

## International Perspectives on Strengthening Government-Nonprofit Relations: Are *Compacts* Applicable to the USA? <sup>1</sup>

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## Executive Summary

Governments around the world have sought to better define and formalize their relations with the nonprofit sector. In many jurisdictions this has led to the development of written framework agreements, most commonly known as compacts. Compacts are distinguished from other government-nonprofit collaborations, partnerships or contracts by their sector-wide focus and by their coverage of a broad range of service delivery, policymaking and regulatory interactions. Since the launch of the first compact in the UK in 1998, similar agreements have been signed in a number of countries, where they have had widely differing impacts. Some are seen as successful initiatives that have considerably strengthened relationships between governments and nonprofits, while others have had little effect and have been quickly discarded or ignored. This paper documents the development and outcomes of compacts in a number of countries and analyses the situation in the USA, where they have not yet been used. It also analyses the lessons learnt from past compact processes and speculates about their future development.

## Introduction

In recent years, governments around the world have sought to better define and formalize their relations with the array of nonprofit organizations (NPOs) that make up the core of civil society. In many jurisdictions this has led to the development of government-nonprofit, sector-level framework agreements that constitute an explicit recognition of the key social and economic role of NPOs and define the obligations and privileges of both government and NPOs in a broad range of service delivery, policymaking and regulatory interactions.

These framework agreements, commonly known as compacts, have become a central element in the regulation of government-NPO around the world since they were first developed in the mid-1990s, yet they have not been used in the USA. This paper documents the advent of compacts in a number of countries -- with particular emphasis on England and Canada -- as well as in supranational entities, and speculates why they have not been a feature of government-NPO relations in the USA.

## Defining Compacts

Compact<sup>2</sup> is the generic term for sector-level written agreements that seek to regulate the collaborative relationship between governments and NPOs. They are signed by senior representatives of governments (head of government or agency) and senior representatives of NPOs (head of umbrella/peak organizations on behalf of member organizations) with the aim of strengthening the relationships between the sectors for their mutual benefit and to improve services to the public, and constitute an explicit recognition of the key role that NPOs play in contemporary society. Compact became the term of choice in the UK where such agreements were first widely adopted and it has become the most commonly used descriptor for them. At the same time other terms such as *accord*, *agreement*, *charter*, *concordat*, *cooperation program*, *framework*, *memorandum*, *protocol*, *partnership* and *strategy* are also used throughout the world to describe such government-NPO agreements. Supranational entities use terms such as *consultative status* (UN) and *quadrilogue* (European Commission) to describe similar arrangements.

While all compacts share a common goal of strengthening inter-sector relations and service outcomes, there is also considerable variations between countries in the characteristics of the documents. The variations are in the following dimensions:

- **The legal status of the compacts.** They may be enshrined in legislation or they can be more informal documents sustained primarily through the political sponsorship of current office holders.

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<sup>2</sup> The word *compact* will be written with lower case in this paper, except where it refers to the formal name of a specific document.

- **The form of the compacts.** They can be short statements of principles or long prescriptive, detailed documents. They may stand alone or be accompanied by a series of supporting documents and specific regulations or codes.
- **The number and scope of both government and nongovernment signatories.** Government partners may be ‘whole of government’ (through either the legislative or administrative branch), a centralized agency with the responsibility for relations with NPOs, or specific line agencies (most commonly the social or community services agency). Nongovernment partners may be all the individual frontline organizations, or a small number of umbrella or peak organizations that represent the sector or subsectors. The compact may focus on a specific subsector (e.g. social service organizations, organizations that use volunteers, etc), or it may be a wider cross-section of NPOs.
- **The range of government and nongovernment support structures created to support the compacts.** Compacts can be supported through a range of capacity-building institutions and monitored by watchdog organizations who mediate disputes, or, at the other end of the scale, the implementation of compacts may simply be monitored through an ad-hoc coordination committee that meets rarely.
- **The stated aims of the compacts.** The compacts can focus more on collaborative processes (i.e. developing better relations) or on the achievement of specific outcomes (i.e. new funding regimes, legislative initiatives, improvements in social indicators).
- **The timelines specified.** Compacts are generally open-ended, but they may also have specific calendars for revision and re-authorization, or may have sunset clauses that specify an end date.

Debates about compacts and the new frameworks for collaborative partnerships they create are embedded in wider discussions of the evolution of *New Public Management* and *governance* approaches to the management of public goods and services. Compacts can be seen as a part of a *mutual obligation* approach (Brown and Jagadananda 2006) to defining obligations and privileges, and they have emerged in the context of wider tendency to strengthen *deliberate relations* (Carter and Speevak Sladowski 2008) between the government and NPO sectors. Reform and partnership agendas under these approaches include a broad range of dynamics and processes, of which compacts are just one example (for a more in-depth discussion of the emergence of compacts in the broader socio-political context, see Osborne and McLaughlin 2002, Casey and Dalton 2006). Compacts are distinguished from other government-NPO consultation, collaboration and partnership processes by

their sector-wide focus and by their inclusion of a broad range of interactions between signatories.<sup>3</sup>

It should also be noted that while this paper uses the broad term NPO, the focus of compacts is primarily on those NPOs that are commonly referred to in the USA as charities or the community-based sector. These are independent, non-profit-distributing organizations that provide an array of social, cultural, recreation, health and education services, and may specialize in a particular segment of the community such as aged, youth, immigrants, or those with disabilities. Numerically, there is a predominance of smaller organizations delivering services locally, but there are also a number of larger organizations which often dominate a particular area of service, and there are numerous peak or umbrella organizations that represent member organizations grouped by sub-sectors.

