From Stockholm to Johannesburg: From Corporate Responsibility to Corporate Accountability for the Global Protection of the Environment?

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INTRODUCTION

Corporate social responsibility is one of the topical issues of our times, particularly with regard to the contribution of multinational corporations (MNCs) to development, respect of human and labour rights and to the protection of the environment. Different legal instruments, at the national, regional and international level, could be and are currently employed to ensure the contribution of MNCs to the promotion of social, development and environmental values. Such instruments, for instance, encompass national laws enacted by the home State of a MNC or by the host State receiving foreign investment, or foreign direct liability. Another possible option is that of an international instrument on the matter.

This article will focus on the question of the practicality of using an international approach to corporate responsibility exclusively from an environmental protection perspective. It aims to contribute to the debate by providing an historical and conceptual background based on the search for international legal standards undertaken during major global environmental conferences.

After a brief overview of the impacts and possible role of MNCs in relation to globally relevant environmental resources, this contribution will focus on an analysis of the textual references to corporate responsibility and accountability in the final instruments adopted at the Stockholm Conference on the Human Environment (1972), the Rio Conference on Environment and Development (1992), and the Johannesburg World Summit on Sustainable Development (2002). A comparison of the official translations of the texts into Spanish and French will assist in focusing on the controversial choice of terms and possible implications. In particular, specific consideration will be given to the use of different terms such as ‘accountability’, ‘responsibility’ and ‘liability’ in order to evaluate whether changes in textual references actually expressed an evolution in the conceptual approach to the matter. Based on the results of the textual analysis and through a review of the literature, a definition of the concepts of ‘corporate responsibility’ and ‘corporate accountability’ will be delineated.

The article concludes by assessing the necessary coexistence of the two approaches, notwithstanding their uneven acceptance by the international community, for ensuring an effective role of MNCs in the global protection of the environment.

1 Throughout this article, the terms ‘multinationals’, ‘multinational corporations’ (MNCs), ‘multinational enterprises’ (MNEs) and ‘transnational corporations’ (TNCs) will be used interchangeably to refer to commercial entities that are owned or operate in more than one country. For a proposed legal definition of transnational corporations, see the draft Code of Conduct on Transnational Corporations (UN Doc. E/CN.4/Sub.2/ 1990/12/Rev.2, 12 June 1990), at para. 1(a); and Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regards to Human Rights (UN Doc. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003), at para. H(20).
THE LINK BETWEEN MNCS AND THE INTERNATIONAL PROTECTION OF THE ENVIRONMENT

According to the 2002 World Investment Report,7 more than 65,000 corporations are transnational, and their growth and international economic dominance is witnessed by a variety of factors.

Multinationals’ share of the world’s exports increased from a quarter in the late 1980s to a third in 1995,8 Cross-border mergers and acquisitions accounted for 59% of total foreign direct investment (FDI) in 1997,9 thus ‘concentrating industrial power in megacorporations at the risk of eroding competition’.10 Between 1990 and 2000 the sales of the largest 100 MNCs increased from US$83.2 trillion to almost US$84.8 trillion.11 In addition, MNCs are involved in more than 60% of world trade, mainly as ‘intrafirm trade within Transnational Corporations (TNCs)’,12 and dominate the production, distribution and sale of goods from developing countries.13 The decisions of TNCs on where to access resources or locate production and distribution simultaneously determine flows of FDI and international trade.14 Such decisions have a greater impact on developing countries, for which FDI constitutes the largest source of external finance, more stable than portfolio investment and bank lending,15 and far more conspicuous than Official Development Assistance (ODA).16 It must also be noted that FDI tends to be highly concentrated and benefits only a very limited number of least developed States.17

The revenues of top corporations exceed by far the GDP of the majority of States.18 Indeed, of the largest 100 concentrations of wealth in the world, 51% are owned by multinationals and 49% by States.19 It has also been highlighted that of the 15 of the world’s largest budgets, six are governments and nine are corporations; and that the 15 largest multinationals each have a budget that exceeds the gross domestic product of more than 120 countries.20

