their first meeting, the appointed representatives will – within their respective constituency – draw lots in order to determine which of them is going to serve an additional term of one, two or three years. Subsequently, membership on the Board will be determined on the basis of elections within the respective constituency to a three-years-term, with one-third of the seats being up for election every year and the possibility for members to be re-elected for one further term.⁸⁰ The members of the Global Compact Board – which will hold only one formal meeting per year but are “expected to interact with the Global Compact Office on an ongoing basis”⁸¹ – are assigned the tasks of providing “ongoing strategic and policy advice for the initiative as a whole, [and] making recommendations to the Global Compact Office, participants and other stakeholders”.⁸²

The second entity representing the different categories of participating actors in the Global Compact and being vested with central governance functions in this initiative is the Global Compact Leaders Summit. Based on the experience with the already above mentioned Global Compact Leaders Summit on 24 June 2004, a similar assembly of chairpersons and chief executive officers of companies as well as heads of participating civil society organizations, labour associations and UN agencies will from now on be convened on a regular basis triennially with the next Leaders Summit being scheduled for 2007. The Global Compact Leaders Summits will, in the same way as the 2004 meeting, continue to be assigned the functions of reviewing progress and providing “overall strategic direction for the Global Compact”.⁸³

Even to a greater extent than the Global Compact Leaders Summit – which can rather be qualified as being something comparable to a “plenary organ” of the Global Compact – the Global Compact Board, whose membership will be determined in the future on the basis of elections within the respective category of participating actors, has to be evaluated in light of an intensified debate in the legal literature about the need for and possibilities of parliamentarizing⁸⁴ governance structures above the level of the nation-state,⁸⁵ an issue that is frequently arising in connection with the question

⁷⁹ For additional information on the ICFTU see its website on the Internet under: <www.icftu.org/> (visited on 25 October 2005).

⁸⁰ Following a break of one year, the respective members are again eligible for election on the same basis. However, the details of the election process – especially with regard to the international civil society organizations which “do not currently have the representative structures and ways of organizing themselves that labour organizations have” – will be worked out under the supervision of the Board once it has constituted itself. See thereto the report by the Global Compact Office “The Global Compact’s Next Phase” of 6 September 2005, paras. 4.7, 4.9, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005).

⁸¹ *Ibid.*, para. 4.6.

⁸² *Ibid.*, para. 4.5.

⁸³ *Ibid.*, para. 4.2.

⁸⁴ On the use of the term “parliamentarization” itself see, e.g., *Majone*, *Governance* 15 (2002), 375 *et seq.*; *Röben*, *Columbia Journal of European Law* 10 (2004), 339 (354 *et seq.*); *Nanz/Steffek*, *Government and Opposition* 39 (2004), 314 (318).

⁸⁵ See thereto recently the in-dept study by *Marschall*, *Transnationale Repräsentation in Parlamentarischen Versammlungen*, 2005, with further references.

of legitimizing the exercise of public authority in the supranational and international realm.⁸⁶ In this regard one only needs refer to, *inter alia*, the concept of “cosmopolitan democracy” developed in particular by *David Held*.⁸⁷ The discussion currently focuses – on the basis of ideas that have been brought forward as early as in the year 1878 by *Johann Caspar Bluntschli*⁸⁸ and in the beginning of the 1920s by *Walther Schücking*⁸⁹ – especially on the potential parliamentarization of international governmental organizations like the United Nations⁹⁰ and the World Trade Organization,⁹¹ as well as of the supranational decision- and law-making processes of the European Communities.⁹² However, while these proposals have, with the exception of the last mentioned European Communities, so far remained on the theoretical level and are also highly unlikely to reach a stage of practical implementation any time soon,⁹³ the notable experiment now initiated with the creation of the Global Compact Board and the experiences gathered from its functioning in the future will undoubtedly be intensively

⁸⁶ Generally on this issue see with regard to the international level only *Delbrück*, *Indiana Journal of Global Legal Studies* 10 (2003), 29 *et seq.*; *Tietje*, *Deutsches Verwaltungsblatt* 118 (2003), 1081 (1094 *et seq.*); as well as concerning the supranational realm see, e.g., *Peters*, *Verfassung Europas*, 499 *et seq.*; *Kluth*, *Legitimation der Europäischen Union*, 11 *et seq.*; *Smismans*, *Law, Legitimacy, and European Governance*, 2 *et seq.*; *Schliesky*, *Souveränität und Legitimität*, 389 *et seq.*, 588 *et seq.*, each with further references.

⁸⁷ See, e.g., *Held*, *Democracy and the Global Order*, 221 *et seq.*; *Held*, in: *Archibugi et al.* (eds.), *Cosmopolitan Democracy*, 96 (106 *et seq.*); *Held*, in: *Held et al.* (eds.), *Global Governance*, 240 *et seq.*; *Held*, in: *Shapiro et al.* (eds.), *Democracy's Edges*, 84 *et seq.*

⁸⁸ On proposals for the creation of a “European House of Representatives” and a “European Senat” see *Bluntschli*, *Die Gegenwart* 13 (1878), 131 (132); for an evaluation of these ideas see also *Hobe*, *Archiv des Völkerrechts* 31 (1993), 138 (145 *et seq.*); *Bodendiek*, *Walther Schückings Konzeption*, 185, with further references.

⁸⁹ With regard to *Schücking's* proposals for the establishment of a second chamber for the League of Nations that would have been elected within the member states see *Schücking*, in: *Schücking* (ed.), *Die nationalen Aufgaben*, 41 *et seq.*; *Schücking*, in: *Munch* (ed.), *Société des Nations*, 138 (145 *et seq.*); for even earlier ideas from 1912 concerning the creation of a “world parliament” see also *Schücking*, *Der Staatenverband der Haager Konferenzen*, 298 *et seq.*; for a detailed analysis of these proposals see *Bodendiek*, *Walther Schückings Konzeption*, 278 *et seq.*, with further references.

⁹⁰ On the creation of a respective “global peoples assembly” see, e.g., *Falk/Strauss*, *Stanford Journal of International Law* 36 (2000), 191 *et seq.*; *Strauss*, *Transnational Law and Contemporary Problems* 9 (1999), 489 *et seq.*; *Camilleri*, in: *Aksu/Camilleri* (eds.), *Democratizing Global Governance*, 255 (257 *et seq.*); as well as generally *Commission on Global Governance*, *Our Global Neighbourhood*, 257 *et seq.*

⁹¹ On this issue see for example “Resolution on Transatlantic Trade and Economic Relations” adopted by the European Parliament on 15 January 1998, OJ C 34/139 of 2 February 1998, paras. 36 (“transparency and democratic accountability would be greatly served by the setting up of a WTO consultative Parliamentary Assembly”); and 57 (“such an Assembly would introduce an additional degree of democracy into the WTO process”); as well as with regard to the discussion in the literature *Benedek*, in: *Kopetz et al.* (eds.), *Festschrift Mantl*, Vol. I, 225 (232 *et seq.*); *Tietje*, in: *Prieß/Berrisch* (eds.), *WTO-Handbuch*, A.II. para. 57; *Krajewski*, *Verfassungsperspektiven*, 255 *et seq.*; *Krajewski*, in: *Bertschi et al.* (eds.), *Demokratie und Freiheit*, 261 (285 *et seq.*); *Rudisch*, *Struktur der Welthandelsorganisation*, 15 *et seq.*; generally on the institutional challenges currently faced by the WTO see also recently *Petersmann*, *Journal of International Economic Law* 8 (2005), 647 *et seq.*, with further references.

⁹² See thereto only *Majone*, *Governance* 15 (2002), 375 (383 *et seq.*); *Röben*, *Columbia Journal of European Law* 10 (2004), 339 (354 *et seq.*); *Misch*, *Zeitschrift für Politikwissenschaft* 6 (1996), 969 *et seq.*

⁹³ For a quite similar perception see, e.g., *Delbrück*, *Indiana Journal of Global Legal Studies* 10 (2003), 29 (36 *et seq.*); specifically with regard to the WTO see also *Sutherland et al.*, *The Future of the WTO*, para. 205.

analysed in the literature and are almost certainly going to have important implications for the ongoing discussion especially also with regard to the desirability and feasibility of parliamentarizing international governmental organizations.

b) Federalization: Local Networks Forum and Strengthened Local Networks

While thus a gradually more visible trend towards parliamentarization can be regarded as a notable characteristic on the horizontal level of governance within the newly reformed Global Compact, the institutional innovations – with regard to the vertical dimension – also point to an increasingly strengthened federalization of this initiative’s governance structure by enhancing the role of the by now already more than forty local networks.