In other countries, terms such as *voluntary, nongovernment organizations (NGOs), associations, civil society* and *third sector*, are used to describe the nongovernment signatories to compacts. These terms are not fully equivalent to NPO, but they will also be used in this paper where appropriate to the context of the country, region or institution being discussed. While the broadest terms such as *civil society* and *third sector* may be used to describe compact partners in some jurisdictions, it is generally NPOs funded by governments or private donors to provide the range of human services that are normally delivered by the charities and community-based sector that have the most involvement in compact development as the focus tends to be on improving service outcomes in these areas. NPOs outside this ambit – such as foundations and large nonprofit hospitals and educational institutions -- tend to have less interest in compacts except when they involve possible changes to regulatory frameworks or tax structures.

## Compacts in England and Canada

England and Canada are the “gold standards” for compact processes and are often referred to in the compact development process of other countries. The following sections document the historical and institutional factors that lead to the compacts in England and Canada and analyses the current status of their implementation.

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<sup>3</sup> The compacts discussed in this paper should also be distinguished from other commonly known compacts that impact on the nonprofit sector, such as the UN Global Compact for responsible corporate citizenship (see: <http://www.unglobalcompact.org/AboutTheGC/index.html>), the Millennium Development Compact for addressing poverty in developing countries (see: <http://www.unmillenniumproject.org/documents/MillenniumDevelopmentCompact.pdf>), and the USA campus compacts (see section below on the USA). They are also separate from legislation regulating the establishment and operation of nonprofit and nongovernment organizations in any jurisdiction (for an excellent guide to such legislation, see USIG 2007).

England

In the 1980s the Conservative government's privatization policies led to a growth of the voluntary sector but also to a growing hostility between the sector and the government over the impact of government cuts and the conversion of many government grants into contracts. The potentially repressive function of commercial relationships with government is one of the most insistently recurring themes in the English literature of that time. Increasingly, those working in the sector expressed concerns that their independent advocacy and whistleblowing functions had been compromised with the widespread adoption of competitive tendering for contracts. As a consequence, the sector entered the 1990s in a state of some turmoil.

The nongovernment peak body the National Council of Voluntary Organizations (NCVO) obtained foundation support to establish a Commission on the Future of the Voluntary Sector, chaired by a widely respected professor of politics, Nick Deakin. Containing prominent figures with backgrounds not only in the voluntary sector but also within civil service, politics and business, the Deakin Commission produced a report, *Meeting the challenge of change: Voluntary Action into the 21st Century* (Deakin 1996), mainly calling for more research and development. However, it also called for a formal agreement between the government and the voluntary sector, an agreement which it referred to as a "concordat". The origins of that notion appear to lie in some other work that Deakin was doing at the time on ways of improving the relationship between the Treasury and other government departments, where continuing clashes of interest had suggested that a stable framework for the conduct of relationships was needed.

Deakin also held several informal discussions with Alun Michael, a key figure in the Labour opposition. In February 1997 the Labour Party published a report on the voluntary sector entitled *Building the Future Together*. Authored by Michael, it called for an agreement between the voluntary sector and the government in terms very similar to those used in the Deakin report. The main difference between the two was that Michael substituted the term "compact" for Deakin's "concordat". After winning the May 1997 election, the new Labour Prime Minister, Tony Blair placed Michael in charge of the Voluntary Services Unit in the Home Office where he soon secured a significant increase in resources.

With the election of Labour came a rhetoric of renewed relations between government and the voluntary and community sector which recognized the latter's contribution to a pluralistic citizens' democracy and the local ownership of welfare delivery strategies. In October 1997, discussions were opened between a group of voluntary sector leaders established by the NCVO in 1996 as a follow-up to the Deakin report and a group of civil servants from a number of government departments. After some wider consultation and further meetings, in November 1998 a *Compact on relations between the government and the voluntary and community sector in England* (Commission on the Compact 2007a) was launched. The Compact is not a legally binding document and its authority is derived only from its endorsement by



government and by the voluntary sector. It notes that the government and the voluntary and community sector have “a number of complementary functions and shared values” and that:

“Voluntary and community activity is fundamental to the development of a democratic, socially inclusive society. Voluntary and community groups as independent, not for-profit organizations, bring distinctive value to society and fulfill a role that is distinct from both the state and the market. They enable individuals to contribute to public life and the development of their communities by providing the opportunity for voluntary action. In doing so, they engage the skills, interests, beliefs and values of individuals and groups” (Commission on the Compact 2007a: 6)

A key element of the Compact process has been the creation of a series of Codes of Practices, including a Consultation and Policy Appraisal Code, which provides good practice guidelines for government consultations with the voluntary sector, and a Funding and Procurement Code, which commits the government to multi-year funding and to funding core costs as a way of building sector capacity (Commission on the Compact 2007c).

Compacts were also created in Scotland, Northern Ireland and Wales and with the encouragement of the central government, local compacts have been developed at county and city levels. In most cases, these focused largely around social services, although in a few cases they included local health and education authorities, arts, sporting groups and community businesses as well as social services. The education sector seems largely to have been excluded from these developments.

