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**Closing Global Governance Gaps Through
Corporate Social Responsibility?**

Conditions for the Effectiveness of the OECD Guidelines, the ILO Declaration, and the UN Global Compact in Ensuring Responsible Business Conduct

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Foreword

Corporate Social Responsibility (CSR) has continued to enjoy widespread appeal as policy approach to deal with a range of governance challenges in the global economy. However, the emergence of CSR as a policy approach for global governance also raises the question as to how effective these global approaches are. How, and if so, what kind of regulatory mechanisms can contribute to the companies' compliance to CSR standards? This question is particularly pertinent as research on regulation has increasingly pointed to the limits and opportunities associated with a range of non-hierarchical modes of governance.

Carlo Drauth takes a regulatory perspective to explore the effectiveness of the three major global initiatives to CSR. Carlo Drauth first identifies the core regulatory mechanisms utilized across the three different global CSR approaches, namely those promoted by the OECD, the ILO and the UN. He then considers whether the necessary conditions for the effective working of the respective mechanisms are in place (drawing on Germany as a case study). In doing so, he introduces the notion of 'governance logic' to emphasize that any non-hierarchical mechanisms of regulation is based on a set of assumptions regarding cause and effects. His study shows that the three approaches by the OECD, the ILO and the UN vary in terms of their specific strength and weaknesses. Drauth develops a set of persuasive recommendations. He advocates a smart combination of key components drawn from the three international organisations' approaches promises to advance contemporary CSR. This is a fascinating study that offers a prime example of how carefully crafted qualitative policy analysis can make use of rather abstract theoretical concepts to develop a concise and highly relevant contribution to a central policy debate.

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Executive Summary

Political integration lags behind economic integration in some policy fields – creating global governance gaps. These unregulated areas provide multinational enterprises with opportunities to externalise (social) costs which has in some cases led to corporate scandals such as environmental harm or human rights violations in the supply chain. With no global government in place to authoritatively enforce responsible behaviour among multinational enterprises, new forms of non-hierarchical regulation have developed that – broadly speaking – commit companies to assume responsibility towards society and the environment on a more or less voluntary basis. This debate has been subsumed under the label of Corporate Social Responsibility (CSR).

This study seeks to find out whether the three dominant international CSR instruments – i.e. the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the UN Global Compact – can be effective in inducing responsible business conduct among companies. Put simply, the OECD Guidelines seeks to trigger behaviour change through ‘naming and shaming’ by ‘watchdogs’, the ILO Declaration through ‘norm-setting’ and the UN Global Compact through ‘mutual learning’. The study's approach is to explore *under which conditions* the varying non-hierarchical governance logics of the three paramount international CSR instruments prove to be effective in ensuring responsible business conduct.

An empirical analysis informed by this approach and applied to the German context reveals two findings. The first finding is that although non-hierarchical instruments can in principle be effective in inducing responsible business conduct, they place very high demands on all policy actors involved. With this qualification in mind, the *UN Global Compact* comes closest to satisfying the conditions for translating its governance logic into practice, while the *OECD Guidelines* and the *ILO Declaration* fail to satisfy necessary conditions for successfully functioning in the German context. The second finding is that the OECD Guidelines, the ILO Declaration and the UN Global Compact do not stand in competition with each other, but are rather complementary. The *UN Global Compact* is *primarily addressed to multinational enterprises*. Its added value is to raise awareness of CSR in the business community and build capacity within firms to deal with social and environmental responsibilities. The *OECD Guidelines* is *primarily addressed to governments and civil society organisations*. Their added value is to monitor multinational business and correct potential irresponsible behaviour. The *ILO Declaration* has a *broader audience*. Its added value is to have an indirect effect by providing the content for the UN Global Compact, OECD Guidelines and other CSR instrument when it comes to labour and social affairs.

Against this background, this study provides, first, one general policy recommendation and, second, instrument-specific policy recommendations. As for the general advice, it is recommended to establish a joined working group composed of the sponsors of the three instruments to better coordinate and exploit synergies between the instruments. As for the instrument-specific advice, it is recommended that the German Government should implement the OECD Guidelines in ways that enable NGOs and trade union to fulfil their watchdog function; the ILO should engage in promotional activities to raise the awareness of the Declaration with a view to reaching a critical mass of businesses so that its recommendations develop into a norm-setting regime in the German business community; and the UN Global Compact should focus on its logic of being a dialogue and learning platform for multinational companies and not mix this logic with contradictory elements such as sanctions.

1. Introduction

1.1. Introduction to Topic and Research Question

The classical interventionist nation-state of the post-war period was characterised by its ability to authoritatively enforce political decisions – typically through command-and-control regulation. By the mid-1970s, however, it had become clear that the processes of globalisation had led to a significant decline in the capacity of the nation-state to govern society and a growing significance of international markets for the functioning of society (Beckert & Streeck, 2008; Leibfried & Zürn, 2006; Maintz, 1995, 1998; Scharpf, 1991).

A case in point for the changing relationship between states and markets is Corporate Social Responsibility (CSR). Whereas nation-states used to be able to enforce social and environmental minimum standards through traditional command-and-control regulation as long as their economies were still relatively closed, they can do so less in times of economic globalisation when companies can (re-)locate and/or outsource business to other countries with de facto lower social and environmental standards. In theory, regulatory differences between states could be levelled through international law. In practice, however, the creation of a binding international level playing field for social and environmental minimum standards has so far not been achieved – mainly for two reasons: First, some states are reluctant to agree on binding international minimum standards because it would deprive them of their comparative advantage. Second, some states are areas of limited statehood and simply lack the capacity to implement and enforce political decisions. As a corollary, political integration considerably lags behind economic integration creating so-called governance gaps at the international level (Rosenau, 1995). This opens the possibility for companies to externalise (social) costs which has in some cases led to corporate scandals such as environmental harm or human rights violations in the supply chain.

In the absence of command-and-control regulation at the international level, new forms of non-hierarchical regulation have developed that – broadly speaking – commit companies to assume responsibility towards society and the environment on a more or less voluntary basis (Levy & Kaplan, 2008). This debate has been subsumed under the heading of CSR and taken the form of a plethora of public and/or private non-hierarchical instruments and initiatives. Notwithstanding the value and relevance of the diversity in CSR initiatives, the most important international instruments are 1) the OECD Guidelines for Multinational Enterprises (*hereafter* OECD Guidelines), 2) the ILO

Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (*hereafter* ILO Declaration) and 3) the United Nations Global Compact (*hereafter* UN Global Compact) (OECD, 2008). Together they serve as the broader CSR framework from which other CSR initiatives emerge – often with a particular sector or issue focus. While the OECD Guidelines and the ILO Declaration provide detailed recommendations for companies on responsible business conduct, the UN Global Compact provides a dialogue and learning platform for companies that are committed to integrate CSR into their daily business operations. Albeit similar in relying on non-hierarchical steering, the underlying governance logic of these instruments still differs. Simply put, the OECD Guidelines try to ensure responsible business conduct through ‘naming and shaming’, the ILO Declaration through ‘norm-setting’ and the UN Global Compact through ‘mutual learning’.

From a public policy perspective, this raises the fundamental question: *Are these different forms of non-hierarchical regulation effective in ensuring socially and environmentally responsible business conduct, thus potentially closing governance gaps at the global level?*

1.2. Aim and Relevance of Work

Against this background, this study aims at analysing whether the underlying governance modes of the OECD Guidelines, the ILO Declaration and the UN Global Compact can be effective in ensuring that companies behave in a socially and environmentally responsible way. It is of high policy relevance to understand how these three paramount international CSR instruments are supposed to function in theory and to analyse whether they work accordingly in practice.

Governments around the world have been increasingly active in developing or supporting policies to promote CSR (Bertelsmann Foundation, 2007). The importance governments attach to CSR stems from their realisation of the substantial contribution the private sector can make to sustainable development¹. From the hundreds of public and/or private instruments and initiatives to promote responsible business conduct, the OECD Guidelines, the ILO Declaration and the UN Global Compact stand out as they have all either been formally agreed upon or received high-level recognition by governments at the international level (OECD, 2008). Accordingly, almost any major

¹ "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." (Brundtland Report, 1987)

official document on CSR in recent years has stressed them as the principal international CSR instruments, be it on the national (Bundesregierung, 2009), regional (European Commission, 2002) or international level (G8 Summit Declaration, 2007). Given the relevance the OECD Guidelines, the ILO Declaration and the UN Global Compact enjoy in day-to-day policy-making, it is of prime importance to gain a thorough understanding of their potential in ensuring responsible business conduct. This way, it will be possible to find out whether they live up to the high expectations governments place on them.

Despite the recent surge in research on CSR, the academic literature has so far not engaged in a thorough empirical analysis and comparison of the OECD Guidelines, the ILO Declaration and the UN Global Compact. Instead, the majority of literature has focused either on the empirical question why companies voluntarily engage in CSR or the normative question whether companies should engage in CSR. As for the empirical strand of research, it has been argued that firms do not primarily engage in CSR for moral or ethical reasons, but because it is in their very interest to behave in a socially and environmentally responsible way. Voluntary adhering to CSR is said to (but does not have to) enhance brand reputation, improve customer relations, increase staff motivation, attract capital from ethical investors, foreclose regulatory intervention, reduce the likelihood of NGO attacks or create new market opportunities (Schreck, 2009; Vogel, 2005). While CSR can thus first and foremost be explained by the behaviour of rational economic actors, some authors argue that once companies engage in CSR, they go through a process of socialisation in which norms and ideas begin to supplement or in exceptional cases even replace rational considerations (Hiss, 2006; Kollman, 2008; Kytte & Ruggie, 2005). As for the normative strand of research on whether companies should engage in CSR, opinions diverge into two broad camps. Proponents of the shareholder theory argue that a company is accountable only to its shareholders who own stock in the company. As a consequence, the sole responsibility of a company is to maximise the return to its shareholders. If a company pursues other aims than to maximise profits, it does not only act against the interests of its shareholders, but in fact also imposes a tax and decides how to spend it – a responsibility which should be left to democratically-elected government alone (Friedman, 1970). Proponents of the stakeholder theory challenge this view by arguing that companies must indeed make a profit to survive, but essentially have a broader purpose as a part of society. They emphasise the importance of creating value for stakeholders – meaning all those who

affect or are affected by actions of companies such as employees, customers, the state, communities and others. Since these stakeholders can exercise their economic, political or other powers in ways that benefit or challenge business, companies must take all stakeholders' (not only shareholders') interests into account – for both practical and ethical reasons (Lawrence et al., 2005; Post et al. 2002; Vogel, 2005).

This little excursion into the mainstream of research on CSR shows that questions whether companies should engage in CSR and why they do it have received considerable attention in academia. As a result, much is known about CSR from a business perspective. The question whether CSR provides an added value from a public policy perspective has also been studied, but more theoretically than empirically. Accordingly, there are a number of theoretical works on how the private sector can contribute to more effective global governance. Levy and Kaplan (2008), for instance, provide theoretical insights on how a socially and environmentally responsible corporate sector can potentially close or, at least, narrow the regulatory gap at the international level. On a similar note, Ruggie (2003; 2004) explains how a newly emerging 'global public domain', in which state, private and civil society actors take on political responsibility in a dynamic interplay, can help to (re)embed global markets within shared social values.

Notwithstanding the value of theoretical contributions in directing further research in a newly emerging field like CSR, it is surprising how much the literature has avoided developing variables that can be used to empirically analyse the effectiveness of CSR. Arguably, measuring the effectiveness of CSR – understood as the contribution of CSR to solving policy problems – is complicated due to methodological challenges in attributing effects to a cause and accessing necessary data. This is particularly difficult in the case of an abstract concept like CSR. Interestingly, however, even the effectiveness of the three important CSR instruments – understood as their capacity in inducing responsible business conduct among firms (not taking into account its actual contribution to problem-solving) – has hardly been studied.

A starting point has only recently been provided by Rieth's (2009) book *Global Governance und Corporate Social Responsibility* analysing the influence of, amongst others, the OECD Guidelines and the UN Global Compact on the CSR engagement of German companies. Rieth's findings are twofold: First, instruments that satisfy not only the expectations of companies, but also those of the companies' stakeholders are most effective in inducing companies to behave in a socially and environmentally responsible way. Second, instruments that rely on 'softer' governance modes are more likely to satisfy

the two criteria just mentioned. Although Rieth's work has brought some light into why some CSR instruments and their underlying governance modes might be more apt than others to ensure responsible business conduct, his approach leaves some questions unanswered. First, Rieth does not provide a sufficiently convincing theoretical analysis of why instruments that satisfy both companies' and their stakeholders' expectations are most effective in ensuring responsible business conduct. Even if these two criteria are satisfied, there might well be other variables influencing whether an instrument is able to translate its governance mechanism into practice. For instance, if an instrument theoretically matches the expectations of both business and its stakeholders, but neither of them is aware of it, chances are low that this instrument will induce change among business. Second, Rieth assesses the effectiveness of instruments with the same set of variables which is difficult given the varying governance logics of the instruments. This is not to say that Rieth's conclusion about the effectiveness of the instruments might not be right. It means that his approach – in particular the two very broad variables – do not allow for pinpointing and identifying why a particular instrument does (not) function in practice.

In sum, it can be said that research on CSR has so far not provided a sound methodological approach to analyse whether the underlying governance logics of the OECD Guidelines, the ILO Declaration and the UN Global Compact are effective in ensuring that companies behave in a socially and environmentally responsible way.

1.3. Approach and Methodology

From the previous section it follows that analysing the effectiveness of the three dominant international CSR instruments in ensuring responsible business conduct requires an in-depth analytical focus on the inbuilt governance logic of the instruments in question. The critical question thus is: *Under which conditions* do the varying non-hierarchical governance logics of the OECD Guidelines, the ILO Declaration and the UN Global Compact induce responsible behaviour among business? Put differently, it is necessary to understand how these instruments are supposed to function in theory and analyse whether they work accordingly in practice.