With a Global Compact Centre in order to assist the local networks already established on 22 July 2004 in Barcelona and others currently being planned,⁹⁴ the new governance structure of the Global Compact – again in line with the predictions included in the *McKinsey-Report*⁹⁵ as well as based on the deliberations at the already above mentioned meeting of local networks in November 2004 in London – reflects the fact that “Local Networks play increasingly important roles in rooting the Global Compact within different national, cultural and language contexts, and also in helping to manage the organizational consequences of rapid expansion”.⁹⁶ Although “participation in local networks remains optional” for Global Compact members,⁹⁷ these entities, whose character as self-governing components of the Global Compact is expressly emphasized,⁹⁸ have now also ever more important steering functions for the initiative as a whole. Among these tasks are the nomination of the business representatives for the Global Compact Board and their role within the by now more formalized complaint procedure.⁹⁹ Furthermore, the Local Networks Forum, which already took place on an informal basis in the previous two years, is now envisioned as a regular annual event coordinated and chaired by the Global Compact Office¹⁰⁰ with “the status of this meeting and its role in the governance of the initiative [being] elevated”¹⁰¹ to, in

⁹⁴ See the report by the Global Compact Office “The Global Compact’s Next Phase” of 6 September 2005, para. 3.13, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005).

⁹⁵ McKinsey & Company, *Assessing the Global Compact’s Impact*, Report of 11 May 2004, at 18, available on the Internet under: <www.wbcd.org/web/projects/advocacy/imp_ass.pdf> (visited on 25 October 2005) (“the nexus of overall activity will necessarily shift from the Global Compact Office to country and regional networks”).

⁹⁶ See the report by the Global Compact Office “The Global Compact’s Next Phase” of 6 September 2005, para. 3.11, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005).

⁹⁷ *Ibid.*, para. 3.10.

⁹⁸ *Ibid.*, para. 4.3.

⁹⁹ *Ibid.*, para. 4.3.

¹⁰⁰ See thereto the respective section on the Annual Local Networks Forum included in the New Framework for Local Network Governance bearing the title “What is a Local Network?” launched on 31 October 2005, available on the Internet under: <www.unglobalcompact.org/content/NewsDocs/network_gov.pdf> (visited on 2 November 2005).

¹⁰¹ See the report by the Global Compact Office “The Global Compact’s Next Phase” of 6 September 2005, para. 4.4, available on the Internet under: <www.unglobalcompact.org/>

light of its functions, an entity which can be qualified as a federal advisory body of the Global Compact.¹⁰²

This tendency to strengthen – and at the same time to formalize – the position and functions of local networks in the Global Compact’s governance structure has recently gained an even further momentum with the introduction of a new framework for local network governance, entitled “What is a Local Network?”, and published by the Global Compact Office on 31 October 2005.¹⁰³ According to this new framework, which forms an integral part of the overall Global Compact governance structure, the local networks – being defined as “clusters of participants who come together to advance the Global Compact and its principles within a particular geographic context” – perform “increasingly important roles in rooting the Global Compact within different national, cultural and language contexts, and also in helping to manage the organizational consequences of rapid expansion”.¹⁰⁴

Although it is reemphasized that local networks in principle “determine their own internal governance arrangements and activities”, the new framework for local network governance introduces six basic requirements with regard to the membership, institutional composition and activities of local networks. In case one of these sub-entities of the Global Compact “ceases to meet these requirements [it] will no longer be regarded as a Local Network and may have its authority to use the name and logo of the United Nations Global Compact revoked”.¹⁰⁵

In addition to each local network being expected to commit itself to the “principles and practices of the United Nations Global Compact”, the governance framework stipulates in this connection that these sub-entities should in general “be business-led, but inclusive”. This requirement is specified by the obligation that every local network “must have at least some company participants” and that “[a]ny major decisions made by the Local Network should have the support of a majority of its participating companies”. Nevertheless, the new framework also states in this connection that the respective local network should not be dominated by a single company or other organization as well as that these institutions should strive to create opportunities not only for small and medium size enterprises, but also “for multi-stakeholder engagement, including by representatives of civil society, labour, academia and/or governmental organizations”. Furthermore, the local networks are expected to estab-

content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005); see also the Report of the Secretary-General on the Work of the Organization, UN Doc. A/60/1 of 8 August 2005, para. 289 (“While the governance of the Global Compact will continue to be directed from the Global Compact Office, the initiative’s participants will take over greater ownership through the many country networks that have been established.”).

¹⁰² On the first Local Networks Forum that took place under the new governance structure on 21 to 22 September 2005 hosted by the Global Compact Centre in Barcelona, see the information on the Internet under: <www.enebuilder.net/globalcompact/e_article000474174.cfm?x=b11,0,w> (visited on 25 October 2005); as well as the Summary Report of the Barcelona Local Networks Forum under: <www.unglobalcompact.org/content/NewsDocs/rep_barcelona.pdf> (visited on 2 November 2005).

¹⁰³ See “What is a Local Network?” of 31 October 2005, available on the Internet under: <www.unglobalcompact.org/content/NewsDocs/network_gov.pdf> (visited on 2 November 2005).

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

lish “a Focal Point authorized by the network to interact with the Global Compact Office and the wider Global Compact network”, to publish “an Annual Activities Report, describing activities and initiatives undertaken in the previous year and planned for the next year”, to organize an – however unspecified – minimum number of activities annually as well as “to hold at least one General Meeting to which all its participants are invited”. Finally, with regard to their increasing incorporation into the compliance mechanisms of the Global Compact, the local networks “should display a willingness to actively support efforts by participants to develop Communications on Progress and to help find solutions to situations related to the integrity measures”.¹⁰⁶

In light of these findings, the vertical dimension of the Global Compact’s new governance structure can therefore be considered as a further indication of federalization – on the basis of a for valid reasons gradually more functional and thus deterritorialized understanding of this concept¹⁰⁷ – becoming an increasingly dominant characteristic of normatively relevant steering regimes not only at the supranational level,¹⁰⁸ but also with regard to governance structures in the international system as a whole.¹⁰⁹

c) Striving for Financial Independence: The Global Compact Foundation

Finally, although it is reiterated that the “enabling environment that governments provide for participants and other stakeholders to engage in the Global Compact, in the form of incentives and assistance, is vital to the initiative’s success”,¹¹⁰ the new governance structure of the Global Compact also mirrors the efforts to achieve a considerably higher degree of financial security by striving for increased pecuniary autonomy from voluntary government contributions. In this connection, the central project will be the establishment of a Global Compact Foundation – financed on the basis of contributions made primarily by Global Compact participants – with the task of assisting the Global Compact Office “with securing the resources needed to undertake its ac-

¹⁰⁶ *Ibid.*

¹⁰⁷ Generally on the appropriateness of the concept of federalism in order to describe governance structure in the international realm *Delbrück*, *Indiana Journal of Global Legal Studies* 11 (2004), 31 (48); *Mosler*, *VVDStRL* 21 (1964), 138 *et seq.*; *Lane*, in: *Bernhardt* (ed.), *E.P.I.L.*, Vol. II, 375 (376); *von Bogdandy*, *Supranationaler Föderalismus*, 62 *et seq.*; *Peters*, *Verfassung Europas*, 183 *et seq.*; *Nettesheim*, *ZEuS* 5 (2002), 507 (535 *et seq.*); *Münch*, *DÖV* 15 (1962), 649; *Böhmer*, *Die Europäische Union*, 27 and 144; *Gamper*, *German Law Journal* 6 (2005), 1297 (1317).

¹⁰⁸ With regard to (supranational) federalism as a characteristic feature of the European Community’s governance structure see for example *Badura*, in: *Kästner et al.* (eds.), *Festschrift Heckel*, 695 *et seq.*; *Everling*, in: *Hailbronner et al.* (eds.), *Festschrift Doehring*, 179 *et seq.*; *von Bogdandy*, in: *Brenner et al.* (eds.), *Festschrift Badura*, 1033 (1035 *et seq.*); *Oeter*, in: *von Bogdandy* (ed.), *Europäisches Verfassungsrecht*, 59 *et seq.*; *Thürer*, *VVDStRL* 50 (1991), 97 (132 *et seq.*).