Since the launch of the Compact, there have been a number of evaluations that focus on its implementation and related issues within the voluntary sector. A 2005 Home Office evaluation, *Partnerships: Next Steps for Compact* (Home Office 2005a), found that the Compact had been an integral part of a package of government measures that had significantly strengthened the voluntary and community sector in England and that it had been an important means to developing better understanding between these sectors and public sector bodies. At the same time, the evaluation found that the Compact and its codes were lengthy and somewhat difficult to understand and apply and so government departments and voluntary organizations could not be sure whether they were “Compact-compliant”. There was evidence of poor practice among both public sector bodies and voluntary and community sector organizations, particularly in the area of funding, but there was no mechanism to recognize good practice or to highlight bad practice, and there were no penalties for those who did not comply with the Compact (Home Office 2005a). Another Home Office report from 2005 *The Paradox of Compacts: Monitoring the Impact of Compacts* (Home Office 2005b), recommended a greater focus on implementation, evaluation and review of Compacts at the national and local level.

As a result of these evaluations, a Commissioner for the Compact was appointed in 2007. The first Commissioner, John Stoker, was the former head

of the UK Lotteries, and of the support fund for the victims of the London Underground bombings. In early 2007, a new nongovernment support institution for the Commissioner, the Commission on the Compact, was created to strengthen the implementation of the Compact.<sup>4</sup> Subsequently, one of the first acts of the newly installed Prime Minister Gordon Brown in July 2007, was to launch the report on *The future role of the third sector in social and economic regeneration* (Cabinet Office 2007). The report reaffirms the commitment of the Labour government to partnerships with the voluntary and community sectors and explicitly encourages the advocacy role of the voluntary sector. Moreover, the Compact has bipartisan support: the July 2007 *Breakthrough Britain* report by the Conservative Party think-tank Social Justice Policy Group recommends that the principles of the Compact be enshrined in legislation and that more National Lottery funding should go to smaller charities (Social Justice Policy Group 2007).

It is important to note that the Compact is not simply a series of documents, but a continuing process backed by a considerable infrastructure. Since its launch in 1998, it has been supported by both the government unit with the responsibility for liaison with the voluntary and community organizations and by independent infrastructures, jointly created by the government and the NCVO. Currently within the English government there is an Office of the Third Sector in the Cabinet Office and a Minister for the Third Sector. Separate from government is the Commission on the Compact, the Compact Advocacy Programme, and Compact Voice which represent the volunteer and community sector and provide support in cases where Compact has been breached (Commission on the Compact 2007b, Compact Voice 2007).

### Canada

In December 2001, the Prime Minister of Canada signed and launched *The Accord between the Government of Canada and the Voluntary Sector* as the culmination of a Voluntary Sector Initiative it had initiated a few years earlier.

The late 1980s and the 1990s had seen growing tension between significant parts of Canada's voluntary sector and the government over funding cuts and the introduction of contracting regimes. In early 1995, as an initiative of the Coalition of National Voluntary Organizations, a Voluntary Sector Roundtable was formed. Its membership included the Canadian Center on Philanthropy, Volunteering Canada, peaks from overseas aid, environment, arts, social services, sport, health and churches. It began pursuing the government for wider and more consistent tax concessions to encourage giving.

The 1997 election platform of the re-elected Liberal government included a section titled *Engaging the Voluntary Sector* which recognized that

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<sup>4</sup> At the time of writing of this paper, the Commission on the Compact was in some turmoil with the September 2007 resignation of the Commissioner John Stoker (the Chief Executive had resigned in June 2007). There appeared to be muted relief at the end of what some saw as Stoker's softly-softly approach which focused on highlighting best practice instead of exposing those bodies in breach of their compact obligations (Kelly 2007).



Canada's ability to offer opportunity and security to its citizens was dependent on the vitality and capacity of the voluntary sector. In late 1997, with support from a private foundation, the Voluntary Sector Roundtable appointed a committee of six eminent Canadians to enquire into the governance and accountability of the voluntary sector. The committee quickly produced a discussion paper and, after extensive consultations, a final report *Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector* was published in February 1999 (Broadbent 1999). It recommended that the federal and provincial governments enter into "discussions with the sector to establish mechanisms, such as compacts for promoting understanding and agreement on appropriate conduct and the future of relationships between the sector and governments" (Broadbent 1999: iii).

Meanwhile, largely in response to these developments in the voluntary sector, the Canadian government had set up a Voluntary Sector Task Force in 1998 comprising officials at the Deputy Secretary level from a wide range of departments. In March 1999, in response to the Broadbent report, the Voluntary Sector Task Force and the Voluntary Sector Roundtable established three Joint Tables with joint chairs, one from the voluntary sector and the other a deputy head of a government department. The Table on Building a New Relationship proposed an "accord" between government and the sector to guide the evolving relationship. In June 2000, the government announced that it had committed itself to the recommendations of the Joint Tables. It established a Voluntary Sector Initiative and committed \$95 million to be spent over five years on a series of initiatives, including coordinating participation within the sector, developing IT and better funding models, building management skills and enhancing the knowledge base of the sector through research and building a wider public awareness of the contribution of the sector. The Accord was signed in 1991.

