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Corporate-NGO Partnerships as a Form of Civil Regulation: lessons from the Energy and Biodiversity Initiative

Stephen Tully



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Corporate-NGO Partnerships as a Form of Civil Regulation: lessons from the Energy and Biodiversity Initiative¹

Introduction

This paper will assess the prospects of so-called ‘civil’ regulation, or the ability of non-governmental organisations (NGOs), to regulate commercial behaviour within the institutional setting of a partnership. The selected case study involves an initiative between five conservation NGOs and five energy firms seeking to integrate biodiversity considerations into upstream oil and gas development projects within, or adjacent to, environmentally-sensitive or protected areas. Part one describes the concept of ‘civil’ regulation, identifies its principal characteristics and considers the potential for partnerships between corporations and NGOs. Part two provides an overview of the Energy and Biodiversity Initiative in the context of dialogue between the business and NGO communities with respect to the commercial role for conserving biodiversity. Finally, part three identifies consequential lessons for collaborative arrangements between NGOs and corporations, assesses the prospects for partnerships as a regulatory device and identifies the prerequisites for effectively controlling corporate behaviour through this mechanism.

1. Corporate-NGO Partnerships as a Regulatory Device

Regulation classically emanates from governments in the nature of command and control legislation. However, regulatory functions can be ‘decentred’ from the state. The continual process of state reform necessitates redefining its role as a market regulator and increasing its governance capability². A broader understanding of regulation defines it as ‘a sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing broadly identified outcomes and involving mechanisms of standard-setting, information-gathering and behaviour-modification’³. Regulation therefore includes the use of rules developed by NGOs to control or influence corporate behaviour⁴. NGOs are a significant driver towards greater corporate responsibility⁵. This occurs indirectly

¹ Thanks to Dr Julia Black (LSE), Greg Love (CI), Kit Armstrong & Pat O’Brien (ChevronTexaco), Jeff McNeely (IUCN), Sachin Kapila (Shell), Dr Tom Reed (Flora & Fauna International), Dr Greg Miller & Nigel Homer (TNC) and especially Dr Assehton Carter and Michelle Ognibene (CI). Views expressed during interviews and responses to questionnaires are not attributable to particular organisations. Errors and omissions remain those of the author. The support of BP is gratefully acknowledged.

² Pereira, L. (1998) ‘Government Reform in the Nineties-Logic and Mechanism of Control’ *Desarrollo Economico-Revista De Ciencias Sociales* 38 (150): 517.

³ Black, J.(2002) Critical Reflections on Regulation, Centre for Analysis of Risk and Regulation, Discussion Paper 4, LSE, London, 20.

⁴ Baldwin, R. and Cave, M. (1999) *Understanding Regulation*, Oxford University Press, Oxford, 2, 63.

⁵ Kakabadse, Y. President, (2002) IUCN, ‘Finance and Sustainability: Perspectives’, Presentation at UNEP Annual Global Roundtable Meeting on Finance and Sustainability, ‘Financing a Sustainable Future: Strategies, Partnerships and Opportunities... on the way to Johannesburg 2002’, Rio de Janeiro.

- NGOs mobilising consumer or public opinion as a forerunner to legislative development by government - or directly. NGOs occupy a prominent position within international decision-making⁶. The neo-liberal state has encouraged a self-organising NGO society to guarantee civil liberties, develop political pluralism, encourage novel representative forms and promote greater competition within the marketplace⁷. Notwithstanding ostensible resort to self-regulatory approaches, actual practice tends towards restructuring management responsibilities between public authorities and civil society to ensure a shared effort at securing corporate compliance and more effective market governance⁸. Collective initiatives from civil society directed at market regulation and assisting government to that end can be traced from the 19th century⁹. NGOs thus enjoy an acknowledged role in ensuring regulatory compliance¹⁰.

However, little attention is given to the actual process by which such rules are formulated. Parallel calls have been made for a fresh perspective on the nature of authority and power to describe the contemporary role of NGOs in the mechanisms of political regulation¹¹. Regulation can be constructed either by coercing organisational compliance through policies of prevention and deterrence, or by exploiting existing heterogeneities in preferences or capacities and instituting mechanisms of co-operation or incentivisation¹². 'Civil' or 'civic' regulation refers to the process of NGOs setting standards for corporate behaviour through dialogue with management, and corporations voluntarily adopting these standards¹³. Such partnerships have not been considered from a regulatory perspective¹⁴. Partnerships can be defined as voluntary cross-sectoral collaborations in which organisations share risks and benefits for the purposes of fulfilling obligations or undertaking specific tasks¹⁵. Efforts have been made at the international level to define the terms and conditions upon which partnerships could arise between governments, corporations and NGOs¹⁶. These principles include common purpose, transparency, fairness, mutual respect and benefit, accountability, respect for UN modalities, balanced representation, independence and neutrality¹⁷.

⁶ Krut, R. (1997) *Globalisation and Civil Society: NGO Influence in International Decision-making*, UN Research Institute for Social Development, Discussion Paper 83, Geneva.

⁷ Alestalo, M. (1997) 'Variations in State Responsiveness-The Science System and Competing Theories of the State' *International Sociology* 12 (1): 73.

⁸ Dubbink, W. and van Vliet, M. (1996) 'Market regulation versus co-management? Two perspectives on regulating fisheries compared' *Marine Policy* 20 (6): 499.

⁹ Laville, J.L. (2000) 'The Third Sector: a subject of study for economic sociology' *Sociologie Du Travail* 42 (4): 531.

¹⁰ Grabosky, P. (1995) 'Using Non-Governmental Resources to Foster Regulatory Compliance' *Governance* 8 (4): 527

¹¹ De Senarclens, P.(1998) 'Governance and the Crisis in the International Mechanisms of Regulation' *International Social Science Journal* 50 (1): 91

¹² Mitchell, R.B. (1994) 'Heterogeneities at two Levels-States, Non-State Actors and Intentional Oil Pollution' *Journal of Theoretical Politics* 6 (4): 625.

¹³ Bendell, J. (2002) 'Civil Regulation: a new form of democratic governance for the global economy?' in Bendell, J. (Ed), *Terms for Endearment: Business, NGOs and Sustainable Development*. Greenleaf Publishing, Sheffield, 2000, 239 at 246. See also Johns G. 'Corporate Social Responsibility or Civil Society Regulation?', Hal Clough Lecture, Institute of Public Affairs, Melbourne. <<http://www.ipa.org.au/pubs/Currentissdocs/Clough02.pdf>> ; Zadek, S. and Forstater, M. 'Strengthening Civil Regulation: Building Competency-Based Alliances'. New Economics Foundation, 1998, <<http://www.neweconomics.org/gen/>>; Gray, T.S. The Changing Role of Environmental Non-Governmental Organisations in the UK in the 1990s, <<http://www.psa.ac.uk/cps/1999/gray.pdf>>

¹⁴ Cp obvious linkages with strategic management, alliance building or network theory.

¹⁵ See generally Long, F.K. and Arnold, M.B. (1995) *The Power of Partnerships*. Harcourt Brace, New York.

¹⁶ UN Secretary General, Guidelines for Cooperation between the UN and the Business Community, 17 July 2000, <<http://www.un.org/partners/business/guide.htm>>

¹⁷ UNGA Resolution 56/ 76 (2002) Towards Global Partnerships, para 2.

Conversely, non-state actors enjoy opportunities to manipulate governmental policymaking where there are a greater number of available international fora from which to choose¹⁸. The sustainable development context is particularly noteworthy for identifying the relevant criteria for voluntary initiatives between governments and ‘major groups’¹⁹. However, such arrangements are not free from difficulty. For example, in 1998 the UN Development Programme (UNDP) established the Global Sustainable Development Facility seeking ‘to find new and additional ways to promote sustainable human development in partnership with the global corporate sector’²⁰. However, sustained NGO criticism brought about the eventual demise of that proposal²¹.

These developments form the background to a case study concerning corporate-NGO partnerships for the conservation of biological diversity. At the Johannesburg World Summit for Sustainable Development during 2002, the Energy and Biodiversity Initiative (EBI) was honoured with an award by the International Chamber of Commerce and the UN Environmental Programme as one of the top four global multi-stakeholder partnerships.²² The initiative has been selected as a suitable test case for civil regulation since the mutual objective of the partners is to jointly formulate operational guidelines which integrate biodiversity considerations into commercial operations. The principal actors of the EBI are diagrammatically represented in Annex 1 (see page 15). The analysis and conclusions which follow are derived from information obtained from those partners who responded to a questionnaire or were interviewed about their experiences in the initiative, quoted in full within Annex 2 (see pages 16-26) and referenced in the main text.

