Remarks by Nora Mardirossian

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I. Introduction

There can be benefits to industry group participation in international governance. However, some engagements between business groups and international organizations raise concerns, including with respect to the legitimacy and trust of international governance and lawmaking itself. These concerns require the establishment and enforcement of guardrails surrounding industry group engagement to ensure participation is responsible.

Below, I highlight how business group participation in international governance processes can lead to worse outcomes for people and the planet; how meaningful civil society participation is being limited at the same time business group participation is expanding; and how these trends lead to diminished regulatory legitimacy and trust in institutions. Then I highlight how corporate duplicity makes it challenging to weigh and assess holistically the potential harms against the purported benefits of business group engagement.

II. Worse Outcomes for People and the Planet

If we look at the history of industry group engagement in governance, the impact is clear: they have achieved success in fighting against critical regulation in the public interest, including disclosure requirements and spending bills, fighting for corporate tax cuts, deregulation, and limiting their own legal liability, and stalling climate action.[1]

Individual businesses engaging in international governance initiatives are self-interested, but their engagement balances potential legal and economic risks with reputational and other considerations. For industry groups, on the other hand, their main purpose is to advocate fiercely for the business interests of their members, who are shielded from the spotlight.

In this forum's keynote conversation, Maria Ressa talked about plausible deniability. I believe this is one of the services industry groups offer their members: doing their dirty work, pushing positions that individual companies would never state publicly, and providing an entity to hide behind to avoid scrutiny for those positions.

At least when individual companies participate in these fora, other stakeholders may be able to engage with them on their own practices, potentially driving positive change with those companies. This is not the case with industry groups. It is extremely unlikely that engaging with an industry group will achieve better practices among its member companies.

[1] See, for example, in the United States: Kiran Stacey, *US Business Lobby Fights Push for Disclosures on Political Spending*, Fin. Times (Mar. 23, 2021), *at* https://www.ft.com/content/0680bcbf-4a4c-4c14-8e40-c512f0716ca2; Tony Romm, *Corporate America Launches Massive Lobbying Blitz to Kill Key Parts of Democrats' $3.5 Trillion Economic Plan*, N.Y. Times (Aug. 31, 2021), *at* https://www.washingtonpost.com/us-policy/2021/08/31/business-lobbying-democrats-reconciliation; Liz Szabo, *Big Soda and the Ballot: Soda Industry Takes Cues from Tobacco to Combat Taxes*, NPR (Nov. 5, 2018), *at* https://www.npr.org/sections/thesalt/2018/11/05/664435761/big-soda-and-theballot-soda-industry-takes-cues-from-tobacco-to-combat-taxes; Aaron Gregg & Douglas MacMillan, *Nation's Biggest Business Lobby Is Behind Republicans' Push to Shield Employers from Coronavirus Liability*, Wash. Post (Aug. 25, 2020), *at* https://www.washingtonpost.com/business/2020/08/25/americas-biggest-business-lobby-is-behind-republicans-push-shield-employers-coronavirus-liability; John Bowman, *U.S. Chamber of Commerce Opposes Climate Action that Corporate America Claims to Back*, Natural Resource Defense Council (Sept. 29, 2021), *at* https://www.nrdc.org/experts/john-bowman/us-chamber-commerce-opposes-climate-action-corporate-america-claims-back.

III. Dilution of Meaningful Civil Society Participation

Industry group participation is even more powerful because others' participation is simultaneously denied or diluted. When corporate voices come in, historically, the voices of those who are most affected by the problems international governance seeks to solve are minimized or drowned out.

Business groups are more resourced, more organized, and present a more professional façade to government representatives compared to other, often more critical, non-state actors. This leads to business groups having disproportionate influence in their engagements with governance institutions.

At the Columbia Center on Sustainable Investment, we regularly participate in advisory councils, negotiating bodies, and other international and regional governance fora. We consistently observe that civil society organizations face more political, technical, financial, and capacity barriers to meaningful participation compared to business groups. For instance, these processes often involve frequent long uncompensated meetings. Civil society organizations cannot sustain the same level of involvement as business groups and multinational companies who can staff multiple people at each meeting to influence these processes.

Sometimes the restrictions to civil society participation in favor of private sector participants is more official. In 2017, the International Chamber of Commerce was granted observer status at the UN General Assembly. This allowed them to continue to have access to, and meaningfully participate in international governance at, the UN headquarters in New York during the first two years of the COVID pandemic while non-governmental civil society organizations' access was denied.[2] During that time period, the General Assembly deferred a decision on a request for observer status for the International Trade Union Confederation—the world's largest trade union federation. Such exclusions stoke concerns about exclusivity and private sector influence at a growing number of international convenings.

Last year, leading environmental groups criticized COP26 for its exclusion of civil society from negotiating areas.[3] Last year's inaugural UN Food Systems Summit also faced legitimacy challenges over concerns that its structure privileged private sector participation over multilateralism. It lacked guardrails to restrict private sector engagement and prevent conflicts of interest, like those that govern WHO and FAO convenings. Hundreds of civil society organizations—including both small peasant organizations and large international organizations like Oxfam—boycotted the Summit.[4]

IV. Diminished Regulatory Legitimacy and Trust in Institutions

There are more and more UN conferences that include robust private sector participation as a major design feature. Powerful business groups work with organizers to craft the agendas behind closed doors, hoping they will be able to center their contributions to tackling the world's problems, while affected stakeholders are not provided this level of participation. Many of these negotiating fora feel transformed from rule- and norm-setting venues to, instead, platforms to showcase

[2] Colum Lynch & Robbit Gramer, *NGOs Frozen Out of U.N. Building*, For. Pol'y (Sept. 23, 2021), *at* https://foreignpolicy.com/2021/09/23/unga-civil-society-ngo-blocked-headquarters-covid.

