Managing the Disaggregation of Development:
How the Johannesburg "Type II" Partnerships Can Be Made Effective

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Abstract:

A major outcome of the 2002 UN Summit on Sustainable Development was a series of non-negotiated, voluntary development projects involving a range of organizations and institutions. These so-called "type II" partnerships were highly controversial, heralded by some as a powerful new development tool while disparaged by others as unproductive public relations stunts. A review of the partnerships to date reveals a number of flaws, especially regarding breadth of involvement and accountability. However, these can be mitigated via a transparency-based partnerships regime that combines both "hard" (law-based) and "soft" (market- and reputation- based) mechanisms to maximize the partnerships' development potential. If such a regime were created, type II partnerships could become a useful supplement to state-to-state development commitments.

EXECUTIVE SUMMARY

Legitimate Development Tool or Smokescreen for Inaction?

A major outcome of the United Nations' 2002 World Summit on Sustainable Development (WSSD) was a series of non-negotiated, voluntary development projects to be carried out by governments, non-governmental organizations (NGOs), intergovernmental organizations (IGOs), and the private sector. Conceptually innovative, these "type II" partnerships offer a range of possible benefits and are accompanied by a list of potential dangers.

Possible Benefits:
• A way around diplomatic gridlock
• Flexibility of approaches
• Multi-sectoral strength
• Speed of implementation

Possible Dangers:
• Imbalance of power between partners
• Failure to engage smaller, poorer groups
• "Green-washing" and "blue-washing"
• Replacement or weakening of type I agreements

If partnerships are to become an effective development tool, a regime must be established to maximize their benefits while mitigating their dangers. Development of such a regime is the object of this paper.

How Have the Partnerships Fared Since Johannesburg?

A number of concerning trends have appeared among the partnerships over the last six months:

- Existing projects have been re-categorized
- The private sector is largely not involved
- Most partnerships lack sufficient transparency guarantees
- A few countries account for most government participation
- Developing countries are largely not involved in leadership
- Some issue areas have very few partnerships

Toward a Development-Maximizing Partnerships Regime

Type I must continue to remain a priority: Substantive multilateral commitments by governments are the primary vehicle for promoting sustainable development and will remain so for the foreseeable future.

The Commission on Sustainable Development (CSD) should establish a committee to review the type II projects' concordance with type I priorities: Meeting annually with the CSD, the committee would identify those issue areas underserved by type II projects. Organizations looking to form new partnerships and donors funding type II projects should focus on these areas.

A learning network should be established: Self-reporting by partnerships should be centralized on a website and supplemented with independent reviews of partnership activities. The UN or another mutually agreed to organization could serve as the point organization for this network.

A system of reputational and market accountability should be established: Partnerships can be regulated via horizontal application of reputational and market mechanisms by a wide range of actors, including NGOs, governments, the media, and affected communities.

Transparency is necessary for such a system to function: Reputation- and market- based mechanisms are only effective when there is a free flow of information. This involves two components:
- The obligation to report information: partnerships should be required to report annually to the UN secretariat.
- The right to receive information: partnerships should be subject to procedural safeguards similar to the freedom of information laws of many countries.

1. INTRODUCTION

The 1992 Earth Conference in Rio de Janeiro was a conceptual breakthrough for international development. For the first time governments as well as civil society came together to broadly endorse the goal of sustainable development, a tripartite idea that promotes cooperative progress on economic, environmental, and social fronts. Much optimism and energy emerged from this conference—"heat and light" in the words of one prominent observer—which subsequently sustained a host of conferences and programs throughout the 1990s.[1]

A decade later, however, when tens of thousands of delegates gathered in Johannesburg for the World Summit on Sustainable Development (WSSD, or Rio +10), the Rio program had not advanced as far as the early optimists had hoped. While gains had been made in many fields—against hunger and on certain health issues, for example—much remained undone. Challenges like climate change and the AIDS epidemic had intensified, even reaching crisis proportions in some parts of the world.

The representatives of governments, intergovernmental organizations (IGOs), non-governmental organizations (NGOs), the private sector, and other major groups meeting in Johannesburg hoped to reinvigorate the sustainable development agenda with an implementation-focused plan of action.

However, as the preparatory meetings foreshadowed, Johannesburg was unable to replicate the advances and optimism of Rio. Political deadlock and reiteration of existing commitments outnumbered and overshadowed the few advances made.

The Emergence of "Type II" Partnerships

Alongside the largely disappointing multilateral agreements, a parallel set of voluntary initiatives was included in the Johannesburg program. As the UN explains, "these 'second type' of outcomes …consist of a series of commitments and action-oriented coalitions focused on deliverables and…contribute in translating political commitments into action."[2] While not a new

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[1] Nane Annan, "Towards a Sustainable Future," presentation to American Museum of Natural History Annual Environmental Lecture, New York, May 14, 2002

[2] WSSD, "Partnerships/Initiatives to strengthen the implementation of Agenda 21 (To be elaborated by interested parties in preparation for the World Summit on Sustainable Development for launching at the Summit)," Explanatory note by the Chairman of the Preparatory Committee (Bali: 2002), p. 1

idea (such arrangements were identified in Rio), these so-called type II partnerships stepped into the spotlight at Johannesburg. Essentially, they are specific, voluntary development projects that are envisioned as a supplemental means of implementing the goals agreed to at WSSD. Most importantly, the partners involved need not be governments; NGOs, IGOs, government agencies, sub-national governments, and private enterprises are all encouraged to participate.

Originally, these type II outcomes were seen as a fixed set of additions to the Johannesburg declaration. Later, as the date approached and few partnerships had materialized, the decision was made to instead adopt an ongoing partnerships program.[3] New proposals can be submitted on a continuing basis.

1.1 Legitimate Development Tool or Smokescreen for Inaction?

The decision to include type II partnerships as an official result of WSSD was highly controversial. While some wax poetic over their virtues, describing them as "the beginnings of a shift from the stiff formal waltz of diplomacy to the jazzier dance of improvisational solution-oriented partnerships," or "letting a thousand flowers bloom," others have been highly critical.[4] For example, Friends of the Earth (an environmental NGO) warns that "Type 2 threatens to mask the failure of governments to agree to meaningful action."[5] The Sustainable Development Issues Network is concerned that "the UN risks conferring legitimacy without any accountability framework."[6] Developing countries have also voiced concerns.[7] Several commonly voiced claims are made both for and against partnerships:

Possible benefits:

- *A way around diplomatic gridlock:* Partnerships are nimble alternatives to cumbersome multilateral negotiations that seem to produce more rhetoric than results.

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[3] Jonathon Margolis, presentation to Woodrow Wilson School Policy Task Force 402f, February 25, 2003.

[4] World Resources Institute, "WRI Expresses Disappointment Over Many WSSD Outcomes." *World Resources Institute News Release*, Washington, D.C., September 4, 2002; Witte et al., "The Road from Johannesburg: What Future for Partnerships in Global Environmental Governance?" in Witte, Streck, and Benner, Eds., *Progress or Peril? Partnerships and Networks in Global Environmental Governance in the Post-Johannesburg Era* (Berlin and Washington D.C.: Global Public Policy Institute, 2003), p. 63

[5] Friends of the Earth, "Type 2 Outcomes—Voluntary Partnerships," http://www.foe.org/WSSD/parnterships.html, January 23, 2003

[6] Sustainable Development Issues Network, "Questioning Partnerships," *Taking Issue* (2003), p. 1

[7] See Witte et al., "The Road from Johannesburg: What Future for Partnerships in Global Environmental Governance?" p. 60

They may also be useful for implementing politically sensitive projects such as women's empowerment or family planning programs.

- *Flexibility of approaches:* Partnerships can be as diverse as the creativity of governments, NGOs, and businesses allows. This gives them an experimental quality that may lead to breakthrough approaches to development problems.

- *Multi-sectoral strength*: Governments, NGOs, IGOs, and the private sector each bring different strengths to development while facing different challenges. Partnerships provide opportunities for the various sectors to pool their assets and thus mitigate their weaknesses.

- *Speed of implementation*: Negotiated agreements may be slow to trickle into implementation. Partnerships are a way to begin immediate implementation of much-needed development projects.

Possible dangers:

- *Imbalance of power between partners*: Partnerships may bring together massive government agencies and small rural villages, transnational corporations and local NGOs. The resource imbalances among such partners may result in the exclusion of smaller partner's viewpoints, or even their cooption by the larger organization.[8]

- *Failure to engage smaller, poorer groups*: Only the relatively large and rich NGOs, businesses, and governments will be able to proactively pursue partnerships. Smaller, poorer actors will be left out.

- *"Green-washing" and "blue-washing"*:[9] Corporations, governments, and IGOs may use partnerships as a showcase of sustainable development to divert attention from their other environmentally and socially unfriendly policies. This problem would be

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[8] This is, of course, also true for more traditional development arrangements. However, critics fear that such imbalance is particularly dangerous in a type II context because profit-seeking corporations become involved, which allegedly have more reason to use their resources to exploit smaller organizations.
[9] Bruno provides the following definitions. Green-wash: "The phenomenon of socially and environmentally destructive corporations attempting to preserve and expand their markets by posing as friends of the environment and leaders in the struggle to eradicate poverty." Blue-wash: "Efforts by corporations to be perceived as part of the world humanitarian community through voluntary association with the United Nations, without provisions for accountability." Kenny Bruno, "Greenwash + 10: The UN's Global Compact, Corporate Accountability and the Johannesburg Earth Summit," CorpWatch, San Francisco, 2002, p. 3

exacerbated by the UN's high-level endorsement of such projects, which would grant
a false sense of legitimacy.

- *Replace or detract from type I agreements*: A focus on type II partnerships reduces
  political pressure on governments to make binding commitments for sustainable
  development. Voluntary partnerships cannot substitute for governments'
  responsibility to address pressing social, environmental, and economic concerns.

- *"Potemkin Villages" for Development*: [10] This is related to the above two concerns.
  While individual partnerships may be effective showcase projects, they are not
  representative of larger trends. This may provide the illusion of progress when, in
  fact, urgent needs are going unmet. While some argue that partnerships, even if not
  very helpful, at least "cannot hurt," is possible that partnerships will do harm by
  distorting the picture. In other words, they are "worse than nothing."