2. Partnerships for the Conservation of Biodiversity: a case-study of the energy and biodiversity initiative²³

One of the regulatory objectives of government is to conserve biological diversity. The most important activity undertaken by them is managing their protected area network²⁴. The Convention on Biological Diversity (CBD) defines protected areas as geographically designated areas regulated and managed to achieve specific conservation objectives²⁵. The World Ministerial Roundtable on biological diversity concluded that the private sector should

¹⁸ Zito, A.R. (1998) ‘Comparing Environmental Policy-making in Transnational Institutions.’ *Journal of European Public Policy* 5 (4): 671.

¹⁹ See further UN Commission on Sustainable Development (CSD), (2003) CSD-11 Decision on Partnerships for the World Summit on Sustainable Development, para 22; Guiding Principles for Partnerships for Sustainable Development (‘Type 2 outcomes’) to be Elaborated by Interested Parties in the Context of the World Summit on Sustainable Development (WSSD), Explanatory Note by the Vice-Chairs Jan Kara & Diane Quarless, 7 June 2002, <http://www.iisd.ca/wssd/download%20files/annex_partnership.pdf >

²⁰ UN Development Programme (UNDP), ‘Multinational corporations join discussions with UNDP to establish global sustainable development facility’, UNDP Flash, 15 March 1999, 5.

²¹ Transnational Resource and Action Centre, (1999) *A Perilous Partnership: The United Nations Development Programme’s Flirtation with Corporate Collaboration*, San Francisco.

²² CELB, (2002) ‘Partnership of Conservation Organisations and Oil & Gas Companies Named Among Top Global Sustainable Development Partnerships at World Summit’, Press Release, Washington DC/ Johannesburg, 31 August.

²³ Responses to a questionnaire issued to each of the EBI partners and the results of interviews are located in annex two and summarised within the text.

²⁴ CBD, Preparations for the Seventh Meeting of the Conference of the Parties (COP), (2002) The Role of Protected Areas within the Convention on Biological Diversity, Executive Secretary Note, UN Doc UNEP/CBD/COP/6/INF/16, paras 31 - 47.

²⁵ Art 2, United Nations (UN) Convention on Biological Diversity (CBD) (1992) 31 ILM 818 (entry into force 29 December 1993 and 187 Contracting Parties as at 2003).

work in partnership with government to implement the objectives of that Convention²⁶. Several participants observed that command and control regulatory approaches would therefore not be appropriate²⁷. The governance paradigm espoused by the CBD includes transparent participatory approaches, decentralised management and regard to the principles of equity and subsidiarity²⁸. The UK government's interpretation is that the CBD can only be realistically delivered through partnerships between all stakeholders including the corporate sector²⁹. Other governments have consistently emphasised the need to ensure the effective involvement of all interested parties in establishing and managing protected areas³⁰. These protected areas are distinct from World Heritage sites which include natural sites constituting the habitat of threatened species and of outstanding universal value from a scientific, conservation or natural beauty perspective³¹. The World Conservation Union (IUCN) - a hybrid inter-governmental and non-governmental organisation - has been instrumental in preparing a single, definitive list of protected areas³².

Biodiversity conservation affects the energy industry by increasing operational costs and imposing more stringent environmental conditions for operations within or adjacent to areas of known biodiversity value. The UK government, for example, has taken the view that 'if industry cannot be persuaded to take biodiversity seriously, government should take action to require them to do so' including imposing a higher statutory duty if necessary³³. Where industry cannot demonstrate an ability to operate with minimal environmental impact, the consequence may be curtailed, or prohibited mineral resource access within the expanding network of protected areas. NGOs have called for protected areas to be rendered permanently immune from mineral resource extraction. Observing that strong legal instruments are required for conserving nature, the IUCN has called upon its government members to prohibit mining within a number of protected areas³⁴. NGOs have moreover criticised the private sector for not actively engaging with processes under the CBD³⁵. Indeed, business has also been encouraged by industry associations to initiate dialogue on biodiversity issues, form partnerships with conservation groups and identify appropriate links with CBD processes³⁶. NGOs argue that '[n]othing would do more to improve the climate of trust and co-operation with conservation stakeholders than a firm declaration from industry leaders that they will

²⁶ International Institute for Sustainable Development (IISD), (1998) *Earth Negotiations Bulletin*, 5 May 1998, 9 (87): 2.

²⁷ *Ibid*, *Earth Negotiations Bulletin*, 6 May 1998, 9 (88): 2.

²⁸ CBD, The Role of Protected Areas within the Convention on Biological Diversity, Executive Secretary Note, UN Doc UNEP/ CBD/ AHTEG- MCPA/ 1/ INF/ 2 (2001), paras 23 - 4.

²⁹ UK Government, (1994) *Biodiversity – the UK Action Plan*, HMSO, London.

³⁰ CBD, Synthesis of Information Contained in National Reports on the Implementation of the Convention, Revised Note by the Executive Secretary, UN Doc UNEP/ CBD/ COP/ 4/ 11/ Rev.1 (1998), para 77.

³¹ Art 2, UN Educational, Scientific and Cultural Organisation (UNESCO), Convention concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention) (1972) 1037 *UNTS* 151 (entry into force 17 December 1975). 128 Contracting Parties and some 754 sites as at July 2003.

³² IUCN WCPA & UNEP WCMC, *1997 United Nations List of Protected Areas*, Gland, Switzerland, 1998. Both organisations also jointly manage the World Database on Protected Areas (WDPA).

³³ UK House of Commons Environment, Transport and Regional Affairs Committee, *Report on UK Biodiversity*, HC 441 (1999-2000), 7 December 2000, para 102. Cf also the UK Government's Making a Corporate Commitment (MACC 2) Initiative calling for voluntary commercial commitments to biodiversity.

³⁴ IUCN Second World Conservation Congress, Recommendation 2.82 (2000) on the Protection and Conservation of Biological Diversity of Protected Areas from the Negative Impacts of Mining and Exploration, Amman, Jordan.

³⁵ International Institute for Environment and Development (IIED), (2001) *Biological Diversity: More Debate than Action?* London.

³⁶ World Business Council for Sustainable Development, (1997) *Business and Biodiversity: A Guide for the Private Sector*, Gland, 29 & 58.

adopt a policy of respecting category I - IV protected areas in future³⁷. However, firms are reluctant to commit to such a moratorium³⁸. For example, the Mining, Minerals and Sustainable Development project is only prepared to acknowledge that ‘most responsible mining companies agree, in principle, that there are some areas where mining development is inconsistent with the protection of ecological, cultural, and landscape values’³⁹.

At a workshop jointly organised by the International Council on Metals and the Environment (ICME) and the IUCN, dialogue between conservation and mining interests was identified as the prerequisite for progress in resolving these conflicting perspectives⁴⁰. NGOs are receptive to the notion of partnerships for managing protected areas⁴¹. Industry associations for their part are keen to engage stakeholders to share experiences, promote best commercial practice, demonstrate responsible corporate behaviour, enable smooth project execution in environmentally sensitive areas and deter the lobbying or litigation activity which denies resource access⁴². Although consultation with local communities and public interest groups can provide insights which are useful as inputs for increasing the knowledge base, their participation need not rise to the level of inclusion within decision-making during execution of the investment project.

The EBI was officially formed in London during 2001. It ‘seeks to be a positive force for biodiversity conservation by bringing together leading energy companies and conservation organisations to share experiences and build on intellectual capital to create value and influence key audiences’⁴³. The Centre for Environmental Leadership in Business (CELB), established by Conservation International and the Ford Motor Company, acted as broker to the EBI and was therefore responsible for building the partnership and securing its effective functioning⁴⁴. To select the participants, Conservation International approached ‘progressive players’ within the energy industry who had acknowledged the importance of biodiversity and expressed an interest in making a commitment to conservation in their commercial operations. NGOs were selected on the basis of their prior field experience with industry and their interest in improving the energy sector’s environmental performance. The depiction of five corporations and five conservation organisations is not entirely accurate: IUCN includes government members, the Norwegian government is the majority shareholder within StatOil and the Smithsonian is also a para-statal organisation. However, restricting participation to these ten entities intended to achieve a ‘balanced and limited’ representation of interests

³⁷ Phillips, A. (2001) Vice-Chair for World Heritage of the World Commission on Protected Areas, IUCN, *Mining and Protected Areas*, Mining, Minerals and Sustainable Development (MMSD) Project, IIED/ WBCSD, Report No. 62, London, 14- 5.

