

Compliance on the UN Global Compact

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Abstract: The UN Global Compact is an international regime established in July 2000 by Kofi Annan, the UN secretary-general at the time. The UN Global Compact was formed as an effort to involve corporations in development. In the journey, the UN Global Compact is much criticized because it is considered more profitable corporations and lack of compliance due to the absence of sanctions in it. However, the number of participating companies and countries is increasing every year. Recorded until May 2017, there are 9,388 companies, 165 countries, and 45,581 public reports have been produced. From here it comes the question of whether sanctions are needed to ensure compliance with the regime. I argue that sanctions are not the only reason for the regime to adhere to. Using instruments developed by Chayes and Chayes (1993) and Jacobson and Weiss (1995), I found that there were considerations of reputation and positive incentives expected by participants by taking part in the international regime.

1 INTRODUCTION

The Secretary General of the United Nations, Kofi Annan, addressed the UN Global Compact in his speech in the Davos World Economic Forum in January 1999. He challenged business leaders to join a global compact of shared values and principles and to provide globalization a human face. He added that shared values provide a stable environment for world market. Additionally, shared values help business from antipathy acts such as protectionism, populism, fanaticism and terrorism.

The UN Global Compact is the largest corporate initiatives to voluntarily support human rights, good labour practices, environment protection and fighting corruption. The Global Compact is coalition to make globalization work for all involving corporations, leaders of labour and civic groups, consortium of NGOs from developing countries, and the UN (ILO, UNDP, UNEP, OHCHR, UNIDO, and UNODC). It also learning network that attempt to reach a broad consensus on good corporate practices. Last, the Global Compact is set as the global extended level of corporate social responsibility (CSR).

The ten principles of the Global Compact focus on human rights, labour rights, concern for environment and anti-corruption. Principles are taken directly from commitments made by governments at the UN: the Universal Declaration of Human Rights (1948); the Rio Declaration on Environment and Development

(1992); the International Labour Organization's Fundamental principles and Rights at Work (1998); and the UN Convention Against Corruption (2003). The ten principles that business should do are: (1) supporting and respecting the protection of internationally proclaimed human rights within their sphere of influence; (2) making sure that they are not complicit in human rights abuses; (3) upholding the freedom of association and the effective recognition of the right to collective bargaining; (4) the elimination of all forms of forced and compulsory labour; (5) the effective abolition of child labour; (6) elimination of discrimination in respect of employment and occupation; (7) supporting a precautionary approach to environmental challenges; (8) undertaking initiatives to promote greater environmental responsibility; (9) encouraging the development and diffusion of environmentally friendly technologies; (10) working against corruption in all its forms including extortion and bribery.

The Global Compact was designed as voluntarily initiative. A company subscribing to the principles is invited to make a clear statement of support and must include some reference in its annual report or other public documents on the progress it is making on internalizing the principles within its operations. The company must submit its report to the Global Compact website. Failure to submit within two years will result in being removed from the list of

participants. The Global Compact is not designed as a compliance-based organization. The Global Compact established several procedures for businesses to demonstrate their commitment and initiatives and to facilitate learning processes concerning the ten principles. These procedures assist in tracking the learning process of a company coincide with all necessary subsystems.

There are some critics on the Global Compact. Some argue that global compact as political concordance to multinational companies' criticism. They use Global Compact as an effort to protect multinational company's brand and the Global Compact function as a "blue wash" for corporate branding. The Global Compact was criticized for enhancing the image and legitimacy of big business, rather than enforcing social and environmental standards. Likewise, the Compact can expel members for violations but it does not have a regular monitoring and verification feature.

Even though there are many critics on the Global Compact, it develops enormously. Recorded until May 2017, there are 9,388 companies, 165 countries, and 45,581 public reports have been produced. From here it comes the question of whether sanctions are needed to ensure compliance with the international regime. By taking the case in developed and developing countries, I argue that sanctions are not the only reason for the regime to adhere to. Using instruments developed by Chayes and Chayes (1993) and Jacobson and Weiss (1995), I found that there were considerations of the reputation and positive incentives expected by participants by taking part in the international regime.

