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Progress

UN Resolution Resets Focus to Human Rights

Priority

Opportunities for Reducing Methane





Moving in Synch

Filling the gap created by the absence of federal legislation, businesses with growing climate change commitments can join with U.S. government initiatives to form powerful public-private partnerships that will accelerate carbon reductions



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THIS issue of *The Environmental Forum* is published exactly three decades after the Rio Earth Summit, where world leaders signed the UN Framework Convention on Climate Change. Since then, a lack of effective governmental policies has contributed to huge increases in global greenhouse gas emissions, which grew by almost 61 percent in the last 30 years, to 36.4 gigatons per year of carbon dioxide equivalents. Today scientists know that to stabilize global temperatures at or below an increase of 1.5 degrees Celsius from pre-industrial levels—the goal of the 2015 Paris Agreement—humanity needs to cut emissions sharply. The first milestone is a cut by 45 percent from 2010 levels by 2030, and then society must reach net-zero carbon emissions by 2050. Unfortunately, the trend has been strongly in the opposite direction. This failure means it is time to change the governance climate as well as the physical climate, in the United States and globally.

It is time to look beyond government alone to set realistic policy and form appropriate instruments regulating market behavior. And it's time for the private sector to move in synch with the government. Climate change is not good for business. It jeopardizes facilities, supply chains, and markets. It also concerns investors, who monitor corporate financial and non-financial performance. At the same time, the transition to clean energy and net-zero carbon emissions presents an unprecedented opportunity for companies and institutions that are quick to seize emerging opportunities in the market. The United States has contributed the most to the buildup of carbon dioxide and other greenhouse gases, but it has much to contribute to the blend of smart, innovative policy and world-class, leapfrogging technology that can achieve not only its own nationally determined contribution, or NDC, under Paris but foster the world community's ability to realize the agreement's science-based temperature limits.

While we remain hopeful that comprehensive federal climate legislation will pass, the year 2030 is not far away, and it is time to get creative with solutions. The U.S. State Department has launched two programs that point the way toward government-business partnerships. The Clean Energy Demand Initiative connects countries with companies to signal demand for clean power, enabling the countries to foster the development of credible clean energy

procurement options. The department is also responsible, with the World Economic Forum, for the First Movers Coalition, a public-private partnership to jump start the global demand for emerging green technologies. Such opportunities are also present elsewhere in the government.

A further promising avenue may lie in the intersection of private actions being taken by companies to reduce GHG emissions, aligned with the criteria of the Science Based Target initiative, with existing U.S. government programs and initiatives that could incentivize and further legitimize the actions of the business community. SBTi “drives ambitious climate action in the private sector by enabling companies to set science-based emissions reduction targets.” SBTi was established in 2015 by the World Resources Institute, CDP, World Wide Fund for Nature, and the UN Global Compact, and it has developed criteria and guidance for science-based targets with the support of several major companies. SBTi's efforts have addressed some of the trepidation that stakeholders have had in company GHG reduction targets. Its criteria and its efforts include many of the attributes needed for effective public governance systems that engage the business world.

Our view is that committing to verifiable steps to achieve a 1.5 degree pathway through the SBTi establishes a strong foundation to build on in the near term. Significant reductions in GHG emissions could be achieved if existing company commitments are met—and there is an even more remarkable opportunity if many more companies commit to science-based targets. Through relatively simple but important steps, the U.S. government can bolster company GHG commitments and incentivize thousands of additional firms to commit to deep reductions by leveraging its purchasing power and signalling that early reductions made by companies will count as verified reductions in any new regulatory program. The regulatory recognition will only occur when a company is verified to be on—and so long as it stays on—track to achieve its science-based target.

In getting business and government in synch on a 1.5 degree path, this article looks at potential steps that the administration and corporate enterprises can take to quickly form a public-private partnership as an effective gap-filler while support builds for comprehensive climate legislation. And we need to act together, because time is not on our side.

As an example of the power of a public-private partnership, we can look to the experience of the pandemic. The joint response to Covid and rapid launch of the vaccine succeeded because industry and the government recognized that they quickly needed to change the way they had operated for years to launch new medicines and vaccines and meet patients' needs. Both sectors left old ways of doing things at the door, took risks, and placed humanity's interest well above self-interest. The world will suffer if this approach is not replicated to address climate change—it is time to move from conflict to coordination in the business-government operating manual.