Therefore, this study sets out to develop a theoretical framework to empirically assess conditions for effectiveness of the OECD Guidelines, the ILO Declaration and the UN

Global Compact in ensuring responsible business conduct. The theoretical framework will be elaborated on in more detail in chapter 3, but a short description will already be provided here. Essentially, the theoretical framework follows a three-step approach – applied to each instrument individually given the varying governance logics at hand. *In a first step*, the inherent governance logic of each instrument will be disentangled. Here the wider literature on non-hierarchical modes of governance serves as a point of reference as it has identified a number of governance mechanisms that – albeit not relying on the hierarchical control model – can under certain conditions prove to be effective in steering behaviour of policy actors (see Kroger, 2009; Lodge, 2007 for EU Open Method of Coordination; see Beisheim et al, 2007 for Public Private Partnership). The question, therefore, is through which (non-hierarchical) governance logic the OECD Guidelines, the ILO Declaration and the UN Global Compact seek to induce companies to behave in a socially and environmentally responsible way. Is it by way of pressure, persuasion or some other governance logic? *In a second step*, a set of conditions will be developed for each instrument (based on its governance logic) that must be fulfilled in practice for the instrument to operate effectively. Here the task will be to find out which prerequisites are necessary for the instrument and its underlying governance logic to function in practice as envisaged in theory and thus to induce companies to comply with its CSR standards. For instance, are there any impediments in the policy environment which hinder the instrument from tapping its full potential? *In a final step*, it will be empirically tested whether these conditions are fulfilled in reality. Here the focus will be on the German context.

Analysing the effectiveness of the three paramount CSR instruments in such a way constitutes a new approach that is different from the existing literature which has so far hardly engaged in a governance-logic-focused and variable-based empirical research of the effectiveness of the OECD Guidelines, the ILO Declaration and the UN Global Compact. The information necessary to empirically assess the (non)presence of the conditions that are essential for the instruments to operate effectively is collected by means of 1) a literature review of existing works on the OECD Guidelines, the ILO Declaration and the UN Global Compact, 2) informal interviews² with the sponsors of

² More formal interviews would have been preferable. However, the persons interviewed specifically asked to remain anonymous. Otherwise, they would not have been able and willing to speak openly about the potential and limits of the respective instruments.

the three instruments and 3) background talks³ with German state, business and civil society representatives.

1.4. Structure of Work

This analysis is divided into five chapters. Chapter 2 will elaborate on the context in which CSR has emerged. Chapter 3 will present the OECD Guidelines, the ILO Declaration and the UN Global Compact and develop the theoretical framework to empirically assess their effectiveness in ensuring responsible business conduct. Chapter 4 will apply the theoretical framework by assessing whether the conditions for effectiveness of the three instruments are met in the German case. This way, it will be possible to assess the extent to which the three instruments (alone or maybe together) are effective in ensuring responsible business conduct in companies operating in or from Germany. Chapter 5 will conclude and make some concrete policy recommendations.

³ These background talks were conducted at various CSR conferences and meetings from September 2008 to March 2010. As the persons interviewed, these persons asked to remain anonymous.

2. Corporate Social Responsibility

2.1. Globalisation and New Patterns of Governance

The emergence of CSR in general and the OECD Guidelines, the ILO Declaration and the UN Global Compact in particular must be understood in the context of the changing patterns of governance – for the most part generated by processes of globalisation.

More specifically, increasing internationalisation has challenged the capacity of the nation-state to authoritatively enforce political decisions as today's policy problems more often than not exceed the scope of national sovereignty. These problems can thus no longer be addressed by actions of national governments alone. Even though governments have established various international orders, regimes and/or institutions to maintain their capacities to address cross-border policy problems, political integration in some areas still considerably lags behind economic integration. This creates so-called global governance gaps because states are reluctant to agree on binding multilateral solutions for reasons of comparative advantage or because they are unable to implement and enforce these political decisions for reasons of lacking statehood. For example, while there are extensive international rules for economic priorities such as intellectual property rights, similar measures to protect the environment and human rights are lacking. The existence of these governance gaps shows that interstate cooperation, in some cases, has only limited capacities to solve policy problems posed by economic globalisation (Zuern, 1998).

In view of the partial impotence of hierarchical inter-state regulation in solving today's cross-border problems, new patterns of governance have evolved in recent decades. To understand these changes, it makes sense to distinguish between, first, actors involved in governance (public and/or private) and, second, modes of steering (hierarchical vs. non-hierarchical). While governance in the past had been closely or almost exclusively connected to the hierarchical control model of the interventionist nation-state, current patterns of governance show two interrelated trends: first, a shift towards the potential governance contribution from non-state actors and, second, a shift towards new modes of regulation relying on non-hierarchical steering such as positive/negative incentives or persuasion (Boerzel & Risse, 2002; Czempiel & Rosenau, 1992; Mayntz, 1995, 1998). It is in this context that Rosenau (1995) and others have emphasised the potential of these new patterns of governance in compensating for the decreasing power of nation-states.

2.2. Emergence of Corporate Social Responsibility

CSR is a prime example for the changing patterns of governance in which state and non-state actors cooperate in addressing today's policy problems.

To better understand the link between CSR and emerging modes of governance, this section will briefly elaborate on how CSR came about as a new form of governance. While responsible business conduct is as old as trade and business itself – its first institutionalised practices date back to 19th century Britain (Asongu, 2007) – a major resurgence of interest in CSR took place in the United States (US) in the 1960s and 1970s (Vogel, 2005). This was particularly due to the American reliance on companies to deliver social services such as pensions and medical care – a responsibility that has rested with government in the other Western countries. With the liberalisation of trade and investment at the international level and the increasing privatisation in many Western countries at the national level, interest in CSR spread from the US to other countries, in particular to Europe. The reason behind the growing reach of CSR is that multinational business is nowadays more difficult to be effectively monitored and controlled by governments due to increasing internationalisation and liberalisation. With business thus becoming ever more flexible and enjoying more freedom in times of economic globalisation, calls for more responsible business conduct have been raised by state and civil society actors alike. In particular, non-governmental organisations (NGOs) have devoted considerable resources to monitoring and pressuring corporations to behave responsibly by running negative campaigns or organising demonstrations and boycotts. In response, most multinational enterprises have set up internal management systems to develop, implement and monitor CSR strategies – be it for defensive (*think* NGO attack), strategic (*think* new markets thanks to ethically-oriented consumers and investors) or other reasons (Vogel, 2005). In sum, CSR emerged as a functional response to regulatory gaps generated by processes of globalisation that cannot be filled by inter-state cooperation alone, but requires cooperation of state and non-state actors (Park et al., 2008). In other words, for CSR to live up to its governance potential, not only *companies* truly committed to integrating CSR into their daily business operations are needed, but also *state and civil society actors* that drive CSR by either punishing non-compliance ('sticks') or rewarding compliance ('carrots') with its standards.

2.3. Definition of Corporate Social Responsibility

While no standard definition of CSR has yet emerged in the academic literature (Campbell, 2007), most studies refer to the European Union's understanding of CSR as "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis" (European Commission, 2002). This definition of CSR is authoritative for three reasons: First, the definition highlights that CSR is not about philanthropy, but about the ways a company manages its core business. Put differently, CSR is not about what a company does with its profit (e.g. sponsoring the local football club or initiating a one-time social project), but about how it makes that profit. Second, the definition highlights the importance of involving stakeholders when designing CSR policies at the firm level. Effective responsible business conduct should be aware of the interests of stakeholders, meaning those who affect or are affected by actions of a company. Third, the definition highlights the voluntary nature of CSR. CSR is not about compliance with legal obligations, but about what companies can do in the social and environmental fields beyond the requirements of the law (European Commission, 2008).

Although CSR is a cross-cutting issue, most CSR activities fall into one of the following four categories: 1) marketplace, 2) workplace, 3) community or 4) environment (ibid.). Marketplace-related CSR refers to the ways in which a company operates in relation to its customers (e.g. responsible marketing), suppliers (e.g. social and environmental requirements on suppliers) and competitors (e.g. anti-corruption measures). Workplace-related CSR refers to how a company treats its employees (e.g. working conditions, work-life balance or professional training). Environment-related CSR refers to the measures a company can take to mitigate its negative impact on the environment (e.g. energy efficiency, less use of pollutants). Community-related CSR refers to the relations between the company and the citizens and communities that may be affected by its operations (e.g. active contribution to community well-being). In addition, it has become commonplace among large companies to publicly communicate information on their CSR activities. Generally this information is provided in the form of so-called CSR or sustainability reports (ibid.).

As can be seen from the above, CSR is both a management approach and a political concept as it touches on business objectives as well as policy goals (Steurer, 2009). Firms engage in CSR because it can enhance brand reputation, improve customer relations,

increase staff motivation, attract capital from ethical investors, foreclose regulatory intervention, reduce the likelihood of NGO attacks; CSR might even create new market opportunities (Schreck, 2009; Vogel, 2005). Governments support CSR because they want to seize the substantial contribution the private sector can make to sustainable development.

2.4. Variety of Corporate Social Responsibility Initiatives

The previous section focused on how CSR has emerged and how it has been operationalised at the individual firm level. On top of individual companies' CSR strategies, however, more than hundreds of public and/or private CSR instruments and initiatives have been developed to deepen and widen responsible business conduct in general. These initiatives differ in terms of 1) objectives, 2) issue focus, 3) membership and 4) governance mode⁴. Objectives range from generally raising awareness of the importance of CSR among the business community to offering concrete guidance on how companies can integrate social and environmental concerns in their daily business operations. Issue foci range from a more in depth focus on one particular issue or industry to an encompassing focus on a wide range of issues and industries. Membership ranges from only involving business actors to including actors from the private, public and civil society sectors. Governance modes share a reliance on non-coercive steering, but still ranging from mutual learning to naming and shaming (OECD, 2008).

As can be seen from this short classification, there is no “one-size fits all approach” for companies that are committed to CSR. Accordingly, the number and diversity of CSR initiatives available offer the possibility of flexibility and increase the likelihood that firms will be able to find support to address concerns of particular interest. However, even though approaches to CSR are for each company to determine individually, governments can help to shape the understanding of what is generally expected of business in terms of responsible conduct. From the hundreds of public and/or private instruments and initiatives in the complex CSR landscape, the OECD Guidelines, the ILO Declaration and the UN Global Compact stand out as they have all either been formally agreed upon or received high-level recognition by governments at the international level. In addition, they have been co-developed and endorsed by high-level business, workers and civil

⁴ It is beyond the scope of this work to provide a comprehensive list of CSR initiatives. For a good overview see OECD (2008).

society organisations which again sets them apart from all other CSR instruments or initiatives. Together the OECD Guidelines, the ILO Declaration and the UN Global Compact serve as the broader CSR framework from which other CSR initiatives emerge – often with a particular sector or issue focus (OECD, 2008). It should thus not come as a surprise that almost any major official document on CSR in recent years has stressed them as the principal international CSR instruments, be it on the national (Bundesregierung, 2009), regional (European Commission, 2002) or international level (G8 Summit Declaration, 2007).

It is against this background that the remainder of this work will analyse under which conditions the OECD Guidelines, the ILO Declaration and the UN Global Compact can be effective in ensuring that companies behave in a socially and environmentally responsible way.

3. Theoretical Framework

3.1. Theoretical Framework

As already touched upon in Chapter 1, this study sets out to develop a theoretical framework to empirically assess conditions for effectiveness of the OECD Guidelines, the ILO Declaration and the UN Global Compact. It is important to reiterate at this point what effectiveness means for the purpose of this work. Easton (1965) distinguishes between three dimensions of effectiveness: output, outcome and impact. While the *output* of an institution refers to the commitments that actors have commonly agreed on, the *outcome* refers to the actors' changing behaviour towards those commitments. The *impact* refers to the contribution of the institution as a whole to problem-solving (ibid.). When applied to the object of this research:

- 1) *output* refers to the rules and provisions laid down in the OECD Guidelines, the ILO Declaration and the UN Global Compact to which actors involved have agreed upon,
- 2) *outcome* refers to the changing behaviour of companies in the light of the rules and provisions of the three instruments and
- 3) *impact* refers to the contribution of the OECD Guidelines, the ILO Declaration and the UN Global Compact to solving concrete policy problems such as climate change or human rights violations.

Ultimately, impact is the dimension of effectiveness which the social sciences are most interested in. This is because knowing the impact of the three instruments would allow for an evaluation of their individual or combined capacities to address policy problems which inter-state cooperation is increasingly unable to accomplish. The downside, however, is that measuring impact is generally difficult due to methodological challenges in attributing effects to a cause and accessing necessary data – a difficulty which is almost insurmountable in the case of an abstract concept like CSR. As a result, most research on the effectiveness of non-hierarchical instruments focuses on the output and outcome dimensions since measuring effectiveness in this way is, first, methodologically possible and, second, still valuable because knowing the output and outcome is indicative of whether impact will eventually be achieved. Against this backdrop, this work seeks to identify under which conditions the OECD Guidelines, the ILO Declaration and the UN Global Compact are effective in ensuring socially and environmentally responsible

business conduct among companies and assess whether these conditions are present in the German case (i.e. in-between the output and outcome dimension of effectiveness)?

Measuring the effectiveness of the three instruments is challenging. Here the wider literature on the effectiveness of non-hierarchical modes of governance can serve as a point of departure (see Kroger, 2009 and Lodge, 2007 for EU Open Method of Coordination; see Beisheim et al, 2007 for Public Private Partnership). It suggests that focusing on the inbuilt governance logic of non-hierarchical instruments is a promising approach to assess the effectiveness of non-coercive governance modes. In other words, the question to be answered is: How do instruments – in the absence of hard sanctions characteristic of the hierarchical control model – try to induce a change of behaviour? The relevant literature has identified a number of non-coercive governance logics that can *under certain conditions* prove to be effective in achieving a desired behaviour of policy actors – be it through ‘peer pressure’, ‘naming and shaming’ or ‘learning’. However, the critical issue is *under which conditions* the varying non-hierarchical governance logics function in practice. To deal with this issue, the literature suggests establishing conditions for success that have to be satisfied for the instruments to operate effectively.