2 COMPLIANCE ON INTERNATIONAL REGIME

As an entity that is followed voluntarily, the sustainability of the international regime depends on its members' compliance. It is necessary to have a bond or rule that can regulate or control the actor's behaviour. This bond is set in an international regime. But by joining the international regime does not mean that the actor will always follow the rules or regulations set automatically. Oran Young (1979 in Simmons 1998) said that compliance can be said to occur when the actual behavior of a given subject conforms to prescribed behavior, and non-compliance or violation occurs when actual behavior departs significantly from prescribed behavior. Meanwhile, non-compliance is when the real behavior differs significantly from the expected

behavior. Thus it can be said that obedience is an attitude where the existence of individual behavior that obeys the rules established, without any coercion.

Chayes and Chayes (1993) are somewhat different from Young. They emphasize that compliance issues are not the presence or absence of coercive mechanisms. The regime is not adhered to because of management problems. Management problems such as regimes contain ambiguous sentences; lack of actor's capacity (administratively, technically and financially) for the implementation of the regime; the social and political conditions at which the regime is formed are irrelevant to the time at which the regime is formed and adhered to; as well as limited government agenda and priorities. Beyond management issues, Chayes and Chayes (1993) also add a personal interest factor that affects the obedience or not of the actor.

On the contrary, a regime will be adhered to because it is influenced by several driving factors, namely efficiency, importance, and norms (Chayes and Chayes 1993). First, efficiency is referred to as being able to encourage the application of a regime's policies because each member of the regime must effectively and sustainably adhere to the established rules so that the decisions can run efficiently and a regime can produce an action and a real action in its function as an international institution. Second, interest is an absolute thing that is brought by each country in forming a collective agreement, so that a country does not need to join an agreement if the direction and purpose of the agreement is against its interests. Third is the existence of a fundamental international legal norm *pact sunt servanda* (agreement must be kept), describing that the countries must obey an agreement involved.

Jacobson and Weiss (1995) established three categories of international legal strategies to foster adherence. First, provide a negative incentive in the form of a penalty, sanction, or withdrawal from an exclusive membership. Second, apply sunshine methods such as monitoring, reporting, transparency, and involving NGOs. This sunshine method focuses on reputation, that the actor will respond when it is associated with his reputation in international relations. Third, provide positive incentives in the form of financial and technical assistance, access to technology, and provision of training. This strategy is based on the idea that compliance issues are caused by a lack of capacity to make them obedient. Subsequently there are four categories linking the state's desire to obey and the capacity to do: (1) a country that has the desire and capacity to obey; (2) a country that desires to adhere to low but has capacity

to do so; (3) a country that has a desire to obey but has low capacity; and (4) a country that has no desire to be obedient and has no capacity. For the first category, the implementation of the sunshine strategy is deemed appropriate where supervision is carried out by the state government as well as by non-state actors. Sanctions can be an option, mainly to ensure that the state does not change its commitments. In the second category, giving incentives is more appropriate. Another option is to apply sunshine. In the third category the right strategy is to apply sanction and application of sunshine as an alternative. In the last category, the implementation of the three strategies is considered necessary.

The concept of compliance with international organizations differs from international law (Downs, Rocke, and Barsoom 1996). The concept of compliance in international organizations further explains how countries can form a relationship in cooperation, without coercion in it. Compliance here is more emphasis on further cooperation in order to apply effectively. Downs, Rocke, and Barsoom (1996) add that non-compliance can occur when international cooperation begins to be ambiguous as well as non-transparency between its members. On the contrary, state compliance will be high in international cooperation when there is an atmosphere of building transparency, and so on in the relationships among its members.

Furthermore, to see the compliance of a country can be seen from the achievement of the function of international organizations. If the function is running and achieved, then it is possible that its members have a high level of compliance. Compliance here is a similarity between the behaviour of state actors and the previously ordered behavioural rules (Young in Simmons 1998). While effectiveness is how successful organizations are formed by these countries in achieving its objectives or addressing the initial issues underlying the establishment of the organization. That is why organizational effectiveness, though not entirely the result of state compliance, but compliance also influences effectiveness. But keep in mind is that if the function of the organization can not be achieved effectively does not mean that its compliance is low. Especially if there are violations or abnormal conditions that hinder the achievement of organizational functions that the organization can not overcome even if the state is compliant. That is, these two things do not always go hand in hand or have a causal interaction. Full member compliance with organizational rules does not necessarily make the organization achieve its ultimate goal; and vice versa, organizational success

is not always only due to the compliance of member states. Young (in Downs, Rocke, and Barsoom 1996) says it is more of a management issue than enforcement.

