

# Making Big Corporations Accountable

by Martin Khor

*This Briefing Paper looks at the implications and repercussions of the 1992 Rio Summit's failure to create a mechanism to regulate corporations. It highlights both the proposals made by TWN and the outcome of the NGOs' campaign towards greater corporate accountability during the World Summit on Sustainable Development (WSSD).*

## 1. Introduction

In discussions on sustainable development, one issue has captured public attention and interest like no other: the behaviour of big companies and the need to make them more accountable.

In the process leading to the WSSD, held in Johannesburg in August 2002, citizen groups made corporate accountability their prime concern. The NGOs wanted the Summit to establish a global system to regulate the practices of corporations to prevent them from further damaging the environment; from manipulating currencies, profits and markets; violating human rights of their workers or the local communities that suffer dislocation to make way for them.

## 2. Corporate Financial Scandals

This issue had amazingly sprung into the forefront of public consciousness through the revelations, one after another, of fraudulent or misleading accounting practices of such big-name companies such as Enron, Worldcom and Xerox.

It is now clear that several companies had been

'dressing up' their bottom lines to show healthy profits when in fact they were making losses. When the true situation was exposed, confidence not only in the specific companies but also in the stock markets generally plunged. Investors doubted the accuracy of the corporations' accounts, and this undermined the basis of investing in stocks.

Overnight, the stature of many corporate CEOs that once were icons and role leaders descended to record low levels. They are now seen as grossly overpaid, manipulative and even plain crooked. Thousands, even millions, of workers and investors have directly suffered the loss of large portions of their life savings as the value of stocks fell.

The implications are very significant for sustainable development. The most important corporate operating principle in many developed countries had been the maximization of short-term corporate profits. The announcement of quarterly earnings by a company causes its stock price to rise or fall dramatically. To avoid being taken over, a company had to show high profits.

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**TWN** THIRD WORLD NETWORK is a network of groups and individuals involved in bringing about a greater articulation of the needs, aspirations and rights of the people in the Third World and in promoting a fair distribution of world resources and forms of development which are humane and are in harmony with nature.

### 3. TNCs' Role in Eco-destruction

The rise of 'shareholder capitalism' and its obsession with short-term performance judged by profitability has now led the market system itself to the brink of worldwide economic slowdown. Some analysts even predict a financial meltdown. The recent financial scandals are only one facet of the crisis in corporate accountability. Due to the dominant trend of deregulation and liberalization, companies have increasingly been able to do pretty much as they like, as the already inadequate controls over them were lifted.

Perhaps the 1992 Rio Summit's biggest error was its decision not to create a mechanism to regulate corporations. Even then, NGOs like Third World Network and Greenpeace had identified the leading role of transnational companies (TNCs) in environmental damage, pointing out that:

- TNC activities generate more than half the greenhouse gases emitted by industrial sectors with the greatest impact on global warming.
- TNCs dominate the trade and often also the extraction of natural resources and commodities, with effects on forests, soils, water and marine resources.
- TNCs dominate the mining sector, and also control about four-fifths of land worldwide cultivated for export crops.
- TNCs dominate global and national industry and transport, and their activities result in pollution, industrial and occupational hazards, toxic wastes and unsafe products.
- TNCs are also major transmitters of environmentally unsound production systems and hazardous materials to the South, including unsafe pesticides, polluting industries and hazardous wastes. They are also promoters of unsustainable consumption patterns in both the North and South.

However, the Earth Summit failed to place obligations on big companies to behave in an environmentally or socially responsible manner. It decided that companies could be trusted to change themselves.

Since Rio, the trend of treating TNCs with kids' gloves has accelerated. They are seen by the UN secretariat not as powerful forces that need to be brought under control, but as responsible partners who would actually lead the world to sustainability. The UN now treats companies as part of 'civil society', as partners in a 'Global Compact' with the UN itself, and as a vital

component in the so-called Type Two Partnerships that are supposed to be a major part of the World Summit on Sustainable Development (WSSD).