³⁸ IIED/ WBCSD, MMSD Project, (2001) *Report of the First Workshop on Mining and Biodiversity*, London, 11– 12 June 2001, Report No. 201, London, 2001 & *Report of the Second Workshop on Mining and Biodiversity*, London, 25- 26 October 2001, Report. 212, London.

³⁹ IIED/ WBCSD, MMSD Project, (2002) *Final Report: Breaking New Ground*, Earthscan Publications Ltd, London, 162.

⁴⁰ UNESCO, Bureau of the World Heritage Committee, (2000) Report of the Technical Workshop on ‘World Heritage and Mining’, Gland, Switzerland, 21 – 23 September 2000, UNESCO Doc WHC-2000/ CONF.203/ INF.7.

⁴¹ Eg IUCN/ WWF, (1997) *Challenges for Protected Areas in the 21st Century: Partnerships for Protection*, Gland, Switzerland.

⁴² International Petroleum Industry Environmental Conservation Association (IPIECA), (2000) *Biodiversity and the Petroleum Industry: A Guide to the Biodiversity Negotiations*, London 6.

⁴³ EBI Mission Statement, 2003.

⁴⁴ Tennyson, R. and Wilde, L. (2000) *The Guiding Hand: brokering partnerships for sustainable development*, UN department of public information. New York, Ch 2.

which was manageable, productive of realisable outputs and possessed greater prospects for success given available time and resources⁴⁵.

The shared intent of the partners in forming the EBI was to improve business-NGO relationships, identify and promote best commercial practice and formulate operational guidelines which integrate biodiversity considerations into upstream oil and gas operations (Annex 2, Qn 5, page 17). For this purpose the partners self-selected their work programmes. The EBI paired each organisation into four working groups with specific mandates as follows:

- i) Site selection (IUCN and Shell International): to identify the legal and biodiversity-related criteria that industry, government and the conservation community use to guide decision-making on undertaking activities in ecologically-sensitive environments;
- ii) The business case (Conservation International and The Nature Conservancy): articulating the rationale for integrating biodiversity conservation into oil and gas operations;
- iii) Biodiversity conservation practices (Smithsonian Institution and ChevronTexaco): injecting biodiversity conservation practices into generic commercial health, safety and environmental (HSE) management systems to produce the best technical and management practices;
- iv) Performance metrics (Fauna & Flora International and BP): to establish meaningful biodiversity indicators which measure corporate performance⁴⁶.

The EBI guidelines indicate ‘what should be expected from companies’ operations and what policy standards should be’ (Annex 2, Qn 20, page 23). In addition to using them within their internal operating structures, the energy firms will attempt to influence industry opinion with the EBI products, and NGOs expect to employ them in future negotiations with firms (Annex 2, Qn 22, page 24). The EBI in effect extracted environmental information from NGOs to promote better informed commercial decision-making⁴⁷. The EBI products build upon existing management systems, update these templates with biodiversity considerations and enable greater regulatory compliance⁴⁸. However, by avoiding overly prescriptive requirements the EBI is encouraging firms to pursue different trajectories. For example, the EBI partners anticipate that environmental management systems will be further refined by individual firms⁴⁹. Similarly, the EBI only proposes a ‘menu’ of sound biodiversity conservation practices⁵⁰. Nonetheless, the EBI is ‘possibly a model for joint collaboration’ (Annex 2, Qn 25, page 26).

⁴⁵ EBI, (2001) Frequently Asked Questions, Washington DC.

⁴⁶ EBI, (2001) terms of reference for the Energy and Biodiversity Initiative Working Groups, Washington DC.

⁴⁷ See eg EBI, (2003) Online Biodiversity Information Sources, Washington DC.

⁴⁸ International Organisation for Standardisation (ISO), (1994) *Environmental Management Systems - Specification with Guidance for Use (ISO 14001)*, Geneva, 1996; Association of International Oil and Gas Producers Association, (formerly the E&P Forum), *Guidelines for the Development and Application of Health, Safety and Environmental Management Systems*.

⁴⁹ EBI, (2003) Integrating Biodiversity into Environmental Management Systems, Washington DC.

⁵⁰ EBI, (2003) Good Practice in the Prevention and Mitigation of Primary and Secondary Biodiversity Impacts, Washington DC.

3. The Prospects for Corporate-NGO Partnerships as a Regulatory Device

Business-NGO partnerships are characterised by flexible experimentalism - different organisational models and pilot programmes - which are conducted within closed self-contained environments. This is because no single partnership model is appropriate for all actors: firms and NGOs are not homogenous and their organisational temperament differs. Self-assessments should first be conducted to determine whether initiating a partnership is appropriate for the character of an organisation, its culture, values, perception of risk, level of development and importance of the topic to its agenda (Annex 2, Qn 8, page 18). Although similar evaluation criteria for firms are yet to be identified, the selection criteria for NGOs include their credibility, prior track record, knowledge, facilitation skills, particular vision, acceptability to political elites and degree of professionalism⁵¹. Establishing trust between the individuals and a credible arrangement are the principal objectives. Each of the EBI partners considered that the Initiative was effective in building trust and improving transparency (Annex 2, Qn 14, page 21). The former was achieved through time, isolation and continuity of representation (Annex 2, Qn 10, page 19). Each partner has also increased their biodiversity-related knowledge and acquired a mutual understanding of the other's organisational nature and operational capacity (Annex 2, Qn 22, page 24).

Partner participation is also dependent upon identifying and recognising both partner-specific and mutual interests⁵². With respect to the latter, firms and NGOs may direct the products of their partnership to one of the more prominent non-parties: governments. From the corporate perspective one specific motivation for entering into partnerships with NGOs is to cost-effectively improve regulatory compliance. Partnerships with environmental NGOs enable corporations to obtain information which may be used to further refine existing environmental risk management systems and reduce prospective environmental liability under national law. Since environmental impact assessments may require independent third party auditing or be derived from credible scientific methodologies, partnerships can increase the accuracy of environmental impact prediction and eliminate resort to obsolete information. Partnerships could also form the basis for regulatory 'credits' under national law which ease the applicable requirements with respect to project construction, customs clearance or taxation, thereby enabling a cheaper and more speedy construction of the necessary operational infrastructure⁵³.

NGOs for their part can increase the impact of their regulatory influence over government by harnessing the commercial influence. The IUCN, for example, opted for more proactive engagement with the corporate sector in recognition of the fact that firms enjoy increasing influence over traditional governmental issues⁵⁴. Improving their appreciation of the commercial environment enables NGOs to undertake more informed and effective lobbying of government and more informed access to regulatory debates⁵⁵. NGOs may thus become more professional in their activity, for example, by constructing an external affairs division (Annex 2, Qn 24, page 25). That said, NGOs bear greater risks by engaging in partnership than firms. NGOs also need to manage their reputations (Annex 2, Qn 22, page 24). They can

⁵¹ BPD, (2002) *Putting Partnering to Work, Tri-Sector Partnership Results and Recommendations*, London, 22.

⁵² Business Partners for Development (BPD), (2002) *Endearing Myths, Enduring Truths: Enabling Partnerships Between Business, Civil Society and the Public Sector*, The Knowledge Resource Group, London, 7.

⁵³ BPD, (2002) *Putting Partnering to Work: Results and Recommendations for Businesses*, London.

⁵⁴ IUCN, IUCN 2001, (2002) *The IUCN Programme: An Assessment of Progress 2001*, Gland, 38.