[3] Nina Lakhani, *COP26 Legitimacy Questioned as Groups Excluded from Crucial Talks*, Guardian (Nov. 8, 2021), *at* https://www.theguardian.com/environment/2021/nov/08/cop26-legitimacy-questioned-as-groups-excluded-from-crucial-talks.

[4] Karen McVeigh, *UN Food Summit Will Be "Elitist" and "Pro-Corporate," Says Special Rapporteur*, Guardian (Sept. 22, 2021), *at* https://www.theguardian.com/global-development/2021/sep/22/un-food-summit-will-be-elitist-and-pro-corporate-says-special-rapporteur.

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companies' initiatives. In the most egregious cases, unscrupulous companies with bad human rights records partner with agencies on human rights topics to redeem their public images.

The growing political influence of industry groups and companies is detrimental to the legitimacy of governance processes, which negatively impacts the good faith participation of private sector actors in these spaces, too.

V. Corporate Duplicity and the Difficulty of Weighing Costs and Benefits of Engagement

Discussing the benefits and harms of specific industry group participation in international governance requires taking a holistic look at their impacts—not only looking at what they *say*, but also how their involvement may negatively impact civil society participation and institutional legitimacy. Such an assessment is challenging, and we do not yet have clear standards or a roadmap for how to conduct this type of assessment.

Recently, companies and industry groups have become more sophisticated in their public engagement with governance at all levels. They present themselves as good faith actors supporting progress on human rights and sustainable development, while working behind-the-scenes to undermine the very same efforts.

For example, last year, Greenpeace released recordings of a sting operation it conducted with an Exxon lobbyist in which the lobbyist was caught on tape saying the company supports a carbon tax in the U.S. as a talking point, because it knows it will never happen. The lobbyist then explained that he would speak on the phone with Senator Joe Manchin weekly, seeking assurances that the carbon tax and other meaningful climate action would never be enacted.[5]

If Greenpeace had never exposed this lobbyist, Exxon's statements in support of a carbon tax would have actually been *more harmful* than saying nothing. Such statements serve to bolster the credibility of companies among the public and their government counterparts by stylizing them as "partners" in tackling the climate crisis, thus giving them more access to lawmakers seeking to develop solutions. These statements also obscure companies' true motives to the public, distracting from the harms they cause both through their emissions and their lobbying activities.

Other companies have done the same in various international and regional policy spaces: taking one stance publicly but lobbying in the opposite direction privately.[6] This track record has led to public distrust of corporate statements supportive of racial justice, climate action, and more. Even when companies and industry groups are honest or well intentioned, the distrust sowed by dishonest companies and industry groups has negative impacts for industry participation across the board.

As a result, assessing the risks and benefits of corporate and industry group participation in governance is very difficult because we cannot be confident we know the full extent of corporate positions and engagement, the consequences of their participation on other stakeholders' participation, and the consequences of the erosion of trust in political and multistakeholder processes.

[5] Lawrence Carter, *Inside Exxon's Playbook: How America's Biggest Oil Company Continues to Oppose Action on Climate Change*, Greenpeace (June 30, 2021), *at* https://unearthed.greenpeace.org/2021/06/30/exxon-climate-change-undercover.

[6] *See, e.g.*, John Geddie, Valeria Volcovici & Joe Brock, *U.N. Pact May Restrict Plastic Production. Big Oil Aims to Stop It*, Reuters (Feb. 18, 2022), *at* https://www.reuters.com/business/sustainable-business/un-pact-may-restrict-plastic-production-big-oil-aims-stop-it-2022-02-18; European Coalition for Corporate Justice, Friends of the Earth Europe & Corporate Europe Observatory, *Off The Hook? How Business Lobbies Against Liability for Human Rights and Environmental Abuses* (June 2021), *at* https://corporatejustice.org/wp-content/uploads/2021/06/OffThe-Hook.pdf.

VI. Conclusion

Defining "responsible corporate political engagement" is exceptionally challenging. We at CCSI tackled this challenge in developing the Policymaking Influence standard in our recently published "Handbook for SDG-Aligned Food Companies."[7] The standard guides companies on due diligence measures to ensure their direct and indirect political engagement activities support, and do not undermine, achievement of the SDGs.

Industry groups and individual companies should align their political engagement activities with their social and environmental responsibilities, including their responsibility to respect human rights as clarified by the UN Guiding Principles on Business and Human Rights. For individual companies, this includes directing their industry groups to meet their human rights and environmental responsibilities, and publicly leaving those that fail to do so. More and more companies are doing this,[8] and action may accelerate in response to growing investor demands.

When it comes to the governance of international fora, the UN, international organizations, and member states should set rules for engagement that align with their duty to protect people from corporate harms and that protect and expand meaningful civil society participation. Civil society should be actively involved at every stage, as co-designers of meeting agenda with real space for their full participation.

In the years to come, it will be critical for all stakeholders to understand the potential harms of industry group participation in international governance and to have the courage to address them.

[7] Nora Mardirossian, et al., *Handbook for SDG-Aligned Food Companies: Four Pillar Framework Standards," Columbia Center on Sustainable Investment and UN Sustainable Development Solutions Network* (Dec. 2021), *at* https://ccsi.columbia.edu/sites/default/files/content/docs/19%20CCSI%20Four%20pillars%20full%20report%20rhr.pdf.

[8] *Id.* at 224 n. h.