



## **Transnational Corporations: The Environmental Governance Gap**

### **Briefing Paper June 2010**

There is a significant gap in the environmental governance of transnational corporations (TNCs). There are no detailed international rules for the environmental regulation of TNCs, and international environmental law lacks a clear source of globally applicable minimum standards similar to the Universal Declaration of Human Rights. Although domestic laws generally bind the operational activities of TNCs, developing host states often lack the capacity or political will to implement strong environmental standards. They may also hesitate to strengthen environmental regulation because of potential arbitral challenges by TNCs. TNCs may avoid corporate responsibility through local shell entities, and some large scale operations enjoy diplomatic immunities or similar privileges. When profits are available in host states without the costs of adequate environmental protection, the environment faces an increased threat of harm.

This briefing paper provides policymakers and non-lawyers with an overview of international instruments which attempt to fill the TNC environmental governance gap. These include voluntary instruments (or 'soft law'), which currently predominate the corporate accountability landscape, as well as legally-binding treaties (or 'hard law'). Common principles of international environmental law are interwoven into both types of instruments. Provisions in both voluntary instruments and treaties represent attempts to apply international environmental law to TNCs, and can affect TNC behaviour.<sup>1</sup>

#### **Soft Law**

#### **Organisation for Economic Co-operation and Development Guidelines**

The Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (Guidelines) are the principal intergovernmentally agreed voluntary instrument on corporate responsibility.<sup>2</sup> All 30 OECD countries and 12 non-member countries adhering to the Guidelines are to 'encourage [TNCs] operating on their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.'<sup>3</sup> The Guidelines establish National Contact Points

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<sup>1</sup> I note the potential for bringing international environmental law claims under domestic law, such as through the Alien Tort Claims Act (ATCA) in the United States. However, similar legislation is not present in other states which are home to TNCs and U.S. courts are hesitant to recognize international environmental law as the basis for an ATCA claim. See *Beanal v. Freeport-McMoran Inc.*, 197 F.3d 161 (5<sup>th</sup> Cir. 1999).

<sup>2</sup> Unlike other voluntary international instruments such as the UN Global Compact, the Guidelines were negotiated and approved by national delegations, and therefore potentially reflect the *opinio juris* of adhering states. See E. Morgera, 'An Environmental Outlook on the OECD Guidelines for Multinational Enterprises: Comparative Advantage, Legitimacy, and Outstanding Questions in the Lead up to the 2006 Review' 18 *GEIELR* 751 (2006) at 755-6.

<sup>3</sup> OECD Guidelines for Multinational Enterprises at s. I, ¶2, available at [www.oecd.org/dataoecd/56/36/1922428.pdf](http://www.oecd.org/dataoecd/56/36/1922428.pdf).

(NCPs), which are senior government officials or government offices tasked with resolving issues under the Guidelines.<sup>4</sup> NCPs must respond to enquiries not only from NGOs and the public, but also from the governments of non-adhering countries.<sup>5</sup>

The Guidelines apply a rich body of IEL principles and instruments towards the governance of TNCs. The Environment Chapter reflects the

*'principles and objectives contained in the Rio Declaration . . . [and] also takes into account the (Aarhus) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and reflects standards contained in such instruments as the ISO Standard on Environmental Management Systems [14001].'*<sup>6</sup>

It includes provisions on access to environmental information and public consultation.<sup>7</sup> Other sections focus on continually improving environmental management and the minimisation of environmental harm, without addressing compliance or liability.<sup>8</sup> Aligned with these goals is the Guidelines' incorporation of the precautionary principle, that 'where there are threats of serious damage to the environment . . . [TNCs should] not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.'<sup>9</sup> Without creating new commitments or precedents, the Guidelines recommend how the precautionary approach should be implemented by TNCs.<sup>10</sup> An update to the Guidelines is imminent.<sup>11</sup>

Whether the Guidelines help fill the environmental governance gap remains an open question. Collectively, the adherents of the Guidelines are the source of the large majority of foreign direct investment and house the headquarters of a majority of the largest TNCs.<sup>12</sup> In non-adhering countries that are developing states, the effectiveness of the Guidelines may depend on issues such as the existence of parallel legal proceedings, the Guidelines' relevance to international trade and supply chains,<sup>13</sup> and access to information.<sup>14</sup>

NCPs, which are the main decision-makers under the Guidelines, are limited to consensual and non-adversarial methods of dispute resolution.<sup>15</sup> However, communications to NCPs can require action by the adhering state and offending TNCs after NCPs make an initial

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<sup>4</sup> Id., OECD Guidelines, Procedural Guidance at ¶I(A)(1).