Lodge (2007), for instance, argues that for the EU Open Method of Coordination (OMC) to effectively converge policy outcomes between EU member states through non-coercive and voluntary means, three conditions for success have to be satisfied: standard-setting, information-gathering and behaviour modification. To be more precise: 1) As for standard-setting, it means that if OMC is to engender a process of policy convergence among EU member states, the information contained in the corresponding guidelines, principles and indicators must be precise. There must be a clear knowledge as to what state of world is to be achieved and as to what sort of processes to be established. 2) As for information-gathering, there needs to be some reliable information about the current and changing state of the world – information that is voluntarily provided by EU member states. 3) As for behaviour modification, it means that there needs to be some sort of pressure to adjust behaviour. To encourage voluntary rather than coerced adjustment through soft-law mechanisms such as learning, peer pressure and/or naming and shaming, a certain amount of interaction intensity between EU member states is required. Testing these three conditions for success in the context of pension and information society, Lodge concludes that the experience in these two OMCs has been disappointing due to shortcomings in all of the three conditions mentioned.

Inspired by this approach⁵, this work puts forward a theoretical framework that seeks to identify and empirically assess conditions for effectiveness of the OECD Guidelines, the ILO Declaration and the UN Global Compact in a three-step approach – applied to each instrument individually given their varying governance logics. *In a first step*, the inbuilt governance logic of each instrument will be identified. Here the question will be through which (non-hierarchical) governance logic the three instruments seek to induce companies to behave in a socially and environmentally responsible way. Is it by way of learning, pressure or some other governance logic? This will be answered by exploring the texts of the OECD Guidelines, the ILO Declaration and the UN Global Compact as well as interviewing representatives of their sponsors. *In a second step*, a set of conditions will be developed for each instrument (based on its inbuilt governance logic) that must be fulfilled in practice for the instrument to operate effectively. The task will be to find out which prerequisites are necessary for the instrument and its underlying governance logic to function as envisaged in theory and thus to induce companies to comply with the respective CSR standards. This will be answered by means of informal interviews with the sponsors of the instruments as well as background talks with state, business and civil society actors using them. *In a final step*, it will be empirically tested whether these conditions are fulfilled in reality. Here the focus will be on the German context. The information necessary to empirically assess whether the conditions for success are satisfied is collected by means of 1) a literature review of existing works on the OECD Guidelines, the ILO Declaration and the UN Global Compact, 2) informal interviews with the sponsors of the three instruments and 3) background talks with German state, business and civil society representatives. The theoretical framework is illustrated in Chart 1 below.

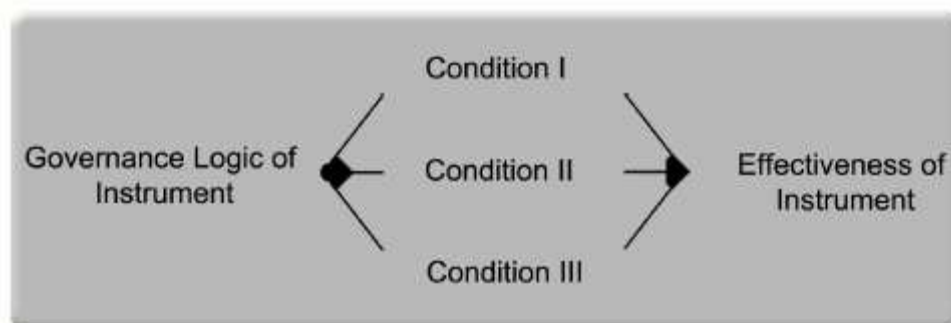


Chart 1

Source: Own Illustration

⁵ Even though Lodge applies this approach to states and not to companies, the mechanism to induce compliance among policy actors is assumed to be similar.

Four important qualifications have to be made at this point: First, the theoretical framework presented above does not directly measure the effectiveness of the OECD Guidelines, the ILO Declaration and the UN Global Compact in ensuring responsible business conduct. Instead it seeks to identify a number of *necessary conditions for effectiveness* that are required for the instruments to operate effectively and explore whether these conditions are satisfied or not in the German case. However, whether these conditions are also *sufficient conditions for effectiveness* is a matter of debate, thus inviting for further research on the topic. Still, an investigation whether the conditions – to be established hereafter for each instrument individually – are in place or not will allow making some informed inferences about the effectiveness of the instruments in ensuring responsible business conduct among companies operating in and from Germany. Second, the study does not judge the relative strength of the varying governance logics used by the OECD Guidelines, the ILO Declaration and the UN Global Compact as such. Its objective is more modest in that it seeks to understand whether the policy environment allows for the envisaged governance logic to be translated into practice. Third, while this study assesses conditions for effectiveness of the OECD Guidelines, the ILO Declaration and the UN Global Compact individually, there may well be a combined impact of those instruments on the CSR engagement of firms. Despite this possibility, which will be discussed in the final chapter, it is necessary to first treat the instruments individually. This will allow for an evaluation of their combined effect afterwards. Fourth, the focus of this work is not on the issue areas covered by the three instruments. As can be seen in table 1 below, the OECD Guidelines have an encompassing approach covering a wide range of issues in great detail, the UN Global Compact provides ten broad principles covering most but not all issues and the ILO Declaration has a more in depth focus on labour and social affairs.

	OECD MNE Guidelines	ILO MNE Declaration	UN Global Compact
General Principles	√	√	√
Disclosure	√		√
Employment	√	√	√
Human Rights	√	√	√
Environment	√		√
Bribery	√		√ (Anti-corruption)
Consumer Interests	√		
Competition	√		
Taxation	√		

Table 1

Source: OECD (2008)

Notwithstanding the importance of these thematic differences, the focus of this work is to find out whether the varying logics of these instruments hold in practice and are thus able to engender a process of behaviour change or maintenance among companies.

4. The OECD Guidelines, the ILO Declaration and the UN Global Compact

Given the work's analytical focus on the potential the varying governance mechanisms of the OECD Guidelines, the ILO Declaration and the UN Global Compact have in ensuring responsible business conduct, the subsequent section will only briefly outline the history and different issue areas covered by the instruments in question. It will instead elaborate in more detail on their underlying governance logic⁶. To gain a more in-depth theoretical understanding of the individual mechanisms used by the instruments to induce firms to abide by their rules, this section will selectively draw from approaches to compliance presented in the literature on regulation and international relations (Boerzel, 2000; Hassel, 2008; Hood, 2000). After having identified the respective governance logics, the section will address the question of which conditions have to be satisfied for each instrument to function in practice as it was theoretically envisaged by its governance logic. For the sake of coherence, the presentation of each condition will follow a similar pattern and structure.

4.1. The OECD Guidelines

4.1.1. Content and History in Brief

The OECD Guidelines are a set of recommendations on responsible business conduct by governments to multinational enterprises operating in or from adhering countries. The Guidelines offer principles and standards in all major areas of responsible business conduct, including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition and taxation. Adhering countries are all 31 OECD countries as well as Argentina, Brazil, Egypt, Estonia, Israel, Latvia, Lithuania, Peru, Romania and Slovenia. However, multinational enterprises headquartered in adhering countries are recommended to observe the Guidelines also when operating outside the OECD area.

⁶ As is with all policy instruments, the OECD Guidelines, the ILO Declaration and the UN Global Compact do not stringently follow a one and only governance logic. However, based on a literature review of the instruments' governance logics (which was also confirmed in informal interviews with their sponsors), the logics of the instruments as presented subsequently are clearly the dominant ones for the respective instruments.

As such, the OECD Guidelines are the only multilaterally agreed code of conduct for multinational companies.

The OECD Guidelines were adopted in 1976 as part of a broader OECD investment instrument – the Declaration on International Investment and Multinational Enterprises – which is designed to promote direct investment and international economic development and growth. Both the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC) were involved in the development of the OECD Guidelines. OECD Watch, a coalition of more than 65 civil society organisations, supports them. The OECD Guidelines were substantially revised in 2000 and are now subject to revision in 2010.

4.1.2. Underlying Logic of Instrument

The public policy aim of the OECD Guidelines is to “encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise” (OECD, 2010).

The OECD Guidelines are implemented through a combination of binding and voluntary arrangements. While adhering governments have bindingly committed themselves to promoting the OECD Guidelines among multinational enterprises operating in or from their territories, multinational enterprises themselves are only recommended to follow them. The responsibility of achieving successful implementation of the OECD Guidelines thus predominantly lies with the member states. Companies in turn are engaged only indirectly via governments. To reach the business community, each adhering government is required to establish a so-called National Contact Point (NCP). NCPs have been organised in various forms by member states. Some are located in a single ministry; others have a multi-ministry structure; still others include social partners or even civil society actors such as NGOs. The task of the NCPs is twofold: First, NCPs have to promote the OECD Guidelines in their respective countries. That is, they are responsible for ensuring that the national business community, employee organisations, NGOs and other interested parties are aware of and understand the OECD Guidelines. Second, NCPs are responsible for handling possible complaints about companies allegedly breaching the OECD Guidelines. For example, when an issue is brought to the NCP’s attention by an NGO, trade union or another interested party, the NCP follows a

unique mediation and conciliation procedure: It first makes an initial assessment of whether or not the allegation merits further examination in the light of the provisions contained in the OECD Guidelines. If the NCP decides that the issue does not merit further consideration, it must substantiate its decision. However, if it decides that the case merits further consideration, the NCP will help the affected parties to resolve the issue. This is done by, amongst others, offering mediation services to the affected parties in dealing with the issue, seeking advice from relevant authorities, consulting the NCP in the other countries involved as well as seeking the guidance of the OECD Investment Committee (i.e. the OECD body responsible for the functioning of the Guidelines). If no agreement can be reached, the NCP issues a public statement (Evans, 2003, Hassel, 2008b).

Having elaborated on how the OECD Guidelines are intended to be implemented by adhering governments, the question arises by which underlying governance logic they seek to induce multinational companies to behave in a socially and environmentally responsible way? The underlying governance logic of the OECD Guidelines can be deduced from the NCP mandate, in particular its requirement to issue a public statement revealing any unresolved complaints against a multinational company. The mechanism that drives corporate compliance with the OECD Guidelines is thus based on the assumption that firms consider the cost of having a complaint published against them to be higher than the cost of compliance. This is in line with empirical findings that irresponsible business conduct might adversely affect the reputation of a company which in turn can, amongst others, worsen customer and investor relations, reduce staff motivation, increase the likelihood of NGO criticism and even lead to regulatory intervention by the state (Schreck, 2009; Vogel, 2005). As a result, it should be in the interest of multinational companies to conform to the OECD Guidelines and avoid being brought before the NCP for alleged violations. The OECD Guidelines thus do not force companies to demonstrate responsible business conduct through command-and-control regulation, but instead assign a watchdog function to non-state actors. As designed, NGOs, trade unions or other interested parties indirectly regulate businesses through naming and shaming.

In sum, it can be concluded that the underlying logic of the OECD Guidelines to induce behaviour change is **naming and shaming by 'watchdogs'**.

4.1.3. Conditions for Effectiveness

There is a great disparity between how an instrument functions in theory and how it functions in practice. As is found with most non-hierarchical instruments (Lodge, 2007), effectively translating the governance logic of the OECD Guidelines into practice is challenging. Based on informal talks with representatives from the OECD as well as state, business and civil society actors using the Guidelines, this section tries to establish a number of conditions that must be met for the OECD Guidelines and its underlying governance logic to function in practice as it was theoretically expected – as a tool that induces companies to comply with CSR standards.

PRECISION

For the OECD Guidelines and their underlying governance logic to operate effectively, it is imperative that *the OECD Guidelines and their recommendations to multinational companies are precise.*

Only if the recommendations are precise, can civil society actors, such as NGOs or trade unions, successfully pinpoint violations in corporate behaviour and report them to the NCP for investigation. Any abstract terms used in the OECD Guidelines would leave ample room for interpretation, and NGOs or trade unions would find it extremely difficult to substantiate a complaint before the NCP. Ambiguous language would thereby remove the threat that irresponsible business conduct on behalf of multinational companies could potentially be sanctioned by the filing of a reputation-damaging complaint.

In short, if the OECD Guidelines are not formulated precisely enough to enable civil society actors to substantiate complaints and thus act as ‘watchdogs’, the capacities of the Guidelines to ensure responsible business conduct are severely undermined.

PROACTIVE IMPLEMENTATION

For the OECD Guidelines and their underlying governance logic to operate effectively, it is imperative that *adhering governments implement the Guidelines in a proactive manner.*

Only if adhering governments implement the OECD Guidelines in a proactive manner, can NCPs work in ways that support the ‘naming and shaming’ logic of the Guidelines. Two factors are of particular importance here: First, the financial and human resources made available to the NCP and, second, the institutional set-up of the NCP. It is no surprise that NCPs need enough financial and human resources to accomplish its

task of handling complaints of companies allegedly breaching the Guidelines. As for the latter, it is important to recall that NCPs have been organised in varying forms by adhering governments: Some NCPs are located in a single ministry, others have a multi-ministry structure, and still others include social partners or even civil society actors. The institutional location and set-up can heavily influence how each NCP interprets its mandate. For instance, some NCPs are solely located in ministries for economics that are responsible for promoting foreign trade and investment, on the one hand, and monitoring responsible business conduct abroad, on the other. This might lead to a conflict of goals. If the ministry decides to prioritise foreign trade and investment over responsible business conduct, the NCP might resist the admission of complaints in consideration of the negative impact attaching social and environmental conditions on business could have on the volume of foreign trade and investment.