⁵⁵ BPD, (2002) *Putting Partnering to Work: Results and Recommendations for Non-Governmental Organisations*, London 4.

expect to receive peer or member criticism for ‘engaging with the enemy’ just as firms will be accused of going beyond the profit-making mandate and succumbing to non-commercial interests to the detriment of shareholders and creditors. Partnerships have the potential to mutate the NGO role from that of civil society activist to technical consultant. The traditional donor-recipient model of corporate philanthropy which hitherto characterised business-NGO relationships is giving ground to a mutual recognition of the profitability of jointly developing voluntary guidelines, environmental controls and best management practice⁵⁶. Collaborative arrangements have thus been turned on their head such that NGOs assist business on internal operational issues and provide environmental advice or services⁵⁷. NGOs thereby lend whatever scientific legitimacy and environmental credibility they may possess to the commercial operations of firms, possibly losing touch with the constituents they purport to represent and increasing tensions with other groups such as trade unions or indigenous communities. Furthermore, partnerships temper the pattern of lobbying by the conservation sector and governments being pressured into formulating legislation. Since the initial corporate incentive for entering a partnership may be negative – in other words, undesirable corporate behaviour or prompted by civil society activism, collective bargaining or government regulation – to further weaken NGO drivers may be undesirable.

Not unexpectedly, ongoing management of the partnership will prove to be problematic. Since they are a long term option, successful partnerships must be durable, quality-orientated and productive of a measurable output targeted towards a specific audience. Difficulties encountered under the EBI include under-estimating the level of financial resources, a lack of time and impasse on key issues (Annex 2, Qn 6, page 17). Attempts were made to resolve these obstacles through additional financial contributions from firms to cover NGO expenses, extending timetables and promoting discussion or mutual agreement (Annex 2, Qn 10, page 19). Partnerships also have a limited life span whose existence is dependant upon its members. Although the loss of Enron changed the ‘shape and form’ of the EBI products, the overall objectives of the Initiative remained ‘constant’ (Annex 2, Qn 23, page 25). Other potential sources of disruption include a loss of impetus or direction and rotating personnel. As for the personnel involved, senior corporate officers with a specific mandate for environmental responsibility may be inappropriately paired with specialist scientists or NGO representatives with more wide-ranging responsibilities. Individuals must be aware of all the activities undertaken by their parent organisation, enjoy authority to manage divergent opinions within it and be receptive to the interests of their constituents.

Turning to an assessment of the efficacy of partnerships as a prospective model for civil regulation, the EBI illustrated that firms and NGOs were interpreting and operationalising international legal standards into core business operations. International conventions only bind states and typically only apply to firms once they have been duly incorporated under national law. Corporate compliance with the expectations of NGOs accordingly amounts to voluntarism ‘beyond’ strict legal requirements. On the other hand, since environmental considerations are integrated into commercial operations because firms elect to do so, partnerships may equally be self-regulatory with the additional virtue of NGO legitimacy. This suggests that corporate-NGO partnerships merely confer process rather than substantive legitimacy upon commercial decision-making. In this respect, the EBI partners predict that NGO-corporate relationships are more likely to improve as a result of the Initiative (Annex 2,

⁵⁶ Rose, M. undated, Global Business Partnerships, Fauna & Flora International, Presentation, held on file with author.

⁵⁷ Murphy, D. and Bendell, (1999) *J. Partners in Time? Business, NGOs and Sustainable Development*, UN Research Institute for Social Development, Discussion Paper 109, Geneva.

Qn 21, page 23). However, it is less clear that commercial practices will change: the EBI products reflect the commercial practices already utilised by the energy partners and are not aspirational in nature. It may be that NGOs are unable to influence corporate behaviour. Partnership arrangements with firms headquartered in northern consumer markets may not enable NGOs to strategically intervene at the right point within disconnected supply chains or southern production points. Partnerships may offer the illusion of profound change but add little other than formality to existing relationships. It is therefore imperative to have ‘public milestones to push beyond dialogue to delivery’ (Annex 2, Qn 10, page 19).

Informal governance models which may ultimately solidify into effective regulatory systems should ideally employ democratic and participatory decision-making procedures. Several partners were satisfied with the degree of mutual accountability given the reputations at stake, the responsibilities owed to constituents and the fact that the final EBI products were universally approved. However, others were concerned that participants were unrepresentative and could not be penalised from taking self-interested action outside the bounds of the partnership (Annex 2, Qn 7, page 17). The democratic deficit common to both firms and NGOs is not resolved through partnership. Partnerships ostensibly obviate the governmental task of filtering and weighing competing public interest considerations, particularly those which are not reflected by the partners. To the extent that politico-legal agendas are internalised, firms and NGOs marginalise the interests of trade unions, consumer groups, indigenous communities and others. Partnerships are not comparable to democratic decision-making fora accountable to a national electorate. Since corporate-NGO partnerships are not subject to the comparable public requirements of information disclosure or freedom of association, they could simply amount to negotiation behind closed doors. Adequate and timely information is necessary to enable effective tracking and the level of detail may be insufficient to meaningfully assess corporate performance. On the whole the EBI partners considered there to be equality in terms of participating in discussions, formulating the final EBI products and decision-making (Annex 2, Qn 9, page 18). Decision-making was transparent (‘eventually, although some sense of agendas being tipped’), information disclosure adequate, information exchange relatively free and decision-making reasonably fair (Annex 2, Qn 12, page 20).

Permitting NGOs to undertake regulatory functions must be preconditioned by appropriate measures which ensure their proper accountability⁵⁸. NGOs are assumed to be socially legitimate actors and representative of the public interest. However, northern-based organisationally-bureaucratic NGOs need not be representative of, or receptive to, the interests of their grassroots supporters. Partnerships may be directed at tempering the concerns of northern consumers and developed country governments (‘greenwashing’) rather than integrating environmental considerations into overseas commercial operations. Furthermore, partnerships provide access to corporate funds but at the expense of independence. Hence, conflicts of agenda could arise. Since firms are free to financially contribute to NGO budgets, the competition between NGOs for limited funding could fragment ‘organised’ civil society and forestall or dilute the public opinion which inspires governments into regulatory activity. For example, potential conflicts may arise between the protected area objectives of conservation groups and the existence, within and around their borders, of indigenous communities. To the extent that NGOs acquire a vested interest in the outcome, they risk losing their objectivity and impartiality for the duration of the partnership and thereafter.

⁵⁸ Keane, J, (2001) ‘Who’s in charge here? The need for a rule of law to regulate the emerging global civil society’ *The Times Literary Supplement* 13: 5120.

Conflicts of interest within the EBI were simply ‘moved off the agenda’ or resolved through dialogue (Annex 2, Qn 8, page 18).

For civil regulation to be viable as a regulatory device NGOs must enjoy authority over corporations. Constructive engagement which positions NGOs as surrogate regulators first requires empowering them⁵⁹. The NGO objective is to hold the firm directly accountable to it within the bounds of the partnership. Partnerships effectively close the space between regulator and regulated. However, the regulatory responsibilities of NGOs may be incompatible with the notion of partner equality. Whereas partnerships are constructed upon the concept of bargaining power parity, inequality between the partners renders such a voluntary arrangement unstable and ultimately unsustainable. Moreover, several partnership characteristics - finite existence, freedom of entry and exit, acquiring vested interests and confidentiality – pose significant constraints on the ability of NGOs to exert control over firms. Partnerships are typically designed around memorandums of understanding which establish the rules of engagement and define the conditions upon which dialogue occurs⁶⁰. From the outset partners select the subsequent structure, operation and governance of the arrangement in terms of shared and individual visions, joint work plans, decision-making principles, funding arrangements, grievance procedures, exit strategies, progress reporting channels and performance measurement systems⁶¹. However, since partnerships are frequently business-initiated and led, NGOs may enter into the arrangement on terms dictated by companies. Comparable with institutional capture, partnerships co-opt the silence of NGOs by limiting scope for criticism and encouraging self-censorship. NGOs are willing to subscribe to processes which in effect implement the international marketing strategies of firms.⁶² Since reputable NGOs have been observed to support false corporate claims, the independence and autonomy of NGOs as monitoring agents need not be assumed⁶³. It would therefore be desirable to increase the auditing potential of non-partnered NGOs and verify the verifiers.

For the purposes of ensuring subsequent compliance, the choice of actor with oversight responsibility must possess the relevant competence and legitimacy to offer a satisfactory degree of credibility to the overall process. NGOs are also assumed to possess the requisite organisational competence and technical expertise for effective regulation. Since corporations may prefer to work with equally-sized NGOs with pre-established credibility, firms have an opportunity to ‘divide and conquer’ NGOs and compromise their integrity as potential regulators. Attention must therefore be devoted towards building the capacity of civil society⁶⁴. If private actors are to continue to participate in the formulation and enforcement of regulation, the subsidisation and taxation measures of economic policy, for example, have to be more supportive of their activity and attributes⁶⁵. Hence, the conservation sector needs to assess whether it can meet the technical demands of those firms which decide to undertake

⁵⁹ Gunningham, N., Grabosky, P. and Sinclair, D. (1998) *Smart Regulation: designing environmental policy*. Oxford University Press, Oxford, 251 and 411.