1.2 Making Type II Work

Both the advocates and critics of partnerships raise important issues that must be
addressed to maximize their potential and minimize their negative aspects. Partnerships bring
new tools to sustainable development even as they raise new challenges. As Witte et al. point
out, "partnerships—properly conceived and managed—can in fact make a useful contribution to
global environmental governance."[11]

The caveat is important. How can we can we properly conceive and manage the WSSD
partnerships? Jonathon Margolis, the chief US negotiator for WSSD, offered one possibility in a
statement at the preparatory meeting in Bali, arguing, "the *quality* and the *breadth* of the
partnerships are a key yardstick for success of the Summit" (emphasis added).[12] In other words,
in order for type II outcomes to be effective they must do two things: make concrete progress on

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[10] The analogy is Michael Doyle's (although it does not necessarily reflect his view). Michael Doyle, "New Model
UN? The Millennium Goals and Partnership Strategy," lecture delivered at Princeton University, Princeton, NJ,
February 20, 2003

[11] Jan Martin Witte, Charlotte Streck, and Thorsten Benner, *Progress or Peril? Partnerships and Networks in
Global Environmental Governance in the Post-Johannesburg Era* (Berlin and Washington D.C.: Global Public
Policy Institute, 2003), p. 5

[12] Jonathan Margolis, "Statement by Jonathon A. Margolis, Head of Delegation, United Sates of America," Fourth
Session of the Preparatory Committee for the United Nations World Summit on Sustainable Development, Bali,
Indonesia, May 27, 2002, p. 1

important development tasks (quality), and do so on an inclusive, significant scale (breadth). This paper explores how policy tools can be utilized to ensure that Type II partnerships achieve these twin goals. Section 2 provides a conceptual framework for type II partnerships in the context of a globalized world. Section 3 evaluates the 255 currently listed partnerships across a range of substantive and procedural criteria, noting that breadth and quality remain elusive. Section 4 is devoted to the "breadth" issue, suggesting ways more resources can be mobilized. Section 5 addresses "quality" by outlining an innovative regulatory regime intended to maximize the amount of development partnerships create. Section 6 concludes by reiterating policy recommendations for various groups and identifying areas for future research.

2. CONCEPTUAL FRAMEWORK

2.1 Diverse Ideological and Theoretical Origins

Two very distinct ideological and theoretical trends converged at Johannesburg to bring partnerships to the forefront of the development agenda: neo-conservatism and globalist "neo-medievalism."[13] This improbable overlap between what are often conflicting philosophies—or at least viewpoints commonly found on opposite ends of the political spectrum—is a testament to the paradigm shift partnerships represent. Any idea that can bring together Texan Reaganites and German idealists is conceptually interesting. The attraction of partnerships to each group is discussed below.[14]

The Neo-conservative Approach to Partnerships:[15]

Neo-conservatives have long argued for shrinking government, either by reducing the amount of public goods offered or by switching the responsibility of providing public goods from government bureaucracies to markets. This agenda is motivated by a distrust of centralized government and a faith in the efficiency of markets and individuals. Global development efforts

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[13] A theory that emphasizes the diminished role of nation-states in a globalized world, further explained below.
[14] N.B: the two philosophies are presented as ideal-types. Real-world actors probably subscribe to more nuanced versions or individual components of the "pure" theories.
[15] For additional discussion of this topic see Maria H. Ivanova, "Partnerships, International Organizations, and Global Environmental Governance" in Witte, Streck, and Benner, Eds., *Progress or Peril? Partnerships and Networks in Global Environmental Governance in the Post-Johannesburg Era* (Berlin and Washington D.C.: Global Public Policy Institute, 2003), pp. 15-16.

have often been singled out by neo-conservatives as an especially wasteful and quixotic government undertaking.[16]

Coming from this background, at Johannesburg neo-conservatives were looking to move away from the type I development agreements that had typified the summits of the 1990s. This was strongly advocated by the Bush administration in the United States, a self-described heir to the neo-conservative tradition and a promoter of partnerships domestically both for environmental regulation and social welfare.[17] For the United States and other supporters, partnerships represent a way for a diverse array of non-governmental actors (NGOs and private corporations) to make concrete steps toward sustainable development.[18] They argue that while diplomats churned out pages upon pages of multilateral agreements, private actors could have been making concrete progress.

The Neo-medievalist Approach to Partnerships

Over the last decade much of the work of the globalization discourse has been spent announcing, cheering, and decrying the rise of "non-traditional actors"—that is, non-state actors—on the international stage.[19] Neo-medievalism analogizes the rise of non-state actors to pre-modern Europe. As Bull explains, "in that system no ruler or state was sovereign in the sense of being supreme over a given segment of the Christian population; each had to share authority with vassals beneath, and with the Pope and (in Germany and Italy) the Holy Roman Emperor above."[20] Similarly, it is argued, in the modern international system non-state actors supplement or even supplant nation-states. For the neo-medievalists, this necessitates a shift from "government" to "governance", by which

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[16] See, for example, John Heilprin, "Conservatives praise Bush for opting out of U.N. Earth Summit," *Associated Press,* August 15, 2002.

[17] For example, the Administration has proposed so-called "faith-based initiatives" to bring NGOs, specifically those of a religious orientation, into government-sponsored social welfare efforts. The "Clean Skies" policy calls for corporate self-regulation of clean air standards, and aims to bring corporations into environmental governance. Both cases have been controversial. Interestingly, domestic critics have voiced many of the concerns of, and employed similar arguments to, those at the international level.

[18] Jonathan Margolis summarized this position in Bali: "Partnerships, better than any declaration, will demonstrate our commitment to sustainable development and to achieving measurable goals." Jonathon Margolis, "Statement by Jonathon A. Margolis, Head of Delegation, United Sates of America," p. 2

[19] Indigenous groups and micro-ethnicities apply pressure from below, supranational organizations and treaty regimes impose restraints from above, and issue-based networks and coalitions as well as transnational corporations work "through" and "around" the traditional state structure.

[20] Hedley Bull, *The Anarchical Society* (Macmillan: London, 1977), p. 254

…is meant not only the formal institutions and organizations through which the rules and norms governing world order are (or are not) made and sustained—the institutions of state, intergovernmental cooperation and so on—but also all those organizations and pressure groups from [multinational corporations] and transnational social movements to the plethora of non-governmental organizations—which pursue goals and objectives which have a bearing on transnational rule and authority systems.[21]

Neo-medievalists herald partnerships as an innovative way to capitalize on the emergence of non-state actors. For them, the development challenges of a globalized world are too complex for states to address alone. "Dynamic in both process and structure, partnerships…can provide an alternative means to finding solutions where traditional policy approaches have not or cannot deliver effective results."[22] This remedy becomes particularly attractive in light of the "implementation crisis" that followed Rio and the other development summits of the 1990s; governments were rarely able to speedily enact the lofty goals set forth at international gatherings. Because the state has not made progress on these goals, neo-medievalists argue, other actors must be brought into the process.

Two Visions of Disaggregation

Both neo-conservatives and neo-medievalists speak of a disaggregation of development, that is, a movement from state-centered and multilateral approaches to multi-sectoral and private or sovereign initiatives.[23] For the former this is driven by faith in markets, individuals, and sovereign governments, for the latter it is recognition of the forces of globalization. While not unrelated, these interpretations have significant areas of divergence as well. The most important of these for this paper is the stance each philosophy takes toward the regulation of partnerships.

Neo-conservatives question the usefulness of centralized government action *per se*; neo-medievalists question government's effectiveness in a complex, globalized context where other actors also matter. The neo-conservative position therefore disfavors a partnerships regime; private actors should be largely free to take the development actions they see as most needed. Efforts to regulate partnerships will only interfere with a dynamic private process. Neo-

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[21] David Held et al., *Global Transformations: Politics, Economics, and Culture* (Stanford University Press: Stanford, California, 1999), p. 50
[22] Maria H. Ivanova, "Partnerships, International Organizations, and Global Environmental Governance", p. 12

medievalists, on the other hand, merely seek to maximize the effectiveness of the partnerships themselves and their synergy with the broader development structure.   They have no inherent bias for or against a regulatory regime. However, as this paper will show, a regulatory regime is necessary to maximize the development potential of partnerships.

2.2 Putting Government Back In

While bringing useful issues into the discourse, both neo-conservatives and neo-medievalists underestimate the continuing importance and efficacy of the state in the global quest for sustainable development. Countering the neo-conservative argument is the imperfect but often impressive range of development success stories governments and intergovernmental organizations have accrued.   Although the neo-medievalists are right to address the new challenges put forth by globalization, they are too quick to disregard the enormous power states continue to wield both as distributors of resources and juridical regulators. [24] That governments have not risen to the challenge of sustainable development is probably more due to a lack of political will than the inherent inadequacy neo-conservatives and neo-medievalists allege.

The most accurate and productive vision of the global development structure embraces a holistic perspective. It recognizes the centrality of states, as well as their shortcomings, and sees partnerships as a potentially useful tool to supplement state action. Positively, this seems to be the mainstream view that is at least rhetorically accepted by a strong majority of nations, major groups, and international institutions, and expressed in the Johannesburg text. As WSSD Secretary-General Nitin Desai explains,

> …we need to connect what Governments…agree on with what can be done by scaling up the wonderful initiatives that have come at the local level and from non-governmental organizations and, in many cases, the business sector. This is where the notion of partnerships comes in. Partnerships basically serve to connect the dynamism that we see at the local level with the commitments that Governments need to make. We need both. Not one or the other — both. Partnerships without the commitments of Governments will not work. The

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[23] A growing literature identifies the "disaggregation of the state" as the one of the most salient phenomena in world affairs today. See, generally, Anne-Marie Slaughter, "The Real New World Order," *Foreign Affairs* 76:5, (September/October 1997).

[24] As Ivanova mentions, partnerships "do not legislate or regulate," only the state can perform that function. Maria H. Ivanova, "Partnerships, International Organizations, and Global Environmental Governance," p. 24

commitments of Governments are important. But partnerships add credibility to the commitments and enhance our capacity to implement them in practice.[25]

2.3 Governance, Between Government and Volunteerism

The type II partnerships announced at WSSD occupy a somewhat ambiguous space between formal multilateral accords (type I agreements) and private volunteerism, sharing aspects of both. On the one hand they are private or sovereign initiatives, undertaken at the volition of individual organizations or governments.[26] No multilateral process authorized or legislated their creation. On the other hand, they are part of the "official" outcomes of WSSD, and aim to implement goals negotiated by the international community. The end result is a procedurally private or sovereign venture that operates within a larger, multilateral context and thus accrues an air of official, multilateral legitimacy. While such an entity can fit under the broad semantic tent we have staked for "governance," its combination of public and private elements raises interesting conceptual issues. More importantly for our purposes, this hybrid identity challenges traditional regulatory notions, a topic section five will explore more fully.