While Congress and the Biden administration have taken important steps, carbon tax and other bills that would limit carbon emissions have unfortunately not been adopted. Meanwhile, many major firms have been working to reduce their GHG emissions. Company GHG commitments in aggregate are significant. Yet the U.S. government does not consider the total impact of these corporate goals when setting its own public governance strategy for GHG emissions reductions, relying instead on more traditional levers of government.

Professors Michael Vandenberg and Jonathan Gilligan of Vanderbilt University, in their June 2015 *Columbia Journal of Environmental Law* article “Beyond Gridlock,” were among the first to recognize the potential for aggregate company GHG reductions to represent a meaningful percentage of needed global cuts. They coined this potential reduction as the “private governance wedge.” In a July 2020 *Environmental Law Reporter* article, “Under the Radar: A Coherent System of Climate Governance, Driven by Business,” Louis Leonard explained that over the past several years a science-based approach to reducing GHG emissions has emerged in the United States and other major economies that is resulting in meaningful climate reduction commitments by major companies without regard to government mandates.

Leonard reported that a 2018 global assessment of corporate climate commitments found that 2,175 companies have pledged at least one climate commitment under the reporting platform used by CDP. If they were to successfully achieve their goals, global emissions would be reduced by 3.4 gigatons of carbon dioxide annually by 2030, an amount greater than the annual emissions of any country except the United States and China.

Reductions of this magnitude could help the United States as well as other countries meet their NDCs

under the Paris Agreement. However, as discussed below there are reasons why governments have not relied on the carbon reduction commitments made by the private sector.

Despite the potential for very significant global GHG reductions from corporate action, stakeholders, including the government, advocacy groups, and the public, remain skeptical that companies will achieve their commitments. Last year, a *New York Times* article, “What’s Really Behind Corporate Promises on Climate Change,” raised stakeholder concerns with voluntary GHG reduction commitments because few have identified a plan to achieve the targets—or they allow the potential use of poor-quality carbon credits to achieve the targets. There is also a concern that companies are not including their entire value chain emissions in their targets or being transparent about the magnitude of their emissions.

These concerns are valid and fueled in part because of the emerging examples of greenwashing by companies and because environmental sustainability commitments made by major companies over the past decade have largely fallen short in addressing key stressed planetary boundaries. Recently, the NewClimate Institute issued its “Corporate Climate Responsibility Monitor,” which analyzed pledges of 25 large companies and concluded that the commitments only reduce GHG emissions by 40 percent on average, not 100 percent as suggested by their “net-zero” and “carbon neutral” claims. However, these concerns are also driving changes in expectations for GHG reductions and enhancement of the private standards that guide goal setting, monitoring, and transparency in reporting and disclosure that together are helping increase the legitimacy of company commitments.

The phenomenon of setting ambitious targets while building the roadmap to achieve those goals is not dissimilar to the commitments many governments have made under the Paris Agreement, which are bold and ambitious, but potentially lacking the concrete plans to deliver their stated reduction commitments. Thus, the public and private sectors appear to have a shared interest in furthering mutual accountability for their GHG reduction commitments.

An effective complement to public governance could be the answer. In his *ELR* article “Under the Radar,” Leonard argues that the effectiveness of a private governance system as a complement to a public governance system calls for examination at both the systems and initiative levels. He discerns a systemwide effectiveness framework based upon several “operational

Continued on page 44

Lubricating Business-Government Gears

WHEN you are in the midst of a crisis, the oft-used three-legged stool analogy seems wholly inadequate. Our global climate crisis cannot be solved by a very limited number of pillars of action. This is the quintessential problem that requires a whole of fill-in-the-blank strategies to arrest the worsening effects of climate pollution. There are no sidelines where inaction should be tolerated.

It is, however, sensible to focus on parties with whom the greatest potential for positive impact rests. Business is near the top of that list. The private sector can and must take responsibility for its greenhouse gas pollution, and take immediate and measurable steps to significantly reduce emissions. In 2015, the Science-Based Target Initiative emerged from a coalition of UN agencies and business leaders committed to addressing the role of the private sector in our climate crisis. Today, hundreds of companies around the world have publicly committed to science-based GHG reduction targets as part of the SBTi, and that list is growing. This is commendable. But a target is not a substitute for actual investments and discernible and achievable emissions reduction plans.