⁶⁰ Jewell, J. (2001) Operations Director, British American Tobacco, First Progress Report, 14 June 2001, 2.

⁶¹ BPD, (2002) *Putting Partnering to Work, Tri-Sector Partnership Results and Recommendations*, London, 23 and 24.

⁶² Young, S. (2002) ‘What do Researchers Know About the Global Business Environment?’ *International Marketing Review* 18 (2): 120.

⁶³ Romeijn, P. (1999) *Green Gold: On Variations of Truth in Plantation Forestry*, Treemail Publishers, Heelsum.

⁶⁴ Utting, P. (2000) *Business Responsibility for Sustainable Development*. UN Research Institute for Social Development, Occasional Paper 2, Geneva.

⁶⁵ Heyes, A.G. (1997) ‘Environmental regulation by private contest’ *Journal of Public Economic* 63 (3): 407.

comprehensive biodiversity strategy processes. Since partnerships are time and resource intensive NGOs may not be in a position to assume the regulatory role. The prominent NGOs may quickly become overstretched whereas too many quasi-regulators will be counter-productive and inefficient.

Civil regulation also contemplates different mechanisms of enforcement for the purposes of ensuring compliance. NGOs frequently depend upon public perception and their media profile for their effectiveness in influencing corporate behaviour. Hence they traditionally employ consumer boycotts, environmental protest campaigns and litigation to capture public opinion, threaten the corporate reputation and influence commercial revenue⁶⁶. Resort to these adversarial or combative techniques is always a possibility but partnerships render it more difficult for NGOs to swiftly disengage. Partnerships in effect deter such name-and-shame approaches. Since partnerships afford soft benefits (namely reputational enhancement derived from a voluntary commitment) and produce soft legal instruments (such as guidelines and codes of conduct), it is not surprising that the tools of enforcement are equally soft: continual dialogue in an effort to produce compromise. The compulsion to comply may be additionally pre-determined by the initial partnership agreement. Although the enforcement of business-NGO agreements are not limited by considerations of jurisdiction, nor hampered by governmental incapacity or corruption, nationally-oriented NGOs and consumer politics also have a limited geographical reach. Consumer perceptions may become confused when NGOs seek to modify their corporate strategies.

Equally critical therefore is corporate self-enforcement. For example, the EBI partners have variously expressed a voluntary commitment to integrate the EBI products into internal operations⁶⁷. Shell for example expects to implement 'all of the EBI conclusions in one-way or another'. Whereas some products are 'already in place', it recognises that there is 'more work to do' on how the EBI products 'best fit' into existing management systems. StatOil for its part intends to adopt the EBI products as 'internal guidance documents' which strengthen its biodiversity orientation. Following an internal evaluation, ChevronTexaco intends to express its biodiversity intentions as one feature of its external corporate responsibility report. The EBI conservation organisations are collectively 'committed to continuing the EBI spirit of collaboration' by working with companies, industry associations and the broader development community to test and secure feedback on the EBI products. However, the Initiative anticipates each company adapting existing procedures as they see fit. Since they are commencing from 'different' points in their internal biodiversity policy and have 'different needs and priorities', 'none is necessarily likely to fully implement' all the EBI recommendations since 'they cannot and should not be expected to resolve the challenges... on their own'⁶⁸. An additional disclaimer provides that the 'views expressed herein do not necessarily represent the views of every EBI member'. Although the intention was for all partners to concur with the EBI's final recommendations, 'this does not guarantee universal agreement on all aspects'.

More importantly, there is no independent external verification mechanism in place for phase two of the EBI. The process of field-testing the products by industry does not formally envisage NGO inclusion. The energy firms are free to decide whether to extend collaboration among existing partners or engage in other bilateral relationships. Overall, NGOs and firms have established, through dialogue, standards of expected corporate behaviour but firms are

⁶⁶ Cf Shell's decommissioning of the Brent Spar and Greenpeace's reaction thereto in 1995.

⁶⁷ EBI, Participant Commitment Statements, 25 July 2003.

⁶⁸ EBI, Frequently Asked Questions, Washington DC, 25 July 2003.

incrementally and independently implementing them within a self-assessment process and NGOs are left to disseminate the best commercial practice of the leading energy firms more widely through industry. None of the EBI partners is unconditionally satisfied with these monitoring arrangements, probably because the corporate commitments will be implemented in light of unique organisational structures and philosophies in ways ‘most appropriate’ for firms (Annex 2, Qn 19, page 22). Although the compliance pull of voluntary market commitments cannot be discounted, the extent to which the agreed partnership results have effected a change in corporate behaviour is yet to be determined. Such non-binding arrangements for implementation may ultimately undo any hard-won consensus.

Since governments are also the orthodox source of regulatory authority, one resulting question is their consequential role given their absence by definition from corporate-NGO partnerships. The EBI guidelines are not ‘law’ per se nor do they claim such a status. The EBI case study vindicates at the global level the hypothesis that public interest participation in co-operative arrangements with firms improves the efficiency of government regulation by reducing the likelihood of capture or corruption⁶⁹. However, formal sources of regulatory control could be weakened where partnerships are observed to deliver quantifiable changes to commercial behaviour. To that extent, partnerships encourage de-regulation. However, private arrangements are unlikely to be effective as stand-alone instruments. Governments will still need to intervene to facilitate their effectiveness (by providing financial support, legal standing and access to information through the public sphere) or to provide the necessary backdrop of formal regulation. Resort to government sanctions are not entirely displaced by corporate-NGO partnerships. In other words, NGO regulatory activity at best complements rather than substitutes for state intervention. Civil regulation can only ever be additional to national and international regulatory standards established by government (strict legal compliance) as well as commercial norms and practices (self-regulation).

Conclusions

The adversarial strategies of NGOs can be influential drivers to corporate behaviour. However, collaborative arrangements have the virtues of instituting dialogue between opposing interests and building trust on controversial topics. Consistent with participatory regulation, corporate-NGO partnerships enable more informed participation within public regulatory processes. In addition to the obstacles inherent in managing such an arrangement, the case study illustrated that partnerships as a credible regulatory device are dependent upon the legitimacy of the arrangement, the accountability of its partners and the nature of the decision-making process. Since NGOs must possess the necessary attributes to be effective and authoritative regulators, a degree of capacity-building and governmental support may be necessary. On the whole, NGOs assume a relatively higher level of reputational risk whereas firms derive a greater proportion of the reputational benefits. In the absence of an external independent verification mechanism during the implementation stage, enforcement of the agreed outcome will be largely reliant upon self-regulation. Since these lessons may be specific to the particular case study, corporate-NGO partnerships as a prospective regulatory device are clearly deserving of further scrutiny.