¹⁰⁹ On the idea of a transnational federalism as the overarching structural concept of governance in the international system see recently *Delbrück*, *Indiana Journal of Global Legal Studies* 11 (2004), 31 *et seq.*; for earlier proposals in this connection see also, e.g., *Bernier*, *International Legal Aspects of Federalism*, 202 *et seq.*; *Friedrich*, *PVS* 5 (1964), 154 *et seq.*; *McWhinney*, *Federal Constitution-Making*, 122 *et seq.*; *Bülck*, *VVDStRL* 21 (1964), 1 *et seq.*; as well as already in the year 1879 *Frantz*, *Deutschland und der Föderalismus*, 154 *et seq.*; *Frantz*, in: *Hartmann* (ed.), *Föderalismus als universale Idee*, 79 (112).

¹¹⁰ See the report by the Global Compact Office “The Global Compact’s Next Phase” of 6 September 2005, para. 3.14, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005).

tivities” specifically with regard to so-called “non-core activities, such as events, issue campaigns and publications”.¹¹¹

2. *Strengthened Integrity Measures*

Aside from the important institutional innovations, the reconfigured Global Compact with regard to its procedural dimension especially reflects – again in conformity with respective proposals made in the *McKinsey-Report*¹¹² – an increased emphasis on measures to ensure quality improvements, as well as to further safeguard the initiative’s integrity by enhancing the accountability of the participating corporations. In the following, an overview will be given on the three central integrity measures of the Global Compact, all of which, although having been introduced in principle already prior to the adoption of the new governance structure, have been substantially modified in order to be more explicit, detailed and transparent thereby ultimately intended to enhance the realization of the value principles enshrined in the Global Compact.¹¹³

a) *Use of the Global Compact Name and Logos*

Among the major incentives for corporations to join the Global Compact and thus an important means for the indirect, incentive-based steering of patterns of behaviour¹¹⁴ is the limited right granted to participants and other stakeholders to use the United Nations’ name and emblem as well as especially the Global Compact logo. While the display of the United Nations’ name and emblem is restricted according to the regulations provided in General Assembly Resolution 92 (I) of 7 December 1947 and may be authorized for use by non-UN entities only in exceptional circumstances on the basis of a prior written permission by the UN Secretary-General¹¹⁵ and although comparable requirements were originally intended to apply to the use of the Global Compact logo on the basis of the “Guidelines for Cooperation between the United Nations and the Business Community”, issued by the Secretary-General on 17 July 2000,¹¹⁶ the way and extent to which these regulations were implemented in prac-

¹¹¹ *Ibid.*, para. 4.11.

¹¹² McKinsey & Company, *Assessing the Global Compact’s Impact*, Report of 11 May 2004, at 15 *et seq.*, available on the Internet under: <www.wbcsd.org/web/projects/advocacy/imp_ass.pdf> (visited on 25 October 2005).

¹¹³ See report by the Global Compact Office “The Global Compact’s Next Phase” of 6 September 2005, para. 3.8, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005).

¹¹⁴ Generally on the increasing use of non-confrontational mechanisms for the indirect steering of patterns of behaviour in contemporary international law see, e.g., *Chayes/Handler Chayes*, *The New Sovereignty*, 109 *et seq.*; *Delbrück*, *Indiana Journal of Global Legal Studies* 9 (2002), 401 (425 *et seq.*); *Tietje*, *Internationalisiertes Verwaltungshandeln*, 274 *et seq.*; *Nowrot*, *Global Governance*, 8 *et seq.*, each with further references.

¹¹⁵ “Official Seal and Emblem of the United Nations”, UN GA Res. 92 (I) of 7 December 1946; see thereto also recently *Schurdel*, *Vereinte Nationen* 53 (2005), 207 (209).

¹¹⁶ See “Guidelines for Cooperation between the United Nations and the Business Community”, issued by the Secretary-General on 17 July 2000, paras. 15 *et seq.*, reprinted in: *Cooperation be-*

tice has in the past years frequently been subject to criticism by NGOs and in the literature.¹¹⁷

In reaction to the concerns expressed with regard to a possible so-called “blue-washing” allegedly undertaken by some corporations, the Global Compact Office has already on 9 March 2005 issued a revised “Policy on the Use of the Global Compact Name and Logos”¹¹⁸ with the aim of making the applied restrictions on the use of these logos “more explicit”.¹¹⁹ In line with their underlying purpose, the new guidelines not only emphasize that the logos are permitted to be used by companies exclusively “in the context of their activities promoting the Global Compact and its goals, but not in any manner that suggests or implies that the Global Compact Office has endorsed or approved of the activities, products, and/or services of the organization or that the Global Compact Office is the source of any such activities, products, and/or services”. Rather, the policy regulations also provide for specific and detailed examples of circumstances under which and in what way the display of the logos will be generally permitted or not be allowed respectively. As a further safeguard, for all proposed uses by the initiative’s participants and other stakeholders of the Global Compact logos “the permission of the Global Compact Office must be sought in advance in writing” with the authorized users being required “to provide the Global Compact Office with samples of all materials that bear the Global Compact name and logos”. Finally, with regard to the implementation of this new guidelines, the Global Compact Office calls attention to the fact that it “reserves the right to take appropriate action in the event of a breach of this policy” whereby any “suspected misuse of the Global Compact name or logo in the context of the Global Compact should be referred to the UN Global Compact Office”. In this connection, possible sanctions against violators of the policy regulations “may include, but are not limited to, removing the participant’s name from the list of participants, revoking participant status, and/or instituting legal proceedings with the appropriate authorities”.

Although it still remains to be seen how these guidelines will be implemented by the Global Compact Office in practice, the newly adopted “Policy on the Use of the Global Compact Name and Logos” can, at least on a theoretical level, be regarded as providing considerably more detailed regulations as well as enforcement mechanisms and thus an appropriate basis for enhancing the integrity of this initiative in the previously quite controversial area of United Nations’ name and emblem as well as Global Compact logo uses by participants.

tween the United Nations and all Relevant Partners, in Particular the Private Sector, Report of the Secretary-General, UN Doc. A/56/323 of 28 August 2001, Annex III.

¹¹⁷ See thereto only *von Schorlemer*, in: von Schorlemer (ed.), *Praxishandbuch UNO*, 507 (536 *et seq.*), with further references.

¹¹⁸ Policy on the Use of the Global Compact Name and Logos of 9 March 2005, reprinted in: report by the Global Compact Office “The Global Compact’s Next Phase” of 6 September 2005, Attachment 2, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005).

¹¹⁹ *Ibid.*, para. 3.8.

b) *Communications on Progress*

In order to foster continuous quality improvement, the Global Compact requires all participating corporations already since January 2003 to report on an annual basis to the Global Compact Office and their respective stakeholders on the activities undertaken to implement, promote and support the core principles of this initiative. These “Communications on Progress”, also being made available on the website of the Global Compact,¹²⁰ should in accordance with the respective “Global Compact Guidelines for ‘Communications on Progress’”¹²¹ include a statement of continued support for the initiative which in line with the Global Compact’s “Leadership model” has to be stated in the form of an “opening letter, statement or message from the Chief Executive Officer, Chairman or other senior executive”¹²² as well as an outline “of practical actions that participants have taken to implement the Global Compact principles during the previous fiscal year”.¹²³ Furthermore, participants are also expected to provide in their communications a measurement “of outcomes or expected outcomes” thereby taking recourse, to the greatest extent possible, to “indicators or metrics such as those developed by the Global Reporting Initiative”,¹²⁴ an institutionalized steering regime founded in the year 1997 at the initiative of UNEP and the *Coalition for Environmentally Responsible Economies* having currently more than 230 transnational enterprises, business associations and NGOs from 34 countries and being aimed at the development of global standards for reports by corporations, state and non-state institutions with regard to the economical, ecological and social implications of their activities and products.¹²⁵

In addition to providing increased assistance to participating companies on the basis of a “Guidance Packet on Communications on Progress” of 28 January 2005¹²⁶ and a “Practical Guide to Communication on Progress – Advice for Global Compact Participating Companies Preparing their Communication on Progress”, published on 4 May 2005,¹²⁷ the modified integrity measures address in particular the issue of fail-

¹²⁰ See the respective communications on progress on the website of the Global Compact under: <www.unglobalcompact.org/Portal/Default.asp?> (30 October 2005).

