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# Civil Society, Corporate Accountability and the Politics of Climate Change

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## Introduction

This article uses the lens of accountability to explore the shifting strategies of a range of civil society groups' engagement with the key actors in the global regime on climate change. From a primary and continuing focus on influencing inter-state United Nations hosted negotiations on climate change, in the form of the UN *Framework Convention on Climate Change* (UNFCCC) and the subsequent Kyoto Protocol, strategies have broadened to target the corporate sector, consumers and multilateral development banks in an attempt to hold these actors to account for their climate footprints. This evolution reflects perceived shifts in political authority and in where power lies as well as a recognition of the increasing role of the private sector in the governance of climate change through engagement in a range of public, private and hybrid "regime" arrangements.

The issue of climate change provides a fascinating basis for exploring the politics of accountability. Amid huge disparities in wealth and power, often weak institutional structures and competing claims about rights and responsibilities (and therefore about who should be held to account for what), accountability is at the heart of many of the key debates about responsibility for action on climate change, even if not often named in those terms. The strategies of groups aiming to increase the *answerability* of key actors for their actions, as well as *enforceability* where those actors fail to deliver on their obligations, are examined. This includes those movements adopting more confrontational strategies of protest and shaming, as well as those promoting change through dialogue, the construction of new institutions, and partnerships. At play here are competing understandings and practices of accountability politics. In more neo-liberal versions there is an emphasis on partnership and self-regulation as the means of engagement, in which private actors view action on climate change as either a rational risk management strategy or as a potential source of brand value. This is in contrast to strategies which seek to disrupt and reverse existing corporate

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strategies which accelerate climate change. These strategies are conducted in public arenas through protest and media work aimed at driving state-based regulation and citizen action, all the while exposing state complicity and expressing skepticism about the separation between the interests of state and capital with regard to climate change.

Strengthening processes and mechanisms of accountability presents an enormous challenge in any environmental policy arena when a) the worst effects are often not felt by those perpetuating the problem in the near or long term b) those with most to lose often have the least voice c) the patterns of causation and irresponsibility are often complex and contested and d) the governance mechanisms to deal with the problem are often weak, under-resourced and operate across poorly coordinated scales. These barriers to an effective politics of accountability are magnified significantly in relation to climate change because of the range of actors involved in producing the problem, their proximity to the centers of political power and the extent of the “globality” and “inter-generationality” of the issue, which dwarfs that of other global environmental challenges.

The article firstly locates the idea and practice of accountability in global environmental governance. It then reviews the traditional pursuit of strategies aimed at increasing the “public accountability” of governments and UN bodies for agreed actions on climate change. This focuses particularly on new strands of legal activism aimed at holding the largest polluting states to account for their international climate change obligations, and at the climate footprint of the way Multilateral Development Banks screen and allocate the use of public development funds. This is then compared in the sections that follow with the growing tendency towards the adoption of corporate accountability strategies aimed, among other things, at promoting “civil regulation”—civil society based regulation of the private sector. The final part of the article reflects on the possibilities and limitations of civil society actors performing such accountability roles in the contemporary politics of climate change and suggests potential future directions in climate advocacy.

## Accountability in Global Environmental Governance

Whilst the idea and practice of accountability has assumed a central place in debates about governance in development,<sup>1</sup> it has been relatively neglected as an organizing theme in the study of global environmental politics. Whilst there is some work on issues of transnational accountability with respect to environmental harm,<sup>2</sup> as well as reflections on closely associated concepts such as responsibility,<sup>3</sup> critical thinking about accountability has not been seriously ap-

1. Goetz and Jenkins 2004; and Newell and Wheeler 2006.

2. Mason 2005; Newell 2001; and Elliott 2006.

3. Pellizzoni 2004.

plied to the public and private arenas in which global environmental politics play out.

In the study of global governance more generally, the work of Held and Koenig-Archibugi, among others, has been helpful in clarifying and seeking to address deficits in governance at the international level.<sup>4</sup> The question they pose at the start of their book on *Global Governance and Public Accountability*, namely: "To what extent are those who shape public policies accountable to those affected by their decisions?"<sup>5</sup> applies as much to global climate policy as to the economic policy spheres that garner most attention in their volume. The element that needs to be added, especially with regard to the analysis developed in this article, is the private domain of power. As Saurin notes, "international political analysis continues to be conducted as if environmental goods and bads are produced, accumulated and therefore regulated by public organizations. They are not."<sup>6</sup> The private dimension of accountability politics requires urgent critical examination in relation to climate change, as with so many other areas of global political life.