3. EVALUTION OF THE WSSD PARTNERSHIPS: SIX MONTHS LATER

Six months after the Johannesburg Summit some important trends have emerged among the partnerships. This study analyzes the data provided by the partnerships to the UN.[27] It is important to stress that these data are not independently verified and were reported by the partnerships themselves. The results are consistent with two earlier empirical analyses.[28] (Note: the charts referred to bellow can be found in appendix I.)

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[25]WSSD, "Report of the World Summit on Sustainable Development," (Johannesburg, 2002), pp. 160-1
[26] "Sovereign" in the sense that they are undertaken by a sovereign national government.
[27] Available at http://www.un.org/esa/sustdev/partnerships/list_partnerships.htm. The data used were last updated February 20, 2003.
[28] See Maria H. Ivanova, "Partnerships, International Organizations, and Global Environmental Governance," pp. 22-5; Liliana B. Andonova and Marc A. Levy, "Franchising Global Governance: Making Sense of the Johannesburg Type Two Partnerships" (draft), in *Yearbook of International Cooperation on Environment and Development* (Fridtjof Nansen Institute: Lysaker, Norway, 2003). The methodologies employed in each study differed slightly. Ivanova studied 32 partnerships, Andonova and Levy studied 231, and the present paper studied 250 (the difference here is partially attributable to the changing number of partnerships registered with the UN). Also, this study counts "bundled" partnerships as one project, while others appear to have counted each sub-initiative as a separate

Existing Projects have been re-categorized: Ivanova explains, "Most of the showcased partnerships are not new. While some are major expansions of programmatic activities, most of them are extensions of current work, sometimes even with the same title."[29]

The private sector is largely not involved: While NGOs, IGOs, and government agencies each act as leading partner for roughly a third of the partnerships, the private sector leads less than two percent of the total (Chart 1). Furthermore, private sector entities are involved at any capacity in only 53 partnerships, less than 20 percent (Chart 5). In comparison, IGOs, NGOs, and government agencies are each involved at some capacity in about 200 partnerships, close to 80 percent (Chart 5).

Funding remains a concern: All told, the partnerships encompass about US $250 million in funding. However, 12 percent of the partnerships remain un-funded while about a third have serious funding questions to address for their medium- to long- term viability (see chart 4).[30]

Most partnerships lack sufficient transparency guarantees: The partnerships were assessed for three different transparency criteria: a website, a reporting system, and a monitoring mechanism. Sixty-four percent of the partnerships have websites. A partnership was classified as having a reporting system if it had an institutional means of publicizing its progress. These range from print and electronic newsletters, to web-postings, to independent evaluations. Sixty-nine percent of partnerships have some reporting system. A "monitoring mechanism" was defined as an institutionalized plan to evaluate progress on defined partnership goals. Fewer than 50 percent of the partnerships have such a mechanism (see chart 6).

Adequate transparency is only achieved when a partnership combines an effective reporting system with an effective monitoring mechanism. This information is most helpful when made available on the Internet. While almost 90 percent of the partnerships have at least one of the criteria, only 35 percent both monitor and report and only 27 percent monitor, report, and post progress on a website (see chart 7).[31]

A few countries account for most government participation: Six countries—Indonesia, USA, France, Australia, Italy, and Japan—represent about 70 percent of the partnerships which

partnership. Nonetheless, each group identified the same overall trends. No other analyses have come to my attention.
[29] Maria H. Ivanova, "Partnerships, International Organizations, and Global Environmental Governance," p. 22
[30] Monika Linn, interviewed by Tom Hale, New York, March 6, 2003.

are lead by governments. The first four each lead about seven partnerships, the last two about twice that many (see chart 8). This indicates a serious "breadth" concern; of the close to 200 governments represented in Johannesburg, only a handful have taken an active lead in promoting partnerships.

Developing countries are largely not involved in leadership: While developing country governments participate in the majority of partnerships, they are not taking a leadership role. Of the partnerships led by governments, developing countries account for only 25 percent. Excluding Indonesia, this number drops to 17 percent (see chart 9). This represents another "breadth" concern. Developing countries, who stand the most to gain from partnerships, are not actively pursuing them.

Some sectors have very few partnerships: The number of partnerships is not evenly distributed across the various development categories established by the UN. Some categories have many partnerships; energy, for example, has 22. However others, like biodiversity, have only eight, while still others, like forests, have only three. Incredibly, only one partnership is explicitly focused on the key issue of technology transfer (see chart 3).

4. MOBILIZING PARTNERSHIPS

I now address the "breadth" of partnerships. In order for the partnership process to succeed there must be a large number of partnerships across a diverse array of actors spanning a range of activities. As the proceeding section shows, these three criteria have not been met. Considering the more than 200 states and regional associates, over 100 IGOs, and hundreds of NGOs, corporations, and other interested groups—tens of thousands of delegates in total—that were at Johannesburg, 255 partnerships is a rather small outcome.[32] Even more troublesome is the lack of participation by major sectors of the international community, especially developing countries and the private sector, and the relatively few partnerships in many key areas.[33] Clearly,

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[31] If only 35 percent of partnerships both monitor and report, yet 69 percent report, approximately 35 percent of the partnerships report but do not monitor. One might ask what is the use of reporting if there is no monitoring system to give substance to the report.

[32] According to the UN, about twice as many proposals were submitted as were accepted to the program. Rejected proposals were either not new, not international, or simply poorly written. The UN Secretariat made these decisions. Monika Linn, interviewed by Tom Hale, New York, March 6, 2003.

[33] See proceeding section. The range across a diversity of issues is discussed in the following section.

a serious mobilization effort must be undertaken if the Johannesburg partnership process is to create much sustainable development. This section considers the incentives various actors have to join partnerships and then sketches how a mobilization effort might take place, focusing on two main sectors that are lacking—certain governments and business.

4.1 Governments

While government agencies lead 33 percent of the current partnerships and are involved in some capacity in over 80 percent of them, that leadership has been limited to a few nations.[34] Clearly more governments will have to commit to partnerships if this process is to be a success.

However, there is more governments can do to aid the mobilization of partnerships than just commit to form more of them. One of the conceptual innovations partnerships bring is a shift in thinking about government. In the traditional international system, the state was a monolithic block. Now, it can be conceptualized as a polymorphous agglomeration of jurisdictions and agencies spanning a number of levels and issues. Partnerships allow us to think of all the various components of government as potential development partners. Whereas before only the overseas direct assistance (ODA) office or foreign ministry might be concerned in a multilateral development process, now a wide range of national agencies and even provincial and municipal parties are participating. For example, in the US 14 federal agencies are involved in WSSD partnership activities, including traditionally domestic agencies like the Department of Energy, the Department of Transportation, and the Environmental Protection Agency.[35] Ringing the Adriatic Sea, 43 municipalities in seven countries have formed a cooperative Agenda 21 implementation plan.[36]

National governments should further encourage their component agencies and sub-national jurisdictions to participate in international partnerships. For agencies of national governments, this can be done through budget support for partnerships outside the agencies' domestic duties and networking with the foreign ministry or the ODA office. Governments should also encourage their component agencies to freely pursue relations with a diverse array of

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[34] See proceeding section.
[35] US Government, "USG WSSD Points of Contact for "Type II" Partnerships," Washington, D.C., May 9, 2002
[36] A21 Adriatic Sea Forum; see generally,
http://www.johannesburgsummit.org/html/sustainable_dev/p2_managing_resources/a21_adriatic_sea.pdf

partners and resist the traditional method of routing all international affairs through the foreign ministry. At the provincial and regional level, governments should educate sub-national entities about the opportunities for partnering in the Johannesburg process and include representatives from interested local governments in national delegations to future meetings.[37]

Increasing developing countries' leadership of the partnerships process is crucial. Many developing countries were highly suspicious of including partnerships at Johannesburg, fearing it would be used as an excuse by rich nations to avoid increasing development aid. This is a serious concern that must be addressed in future negotiations. However, it nonetheless behooves developing countries to avail themselves of partnerships much more so than they have to date. Refusing to participate in partnerships is unlikely to be an effective bargaining chip to be traded for increased aid, and will likely cost developing countries a chance to participate in programs of real value. By taking a leading role in partnerships, developing countries will be able to play an agenda-setting role, ensuring they are being served by type II outcomes.

Alongside these political concerns, there are pragmatic barriers to developing countries' participation in leadership. Simply put, government agencies and local entities in developing countries are unlikely to have the resources available to participate in international partnerships. Donors looking to fund partnerships can help ameliorate these problems. Developed countries should also provide for the meaningful participation of their developing world counterparts in the partnerships they undertake.

4.2 The Private Sector

The private sector was one of the key pro-partnership lobbies at Johannesburg and in the preparatory meetings. It is curious, then, that business have elected to participate in such a small number of partnerships (about 20 percent) and take the lead in far fewer (about two percent).[38] For many in the NGO world, this confirms their fears that corporations were never serious interlocutors in the development process. They argue that business involvement was directed not

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[37] Domestic governments and agencies may lack the experience to effectively pursue partnerships. For example, they may overestimate the importance of technology as the "missing ingredient" and underestimate capacity-building or motivational elements of development. Coordination with experienced partners can help to overcome these difficulties.

[38] See preceding section.

at development, but rather at relieving political pressure for regulation by scoring a public relations victory.[39]

There are, however, other explanations for the private sector's non-participation. One of the strongest is that partnerships exist in an uncertain regulatory environment.[40] Businesses are hesitant to participate in a process that may later impose regulatory restraints on them to which they had not agreed when joining. Because the partnerships process left Johannesburg with an uncertain future, businesses may have been reluctant to associate themselves with the idea.

There will be no way of knowing which of the above explanations is most correct—both are at least partially true—until a definitive partnerships regime is decided upon.

Some may argue that the idea of any regulatory regime—including the one advanced in this paper—would automatically decrease the interest of business to participate. Conventional wisdom seems to be that there is a trade off between regulation and private sector participation. While intuitively appealing, this view is simplistic. An information-based, as opposed to substance-based regulatory model (like the one advanced in the following section), could actually serve as a tool to bring business into the process. To the extent that the second explanation of private sector participation is true—that is, to the extent that the private sector is a serious interlocutor in the development discussion—a transparency regime would actually give businesses an incentive to participate by validating their efforts. This idea is explained further in the following section.