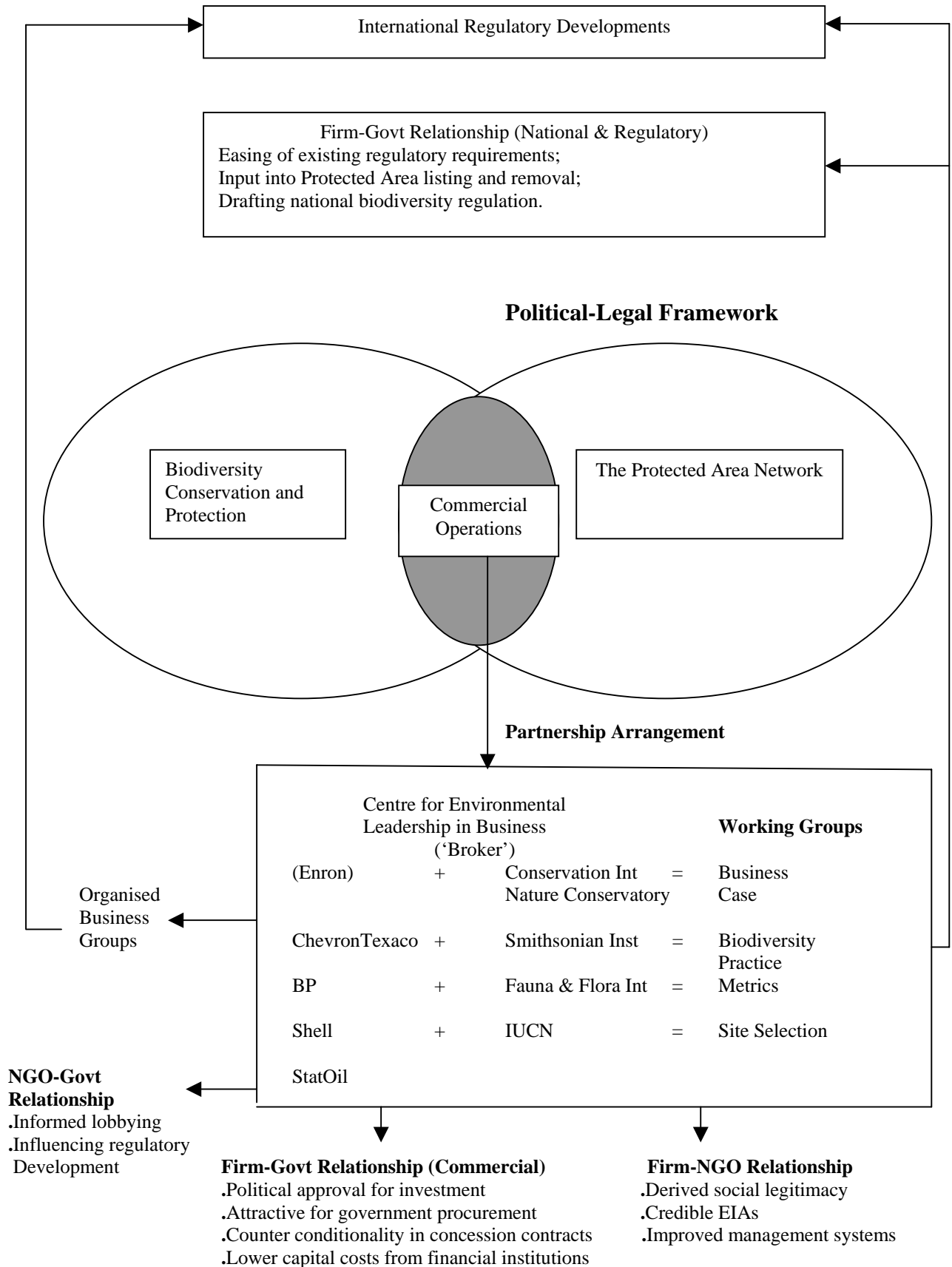
⁶⁹ Ayres, I. and Braithwaite, J. (1992) *Responsive Regulation: Transcending the Deregulation Debate*, Oxford University Press, New York, 86, 100.

Table of Acronyms

AHTEG-PA	Ad Hoc Technical Experts Group on Protected Areas
BAT	British American Tobacco
BPD	Business Partners for Development
CBD	Convention on Biological Diversity
CELB	Center for Environmental Leadership in Business (CI)
CI	Conservation International
COP	Conference of the Parties
CSD	Commission on Sustainable Development
EBI	Energy and Biodiversity Initiative
EC	European Community
EIA	Environmental Impact Assessment
EMAS	Environmental Management and Audit Scheme
EMS	Environmental Management Systems
EU	European Union
HSE	Health, Safety and the Environment
ICC	International Chamber of Commerce
ICCA	International Chemical Council Association
ICME	International Council on Metals and the Environment
ICMM	International Council of Mining and Metals
ICSID	International Centre for the Settlement of Investment Disputes
IFI	International Financial Institution
IIED	International Institute for Environment and Development
IISD	International Institute for Sustainable Development
ImapS	Interactive Map Service
IPCC	Intergovernmental Panel on Climate Change
IPIECA	International Petroleum Industry Environmental Conservation Association
ISO	International Organisation for Standardisation
IUCN	World Conservation Union
MAB	Man and the Biosphere programme (UNESCO)
MACC	Making a Corporate Commitment Initiative (UK)
MMSD	Mining, Minerals and Sustainable Development Project
NBSAP	National Biodiversity Strategy and Action Plan
NGO	Non-Governmental Organisation
OGP	International Association of Oil and Gas Producers (formerly the E & P Forum)
PA	Protected Area
SBSTTA	Subsidiary Body for Scientific, Technical and Technological Advice
SI/MAB	Smithsonian Institute Monitoring and Assessment of Biodiversity Programme
TNC	The Nature Conservancy
UK	United Kingdom
UN	United Nations
UNDP	UN Development Programme
UNEP	UN Environmental Programme
UNESCO	UN Educational, Scientific and Cultural Organisation
UNGA	UN General Assembly

US	United States
WBCSD	World Business Council for Sustainable Development
WCC	World Conservation Congress (IUCN)
WCMC	World Conservation Monitoring Center (UNEP)
WCPA	World Commission on Protected Areas (IUCN)
WDPA	World Database of Protected Areas
WEHAB	Water and Sanitation, Energy, Health, Agriculture, Biodiversity and Cross-Sectoral Issues
WHC	World Heritage Committee (UNESCO)
WRI	World Resources Institute
WSSD	World Summit on Sustainable Development
WWF	World Wide Fund for Nature

Annex 1
Diagram of Principal Issues and Actors



Annex 2
EBI Questionnaire and Results

Interpretative Note

N = total number of responses.

7 individuals responded to Questions 1 – 21 and an additional 2 responded to Questions 22 – 25, giving a maximum of 9 responses from 6 of the 9 organisational partners to the EBI. These are ChevronTexaco (1 response), Conservation International (2), Flora & Fauna International (1), IUCN (2), Shell (1) and The Nature Conservancy (2).

Responses and additional comments are not to be attributed to any particular organisation.

1. How important were existing regulatory requirements/expectations as an original impetus to you joining the EBI partnership?

- 0 The most important consideration.
- 2 As important as other considerations.
- 5 Not important.

N = 7

2. How important were existing regulatory requirements/expectations in formulating the EBI products?

- 0 The most important points of reference.
- 5 As important as other considerations.
- 2 Not important.

N = 7

3. Which regulatory requirements/expectations were important?

- 5 UNESCO World Heritage Listing.
- 6 Convention on Biological Diversity.
- 5 RAMSAR protected wetlands.
- 0 Johannesburg type 2 partnership initiatives.
- 4 Environmental Impact Assessment regulation – national and/or EC.
- 2 EC Habitats Directive and national implementation.
- 0 1998 Aarhus Convention on Access to Information and Public Participation in Decision-making.
- 0 1991 Espoo Convention on Environmental Impact Assessment in a Trans-boundary Context.
- 4 IUCN 2000 Amman Resolution on protected areas.
- 2 ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.
- 1 Prospective environmental liability under national law.
- 1 Other: (not specified).

Additional Comments:

- These are not all regulatory but I'm circling the influencing processes.

N = 7

<p>4. 5 5 7 4 4 0</p> <p>N = 7</p>	<p>4. What core competencies (skills and knowledge) do you consider you contributed to the EBI?</p> <p>Biodiversity science. Social sciences. Environmental management expertise. Best commercial practice in oil/gas. Knowledge of government (national, intergovernmental) Other:</p> <p>Additional Comments:</p> <ul style="list-style-type: none"> - Management systems/processes (eg assurance processes/incentive systems). - Institutionally, biodiversity science. Also, project management and facilitation skills.
<p>6 1 6 2 3</p> <p>N = 7</p>	<p>5. What was your original intent for joining the EBI partnership and what did you hope to get from your investment in the process?</p> <p>Improved [expanded] relationships with firms/NGOs. Better understanding of biodiversity issues. Formulate operational guidelines. Update environmental management systems. Other:</p> <ul style="list-style-type: none"> - open dialogue on biodiversity issues - establish industry-wide norms/ standards for managing biodiversity. Pilot/ demonstrate guidelines in the field ie partnerships in the field. - better understanding of links between biodiversity issues and oil/ gas sector operations.
<p>2 5 0</p> <p>N = 7</p>	<p>6. Were your objectives realised?</p> <p>Fully. Partly. Not at all.</p>
<p>3 0 2</p>	<p>7. Do you consider there to have been proper accountability of each of the partners to the group?</p> <p>Yes, because</p> <ul style="list-style-type: none"> - we all had to agree final products. - each of the components in the EBI were assessed and debated before a final product was rendered. - each organisation is very well-known in its own field and is in itself accountable either to its members or shareholders. <p>No</p> <p>Yes and No, because</p> <ul style="list-style-type: none"> - I am concerned both the companies and NGOs were represented from their 'corporate centres' and therefore didn't bring enough on-the-ground reality/ experience into the process. - the process was mostly transparent, no because some companies have been

developing biodiversity related products without being open with the rest of the group, and have been promoting their contribution to biodiversity, including the EBI, without mentioning other EBI members. This is a pity as more could have been produced and greater trust could have been built.