In a 2004 evaluation of the Accord's implementation, voluntary sector respondents to an online survey were positive about the professional relationships between government staff and voluntary organizations. However, they had concerns about the relationship and particularly processes relating to funding and protocol, which some characterized as burdensome or restrictive. Almost half of the federal departments responding to the survey said their relationship with the sector had stayed the same over the past year, while one quarter said it had improved. The improvements cited included a greater level of engagement in constructive dialogue, enhanced sharing of good practices, and greater involvement by the voluntary sector in governmental activities (Voluntary Sector Initiative 2004).

However, despite all this activity and seemingly positive evaluations, the Accord and the Voluntary Sector Initiative is now considered by many to have achieved limited success. The Voluntary Sector Initiative was a fixed term project, with staff seconded from other organizations. Despite some recognition of the worth of the project and the products it produced, its long-term impact has been questioned. The emphasis was on the Initiative as a "project" and not as a continuing process to build and maintain an ongoing

relationship. As Phillips (2004: 7) observed, "Perhaps one of the greatest concerns is that the multi-faceted, time-bound nature of the Voluntary Sector Initiative gives government and the Canadian public the sense that the 'voluntary sector file' is more or less closed - accomplished. Done that, next." According to White (2006) the feeling within the voluntary sector is that the Accord did not improve the conditions under which the sector operated. The creation of the Voluntary Sector Initiative took control out of the hands of the sector itself and there was an internal reorganization of sector leadership, which appears to have disenfranchised many organizations.

The February 2006 election of a Conservative Party government (after 12 years of Liberal Party rule) has now consigned the Accord to a historical reference, mentioned almost only in the past tense, and the Voluntary Sector Initiative website has been colonized by a private business. The processes of the Voluntary Sector Initiative, particularly the dialogue in the Joint Tables, were considered to be constructive as they built trust among the individuals involved from both government and the volunteer sector. But in the end, that trust was not able to be institutionalized. The Accord itself was seen as a positive result when it was launched, but it appears to have got bogged down in operational matters (which had project funding and when that ended, so did the projects), and the ultimately was not seen to have addressed big policy issues, although many consider that it did shift the paradigms of government-voluntary sector relations in Canada somewhat more towards more equal partnerships.

It should be noted that this review of the Accord in Canada has focused on the federal government. At the same time, there have been parallel initiatives in various provinces. Of particular note is the work done in Quebec to create a government policy on community action. The policy document, launched in 2001, is officially signed only by the provincial government's Minister for the Elimination of Poverty and Exclusion, but it was developed in conjunction with the NPO sector and its implementation is overseen by an advisory council of NPOs and representatives from a range of government departments. The focus is on the independence of the community sector and on its role in "social action" (Government of Québec 2001). It appears to continue to enjoy the support of a wide range of stakeholders and, unlike many other compacts, has successfully survived the transition from one government to the next. The policy was originally signed by a social-democratic independentist government, but a Liberal government elected in 2003 also committed itself to the policy and in June 2008 was in the process of negotiating a new 3-year action plan.

### Compacts in Other Countries

England and Canada are both English-speaking industrialized countries with political structures based on parliamentary monarchies. Are similar trends emerging in other countries? In a globalized world that is experiencing an increasing convergence in policy and practices, previous distinctions between

different 'cultural models' or 'regimes' (see for example, Bullain and Toftisova 2005, Casey 2003) are becoming less valid -- any single nation or jurisdiction will display elements of more than one model. While making some reference to the models, the following snapshots of compact-like processes in a number of countries focus more on the possible similarities.

### Australia

For most of the last decade, Australia was in the historically unique situation of having Labor Party (progressive) governments in all eight States and Territories, but a Liberal Party (conservative) government at the Federal level. Perhaps not coincidentally, since 2001 compacts have been signed or are in the process of development in all the States and Territories, but at a Federal level there were no similar initiatives. The lack of interest in a Federal compact was due to a combination of both the ideological bent of the conservative Federal government and the nature of Australian federalism, which results in NPOs having more frequent and fundamental contact with state-level administration (Casey and Dalton 2006). The State-level compacts vary considerably in their form and outcomes: in South Australia there are two parallel/overlapping compacts - one that focuses on NPOs that work with volunteers and one that focus on human services NPOs - and the human service compact is considered to have significantly improved partnership arrangements between NPOs and the state government; in New South Wales a compact between the Premier (Governor) of the state and the peak body representing the NPO sector was signed after a 10-year negotiation process, and was promptly disregarded by a new state Premier (for a detailed review of all Australian State and Federal compacts, see Casey et al. 2008). In November 2007, the Liberal Party was ousted from the Federal government and the new Labor administration swiftly announced its intention to develop a national level compact with NPOs. Extensive consultations were held throughout 2008 regarding the form and content of the proposed Australian Compact.

### New Zealand

In 2001, following the UK and Canada examples, a Working Party was appointed by the Minister for the Community and Voluntary Sector to develop a framework for an agreement between the government and the community and voluntary sector. The Working Party concluded that the pre-conditions for a broad sector-wide written agreement were not present. Among the reasons cited was a lack of clear consensus among the Maori organizations and other voluntary organizations that they constitute a single sector (Lyons 2001). While no compact document has been developed, the Prime Minister and the Minister Responsible for the Community and Voluntary Sector signed a *Statement of Government Intentions for an Improved Community-Government Relationship* in December 2001 which specified the principles that guide the government's relationships with NPOs and committed the government to a range of actions to support the sector. An Office for the Community and Voluntary Sector (OCVS)

was established in September 2003 to address overarching issues affecting the community and voluntary sector and to raise the sector's profile within government. The OCVS has worked to produce good funding guidelines, which make explicit reference to the UK Compact (OCVS 2007).