Due to such economic power and worldwide scale of activities, multinational corporations have been recognized as having significant impacts on the global protection of the environment. As economic liberalization poses growing demands on transboundary environmental management, the role of the private sector increases in ‘shaping environmental decisions, controlling environmental impacts of economic instability and redefining the dependence on ecosystems on the basis of integration and interdependence of national economies’.21

In terms of their potential adversely to affect globally relevant environmental resources, MNCs play a significant role in the utilization of the global commons.22 It has been documented, for example, that more than 50% of global greenhouse gases emissions are generated by multinational corporations.23 Biodiversity represents the prime resource for the development by MNCs of new technologies and materials related to crops, medicines, fibres and food.24 Marine pollution by waste disposal at sea and harvesting of fish stocks are other activities undertaken by corporations on a large scale.

With regard to the efficient use of environmental resources, MNCs are also extensively involved in the exploitation of renewable and non-renewable resources, in particular oil drilling, mining and forestry.25 In addition, multinational corporations, particularly in the chemical and manufacturing sectors, are responsible

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9 Ibid., at 3.
10 Ibid., at 31.
11 ‘Intrafirm trade’ refers to trade within firms of the same transnational group.
12 UNDP, n. 8 above, at 114.
14 Ibid., at 18.
16 Ibid., at 32 (table).
23 Ibid., at 101.
24 Ibid., at 153.
for most of the production and management of toxic chemicals and hazardous waste.  

From a different perspective, the international financial flows linked with MNCs’ foreign investments have significant implications for environmental sustainability, ‘in terms of both ecological footprints of specific investments and the development trends they reinforce’.  

In this regard, it has been observed that the increasing acceleration in international financial flows has outpaced the capacity or retarded the efforts of States to regulate or control multinationals for the protection of the environment.  

Furthermore, privatization of services related to the management of natural resources (such as water utilities) may raise particular concerns in that governments may not be able to regulate appropriately MNCs so as to ensure fair prices for basic services and the proper consideration of environmental impacts.  

It can be concluded, as Gleckman points out, that ‘transnational corporations can play a critical role in a sustainable managed world or serve as major impediment to this transition’.  

The following section will analyse how the global summits on environmental protection have addressed the issue.

**FROM STOCKHOLM TO JOHANNESBURG**

As early as during the 1972 United Nations Conference on Human Development, discussions took place with regard to the role of business in the global protection of the environment and on the necessity of including environmental concerns into corporate activities.  

Indeed, the Preamble of the Stockholm Declaration made a broad reference to the environmental responsibility of business in the following terms:

> To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities, and by enterprises and institutions at every level, all sharing equally in common efforts. (emphasis added)

The official French text makes equal reference to ‘les responsabilités des entreprises’, thus confirming the choice of the term ‘responsibility’ with reference to business enterprises in the field of the environment.

More debate on the role of MNCs and environmental protection occurred at the United Nations Conference on Environment and Development in Rio de Janeiro...
in 1992. This was in accordance with the 1989 UN General Assembly resolution convening the conference.\textsuperscript{40} The resolution explicitly acknowledged transnational corporations’ ‘activities in sectors that have an impact on the environment’, and their correlated ‘specific responsibility’.

Indeed Rio was the first international conference where industrial leaders participated, along with diplomats and scientists, in discussing the role of business in aiming at sustainable development.\textsuperscript{41}

Interestingly, the Rio Declaration\textsuperscript{42} does not mention what the contribution of MNCs to sustainable development should be, which has been considered a lost opportunity.\textsuperscript{43} However, the emphasis placed in the Rio Declaration (Principle 16) upon the necessity of internalizing environmental costs through economic instruments has some direct relevance for corporations.\textsuperscript{44} The polluter-pays principle is, in fact, the basis for the international provisions on civil liability of enterprises for nuclear damage\textsuperscript{45} and oil pollution.\textsuperscript{46}