<sup>5</sup> Id., OECD Guidelines, Procedural Guidance at ¶I(B)(3)(b)-(c).

<sup>6</sup> Id., OECD Guidelines, Commentaries at ¶30.

<sup>7</sup> Id., OECD Guidelines at ¶¶III(2), V(2)(a) (access to information) and ¶V(2)(b) (public consultation).

<sup>8</sup> See id., OECD Guidelines, Chapter V.

<sup>9</sup> Id., OECD Guidelines at ¶V(4).

<sup>10</sup> Id., OECD Guidelines, Commentaries at ¶39.

<sup>11</sup> See International Bar Association Working Group on the OECD Guidelines for Multinational Enterprises, Response to the UK consultation on the terms of reference for an update of the OECD Guidelines for Multinational Enterprises (30 November 2009) at ¶3, available at [www.ibanet.org/PPID/Constituent/CSR\\_Committee/IBAWGOECD\\_Guidelines.aspx](http://www.ibanet.org/PPID/Constituent/CSR_Committee/IBAWGOECD_Guidelines.aspx). As part of this update, the Working Group has suggested that the Guidelines specifically reference climate change and request that TNCs help in the fight against climate change. Id. at ¶¶32-33.

<sup>12</sup> The 11 non-member adhering countries are Argentina, Brazil, Egypt, Estonia, Israel, Latvia, Lithuania, Morocco, Peru, Romania, and Slovenia.

<sup>13</sup> At least three cases related to the environment have not been accepted by NCPs as a result of a 2003 decision by the OECD Committee on International Investment and Multinational Enterprises that the Guidelines apply only to instances with an 'investment nexus', or 'some clear direct responsibility of the MNE in the form of a direct investment, long-term contract, or joint venture.' This excludes contractual relations with suppliers. Supra note 2 at 769.

<sup>14</sup> H. Ward, 'The OECD Guidelines for Multinational Enterprises and Non-Adhering Countries: Opportunities and Challenges of Engagement', Paper Presented at the OECD Global Forum on International Investment: Investment for Development, New Delhi (October 19-21, 2004) at 3, available at <http://www.oecd.org/dataoecd/6/62/33807204.pdf>.

<sup>15</sup> Supra note 3, OECD Guidelines, Procedural Guidance, Section C.

assessment that the issues raised merit further examination.<sup>16</sup> In practice this can enable 'civil regulation' of TNCs by NGOs, the effectiveness of which depends on the procedures and timelines of the particular NCP involved.<sup>17</sup> For example, a Chilean NCP report recommended that Dutch company Nutreco bring the environmental standards of its operations in Chile in line with Dutch standards.<sup>18</sup> Another case brought by Oxfam to the Canadian NCP regarding copper mining in Zambia resulted in a resolution giving farmers short-term use of company-owned land, and the establishment of a multi-stakeholder committee to protect the environment, provide information and resolve local land disputes.<sup>19</sup>

## **The UN Global Compact**

In contrast to the government-driven Guidelines, the UN Global Compact (Compact)<sup>20</sup> was developed by international experts and invites direct participation by businesses. It includes ten principles said to enjoy universal consensus, including the following three:

'Businesses are asked to support a precautionary approach to environmental challenges; undertake initiatives to promote greater environmental responsibility; and encourage the development and diffusion of environmentally friendly technologies.'<sup>21</sup>

The Compact derives these principles from the Rio Declaration and Agenda 21.<sup>22</sup> The over five thousand businesses who participate in the Compact are expected to incorporate these principles into board decision-making processes, and include a description of how the principles are implemented in their annual reports. The Compact is subject to light governance spread over seven network-based entities.