Chayes and Chayes (1993) describe the difficulties that arise on compliance. First, compliance is difficult to measure empirically because the state on an issue can be adherent to a particular situation, but in different circumstances it may be that it is not compliant even though the issue is the same. This is because the state essentially aims to pursue its interests. But compliance can be predicted by recognizing the assumptions. Assumptions are not understood as true false but as a form of adaptation to a particular problem. Second, compliance issues do not necessarily imply a decision to violate international commitments. There are many reasons why the state denies its international obligations and why in some circumstances those reasons are accepted by many. Third, the overall treaty regime need not be seen as compliance standard but as an acceptable level of compliance or in line with the interests of the state. So speaking of compliance is talking about the level of acceptance, how the level of acceptance is determined and adjusted.

Several important points, one of which is the aspect of interest and efficiency, support the argument that countries tend to comply with an international organization. State ratification of a treaty must have passed the procedures and considerations mature and have been in accordance with the interests being pursued by the country. Therefore, when the state enters the organization, it will comply with all rules that have been established to achieve its interests earlier. Chayes and Chayes (1993) also explained that in the process of consideration of the ratification of an agreement, the state undergoes a learning process in which the interests and position of the state begin to change gradually in accordance with the new conceptions offered in international organizations as well as adjustment of these positions and interests with rules and regulations agreed in the organization. In the efficiency aspect, international organizations are an efficient means for countries to engage multinational in a forum. In addition, decisions taken within an international organization are certainly more efficient because all members then carry out the decisions jointly and the division of tasks is done equally. Thus, if all member states adhere to established rules, efficiency in policy implementation and the achievement of collective goals will be achieved.

Background assumptions can be taken on the basis of the following considerations. First is efficiency. Every decision is cost-effective, therefore chosen the most urgent and most profitable. Every commitment to an international agreement is considered calculated and there is always an alternative calculation of it. Second is the interest. The state is involved in international regimes and organizations because it is appropriate and can support its interests. This is understood also in the mechanism of international law, which states that the state cannot be bound without any prior consent. It should be understood also that in an agreement is not black and white between signatures or not

The next question is then what can be done. Management theories suggest that punishment does not even need to be done because the cost is too big, too political, and too pushy (Downs, Rocke, and Barsoom 1996). Young added that coercive mechanisms for compliance are also rare or unusual in international interactions. Chayes and Chayes (1993) add that the sanctions legitimacy is questioned because sanctions are only successful when applied to a weak state and unilateral sanctions can only be done by a large country. Furthermore, sanctions also harm the emergence of future cooperation.

Therefore, disobedience is more of a problem to be solved together than seen as a form of offense that must be punished and sanctioned (Downs, Rocke and Barsoom 1996). Downs, Rocke, and Barsoom (1996) suggest three strategies that can be used to achieve compliance while maintaining cooperation: (1) improving dispute resolution procedures; (2) provide technical and financial assistance; (3) increase transparency. While Chayes and Chayes (1993) say that to overcome the problem of non-compliance then what is needed is a mutually beneficial consultation that emphasizes the persuasion and argumentation.

3 BEYOND SANCTION

From the above explanation it can be concluded that the compliance of members in the international regime is not merely with coercive measures such as sanctions. There are two other decisive things. Firstly by providing sunshine policies that focus on improving the reputation of the actor. This sunshine policy can include monitoring, reporting, transparency, and NGOs engagement. The second is to provide positive incentives such as financial and technical assistance, access to technology, and training.

4 SUNSHINE'S POLICY AND REPUTATION

Sunshine's policy focuses on improving the reputation of the actor. This sunshine policy can include monitoring, reporting, transparency, and NGOs engagement. The Global Compact provides a reputation for the company. The values promoted by the Global Compact are universal values such as human rights, labour standards, environmental stewardship and the fight against corruption. Sharing that universal value will enhance the company image and strengthen the brand. The Global Compact also reduces many negative publications by non-state actors. The Global Compact connects companies with state and non-state actors such as environmental activists, working groups and human rights based organizations. Engaging and consulting these actors can avoid the negative publicity of these groups, especially for companies operating in countries that have tremendous human rights violations (Potoski and Prakash 2005). The company's vulnerable position also exists in companies engaged in extractive industries where the country's host is very large and prone to corruption. Here, the Global Compact not only benefits in improving the negative reputation of non-government actors but can also protect the company from corrupt behaviour of state actors.