In short, if adhering government do not install the NCP in a way that supports the ‘naming and shaming’ logic of the OECD Guidelines, the likelihood of compliance on behalf of multinational companies is severely diminished.

PREPAREDNESS TO COMPLAIN

For the OECD Guidelines and their underlying governance logic to operate effectively, it is imperative that *civil society actors are prepared to file complaints before the NCP*.

Only if civil society actors are prepared to file complaints before the NCP, can the ‘naming and shaming’ logic of the OECD Guidelines induce multinational companies to comply with the respective principles and standards. Two factors in particular seem to determine the preparedness of civil society actors to launch a complaint before the NCP – capability and willingness. Civil society actors need to have enough financial and human resources to gather evidence on an alleged corporate misconduct and produce a strong written complaint that can stand the consideration process of the NCP. It is also necessary that civil society actors consider the NCP as an honest broker. NGOs and trade unions must have confidence that – provided they are able to present a convincing case – the NCP will accept the case and offer its services to the affected parties to resolve the issue. Apprehension on behalf of civil society actors, whether for insufficient resources or lack of willingness, will cause multinational companies to be less worried about the consequences of irresponsible business conduct.

In short, if civil society actors are not prepared to file complaints before the NCP and thereby set in motion the ‘naming and shaming’ logic of the OECD Guidelines, the

capacities of the Guidelines to ensure responsible business conduct are severely undermined.

DISADVANTAGES FROM COMPLAINTS

For the OECD Guidelines and their underlying governance logic to operate effectively, it is imperative that *multinational companies face economic disadvantages upon publication of a statement made by the NCP.*

Only if multinational companies face economic disadvantages upon publication of a statement made by the NCP, can it be expected that the ‘naming and shaming’ logic of the OECD Guidelines will drive firms to comply with their standards and principles. If the economic costs of a public statement by the NCP are less than the costs of complying with the OECD’s social and environmental standards, firms are less likely to comply. The logic of regulating companies by publicly naming and shaming incidents of irresponsible business conduct would prove toothless.

In short, if the publication of a statement by the NCP is not costly enough for firms to comply with the provisions laid down in the OECD Guidelines, the capacities of the Guidelines to ensure responsible business conduct are severely undermined.

SUMMARY

Chart 2 below summarises the conditions that need to harmonise for the OECD Guidelines and their underlying governance logic to function in practice as theoretically expected, thereby inducing companies to comply with its CSR standards.

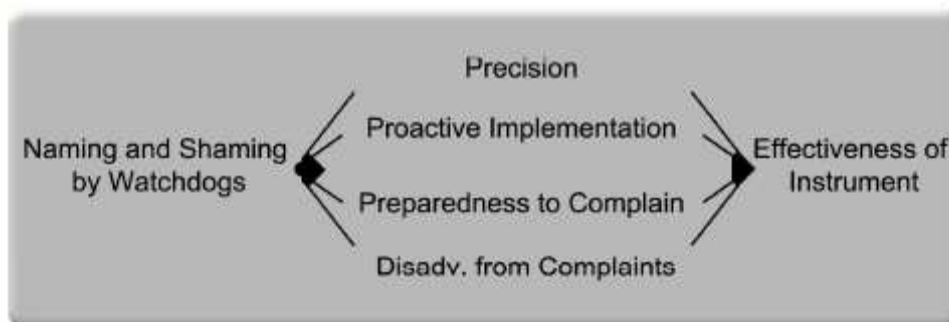


Chart 2

Source: Own Illustration

4.2. The ILO Declaration

4.2.1. Content and History in Brief

The ILO Declaration establishes standards and principles on responsible business conduct that primarily multinational enterprises, but also governments and their employer- and worker organisations, are recommended to observe on a voluntary basis. More precisely, the ILO Declaration offers guidance in the fields of general policies, employment, training, conditions of work and life as well as industrial relations (ILO, 2010).

The Declaration is an agreement between the 180 member states of the ILO and their employer and worker organisations. Forged in 1977 and last updated in 2006, it constitutes the only international tripartite consensus concerning the social behaviour of multinational enterprises. The consensus is based on agreed ILO conventions and recommendations, in particular the ‘Declaration on Fundamental Principles and Rights at Work’ that forms the basis of the ILO’s ‘core labour standards’. The Declaration is universally applied on a voluntary basis, regardless of the ratification of respective ILO conventions.

4.2.2. Underlying Logic of Instrument

The public policy aim of the ILO Declaration is to “encourage the positive contribution which multinational enterprises can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise” (ILO, 2010).

Contrary to the OECD Guidelines, the ILO Declaration does not have a palpable implementation mechanism. Instead, the ILO made dissemination of the Declaration its main objective, particularly drawing on its tripartite structure to serve as a multiplier for diffusion. As a further channel of communication, the ILO has recently established a helpdesk which companies can consult for questions pertaining to the Declaration (ILO 2010b). In addition, the ILO continuously updates the Declaration and undertakes periodic surveys on its implementation (OECD, 2008).

Given the lack of a palpable implementation mechanism, the question arises of which underlying governance logic the ILO Declaration employs to entice multinational companies to behave in a socially and environmentally responsible way. Literature on

global labour governance serves as a point of departure on this matter. Hassel (2008) explains how new patterns of norm-setting and international guidelines do not only lead to higher expectations regarding the responsibility of companies, but also to a shared understanding of what responsible business conduct is, which together can activate a form of indirect regulation. What Hassel argues is that international guidelines, despite being legally unenforceable, can still serve as norm-setting regimes in that they define a core of acceptable behavioural norms below which companies are advised not to fall. The ILO, drawing on its tripartite strength, should in theory possess the legitimacy to act as a norm-setter and position the ILO Declaration as the fundamental interpretation of responsible business conduct for individual companies' CSR strategies and private and/or public CSR instruments and initiatives.

In sum, it can be said that the underlying logic of the ILO Declaration to motivate companies to change their behaviour is **norm-setting**.

4.2.3. Conditions for Effectiveness

Based on informal talks with representatives from the ILO as well as state, business and civil society actors using the Guidelines, this section tries to establish a number of conditions that are key to the success of the ILO Declaration and its underlying governance logic.

PRACTICAL USE

For the ILO Declaration and its underlying governance logic to operate effectively, it is imperative that *the recommendations contained in the ILO Declaration are of practical use to multinational enterprises.*

Only if the recommendations contained in the ILO Declaration are of practical use to multinational enterprises, are companies willing to let them influence their individual CSR strategies. If companies deem that the Declaration offers no added-value on how to operationalise social responsibility at the individual firm level, they will be less inclined to consult the Declaration when mapping out their individual CSR policies. This would ultimately impede the dissemination of the Declaration. The practicality of recommendations for firms is thus a sine qua non condition for the ILO Declaration to become a norm-setting regime in the business community.

In short, if the recommendations are of no practical use to multinational enterprises, the ILO Declaration is less likely to be used by companies and thus less likely to become a norm-setting regime for the social behaviour of business. As a result, the capacities of the ILO Declaration to ensure responsible business conduct would be severely undermined.

AWARENESS

For the ILO Declaration and its underlying governance logic to operate effectively, it is imperative that *the ILO Declaration is sufficiently known in the business community.*

Only if the ILO Declaration is sufficiently known in the business community, can individual companies be aware of its recommendations and be able to consult them when developing their own CSR policies. It is interesting to note that labour governance regimes tend to expand and strengthen once a critical mass of addressees is reached because low-standard firms come under increasing civil pressure to raise their standards to their competitors' levels. Reaching a critical mass of companies is thus key for a shared understanding on responsible business conduct to emerge around the standards and principles contained in the Declaration.

In short, if the ILO Declaration has a limited audience in the business community, it will less likely develop into a norm-setter, and its capacities of ensuring responsible business conduct would be severely restrained.

STAKEHOLDER ACCEPTANCE

For the ILO Declaration and its underlying governance logic to operate effectively, it is imperative that *the ILO Declaration enjoys acceptance among the stakeholders of multinational enterprises.*

Only if the ILO Declaration is widely accepted among the stakeholders of multinational enterprises, will multinational companies use it to model their individual CSR strategies. As already mentioned, CSR strategies often develop as a direct response to increasing state and civil society pressure. Calls for more responsible business conduct have been based on the argument that companies should match their increasing economic power with an increase in consideration for the society and environment. However, if the recommendations presented in the ILO Declaration are not accepted as appropriate standards by civil society actors, such as NGOs or trade unions, companies

may disregard the Declaration as a penetrable shield to allegations of corporate irresponsibility.

In short, if the ILO Declaration is not recognised as legitimate and correct by stakeholders of multinational enterprises, companies will be less likely to follow the recommendations when under civil pressure, thus reducing the chances that the Declaration develops into a norm-setting regime. As a result, the ability of the ILO Declaration to ensure responsible business conduct would be severely undermined.

REFERENCE BY OTHERS

For the ILO Declaration and its underlying governance logic to operate effectively, it is imperative that *the content of the ILO Declaration is taken up by other CSR instruments and initiatives.*

Only if the content of the ILO Declaration is taken up by other CSR instruments and initiatives, can its recommendations reach a wider audience and become a norm-setting regime for multinational enterprises. Given that there is no ‘one-size fits all approach’ to CSR, multinational companies often consult industry- or issue-specific CSR instruments and initiatives. If the content of the ILO Declaration is embodied by these instruments and initiatives, it is more likely that it will reach the critical mass of companies necessary for the ILO Declaration to serve as a form of indirect regulation.

In short, if the ILO Declaration is not taken up by other industry- or issue-specific CSR instruments and initiatives, its recommendations are unlikely to reach enough companies to develop into a norm-setting regime. As a result, the capacities of the ILO Declaration to ensure responsible business conduct would be severely undermined.

SUMMARY

Chart 3 below summarises the conditions that need to coexist for the ILO Declaration and its underlying governance logic to function in practice as theoretically expected, thereby inducing companies to comply with its CSR standards.



Chart 3

Source: Own Illustration

4.3. The UN Global Compact

4.3.1. Content and History in Brief

The UN Global Compact is a voluntary initiative that offers a dialogue and learning platform to multinational enterprises committed to integrating CSR into their daily business operations. More precisely, the Global Compact is understood as both a learning platform for companies to develop individual CSR strategies based on ten universally accepted principles of responsible business conduct, and a dialogue platform for companies to share best practices and encourage innovative CSR initiatives and partnerships with their stakeholders. Albeit primarily directed towards the business sector, the UN Global Compact has become a multi-stakeholder initiative that includes a breadth of societal actors – it is open to all business and stakeholders⁷. Those eager to participate in the UN Global Compact must express their willingness to join in a letter at CEO level. At the heart of the UN Global Compact are ten universally accepted principles on responsible business conduct pertaining to human rights, labour standards, the environment and anti-corruption. Participating companies pledge to 1) incorporate the ten principles into their corporate practices, 2) produce an annual “communication on progress” report on the implementation of these principles and 3) publicly advocate the UN Global Compact (ibid.). Though participants are asked to provide evidence on their inclusion of the principles, the Global Compact itself neither monitors behaviour nor verifies the information. However, companies that do not produce the annual Communication on Progress can eventually be delisted from the Global Compact network.

⁷ Companies involved in the manufacture, sale etc. of anti-personnel landmines or cluster bombs, companies that are the subject of a UN sanction or that have been blacklisted by UN Procurement for ethical reasons are not allowed to join. Companies in the tobacco industry are discouraged to join.

The UN Global Compact was launched by Kofi Annan in 2000 and has ever since grown to over 5000 participants, including over 3600 businesses in 120 countries around the world (UN Global Compact, 2010).

4.3.2. Underlying Logic of Instrument

The public policy aim of the UN Global Compact is twofold: First, to mainstream its ten core principles in business activities around the world and, second, to catalyse actions in support of broader UN goals such as the Millennium Development Goals (ibid.).

Contrary to the OECD Guidelines, the UN Global Compact has no concrete step-by-step implementation mechanism. The UN Global Compact is better understood as a dynamic process aimed at inducing change among multinational enterprises. This process is organised via a ‘multi-centric’ governance network. The nucleus of this network is the Global Compact Office in New York that manages the initiative on a daily basis with support provided by an UN Inter-Agency Team and strategic guidance by the Global Compact Advisory Board. The main functions of the Global Compact Office are to provide strategic direction, policy coherence and quality control for the Global Compact as a whole (Ruggie, 2002). Participants in the Global Compact then use the dialogue and learning platform organised and run by the Global Compact Office. The activities within the Global Compact can be divided into three areas: 1) dialogues and learning, 2) specialised workstreams and 3) partnership projects. First, dialogue and learning are at the centre of the Global Compact’s effort to bring stakeholders with different experiences together. The Compact promotes dialogue and learning both among businesses in order to share experiences, review progress and identify best practices, as well as between businesses and other stakeholders to discuss critical challenges and possible solutions with regard to issues of CSR. Second, the UN Global Compact has responded to the need of placing a stronger focus on key elements driving CSR by launching several specialised workstreams on critical issues such as climate change, management education or responsible investment. Third, the UN Global Compact encourages its companies to reach out to other state and civil society actors to seek partnerships projects in support of broader UN aims such as the Millennium Development Goals. The basic concept of these partnerships is to identify common ground between the private and the public sectors and to combine their resources, skills and expertise to improve results in a win-win situation. In addition to these three areas,

local networks of the Global Compact have been created in over 80 countries. These local networks are self-governed multi-stakeholder bodies that come together regionally to assist companies in their efforts to implement the Global Compact. Their activities essentially mirror the overall Global Compact activities, that is 1) dialogues and learning, 2) specialised workstreams and 3) partnership projects. The role local networks have in advancing and rooting their principles within different national and cultural contexts cannot be overstated (Kell & Levin, 2003).