## **ISO Standards**

Another voluntary international instrument, one designed with heavy influence from industry, is the ISO 14000 series of environmental management standards.<sup>23</sup> These cover a multitude of areas including environmental labelling and life-cycle assessment. Certification is site-specific and can only be obtained for ISO 14001 on environmental management systems. Each certified site must:

- 1) have its own environmental policy statement which commits to compliance with local environmental laws, continual improvement and the prevention of pollution;
- 2) implement a management system to ensure conformity with the statement;
- 3) audit implementation of the management system; and
- 4) encourage suppliers and contractors similarly to conform to ISO 14001.<sup>24</sup>

Like other voluntary industry initiatives which focus on environmental management and do not set standards for environmental performance, the ISO 14000 series of standards is accused of being mere greenwash. Key questions include whether in practice certified

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<sup>16</sup> Supra note 3, OECD Guidelines, Procedural Guidance at ¶¶(C)(1)-(2).

<sup>17</sup> For an overview of specific instances brought before NCPs, see E. Morgera, supra note 2. For an argument that the Guidelines can provide effective governance, see G. Schuler, 'Effective Guidance Through Decentralized Soft Implementation: The OECD Guidelines for Multinational Enterprises', 9 German LJ 1753 (1 November 1998).

<sup>18</sup> Supra note 2 at 769.

<sup>19</sup> Supra note 2 at 770.

<sup>20</sup> UN Global Compact, available at [www.unglobalcompact.org](http://www.unglobalcompact.org).

<sup>21</sup> UN Global Compact, Principles 7 through 9, available at <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>.

<sup>22</sup> See [www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/environment.html](http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/environment.html).

<sup>23</sup> See J. Clapp, 'The Privatization of Global Environmental Governance: ISO 14000 and the Developing World', Global Governance 4 (1998) 295 at 296.

<sup>24</sup> Id. at 300.

facilities set low goals which barely exceed domestic laws,<sup>25</sup> and whether the widespread adoption of ISO 14001 pre-empts or softens developing state regulation.

The ISO 26000 standard on corporate social responsibility is currently in development. A draft international standard was recently approved after voting concluded on 14 February 2010,<sup>26</sup> and will be edited prior to voting on a final version.<sup>27</sup> ISO 26000 would be a voluntary guidance standard and certification would not be possible. The environmental section of the draft standard draws principles from the Rio Declaration including the precautionary approach, polluter pays principle, and use of environmentally sound technologies and practices, and outlines specific actions and expectations related to four environmental issues: (1) the prevention of pollution; (2) sustainable use of resources; (3) climate change mitigation and adaptation; and (4) the protection of the environment and restoration of natural habitats.<sup>28</sup>

### **Industry-Specific Instruments**

Alongside these broad soft law instruments stand others which are industry specific. Chief among these are the International Finance Corporation's Performance Standards, which are not only a precondition of its own lending, but are followed by banks adhering to the Equator Principles, which account for two-thirds of global project lending.<sup>29</sup> They require social and environmental assessment but do not incorporate a grievance process.<sup>30</sup> Other industry-specific initiatives include the International Council of Mining and Metals, formed by 15 major mining companies accounting for 50% of mining market capitalisation,<sup>31</sup> and the Forest Stewardship Council, a global forest certification system run collaboratively between business and NGOs.<sup>32</sup>

### **Hard Law**

#### **Multilateral Environmental Agreements (MEAs)**

Although soft law currently predominates the environmental governance of TNCs, international treaties may influence TNC behaviour. For example, several MEAs impose obligations on states which affect TNC operations with transboundary effects. The widely-ratified Basel Convention<sup>33</sup> regulates the transboundary movement of hazardous waste, the

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<sup>25</sup> Compare *id.* at 309 with M. Potoski et al., 'Racing to the Bottom? Trade, Environmental Governance, and ISO 14001', 50 *Am. J. Pol. Sci.* (2006) 350 at 352.

<sup>26</sup> ISO document ISO/TMB/WG SR N 175, available at [www.iso.org/wgsr](http://www.iso.org/wgsr).

<sup>27</sup> See ISO document ISO/TMB WG SR N 193 (21 May 2010), available at [www.iso.org/wgsr](http://www.iso.org/wgsr).

<sup>28</sup> ISO document ISO/TMB WG SR N 172, available at [www.iso.org/wgsr](http://www.iso.org/wgsr).

<sup>29</sup> UN Human Rights Council, Fourth Session, Report of the Special Representative of the Secretary-General, Business and human rights: mapping international standards of responsibility and accountability for corporate acts, A/HRC/4/35 (19 February 2007) at ¶51.