Targets and commitments are precursors to action, and we must focus on actual reductions. Companies that emit GHGs should be transparent about their plans to reduce emissions, and be held to account. These plans should also address companies' supply chain emissions, which often represent the vast majority of their overall carbon footprint. These are not easy decisions and actions for companies to take, and they often collide with plans for production growth and the desire to maximize profits. But the climate crisis de-



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“Philanthropy can leverage both government and the private sector in ways that can supercharge their collective effectiveness”

mands a long-term outlook. And consumers and investors should reward companies that match science-based targets with real emissions reductions. Going a step further, companies should be advocates for public policies that enable more widespread emissions reductions. Why? Because addressing a global climate crisis should be viewed as a business imperative.

Those public policies may include a range of voluntary programs, government-led research and development, and action-inducing incentives. They should be centered around equity, recognizing that the climate crisis is also an environmental, economic, and social injustice that demands proactive and equitable responses.

Those public policies should include stringent emissions standards that are legally defensible and scientifically based. We should not be fooled by the list of hundreds, if not thousands, of companies worldwide who promote their GHG targets as representative of those actually partaking in the solution to this crisis. The largest GHG emitters—including those who fail to account for their supply chain emissions—are often absent from those lists. It is government's responsibility, using its full authorities, to address the

largest-emitting sectors by setting enforceable limits.

There is another segment of society that also plays an important role in solving our climate crisis, less heralded in Washington, D.C., and state capitals, unspoken of in corporate board rooms, but felt keenly in communities suffering from worsening effects of this crisis: philanthropists. They, and the organizations that wield their dollars, have the capacity to equitably target resources to communities where needs for restoration and resilience are greatest. Philanthropic organizations can experiment, innovate, and invest, without the restrictions of government or the self-imposed limits of most corporations. They can fund pilot projects, prioritize impact, convene and connect people, and seize upon new ideas and approaches. Philanthropy can also leverage both government and the private sector in ways that can supercharge their collective effectiveness.

We are in the midst of a crisis of our own making that spares no one. Conversely, no one can afford to remain a bystander to the array of solutions at our disposal and on the horizon. Aspirations and intent are not enough. Only through the combined force of action can we see a brighter future.

functions” that are expected in public environmental law.

These same features would be expected in any system designed to complement the public governance system, and the most significant include motivating participation by the threat of negative sanctions or benefits of positive incentives; setting emission standards that align with societal science-based benchmarks; assessing and disclosing emissions data specific to individual companies to facilitate allocation of responsibility; driving implementation using tools such as subsidies, market-based instruments, and guidance; tracking progress to measure and publicly report progress against goals; and promoting the use of robust mechanisms to hold to account those who do not comply.

In addition to a complementary governance scheme being effective, Leonard and other experts recognize that the system must be a “legitimate” form of governance that includes fair decisionmaking for all participants and stakeholders; transparent decisions and data to attract and retain participants and build public trust and confidence in the system; and equity and justice for participants and stakeholders.

The SBTi process is an opportunity for business to align with government initiatives, becoming an effective addition to the public climate governance system we hope will succeed it and build upon its success. SBTi’s criteria require companies to establish significant near-term targets to achieve the trajectory aligned with science-based 2050 global GHG reduction targets established by the Intergovernmental Panel on Climate Change. SBTi revises its criteria on a regular basis to assure consistency with the latest climate science.

Importantly, experts from SBTi conduct a detailed review of a company’s GHG reduction commitments against their scientific criteria to validate the legitimacy of corporate reduction commitments. To maintain the SBTi validation companies must show meaningful progress toward the target and publicly report progress annually.

Last October, SBTi, with extensive private- and public-sector stakeholder input, published a sustainability standard that establishes additional criteria that companies will need to meet to reach validated science-based net-zero GHG reductions across the entire supply chain. Importantly, SBTi’s standard addresses the most significant issues in companies’ net-zero GHG commitments identified by the NewClimate Institute in its 2022 report.