Additional Comments:

- not sure what is meant here.
- we do not view accountability of partners as particularly relevant. Each partner contributed to the effort.

N = 7

8. *Were there any conflicts of interest or agenda?*

4 Yes; if so, how were they identified and resolved?

- mostly simply moved off the agenda - climate change, transport (oil spills).
- there were clearly diverging views both within and between the NGO/ energy sectors about the significance of various issues – protected areas, secondary impacts. Probably the largest philosophical difference was that for the energy companies, biodiversity is one of a suite of risk management issues that need attention for any new development or ongoing operation, while for the NGOs at the table, it is their central issue and primary area of focus. This fact gives rise to a natural difference in perspective on the significance of the biodiversity issue as it relates to energy operations. The substantive issues, especially the question of operating in or near protected areas was resolved through much discussion, review of sequential draft documents and negotiation about what the various parties could live with
- in open dialogue and recognition of positions. Minds were opened on both sides.
- when dealing with the subject of biodiversity (conservation, science, politics) and the extractive industry, of course, there are going to some areas which cause increased tension/ conflict. The single biggest and most crucial area for us to get right and to get consensus on as a group was that of site selection. All of the NGOs as part of EBI are members of IUCN, and IUCN had in 2000 passed the Amman Recommendation – this was forefront of people's discussion – wanting to see at first, the establishment of industry no-go areas – the site selection decision-making framework was a breakthrough piece of work as it provided a rationale and logical approach to dealing with this contentious issue – and it was developed in such a way as to obtain agreement from all 9 organisations. The conflict was resolved through dialogue and debate.

3 No

N = 7.

9. *Was there equality between the partners in terms of participating in discussion, formulating the EBI products and decision-making?*

6 Yes

Additional comment:

- although there were some more vocal organisations (individuals than others)

1 No

N = 7

10. What were some of the difficulties encountered during the course of the partnership and how were they overcome?

- 5 Sources of funding
- recognition of the NGO time taken to review and undertake work was hard to get covered financially.
 - overcome by [X] dipping into [its own funds] and companies providing extra funding; energy companies kicked in a 'surcharge' to compensate for loss of Enron.
 - the initiative was somewhat under-budgeted; additional contributions.
 - some of the NGOs wanted to be paid for their time but this was soon resolved by giving each NGO a stipend.
- 5 Trust
- discussion
 - in the early stages. Overcome at one workshop where the group was locked away without communications in Norway. Here we were open about the challenges to work together, but also committed to overcoming these.
 - initial barrier that broke down as people got to know one another. First two meetings were largely posturing with little accomplished.
 - established during the process.
 - a lot of talking/ dialogue - in person.
- 6 Impasse on key issues
- discussion.
 - commitment to not go into protected areas.
 - agreed not to engage on the issue of the relationship of biodiversity to climate change. Stated reason why WWF chose not to join the EBI.
 - again, dialogue/ long drafting and comments period.
 - see above on issue related to site selection and no-go areas.
- 4 Maintaining continuity/ progress/ commitment
- plenty of hard work from [X] management team in ringing, emailing, motivating etc.
 - lack of defined project manager at outset needed to be corrected because of lack of insurance that commitments were indeed commitments and lack of follow through.
 - needed consistency in representation to build the trust.
- 2 Personalities
- part of any human process?
 - I wouldn't call this a difficulty but more of an interesting issue – something that had to be handled given that the team was about 20 in total.
- 3 Information
- could have used more information and examples of where mitigation of secondary impacts was/ was not successful.
 - internal list serves/ website; conference calls regularly.
- 6 Time
- hire consultants.
 - extended deadlines and timetable.
 - difficulties for all partners devoting time necessary to plan and produce EBI products in addition to other primary work obligations. Delays in producing products and quality of writing necessitated hiring consultants to do substantial amounts of writing.
 - under budgeted (for overall project) – key to have public milestones to push

1	<p>beyond dialogue to delivery.</p> <p>Other:</p> <ul style="list-style-type: none"> - equitable sharing of workload. There were some organisations working a lot harder than others – this issue was never really discussed but as an underlying issue for some. <p>N = 7</p>																				
<p>11. How were resource needs (financial, human) identified and met?</p>																					
0	Self-identified and self-satisfied.																				
2	Self-identified and mutually satisfied.																				
2	Mutually identified and mutually satisfied.																				
1	Mutually identified and self-satisfied.																				
	<p>Additional Comment:</p> <ul style="list-style-type: none"> - ? For overall EBI ? - not sure of the meaning of this question. - not sure any of the above choices apply. Companies and NGOs each committed two persons to the effort who attended most meetings. Companies each committed about \$80m to support staff-work and NGO travel. <p>N = 7</p>																				
<p>12. On the whole, were you satisfied with the following decision-making aspects of the partnership?</p>																					
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Transparency</td> <td style="width: 20%;">7 Yes</td> <td style="width: 20%;">0</td> <td style="width: 20%;">No</td> </tr> <tr> <td>Disclosure of information</td> <td>6 Yes</td> <td>1</td> <td>No</td> </tr> <tr> <td>Freedom to acquire information</td> <td>6 Yes</td> <td>1</td> <td>No</td> </tr> <tr> <td>Frankness of exchange</td> <td>6 Yes</td> <td>1</td> <td>No</td> </tr> <tr> <td>Voting/ Decision taking</td> <td>7 Yes</td> <td>0</td> <td>No</td> </tr> </table> <p>Additional Comment:</p> <ul style="list-style-type: none"> - eventually, although some sense of agendas being tipped. <p>N = 7</p>	Transparency	7 Yes	0	No	Disclosure of information	6 Yes	1	No	Freedom to acquire information	6 Yes	1	No	Frankness of exchange	6 Yes	1	No	Voting/ Decision taking	7 Yes	0	No
Transparency	7 Yes	0	No																		
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Freedom to acquire information	6 Yes	1	No																		
Frankness of exchange	6 Yes	1	No																		
Voting/ Decision taking	7 Yes	0	No																		
<p>13. Was the absence of any identifiable party listed below an obstacle to progress and to the quality of the final products? If so, how did the group attempt to overcome this shortcoming?</p>																					
3	<p>Government</p> <ul style="list-style-type: none"> - not overcome. Objective of phase 2. - was missing – some exchange with government leaders, not enough. - through trailing of EBI products during a second phase. 																				
1	<p>Consumers</p> <ul style="list-style-type: none"> - in terms of end users of guidelines ? – consulted on drafts. 																				
0	Trade unions																				
2	<p>Indigenous communities.</p> <ul style="list-style-type: none"> - not overcome. Objective of phase 2. - through some local stakeholder consultation efforts during a trial second phase period. 																				
3	Local NGOs																				

	<ul style="list-style-type: none"> - not overcome. Objective of phase 2. - NGO partners could have been more proactive in involving NGO partners. - see above. <p>0 Financial institutions</p> <p>0 Secretariat of an international convention.</p> <p>0 Academic.</p> <p>1 Public opinion.</p> <p>0 Other.</p> <p>Additional Comments:</p> <ul style="list-style-type: none"> - not really. - any of these interests could have added valuable perspective. The most lacking was local NGO representation, people who could effectively represent government views and practices, and a national oil company, which doesn't appear on the above list. We just decided to forge on without additional members after some initial effort to screen for interest/ availability among additional groups. There was a general feeling, especially once trust started to build, that more members would have hindered progress in generating products. <p>N = 5</p>
14.	<p><i>Was the partnership effective in building trust?</i></p> <p>6 Yes.</p> <p>0 No.</p> <p>1 Mixed success.</p> <p>N = 7</p>
15.	<p><i>Were you satisfied with the level of commitment and contribution from the partners over the 2½ year period of the EBI?</i></p> <p>5 Yes.</p> <p>2 No.</p> <p>Additional Comment:</p> <ul style="list-style-type: none"> - I feel that some organisations/individuals worked a lot harder and put in much more effort than others. <p>N = 7</p>
16.	<p><i>In what ways did you benefit from the partnership?</i></p> <p>7 Building constructive relationships for the future.</p> <p>4 Further developing environmental management systems.</p> <p>2 Enabling the completion of environmental impact statements.</p> <p>Additional Comment:</p> <ul style="list-style-type: none"> - enabling the completion of [biodiversity into] environmental impact statements. <p>6 Information exchange.</p> <p>7 Understanding the motivations/ behaviour of other organisations.</p> <p>1 Capacity building.</p> <p>3 Developing expertise.</p> <p>3 Reputational enhancement.</p> <p>2 Other:</p>

- participation helped keep the discussion focused on areas of interest to our company without letting it spin out of control. We made a judgment that it would be better to participate in order to help shape the discussion and products that we expect would set standards for industry behavior and performance.
- developing generalisable standards agreed by NGOs and companies.