### France

The relative strength of State institutions and corporatist nature of government-nongovernment relations in Western European countries have generally precluded the need for protocols or agreements. Relationships between government and nongovernment organizations have already been institutionalized for a number of decades through stable relationships based on social pillars and, particularly in Germany, on the concept of subsidiarity. Notwithstanding the existing strong ties between government and NPOs, there is some evidence of recent compact activity in these countries, but the efforts appear to be somewhat half-hearted. France appears to be a typical example of compact development in corporatist countries.

On July 1, 2001, -- the centenary of the French Association Law - the French government entered into a *Charter* with nongovernment organizations (the French word *association* is most commonly used to describe these organizations) which was signed by the Prime Minister and the President of the conference of peak organizations (known as CPCA -- Conférence Permanente des Coordinations Associatives). The Charter (*Charte d'Engagements Réciproques entre l'Etat et les Associations regroupées au sein de la CPCA*) (Activecitizenship.net 2001) was not a legal document, but more a symbolic statement giving public recognition to nongovernment associations as a key social actor in French society, which sought to "strengthen democracy through greater public participation". As with compacts in other countries the Charter catalogued a series of commitments, both symbolic and operational from both government and nongovernment organizations. Some of the specific goals of the Charter had already been implemented by the government in a 2000 reform of taxation and funding arrangements when it was launched. For example, the government authorized public bodies to enter into multi-year agreements to subsidize nongovernment programs, gave employees additional rights to take time off to perform volunteer work and increased tax incentives to encourage charitable donations (Newman 2002).

With the change of government in 2002, however, the Charter was no longer a priority and any impetus for a more comprehensive implementation of the Charter principles appears to have been lost. It remained simply the symbolic document that marked the centenary of the French law on associations. An October 2005 French Senate report on nongovernment associations made no mention of the Charter (Sénat 2005).

## Estonia

Since the dissolution of the Soviet Union in 1991, international organizations and private foundations have promoted the development of an active civil society in former Soviet republic, which as lead to the rapid development of NPOs. The results have been mixed, with tensions often arising when NPO are seen more as anti-government than non-government, or when NPO structures are used as fronts for criminal or corrupt activities. A range of strategies have been used to calm tension and in effect create peace treaties between governments and NPO sectors.

In 2002, the Estonian Parliament passed a resolution to officially adopt the 'Civil Society Development Concept' (EKAK is its Estonian acronym). EKAK combines general principles with specific proposed actions, and in both its form and proposed goals can be seen to be the equivalent of the compacts signed in other countries. The principles in EKAK include citizen action, participation and political independence of civic initiatives (Estonian Ministry of the Interior 2002)

EKAK included an implementation plan and schedule for review (three year plans were published in 2004 and 2007), and in subsequent years has come to be considered a relatively successful platform for creating legislative reforms that support the non government sector. These reforms included a new tax policy, leading to exemptions from income tax and customs duties for nonprofit associations and foundations. At the same time, it appears that the nongovernment sector was silent as the Parliament passed a Gambling Act that did not dedicate funding to the voluntary sector.

An important factor in the original development of EKAK and in its continuing implementation and review is the role played by two key nongovernment organizations, the Network of Estonian Non-profit Organizations (NENO) and the Open Society Foundation. With supportu funding from the UN Development Program, they were active participants in the development of the EKAK since the earliest negotiations and they have served as co-chairs of two of the working groups for the EKAK Implementation Plan. At the same time, EKAK had strong support within the parliament. An Estonian Member of Parliament spent time as a research associate in the Center for Nonprofit Law in Washington DC in 2000 and prepared a paper *Guidelines for the Preparation of Compacts* (Liiv 2001) which became the basis for EKAK (Toftisova 2005).

The implementation of (EKAK) is supported by the government's 2007 Civic Initiative Support Strategy, which serves to standardize the government's approach to nurturing civil society. But nongovernment organizations are somewhat dissatisfied with the Strategy as innovative ideas proposed by the nongovernment sector were not accepted. There is generally slow progress in EKAK implementation, "caused by insufficient resources and lack of political interest" (USAID 2007, NENO 2007). Recent reports on EKAK implementation indicate that the members of the joint implementation committee have agreed to revize the EKAK principles and membership of the committee. The new committee will be smaller but of a higher level, and will include leaders of



umbrella organizations as well as heads of departments of the ministries of Finance, Social Affairs, Education, Culture and Economic Affairs. The Minister of Regional Affairs chairs the committee. NGOs are also pushing for the formation of an independent EKAK bureau, which would help the nonprofit sector in taking EKAK forward (NENO 2007).

### Other developing countries

The new democracies of Eastern Europe and the developing nations around the world have only relatively recently needed to lay the groundwork for emerging nongovernment sectors. These countries have relatively weak economies, so there are limited government funds for NPOs and the populations have limited time and income to devote to the voluntary dimension that is a defining feature of the nongovernment sector in Western democracies. The other significant feature of the sector in these countries is the strong presence of foreign, aid-based NGOs and the economic impact of foreign donors who contribute to local organizations, and the subsequent political and operational consequences that flow from international funding. NPOs have generally played a crucial role in building democracy and providing essential services. But the "dark side" of the sector has also developed and there are considerable concerns about corruption. Moreover, NPOs in these countries are often seen as *anti*-government and there is a significant amount of suspicion around what is commonly characterized as foreign influence on internal issues.