As a result, SBTi’s program has evolved to include

many of the key attributes and operational functions identified by Leonard that are needed for a private climate change governance approach to be an effective and legitimate measure and complement to government requirements. Importantly, these are the same attributes that most leading companies have stated are needed in climate legislation, including science-based ambition, public reporting, steps to foster implementation and innovation among the regulated community, and accountability for participants.

Our focus is on the opportunity for existing governmental programs and initiatives to supplement the SBTi program, to thus create an approach that can complement a future public climate governance system. Alignment with government programs and initiatives could incentivize more companies to commit to and achieve net-zero carbon reduction targets, and it could enable the federal government to accept firms’ commitments as part of its NDC using existing or modified GHG accounting systems to break out company emissions that occur in the United States.

To become an effective and legitimate gap-filler and ultimately complement comprehensive federal climate legislation, several additional programmatic elements are needed to enhance the existing SBTi program. These include strong market-based incentives, meaningful consequences for non-compliance, disclosure of how companies estimate GHG emissions, and transparency in SBTi’s internal decisionmaking for determining the adequacy of company targets.

With more incentives to significantly reduce GHG emissions—such as preferential procurement—more companies might commit to net-zero GHG reduction targets. And with more meaningful consequences for lack of transparency or greenwashing, the federal government might be better positioned to focus enforcement resources on those companies that fail to comply with future regulatory requirements, and to accept companies’ commitments as part of its NDC.

A PUBLIC-PRIVATE partnership that synchronizes SBTi’s program with existing federal government initiatives would be an effective mechanism to accelerate GHG reductions, provide a fill-in for federal climate legislation, and ultimately complement comprehensive federal climate legislation when it is passed.

Initiatives that the federal government has established, including the sustainability purchasing initia-

Continued on page 46

Accelerating Business's Climate Actions

THERE has been a subtle but significant transition in how business is addressing the challenge of climate change. We have seen growing corporate support for the Paris Agreement. An ever-increasing number of companies are committed to a net-zero target by mid-century. This is not surprising. The business community is looking out for its long-term sustainability, which requires predictability. The need to plan business investments even in the face of the continued U.S. policy uncertainty, coupled with increasingly compelling science, has persuaded many firms that it is in their interests to act on their own in reducing greenhouse gas emissions.

At the same time, the investment community is looking at risks faced by businesses from climate change. BlackRock, an investment firm with over \$6 trillion in assets, is urging its clients and customers to build sustainability and climate change implications into their planning. This has helped CEOs strengthen the climate change discussion within their own boards. In a recent letter to Congress, 30 leading companies have urged the passage of the climate provisions of the Build Back Better package because it will help them meet their climate goals.

In the U.S. power sector, emissions of carbon dioxide fell 30 percent from 2005 to 2020. Federal and state tax incentives for renewable power, advances with directional drilling aided by years of federal and industry research coordination, and a stiffer regulatory environment for coal-powered facilities influenced these reductions. Those regulatory needs forced power companies to decide to invest more in cleaning up coal plants or put those investments into cleaner energy.

In 2003, GM recalled all its electric vehicles in California, misjudging the future. Tesla was founded in that



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same year, and by 2009 had received a \$465 million loan from the U.S. Department of Energy—which it has paid back with interest. It wasn't until 2012 that Tesla sold more than 1,000 cars per quarter. In the 4th quarter of 2021, Tesla sold just over 300,000 vehicles. Following suit, every major car manufacturer has developed impressive lines of electric vehicles. Ford introduced an electric version of the F150 pickup truck. Further demonstrating this transition, GM has boldly proposed to sell only clean electric vehicles by 2035.

These two sectors alone represent more than 50 percent of U.S. greenhouse gas emissions. There are similar actions in other sectors, from manufacturing to buildings. A transition is underway from waiting for legislation to set the course, to a norm of taking action now. In the early environmental movement, government's role was telling businesses what to do. Today, when it comes to climate change, businesses already know what they need to do—what they need now are government and nongovernmental organization partnerships to help them accelerate the pace.