N = 7

17. Were the benefits of participating shared equally among the partners?

3 Yes.

2 No,

Additional Comment:

- don't know – can't speak for them.
- unclear that I know their perspectives.

N = 6

18. In what ways were you disappointed with the partnership?

3 Unresolved issues.

2 Lack of time.

2 Lack of resources.

0 Unenviable compromises.

1 One-way information flows.

0 Curtailed freedom of action.

1 Other:

- concern that the products haven't pushed the boundaries around the issues as far as they might have been. Leads to some level of concern about their credibility among NGOs who weren't at the table.

N = 7

19. Are you satisfied with the monitoring arrangements established for phase two (ie testing of the EBI products in the field by firms) in terms of 'enforcing' what was agreed during the partnership and independently verifying compliance?

0 Yes.

3 Appropriately balanced.

3 No.

Additional Comments:

- the use of the words "enforce" and "compliance" misrepresents the intent of phase two testing. Anything that gets done by individual companies in the field will be voluntary with each company having different needs and priorities as well as organisational structures and philosophies (central control/ decentralised authority and decision-making). The word "enforce" implies a legal compliance obligation, which doesn't exist. Each of the organisations has made voluntary commitments to undertake testing and use of the EBI products in ways most appropriate for them.

N = 7

20. Do you envisage using the EBI products in your subsequent relationships with any of the following parties and if so, how?

- 5 Government
 - providing them with info for best practice.
 - products can offer guidelines on what should be expected from companies' operations and what policy standards should be.
 - part of permit negotiations.
 - 0 Consumers.
 - 0 Trade unions.
 - 4 Indigenous communities.
 - or local communities.
 - a starting point for further dialogue.
 - 6 Local NGOs
 - consult them on relevance.
 - EBI products indicate what standards and practices companies should be adhering to.
 - part of permit negotiations and community engagement commitments.
 - 5 Financial institutions.
 - as with government.
 - products can offer guidelines on what should be expected from companies' operations and what policy standards should be.
 - showing commitment to biodiversity values.
 - 3 Secretariat of an international convention.
 - same as government.
 - 2 Academic.
 - seminars.
 - 3 Public opinion.
 - communication through corporate responsibility report and other communications mechanisms.
 - 3 Other.
 - operations – consult them on relevance.
 - operating organisations within our own corporation.
 - companies in other sectors.
- Additional comments:
- I would expect the process and some of the outcomes will be used in a range of discussions- from the NGO standpoint you have missed out the value of future discussion with the corporate sector.

N = 7

21. How likely is it that the practices of and relationships between each NGO and the corporate members of the EBI will change as a result of the EBI?

- 3 Likely that all practices and relationships will change.

3 Improve	Deteriorate
-----------	-------------
- 3 Likely that commercial practices will change.

3 Improve	Deteriorate
-----------	-------------
- 6 Likely that NGO-business relationships will change.

5 Improve	Deteriorate
-----------	-------------
- 2 Unlikely that commercial practices will change.

0 Unlikely that NGO-business relationships will change.

0 Unlikely that anything will change.

Additional Comments:

- we're not clear what is meant by "commercial practices". If this means environmental management practices implemented for oil and gas projects, then we would expect use of EBI products will potentially produce incremental improvements in how we focus on biodiversity in some specific relevant areas above our already good practice.
- hard to be categorical in such simple terms. This pre-supposes that there is some strong pre link with all of the companies in the EBI.

N = 7

22. *In the past, operational guidelines for environmental management have been developed by companies or industry groups and NGOs acting unilaterally. What value did the EBI add in bringing NGOs and companies together to develop tools for integrating biodiversity into oil and gas development?*

- for the energy companies, it puts the stamp of approval by 5 highly recognised, international NGOs on the products. This gives them another layer of legitimacy.
- stronger constituency.
- provided a basis for informing both sides, and using this as an informed outcome and a better outline product with potential credibility for both sides.
- the fact that each product produced by EBI has had the signature of 9 organisations. This gives whatever was produced some weight and credibility, albeit recognising that if one was to work on these products one could possibly have progressed further. But from the industry's standpoint, to have agreed working documents that might influence the industry with the aide of conservation organisations was a very powerful mechanism.
- the value of consensus cannot be underestimated. NGOs now have a set of recommendations that were developed with companies, giving them more force in their negotiations with companies. Companies can demonstrate that it is possible to work with NGOs to come to conclusions on biodiversity-related issues and that cooperation is possible.
- because the industry was at the table, the outputs are focused and very practical and can be used by environmental managers in the oil and gas sector. The NGO participation guaranteed good thinking in terms of biodiversity and its conversation. The two together acted as mutual assurance group regarding reputation of the members and credibility of the EBI products.
- improved internal understanding in both NGOs and companies. NGOs learned of the real constraints business face, thus better able to give appropriate/relevant guidance. Companies better understand complexity of conservation agenda and diversity of views.
- demystify preconceptions and engage in a mutual learning process.
- NGOs are also managing their reputational risk and their environment vis-à-vis one another is equally volatile.

N = 9

23. *Of the objectives and structure of the EBI partnership what changed over the two-year period and what did not change?*

- don't have these on hand on the plane ! We lost Enron, and moved many of the potential products in shape and form.
- Enron dropped out. Objectives stayed the same, but vision of products changed.
- the objective(s) never changed – we always remain focused on achieving our ultimate goal and in fact, quite a lot of work had to be done to 'educate' the NGOs about the need to really focus and deliver what we said we would deliver. The structure changed slightly from ten to nine organisations which caused some in balance – we had four working groups each with two organisations – this left the business working group without a corporate partner when Enron fell out. This was slightly problematic and unfair.
- initially, we wanted more concrete recommendations on how to deal with secondary impacts, especially colonisation. There are precious few examples of “best practice” in both mitigation and prevention, so we could not get as specific as we wanted to. However, the commitment to acknowledging the impacts and possible ways forward in addressing them remained.
- piloting the projects in the field during the two year programme. This was put off until phase 2.
- Enron dropped ; big reshuffle of responsibilities/funding. Overall aim remained constant.
- partners were engaged in a vigorous discussion of potential topics; other subjects are tempting but discipline is necessary to retain consistency of approach and integrity of objectives.
- partnerships must be output orientated to justify the effort.

N = 8

24. *Would you have done anything differently?*

- project manager from the outset.
- had a clearer set of products in mind, and a better next stage engagement strategy.
- brought in an editor right from the start – it is one thing getting an initiative like this off the ground but quite another, having to do all the work ourselves. When we finally agreed to bring in a consultant, the quality of the products improved exponentially and he managed to really pull everything together. We also had an editor writing the high level summary document – again very valuable. Second, if we had more time and budget, I would have held more consultative working workshops with selected Government departments and other stakeholders (eg other NGOs, financial community etc).
- I would have pushed harder for more specific and concrete work to be done on secondary impacts prevention and mitigation.
- raised more funds for writing the products. Found a partner in the field to test the products.
- clear project manager earlier in process. Milestones set out from beginning.
- NGOs need an external affairs division to promote and channel their efforts externally.

N = 7

25. Any additional comments/thoughts on your experience in the EBI to date?

- generally positive experience for all the reasons listed above.
- better to have been there than not!
- a very valuable experience – possibly a model for joint collaboration. I think the key thing is to be realistic about one's expectations – not to be too grand in one's vision. It is much better to go for small steps and achieve them really well, than to have grand visions and fail.
- it has been a positive experience overall, but the real challenge is taking this knowledge and successfully applying it in the field.
- objectives are not to be over-ambitious.

N = 5

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