These increasingly close links are bound to bring embarrassment to the UN. NGOs have already collected evidence that some companies have misused their status in the Global Compact. And imagine what will happen if many of the 'partners' proudly listed in the Global Compact or in the Type Two documents turn out to have engaged in fraudulent accounting and other unethical practices.

### 4. More Power to TNCs After Rio

The failure of Rio to make companies accountable was followed by developments in other areas which opened the way for companies to get more rights with less obligations. In particular:

- The World Trade Organisation's (WTO's) establishment in 1995 ushered in new global rules that made it more difficult for developing countries to set their own development policies or to regulate foreign products and firms.

For example:

- the Trade-Related Aspects of Intellectual Property Rights (TRIPS) gives monopoly rights mainly to TNCs that own most of the world's patents, with adverse effects for consumers, farmers and indigenous people and technology users.
- the services agreement enables transnational service corporations to use their governments to pressurise developing countries to give them market access, which can affect the viability of local companies.
- the agriculture agreement enables large farms and giant agro-companies to profit from huge subsidies and tariff protection whilst many small farmers in the South are finding it hard to survive competition from cheap and often subsidised imported food.

Some developed countries are also trying to make use of the WTO to prevent other members from taking health, safety or environmental measures, for example the labelling of genetically modified products or the import of unsafe food.

- The developed countries are now pushing hard to establish new agreements in the WTO on investment, competition policy and government procurement. If they succeed, the TNCs will have

even more rights to operate around the world and have access to sectors and spheres (for example, government purchases, contracts and concessions) where local firms now enjoy advantages. Correspondingly, governments would be more and more constrained by international law from regulating foreign companies, or imposing obligations on them, or from assisting local firms.

- In the decade since Rio, financial globalisation and liberalisation has continued at a rapid pace, enabling financial institutions (including speculative investment funds) greater freedom and access to markets worldwide. The deregulation process enabled the greater inflow and outflow of funds, which has destabilised many developing countries and caused crises in Asia and Latin America. Governments in most affected countries are unable to get out of the spiral of debt, devaluation and capital flight, as they have been committed not to regulate the free flow of funds.

With the institutionalisation of this particular brand of globalisation, each country and each company is under intense pressure to compete with the others. Under such conditions, environmental concerns have fallen down many notches in the national and international agendas.

Business interests, which have gained much ground in political influence, have also persuaded certain governments not to be party to multilateral environmental rules such as the Kyoto Protocol on climate change or the Cartagena protocol on biosafety. The global climate situation continues to deteriorate, whilst the safety and ecological risks arising from genetic engineering are growing much faster than the capacity to monitor or regulate.

The last ten years' record has confirmed that when governments give up their task of regulating companies, sustainable development is the loser. The myth that voluntary action by companies or self-regulation by industry will take care of corporate responsibility has now been exploded again by the accounting scandals of major companies.

Case studies of the performance of many TNCs (for example by Jed Greer and Kenny Bruno in their book, 'Greenwash: The reality behind corporate environmentalism') also show that despite the public relations exercise claiming greater corporate responsibility, and despite more voluntary industry codes of conduct, there has

been little change and much 'business as usual', with the corporations continuing with environmentally harmful activities.

## 5. Proposals to Regulate the TNCs

Thus, the WSSD had the urgent task of placing the regulation of corporations back onto the international agenda. Self-regulation by companies is impossible to expect in the present highly competitive economic environment. Public regulation, through the setting up of industry-wide standards backed up by law and effective enforcement, is thus required.

However, it is also not enough to expect individual governments to control TNCs on their own. Firstly, there is fierce and intense competition between countries; the government of a country would be reluctant to legislate standards higher than its competitor countries. Secondly, TNCs are now so huge in economic size (in terms of assets, turnover, employment, and investment) as to dwarf many a country. Most governments, by themselves, are unable to even begin to adequately monitor (let alone regulate or control) the TNCs operating within their countries, due to lack of information, absent or inadequate corporate disclosure, and sheer absence of clout or influence in the face of immense TNC power.