When Duke Energy adopted a net-zero goal for 2050, the company clearly noted that it needed support-

ing public policy. New transmission lines will be needed, carbon capture will be needed, and continued support for nuclear power will be needed. With its zero-emitting goals established, GM will be supported by new partnerships with research and development on batteries as well as government policies accelerating the deployment of charging stations.

Businesses need certainty to achieve sustainability. They see the low probability for a comprehensive federal program, they see the growing consumer interest, advantages for recruiting employees, investors wanting responsible action, and the continually growing scientific urgency. What is needed now is a stronger business-government partnership, with supporting policy and investment, because the pace of change and current steps taken are insufficient to meet the challenge.

Here is where environmental NGOs have a guiding role to play on the path to society-wide zero emissions by 2050. They can help target existing federal programs to support private greenhouse gas reduction efforts, and they can provide a coordinated and non-redundant transparency structure to give businesses platforms to build credibility and accountability with the public.

tives announced by the Biden administration, hold tremendous potential to supplement the SBTi governance framework in a short timeframe, transforming it into a public-private climate change partnership that possesses the key attributes of a comprehensive public governance approach.

In “The Next Phase of Business Sustainability,” an article published in the Spring 2018 *Stanford Social Innovation Review*, Andrew Hoffman described the power of the market in addressing global environmental challenges. Hoffman stated:

“The market is the most powerful institution on Earth, and business is the most powerful entity within it. Business transcends national boundaries, and it possesses resources that exceed those of many nation-states. Business is responsible for producing the buildings we live and work in, the food we eat, the clothes we wear, the automobiles we drive. . . . This does not mean that only business can generate solutions, but with its unmatched powers of ideation, production, and distribution, business is best positioned to bring the change we need at the scale we need it.”

Last December, President Biden signed the Executive Order on Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability. The EO establishes requirements for federal agencies to purchase sustainable products identified or recommended by EPA. Through the agency’s existing Environmentally Preferable Purchasing program, EPA can recommend purchasing products from a company that has established private environmental standards and eco-labels that meet EPA’s Framework for the Assessment of Environmental Performance Standards and Ecolabels for Federal Purchasing. The agency’s recommendation of purchasing preference to companies committed to the SBTi’s Net-Zero voluntary consensus standard, or a VCS under the parlance of the EPA’s

Framework, would provide a strong market incentive to help companies with their ambitious carbon reduction targets. Eligible company’s products could carry a certified eco-label like that for USDA’s organic stamp.

Other large consumers, including public entities such as EU member states, the UK’s National Health Service, the UN, and municipalities, and private entities such as health insurance companies, Walmart, Unilever, and Amazon, are seeking to become more sustainable through purchasing preference protocols for net-zero carbon products and services. Billions of individual consumers are also seeking to become more sustainable through their purchasing decisions.

If the U.S. government and other large consumers gave purchasing preference to products and services from companies committed to net-zero targets, then more companies that compete for these consumers would recognize that to compete, they too will need to commit to the Net-Zero VCS. As a result, this would provide both a market incentive to commit to net-zero and, importantly, would level the playing field between companies expending money to achieve net-zero carbon emissions and companies that do not act. The terms establishing a government purchasing preference also could promote the development of standard terms for private supply chain contracts even for supply chains with no government involvement.

Companies that participate in the SBTi program provide data on emissions voluntarily, and no mechanism exists to guarantee that a company is including all emissions. While SBTi has stated its commitment to continuing to improve the veracity of corporate commitments, this concern can also be addressed by involving the expertise and perhaps some level of oversight by EPA. This may also be reinforced by the climate disclosure regulations that the SEC is developing.

EPA has the expertise to confirm that SBTi’s guidance for companies’ accounting of emissions is technically sound and, as a participant in a public-private partnership, can provide an important role in conducting random assessments of participating companies’ GHG emissions. Finally, the CDP’s existing database could be used as the accounting system for the partnership and modified, if needed, to break out firms’ U.S. emissions.

In a purely private governance system, the consequences for a company that fails to achieve its emission targets are limited. Certainly, a company missing its targets is open to criticism by its stakeholders, reduced environment-social-governance rating scores, loss of supply chain customers, potential claims under SEC rule 10b-5, and breach of contract actions, and perhaps will suffer some reputational damage, but evidence that companies suffer significant consequences for not achieving voluntary goals is scarce.