In a context in which effective nongovernment service delivery and participation in policy making is often compromised by the weakness of nongovernment organizations and a sense that they simply act as a surrogate opposition, compacts appear to be emerging as key documents for guiding the development of the sector. However, a weak nongovernment sector means that it is not in a strong position to negotiate and so the compacts that are emerging in these countries have been primarily initiatives from government and appear to be concerned more with controlling possible political opposition than with developing an emerging sector.

The focus of this review has been on agreements signed freely between governments and independent nongovernment sectors, but it should be recognized that in more authoritarian regimes there also are organizations that take on the form and use the language of NPOs -- usually these mass movement, party-based organizations are tightly controlled by the ruling regime (typically, the wife of the President is the head of the women's mass movement). Compacts signed with democratic governments generally seek to strengthen NPOs and guarantee their independence, but other governments are seeking to weaken and control this nascent sector, which is regarded with suspicion by ruling elites. A study by the International Center for Not-for-Profit Law (ICNL 2006) reveals that nineteen countries have recently enacted or proposed laws that would in some way restrict the activities of civil society. These countries are generally in Africa, the Middle East, and the former Soviet Union, and are governed by authoritarian regimes. The restrictive laws are



part of continuing repressive government tactics and appear to be motivated by a desire to forestall political opposition.

Other processes somewhat analogous to compacts are the attempts to oversee the involvement of international NGOs in developing countries. In Africa, the UN has encouraged the development of “policy documents” which provide guidelines for the operations of NGOs in different countries (see for example the Sierra Leone policy document in DACO 2007), although it could be argued that these policies in effect constitute the legal framework for regulating the activities of nongovernment organizations in the absence of local legislation.

### Compacts in Supranational Institutions

While supranational institutions offer distinct challenges in terms of the level of diplomacy and negotiation required for participation in policy development, there are processes similar to compacts in supranational policy domains. In fact, the consultative status offered to NGOs by the UN since its inception in 1945 is, arguably, a pre-cursor to compacts at national levels.

Supranational entities work primarily with NGOs that work in the international policy arenas, either because they are the international peak organizations for like-minded national organizations or because of their strong cross-national interest. These organizations are often called International NGOs (INGOs). It is debatable whether the possible influence of INGOs on supranational entities is comparable to the relationships regulated by the compacts emerging between the national governments and NPOs. However, many of the same discourses exist at an international level around the role of civil society in addressing the ‘democratic deficit’ and ‘legitimacy crisis’ facing many contemporary democratic institutions. In addition, there are emerging discourses about whether globalization is leaving the nation state behind as the highest legitimate level of democratic power (Nye 2001) and the emergence of ‘global civil society’ (Keane 2003). Certainly, INGOs are active as advocates for their constituents and causes and supranational institutions both acquire legitimacy from and confer legitimacy upon registered NGO observers and ‘partners’.

#### United Nations

The founding Charter of the UN states that the Economic and Social Council (ECOSOC), the UN entity that promotes international economic and social cooperation and development, “may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence” (UN Charter 1945: Ch. 10, Article 71). These “arrangements” became a series of rosters of accredited NGOs that have attained Consultative Status through a formal application process. The Charter specified that consultation was to be with “international organizations and, where appropriate, with national organizations after consultation with the

Member of the United Nations concerned" (UN Charter 1945: Ch. 10, Article 71). NGOs with Consultative Status generally have the words 'international' or 'world' in their names (e.g. International Federation of Women Lawyers and the World Muslim Congress), but there are also many nation-based organizations (e.g. Association of Presbyterian Women of Aotearoa New Zealand). In 2007 there were 2,719 NGOs with Consultative Status (UN 2007). Many are members of the Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations (CONGO), an international membership association that since 1948 has facilitated the participation of NGOs in UN debates and decision-making (CONGO 2007).

### Council of Europe

The Council of Europe (COE) is an intergovernmental organization that fosters dialogue between European countries beyond the boundaries of the EU, primarily on human rights, rule of law and democracy. The COE has offered consultative status to INGOs since 1952. In 2003 the COE, "convinced that initiatives, ideas and suggestions emanating from civil society can be considered a true expression of European citizens", adopted a resolution which shifted "consultation" with INGOs to "participation" (COE 2003). Under this enhanced status, INGOs would become more integral to the COE's decision-making process. The resolution institutionalized the status of INGOs as one of the four pillars of the COE. These four pillars, known as the 'Quadrilogue', consist of: the Committee of Ministers and its subsidiary bodies; the Parliamentary Assembly; the Congress of Local and Regional Authorities of Europe and INGOs. INGOs with participatory status with the Council of Europe are organized through the Conference of INGOs. In 2007 there are 370 INGOs with participatory status (COE 2007).

### Why are There No Compacts in the USA?

There is a long tradition of partnership and collaborations between nonprofit organizations and government in the USA and there are numerous agreements between governments and specific organizations, or between government and small groups of organizations to pursue specific goals such as the regeneration of a neighborhood or provision of adult literacy education in a region. However, there is no evidence of broader, sector-wide compacts<sup>5</sup> in the USA that would be the direct equivalents of those that have been implemented in the UK and Canada.