Having elaborated on how the UN Global Compact is organised, the question remains: which underlying governance logic can induce multinational companies to behave in a socially and environmentally responsible way? Instead of employing regulatory mechanisms to ensure responsible business conduct among multinational enterprises, the UN Global Compact has explicitly adopted a dialogue and learning approach. This practice was not only meant to be pragmatic in the sense that companies are often drawn to initiatives with low entry requirements, few formalities and practically no monitoring. It also promotes institutional learning through processes of argumentation, deliberation and persuasion. In other words, the logic through which the UN Global Compacts intends to stimulate responsible business conduct is based on the concept of learning networks, which Knight defines as “groups of organisations that interact with the express purpose of learning together, from one another and through their interaction” (Knight, 2002, p. 435). The ultimate aim of the UN Global Compact thus is to initiate a process of gradual change in which companies progressively alter both attitudes and behaviour in favour of a commonly agreed consensus on responsible business conduct (Kell & Levin, 2003). How dialogue and learning can facilitate behaviour change is explained in international relations literature. Risse (2000, p. 1), for instance, describes the ‘logic of arguing’ as an interaction where:

“actors engage in truth seeking with the aim of reaching a mutual understanding [and] an optimal solution for a commonly perceived problem....[Arguing] provide[s] actors with a mode of interaction that enables them to mutually challenge and explore the validity claims of [their] norms and identities. When actors engage in a truth-seeking discourse, they must be prepared to change their own views of the world, their interests, and sometimes even their identities”.

When applied to the UN Global Compact, this means that dialogue and learning, both among businesses and between businesses and their stakeholders, should lead to an internalisation of norms, which will ultimately alter companies’ preferences and behaviour.

In sum, it can be concluded that the underlying logic of the UN Global Compact to induce behaviour change is **mutual learning through processes of argumentation, deliberation and persuasion.**

4.3.3. Conditions for Effectiveness

Based on informal talks with representatives from the UN Global Compact, as well as state, business and civil society actors using the Guidelines, this section has tried to establish a number of conditions for the UN Global Compact and its underlying governance logic to function in practice as theoretically expected, thereby inducing companies to comply with its CSR standards.

PARTICIPATION

For the UN Global Compact and its underlying governance logic to operate effectively, it is imperative that *multinational enterprises are prepared to participate in the Global Compact.*

Only if multinational enterprises are prepared to participate in the Global Compact, will there be enough interaction among companies to share experiences, review progress and identify best practices on responsible business conduct in a value-added way. If there are no or only a few firms willing to engage in the Global Compact, institutional learning among companies is unable to take place, thus annulling the governance logic of the initiative. Related literature suggests that a critical mass of companies is needed to join an initiative like the Compact for others to follow. The rationale is that, as more companies become members, low-standard firms will be under increasing pressure to join the initiative or face the competitive disadvantages resulting from being non-members.

In short, if multinational enterprises are not prepared to participate in the Global Compact, institutional learning on CSR cannot take place given the lack of sufficient interaction between companies. This would severely undermine the capacities of the UN Global Compact to ensure responsible business conduct.

STAKEHOLDER ACCEPTANCE

For the UN Global Compact and its underlying governance logic to operate effectively, it is imperative that *the UN Global Compact enjoys acceptance among the stakeholders of multinational enterprises.*

Only if the UN Global Compact enjoys acceptance among the stakeholders of multinational enterprises, will stakeholders, such as NGOs or trade unions, be willing to

participate. The involvement of stakeholders is critical for institutional learning through argumentation, deliberation and persuasion to take place. The question of stakeholder acceptance also has repercussions on the decision of firms to join because companies are particularly interested in learning about and adjusting to stakeholders' expectations on corporate behaviour. Most of the time, it is less costly for companies to adjust to societal expectations *ex ante* than to react to allegations *ex post*.

In short, if the UN Global Compact does not enjoy acceptance among the stakeholders of multinational enterprises, NGOs or trade unions will be less likely to participate in the Compact, thereby reducing the learning experience for companies. This would severely undermine the capacities of the UN Global Compact to ensure responsible business conduct.

INTERACTION INTENSITY

For the UN Global Compact and its underlying governance logic to operate effectively, it is imperative that *there is a certain amount of interaction intensity among the participants*.

Only if there is a certain amount of interaction intensity among the participants, will there be enough argumentation, deliberation and persuasion taking place between businesses and its stakeholders for institutional learning to incite changes in behaviour among enterprises. If both companies and their stakeholders formally join the Compact but refrain from actively engaging in forums of dialogue and learning, the underlying governance logic of the instrument cannot function.

In short, if there is not sufficient interaction intensity among participants of the Global Compact, the logic of learning through argumentation, deliberation and persuasion is not able to take hold. This would severely undermine the capacities of the UN Global Compact to ensure responsible business conduct.

ACTIVE PROMOTION

For the UN Global Compact and its underlying governance logic to operate effectively, it is imperative that *the respective local network actively promotes the workings of the Global Compact*.

Only if the respective local network actively promotes the workings of the Global Compact, will there be actual opportunities for businesses and their stakeholders to come together (e.g. through conferences, workshops etc.) and enter into a dialogue about CSR. It is thus a prerequisite for institutional learning that the local network has both the

financial and human resources available to actively execute the activities of the Compact, thus providing a dialogue and learning platform for business and its stakeholders.

In short, if the respective local network does not actively promote the workings of the Global Compact, multinational enterprises and their stakeholders will be provided with opportunities of argumentation, deliberation and persuasion. This would severely undermine the capacities of the Guidelines to ensure responsible business conduct.

SUMMARY

Chart 4 below summarises the conditions that need to be realised for the UN Global Compact and its underlying governance logic to function in practice as theoretically expected, thereby inducing companies to comply with its CSR standards.



Chart 4

Source: Own Illustration

5. Empirical Analysis

Having established the conditions that have to be satisfied for the OECD Guidelines, the ILO Declaration and the UN Global Compact to function in practice, the subsequent section empirically assesses whether these conditions are met in the German case.

5.1. The OECD Guidelines: Assessment of Conditions

5.1.1. Precision

To recall, for the ‘naming and shaming’ logic of the OECD Guidelines to set in, the OECD Guidelines and their recommendations to multinational enterprises have to be precise. If not, civil society actors such as NGOs or trade unions will find it extremely difficult to substantiate a complaint before the NCP which, as a result, undercuts their function as ‘watchdogs’.

While the provisions on responsible business conduct are considered to be formulated precisely enough to pinpoint the particular corporate behaviour in violation of the Guidelines (background talks with civil society representatives), German NGOs and trade unions complain that the provisions on the applicability of the OECD Guidelines leave ample room for interpretation (Heydenreich, 2004). The crux here is whether the Guidelines apply to investment only (e.g. purchase of subsidiary, location of a plant or merger) or also include trade (e.g. direct business relationship with suppliers). This is of particular importance given the common practice of outsourcing in today’s business world. Restricting the applicability to solely investment would exclude the supply chain from the scope of the Guidelines, undermining the instrument as a whole. On this point, the OECD Guidelines (2010) are indeed exceedingly vague in that they merely ask companies to “[e]ncourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines”. In an effort to clarify to which kind of business activities the Guidelines apply, the OECD (2003) issued a statement specifying that:

“the Guidelines have been developed in the specific context of international investment by multinational enterprises and their application rests on the presence of an *investment nexus*...In considering Recommendation II.10, a case-by-case approach is warranted that takes account of all factors relevant to the nature of the relationship and the degree of influence. The fact that the OECD Declaration does not provide precise definitions of international investment and

multinational enterprises allows for flexibility of interpretation and adaptation to particular circumstances (emphasis added).”

This lack of precision in the applicability of the Guidelines provides the concerned NCP with wide discretion as to whether or not a given case will be considered under the OECD Guidelines. In other words, the watchdog function of civil society actors is largely determined by the interpretation of the ‘investment nexus’ by the respective NCP.

In short, even though the recommendations on responsible business conduct are precise enough for civil society actors to substantiate a complaint before the NCP, the indeterminate definition of the ‘investment nexus’ by the OECD gives the government-installed NCPs ample discretion in the admission of complaints. While this does not obstruct the ‘naming and shaming’ logic of the Guidelines, it does considerably limit its scope of application.

→ **Level of Condition Satisfaction: MEDIUM**

5.1.2. Proactive Implementation

To recall, for the ‘naming and shaming’ logic of the OECD Guidelines to set in, adhering governments have to implement the Guidelines in a proactive manner, particularly when it comes to the setting up of NCPs. If not, an NCP can neither be expected to be able nor willing to support the ‘naming and shaming’ logic of the instrument.

Whether or not the German NCP implements the Guidelines in a proactive manner depends on the German Government to 1) locate the NCP in an institutional environment that is conducive to its task of monitoring business and 2) to provide the NCP with enough financial and human resources. As for the institutional set up of the NCP, the German government opted for locating the NCP in a single ministry: i.e. the Federal Ministry for Economics and Technology (Bundesministerium fuer Wirtschaft und Technologie, BMWI). The responsibility for the implementation of the OECD Guidelines thus lies with the ministry responsible for promoting foreign trade and investment. What is more, the NCP is also part of the division within the ministry in charge of foreign trade policy (BMW, 2010). Civil society organisations have repeatedly criticised locating the NCP in a ministry responsible for promoting foreign trade and investment since this creates “conflicts within the department as they are acting both as a cheerleader for business as well as a watchdog” (Amnesty International et al., 2005, p. 21). This conflict of goals seems to also be present in the German case. Among civil society actors in Germany, the NCP has the reputation of prioritising business over other interests (background talks with civil society representatives). Two facts seem to give

credence to this view: First, the German NCP has only accepted three out of eleven complaints since its inception (BMW_i, 2010b) – often due to a very strict interpretation of the investment nexus and of the Guidelines’ scope of application (Rieth, 2009). Second, the German NCP has repeatedly refused to link the granting of foreign trade credit promotions, such as the so-called Hermes endorsements, with compliance of the OECD Guidelines (background talks with state representatives). In response to the criticism concerning this narrow interpretation and application of the OECD Guidelines, the BMW_i established a working group “OECD Guidelines” consisting of representatives from other ministries, social partners and civil society (BMW_i, 2010b). Given the high number of complaints rejected in the past, however, civil society actors have in the meantime opted for other strategies, rather than filing complaints before the NCP (see below for more details). As a result, the new multi-stakeholder working group has yet not been able to demonstrate that it induces the NCP to interpret its mandate in a more proactive manner. As for the human and financial resources made available, the NCP cannot be considered to have the resources necessary to adequately fulfil its dual task of raising awareness and handling possible complaints. With its limited resources, the NCP is said to neither enhance the awareness of the Guidelines in Germany nor is it able to conduct its own research in case of a complaint (Rieth, 2009).

In short, the German Government has not implemented the OECD Guidelines in ways that support its ‘naming and shaming’ logic. The German NCP has neither been located in an institutional environment conducive to its task of supervising business nor has it been given enough resources to engage in awareness-raising activities of the OECD Guidelines.

→ **Level of Condition Satisfaction: LOW**

5.1.3. Preparedness to Complain

To recall, for the ‘naming and shaming’ logic of the OECD Guidelines to set in, civil society actors have to be prepared to file complaints before the NCP. If not, multinational companies are less worried about the eventuality of a complaint in case of non-compliance with the OECD Guidelines.

In general, German NGOs and trade unions consider the OECD Guidelines as one of the more acceptable CSR instruments. Contrary to other purely voluntary CSR initiatives, the OECD Guidelines contain at least some form of (albeit soft) sanction mechanism. This comes a bit closer to the ideal of NGOs and trade unions that

responsible business conduct ought to be ensured through binding inter-state regulation (Rieth, 2009). However, German civil society actors are hesitant to file complaints before the NCP. This reluctance on the part of NGOs and trade unions can be explained by two factors. First, the OECD Guidelines still lack sufficient awareness in the public in general (Germanwatch, 2002). This does not only mean that many NGOs and trade unions are still unaware of the functioning of the Guidelines, but also that public statements by the NCP on irresponsible business conduct are unlikely to reach a satisfying number of people. Second, the strict interpretation of the Guidelines by the German NCP has caused frustration among civil society actors. With only three out of eleven complaints accepted, civil society actors have lost confidence in the German NCP as an honest broker between business and civil society. As a result, the number of complaints has decreased in recent years (Rieth, 2009). With only limited financial and human resources available, many NGOs and trade union have decided to follow other, more promising strategies such as running negative campaigns or organising boycotts (background talks with civil society representatives).

In short, German NGOs and trade unions are extremely hesitant to file complaints before the NCP because they consider the efforts of lodging a complaint burdensome when weighed against the expected effect on multinational companies – not only because of the past interpretations of the German NCP, but also due to the insufficient awareness of the OECD Guidelines in general.

→ **Level of Condition Satisfaction: LOW**

5.1.4. Disadvantages from Complaints

To recall, for the ‘naming and shaming’ logic of the OECD Guidelines to set in, multinational companies have to face economic disadvantages upon publication of a statement by the NCP. If not, publicly naming and shaming incidents of irresponsible business conduct proves ineffective to induce companies to behave socially and environmentally responsible.