On the other hand, the consequences for non-compliance with environmental legal requirements include potentially significant civil and criminal penalties—if EPA is able to adopt the requirements, defend them in the courts, and aggressively enforce them, all of which are difficult in the current polarized political system. However, if the approach is incentivized by a commitment from the U.S. government to provide a purchasing preference to net-zero carbon emission products, then loss of the certification because of non-compliance with a target could result in meaningful marketing consequences.

Companies can impose legally binding require-

Obtaining credit for early commitments and certainty that a 1.5 pathway can be maintained should act as additional inducements for companies to commit to net-zero carbon reductions

ments on suppliers to reduce GHG emissions aligned with SBTi through specific provisions in supplier contracts. In the UK, the Chancery Lane Project has developed model supply chain contract provisions for climate issues in many types of contracts. In the United States, the Environmental Law Institute is working with individuals from the private sector, advocacy groups, and universities to develop model supplier contract language for GHG reductions, and these provisions could easily dovetail with the requirements of a comprehensive public-private partnership on climate change.

As another incentive for companies to commit to following SBTi's Net-Zero VCS, EPA could provide relief to a company from future GHG mandatory requirements that exceed those achieved through its prior commitments, provided the company remains in substantial compliance with the VCS. In other words, a company that volunteered to pursue an SBTi-approved carbon reduction pathway would need to remain on that pathway, but it would be credited for having done so and, to the extent possible, would not be required to exceed that pathway through new regulations. Although the authority for crediting individual companies for early actions in this way would need to be established, this approach is not regulatory relief but rather recognition for early compliance, since EPA is unlikely to require more than a 1.5 degree emissions pathway, which is what SBTi requires. In addition, the agency has accounted for these types of collaborative actions in the past. Substantial non-compliance could then result in loss of this relief.

Companies generally prefer to achieve performance-based targets through approaches that suit their operations, rather than command-and-control requirements that can be difficult to achieve cost-effectively. Obtaining credit for early commitments and certainty that a 1.5 pathway can be maintained should act as additional inducements for companies to commit to net-zero carbon reductions.

What would a public-private partnership to address climate change look like? It would have several components. Companies that have Net-Zero VCS reduction targets validated by SBTi or commit to secure validation by SBTi would be eligible to opt into the partnership.

For its part, EPA would establish its own certification or review and accept an independent private certification for companies that have achieved science-based targets or are committed to achieve targets. The certifications could be available in three tiers, the highest tier—for companies that have achieved net-zero targets—a middle tier for companies that have committed to net-zero targets, and a tier for companies that have committed to near-term science-based targets.

For example, an eligible company's products could carry a certification seal along the lines of "Product from a Net-Zero Carbon Committed Company."

Companies that opt into the program would allow auditors to review, under an EPA-approved process with EPA-approved auditors, its emission calculations, accounting, basis for targets, and progress in achieving targets. If an auditor determines that a company's approach is not technically sound, the company would be given an opportunity to remediate. Then, in accordance with the 2021 EO on purchasing preference, the chair of the Council on Environmental Quality would establish instructions to provide preferential purchasing to products and services from companies that are SBTi validated. Through a memorandum of understanding, EPA can commit to account for the emissions reductions of companies that have joined the partnership in future mandatory regulatory requirements for GHG reductions if it has the statutory authority to do so. Substantial non-compliance that is not remediated in a timeframe prescribed by the agency would result in loss of the relief—the company would be given a short but practical timeframe to achieve compliance with mandatory requirements.

With the company commitments established, as well as the consequences of significant failures to achieve targets, the government can then develop an accounting framework to take credit for these private-sector reductions as part of its NDC under the Paris Agreement.

SINCE most of the attributes of an effective public-private climate partnership already exist, the partnership could be launched in a few months, which is critically important, since 2030 is not far away. For this approach to succeed, both the private and public sectors need to take some risk and work together.

To address uncertainties and questions that will face the public and private sectors, the partnership can be piloted for a pre-determined time period. This would allow adoption and implementation concerns to be worked through while still allowing progress in recruitment of companies and proof of concept of the incentive offered by the government procurement program. It is time to change the climate. **TEF**

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