It was said at the beginning that the Global Compact was not designed as a compliance-based international regime. Instead, the Global Compact provides rules and procedures for businesses to make what they do in accordance with the ten principles of the Global Compact. The Communication on Progress (COP) is the main thing that shows the company's commitment to be involved in the UN Global Compact. COP shows the reporting and transparency process that has been done by the company. COP is reported through the website. For companies from OECD countries COP is collected no later than one year after they are incorporated in the Global Compact. As for companies coming from non-OECD countries, the submission of COP is not later than three years after they are incorporated in the Global Compact.

Although there is no specific format in the COP, the COP at least contains a statement from the chief executive to continue to commit to the Global Compact, any description that has been made by the company related to the 10 principles, and includes a measurement tool to achieve outcomes. The company is then divided into three categories based on its COP report. The lowest category is the GC Learner where

the COP has not met the minimum requirements. The second level is GC active where the COP is compiled to meet minimum standards. The top level is GC advanced where COP has complied with minimum standards plus an explanation of implementation and best practices.

This COP is transparent and accessible to all members and other stakeholders. COP at the same time responds to the demands of transparency from key stakeholders such as investors, community groups, governments and consumers. Companies can communicate steps that have been and will be made to support commitments to human rights, labour standards, environmental protection, and anti-corruption. The public can read it in the company profile, which has not been done much before. The Global Compact also encourages members to always communicate the principles that exist within the media communications owned by companies such as press releases, speeches, etc.

5 POSITIVE INCENTIVES

Positive incentives are diverse, such as financial and technical assistance, access to technology, training, and consulting. By joining the Global Compact, the company can meet with other companies, NGOs, UN agencies, and other government organizations. This allows for access to technology, training and consultation. It also reduces transaction costs when it comes to communicating separately. The Global Compact provides engagement mechanisms, including policy dialogues, learning, local networks and partnership projects such as the UN Global Compact Leaders' Summit, the UN Private Sector Forum, the UN Forum on Business and Human Rights.

The Global Compact provides a framework of reference for best practices sharing by companies that fall into the advanced GC category. In addition, the company will become more careful because of the transparency nature of the reports made within the framework of the Global Compact. The Company conducts discussions and consultations related to the compact-related activities undertaken. The media and NGOs oversee accountability reports. So when companies fail to meet existing ethical standards, the public will criticize them through media and NGOs. This criticism can appear as a trigger for the company to do better for example what Royal Dutch / Shell and Nike do. Royal Dutch / Shell made major policy changes and business practices after getting criticized for its activities in Nigeria (Paine 2003). Nike had

previously been heavily criticized for sweatshop practices in several countries. Reflecting on the Nike case, multinational corporations are now also required to oversee business practice in supply chains to avoid sweatshop practices (Giron 2003). In the SDG Compass reporting guide (SDG Compass) for example, the UN Global Compact describes the steps that can be taken by the company as well as the supply chains underneath it to create a humane working environment and adequate wages such as the availability of breastfeeding places, smoke free environment, leave childbirth, loans and insurance for workers.

6 CONCLUSIONS

The UN Global Compact is an international regime established in July 2000 by Kofi Annan, the UN secretary-general at the time. The UN Global Compact was formed as an effort to involve corporations in development. The Global Compact engages firms with a set of actors that includes states, environmental groups, labour unions, and human rights organizations.

The Global Compact is voluntary initiatives and does not have authority to enforce sanctions. Rather, it is designed to stimulate behaviour change and share businesses' innovative practices. Even though there is no sanction mechanism, recorded until May 2017, there are 9,388 companies, 165 countries, and 45,581 public reports have been produced. Research finds that sanctions are not the only reason for the regime to adhere to, there were considerations of reputation and positive incentives expected by participants by taking part in the international regime.

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