Agenda 21, instead, dedicated a whole chapter (Chapter 30) to ‘strengthening the role of business and industry’, explicitly and implicitly\textsuperscript{47} making reference to the role of TNCs. This has been considered by some as the most important contribution of the document: it provided an unprecedented framework for corporate environmental responsibility\textsuperscript{48} and acknowledged the importance of governments in encouraging improved corporate environmental management.\textsuperscript{49} Agenda 21, therefore, underlines the idea that sustainable development cannot be achieved without the cooperation of business.\textsuperscript{50}

In particular, Chapter 30 starts by requiring the ‘full participation’ of TNCs ‘in the implementation and evaluation of activities related to Agenda 21’.\textsuperscript{51} It is worth noting that, whereas the English version of the document uses the verb ‘should’, both the French and the Spanish versions utilize a stronger formulation (‘doivent’ and ‘deben’) for this first recommendation, perhaps implying a stronger commitment. All the three translations rely on the conditional (‘should’/ ‘devraient’/ ‘deberian’) for the rest of the text.

Furthermore, the introduction to Chapter 30 exhorts corporations to recognize environmental management as among the highest corporate priorities and as a key determinant to sustainable development.\textsuperscript{52} Some authors have recognized in this recommendation a reflection of the need for corporations to integrate sustainability concerns\textsuperscript{53} and even the interests of future generations in their business operations.\textsuperscript{54}

Chapter 30 then puts forward two programme areas for MNCs. The first, ‘promoting cleaner production’,\textsuperscript{55} focuses on efficient resource utilization (reuse and recycling of residues, waste reduction), partnership, and reporting and codes of conduct on best environmental practices. More relevant for the purposes of this article is the second programme area, ‘promoting responsible entrepreneurship’,\textsuperscript{56} which requires the implementation of sustainable development policies by enterprises\textsuperscript{57} and ‘responsible and ethical management of products and processes from the point of view of health, safety and environmental aspects’.\textsuperscript{58} The Spanish text appears in line with the English version by referring to ‘responsabilidad empresarial’ and to ‘gestión responsable y ética de los productos’ (literally ‘responsible entrepreneurship’ and ‘responsible and ethical management of products’ respectively). Conversely, a significant difference characterizes the French translation of the same paragraphs. It only refers to an unqualified ‘initiative des entrepreneurs’ (literally ‘entrepreneurship’) in the title of the programme area, and then to a ‘gestione rationnelle et rigoureuse des produits et des procédés’ (literally ‘rational and rigorous management of products and processes’). The text in French, therefore, lacks any reference to the concept of responsibility, neither using the words ‘responsabilité’ nor the words ‘responsable’.

Overall, Agenda 21 makes more substantial references to the responsibility of multinationals in the area of sustainable development than any other area considered

\textsuperscript{40} General Assembly Eighty-Fifth Plenary Meeting, 22 December 1989 (UN Doc. A/RES/44/228, 1989), at para. 10.
\textsuperscript{42} Rio Declaration on Environment and Development, n. 5 above.
\textsuperscript{43} H. Gleckman, n. 37 above, at 93 and 95.
\textsuperscript{44} J.H. Faulkner, n. 36 above, at 153.
\textsuperscript{45} Vienna Convention on Civil Liability for Nuclear Damage (Vienna, 21 May 1963), Articles I(1)(k) and II(1).
\textsuperscript{46} Brussels International Convention on Civil Liability for Oil Pollution Damage (Brussels, 29 November 1969), Articles II and III(1).
\textsuperscript{47} The document Follow-up to the United Nations Conference on Environment and Development as Related to Transnational Corporations: Report of the Secretary-General (UN Doc. E/C.10/1993/7, 4 March 1993), at 35, n. 44, indicates that TNCs were referred to with the following terms ‘foreign direct investment, multinationals, commerce and industry including TNCs’, etc.
\textsuperscript{48} UNCTAD, n. 23 above, at 42 and 51.
\textsuperscript{49} Ibid., at 167.
\textsuperscript{50} See W.L. Thomas, n. 16 above, at 41.
\textsuperscript{51} Agenda 21, n. 5 above, para. 30.1.
\textsuperscript{52} Ibid., para. 30.3.
\textsuperscript{53} N. Choucri, n. 35 above, at 198.
\textsuperscript{55} Agenda 21, n. 5 above, paras 30.5–30.16.
\textsuperscript{56} Ibid., paras 30.17–30.30.
\textsuperscript{57} Ibid., para. 30.18(b).
\textsuperscript{58} Ibid., para. 30.26.
by the General Assembly.59 So much so that expectations arising from the Rio process encompassed the inclusion, in accordance with the objectives of Agenda 21, of environmental norms and rules in an international agreement on investment that was never concluded.60 Nevertheless, according to some authors, what was expressed by the Stockholm Convention and Agenda 21 represents the explicit political intention of the vast majority of States,61 that the private sector can no longer avoid responding to the challenge of sustainable development.62