Thus, not only must there be monitoring and regulation of TNCs at the level of individual governments, but at least just as important at the international or multilateral level. Otherwise there would be no adequate or effective means to monitor and check the environmentally-harmful activities of the world's major economic agents, and there would be no movement towards effective solutions to the global environment and development crises.

Before and at the WSSD, Third World Network proposed that the WSSD begin a process towards a binding framework on corporate accountability. This framework should contain provisions for public regulation and monitoring, in relation to such aspects as public disclosure of information, health and safety, environmental effects, and social and developmental implications. It should set up activities to monitor, analyze, develop criteria and principles for ethical and environmentally-sound behaviour, and regulate the activities of TNCs. Areas to be covered include environmental, health and safety aspects; social and developmental

aspects; and restrictive trade and business practices that deprive states and the public from their full benefits. TNCs should be made liable for compensation for the harmful effects caused by their operations on the environment, safety and health.

Another proposal was that the WSSD and post-WSSD process reaffirm the principle that states have the right to regulate the entry, establishment and operations of TNCs; and that TNCs have the duty to respect national sovereignty, respect the health and environmental rights of the public, and refrain from financial, pricing or technological activities that cause socio-economic difficulties to the host countries. These are principles contained in the draft Code of Conduct on TNCs that unfortunately was abandoned in the early 1990s.

The WSSD should send a clear message that the rights and freedoms of TNCs and other business enterprises are secondary compared to the primary rights of the public and of states to subject their operations and behaviour to regulations, laws and guidelines that can ensure the reduction of environmental and development problems that threaten to engulf both Earth and humanity.

## 6. The Process and Outcome at the WSSD on Corporate Accountability

One of the few bright spots in an otherwise disappointing World Summit on Sustainable Development was the successful campaign by many NGOs to get the WSSD to make a commitment to make corporations accountable for their actions and the effects of these.

Many NGOs had made the need to regulate corporations and make them accountable as their main priority for the WSSD. They saw the failure of Rio 1992 as stemming from the Earth Summit's rejection of the need to regulate companies. In the decade after Rio, the transnational corporations (TNCs) became much stronger and were now disciplining governments for their own interests, instead of governments disciplining them in the public interest.

The WSSD eventually did adopt a significant paragraph (para 45.ter in the Plan of Implementation) on corporate responsibility. But there was a dramatic last-minute fight to keep this para intact.

Para 45.ter of the draft Plan of Implementation read: '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.'

This para was approved together with the rest of the draft Plan on the night of 3 September after a last-minute attempt by some countries to water down the paragraph was turned back by forceful interventions by Ethiopia and Norway. As a result, one of the few achievements of the Summit will be a commitment to promote corporate responsibility and accountability through the full development and effective implementation of intergovernmental agreements and measures.

The meeting of the Main Committee on 3 September night to adopt the draft Plan, chaired by Emil Salim of Indonesia, was delayed for three hours when delegates held last-minute negotiations to amend three paragraphs regarding women's rights; human rights and fundamental freedoms relating to health, and access to healthcare services.

The draft Plan was adopted at almost 1.00 a.m. Immediately following this, a member of the UN secretariat sitting on the dais read out a prepared statement that it is the 'collective understanding of the contact group on means of implementation' that the paragraph regarding corporate responsibility and accountability refers to 'existing' intergovernmental agreements and international initiatives, and that this understanding should be reflected in the final report of the Conference.

The reading of this statement, according to several delegates, was an untransparent action as there was no explanation at the session as to how the statement had come about, whether the contact group had met in full membership, and who had taken the decision to enable it to be termed a 'collective understanding'.

It was also unusual that a UN official instead of a government representative, such as the chairman of the contact group, read out the statement and without an introductory explanation.

According to a document issued by NGOs, the statement was the result of an attempt by the United States delegation to neutralise the text on corporate accountability that had already been agreed to by the contact group on globalisation and the means of implementation.