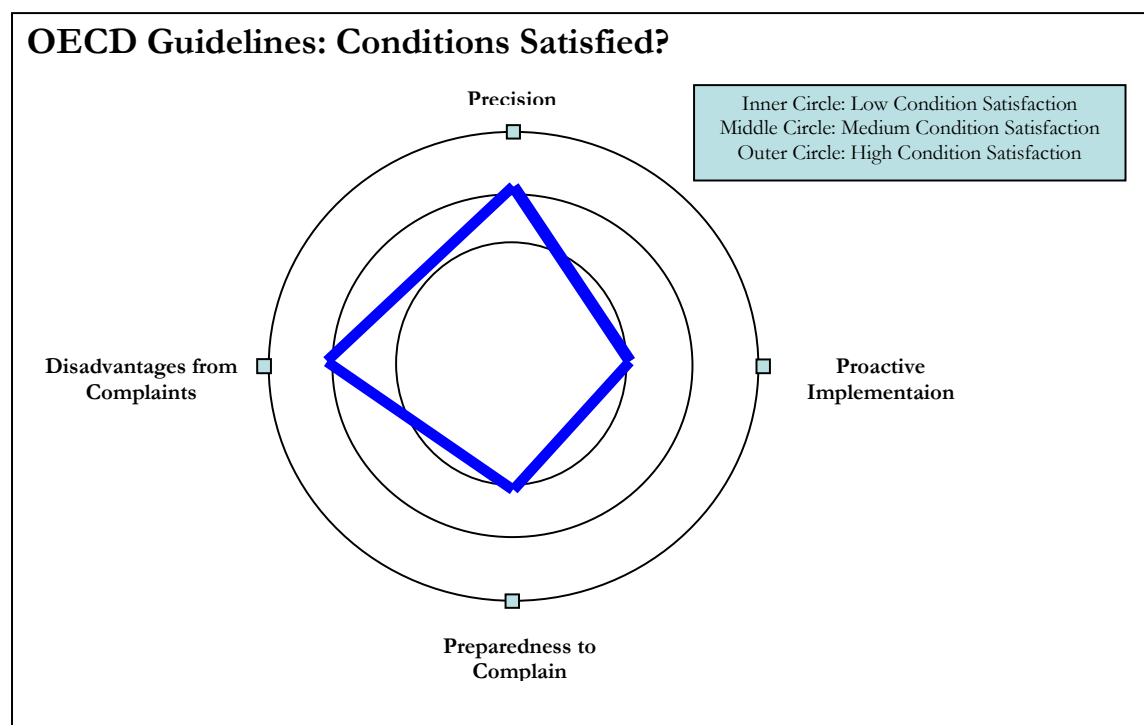
Due to the methodological problem of attributing effects to a cause, it is almost impossible to quantitatively disentangle the impact of a public statement by the NCP on the turnover of an individual company. However, it can be expected that the economic disadvantages resulting from being publicly named and shamed by the NCP are not immense (Germanwatch, 2002; Rieth, 2009). The media is also unlikely to serve as a multiplier given the low awareness of the Guidelines in the wider public.

Notwithstanding the uncertain economic effects of the publication of a statement by the NCP, firms will always try to avoid public accusations of not abiding by the rules and provisions on responsible business conduct (background talk with business representatives).

In short, the economic effects for companies resulting from an NCP publication on corporate misconduct are expected not to be huge given the low awareness of the OECD Guidelines in the German public.

→ **Level of Condition Satisfaction: MEDIUM**

5.1.5. Conditions Satisfied?



Graph 1

Source: Own Illustration

The spider graph 1 above summarises the results. The ‘naming and shaming’ logic of the Guidelines is undermined by the lacking willingness on the part of the BMWi to set up the German NCP in ways that enable civil society actors such as NGOs or trade unions to fulfil their ‘watchdog’ function (2nd and 3rd conditions). The ample room for interpretation of the applicability of the Guidelines – which the German NCP has repeatedly relied on to reject complaints – further reduces their scope of application (1st condition). Even though companies try to public accusations of not abiding by the Guidelines (4th condition), the OECD Guidelines are unlikely to change corporate behaviour given the lacking threat of being named and shamed by watchdogs.

5.2. The ILO Declaration: Assessment of Conditions

5.2.1. Practical Use

To recall, for the ‘norm-setting’ logic of the ILO Declaration to set in, the recommendations contained in the ILO Declaration must be of practical use to multinational enterprises. If not, it is unlikely that multinational enterprises will use the recommendations to operationalise social responsibility at the individual firm level. That in turn would undermine the potential of the Declaration to develop as a norm-setting regime in the business community.

German enterprises aware of the ILO Declaration consider its recommendations to be of practical use to them (background talks with business representatives). For instance, BASF, one of the leading companies in terms of CSR⁸, states in its latest annual report that its CSR strategy is, amongst others, largely informed by the standards and principles of the Declaration. As an example, BASF conducted a survey within its corporation with the objective of finding out whether its workers think that the ILO core labour standards are fulfilled or not (BASF, 2009). The positive reception of the Declaration’s content particularly stems from the high credibility the ILO enjoys 1) as a tripartite organisation and 2) as an institution in the fields of labour and social affairs. Accordingly, firms assume that compliance with the ILO recommendations shield them from accusations of irresponsible business conduct by their stakeholders (background talks with business representatives).

In short, German companies aware of the ILO Declaration consider it to be of practical use, in particular due to the authority the ILO enjoys as an institution.

→ Level of Condition Satisfaction: HIGH

5.2.2. Awareness

To recall, for the ‘norm-setting’ logic of the ILO Declaration to set in, the Declaration must be sufficiently known in the business community. If not, it is unlikely that a critical mass of companies will consult them when developing their own CSR policies, which in

⁸ BASF has won multiple CSR awards in the past (BASF, 2009) and is a member of the CSR multi-stakeholder forum advising the German Government on its national CSR strategy (Bundesregierung, 2010).

turn undermines the potential of the Declaration to develop into a norm-setting regime in the business community.

German companies are generally not, or only to a small extent, aware of the Declaration and its recommendations (informal interview with ILO representatives). This is particularly due to the fact that the ILO has only recently endorsed CSR as an acceptable mode of governance. Previously, the ILO followed a state-centric approach to labour and social affairs: It established labour standards in the form of conventions that had the status of treaties, binding for member states that voluntarily ratified them. When it became clear, however, that important economic actors, such as the US or India but also poorer countries, persistently resisted ratifying central ILO conventions, the ILO changed its approach by adopting a soft-law approach (next to its traditional approach) (Hassel, 2008). Therefore – whereas the ILO as such is well known in the corporate sector – its Declaration is not because the ILO is still relatively unknown in the CSR community (informal interview with ILO representatives). However, awareness of the ILO Declaration is slowly rising among German business. Not only because the ILO increasingly engages in promotional activities through holding conferences (OECD, 2008) and installing a helpdesk for companies (ILO, 2010b), but because the latest government documents on CSR made reference to the ILO Declaration (Bundesregierung, 2009; European Commission, 2002; G8 Summit Declaration, 2007).

In short, awareness of the ILO Declaration is – albeit some recent improvements – still very low among the German business community. Most companies do not yet associate the ILO with the soft-law approach inherent in CSR.

→ **Level of Condition Satisfaction: LOW**

5.2.3. Stakeholder Acceptance

For the ‘norm-setting’ logic of the ILO Declaration to set in, the ILO Declaration has to enjoy acceptance among the stakeholders of multinational enterprises. If not, companies are less likely to use its recommendations as a way to react to civil society pressure to behave responsibly, which undermines the potential of the Declaration to develop into a norm-setting regime in the business community.

German civil society actors like NGOs and trade unions share the ILO’s traditional approach in relying on international law to enforce labour and social minimum standards (Rieth, 2009). The ILO Declaration, however, follows more of a soft-law approach without palpable implementation mechanisms – something German NGOs and trade

unions consider too ‘soft’ to induce change in business conduct. Particularly German trade unions worry that relying on voluntary measures to ensure labour and social affairs might in the long term result in the retreat of the state in these fields (background talks with civil society representatives; informal interview with ILO representatives).

In short, while NGOs and trade union accept the ILO as a credible institution, they do not endorse the ILO Declaration’s approach to ensure labour and social standards by voluntary guidelines.

→ **Level of Condition Satisfaction: LOW**

5.2.4. References by Others

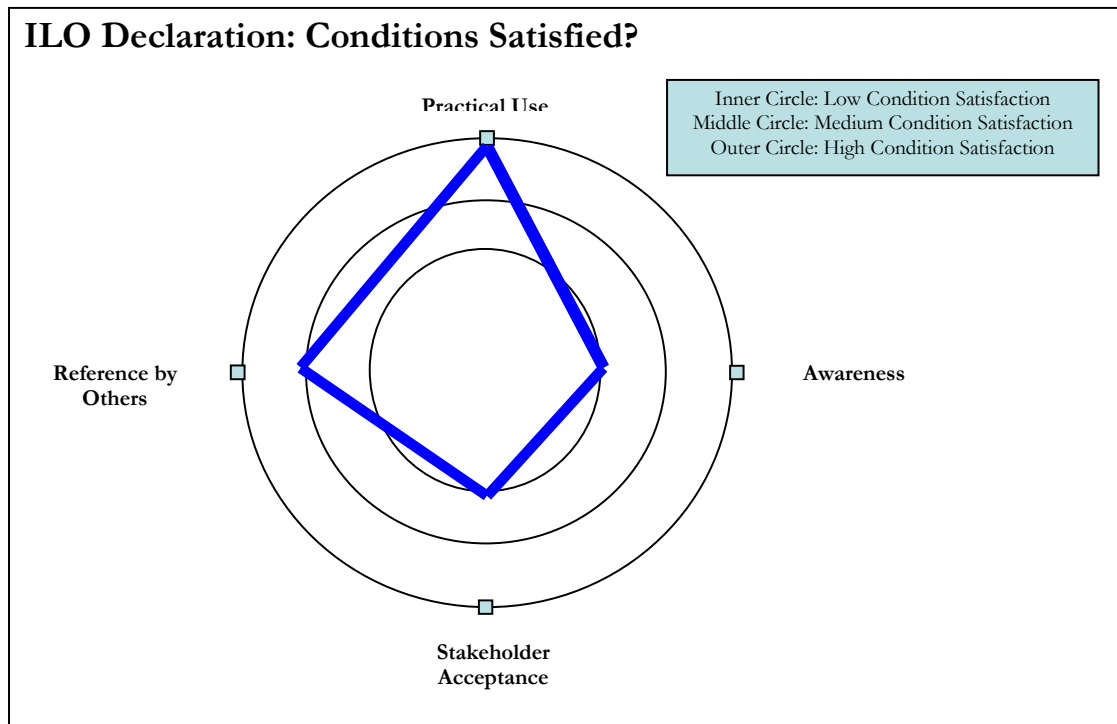
To recall, for the ‘norm-setting’ logic of the ILO Declaration to set in, the content of the Declaration must be taken up by sector- or issue-specific CSR instruments and initiatives to trigger a multiplier effect. If not, the recommendations laid down in the Declaration are unlikely to reach enough companies to develop into a norm-setting regime.

Both the OECD Guidelines and the UN Global Compact make either direct or indirect reference to the provisions of the ILO Declaration. In addition, a number of industry- or issue-specific CSR instruments are informed by the ILO Declaration when it comes to labour and social affairs (OECD, 2001). The guidelines of the Global Reporting Initiative (GRI) are a case in point; they provide principles and indicators by which companies can measure and report on their economic, social and environmental policies and/or impacts and have become the leading instrument in terms of sustainability reporting (GRI, 2010). The reliance on the content of the ILO Declaration by various CSR instruments can be explained by the fact that the ILO is considered *the* institution when it comes to international labour. It therefore enjoys considerable legitimacy (background talks with civil society representatives).

In short, a considerable number of general or specific instruments on CSR refer directly to the ILO Declaration. If not directly referring to it, the ILO Declaration is used to at least inform labour and social sections.

→ **Level of Condition Satisfaction: MEDIUM**

5.2.5. Conditions Satisfied?



Graph 2

Source: Own Illustration

The spider graph 2 above summarises the results. The ‘norm-setting’ logic of the *ILO Declaration* is unlikely to set in because, first and foremost, the German business community is not sufficiently aware of its existence (2nd conditions). What is more, German NGOs and trade unions are sceptical of the Declaration due to its lack of a palpable implementation mechanism (3rd condition). On the positive side, those companies using the Declaration consider it to be of practical use (1st condition). This might explain why its content has been taken up by a number of other CSR instruments (4th condition). Still, particularly its lack of awareness is most likely to hinder the ILO Declaration from developing into a norm-setting regime for the social behaviour of business in the German corporate sector.

5.3. The UN Global Compact: Assessment of Conditions

5.3.1. Participation

To recall, for the ‘mutual learning’ logic of the UN Global Compact to set in, multinational enterprises must be prepared to participate in the Global Compact. If not,

institutional learning among companies is unlikely to take place due an insufficient number of participants.

In total, 148 German companies are registered with the German Global Compact Network. Among them are 20 out of the 30 largest German companies trading on the Frankfurt Stock Exchange – the so-called DAX companies (UN Global Compact, 2010b). While the total number of 148 companies is below average when compared to Global Compact Networks in other countries⁹, the high participation rate among multinational enterprises is higher than in other local networks (Rieth, 2009; UN Global Compact, 2010b). Hence, despite not bringing together the highest number of corporate participants, the German Global Compact Network has still reached a critical mass of companies for institutional learning to take place. Some even argue that there is an inverted U-shaped relationship, with the positive effect of participation increasing up to a certain point and decreasing thereafter due to a saturation effect (informal interview with UN representatives). Three major motivations can be identified for German enterprises to engage in the Global Compact. First, companies develop practical knowledge on how to integrate CSR into their daily business operations through sharing experiences and identifying best practices with other companies. Second, companies learn about societal expectations towards business and are thus better able to integrate these demands into their CSR policies. Third, companies see participation in the Global Compact as a way to publicly communicate their commitment to CSR. In addition, all these benefits accrue with almost no costs to business since participation in the Global Compact comes with low entry requirements (i.e. only formal endorsement of ten principles), few formalities (i.e. only publication of annual ‘communication on progress’) and virtually no monitoring (i.e. only check of formal submission the annual ‘communication on progress’) (Kell & Levin, 2003; Rieth, 2009; Witte & Reinicke, 2005; background talks with business representatives).

In short, the number of companies – especially of multinational enterprises – participating in the German Global Compact is high enough for institutional learning to occur among companies.