Such as it exists, the emphasis in existing literature to date has also been more on top-down forms of accountability where accountability is *conferred from above*, rather than *claimed from below*. The history of social movement and civil society engagement with international institutions, whether it be the World Bank, World Trade Organisation (WTO) or International Monetary Fund (IMF),<sup>7</sup> shows clearly, however, that activists seek to claim and create new spaces as well as occupy invited and existing spaces of participation.<sup>8</sup> Some of the analysis below shows the way in which groups have both engaged with international institutions working on climate change, making use of formal institutional channels to represent their concerns, as well as challenged those bodies directly, in an attempt to democratize them and open them up to a plurality of perspectives and participants around an issue that, by virtue of its scale, allows everyone to claim to be a legitimate stakeholder.

Accountability is composed of two key dimensions: *answerability* and *enforceability*.<sup>9</sup> The first element assumes both the right to accountability and to demand a justification for (in)action on the part of an institution exercising power and the expectation on the part of an accountability "provider" that it has to provide an account of its (in)actions in the public name. The second refers to the means to secure accountability: the ability to realize accountability claims and the capacity to penalize non-responsive behavior with sanctions of one form or another. This harks back to classical notions of accountability devel-

4. Held and Koenig-Archibugi 2005.

5. Held and Koenig-Archibugi 2005, 1.

6. Saurin 2001, 80.

7. Fox and Brown 1998; Wilkinson 2002; and O'Brien et al. 2000.

8. Cornwall and Schatten Coelho 2006.

9. Schedler et al. 1999.

oped by Plato and Aristotle that rested on notions of justice, duty and punishment.<sup>10</sup>

Accountability is best thought of as a dynamic and living concept derived from practice, rather than a static concept which describes the distribution of power in narrow institutional terms. Accountability relations transcend the formal institutional arenas in which its most obvious manifestations are often described. Accountability is, nevertheless, often linked to the performance of institutions, accounting for actions undertaken in the service of a public mandate, answering to those in whose name they exercise power or providing indicators of performance.<sup>11</sup> Neo-liberal political culture has elevated the use of accounting, auditing and “rituals of verification” in political life as means to discipline inefficient institutions,<sup>12</sup> mainly assumed to reside in the public domain, and justify the case for private delivery of public services.<sup>13</sup>

Though civil society groups often make accountability demands directly of regional and international bodies, a large proportion of accountability claim-making continues to be conducted via the state, which, despite its limitations, continues to be the formal, legitimate, and often the most democratic vehicle by which national publics in democratic settings express their will within international institutions. This does not negate the significance of transnational forms of citizen action which bypass the state and allow concerned citizens to register approval or disapproval, often via electronic communication or other virtual means. The point, however, is that in so far as international institutions facilitate inter-state bargaining, the targets of most action continue to be particular agendas pursued by certain governments within those arenas, rather than the institutions themselves. Campaigns to see the Kyoto Protocol enforced were targeted not at the secretariat of the UNFCCC, but rather at those expected to take a lead on the issue, most notably the EU or those resisting enforcement such as the US. Whilst acknowledging the agency exercised by secretariats to environmental agreements and much more so by those institutions with strong financial clout such as the World Bank, direct accountability demands are most often directed towards those institutions with whom people feel they can exercise their “right to accountability” and that, for most people, most of the time, remains the state in the first instance.

### *The Case for Accountability*

The concept of accountability is often subsumed within broader analyses of participation gaps in global governance<sup>14</sup> or debates about responsibility and trans-

10. Pellizzoni 2004, 546.

11. Brinkerhoff 2004.

12. Power 1997.

13. Whitfield 2001.

14. Fox and Brown 1998.

parency.<sup>15</sup> Pellizzoni, for example, identifies accountability as one of four dimensions of responsibility in his analysis of responsibility and environmental governance (the others being liability, care and responsiveness).<sup>16</sup> A serious analysis of accountability in global environmental politics in its own right is warranted for a series of reasons, however.

Firstly, accountability is essentially about power: the division of *rights* and *responsibilities* between state, market and civil society actors and the means for realizing these. Embedding the often technocratic and performance-related notions of accountability as accountancy and efficient performance of public functions within a framework of power allows us to raise critical questions about who is served by particular (global) governance arrangements: on whose behalf is power exercised.<sup>17</sup> Applied to the environment and questions of the stewardship of natural resources, it raises fundamental questions of:

1. Accountability for what?
2. Accountability to whom?
3. How?
4. When?

At the international level it might be expected that the mechanisms for claiming accountability by “accountability seekers”<sup>18</sup> and the means for realizing accountability by “accountability providers” are weaker. The checks and balances that characterize many systems of national political governance are poorly embedded or non-existent in transnational arenas of governance where “executive multilateralism” prevails.<sup>19</sup> This may be considered to be as true of the politics of the environment as it is for other global issue areas. Scholte suggests “a notional accountability chain does connect voters via national parliaments and national governments to global governance organizations, but the links in practice have been very weak.” For example, “national parliaments have exercised only occasional and mild if any oversight over most supra-state regulatory bodies.”<sup>20</sup> There is much evidence that even around agreements with far reaching social and environmental implications such as the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement of the World Trade Organization, parliaments have been kept out of decision-making and often remain unaware of the extent of the commitments their government has signed up to. Instead, unelected technocrats represent their governments at the international level, without a direct connection to citizens whose interests they are, in theory, advancing.