5. MAKING PARTNERSHIPS EFFECTIVE: TOWARD A DEVELOPMENT-MAXIMIZING REGIME

The second main issue to address is "quality"—making partnerships into effective development tools. The central question is: what type of institutional framework will encourage the greatest amount of sustainable development to take place? This issue was heavily debated in the meetings up to and at WSSD. The only standards to emerge, however, were a general set of "Guiding Principles" that do little more than make helpful suggestions.[41] A stronger, more

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[39] See, for example, Kenny Bruno, "Greenwash + 10: The UN's Global Compact, Corporate Accountability and the Johannesburg Earth Summit," p. 3.
[40] This point was offered to me by Monika Linn.
[41] See Maria H. Ivanova, "Partnerships, International Organizations, and Global Environmental Governance," p. 19

specific regime is outlined in this section. Before beginning to explore such a framework, however, it is necessary to deal with two preparatory topics—the legitimacy of regulating partnerships in the first place and the danger of over-regulation.

Regulating Hybrid Governance

As was explained in section two, partnerships are a kind of hybrid governance, combining not just the public and private sectors, but sub-national, national, international, and transnational actors as well. Such a pluralistic system offers a number of regulatory challenges, not least of which is the fundamental question: how is regulation of such an arrangement justified? Who can legitimately claim jurisdiction?

To effectively regulate partnerships, two jurisdictional claims must be established. First, the issues of internationality and trans-nationality must be addressed. Absent some form of world government, no body can claim absolute jurisdiction over ventures that exist in many different nations, sometimes even between them. Under traditional international law, it is incorrect to think of the UN, in this case WSSD, as exercising this kind of universal jurisdiction.[42] However, we can overcome this barrier if we think of WSSD as a kind of contract writ large, and partnerships, as official outcomes of the Summit, as both parties to and subjects of that contract. They are thus open to regulation under WSSD because, even as sovereign, international, or transnational actors, they participate in the WSSD treaty.

A second jurisdiction must be established over the "private" nature of partnerships. What authority does an international treaty have to regulate private actors or sovereign governments acting on their own volition? An answer can be found in the expansion of administrative law advocated by legal scholars like Alfred C. Aman. Based on an analysis of privatized public services—everything from utilities to prisons—Aman argues that when private entities perform public functions they must be held to similar standards of accountability as public agencies.[43]

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[42] Witte et al. stress this point while suggesting a possible solution I will build upon below: partnerships "are a form of 'governance without world government,' but not governance without governments.'" Witte et al., "The Road from Johannesburg: What Future for Partnerships in Global Environmental Governance?" p. 65

[43] See Alfred C. Aman, "The Globalizing State: A Future-Oriented Perspective on the Public/Private Distinction, Federalism, and Democracy," *Vanderbilt Journal of Transnational Law*, 31:4, October 1998, pp. 769-870; Alfred C. Aman, "Information, Privacy, and Technology: Citizens, Clients, or Consumers?" in Beatson, Jack and Cripps, Yvonne Eds., *Freedom of Expression and Freedom of Information* (Oxford University Press: Oxford, 2000); Alfred C. Aman, "Globalization, Democracy, and the Need for a New Administrative Law," *UCLA Law Review*, 49:6, August 2002, pp.1687-1716.

Because the governments and private entities partnering under the Johannesburg agreement are carrying out multilateral, public tasks, they are thus subject multilateral, public restrictions.[44]

It is important to note that these two jurisdictions do not convey the juridical power of, say, a national government. Whereas governments can enforce their rules through a wide array of mechanisms (e.g. fines, imprisonment), the only consequence for disobeying a WSSD rule is exclusion from the WSSD process.

The Danger of Burdensome Regulation

Two fears are commonly expressed regarding regulation of partnerships. One, that regulation will reduce the willingness of states, NGOs, businesses, and other actors to form partnerships (see above, section four). Similarly, some worry that the costs of compliance will detract from the partners' ability to carry out their project, an issue of special concern to small-scale partnerships and developing country partnerships.

These are important concerns that any regulatory regime must address effectively. They do not, however, imply evidence for the commonly assumed trade off between regulation and participation. As was alluded to above, there are regulatory modalities available that turn the conventional wisdom on its head, allowing for widespread participation in quality partnerships. These are explored below.

5.1 Key Issues A Partnerships Regime Must Address

In their excellent analysis, Benner et al. identify five key issues a partnerships regime must address.[45] However, when thinking of concrete policy tools to implement these goals, the objective of this paper, it is useful to consolidate and re-categorize them slightly. Therefore, while drawing upon Benner et al.'s work, this paper identifies the key issues as follows:

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[44] Muller-Kraener speaks to this point: "'Type II' partnerships should not be allowed to become purely private endeavors, since they are, by their very nature, political animals that play an important role in the emerging system of global environmental governance."   Sascha Muller-Kraenner, "Partnerships as an Instrument to Implement the Johannesburg Policy Targets," in Witte, Streck, and Benner, Eds., *Progress or Peril? Partnerships and Networks in Global Environmental Governance in the Post-Johannesburg Era* (Berlin and Washington D.C.: Global Public Policy Institute, 2003), p. 57

[45] Thorsten Benner et al., "Moving the Partnership Agenda to the Next Stage: Key Challenges," in Witte, Streck, and Benner, Eds., *Progress or Peril? Partnerships and Networks in Global Environmental Governance in the Post-Johannesburg Era* (Berlin and Washington D.C.: Global Public Policy Institute, 2003), pp. 86-88

1. Type II partnerships must follow multilaterally negotiated priorities;
2. A learning network must be established;
3. A pluralistic accountability system must use monitoring and evaluation to regulate partnerships; and
4. A focused multi-stakeholder dialogue is the best way to institutionalize these goals.

Coexistent with these goals are a number of other concerns:

1. Partnerships must not detract from type I agreements;
2. A regulatory regime must not overly burden partnerships; and
3. Flexibility is necessary, especially for developing countries and small partnerships.

The rest of this section explains the above goals and outlines a series of substantive policy tools that can be used to implement them while remaining mindful of the concerns mentioned.

5.1.1 A Focused Multi-Stakeholder Process is the Best Way to Institutionalize a Partnerships Regime

A legally binding partnerships regime established by governmental negotiation—that is, a type I agreement to regulate type II initiatives—is not likely to be politically feasible in the near future.[46] However, a multi-stakeholder dialogue could serve the same purpose in a shorter time frame and with relatively lower transaction costs. Such a dialogue should involve governments as well as major groups, and could consist of a few meetings supplemented by formal and informal communication. As the official follow up organ to Johannesburg, the Commission on Sustainable Development (CSD) is the best forum to launch such an initiative.

A multi-stakeholder dialogue approach may actually prove a more legitimate route, as the same multi-sectoral grouping that forms the partnerships would be deciding what the regulatory regime should look like. As Benner et al. suggest, the World Commission on Dams provides a promising example of what such dialogues can achieve, even in politically volatile contexts.[47]

Of course, the largely ineffectual "Guiding Principles" established at Johannesburg also emerged from a multi-stakeholder dialogue. Can a better result be expected now? There may be

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[46] Monika Linn highlighted this point.
[47] Thurston Benner et al., "Moving the Partnership Agenda to the Next Stage: Key Challenges," pp. 86-7. For a more general discussion of the World Commission on Dams see Sanjeev Khagram, "Toward Democratic Governance for Sustainable Development: Transnational Civil Society Organizing Around Big Dams" in Florini, Ann M. Ed., *The Third force*, (Japan Center for International Exchange: Tokyo and Carnegie Endowment for International Peace: Washington, 2000).

some reason for optimism. For example, as section three demonstrated, partnerships are not living up to the goals set out for them at Johannesburg; the need for stronger rules is undeniable. In addition, the multi-stakeholder dialogue could be focused by the CSD. By setting out several "baseline" rules, the CSD could ensure a strong result while directing those tasks best suited to a multi-stakeholder dialogue to that body. Many of the recommendations in the remainder of this section outline what that baseline might incorporate and highlight areas to de delegated to the multi-stakeholder dialogue. A specific time limit should be set (probably not more than a year) for the dialogue to complete its work. At that point the agreed upon standards should be officially endorsed by the CSD.

5.1.2 Type II Partnerships Must Follow Multilaterally Negotiated Priorities:

Because partnerships are voluntary, some key issues have not received the attention they deserve.[48] While high-profile concerns like energy, freshwater, and Africa are receiving a good deal of attention, other important issues are being overlooked. Obviously not every issue should have the same number of partnerships; in a world of limited resources and pressing issues, priorities must be set. However, these priorities should be decided through the multilateral process, not the whim of individual actors. The most urgent development needs are not necessarily the ones governments, NGOs, IGOs, and the private sector are willing or likely to form partnerships around.[49] At the same time, it is imperative to avoid any kind of top-down system. Partnerships are voluntary in nature; the idea of officially mandated partnerships is both oxymoronic and practically unfeasible.

There are several steps that can be taken to focus partnerships on internationally agreed to development priorities without unduly constraining them. Here again the UN, specifically the CSD, has a central role. A committee should be created to evaluate the extent to which the existing partnerships match the negotiated priorities. Such a committee would convene at regular CSD meetings and be composed of both sectoral—governments, IGOS, NGOs, business—and categorical—freshwater, energy, biodiversity, etc.—stakeholders. These meetings would highlight the neglected areas and produce a report that could guide and

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[48] See section three.
[49] Indeed, Andonova and Levy's excellent study shows that partnerships are supply-driven, not demand-driven. That is, they reflect the capabilities of rich countries and donors as opposed to the needs of poor countries. Andonova and Levy, "Franchising Global Governance: Making Sense of the Johannesburg Type Two Partnerships"

encourage governments, IGOs, NGOs, businesses, and others to establish future partnerships. Private and public donors should adopt the committee's findings into their own priorities when they consider funding partnerships. International organizations could use their leading role in partnering to bring other actors, namely governments, NGOs, and businesses, into these priority areas. Essentially, the committee would serve as the nerve center of a priority-setting network within the partnership system.

Attention must also be given to priority setting *within* categories. For instance, energy partnerships should address a wide range of issues, not just, for example, solar power generation for off-grid, rural communities. Intra-category prioritization need not, however, be micromanaged by the CSD. Rather, smaller, category-based networks of the partners involved should develop to explore these issues. These could range from informal contact between partners to more organized discussions or even meetings. The extent to which these networks will develop depends on the resources and needs of the partners in each category.

While meeting the goal of tying type II partnerships to type I priorities, this proposal would not unduly burden partnerships. The costs—an additional meeting at a regular event, informal contact between partners in similar categories—would be minimal. More importantly, there is no danger of vertical control. The committee and networks' power would be informational; the minimal enforcement capacity provided by donors—valid only to the extent donors accept the committee's priorities—is purely incentive-based. No proposed partnership would be rejected from the Johannesburg program for its failure to address neglected areas. Rather, proposals that did address such areas would be encouraged.