➔ **Level of Condition Satisfaction: HIGH**

⁹ The Spanish Global Compact Network has more than 700 and the French Global Compact Network more than 600 corporate members (UN Global Compact, 2010b).

5.3.2. Stakeholder Acceptance

To recall, for the ‘mutual learning’ logic of the UN Global Compact to set in, the UN Global Compact must enjoy acceptance among the stakeholders of multinational enterprises. If not, NGOs or trade unions are less likely to participate in the activities of the Compact, thereby reducing the learning experience for companies.

German NGOs and trade unions at first were sceptical about the UN Global Compact. Not only were they worried that the Global Compact might ultimately lead to an ‘outsourcing’ of important state functions to the private sector, but also thought that the Global Compact – void of any significant sanction mechanism – was nothing more than a public relations tool for companies to improve their corporate image (Rieth, 2009; background talks with civil society representatives; informal interview with UN representatives). While some German NGOs still question the Compact’s approach to induce change in corporate conduct through dialogue and learning, a number of important NGOs and trade unions (e.g. Transparency International, Amnesty International etc.) are now less sceptical. Three reasons can be identified for the more positive reception of the Global Compact in German civil society in recent years. First, the Compact reacted to the initial allegations of being a mere public relations instrument by introducing some (albeit very soft) sanctions (e.g. companies could be marked as inactive when they did not hand in their annual ‘communication on progress’). Second, German NGOs and trade unions realised that a binding inter-state solution on labour and social minimum standards would be politically infeasible in the near future and thus came to endorse the Compact’s approach as the second best option. Third, the Deutsche Gesellschaft fuer Technische Zusammenarbeit (GTZ) became the institution responsible for running the German Global Compact network in 2001. Especially German NGOs consider the GTZ to be an honest broker between business and their interests. (Rieth, 2009, background talks with civil society representatives). As a result of these developments, civil society actors’ acceptance of the Global Compact increased and with it their participation in the German local network (Rieth, 2009). At the moment, 18 NGOs and trade unions are members of the German local network, which is above average by international standards (UN Global Compact, 2010b).

In short, the initial scepticism among German civil society actors gave way to a more positive attitude towards the Global Compact among some important NGOs and trade

unions. This is also reflected in an increasing participation rate among civil society organisation.

→ **Level of Condition Satisfaction: MEDIUM**

5.3.3. Interaction Intensity

To recall, for the ‘mutual learning’ logic of the UN Global Compact to set in, there has to be a certain amount of interaction intensity among the participants. If not, learning through argumentation, deliberation and persuasion will not take place between companies and their stakeholders.

The interaction intensity within the German Global Compact network experienced significant ‘ups’ and ‘downs’ in the past. While there was initial enthusiasm and high participation among companies in the beginning, civil society actors were – as already mentioned – more sceptical of the added value of an initiative that almost solely relies on dialogue and learning. With no or only few NGOs and trade unions engaging in dialogues, the added value of the Compact also declined for German companies to some extent. The result was that participating companies ceased to send medium- and high-level managers, but lower-ranking representatives such as trainees instead. However, with the scepticism fading and the resulting higher involvement of German NGOs within the Compact, the interaction intensity among business and its stakeholders gained momentum¹⁰ (Rieth, 2009, informal interview with UN representatives). This provided the basis for an open exchange of views and expectations to take place between German companies and their stakeholders who had until then interacted in a more confrontational manner (*think* negative campaigns or boycotts). This revitalised dialogue allowed both parties to better understand their views on problems and possible solutions. The experience of trying to achieve a mutual understanding and an optimal solution for a commonly perceived problem, in some cases, led to a change of preferences and ultimately behaviour (background talks with business representatives).

In short, the interaction intensity between German companies and their stakeholders in the Global Compact underwent a positive development with dialogue between high-ranking participants occurring more often than in the past.

→ **Level of Condition Satisfaction: MEDIUM**

¹⁰ In addition to the interaction taking place within the Global Compact, companies and stakeholders also meet ‘outside’ the Compact after having made contacts at ‘official’ Global Compact events (informal interview with UN representatives).

5.3.4. Active Promotion

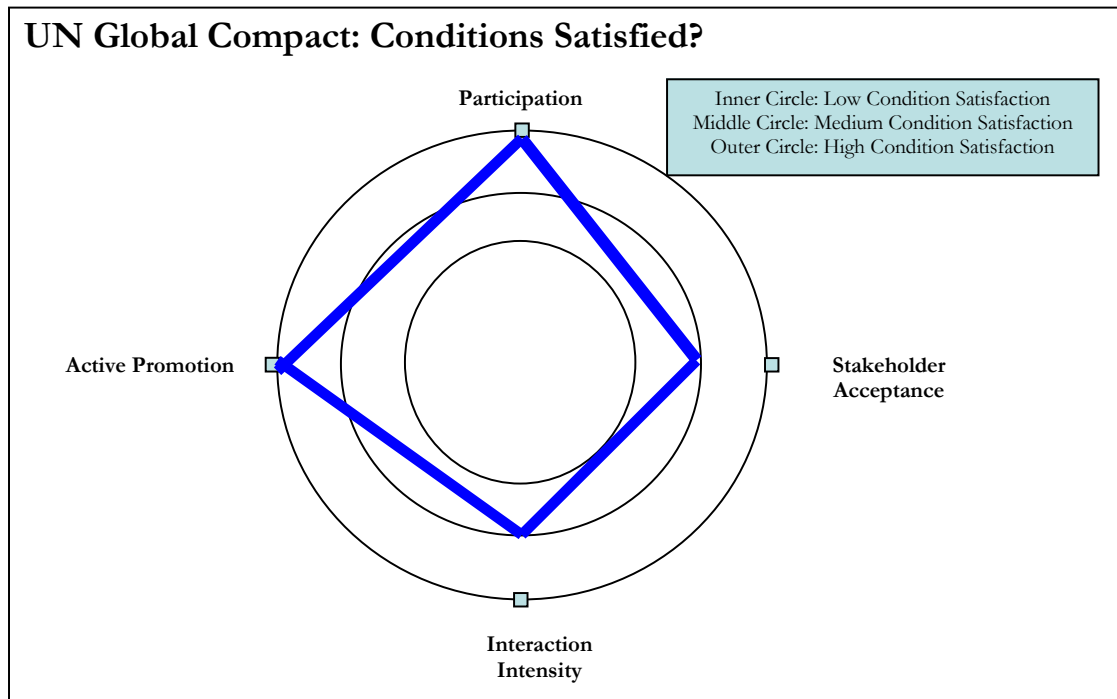
To recall, for the ‘mutual learning’ logic of the UN Global Compact to set in, the respective local network has to actively promote the workings of the Global Compact. If not, multinational enterprises and their stakeholders will not be provided with a dialogue and learning platform to enter into processes of argumentation, deliberation and persuasion.

As already mentioned, the GTZ is the organisation responsible for running the German Global Compact Network. The increase in interaction between companies and their stakeholders can to some extent be attributed to the role of the GTZ. This is due to 1) the high acceptance the GTZ enjoys among all participants and 2) its active promotion of the Global Compact in the German network. As for the former, the GTZ is accepted by all participants (informal interview with UN representatives): Civil society actors can identify with the GTZ as an institution with goals to their liking. State actors have confidence in the GTZ due to a long-time working relationship with each other. Business actors do not see a rival in the GTZ. As for the latter, the GTZ organises three conferences each year focusing on a particular issue pertaining to CSR. In addition, the GTZ has established a steering committee, composed of all relevant stakeholder groups, providing strategic guidance to the GTZ on a regular basis (informal interview with UN representatives).

In short, the GTZ is a driver for dialogue and learning that takes place within the German Global Compact Network. In addition, it is an institution that is accepted as an honest broker by all parties involved.

→ Level of Condition Satisfaction: HIGH

5.3.5. Conditions Satisfied?



Graph 3

Source: Own Illustration

The spider graph 3 above summarises the results. All conditions for the ‘mutual learning’ logic of the Global Compact to unfold are either fully or partially met. With German companies – especially multinational enterprises – prepared to participate (1st condition) and their stakeholders increasingly coming to terms with the initiative (2nd condition), dialogue and learning can take place (3rd condition). This is further reinforced by the GTZ as an active and accepted coordinator of the local network (4th condition). As such, institutional learning is possible to occur within the German Global Compact Network.

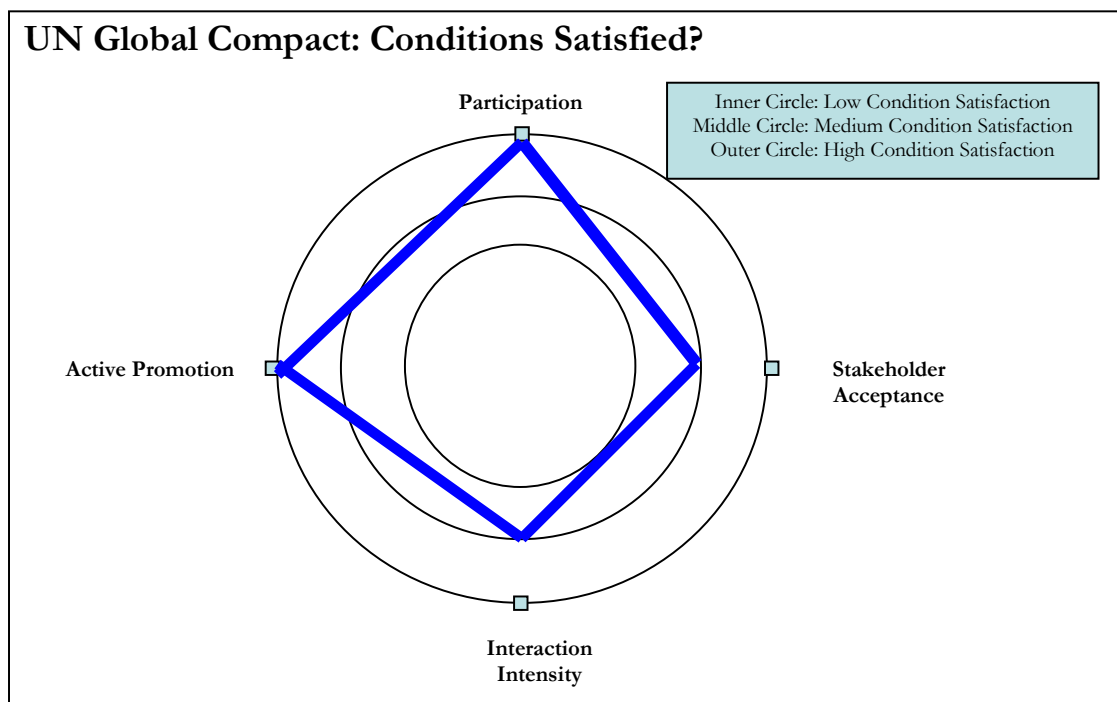
6. Conclusion and Recommendations

6.1. Summary of Results

The starting point of this study was that political integration considerably lags behind economic integration – creating global governance gaps. These unregulated areas provide companies with ‘incentives’ to externalise (social) costs which has in some cases led to corporate scandals such as environmental harm or human rights violations in the supply chain. With no global government in place to authoritatively enforce responsible behaviour among multinational enterprises, new forms of non-hierarchical regulation have developed that – broadly speaking – commit companies to assume responsibility towards society and the environment on a more or less voluntary basis. This debate has been subsumed under the label of CSR.

Against this backdrop, this study sought to find out whether the three dominant international CSR instruments – i.e. the OECD Guidelines, the ILO Declaration and the UN Global Compact – can be effective in ensuring responsible business conduct. Given the methodological difficulties in measuring the effectiveness of such non-hierarchical instruments in terms of their capacities to solve concrete policy problems, this study aimed at investigating whether the three instruments are successful in inducing responsible business conduct among multinational firms (not taking into account its actual contribution to problem-solving). The approach to assess the effectiveness of the three paramount CSR instruments was to explore *under which conditions* the varying governance logics of the OECD, Guidelines, the ILO Declaration and the UN Global Compact prove to be effective in ensuring responsible business conduct. To this end, this study at first identified the governance logics of the three instruments: The OECD Guidelines seeks to induce behaviour change through naming and shaming by ‘watchdogs’, the ILO Declaration through norm-setting and the UN Global Compact through mutual learning. On the basis of the respective governance logics, sets of conditions were established for each instrument that needed to be satisfied for the instruments to operate effectively. Having established necessary conditions for each of the instruments to function, the study empirically assessed whether these conditions are met using the example of Germany. Based on this analysis, it is now possible to make some informed inferences about the effectiveness of the individual instruments in ensuring responsible business conduct among companies operating in and from Germany.