¹²¹ The Global Compact Guidelines for ‘Communications on Progress’ are available on the Internet under: <www.unglobalcompact.org/content/cops/guidance_pack/cop_guidelines.pdf> (visited on 30 October 2005); see also in this connection the “Guidance Packet on Communications on Progress” of 28 January 2005, available on the Internet under: <www.unglobalcompact.org/content/cops/gp_full.htm> (visited on 30 October 2005); as well as the “Practical Guide to Communication on Progress – Advice for Global Compact Participating Companies Preparing their Communication on Progress” of 4 May 2005, available on the Internet under: <www.unglobalcompact.org/content/cops/pock_guide.pdf> (visited on 30 October 2005).

¹²² See the Global Compact Guidelines for ‘Communications on Progress’, para. 1 lit. a, available on the Internet under: <www.unglobalcompact.org/content/cops/guidance_pack/cop_guidelines.pdf> (visited on 30 October 2005).

¹²³ *Ibid.*, para. 1 lit. b.

¹²⁴ *Ibid.*, para. 1 lit. c.

¹²⁵ On the tasks, institutional structure and members of the Global Reporting Initiative see the information on the Internet under: <www.globalreporting.org/> (visited on 30 October 2005).

¹²⁶ “Guidance Packet on Communications on Progress” of 28 January 2005, available on the Internet under: <www.unglobalcompact.org/content/cops/gp_full.htm> (visited on 30 October 2005).

¹²⁷ “Practical Guide to Communication on Progress – Advice for Global Compact Participating Companies Preparing their Communication on Progress” of 4 May 2005, available on the Inter-

ures to submit communications on progress by individual participating companies in order to “increase the transparency and public accountability of the initiative”.¹²⁸ Introduced on 15 June 2004, the integrity measures stipulated that – with the possible exception of “small and medium size enterprises and other companies that may lack the capacity to report or face other barriers to communicating fully”¹²⁹ – any participating company who fails to submit a communication on progress by 30 June 2005, within two years of joining the Global Compact¹³⁰ or, subsequently, for two years in a row will “be labelled ‘inactive’ on the Global Compact website” until it provides the next respective report.¹³¹ Companies qualified as inactive are neither allowed to participate in Global Compact events, including local network activities, nor are they any longer authorized to use the Global Compact name and logo.¹³²

By 15 July 2005, out of the 977 participating companies who have been the Global Compact for at least two years and for whom thus the new integrity measure went into effect on 30 June 2005, 98 percent of the 73 participating large transnational enterprises belonging to the “Financial Times Global 500” had submitted a respective communication on progress, while overall only 38 percent – 367 companies – of the respective 977 enterprises provided the Global Compact Office with a report.¹³³ As of 3 November 2005, a total of 600 participants were still listed on the respective website of the Global Compact as “non-communicating companies”.¹³⁴

c) *Complaint Procedure*

The third and for the future development of the Global Compact potentially most important modified integrity measure is the possibility to file complaints of sys-

net under: <www.unglobalcompact.org/content/cops/pock_guide.pdf> (visited on 30 October 2005).

¹²⁸ See Report of the Secretary-General on the Work of the Organization, UN Doc. A/60/1 of 8 August 2005, para. 286.

¹²⁹ See thereto „Note on Integrity Measures“ of 29 June 2005, para. 3, Attachment 1 to the report by the Global Compact Office “The Global Compact’s Next Phase” of 6 September 2005, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005).

¹³⁰ See “Guidance Packet on Communications on Progress” of 28 January 2005, para. 2, available on the Internet under: <www.unglobalcompact.org/content/cops/gp_full.htm> (visited on 30 October 2005); see thereto also *Rieth*, Die Friedens-Warte 79 (2004), 151 (156).

¹³¹ See „Note on Integrity Measures“ of 29 June 2005, para. 3, Attachment 1 to the report by the Global Compact Office “The Global Compact’s Next Phase” of 6 September 2005, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005).

¹³² *Ibid.*

¹³³ See the press release by the Global Compact Office “GC Participants Disclose Actions in Support of Universal Principles – Vast Majority of Largest Companies Actively Communicating Progress” of 15 July 2005, available on the Internet under: <www.unglobalcompact.org/content/NewsEvents/cop_pr.htm> (visited on 30 October 2005); for more detailed statistical information in this connection see also the document “Global Compact Communication on Progress – Key Figures” of 15 July 2005, available on the Internet under: <www.unglobalcompact.org/content/NewsDocs/statrep_cop.pdf> (visited on 30 October 2005).

¹³⁴ See the respective information on the Internet under: <www.unglobalcompact.org/Portal/Default.asp?> (visited 3 November 2005).

tematic or egregious abuse of the Global Compact's overall aims and principles to the Global Compact Office against any participating company. This option, from its personal scope of application not being limited to participants or other stakeholders of the Global Compact but granted to all individuals, organizations, states or other entities, was introduced in the initiative on an informal basis in June 2004.¹³⁵ Under the reconfigured governance scheme of the Global Compact, this prior informal system for reviewing respective complaints has now been "made more detailed and transparent".¹³⁶

According to this more formalized complaint procedure as laid down in the "Note on Integrity Measures" of 29 June 2005, the Global Compact Office with regard to any complaint submitted to it in writing is first going to "use its judgement to filter out *prima facie* frivolous complaints" on which, in the affirmative, no further action will be taken and the complaining party so be informed.¹³⁷ In case the complaint is not considered to be *prima facie* frivolous, the Global Compact Office forwards it to the respective company together with a request for written comments to be submitted to the complaining party as well as to the Office, and asks the responding party to notify the Office of any actions taken to address the situation.¹³⁸ With regard to the selection of possible measures, the Global Compact Office can "provide guidance and assistance, as necessary and appropriate, to the participating company concerned, in taking actions to remedy the situation that is the subject matter of the complaint in order to align the actions of the company with its commitments to the Global Compact principles".¹³⁹ In this connection, the Office may "in its sole discretion"¹⁴⁰ offer to the parties concerned its good offices to contribute to the resolution of the dispute,¹⁴¹ ask the competent local network or other participating entities for assistance,¹⁴² refer the complaint to the respective participating UN agencies for advice,¹⁴³ bring the dispute to the attention of the Global Compact Board, thereby "drawing in particular on the expertise and recommendations of its business members",¹⁴⁴ and/or "[s]hare with the parties information about the specific instance procedures of the *OECD Guidelines for Multinational Enterprises* and, in the case of complaints relating to the labour principles, the interpretation procedure under the ILO *Tripartite Declaration of Principles*

¹³⁵ See only *Rieth*, *Die Friedens-Warte* 79 (2004), 151 (157).

¹³⁶ See the report by the Global Compact Office "The Global Compact's Next Phase" of 6 September 2005, para. 3.8, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005).

¹³⁷ See „Note on Integrity Measures“ of 29 June 2005, para. 4 lit. a, Attachment 1 to the report by the Global Compact Office "The Global Compact's Next Phase" of 6 September 2005, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005).

¹³⁸ *Ibid.*, para. 4 lit. b.

¹³⁹ *Ibid.*, para. 4 lit. c.

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*, para. 4 lit. c (i).

¹⁴² *Ibid.*, para. 4 lit. c (ii).

¹⁴³ *Ibid.*, para. 4 lit. c (iii).

¹⁴⁴ *Ibid.*, para. 4 lit. c (v); see also report by the Global Compact Office "The Global Compact's Next Phase" of 6 September 2005, para. 4.8, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005).

concerning *Multinational Enterprises and Social Policy*".¹⁴⁵ In the course of the whole dispute resolution process, the complainant, the respondent and all other entities involved are asked – in order to assist in the resolving the matter at issue – not to make any public statement.