Such a proposal, however, is unlikely to bring the partnerships fully in line with the negotiated priorities. In many ways this highlights a central limitation of partnerships—they do not necessarily match the priorities set out in the multilateral process—and reinforces the importance of type I initiatives.

5.1.3 A learning network must be established

One of the most useful aspects of partnerships is that they serve as a kind of laboratory for development projects. Because they are varied and innovative and often have lower transaction costs than more formal arrangements, they can be a way to experiment with new ideas. Such experimentation is only useful, however, when lessons can be learned (from both

success and failure) and shared. This allows for "scaling up;" partnerships seen as effective can attract new partners and funding or expand into new areas while their methodologies are adopted by other organizations.

Steps have already been taken to institute a learning network. The 11th CSD meeting features a "partnerships fair" that will allow partners to showcase their work to the attending delegates. This should be expanded into a continuous, virtual fair via the Internet. This could be done at relatively low cost by the UN or some other mutually agreed-to point organization.

While a step in the right direction, a venue for partnerships to display their projects will probably not draw out all the learnable lessons partnerships have to offer. Partners may not be forthcoming about experiments that did not work, yet that information is critical for learning to take place. Therefore, independent reviews of partnerships' successes and failures are a necessary compliment to the "fair." These should be funded by donors interested in supporting partnerships and those partners with the resources to carry out such studies (e.g. developed countries, large NGOs, IGOs, and corporations).

5.1.4 A Pluralistic Accountability System Must use Monitoring and Evaluation to Regulate Partnerships

An accountability system based on monitoring and evaluation is the most important component of a partnerships regime. It is through accountability that fears of "green-washing" and "Potemkin villages" are addressed. It is also likely to be the most controversial component. There is a real fear that accountability derived from monitoring and evaluation will burden partnerships, hampering them from carrying out important development projects. As has been discussed elsewhere, such concerns are valid but avoidable. While a traditional, command-and-control based accountability system would certainly run the danger of doing more harm than good, innovative policy tools can avoid this danger.

The New Accountability

What precisely do we mean when we say partnerships must be accountable? Several authors have noted that accountability itself is "an under-explored concept whose meaning remains evasive."[50] However, Schedler identifies two key components: answerability—"the

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[50] Andreas Schedler, "Conceptualizing Accountability," in Andreas Schedler, Larry Diamond, and Marc Plattner, Eds, *The Self-Restraining State: Power and Accountability in New Democracies* (Lynne Rienner: London, 1999), p.

right to receive information and the corresponding obligation to release details"—and enforcement—"the idea that accounting actors do not just 'call into question' but also 'eventually punish' improper behavior".[51]

Traditionally, answerability and enforcement have been exercised through vertical, juridical arrangements. "A" has juridical power over "B," thus B must answer to A and do as A wishes or face punishment. For example, a politician must answer to her constituents; should she displease them, they will vote her out of office. A more related example would be the UN, which must answer to its member governments. Should it go against their wishes they have the juridical ability to sanction it.

However, such a conception of accountability is unworkable in the pluralistic context of partnerships. While the juridical channels linking partnerships to the relevant "accounting actors" (the states that signed the WSSD agreement or, more accurately, the conglomeration of those states) are conceptually sound (see above), it is not practically or politically feasible for some intergovernmental monitoring agency to hold the partnerships accountable. Therefore, a new accountability must be fashioned.

This is done in the concept of "horizontal accountability," which Schmitter defines as "the existence of permanently constituted, mutually recognized collective actors at multiple levels of aggregation…that have equivalent capacities to monitor each other's behavior and react to each other's initiatives."[52] At the national level this might be expressed as "checks and balances;" for example, in the US constitutional system each branch of government is independent and serves as a restraint on the others' power.[53] At an international level, however, such juridical horizontal accountability is not possible. Where there is no Constitution, and the relevant entities are not branches of government but a range of governmental, non-governmental, and intergovernmental actors, horizontal accountability can still be applied, but must be done by non-juridical means.

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13. See also Robert O. Keohane and Joseph S. Nye, "Democracy, Accountability, and Global Governance," Politics Research Group Working Papers on International Relations, Kennedy School of Government, Harvard University, accessible at http://www.ksg.harvard.edu/prg/nye/ggajune.pdf.

[51] Schedler, "Conceptualizing Accountability," p. 15

[52] Philippe C. Schmitter, "The Limits of Horizontal Accountability," in Andreas Schedler, Larry Diamond, and Marc Plattner, Eds, *The Self-Restraining State: Power and Accountability in New Democracies* (Lynne Rienner: London, 1999), p. 61

[53] See, generally, Guillermo O'Donnell, "Horizontal Accountability in New Democracies," in Andreas Schedler, Larry Diamond, and Marc Plattner, Eds, *The Self-Restraining State: Power and Accountability in New Democracies* (Lynne Rienner: London, 1999).

Keohane and Nye outline several alternative forms accountability might take at the global level.[54] Alongside the traditional vertical and juridical accountability described above, they put forth "reputational" and "market" accountability. The first "occurs through publicity… Organizations are subject not only to press criticism, but also to transnational professional judgments by members of epistemic communities. Transnational corporations are subject to naming and shaming campaigns by NGOs." Reputational accountability is particularly effective "in an information age" where credibility is "a key power resource." The second, market accountability, "works through the information that markets provide and the rewards and punishments they bestow." Simply put, consumers can hold suppliers accountable by not purchasing their products. The converse to both reputational and market accountability is also true; partnerships will receive economic and public relations rewards for good behavior.

How might these two enforcement tools be of use in the regulation of partnerships? Reputational accountability could be wielded against partnerships that had failed to seriously pursue their stated goals or acted contrary to the tenets of sustainable development. Beyond just the "naming and shaming" suggested by Keohane and Nye, critiques could take the form of evaluative reports with constructive as well as critical components. Furthermore, there is no reason reputational accountability need be exclusively wielded by NGOs against businesses. Indeed, it should not be limited to just that situation. All partners—under Schmitter's definition any of the "mutually recognized collective actors at multiple levels of aggregation"—must both hold others accountable be held accountable in return.

While the application of market accountability to partnerships is clear when private enterprises participate, it may seem less relevant to partnerships by governments, NGOs, and IGOs. However, if we consider that these partnerships must seek funding from donors—in effect "consumers" of development—we can see how market accountability broadly defined can be applied to them as well.

Thus, new conceptions of accountability—horizontal as opposed to vertical, reputational and market-oriented as opposed to juridical—offer an effective and politically feasible way to regulate partnerships. However, conceptual articulation will not cause such a system to

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[54] Robert O. Keohane and Joseph S. Nye, "Democracy, Accountability, and Global Governance," pp. 4-5. See also the discussion of accountability in Witte et al., "The Road from Johannesburg: What Future for Partnerships in Global Environmental Governance?" pp. 74-80.

automatically spring into being. Reputational and market accountability require certain conditions to operate effectively. As is explained below, transparency is crucial.

5.1.5. Transparency is Necessary for the Application of Reputational and Market Accountability
        Both reputational and market accountability hinge on access to information, or transparency. [55] In order for actors to enforce accountability on a partnership through reputational or market means, they must first know how that partnership has failed to live up to its responsibilities. This is the answerability aspect of accountability—"the right to receive information and the corresponding obligation to release details"—that Schedler mentions. Only with answerability can enforcement effectively take place.

        How can transparency be ensured in the partnerships system? The laissez-faire response would be to rely on the very same reputational and market powers of horizontal accountability that are employed for substantive concerns. Just as organizations could denounce or remove economic support from partnerships failing to meet their development obligations, similar tactics could be used against partnerships perceived as non-transparent. On closer reflection, however, it is apparent that such a system would have many flaws, the most fundamental of which being that reputational and market accountability are *predicated* on a transparent system. Transparency is a precondition for effective reputational and market accountability; if such an accountability system is to be successful at the substantive level, transparency must be ensured by more powerful tools than reputations and markets. Thus, at the procedural level of the proposed partnerships regime it is important to have more traditional legal and hierarchal safeguards for transparency. Only then can reputational and market accountability effectively regulate the substantive results of partnerships. This represents a mixing of vertical, juridical power for procedural issues with horizontal, reputational and market power for substantive issues.[56]

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[55] An analysis of the use of transparency as a mechanism of horizontal accountability is presented in Fredrik Galtung, "A Global Network to Curb Corruption: The Experience of Transparency International," in Florini, Ann M. Ed., *The Third force*, (Japan Center for International Exchange: Tokyo and Carnegie Endowment for International Peace: Washington, 2000).
[56] Slaughter speaks of a need for a combined approach; although the international system is generally shifting toward governance, "governance without government is governance without power, and government without power rarely works." Anne-Marie Slaughter, "The Real New World Order," *Foreign Affairs* 76:5, September/October 1997, p. 195

Procedural guarantees of transparency should be established for each of the components suggested in Schedler's definition of answerability: a right to receive information and an obligation to report it.

The Obligation to Report Information

Partnerships should be obligated to issue public reports on their activities. While many already do this, the process should be institutionalized. Partners should regularly send reports to the UN secretariat to be published on its website. The exact timing and content of such reports should be determined through the multi-stakeholder process described above.[57] Partnerships that failed to report would no longer be included in the Johannesburg program.

Furthermore, common sense dictates that any kind of reporting system must include a monitoring element to give substance to the report. Partnerships should therefore establish clear monitoring methods tailored to their particular project. As long as the exact methodology is made public, there is no need for internationally mandated monitoring processes. Flexibility is required to accommodate varying institutional capacities and the nature of each project.

The Right to Receive Information

Reporting alone cannot guarantee transparency; a freedom of information component must be included as well. No matter how exacting the reporting criteria are made (and it may be burdensome to make them overly demanding), there is always the possibility that critical information will be overlooked. More cynically, reports can often be made to look more like propaganda pieces than objective scorecards. For these reasons partnerships must be required to satisfy reasonable information requests in addition to their reporting responsibilities.