In Johannesburg in 2002, discussions on the role of the private sector were even more extensive than at the previous international conferences. A broad coalition of non-government organizations (NGOs) presented a proposal for a convention on binding corporate accountability, including provisions for corporate liability.63 The EU also manifested its support to enhance corporate social and environmental responsibility at the international level.64 Both final texts of the WSSD refer to the issue,65 notwithstanding the opposition of some national delegations.66

The WSSD Political Declaration67 includes two references to the role of business for sustainable development. Paragraph 27 refers to a ‘duty’ of the private sector ‘to contribute to the evolution of equitable and sustainable communities and societies’. In addition, paragraph 29 states:

... there is a need for private sector corporations to enforce corporate accountability, which should take place within a transparent and stable regulatory environment.

Interestingly, the word ‘accountability’ appears for the first time as a concept linking corporations and environmental/sustainable development concerns.68 As a preliminary observation in comparing the different translations of the WSSD documents, it should be noted that the English term ‘accountability’ does not have an exact equivalent in the other official languages. Indeed, the words ‘responsabilité’ in French69 and ‘responsabilidad’ in Spanish70 encompass three different concepts expressed in the English language with three different words: accountability, responsibility and liability.

The French version of the Political Declaration does not diverge in the formulation of paragraph 27 in the English version. However, the text of paragraph 29 completely omits the first part of the sentence, namely the reference to ‘corporate accountability’. It actually only highlights, in a rather weaker formulation, the need for a transparent and stable framework:

... nous nous accordons à penser que les entreprises du secteur privé doivent fonctionner dans un encadrement transparent et stable.

On the other hand, the Spanish translation utilizes stronger language than the English, stating the necessity for enterprises to assume ‘plena responsabilidad de sus actos en un entorno regulatorio transparente y estable’. As opposed to the lack of reference to ‘accountability’ in the French version, accountability has been translated in the Spanish text with ‘responsabilidad’. Such significant discrepancies in the different translations of the Political Declaration highlight that controversy characterized its formulation, particularly paragraph 29.71 In spite of the controversy, civil society has welcomed the formulation in paragraph 29 as a ‘significant new basis on which to build stronger, binding standards for global companies’.72

The WSSD Plan of Implementation73 further refers to the issue of corporate accountability, in three separate instances. Paragraph 18 is entitled in the English version ‘Enhance corporate environmental and social responsibility and accountability’, and it encourages voluntary initiatives. The French version quite closely followed the English by referring to ‘Promouvoir la responsabilité écologique et sociale et la transparence dans le monde des affaires’, whereas the Spanish translation only speaks of ‘responsibility’ (‘Promover la responsabilidad en los círculos empresariales’). Interestingly, ‘accountability’ has been translated as

58 H. Gleckman, n. 37 above, at 98.
59 T. Juniper, n. 54 above, at 80.
61 N. Choucri, n. 35 above, at 198.
62 Friends of the Earth, Towards Binding Corporate Accountability, Position Paper for the WSSD (January 2002).
63 R. Ankerberg, General Overview of WSSD Outcomes on Globalization, Trade, Corporate Accountability and the Hierarchy of Multilateral Environmental Agreements Versus Trade Rules, Public Hearing Organized by the European Parliament and Heinrich Böll Foundation (6 March 2003), at 3.
65 See, in particular, the reservation expressed by the US delegation, specifying that the references to corporate accountability should only apply to existing agreements and not to new ones, in Report of the World Summit on Sustainable Development (UN Doc. A/CONF.199/20, 2002), at 145, para. 20.
66 See n. 6 above.
70 On this point see M.C. Cordonier Segger, n. 65 above, at 305.
72 See n. 6 above.
‘transparency’ in the French text. On the other hand, the Spanish text does not distinguish between responsibility and accountability, but rather translates both terms with the same word, ‘responsabilidad’.