However, if the respective company shows itself unwilling to enter into a dialogue on solving the complaint within three months of first being contacted by the Global Compact Office, "it may be regarded as 'inactive', and would be identified as such on the Global Compact website until such time as a dialogue commences".¹⁴⁶ Furthermore, if – based on the nature of the complaint and as a result of the outcomes of the following dispute resolution process – "the continued listing of the participating company on the Global Compact website is considered to be detrimental to the reputation and integrity of the Global Compact, the Global Compact Office reserves the right to remove that company from the list of participants and to so indicate on the Global Compact website".¹⁴⁷

The Global Compact Office emphasizes in connection with the introduction of this now considerably more formalized complaint procedure that it "will not involve itself in any way in any claims of a legal nature that a party may have against a participating company", that this complaint procedure is "not intended to affect, pre-empt or substitute for other regulatory or legal procedures or proceedings in any jurisdiction" and, more generally, that the Global Compact "is not and does not aspire to become a compliance based initiative".¹⁴⁸ In addition, a decisive influence, as it is often the case, will be exercised in this connection by the subsequent practice of especially the Global Compact Office, the local networks, the Global Compact Board and, of course, the complainants in interpreting and applying this modified complaint procedure. Nevertheless, already at this stage it appears to be not too far-fetched to draw the conclusion that the design of the newly created procedural scheme of reviewing com-

¹⁴⁵ See „Note on Integrity Measures“ of 29 June 2005, para. 4 lit. c (iv), Attachment 1 to the report by the Global Compact Office "The Global Compact's Next Phase" of 6 September 2005, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005) (emphasis in the original); on the respective procedure of the OECD itself see the "OECD Guidelines for Multinational Enterprises" in their current version of 27 June 2000, reprinted in: I.L.M. 40 (2001), 237 *et seq.*; as well as the procedural guidelines for implementation in OECD, Decision of the Council on the OECD Guidelines for Multinational Enterprises, adopted by the Council at its 982nd Session on 26-27 June 2000, OECD Doc. C(2000)96/FINAL, reprinted for example in: *Mares* (ed.), *Business and Human Rights*, 70 *et seq.*; see thereto also, e.g., *Böhmer*, *Revised 2000 OECD Guidelines*, 2 *et seq.*; *Acconi*, *Journal of World Investment* 2 (2001), 123 *et seq.*; *Tully*, *International and Comparative Law Quarterly* 50 (2001), 394 *et seq.*; concerning the referred to procedure introduced by the ILO see "Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy" in their current version of 17 November 2000, reprinted in: I.L.M. 41 (2002), 186 *et seq.*; as well as the "Tripartite Declaration on Principles Concerning Multinational Enterprises and Social Policy – Procedure for the Examination of Disputes" in its current version of March 1986, reprinted for example in: *Mares* (ed.), *Business and Human Rights*, 86 *et seq.*; see thereto only *Wallace*, *The Multinational Enterprise*, 1080 *et seq.*

¹⁴⁶ See „Note on Integrity Measures“ of 29 June 2005, para. 4, Attachment 1 to the report by the Global Compact Office "The Global Compact's Next Phase" of 6 September 2005, available on the Internet under: <www.unglobalcompact.org/content/AboutTheGC/gc_gov_framework.pdf> (visited on 25 October 2005) (emphasis added).

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

plaints has obviously at least the potential to provide the Global Compact's stakeholders, as well as individuals and other interested organizations with an effective mean to strengthening the accountability of participating companies with regard to the implementation in practice of their commitment to the core principles of this initiative, thereby possibly contributing in a crucial way to a change in the Global Compact's regulatory character.

D. Evaluation and Consequences of the Global Compact's New Governance Structure

When trying to evaluate the considerable changes with regard to the institutional structure of the Global Compact as well as the significant modifications of this initiative's integrity measures, two fundamental issues, being interrelated with each other, merit further attention. The first question arising in connection with the introduction of the new governance framework concerns the underlying reasons for this reconfiguration of the Global Compact: Are the arguments brought forward by *Kofi Annan* at the Global Compact Leaders Summit in June 2004 the only driving forces behind these developments or is the now adopted governance structure of this initiative also the result of other considerations not expressly named by the Secretary-General?

Secondly, in light of the substantial modifications this initiative is currently subjected to, it appears to be necessary to explore the possible consequences of the new governance structure for the overall understanding of the Global Compact and its underlying approach of value-realization: Is the once fitting and continuously reiterated characterization of this initiative as a mere dialogue forum and learning network still appropriate or has the Global Compact – despite statements to the contrary made especially by the Global Compact Office – to a considerable extent abandoned its original informal strategy and so profoundly changed its steering philosophy that it has silently transformed into something new by aligning itself to the governance approach adopted by other recently created transnational regulatory regimes aimed at the promotion and protection of global public goods? These two issues will be addressed in the final part of this contribution.

I. Reasons for Reconfiguring the Global Compact

Most of the underlying reasons for adopting the new governance framework of the Global Compact are well-known, have been extensively addressed in the above mentioned *McKinsey*-Report of May 2004 and were expressly stated by the Secretary-General, *inter alia*, in his opening speech as well as his closing remarks at the Global Compact Leaders Summit on 24 June of the same year. Among them are the extraordinary rise in the number of participants requiring a more federalized structure by assigning a more important role to equally growing quantity of local networks, the desire to enhance the effectiveness and acceptance of this initiative by improving the possibilities for participants and other stakeholders to directly take part in the governing functions, the wish to broaden the Global Compact's financial basis, as well as the increasingly felt need to address – in particular by way of modifying the integrity

measures – the in part severe criticism voiced especially by many NGOs and parts of the literature with regard to for example the initiative’s transparency, its impact on the participating companies as well as an alleged lack of appropriate compliance mechanisms to ensure the effective implementation of the Global Compact’s core principles.¹⁴⁹

However, achieving this variety of goals aimed at enhancing the effectiveness and acceptance of the initiative appear not to be the only driving forces behind the reconfiguration of the Global Compact. Rather, two additional underlying motives for adopting the new governance framework can be identified which were both not expressly mentioned by the UN Secretary-General or the Global Compact Office.

The first of these reasons, already being subject to discussion in the literature,¹⁵⁰ concerns the implications for the initiative of the approaching end of *Kofi Annan’s* second and final term of office as Secretary-General on 31 December 2006. *Annan* not only personally symbolizes the above mentioned general shift in the relationship between the United Nations and the private business sector and has in this connection initiated the Global Compact, but has also remained the central integrative figure with regard to the subsequent operational functioning of this initiative especially for the participating corporations to such an extent that – as being stated in the *McKinsey Report* – “[i]n the eyes of many companies, the Compact’s credibility stems from its association with the current Secretary-General, not from its on-going activities”.¹⁵¹ Taking into account the strong interest of *Kofi Annan* as well as the overwhelming majority of current participants to retain the Global Compact as an effective and sustainable initiative in the years to come,¹⁵² the current reconfiguration can also be regarded as an attempt to emancipate the Global Compact from its “founding father” on the basis of a more institutionalized and thus more sustained governing structure by increasingly devolving decision-making functions and oversight responsibility to – on the horizontal level – representative bodies of the participating actors, as well as – with regard to the vertical level of governance – to the local networks.

The second development which, also unspoken, has probably to a considerable extent influenced the adoption of the new governance framework can be, with regard to its origins, traced back to approximately the same time when the Global Compact was initiated. On 3 August 1999, the former *Sub-Commission on Prevention of Discrimination and Protection of Human Rights*, a sub-organ of the *Commission on Human Rights*, established through its Decision 1999/101, adopted on the basis of its Resolution 1998/8, a *Sessional Working Group on the Working Methods and Activities of Transna-*

¹⁴⁹ For a more detailed description and evaluation of the criticism brought forward against the previous steering approach of the Global Compact see, e.g., *von Schorlemer*, in: *von Schorlemer* (ed.), *Praxishandbuch UNO*, 507 (535 *et seq.*); *Rieth*, *Die Friedens-Warte* 79 (2004), 151 (163 *et seq.*); *Brinkmann/Pies*, *Der Global Compact*, 9 *et seq.*; *Zumach*, *Vereinte Nationen* 50 (2002), 1 *et seq.*; *Martens*, in: *Auswärtiges Amt* (ed.), *Fünftes Forum Globale Fragen*, 30 *et seq.*; *Sethi*, *Setting Global Standards*, 115 *et seq.*; *Benner/Witte*, *Internationale Politik* 56 (No. 5, 2001), 1 (4); *Chimni*, *European Journal of International Law* 15 (2004), 1 (14 *et seq.*).

¹⁵⁰ See *Rieth*, *Die Friedens-Warte* 79 (2004), 151 (167 *et seq.*).

¹⁵¹ See *McKinsey & Company*, *Assessing the Global Compact’s Impact*, Report of 11 May 2004, at 16, available on the Internet under: <www.wbcsd.org/web/projects/advocacy/imp_ass.pdf> (visited on 25 October 2005).