Such an arrangement could mirror the Freedom of Information (FOI) laws of many countries. The US provides an example of a high standard of disclosure; under the Freedom of Information Act (FOIA):

> "Any person" is entitled to request and receive identifiable records held by an
> agency, unless the records in question fall within one of the Act's nine
> exemptions. Disclosure is the norm. A requester's motives or her relation to the

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[57] While a number of reporting standards abound, the work of the Global Reporting Initiative is perhaps the most thoughtful and organized approach. It is important to remember, though, that the "right" reporting scheme will vary from project to project. Global Reporting Initiative, "Sustainability Reporting Guidelines" (Boston, 2002), available at www.globalreporting.org

information she seeks to acquire are irrelevant. An agency's refusal to disclose requested information is subject to *de novo* judicial review and the government has the burden of proving that the information it seeks to withhold is, in fact, exempt from disclosure.[58]

Domestically, FOIA is an enormously helpful tool for civil society to monitor government agencies and thus hold them accountable. It is widely used by the for-profit and non-profit sectors, as well as the news media, to investigate governmental operation.

How might freedom of information be applied to partnerships? Several options are available, but the policies suggested here best match the twin goals of effective regulation and political feasibility. The leading partners of a given partnership should sign a contract with the UN committing themselves to satisfy all reasonable information requests pertaining to the partnership from any entity. Such contracts would be a prerequisite for participation in the Johannesburg program, but could vary to reflect the diversity of the partnerships as long as the core principles are consistent. Like domestic FOI laws, the contract would provide for several exceptions for commercially valuable, personally sensitive, and other restricted kinds of information.[59] Should the partner refuse an information request for whatever reason, the contract would allow the requester to challenge the denial of information in a court pre-identified in the contract (most likely the domestic courts of the lead partners). A court finding in the litigant's favor would provide the UN footing to terminate the contract, ending the partnership's participation in the Johannesburg process and any public relations benefits obtained by such participation.[60]

A Transparency-based Regime Breaks Free of the Conventional Wisdom

As was alluded to above, conventional wisdom suggests a trade-off between regulation and participation. It is feared that corporate actors in particular may decline to participate in a system with too many rules. However, a transparency-based system turns this assumption on its

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[58] Alfred C. Aman and William T. Mayton, *Administrative Law, 2nd Ed.* (St. Paul, Minnesota: West Group, 2001), p. 631

[59] The multi-stakeholder dialogue proposed above would be tasked with specifying the allowable exceptions. The US FOIA provides for nine exceptions: national security information, internal rules and practices, statutory exemptions, trade secrets, intra and inter agency memoranda, privacy, law enforcement, financial records, and records of oil exploration. US courts have built a substantial body of jurisprudence delineating each of these exceptions. Other countries have had similar experiences.

[60] While removing the partnership from the program is a possibility, a negotiated solution between the UN, the offending partnerships, and the information seeker would probably could often be used to settle out of court.

head. A free flow of information will legitimize development efforts that are making good progress by refuting allegations of green-washing or public relations stunts. Thus, transparency will actually provide incentives for corporations and other actors serious about sustainable development to participate. "Good" partnerships will be validated while "bad" partnerships will be exposed. All other things remaining equal, it behooves actors serious about promoting sustainable development to choose a transparent system over an opaque one.

5.2 Limits of the Regime

The partnerships regime described above is not without flaws. These are mostly related to problems with reputational and market accountability. One, it is unlikely that many organizations will be able to invest substantial resources in monitoring the proposed partnerships; a problem that will become exacerbated as the number of partnerships grows. Because the proposed regime only establishes the possibility of detailed monitoring, it is feasible that partnerships may not be held fully accountable. It is hoped, however, that the mere possibility of being held accountable will provide incentives for most partnerships to act properly.

A second problem with reputational and market accountability is that it does not work equally well on all types of actors. "Brand-less" corporations, non-democratic governments, and projects with guaranteed funding sources are resistant to the kind of reputational and market enforcement powers the proposed regime would apply. Furthermore, well-funded and politically savvy organizations can mitigate efforts to damage their credibility or market share. While the proposed transparency standards would hamper their ability to do so, well-organized public relations campaigns may still be effective in this regard.

6. CONCLUSION

6.1 Policy Recommendations

This paper has put forth a number of policy recommendations geared at maximizing the development potential of the Johannesburg partnerships. These are categorized by sector and reiterated here.

The international community, broadly defined, must continue to emphasize type I commitments:

- Substantive multilateral commitments by governments are the primary vehicle for promoting sustainable development and will remain so for the foreseeable future. While both neo-conservatives and neo-medievalists have highlighted the role partnerships can play, this must be seen as auxiliary to effective state action.

The Commission on Sustainable Development should:

- Form a multi-stakeholder dialogue to implement the partnerships regime. This dialogue must include representatives of governments, IGOs, NGOs, and the private sector, as well as representatives from the various issue categories established by the UN. It should build off a set of "baseline" rules agreed to by the CSD, which should mandate a system of reputational and market accountability by:
    - o Requiring partnerships to report annually to the Secretariat
    - o Requiring partners to sign contracts committing themselves to release information pertinent to their WSSD projects
    The multi-stakeholder dialogue should conclude its work within a specific time frame, probably not more than one year.
- Establish a committee to review the concordance of type II partnerships with type I priorities. This committee should convene at regular CSD meetings and compile a report highlighting the issues areas in most need of attention.
- Establish a learning network that includes independent reviews of partnership activities.

Intergovernmental organizations should:

- Engage in more partnerships, particularly with developing countries and in neglected issue areas.
- Use their leading role to promote other actors to engage in partnerships in neglected issue areas.

Governments should:

- Undertake more partnerships. This applies to both developed and developing nations.

- Educate sub-national governments about the possibility and opportunity to participate in type II partnerships and include interested parties in delegations to international fora.
- Allow agencies and sub-national governments to partner directly instead of routing all international dealings through the foreign ministry or ODA office.

Non-governmental organizations should:

- Undertake more partnerships.
- Play a leading role in monitoring and evaluating partnerships through the proposed transparency mechanisms.

The private sector should:

- Significantly increase its participation in the partnerships program, aiming to achieve parity with the other sectors.

Donors should:

- Target funding to under-served issue areas identified by the CSD.
- Provide resources for meaningful participation of smaller NGOs and developing countries in partnering.

6.2 Areas for Further Research and Policymaking

This paper has sought the address the crucial issues of "breadth" and "quality" in the Johannesburg partnership program. It has focused on the key concerns of participation, legitimacy, and accountability, but other problems remain under-studied.

First, there is the issue of engaging relatively small actors. The disaggregated nature of small-scale NGOs, communities, and businesses makes them ideal candidates for partnerships and perhaps offers the greatest opportunities for meaningful collaboration. Furthermore, a broad-based network of small actors would bring a grassroots legitimacy to the overall program and put a local face on the multilateral development structure. For these reasons, new ways to bring small-scale actors together should be sought.

Second, the "newness" of partnerships must be guaranteed. Registering old projects with the UN will not generate additional development; new initiatives must be launched that bring new resources to bear. This has not been the case so far. As Ivanova observes, "the impressive number of partnerships announced at the Summit was to a large extent a repackaging of already

existing initiatives to fit the 'Type II' outcome definition."[61] For real progress to be made, as opposed to rhetorical progress, this will have to change.

6.3 An Imperative For Action

This paper has highlighted the need for a regulatory system to maximize the sustainable development potential of the type II partnerships program established at Johannesburg, and suggested how such a system might evolve. Benner et al. powerfully summarize the consequences of inaction:

> [F]urther delay in addressing the pressing issues related to partnerships will inevitably result in a sustained political backlash. NGOs will campaign against what they perceive to be…an effort by governments to abdicate their responsibilities…Governments will come under pressure not to participate…and businesses will go on the defensive…Therefore, it is all the more important to swiftly develop and implement "rules of the game."[62]

Andonova and Levy also highlight the need for regulation, "if the opportunistic tendencies are not subjected to disciplining leadership, transparency, and oversight, the seeds of innovation currently present will be choked out and the process will become a mockery."[63] Fortunately, there is no reason such a backlash need occur. If the international community can commit to making partnerships effective, they can become a useful tool in the fight for environmental protection, social progress, and economic growth. It is hoped that this paper has been able to advance that goal.

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[61] Maria H. Ivanova, "Partnerships, International Organizations, and Global Environmental Governance," p. 23
[62] Thorsten Benner et al., "Moving the Partnership Agenda to the Next Stage: Key Challenges," p. 88
[63] Andonova and Levy, "Franchising Global Governance: Making Sense of the Johannesburg Type Two Partnerships," p. 18

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This Junior Paper represents my own work in accordance with University regulations.