The contact group had been faced with three proposed versions (from the EU, the G77 and the US) of the paragraph on corporate accountability. Part of the EU-proposed text read: 'Actively promote corporate responsibility and accountability.... including through full and effective implementation of existing intergovernmental agreements and measures....'

On 31 August evening, Ambassador John Ashe, the contact group chairman, produced a new text, in which the word 'existing' had been removed and the words 'full development' added.

The text, which was the one that was eventually adopted by the Main Committee as para 45.ter of the draft Plan of Implementation, reads: '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.'

After the intervention by the UN official reading out the 'collective understanding of the contact group', the Ethiopian delegate Dr Tewolde Berhan Egziabher took the floor and asked for clarification on who in the contact group had made the decision to issue the statement, as his delegation for one had not been informed of such a consensus reached.

Tewolde also said the statement about 'existing' agreements was not logical when read in conjunction with the paragraph. He said that in the text, 'full development' obviously refers to new agreements. 'How then do we develop agreements in the future if the statement refers only to existing agreements and thus prevents us from what is to be done in the future? The whole thrust of the paragraph is what is to be done in the future. But what is read out in the statement implies there is no future agreement.'

Tewolde asked where then was the logic of the

statement and asked for clarification.

The contact group chairman John Ashe explained that although not all delegations were present at the contact group meeting that decided on the statement, representatives of delegations were present and thus it was assumed that it was the intention of the group.

Tewolde then reiterated that the term 'full development' seems to refer to new agreements, and therefore the statement that only existing agreements were meant must be wrong. 'Let us assume our representatives made a mistake. Do we as countries repeat that mistake? My proposal is that the contact group's statement is incompatible with our decision here (i.e. the text in the draft Implementation Plan), and one or the other has to be discarded, and I propose that the statement has to be discarded.'

After a brief exchange for clarification between the Main Committee chairman, Emil Salim, and Tewolde, the chairman ruled that para 45.ter of the text is agreed to and would be kept and that the statement of the contact group would be discarded.

The Norwegian Minister for International Development, Ms Hilde Johnson, then stated that she also had concerns on the contact group statement. She said that according to UN procedure, informal contact groups do not formally exist, and thus should not be referred to in an official UN document. 'We question that statement on behalf of the contact group and we have the same understanding of the situation as Ethiopia,' she said.

But even after the passing of the para by the Main Committee, it was not the end of the story.

The next day (4 September) was the last day of the WSSD. At the final plenary, chaired by the South African President Thabo Mbeki, the US delegation stated it wanted to make interpretative statements on four points relating to the WSSD documents. One of the points was in relation to the Implementation Plan's para on corporate responsibility and accountability. According to the US delegate, the chairperson of the Main Committee meeting (held on 3 September night) had said that it was the collective understanding that the para refers to existing international agreements, and that this should be reflected in the report of the WSSD.

In fact the US delegate made a factual error in announcing the US interpretative statement. The chairman of the 3 September night meeting, Emil Salim, expressly rejected the proposal read out by the UN official that it was the common understanding of the contact group on globalisation and means of implementation that only existing intergovernmental agreements were being referred to. The chairman's clear decision to reject the proposal came after strong objections by Ethiopia and Norway.

That the chairman had rejected the proposal that there was 'collective understanding' which should be reflected in the WSSD report, was confirmed personally by Emil Salim to the author of this article during the final plenary session of 4 September itself.

It is unclear whether the final report of the WSSD will endorse the US position that there was a collective understanding that the para on corporate responsibility refers only to existing agreements. If it does, then this would be to cater to a total untruth, for the decision of the chairperson on the night of 3 September was to reject the proposal for diluting the text, and to adopt the para as it was, without any accompanying 'understanding'.

The next step forward is for the NGOs, the governments and the UN to follow up on the para, and to begin as soon as possible to take steps to internationally regulate the corporations so as to make them accountable.

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