<sup>30</sup> See IFC Policy on Social and Environmental Sustainability at ¶15, available at [www.ifc.org/ifcext/sustainability.nsf/Content/EnvSocStandards](http://www.ifc.org/ifcext/sustainability.nsf/Content/EnvSocStandards); see also CIEL et al., 'The International Finance Corporation's Performance Standards and the Equator Principles: Respecting Human Rights and Remediating Violations?' (2008), available at [www.ciel.org/Publications/IFC\\_Aug08/Ruggie\\_Submission.pdf](http://www.ciel.org/Publications/IFC_Aug08/Ruggie_Submission.pdf).

John Ruggie has called on initiatives such as the Equator Principles to develop grievance processes. UN Human Rights Council, Eighth Session, Report of the Special Representative of the Secretary-General, Protect, Respect and Remedy: a Framework for Business and Human Rights, A/HRC/8/5 (7 April 2008) at ¶100.

<sup>31</sup> UN Human Rights Council, Fourth Session, Report of the Special Representative of the Secretary-General, Addendum, Business recognition of human rights: Global patterns, regional and sectoral variations A/HRC/4/35/Add.4, (8 February 2007) at ¶156. See ¶159 for other collective initiatives.

<sup>32</sup> See P. Muchlinski, *Multinational Enterprises and the Law* (2<sup>nd</sup> ed., Oxford, 2007) at 551-52 for a description of the FSC and other NGO-business partnership arrangements.

<sup>33</sup> Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, available at [www.basel.int/text/documents.html](http://www.basel.int/text/documents.html).

Helsinki Convention<sup>34</sup> addresses the management of transboundary waters, and the Espoo Convention<sup>35</sup> sets conditions for transboundary environmental impact assessment. Having originated within the United Nations Economic Commission for Europe, the Helsinki and Espoo Conventions are regional in effect but open for adoption by all states. Protocols to the Basel and Helsinki Conventions impose strict liability for related environmental damage upon the 'operator' or the entity with 'operational control', but have not come into force many years after adoption.<sup>36</sup> Further progress on civil liability regimes under international law does not appear promising.<sup>37</sup> Civil liability attaches in narrow contexts which do not affect most TNCs. For example, the Brussels Conventions establish strict liability for oil pollution damage from tanker spills and an international fund to compensate for such damage.<sup>38</sup>

Among its state parties, the much broader Aarhus Convention ensures the procedural rights of access to environmental information, public participation in environmental decision-making, and access to judicial remedy.<sup>39</sup> It is exceptional among MEAs in enabling citizen suits to challenge contraventions of domestic environmental legislation,<sup>40</sup> and in allowing members of the public to bring communications before the treaty's compliance committee concerning any party's compliance with the Convention.<sup>41</sup>

With respect to procedural rights, the Convention does not discriminate 'as to citizenship, nationality or domicile and [for legal persons such as TNCs] . . . registered seat or an effective centre of its activities.'<sup>42</sup> Citizens and organisations from one state party can access procedural rights in each of the others. Therefore, within the group of 40 developed states and economies-in-transition which are parties to the Aarhus Convention, TNCs are subject to minimum procedural environmental rights.<sup>43</sup> However, the Aarhus Convention does not guarantee substantive environmental rights, and it may not extend procedural rights to individuals and organisations in developing countries which are not parties.<sup>44</sup>

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<sup>34</sup> Convention on the Protection and Use of Transboundary Watercourses and International Lakes, available at [www.unece.org/env/water/pdf/watercon.pdf](http://www.unece.org/env/water/pdf/watercon.pdf).

<sup>35</sup> Convention on Environmental Impact Assessment in a Transboundary Context, available at [www.unece.org/env/eia/eia.htm](http://www.unece.org/env/eia/eia.htm).

<sup>36</sup> Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal, Arts. 4 and 6, available at [www.basel.int/pub/protocol.html](http://www.basel.int/pub/protocol.html); UNECE Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters, Art. 4, available at [www.unece.org/env/civil-liability/protocol.html](http://www.unece.org/env/civil-liability/protocol.html).

<sup>37</sup> For a recent analysis of international civil liability treaties, see Noah Sachs, 'Beyond the Liability Wall: Strengthening Tort Remedies in International Environmental Law' 55 UCLALR 837 (April 2008). Negotiations for a liability and redress regime under the Cartagena Protocol on Biosafety may be concluded this October, but the resulting binding provisions on civil liability are likely to be weak.