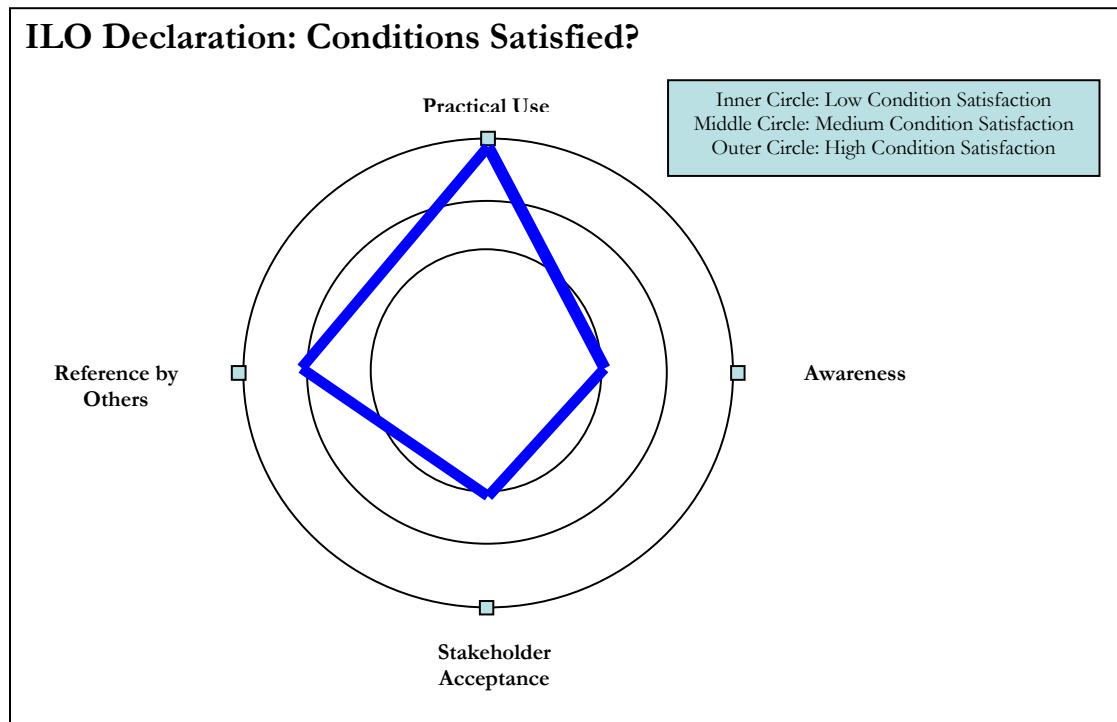
In general, the *UN Global Compact* is the instrument that comes closest to satisfying the conditions for functioning in practice as envisaged by its governance logic. All conditions for the ‘mutual learning’ logic of the Global Compact to unfold are either fully or partially met¹¹. With German companies – especially multinational enterprises – prepared to participate (1st condition) and their stakeholders increasingly coming to terms with the initiative (2nd condition), dialogue and learning both among business as well as between business and its stakeholders can take place (3rd condition) which is further reinforced by the GTZ as an active and accepted coordinator of the local network (4th condition). As a result, institutional learning is possible to occur within the German Global Compact Network.



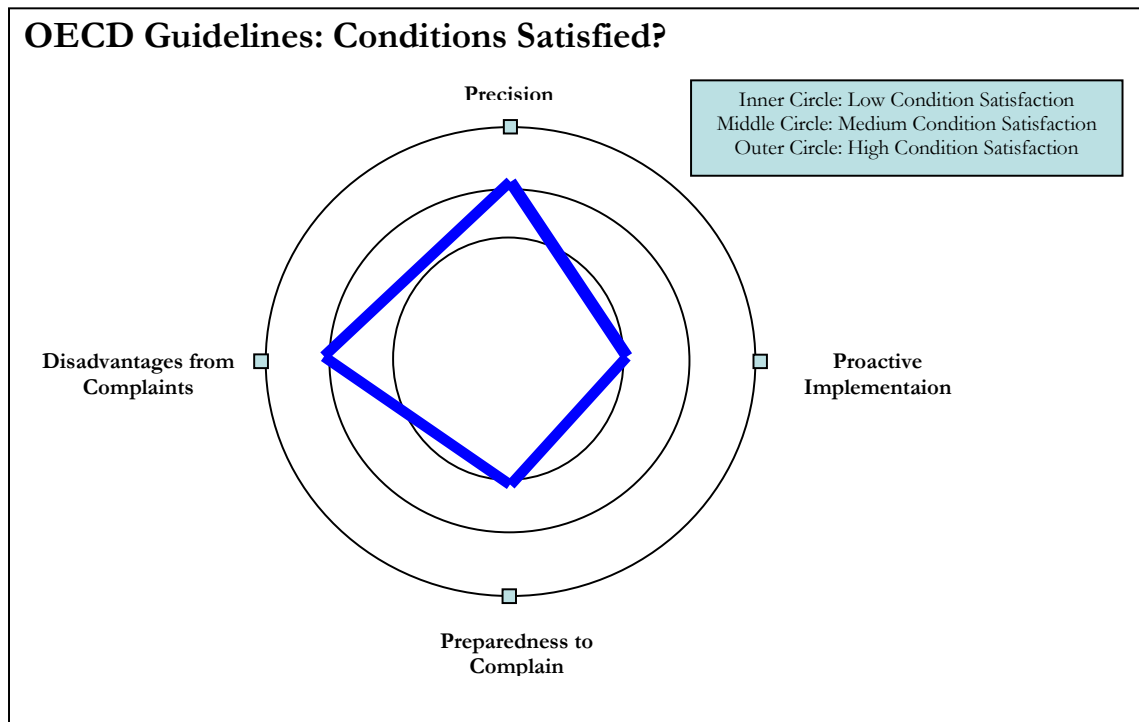
The picture is less promising when it comes to the ILO Declaration and the OECD Guidelines. The ‘norm-setting’ logic of the *ILO Declaration* is unlikely to set in because, first and foremost, the German business community is not sufficiently aware of its existence (2nd conditions). What is more, German NGOs and trade unions are sceptical of the Declaration due to its lack of a palpable implementation mechanism (3rd condition). On the positive side, however, those companies using the Declaration consider it to be of practical use (1st condition) which might explain why its content has been taken up by a number of other CSR instruments (4th condition). Still, particularly its

¹¹ Note of caution: Given the fact that the UN Global Compact has a clearly defined membership structure as opposed to the other two instruments considered, it may well be that this explains the relative strength of the Compact.

lack of awareness is most likely to hinder the ILO Declaration from developing into a norm-setting regime for the social behaviour of business in the German corporate sector.



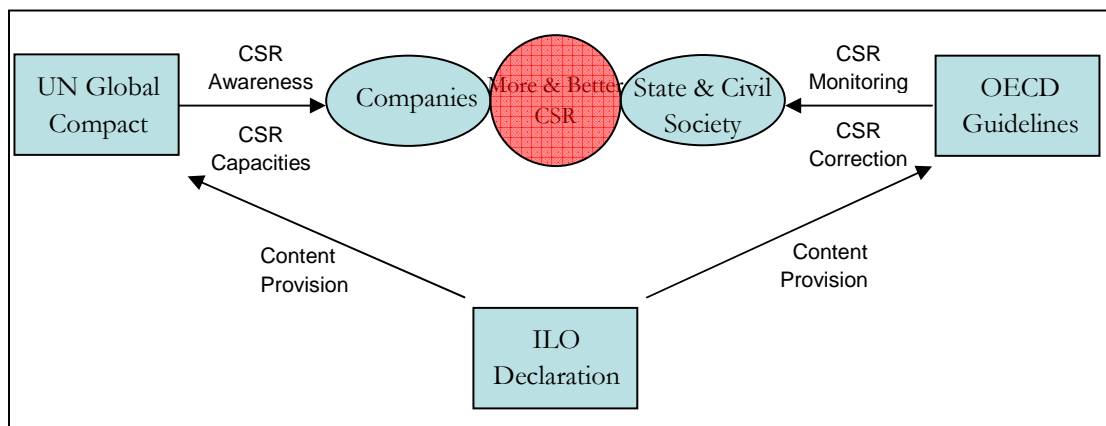
The prospects are not better for the *OECD Guidelines*. The ‘naming and shaming’ logic of the Guidelines is undermined by the lacking willingness on the part of the BMWi to set up the German NCP in ways that enable civil society actors such as NGOs or trade unions to fulfil their ‘watchdog’ function (2nd and 3rd conditions). The ample room for interpretation as regards the applicability of the Guidelines – which the German NCP has repeatedly relied on to reject complaints – further reduces their scope of application (1st condition). Even though companies try to avoid public accusations of not abiding by the Guidelines (4th condition), the OECD Guidelines are unlikely to change corporate behaviour in the near future given the lacking threat of being named and shamed by watchdogs.



What these findings show is that even though non-hierarchical governance arrangements such as those evidenced in the three instruments are in principle able to induce companies to behave responsibly, it 1) places very high demands on all actors involved (i.e. state, business and civil society) and 2) becomes unstable as soon as one of the actors does not fulfil its respective responsibilities. As a result, these findings are not to say that the UN Global Compact will definitely – and that the OECD Guidelines and ILO Declaration will definitely not – induce responsible business conduct among companies operating in and from Germany. The conditions tested are necessary conditions, but no sufficient conditions for success. Whether these conditions are also sufficient, or whether further conditions are necessary for the instruments to operate effectively, is a matter for further research.

Having discussed the individual effectiveness of the instruments in ensuring responsible business conduct among firms operating in and from Germany, the question arises as to how the instruments relate to each other. It may well be that the three dominant CSR instruments have a combined effect on corporate behaviour. Based on the governance logics identified in this study, it can be said that the OECD Guidelines, ILO Declaration and UN Global Compact do not stand in competition with each other. On the contrary, they are complementary in that they all contribute to more and better CSR but through different channels (see graph 4 below): the *UN Global Compact is primarily addressed to*

multinational enterprises. Its added value is to raise awareness of the importance of CSR in the business community and to build capacity within firms to deal with their social and environmental responsibilities. The *OECD Guidelines* are primarily addressed to governments and civil society organisations. Their added value is to monitor multinational business and correct potential irresponsible behaviour. The *ILO Declaration* has a broader audience. Its added value is to have an indirect effect by providing the content for the UN Global Compact, OECD Guidelines and other CSR instrument when it comes to labour and social affairs.



Graph 4

Source: Own Illustration

6.2. Policy Recommendations

GENERAL POLICY RECOMMENDATION

BETTER EXPLOITATION OF SYNERGIES BETWEEN INSTRUMENTS

Based on the above, this study recommends to better exploit the synergies between the OECD Guidelines, the ILO Declaration and the UN Global Compact.

As mentioned, the three instruments are complementary. If coordinated well, they might develop a combined effect on multinational business. The current loose coordination between the OECD Guidelines, the ILO Declaration and the UN Global Compact should be upgraded into a **formal strategic alliance**. In particular, the OECD Guidelines and the UN Global Compact offer great synergy potential. Together the two instruments could function as *‘Good Cop/Bad Cop’*. The UN Global Compact – as the Good Cop – would raise awareness about the relevance of CSR among German

companies and help them to gain practical knowledge on how to implement CSR at the individual firm level. The OECD Guidelines – as the Bad Cop – would monitor whether or not companies truly act in accordance with the respective standards and correct irresponsible business conduct if necessary. To better exploit their synergies, UN Global Compact and the OECD Guidelines should strictly divide the responsibilities by stringently focusing on its inbuilt governance logic. Accordingly, the UN Global Compact should get rid of its too soft and ineffective sanctions and focus on its mission to be a dialogue and learning platform for companies. The OECD Guidelines should be implemented in a more proactive manner to activate its stricter and more effective correction mechanism. In practice, the establishment of a **joined working group** at both global and national level between the representatives of the OECD Guidelines, the ILO Declaration and the UN Global Compact could help to better coordinate the instruments in the manner described above.

INSTRUMENT-SPECIFIC POLICY RECOMMENDATIONS

OECD Guidelines

Major Weakness:

- Inability to translate ‚naming and shaming‘ logic into practice due to unwillingness of the BMWi to implement the Guidelines in ways that enable civil society actors to fulfil their watchdog function by monitoring multinational business.

Solution:

- The German NCP has to fulfil its dual mandate of 1) raising awareness of the OECD Guidelines in Germany and 2) handling possible complaints in an unbiased manner. If the NCP does so, other conditions for success identified in this study will improve automatically. For instance, German NGOs and trade unions will file complaints again when they know that their cases stand the chance of being accepted. Likewise, economic disadvantages for companies in breach of the Guidelines will increase when promotional activities by the NCP raise awareness of the OECD Guidelines in the German public.

Policy Proposal:

- Establish a truly multi-stakeholder NCP outside the structure of the BMWi but under the supervision of the German Government. Institutionally locating the

NCP outside the ministry responsible for promoting foreign trade and investment and involving a more diverse set of stakeholders will result in a more balanced interpretation of the mandate of the NCP.

ILO Declaration

Major Weakness:

- Inability to translate ‚norm-setting‘ logic into practice due to still very low awareness of the ILO Declaration in the business community.

Solution:

- German companies have to be aware of the ILO Declaration and its recommendations so that they can consult them when developing their own CSR policies. Reaching a critical mass of companies is key for a shared understanding on responsible business conduct to emerge around the standards and principles contained in the Declaration.

Policy Proposal:

- ILO Headquarters in Geneva and its representation in Berlin should engage in promotional activities to raise awareness in the German CSR community of the added-value content of the ILO Declaration. This way, it will not only reach more companies but also other important CSR initiatives that could serve as a multiplier for dissemination.

UN Global Compact

Major Weakness:

- Inconsistency in its governance logic by claiming to be a dialogue and learning platform for companies but at the same time including some soft but ineffective control mechanisms (e.g. sanction of being marked as inactive member if no annual ‘communication on progress’ is submitted).

Solution:

- To fully translate ‘mutual learning’ governance logic into practice, the UN Global Compact should concentrate on its actual governance logic and maximise its efforts to provide a platform able to raise awareness and build capacities among multinational business.

Policy Proposal:

- The UN Global Compact should get rid of its soft and ineffective control mechanisms. While this might reduce the acceptance among civil society organisations, it can be compensated by linking the UN Global Compact with the OECD Guidelines, which should focus more on its naming and shaming logic (see God Cop/Bad Cop solution above).

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Informal Interviews & Background Talks

To gain the information necessary to 1) identify the governance logics of the OECD Guidelines, the ILO Declaration and the UN Global Compact, 2) establish the conditions necessary for these instruments to operate effectively and 3) empirically assess the (non)presence of the conditions in the German case, the author conducted, first, informal interviews with the sponsors of the three instrument and, second, background talks with German state, business and civil society representatives at various CSR conferences and meetings from September 2008 to March 2010. More formal interviews would have been preferable. However, both interview and background talk partners specifically asked to remain anonymous. Otherwise, they would not have been able and willing to speak openly about the potential and limits of the respective instruments.