There appear to be a number of intersecting dynamics that militate against the development of such sector-wide agreements:

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<sup>5</sup> The word *compact* is used widely in the USA, but it almost always refers to agreements either between two or more universities, or between universities and nonprofit organizations, that seek to promote closer links between universities and the communities that surround them. "Campus compacts" are often touted as evidence of universities meeting their social responsibilities.

- A longer history of privatization and marketization of service delivery in the USA has meant that nonprofit organizations are more accustomed to functioning under the rules of the marketplace and competing with private for-profit providers, and they have not sought to demarcate a particular or privileged role for nonprofits.
- Relations between nonprofits and different levels of government have been characterized more by conflict (advocacy, lobbying or watchdog roles) or complementarity (provision of services to fill gaps in government services) than by partnership or collaboration.
- There is relatively little "sector consciousness" among nonprofit organizations in the US. They are most commonly identified by a tax code category -- 501(c) -- and much of the literature focuses more on the diversity of nonprofits than on their identity as a sector. This also is reflected in the structure of peak organizations which are primarily issue-based or service sector-based with relatively little cross-fertilization between them.
- The political autonomy of the states and of cities/towns, and the resulting multi-layered funding streams and oversight responsibility makes it hard to determine which level of government could or should be party to the development of such agreements.
- Private philanthropy plays a prominent role in funding nonprofits, so much of the focus and energy of community organizations is spent on developing relationships with corporations, foundations and private donors. The Vice-Presidents for Corporate Responsibility (the common title of the corporate manager responsible for donations and other relationships with nonprofits) often appear to wield as much power as government funders.
- The structure of philanthropy has created intermediary organizations such as the United Way, which are at the same time donor organizations (they collect donations from the public and corporations and gives grants to nonprofits) and peak coordinating organizations (they promote the work of and represent the interests of nonprofits). The dual roles of such organizations further complicates the question of the possible roles of the various stakeholders in sector-based agreements.

While there are no compacts, many of the same concerns that they seek to address in other countries are also evident in the USA. Gronbjerg and Salamon (2004) note the poor state of current relations between governments and nonprofit organizations and recommend a new paradigm of government-nonprofit interaction in which nonprofits acknowledge the legitimate performance requirements of government, and government acknowledges the advocacy responsibilities of nonprofits and its own obligation to provide greater stability in public funding for nonprofits. In New York City, where a single city government covers 8 million people and some 30,000 nonprofit organizations, Krauskopf (2001) identifies a range of problems with the City's contracting process, including late contracts and delayed payments, which result in inadequate cash flows to nonprofit organizations.

Compacts do not yet appear to have been touted as a solution to these concerns, but there have been a number of attempts to create more deliberate relations between governments and nonprofits. More than 30 years ago, the Filer Commission (1975) recommended that Congress create a permanent commission on nonprofits. While the recommendation was never implemented, the issue has never quite left the policy agenda and in the 2008 election season there were calls for a new administration to create a cabinet-level office for nonprofits (Rucker 2008). On the campaign trail, then Senator Barack Obama proposed creating a Social Entrepreneurship Agency, which he envisaged as residing in the Corporation for National and Community Service rather than in the Cabinet (Perry 2008). Other initiatives that have sought to develop sector-wide principles have included the national *Declaration for America's Nonprofits* and the *Nonprofit Constitution* promoted by the Nonprofit Congress (Nonprofit Congress 2008), and the allied V3 (Voice, Value and Votes) campaign (V3 2008), as well as numerous state-level initiatives such as the *Arizona Nonprofit Agenda* (Arizona Nonprofit Alliance 2008).

With the election of Barack Obama there are now new attempts to develop broader framework agreements. In March 2009, a "call to action" signed by dozens of nonprofits CEOs and academics was published as the *Forward Together Declaration* (JHUCCS 2009). The Declaration states that it is time to "renew the compact" with the nonprofit sector (note that compact is used here in the conceptual sense and does not refer to a specific past document) and calls for the establishment of a Commission on Cross-Sector Partnerships and the development of a set of Partnership Principles.

### **Conclusion: Lessons Learnt and Future Directions**

Different political, economic and cultural contexts have generated varying interpretations of the role of NPOs and the need to formalize agreements between NPOs and the State. Nevertheless, a common discourse of compacts has emerged across many jurisdictions that seeks to explicitly recognize the contribution of NPOs to democracy and acknowledge the legitimacy of their role in service delivery and in organising community input into the policy process. As this review demonstrates, written compacts have been a key feature of government-NPO relations over the last decade in a wide range of countries and supranational entities since the late 1990s. These compacts constitute an unequivocal recognition of the important and unique role of NPOs and they seek to regulate and institutionalize relationships between the sectors. The two key areas that compacts seek to address are the stability of the funding process and the recognition of the independence of NPOs. As part of that independence, compacts generally acknowledge the legitimacy of NPO participation in policy development processes.

There is little doubt that there has been significant policy transfer and convergence in the development of compacts, with almost all post-1998 processes making some reference to the UK, which continues to be the benchmark by which other jurisdictions measure their own processes. In

addition to those jurisdictions that have written compacts, there are others that have a 'compact-style approach' to government-NPO relations that may not yet have delivered a final agreement or may have decided not to develop such a document. Such jurisdictions maintain some form of institutionalized dialogue between government and NPOs in order to promote better relations and to develop a range of processes and formal organizational structures which promote cooperation between the sectors.