¹⁵² For a similar perception see, e.g., *Rieth*, *Die Friedens-Warte* 79 (2004), 151 (168).

tional Corporations comprising of five members.¹⁵³ Already in the course of its first session, the members of the *Working Group* agreed to draft, in cooperation with other UN agencies, business associations, corporations and NGOs, a “code of conduct for TNCs based on the human rights standards”,¹⁵⁴ a decision which ultimately led to the adoption of the *Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*¹⁵⁵ by the re-named *Sub-Commission on the Promotion and Protection of Human Rights* on 13 August 2003.¹⁵⁶ It is currently – especially in light of the quite reserved response that this draft code of conduct subsequently received by the *Commission on Human Rights* in its Decision 2004/116 of 20 April 2004¹⁵⁷ and the fact, that this document is not even expressly mentioned anymore in the following respective Resolution 2005/69 of 20 April 2005¹⁵⁸ – rather questionable whether the “UN Norms” itself will be adopted by the *Commission on Human Rights* any time soon.¹⁵⁹ Nevertheless, a notable number of developments clearly indicate that the discussion about possible approaches to deal with the issue of especially transnational corporations and human rights on a more formal basis than previously undertaken by the Global Compact has gained considerable momentum not only among civil society groups, at the domestic level of an increasing number of states and in the legal literature,¹⁶⁰ but in recent years especially also within the United

¹⁵³ See Sub-Commission Resolution 1998/8 of 20 August 1998, para. 4; as well as Sub-Commission Decision 1999/101 of 3 August 1999; with regard to the original members of this working group, see the Report of the Sessional Working Group on the Working Methods and Activities of Transnational Corporations on its First Session, UN Doc. E/CN.4/Sub.2/1999/9 of 12 August 1999, para. 1.

¹⁵⁴ Report of the Sessional Working Group on the Working Methods and Activities of Transnational Corporations on its First Session, UN Doc. E/CN.4/Sub.2/1999/9 of 12 August 1999, paras. 32, 37.

¹⁵⁵ Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003) of 26 August 2003; for a more detailed analysis of the drafting history and contents of this draft code of conduct, see, e.g., *Weissbrodt/Kruger*, *American Journal of International Law* 97 (2003), 901 (903 *et seq.*); *Nourot*, *Die UN-Norms*, 6 *et seq.*; *Muchlinski*, *Non-State Actors and International Law* 3 (2003), 123 (135 *et seq.*).

¹⁵⁶ Sub-Commission Resolution 2003/16 of 13 August 2003, paras. 1 *et seq.*, reprinted in: Report of the Sub-Commission on the Promotion and Protection of Human Rights on its Fifty-Fifth Session, UN Doc. E/CN.4/2004/2, E/CN.4/Sub.2/2003/43 of 20 October 2003, at 51 *et seq.*

¹⁵⁷ Commission on Human Rights Decision 2004/116 of 20 April 2004, reprinted in: Commission on Human Rights, Report on the Sixtieth Session, UN Doc. E/2004/23, E/CN.4/2004/127, at 332 *et seq.*; see thereto also *Nourot*, *Die Friedens-Warte* 79 (2004), 119 (137).

¹⁵⁸ Commission on Human Rights Resolution 2005/69 of 20 April 2005, reprinted in: Commission on Human Rights, Report on the Sixty-First Session, Draft Resolutions and Draft Decisions Recommended for Adoption by the Economic and Social Council, and the Resolutions and Decisions Adopted by the Commission at its Sixty-First Session, UN Doc. E/2005/23 (Part I), E/CN.4/2005/134 (Part I), 266 *et seq.*; see thereto *Strohscheidt*, *Vereinte Nationen* 53 (2005), 138 (143 *et seq.*).

¹⁵⁹ For a similar rather sceptical perception see also, e.g., *Murphy*, *Columbia Journal of Transnational Law* 43 (2005), 389 (408); *Riethl/Zimmer*, *Die Friedens-Warte* 79 (2004), 75 (101); *Dhooge*, *Arizona Journal of International and Comparative Law* 21 (2004), 441 (471); *Simons*, *Relations Industrielles/Industrial Relations* 59 (2004), 101 (112); *Blome*, *Paradigmenwechsel*, 10; *Kamminga*, in: *International Law Association* (ed.), *Report of the Seventy-First Conference 2004*, 422 (423 and 427).

¹⁶⁰ From the by now virtually countless numbers of contributions on this issue see only *Seibert-Fohr/Wolfrum*, *Archiv des Völkerrechts* 43 (2005), 153 *et seq.*; *Reinisch*, in: *Alston* (ed.), *Non-State*

Nations itself. Not only has the *Sub-Commission on the Promotion and Protection of Human Rights* in the years 2004 and 2005 decided to continue to be actively involved in this matter,¹⁶¹ *inter alia*, on the basis of a renewed mandate of the respective *Sessional Working Group on the Working Methods and Activities of Transnational Corporations*.¹⁶² Rather, to mention but one further example, at least equally noteworthy in this connection are the facts that the *Commission on Human Rights* itself has in 2004 requested the *United Nations High Commissioner on Human Rights* “to compile a report setting out the scope and legal status of existing initiatives and standards relating to the responsibility of transnational corporations and related business enterprises with regard to human rights”¹⁶³ which was completed on 15 February 2005,¹⁶⁴ and that subsequently the *Commission*, on the basis of its Resolution 2005/69 of 20 April 2005 bearing the title “Human Rights and Transnational Corporations and Other Business Enterprises” asked the Secretary-General “to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises, for an initial period of two years, who shall submit an interim report to the Commission at its sixty-second session and a final report at its sixty-third session, with views

Actors and Human Rights, 37 *et seq.*; Weissbrodt/Kruger, in: *ibid.*, 315 *et seq.*; Jägers, Corporate Human Rights Obligations, 19 *et seq.*; Joseph, Corporations and Transnational Human Rights Litigation, 1 *et seq.*; Redmond, *International Lawyer* 37 (2003), 69 *et seq.*; Koh, *Journal of International Economic Law* 7 (2004), 263 *et seq.*; Ratner, *Yale Law Journal* 111 (2001), 443 *et seq.*; Nowrot, *Die Friedens-Warte* 79 (2004), 119 *et seq.*, each with further references.

¹⁶¹ See, e.g., Sub-Commission Resolution 2005/6 of 8 August 2005, reprinted in: Draft Report of the Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2005/L.11 of 9 August 2005; Sub-Commission Decision 2005/112 of 11 August 2005, reprinted in: Draft Report of the Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2005/L.11/Add.2 of 11 August 2005; as well as the Working Paper on Human Rights and Non-State Actors submitted by Gáspár Bíró and Antoanella Motoc to the Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2005/40 of 11 July 2005.

¹⁶² See thereto Sub-Commission Resolution 2004/16 of 12 August 2004, para. 3, reprinted in: Report of the Sub-Commission on the Promotion and Protection of Human Rights on its Fifty-Sixth Session, UN Doc. E/CN.4/2005/2, E/CN.4/Sub.2/2004/48 of 21 October 2004, at 46 *et seq.*; Sub-Commission Decision 2005/102 of 25 July 2005, reprinted in: Draft Report of the Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2005/L.11/Add.1 of 11 August 2005; as well as the Report of the Sessional Working Group on the Working Methods and Activities of Transnational Corporations on its Sixth Session, UN Doc. E/CN.4/Sub.2/2004/21 of 5 August 2004; and the Report of the Sessional Working Group on the Working Methods and Activities of Transnational Corporations on its Seventh Session, UN Doc. E/CN.4/Sub.2/2005/22 of 8 August 2005.

¹⁶³ Commission on Human Rights Decision 2004/116 of 20 April 2004, lit. (b), reprinted in: Commission on Human Rights, Report on the Sixtieth Session, UN Doc. E/2004/23, E/CN.4/2004/127, at 332 *et seq.*

¹⁶⁴ Report of the United Nations High Commissioner on Human Rights on the Responsibility of Transnational Corporations and Related Business Enterprises with Regard to Human Rights, UN Doc. E/CN.4/2005/91 of 15 February 2005; see also Strohscheidt, *Vereinte Nationen* 53 (2005), 138 (142 *et seq.*).

and recommendations for consideration of the Commission”¹⁶⁵ and decided to continue considering this question at its sixty-second session.¹⁶⁶

It is not too far-fetched to assume that this intensified debate about the possible human rights responsibilities of private business actors can be regarded as one of the major driving forces behind the reconfiguration of the Global Compact. From this initiative’s point of view it stands to reason and can be regarded as quite telling that the Global Compact Office has from the very beginning displayed a rather cautious attitude towards the adoption of the “UN Norms” in August 2003,¹⁶⁷ taking into account that this draft code of conduct or any related project, if pursued in an earnest way by the *Commission on Human Rights*, could have – due to its limited compatibility with the so far informal and non-regulatory approach adopted by the Global Compact – the potential to undermine the very foundations of the dialogue forum and learning network initiated by the Secretary-General and thus seriously threaten the continued existence of this initiative.¹⁶⁸