<sup>38</sup> International Convention on Civil Liability for Oil Pollution Damage (as amended 1992); Brussels International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage (as amended 1992), both available at [www.iopcfund.org/npdf/Conventions%20English.pdf](http://www.iopcfund.org/npdf/Conventions%20English.pdf).

<sup>39</sup> Aarhus Convention, Arts. 4 and 5 (public access to environmental information), Arts. 6-8 (public participation in environmental decision-making), Art. 9 (access to judicial remedy), available at [www.unece.org/env/pp/treatytext.htm](http://www.unece.org/env/pp/treatytext.htm).

<sup>40</sup> *Id.*, Aarhus Convention, Art. 9(3).

<sup>41</sup> UN Economic Commission for Europe, Report of the First Meeting of the Parties, Decision I/7, Review of Compliance, ECE/MP.PP/2/Add.8 (2 April 2004) at ¶¶18-24.

<sup>42</sup> *Supra* note 39, Aarhus Convention, Art. 3(9).

<sup>43</sup> This is termed horizontal accountability in Elena Petkova and Peter Veit, 'Environmental Accountability Beyond The Nation-State: The Implications of The Aarhus Convention', World Resources Institute, Environmental Governance Notes (April 2000) at 7.

<sup>44</sup> The Guidance Document on the Aarhus Convention Compliance Mechanism at 30, available at [www.unece.org/env/pp/compliance/manualv8.doc#\\_Toc147215638](http://www.unece.org/env/pp/compliance/manualv8.doc#_Toc147215638), states that '[t]he person [submitting] a communication . . . is not required to be a citizen of the State Party concerned, or, in the case of an organization, to be based in the State Party concerned.' However, this does not clarify whether a member of the public in a non-State Party can submit a communication regarding the conduct of an entity in a State Party.

## Investment and Trade Agreements<sup>45</sup>

Bilateral investment treaties (BITs) have gradually evolved to include environmental provisions. One example is the 2004 United States-Uruguay BIT – the first BIT based on the U.S. model text. The treaty allows the host state to take environmental measures where these are not applied in an arbitrary or unjustifiable manner and are not a disguised restriction on trade,<sup>46</sup> following the language of GATT Article XX.<sup>47</sup> The parties agree not to encourage reduced domestic environmental protection in exchange for investment,<sup>48</sup> and that either party may regulate on environmental matters as it deems appropriate.<sup>49</sup> The parties also confirm their shared understanding that non-discriminatory regulatory actions designed to protect the environment are rarely indirect expropriations.<sup>50</sup>

With respect to the environment, arbitration under BITs and free trade agreements (FTAs) has generally not moved beyond this last issue – whether subsequent environmental regulation can constitute a taking and require compensation. Some recent panels have held that environmental regulatory actions do constitute takings.<sup>51</sup> Outside of this narrow issue, environmental provisions have been deemphasised by arbitral tribunals, and investors have sought to negate new environmental regulation through the use of stabilisation clauses, which exclude the application of later improvements to environmental standards.<sup>52</sup> Of particular note is *S.D. Myers, Inc. v. Canada* (2000), where the tribunal held that Canada had violated NAFTA's national treatment provisions even though it adhered to the Basel Convention in requiring that hazardous waste be disposed of in Canada.<sup>53</sup>

## Human Rights and TNCs

The work of John Ruggie, Special Representative of the Secretary-General on human rights and transnational corporations, may extend to environmental governance. Ruggie's initial mandate as Special Representative was to provide a comprehensive mapping of current international standards and practices regarding business and human rights.<sup>54</sup> His 'protect, respect, and remedy' framework emphasises the state's duty to protect against human rights abuses, corporate responsibility to respect human rights, and more effective access to remedies.<sup>55</sup> The framework was unanimously welcomed by the Human Rights Council, and

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<sup>45</sup> I note that the Energy Charter Treaty (ECT) is commonly viewed as a sectoral multilateral investment agreement. It has been ratified by nearly fifty countries, primarily in Europe and the now independent countries of the ex-Soviet Union. Although focused on energy trade and investment, the ECT nonetheless includes 'best-efforts' commitments to environmental goals, and softly words 11 types of actions for Parties to take. But neither the ECT nor its Protocol on Energy Efficiency and Related Environmental Aspects include substantive obligations binding Parties to specific enforceable environmental commitments. See C. Shine, 'Environmental Protection Under the Energy Charter Treaty' in T. Walde, *The Energy Charter Treaty: An East-West Gateway for Investment and Trade* (Kluwer, 1996). Russia's recent withdrawal from the ECT also raises questions as to the ECT's ongoing primacy.