A summary of the national snapshots presented in this paper highlights the different development processes and outcomes of compacts (Table 1).

**Table 1: Summary of Compact Development and Outcomes**

COUNTRY	COMPACT DEVELOPMENT	OUTCOMES
UK (England)	1998 national Compact, followed by regional and local compacts. Compacts complemented by specific codes, and supported by a range of administrative structures.	Widespread support for compact and supporting structures. Calls to have compact enshrined in legislation
Canada	2001 national Accord; Quebec Government Policy on Social Action 2001; other provincial compacts	The national Accord in effect abandoned when government changed. Provincial accords continue to be developed and supported.
Australia	State-level compacts since 2001; 2008 proposed federal compact	State-level compacts have been adopted with considerable variations in form and outcomes. New federal government elected in 2007 currently developing national compact
NZ	No compact, but a 2001 Statement of Intentions.	Creation of Office for Voluntary and Community Sector to promote and support nonprofit sector
France	2001 Charter	A symbolic statement that appears not have any ongoing impact
Estonia	2002 Civil Society Development Concept	Widespread support and continuing negotiations to strengthen implementation structures
Developing	"Anti-compacts"	Laws and regulations that generally seek to keep nonprofits under close government control and supervision



Supranational	1945 UN consultative status; 2003 Council of Europe quadrilogue	Continuing efforts to integrate nonprofits into decision making structures.
USA	No compacts; call for a new cabinet-level agency; The Way Forward declaration	Since Filer Commission there have been multiple efforts to create stronger national coordinating structures, but these have not yet been successful

An analysis of these compact development processes highlights the following issues:

- Two seemingly opposing discourses co-exist about the genesis of compacts: 1) they are a welcome new phase in the evolving mutually-beneficial relationship between the government and NPOs; 2) they are a regrettable but necessary response to the excesses of contracting and competitive tendering approaches which had generated unsustainable tensions between government and NPOs.
- They tend to be “top-down”, with much of the initiative for their establishment coming from government and/or major peak organizations. Evidence about “bottom-up” demands for such compacts is sketchy (although it can also be argued that peaks are pushing for compacts in response to the aggregated concerns of their member organizations).
- The outcomes of compacts in terms of impacts on target groups and programs are difficult to evaluate. Instead, evaluations tend to focus on outputs and on the relationships between signatories, and it is extremely difficult to determine whether achievements can be ascribed to compacts or to other aspects of reform processes.
- Evaluations of compacts invariably focus on signatories to the process (either directly or through membership of peaks). There is a lack of research about the sector that may have remained outside the process, either voluntarily or by omission.
- Initial evaluations demonstrate that they have majority support among participants who are aware and involved in the compact process. However, there is also widespread lack of knowledge about their existence and significant dissatisfaction in the processes and outcomes, even among signatories in both government and NPOs. “Skeptical goodwill” appears to be a common reaction.
- The key factors that appear to determine the perceived success or otherwise of compacts include: the timing of the process; the “fit” between perceived problems and compacts as a solution; the work of key “champions” at a senior level in either the government or NPOs, or both, who continue to direct the process; the level of trust



between stakeholders that existed at the beginning of the process and the trust generated through the process of creating it; the resources available to the implementation process; and the visible gains that can be shown to have resulted.

- Four possible outcomes scenarios have been identified: government and NPOs become equal partners; government subsumes NPOs as a third-party operating arm of the public service implementing pre-determined policies; NPOs capture government agendas; the compact becomes simply irrelevant (Craig et al. 2002: 21; Rawsthorne and Christian 2004: i).

In some countries, the compact process has failed, or at least failed to prosper. On the heels of the UK Compact, numerous countries launched similar compact processes, yet just a few years later there is little evidence of the continued implementation of some of the documents that resulted. The Canadian Accord is probably the most high profile example. Considerable resources were committed from 1999 to developing the Accord and the Voluntary Sector Initiative, yet they have been formally abandoned by the new conservative government (even though they may have served for recasting the prevailing paradigms of government-NPO relations). Compacts are seen in a positive light as heralding a new era in the evolving relationship between the government and NPOs, but also in a negative light as necessary peace treaties between sectors that have been at odds due to previous excesses of the contracting and competitive tendering approaches. They are not static documents, but subject to continual review and adjustment.

Compacts are likely to continue as a central feature of government-NPO relations around the world in years to come, even though it remains to be seen whether they in fact constitute new relationships or they are simply a rediscovery of previous traditions of social partnerships - such as European (neo)corporatism - by those who had moved towards a more neo-liberal Anglosaxon model of government (Casey and Dalton 2006). The recent installation of Gordon Brown as Prime Minister in the UK and his unequivocal support of the Compact suggests that the UK will continue to set the benchmark for government and NPO relations in other countries. At the same time, the apparent abandoning of the much vaunted Accord in Canada indicates that there are no guarantees of ongoing commitments to such compacts, and that while they may have positive short-term process outcomes (e.g. they improve the relationships between those negotiating the documents), they may have few longer-term structural impacts.

In the USA, there has been at least a 30-year history of calling for more structured government-nonprofit relations, but no compact-like framework agreements have yet emerged. However, with the current calls for a new administration to create a cabinet-level office that supports NPOs and the recent *Forward Together Declaration*, it is worth speculating whether the compact model currently widely used in other countries to regulate obligations and privileges will finally be imported to the world's largest "market" for NPOs.

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