In light of this considerations, the Global Compact’s new governance structure can therefore in the end very well also be regarded as a laudable attempt by *Kofi Annan*, the Global Compact Office and the majority of participants to create a synthesis between the original philosophy of this initiative on the one side and the increasingly articulated claims for a more formalized compliance-based regime most prominently being represented by the “UN Norms” one the other side, thereby, on the basis of a considerably modified steering approach, securing the continued existence and attractiveness of the Global Compact. Finally, in order to further illustrate the plausibility of this argumentation, recourse can be taken to the fact that in response to the above mentioned request by the *Commission on Human Rights*, *Kofi Annan* on 28 July 2005 appointed *John Ruggie*, who is generally regarded as being one of the main architects of the Global Compact and had so far served as the Secretary-General’s Special Advisor on the Global Compact, to be the respective Special Representative on the issue of human rights, transnational corporations and other business enterprises.¹⁶⁹

¹⁶⁵ Commission on Human Rights Resolution 2005/69 of 20 April 2005, para. 1, reprinted in: Commission on Human Rights, Report on the Sixty-First Session, Draft Resolutions and Draft Decisions Recommended for Adoption by the Economic and Social Council, and the Resolutions and Decisions Adopted by the Commission at its Sixty-First Session, UN Doc. E/2005/23 (Part I), E/CN.4/2005/134 (Part I), 266 *et seq.*

¹⁶⁶ *Ibid.*, para. 6.

¹⁶⁷ See in this connection especially the Press Release issued by the Head of the Global Compact Office, *Georg Kell*, at the day of the adoption of the “UN Norms” bearing the title “GC clarifies relation to Norms adopted by Sub-Commission on Promotion and Protection of Human Rights” of 13 August 2003, available on the Internet under: <www.unglobalcompact.org/Portal/Default.asp?> (visited on 31 October 2005) (“The Global Compact is a voluntary corporate citizenship initiative. It is not designed to regulate or enforce compliance, but rather to encourage change and solution-finding through practices and actions based on the notions of leadership, dialogue, learning and projects. Global labour and civil society take an active part in this, providing expertise, operational knowledge and on-the-ground capacities. The Global Compact is meant to complement and not substitute regulation. Regulatory authority lies entirely with governments and governments will have to make decisions on the Norms as adopted by the Sub-Commission of Human Rights. From the perspective of the Global Compact, we always welcome efforts that help to clarify complex human rights questions and that foster practical changes.”).

¹⁶⁸ See thereto already *Nowrot*, Die UN-Norms, 21 *et seq.*

¹⁶⁹ See UN Press Release SG/A/934 of 28 July 2005. On 5 October 2005, *Kofi Annan* named *Klaus M. Leisinger*, President of the *Novartis Foundation for Sustainable Development*, to be his new Spe-

II. The Changing Character of the Global Compact: Once You Were a Learning Network ...

These findings with regard to the underlying motives for the recently introduced changes in the governance structure already indicate the consequences of this effort to form a synthesis between the original approach of the Global Compact and the ambitious proposal to establish a comprehensive legal framework on the basis of the “UN Norms” for the character of this initiative.

The undertaking to create a respective compromise being acceptable to the various categories of participants in the Global Compact could only have reasonable chances of success if this initiative were to be reconfigured and transformed in such a way that its new governance structure resembles the steering framework of comparable transnational regulatory regimes comprising of international organizations, corporations, business associations, NGOs and other categories of non-state actors which have evolved in recent years and constitute in cooperation with state and sub-state entities an emerging transnational community that has increasingly taken over the responsibility for the promotion and protection of global public goods.¹⁷⁰

And indeed, it is noticeable that the reformed Global Compact now mirrors to a striking extent other voluntary and cooperative regulatory approaches, none of which considers itself to be a mere dialogue forum or learning network. In order to support this argumentation, recourse can be taken for example to the Forest Stewardship Council (FSC), already being qualified in the literature as a “prototypical example of business-NGO collaboration”.¹⁷¹ This institution, founded in October 1993 and since January 2003 being headquartered in Bonn, is a transnational regulatory regime aimed at the promotion of responsible management of the world’s forests on the basis of accreditation processes.¹⁷² The FSC currently comprises of 638 members, all of them being non-state actors like corporations, NGOs, scientific organizations, business associations and trade unions.¹⁷³ The institutional structure of the FSC very much resembles the organizational composition of traditional intergovernmental organizations. It consists of a plenary organ, the General Assembly, as the highest decision-making body of the FSC which is made up of three chambers representing social, en-

cial Advisor on the Global Compact, see the respective Press Release by the Global Compact Office of 5 October 2005, available on the Internet under: <www.unglobalcompact.org/Portal/Default.asp?UNGC_CookieTest=true> (visited on 31 October 2005).

¹⁷⁰ On this concept of a transnational community comprising of various categories of actors and having taken over the responsibility for the realization of community interests see *Nowrot/Wardin, Liberalisierung der Wasserversorgung*, 53 *et seq.*

¹⁷¹ *Furger*, in: Appelbaum *et al.* (eds.), *Rules and Networks*, 201 (223); for a related view see also *Pattberg*, in: Brühl *et al.* (eds.), *Unternehmen in der Weltpolitik*, 143 (144).

¹⁷² With regard to detailed information on the history, organizational structure, activities and members of the FSC see especially the information on the Internet under: <www.fsc.org/en/> (visited on 1 November 2005); from the literature see also, e.g., *Domask*, in: Doh *et al.* (eds.), *Globalization and NGOs*, 157 (168 *et seq.*); *Bendell/Murphy*, in: Bendell (ed.), *Terms for Endearment*, 65 (70 *et seq.*); *Pattberg*, in: Brühl *et al.* (eds.), *Unternehmen in der Weltpolitik*, 143 *et seq.*

¹⁷³ See the current FSC Membership List of 12 October 2005, available on the Internet under: <www.fsc.org/keepout/en/content_areas/77/82/files/5_2_2_FSC_Membership_List__2005_10_12.pdf> (visited on 1 November 2005).

vironmental and economic interests.¹⁷⁴ Furthermore, the FSC possesses two executive organs – the Board of Directors comprising of nine individuals elected by the General Assembly for a three-year term as well as the Secretariat headed by an Executive Director.¹⁷⁵ In addition, a “Dispute and Accreditation Appeals Committee”, established on the basis of Art. 30 *et seq.* of the FSC-Statutes and Paragraph 73 of the By-Laws, is assigned to deal with disputes arising between members, in relation to the accreditation and certification processes as well as complaints submitted with regard to the performance of the Secretariat. In case the complainant is not satisfied with the particular dispute resolution provided by the Dispute and Accreditation Appeals Committee, the possibility exists in conformity with Art. 33 (2) of the FSC-Statutes to appeal the respective decision at the General Assembly.¹⁷⁶ A comparable institutional structure is displayed by the Marine Stewardship Council (MSC), founded in 1997 at the initiative of *Unilever* and the *World Wide Fund for Nature* (WWF).¹⁷⁷ The MSC, which currently comprises of more than 100 non-state members from the realms of business, civil society and the scientific community, is aimed at promoting environmentally responsible stewardship of the world’s fisheries on the basis of a certification program. The rather advanced institutional structure of this regime consists of – in addition to dispute settlement panels under the so-called “objections process” – a plenary organ, the “Stakeholder Council”, as well as a number of executive bodies like the “Main Board of Trustees”, the “Technical Advisory Committee”, the “Accreditation Committee”, and the “Finance Committee”.

Furthermore, the same applies to, *inter alia*, the Fair Trade Labelling Organization (FLO),¹⁷⁸ the Ethical Trading Initiative (ETI),¹⁷⁹ the Fair Labor Association (FLA)¹⁸⁰ and the Coalition for Environmentally Responsible Economies (CERES).¹⁸¹

¹⁷⁴ See thereto Art. 14 *et seq.* of the FSC-Statutes in their current version of November 2002, available on the Internet under: <www.fsc.org/keepout/en/content_areas/77/83/files/FSC_Statutes_revised_November_2002.PDF> (visited on 1 November 2005); as well as the Paragraphs 11 *et seq.* of the By-Laws of the FSC in their current version of November 2002, available on the Internet under: <www.fsc.org/keepout/en/content_areas/77/84/files/FSC_By_laws_revised_November_2002.PDF> (visited on 1 November 2005).