Paragraph 49 of the Plan of Implementation, whose significance has been emphasized by civil society74 and scholars75 as a further endorsement of future discussions on a binding instrument on corporate accountability, again shows major inconsistencies in the official translations. Both the English and the Spanish versions urge to:

Actively promote corporate responsibility and accountability, based on the Rio principles including through the full development and effective implementation of intergovernmental agreements and measures, international initiatives and public–private partnerships and appropriate national regulations, and support continuous improvement in corporate practices in all countries.

In Spanish it states: ‘Promover activamente la responsabilidad y la rendición de cuentas en las empresas, sobre la base de los principios de Río . . .’. It can be observed in the Spanish version that the term ‘accountability’ has this time been translated as ‘rendición de cuentas’, the equivalent to ‘answering of one’s actions’, rather than with ‘responsabilidad’. The French text appears quite different, in that it simply requires ‘encourager activement les entreprises à adopter une attitude responsable, sur la base des Principes de Río’. Therefore, it does not utilize two different terms for ‘responsibility’ and ‘accountability’ as it did in paragraph 18 (‘responsabilité’ and ‘transparence’). It actually uses a weaker connotation for ‘responsibility’ altogether (translated as ‘responsible attitude’).

Finally, paragraph 140(f) of the Plan of Implementation states that ‘the international community should . . . [p]romote corporate responsibility and accountability’. The Spanish translation appears consistent with the English version, stating: ‘La comunidad internacional debería . . . f) Promover la responsabilidad y la rendición de cuentas de las empresas’. This is the second instance (together with paragraph 49) in which the Spanish translation of accountability is ‘rendición de cuentas’.

Once more the French translation appears dissimilar in providing for the promotion of ‘la responsabilité et l’obligation redditionnelle des entreprises’. Interestingly, the differentiation between responsibility and accountability has been maintained in the French text (as opposed to paragraph 49). Furthermore, a different translation for ‘accountability’ is utilized: ‘obligation redditionelle’ rather than ‘transparence’ as in paragraph 18 of the Plan of Implementation. ‘Obligation redditionelle’ can be translated into English as ‘reporting obligation’,76 an apparently limited element of the concept of accountability.

Comparing the outcomes of the WSSD with those of the UNCED on the issue of corporate accountability, it may be noted that the Johannesburg Summit has more effectively drawn attention to the international level of action, rather than solely focusing on domestic measures for environmental liability.77 This development is in line with the anticipation expressed by the United Nations Conference on Trade and Development in 1999, when the World Investment Report devoted to ‘Foreign Direct Investment and the Challenge of Development’ stated that ‘it seems clear that national policy action will increasingly be complemented by international action, a not altogether surprising evolution given the importance and global nature of this issue’.78

In addition, the WSSD also expanded the scope of corporate responsibility delineated in Agenda 21, beyond purely environmental concerns, thus paving the way for linking regional and multilateral regimes for sustainable development to the concept of corporate accountability.79

In light of all the inconsistencies in terminology highlighted above, a few initial observations can be drawn from the comparison between the Stockholm Declaration, Agenda 21 and the WSSD final documents.

First of all, it appears that all these instruments have referred consistently to corporate ‘responsibility’ in the field of the environment and sustainable development. Thus, the concept of responsibility firmly links the role of business to the global protection of the environment.

Second, none of these instruments has referred to ‘liability’ of multinational corporations in the field of environmental protection. Notwithstanding the call for an international liability regime voiced by civil society in Johannesburg, indications of direct liability of the private sector seem to be strictly limited to a very narrow ambit of ultra-hazardous activities at the international level.80 No other reference has been made to it in Stockholm, Rio or Johannesburg.