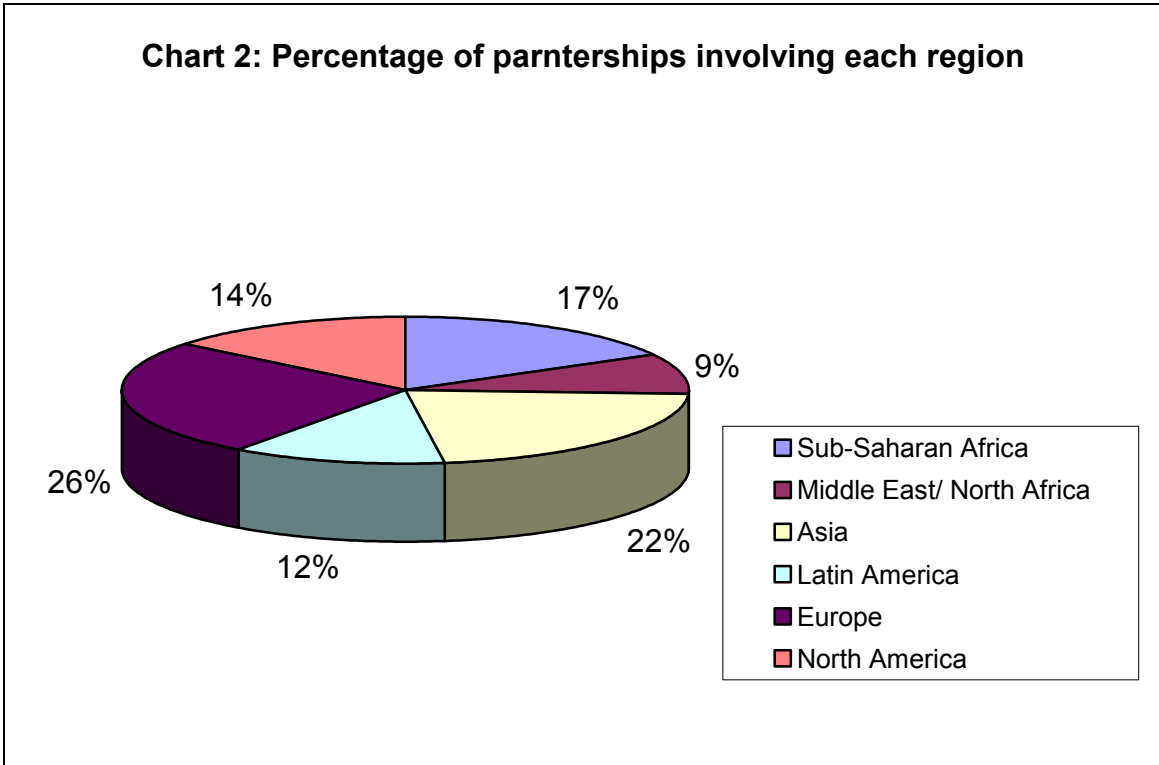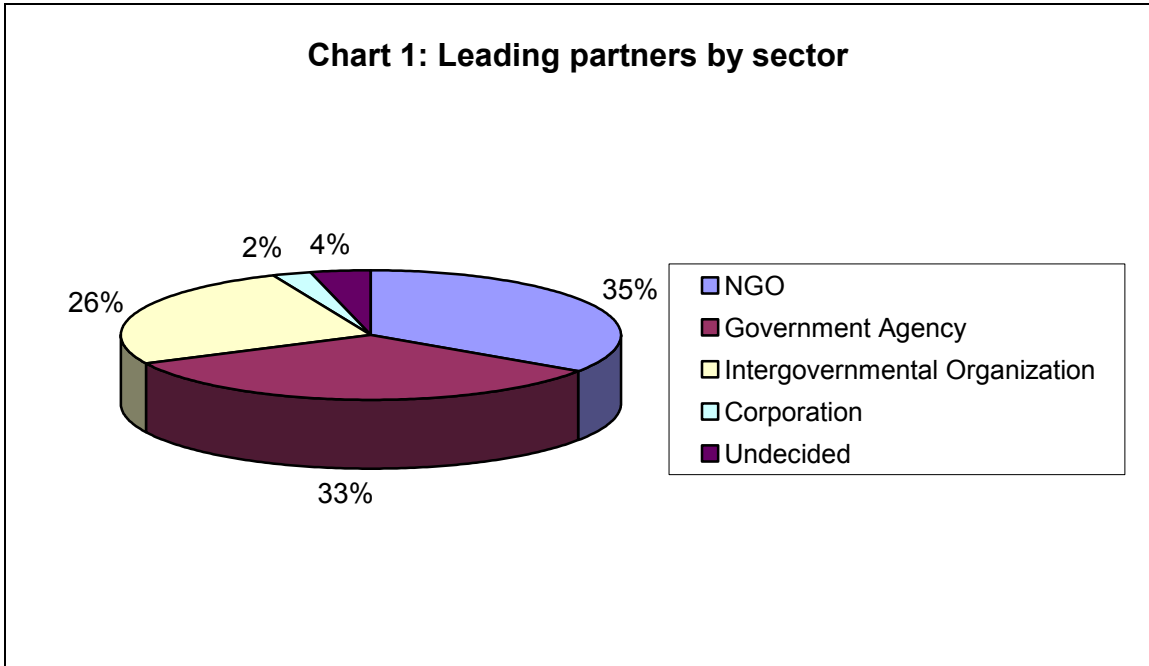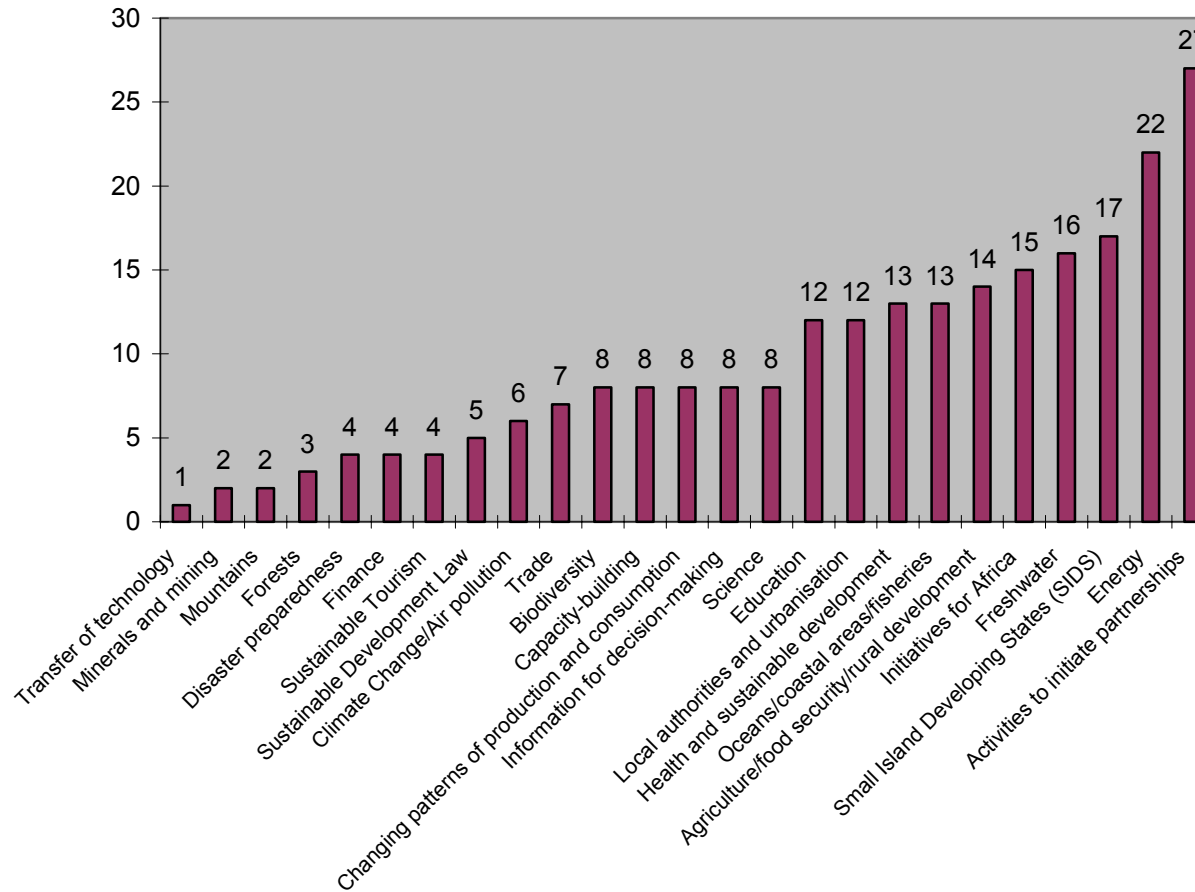   May 2, 2003

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Appendix I: CHARTS

Chart 1: Leading partners by sector

2% 4%

26%

35%

□ NGO
■ Government Agency
□ Intergovernmental Organization
□ Corporation
■ Undecided

33%

Chart 2: Percentage of parnterships involving each region

14%   17%

9%

26%

22%

12%

□ Sub-Saharan Africa
■ Middle East/ North Africa
□ Asia
□ Latin America
■ Europe
□ North America

Chart 3: Number of partnerships by issue area*

*Issue areas defined by the UN

Chart 4: Percentage of partnerships with funding
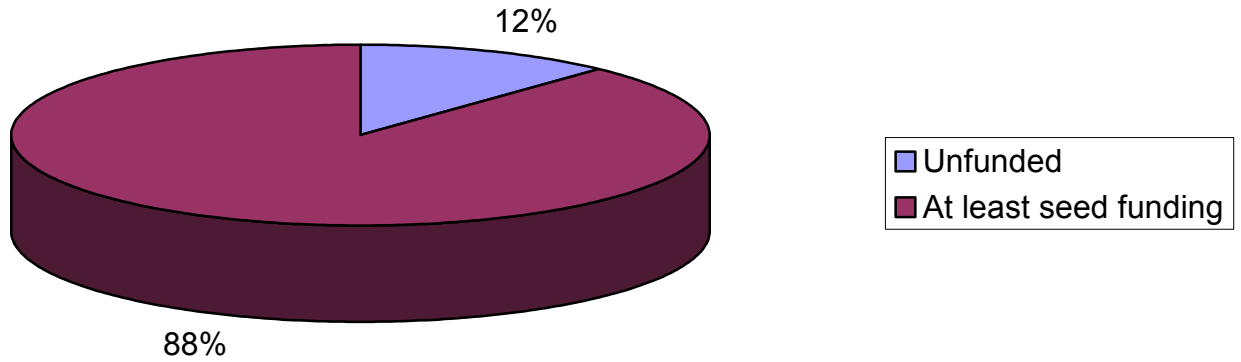
12%

