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Session 2: Rules of the Game  
International “Soft Law” Mechanisms

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# “Soft Law” Mechanisms

*“Soft law is ‘soft’ in the sense that it does not by itself create legally binding obligations. It derives its normative force through the recognition of social expectations by states and other key actors.”*

Prof. John Ruggie

# “Soft Law” results from:

- Governance gaps:
  - Lack of enforcement/compliance,
- Institutional constraints
- Market failures
- Signal future direction of regulation

# Types of Initiatives

- Inter-Governmental guidelines and principles
- Multi-Stakeholder codes and principles
- Business Initiatives
- Sector alliances and codes of conduct
- NGO & other initiatives

# Inter-Governmental Initiatives

- ILO Declaration on MNE's & Social Policy
- OECD Guidelines for Multinational Enterprises
- Global Compact
- UNEP Finance Initiative
- European Alliance for CSR
- US Model Business Principles
- APEC Code of Conduct for Business
- IFC Performance standards

# Multi-stakeholder Initiatives

- Voluntary Principles on Security & Human Rights
- Kimberly Process Certification of Diamonds
- Extractive Industry Transparency Initiative
  
- Address governance gaps in specific areas for participating companies

# Business Initiatives

- ICC Business Charter & Responsible Business Conduct
- Global Sullivan Principles
- Caux Principles for Business
- Equator Principles
- Fair Labor Association
- WEF Leadership Challenge for CEOs & Boards
- Worldwide Responsible Apparel Production Principles

# Sector Initiatives

- Worldwide Responsible Apparel Production
- International Council of Toy Industries - CARE
- Electronic Industry Code of Conduct
- Forest Stewardship Council
- Marine Stewardship Council
- World Federation of Sporting Goods Industries
- International Council on Metals & Mining
- Coffee, cocoa

# Other Initiatives

- AccountAbility 1000
- Amnesty Human Rights Guidelines
- CERES Principles
- Ethical Trading Initiative
- Global Reporting Initiative (GRI)
- ISO 26000 guidance on social responsibility
- SA 8000
- SIGMA Integrated Guidelines for Sustainability Management
- Worker Rights Consortium

# Drivers for Joint Action

- Increase effectiveness:
  - Scale, leverage
- Increase efficiency:
  - Reduce duplication, maximize resources
- Increase legitimacy:
  - Higher participation, more accountability
- More flexible & solution-oriented, less bureaucratic

# Supplier Codes of Conduct

- Adequate labor standards
- Inadequate implementation and enforcement
- CSR codes for suppliers are the short to medium term substitution for better government oversight
- Some aspects would be implemented regardless (ethics)
- Governments beginning to intervene (e.g. China regulation on social certification programs)

# Important Differences

- Ability of a company to respond will vary according to:
  - Sector & Types of products
  - Location
  - Contract Terms & volume of purchases
  - Level of vertical integration
  - Parts supplier vs. solution partners

# Benefits

- Follow company's own values & principles
- Protect brand image and reputation
- Respond to customer and stakeholder concerns
- Raise suppliers' awareness of national labor laws and compliance with legal requirements
  - System in place for corrective action
- In some cases, avenue for more strategic partnerships with suppliers:
  - productivity, quality, time to market

# Challenges

- Scope: factories producing for domestic market not audited
- Lack of government participation or involvement
  - Who sets the standards?
- Redundancy of codes, number of audits
- Number of suppliers: logistics, corrective action, revisits
- Falsification of factory records, staged interviews
- Subjective assessments of social/ethical standards

# Beyond Monitoring

- Audit-based codes continue to play an important role, but are reaching their limit to deliver improvements
- A key variable is the operating environment (country)
- Shift away from compliance approach (costs, cheating) and toward assistance & capacity building
- Improvements more likely to be retained when linked to business gains (productivity, quality)
- Designed more as a partnership with vendors

# Going Forward

- Continued innovation in codes, processes
- Increase governments involvement:
  - Improve enforcement of local and national laws
  - Engage with and learn from supply chain audits
- Spread efforts to include domestic suppliers:
  - Move beyond small numbers of exporters
- Focus on capacity-building in labor ministries, trade unions, and factories
  - Important role for international organizations (ILO, OECD)