74 World Resources Institute, n. 21 above, at 129.
75 A. Fondella, n. 68 above, at 392; and M.C. Cordonier Segger, n. 65 above, at 305–307, where she examines different options for an ‘intergovernmental agreement’.
77 See M.C. Cordonier Segger, n. 65 above, at 308.
78 UNCTAD, n. 14 above, at 345.
79 See M.C. Cordonier Segger, n. 65 above, at 305 and 309.
80 For a detailed discussion on this point, see D.M. Ong, n. 61 above, at 696–702.
Third, the new concept of ‘accountability’ was utilized during the negotiations in Johannesburg. Its differing translations into Spanish and French seem to point to a difficulty in defining its legal implications. The following elements of the concept of accountability have emerged from the comparison: transparency, answering of corporate actions and reporting requirements. None of these alone seems sufficient to translate fully the concept of accountability into French or Spanish, thus blurring its legal significance.

It therefore remains to be clarified what exactly the conceptual difference is between the use of the term corporate responsibility and that of accountability in the field of international environmental protection, through a review of the literature on this point.

**THE CONCEPT OF CORPORATE RESPONSIBILITY**

The concept of corporate responsibility is based on the perception that multinationals should no longer base their actions on the needs of their shareholders alone, but rather have obligations towards the society in which they operate in general. Specifically, TNCs are expected to respect obligations that go beyond national laws of the country in which they operate, in response to the expectations and assumptions of international society, which has granted TNCs their right to existence and the possibility of operating internationally through trade and investment liberalization.

Thus, responsibility seems to refer to the existence of substantive standards on the contribution of MNCs to the maintenance and promotion of sustainable development, and perhaps, more specifically, to the implementation of environmentally sound policies, operational standards, practices and technologies.

Referring to the existence of a ‘corporate conscience’, the responsibility of corporations has also been characterized by the necessity to maintain ‘a constant awareness for the environment as the economic progress leads to various improvements in the standards of life’. Even from a business point of view, the recognition that the very nature of a multinational corporation involves forms of responsibility at the global level leads to the conclusion that standards of care for the environment should be in place wherever a multinational operates.

At a minimum, corporate responsibility presupposes an increasing demand on MNCs to consider the environmental implications of their actions regardless of whether specific legal obligations require them to do so. Further developed, the inclusion of environmental concerns into the overall interests of a multinational could lead to the protection of environmental interests as an explicit duty of company directors.

At a maximum, corporate responsibility could include the requirement for corporations to implement the principle of sustainable development. However, the practical implications in terms of business activities to respect the principles of intergenerational equity and sustainable use of resources remain difficult to define.

Finally, corporate responsibility has been characterized as ‘prescriptive in character’, by focusing on future corporate behaviours rather than past conduct.

**THE CONCEPT OF CORPORATE ACCOUNTABILITY**

The concept of accountability has developed in the broader context of the debate on global environmental governance. In the process of economic globalization and its increasing demands on transboundary environmental management, multinationals as ‘global citizens’ are expected to be included in the design of a more coherent and effective global framework for environmentally relevant decision making at all levels, in order to ‘be encouraged to play an active role in bringing about sustainable development’. Against this background, ‘accountability’ refers, in general, to the way in which public and private actors are considered responsible for their decisions and are

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82 UNCTAD, n. 14 above, at 345–347.
83 UNCTAD, n. 30 above, at 68.
85 D.M. Ong, n. 61 above, at 686.
86 Ibid., at 723–724.
87 D. Santillo and P. Johnston, n. 22 above.
88 See generally World Resources Institute, n. 21 above, and UNDP, n. 8 above, at 100, where it was stated: ‘Multinational corporations are already a dominant part of the global economy – yet many of their actions go unrecorded and unaccounted. They must however go far beyond reporting just to their shareholders. They need to be brought within the frame of global governance’.
expected to explain them when they are asked by stakeholders. Thus, this means they must be open in their decision-making processes in order for them to be examined and judged by other interested parties. This is based on the assumption that TNCs are 'both global and local citizens so they should be in theory accountable to numerous constituencies'. In this light, corporate accountability responds to the current situation in which businesses can 'no longer count on the anonymity of the market place' to hide from scrutiny. Indeed, the international community is moving towards the implementation of a mechanism for enhanced democratic control over corporations in order to prevent environmental damage.