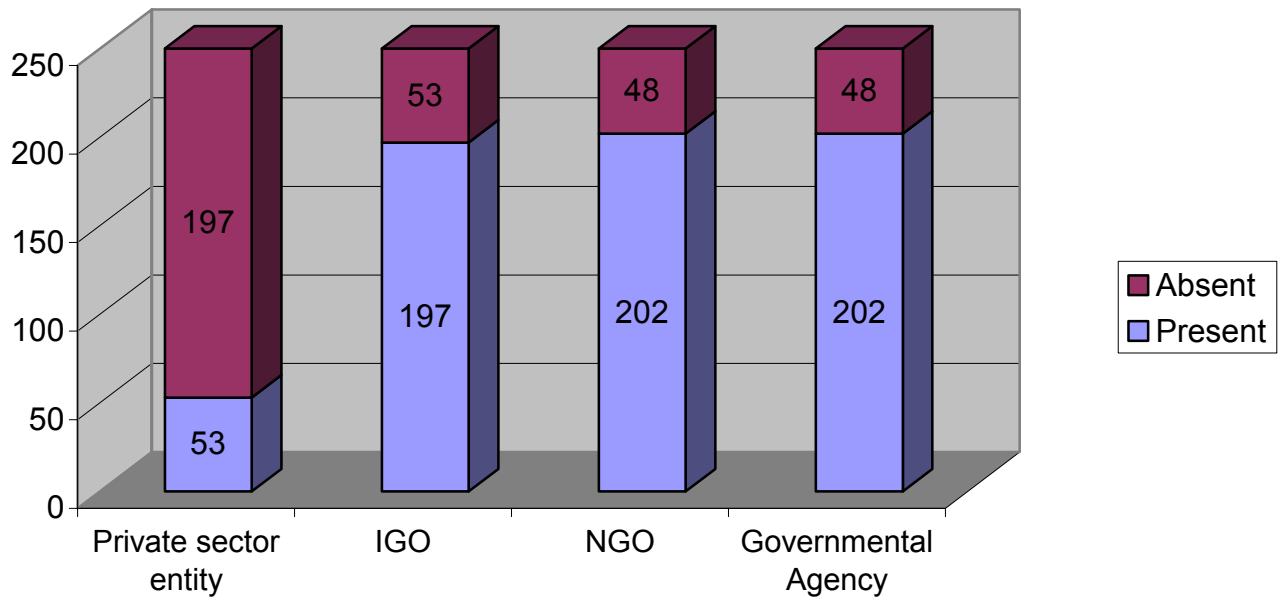Unfunded

At least seed funding

88%

Chart 5: Number of partnerships including at least one member of each category

250	53	48	48
200		
197		
150		
100	197	202	202
53		
0		

Private sector entity   IGO   NGO   Governmental Agency

Absent

Present

Chart 6: Number of partnerships with and without each transparencey criterion

	Website	Reporting	Monitoring
Without	90	78	127
With	160	172	123

Chart 7: Combined transparencey criteria

- No criteria: 12%
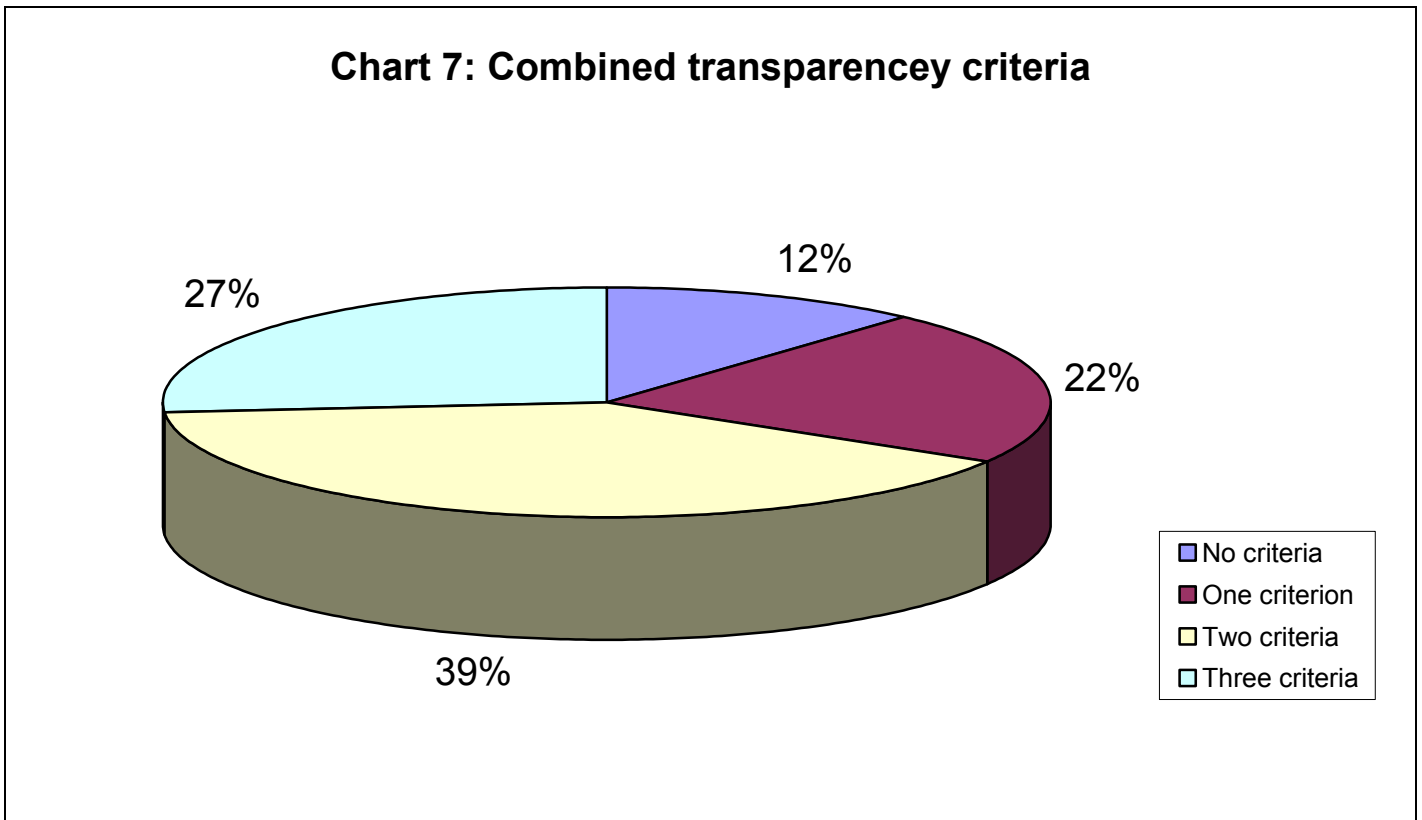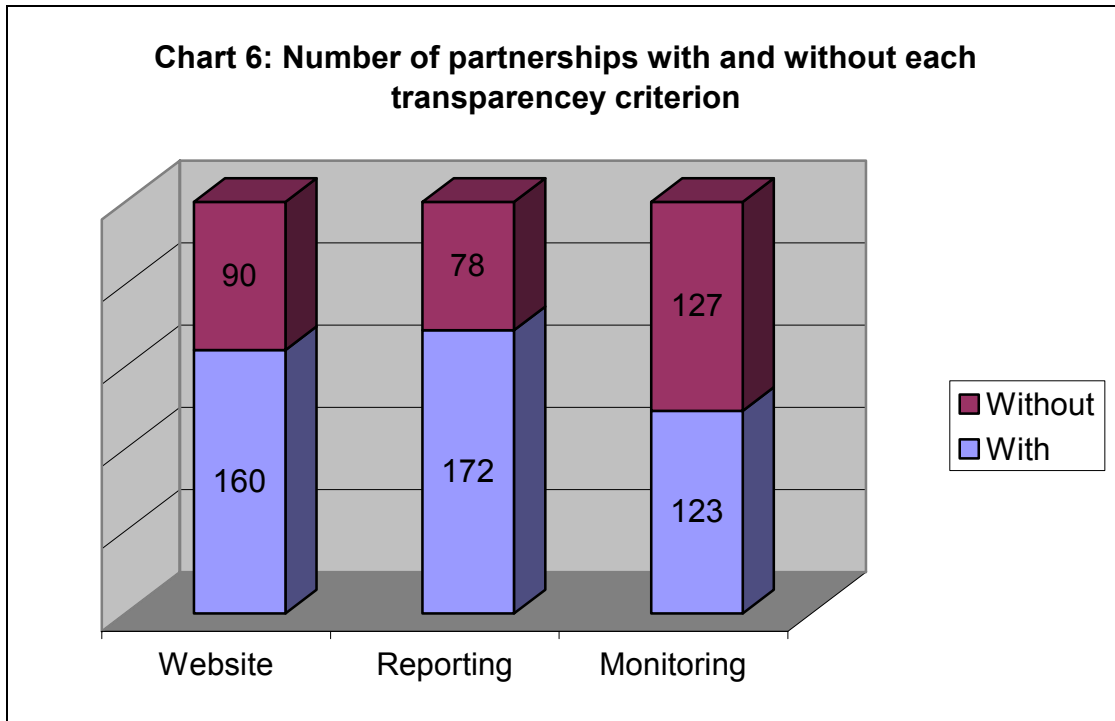- One criterion: 22%
- Two criteria: 39%
- Three criteria: 27%

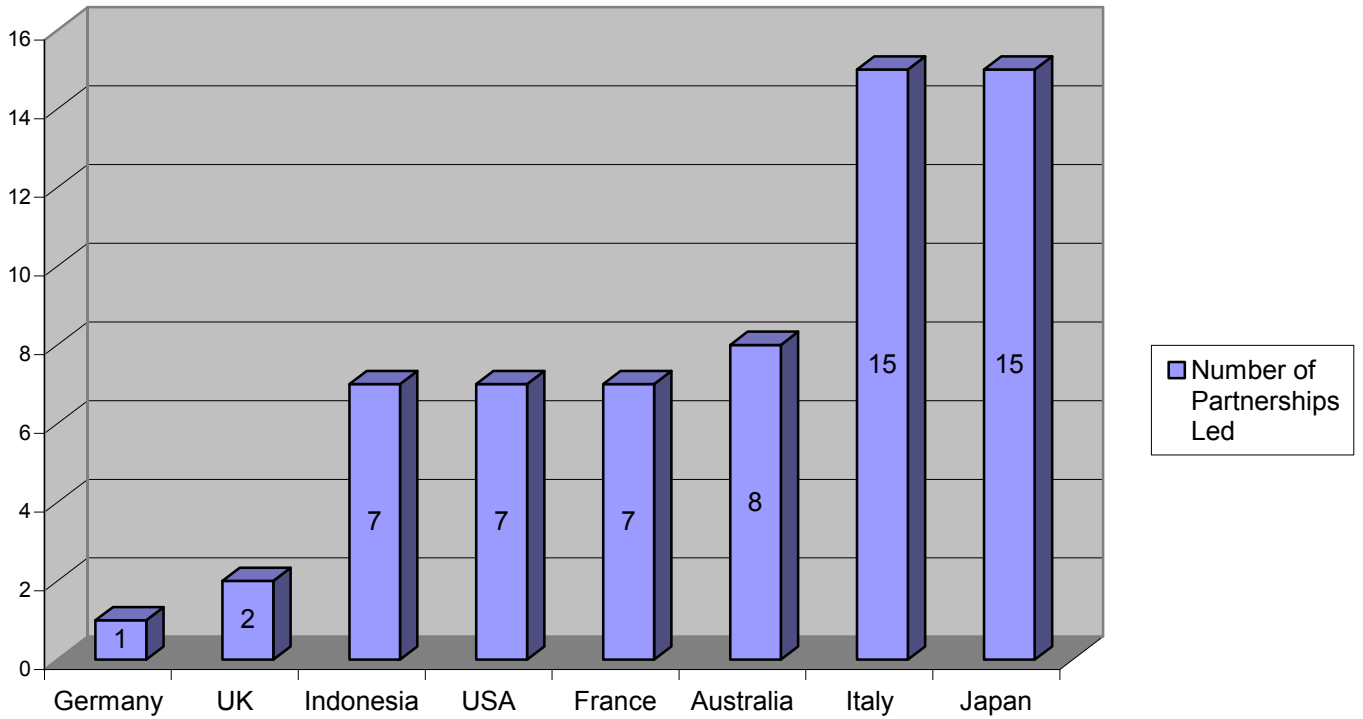**Chart 8: Number of partnerships in which selected countries play a leading role**

Chart 9: Number of partnerships led by developing and developed countries