<sup>46</sup> US-Uruguay BIT, Art. 8(3)(c), available at [www.sice.oas.org/TPD/URY\\_USA/Negotiations/text\\_e.pdf](http://www.sice.oas.org/TPD/URY_USA/Negotiations/text_e.pdf).

<sup>47</sup> Supra note 32 at 563.

<sup>48</sup> Supra note 46, US-Uruguay BIT, Art. 12(1).

<sup>49</sup> Supra note 46, US-Uruguay BIT, Art. 12(2).

<sup>50</sup> Supra note 46, US-Uruguay BIT, Annex B, para. 4(b).

<sup>51</sup> See *Metalclad v. Mexico*, 5 ICSID Rpts 209 (2000); *Santa Elena v. Costa Rica*, 5 ICSID Rpts 153 (2002); *Tecmed v. Mexico* (2003) ICSID ARB (AF)/00/2 at ¶121.

<sup>52</sup> M. Sornorajah, *The International Law on Foreign Investment* (2<sup>nd</sup> ed., Cambridge, 2004) at 180, 260.

<sup>53</sup> *S.D. Myers, Inc. v. Canada* (2000), Partial Award at ¶255, available at [www.naftalaw.org/Disputes/Canada/SDMyers/SDMyersMeritsAward.pdf](http://www.naftalaw.org/Disputes/Canada/SDMyers/SDMyersMeritsAward.pdf).

<sup>54</sup> Supra note 29 at ¶5.

<sup>55</sup> UN Human Rights Council, Eighth Session, supra note 30 at ¶9.

has received support from leading business organisations and civil society organisations.<sup>56</sup> Ruggie's extended mandate focuses on operationalising this framework.

On the state's duty to protect, Ruggie concluded that '[t]he human rights treaty bodies express concern about a State's failure to protect against business abuse most frequently in relation to the right to non-discrimination, indigenous peoples' rights, and labour and health-related rights. But the duty to protect applies to all substantive rights.'<sup>57</sup> These could include environmental rights even where they cannot be derived from related human rights. On the corporate responsibility to respect, Ruggie asked the world's largest representative business organisations for proposals to close the human rights governance gap.<sup>58</sup> In their collaborative proposal, the International Organization of Employers, International Chamber of Commerce, and OECD Business and Industry Advisory Committee advised that '[a]ll companies have the same responsibility in weak governance zones as they do elsewhere. They are expected to obey the law, even if it is not enforced, and to respect the principles of relevant international instruments where national law is absent.'<sup>59</sup> This applies as strongly to environmental governance as to human rights governance.

## Conclusion

Binding international law leaves a significant gap in the environmental governance of TNCs. Some initiatives, such as John Ruggie's work on human rights and TNCs, may help fill this gap. But the dominant trend appears to be the use of voluntary instruments and self-control. States should not rely on such instruments, as the globalised nature of TNC activity is best addressed through strong domestic environmental regulation.<sup>60</sup> In the absence of strong domestic regulation or binding international law, TNCs are left to police themselves. When their resolve to do so is weakened by conflicting obligations to shareholders, it will be the environment that suffers.

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<sup>56</sup> UN Human Rights Council, Eleventh Session, Report of the Special Representative of the Secretary-General, Business and human rights: Towards operationalising the 'protect, respect and remedy' framework, A/HRC/11/13 (22 April 2009) at ¶¶1-5.

<sup>57</sup> Supra note 29 at ¶14.

<sup>58</sup> Supra note 29 at ¶48, footnote 45.

<sup>59</sup> IOE, ICC, BIAC, 'Business and Human Rights: The Role of Business in Weak Governance Zones' (December 2006) at ¶15, available at [www.business-humanrights.org/Links/Repository/596399](http://www.business-humanrights.org/Links/Repository/596399).

<sup>60</sup> Many states appear to rely on voluntary instruments. See supra note 29 at ¶17. In Ruggie's survey to states, a larger number of respondents said they relied on soft law instruments or voluntary initiatives.