Consequently, corporate accountability implies, on the one hand, widening the scope of stakeholders within a company so as to include all interest groups affected by the company’s activities, such as governments, employees, board of directors, investors, consumers, suppliers, local communities situated where the company operates, civil society and the public at large. In this regard, it has been noted that the plethora of voluntary codes of conduct enacted by several MNCs reflects the acceptance by the corporate world that they must address public expectations of environmentally sound behaviour. This aspect appears to be in line with the translation of the term as ‘rendición de cuentas’ in the Spanish version of the WSSD Plan of Implementation.

On the other hand, corporate accountability appears to be dependent on access or provision of information and therefore to the concept of transparency, as suggested by the French translation of the WSSD Plan of Implementation. To connect business to stakeholders, public access to information and reporting appears to be a more direct tool in creating a participatory approach in regulating environmental performance of corporations. Such developments would be in line with the novel approach of the Aarhus Convention and generally with Principle 10 of the Rio Declaration.

From a governance perspective, the role of the private sector is also linked with that of civil society in the protection of the environment. It is suggested, for instance, that NGOs should play the role of ‘watchdogs’ for corporate accountability on at least three levels: demanding transparency of business operations; ‘shaming’ corporations into better environmental behaviour by widely informing about their behaviour; and raising awareness about corporate behaviour at the local level.

In conclusion, accountability is thought to encourage better environmental behaviour of corporations without resorting to more coercive measures, focusing on the need to guard corporate reputation and market power in the face of stakeholders.

CONCLUSIONS: FROM CORPORATE RESPONSIBILITY TO CORPORATE ACCOUNTABILITY?

The concepts of corporate responsibility and accountability seem to refer to two different legal approaches in addressing the role of business, and multinationals in particular, in the global protection of the environment.

Corporate responsibility makes reference to the existence of substantive standards for the conduct of MNCs that go beyond what is required at the national level of the host State, to ensure corporate contributions to environmental protection and, more generally, to sustainable development. This is, for example, the approach underlying the ‘norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights’ recently adopted by the United Nations Commission on Human Rights (UNCHR), which specifically provides for transnational corporations and other business enterprises to carry out their activities:

... in accordance with relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment as well as human rights, public health and safety, bioethics and the precautionary principle, and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development.
Corporate accountability, on the other hand, makes reference to the existence of procedural standards, in terms of transparency, reporting and openness to the public, as indirect means for ensuring environmentally friendly conduct of MNCs. This is, for instance, the approach of the Global Reporting Initiative, which was supported at WSSD.

Global environmental conferences have dealt increasingly with the roles of business in fostering sustainable development. The Stockholm Declaration and Agenda 21 consistently invoked corporate responsibility. The WSSD Plan of Implementation proposed coexistence of corporate responsibility with the new concept of accountability. These are therefore two complementary facets of the role identified by the international community for TNCs to play in the global protection of the environment. In other words, ‘corporate accountability implies a new level of commitment that must be supported by reliable instruments for monitoring and reporting on corporate responsibility’.

However, the two approaches are at different stages of development and acceptance at the international level. Controversy still surrounds the question of identifying substantive standards for corporate responsibility. Important indications in this regard will emerge from States’ reactions to the norms elaborated by the UNCHR in 2004. On the other hand, according to the World Resources Institute, ‘global consensus has emerged on the basic principles of good environmental governance: access, participation, transparency, appropriate scale and an ecosystem basis’. The concept of corporate accountability seems likely to gather general acceptance in the short term, within the broader framework of global environmental governance.

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106 M.C. Cordonier Segger, n. 65 above, at 308.
107 World Resources Institute, n. 21 above, at 221.