¹⁷⁵ See thereto Art. 18 *et seq.*, 27 *et seq.* of the FSC-Statutes in their current version of November 2002, available on the Internet under: <www.fsc.org/keepout/en/content_areas/77/83/files/FSC_Statutes_revised_November_2002.PDF> (visited on 1 November 2005); as well as the Paragraphs 48 *et seq.*, 60 *et seq.* of the By-Laws of the FSC in their current version of November 2002, available on the Internet under: <www.fsc.org/keepout/en/content_areas/77/84/files/FSC_By_laws_revised_November_2002.PDF> (visited on 1 November 2005).

¹⁷⁶ Concerning the procedural details of the dispute settlement regime established by the FSC see also the FSC Interim Dispute Resolution Protocol of 27 January 1998, available on the Internet under: <<www.fsc.org/keepout/en/content_areas/77/71/files/FSC_STD_01_001_FSC_Principles_and_Criteria_for_Forest_Stewardship_2004_04.PDF>> (visited on 1 November 2005).

¹⁷⁷ On the MSC see especially the information on the Internet under: <www.msc.org/> (visited on 1 November 2005); as well as from the literature *Heap*, NGOs Engaging with Business, 130 *et seq.*; *Fowler/Heap*, in: Bendell (ed.), Terms for Endearment, 135 *et seq.*

¹⁷⁸ With regard to further details on the FLO see the respective information on the Internet under: <www.fairtrade.net/sites/aboutflo/aboutflo.html> (visited on 1 November 2005).

¹⁷⁹ Concerning the institutional structure, members and activities of ETI see the information on the Internet under: <www.ethicaltrade.org/> (visited on 1 November 2005); as well as from the literature *Blowfield*, in: Jenkins *et al.* (eds.), Corporate Responsibility, 184 *et seq.*, with further references.

¹⁸⁰ See thereto the information on the Internet under: <www.fairlabor.org/index.html> (visited on 1 November 2005).

All of these new transnational regulatory regimes comprise of various categories of non-state actors, rely on different types of quite effective cooperative compliance mechanisms such as incentives, notification and reporting requirements, monitoring systems by way of complaint procedures and dispute settlement mechanisms or capacity building, feature an institutional structure in the form of at least one executive as well as one plenary organ, and thus not only very much resemble the new governance structure of the Global Compact but are also highly likely to have served the Secretary-General and the Global Compact Office to a considerable extent as a model for this initiative's current reconfiguration.

In light of these findings, it can thus be concluded that by entering its next phase following the adoption of the new governance structure, the Global Compact did not only reach a new operational stage on the basis of a continued evolutionary basis, but rather – by way of abandoning to a large extent its original concept as a mere dialogue forum and learning network – has undergone a profound transformation into what can be most appropriately characterized as now belonging to the increasing number of at least in part also federalized and parliamentarized transnational regulatory regime in the international system aimed at the promotion and protection of global public goods.

E. Outlook

In addition to the consequences for the character of the Global Compact itself, this initiative's new governance structure, which devolves considerably more governance functions and at the same time greater responsibilities to the participating corporations, business associations and NGOs, has also, viewed in a broader perspective, implications with regard to the changing steering structure of the international system as a whole.¹⁸²

As already emphasized in the literature prior to the adoption of the new governance structure, the Global Compact not only contributes to the continued "process of the privatization of the UN system"¹⁸³ but furthermore serves as an additional indication of the recognition of in particular transnational enterprises as equal partners in international politics,¹⁸⁴ of the ever more important role played by this influential

¹⁸¹ On the history, organizational structure and members of CERES see the respective information on the Internet under: <www.ceres.org/> (visited on 1 November 2005).

¹⁸² From the numerous contributions on the discussion about the changing structure of the international system see, e.g., *Delbrück*, *Schweizerische Zeitschrift für Internationales und Europäisches Recht* 11 (2001), 1 *et seq.*; *Higgins*, *Cambridge Law Journal* 58 (1999), 78 *et seq.*; *Thürer*, in: *Bröhmer et al.* (eds.), *Festschrift Ress*, 307 *et seq.*; *Slaughter*, *A New World Order*, 1 *et seq.*; *Tietje*, *Deutsches Verwaltungsblatt* 118 (2003), 1081 *et seq.*; *Peters*, in: *Dicke et al.* (eds.), *Liber amicorum Jost Delbrück*, 535 *et seq.*; *Hobe*, *Archiv des Völkerrechts* 37 (1999), 253 *et seq.*; *Nolte*, *Ver-einte Nationen* 53 (2005), 190 (191 *et seq.*); *Dörr*, *JuristenZeitung* 60 (2005), 905 *et seq.*; *Ruffert*, *Globalisierung als Herausforderung*, 9 *et seq.*; *Walter*, *German Yearbook of International Law* 44 (2001), 170 *et seq.*, each with further references.

¹⁸³ *Chimni*, *European Journal of International Law* 15 (2004), 1 (15); generally on the current trend of a privatization of public international law see recently *Dörr*, *JuristenZeitung* 60 (2005), 905 *et seq.*

¹⁸⁴ See thereto *Pies*, in: *Arnold* (ed.), *Wirtschaftsethische Perspektiven VII*, 61 (62); *von Schorlemer*, in: *von Schorlemer* (ed.), *Praxishandbuch UNO*, 507 (509 *et seq.*).

category of non-state actors in the normatively relevant steering processes of the international system¹⁸⁵ and thus the emergence of a “new global division of regulatory labor”.¹⁸⁶ Taking into account that the Global Compact is clearly guided by an approach of assigning public governance functions, which were previously exercised exclusively by states and international organizations, to non-state actors such as corporations, business associations and NGOs,¹⁸⁷ the new governance structure of this transnational regulatory regime – even to a greater extent than the original initiative – seen in a broader sense also supports the view, for valid reasons increasingly expressed in the literature, that especially due to the reduced steering capacity of states as a result of the processes of globalization,¹⁸⁸ public governance functions and responsibilities for the protection and promotion of public goods are more and more also assigned to and exercised by non-state actors.¹⁸⁹ Thereby, the transformation of the Global Compact ultimately also confirms the perception recently expressed by UN Secretary-General *Kofi Annan* in his report “In Larger Freedom”:

“States, however, cannot do the job alone. We need an active civil society and a dynamic private sector. Both occupy an increasingly large and important share of the space formerly reserved for States alone, and it is plain that the goals outlined here will not be achieved without their full engagement.”¹⁹⁰

¹⁸⁵ On this perception based on the participation of these non-state actors in the Global Compact see only *Hobe*, in: Baudenbacher/Busek (eds.), *Europa und die Globalisierung*, 365 (370 *et seq.*).

¹⁸⁶ *Lipschutz/Fogel*, in: Hall/Biersteker (eds.), *Emergence of Private Authority*, 115 (121).

¹⁸⁷ See only *Scherer*, *Zeitschrift für Evangelische Ethik* 48 (2004), 107; *Tietje*, in: Tietje (ed.), *Internationales Wirtschaftsrecht*, § 1, para. 136; *von Schorlemer*, in: von Schorlemer (ed.), *Praxishandbuch UNO*, 507 (515).

¹⁸⁸ On this effect of the processes of globalization see only *Delbrück*, in: Jickeli *et al.* (eds.), *Gedächtnisschrift Sonnenschein*, 793 (796 *et seq.*); *Peters*, in: Dicke *et al.* (eds.), *Liber amicorum Jost Delbrück*, 535 (536 *et seq.*); *Tietje/Nowrot*, *European Business Organization Law Review* 5 (2004), 321 (347 *et seq.*), with further references; concerning the various processes of globalization itself see already *Delbrück*, *Indiana Journal of Global Legal Studies* 1 (1993), 9 *et seq.*

¹⁸⁹ With regard to this perception see, e.g., *Delbrück*, *Indiana Journal of Global Legal Studies* 11 (2004), 31 (32 *et seq.*); *Delbrück*, *Das Staatsbild*, 9 *et seq.*; *Aman*, in: Dicke *et al.* (eds.), *Liber amicorum Jost Delbrück*, 13 (16 *et seq.*); *Tietje*, in: Tietje (ed.), *Internationales Wirtschaftsrecht*, § 1, para. 136; *Nowrot/Wardin*, *Liberalisierung der Wasserversorgung*, 53 *et seq.*

¹⁹⁰ *In Larger Freedom: Towards Development, Security and Human Rights for All*, Report of the Secretary-General, UN Doc. A/59/2005 of 21 March 2005, para. 20.

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