Conceptually, it also the case that the tools we have to understand ac-

15. See Gupta 2008; Mason 2008; and Florini 2008.

16. Pellizzoni 2004.

17. Wallach and Sforza 1999; and Foster and Anand 1999.

18. Goetz and Jenkins 2004.

19. Zürn 2005; and Held 2005.

20. Scholte 2005, 87.

countability globally were fashioned with national systems of governance in mind, assuming both strong possibilities of *horizontal* accountability: checks and balances between different parts of the state and *vertical* accountability: citizen-based claim-making of public authority. At the national level this would include, horizontally, an emphasis on the separation of powers between the executive, parliamentary and judiciary arms of government and the use of ombudsmen for example. Meanwhile, vertical checks and balances include the use of elections, plebiscites and citizen auditing. Clearly, many of these mechanisms do not exist at the international level even if forms of accountability from regional bodies to local and national electorates have improved through elections such as exist for the European Parliament for example.

Such problems are compounded by the uneven geography of participation in global environmental decision-making. The inequities in capacity and participation which mean that most governments in the majority world are not able to even be present, let alone adequately represent, the interests of their publics in arenas in which demands for legal and scientific expertise are high, also apply to civil society. Merely constructing more “spaces” for civil society groups within international institutions does not address the inequalities within civil society that will continue to mean participation is unevenly distributed by region, issue, as well as other key social cleavages such as gender, race and class.<sup>21</sup> Marceau and Pedersen’s argument that merely creating more spaces at the international level means that some groups “get two bites at the apple”<sup>22</sup>—a high degree of access and presence at the national level and then a second opportunity to pressure other governments at the international level—is relevant here. Many developing countries rightly fear that the further inclusion of well-resourced groups able to represent themselves at both levels merely amplifies the voice of already powerful states since that is where the wealthiest and most internationalized groups are based.<sup>23</sup>

There are also uneven and diverse cultures of transparency and participation among and between international institutions, with enormous implications for environmental accountability politics. While environmental arenas are more open to civil society contributions, participation on delegations and access to the negotiating floor, equivalent multilateral trade institutions such as the WTO conduct their affairs in a far more secretive fashion in which civil society participation is on highly restrictive terms. The WTO’s *Guidelines for Arrangements on Relations with NGOs*, make clear that “there is currently a broadly held view that it would not be possible for NGOs to be directly involved in the work of the WTO or its meetings.”<sup>24</sup> Echoing the emphasis on national arenas as the primary site of accountability politics, the guidelines continue, “Closer consultation and cooperation with NGOs can also be met constructively through ap-

21. Newell 2005a.

22. Marceau and Pedersen 1999, 43.

23. Newell and Tussie 2006.

24. WTO 1996.

propriate processes at the national level where lies primary responsibility for taking into account the different elements of public interest which are brought to bear on trade policy-making."<sup>25</sup> Nevertheless, when environmental regimes are so profoundly affected by decisions made within trade fora, the lack of accountability within trade arenas has a direct knock-on effect upon the possibilities of effective environmental cooperation. Decisions made in highly undemocratic settings constrain the autonomy and responsiveness of institutions where accountability politics are more deeply embedded. The scope for environmental negotiators to include in environmental agreements the very trade discriminating measures that make them effective and that have been central to the relative success of the Montreal Protocol, Basel Convention and CITES (Convention on the International Trade in Endangered Species), is restricted by decision-making in non-accountable commercially driven multilateral arenas such as the WTO.<sup>26</sup>

A second reason why accountability is central to the study of global environmental politics is that it provides us with a vocabulary for thinking about *liability and redress*, questions which occur perennially in global environmental debates as we can see from international negotiations around the international trade in genetically modified organisms or regimes to regulate the trade in hazardous waste or the use of chemicals. We will also see below how concerned groups within civil society have been developing their own mechanisms of *civil redress*.<sup>27</sup> Within the inter-state climate change debate, issues of historical responsibility and more recently the duty to compensate those communities now in the front line of climate change who have contributed little to the problem, through forms of support for adaptation, has become an increasingly salient feature of the negotiations. Underpinning this division of responsibility is an assumed duty of care on the part of those who have polluted most to help those who have polluted least to adjust to the consequences of climate change with which they are living.

Thirdly, the lens of accountability serves to highlight the *procedural* democratic deficits that characterize contemporary forms of global (environmental) governance. It does so for it brings questions of representation and participation into sharp relief. Many international environmental regimes have been challenged for their failure to include those groups most affected by the issue they manage. The role of indigenous peoples in the Convention on Biodiversity, whose resources are subject to increasing commercial interest, would be an obvious example. The analytical lens of accountability can also bring into sharp relief power imbalances within systems of global governance through its analysis of the competing webs of obligations which bind states to different bodies of international law and their associated institutions. In the environmental context, debates about "whose rules rule?" when trade rules are allowed to trump

25. WTO 1996.

26. Conca 2000.

27. Mason 2005.



trade restricting provisions of MEAs (Multilateral Environmental Agreements),<sup>28</sup> as noted above, are suggestive of the traction to be gained by thinking about inter-regime relations in terms of competing accountabilities.

Contrary to many treatments of the term, accountability is not an end in itself. Rather it is a means to an end and requires, therefore, that the end be specified. This is important for considering which accountability strategy will serve whom and when. Applied to the question of climate change, it allows us to ask whether or not the balance of power and rights and responsibilities that describe the roles of key actors in climate governance are working towards the prevention of dangerous interference in the climate system; the stated goal of the UNFCCC. It will be shown below in more detail that governance gaps and accountability deficits, especially with regard to the central, but often unregulated, role of market actors in the governance of climate change, undermine the effectiveness of global responses to this pressing threat. A politicized understanding of accountability provides us, therefore, with both the means for interpreting changes in policy approaches to the governance of the environment and a tool for evaluating these policy tools against their ability to cope with climate change.

## Public Accountability

There is of course a long history of civil society actors seeking to hold governments and international institutions to account for their responsibilities to tackle climate change.<sup>29</sup> Lobbying national governments, seeking access to negotiating delegations and exposing non-compliance with targets and commitments agreed at the international level have been among the strategies adopted. Demonstrations, media work and alternative reporting have been among the repertoires of protest deployed. This has included the construction of “boomerang” effects that create accountability impacts across scales and between different decision-making arenas.<sup>30</sup> Environmental NGOs often seek to attract media attention to international conferences through stunts, press conferences and the like which force attention on a government whose position is stalling international progress. It is hoped that heightened domestic attention through media exposure helps to close the accountability gap which often leaves international bureaucrats relatively free from domestic political scrutiny.<sup>31</sup>

It should be recalled that such “double-edged” accountability diplomacy:<sup>32</sup> influencing global politics domestically and vice versa, playing on the points of leverage in each, can be conducted by social forces resisting environmental action just as easily as by those in favor of it. Hence, those opposed to

28. Conca 2000; and Newell 2005b.

29. Arts 1998; and Newell 2000.

30. Keck and Sikkink 1998.

31. Newell 2005c.

32. Newell 2000.

action on climate change tried to hold US negotiators to account for their support for the Kyoto Protocol in the face of significant opposition from US Senators whose support would be necessary to ratify the Protocol. Petitions organized by industry groups of Senators pledging to veto the ratification of the Kyoto Protocol in the absence of binding emission reductions targets for developing countries, an impossible political demand back in 1997, was a sure way of tying the hands of US negotiators.

Propelling governments to sign up to international accords, lobbying to strengthen their provisions and then performing watchdog roles in monitoring their implementation has, nevertheless, been a central strategy for groups working on climate change. Since this ground has been widely covered elsewhere in the literature,<sup>33</sup> however, I focus the analysis here on some of the newer innovations in climate advocacy aimed at securing improved levels of public accountability.

### *Legal Activism*

The law has been the central medium for processing and mediating accountability claims in environmental politics, a fact which accounts for the continued popularity of theoretical approaches which seek to account for the origins, development and effectiveness of international treaties and the organizations which oversee them.<sup>34</sup> Given both the slow pace of progress in negotiations and the stalling tactics of the world's leading contributor to climate change, one interesting source of momentum has come from groups adopting a range of legal based strategies to hold governments to account for their obligations to act on the issue. A few examples will serve to illustrate the potential and limitations of these legal cases as accountability strategies. The examples demonstrate both *ex-ante* accountability and *ex-post* accountability. Traditionally the assumption is that accountability refers to holding governments to account for commitments already made. Some of the strategies described below, however, seek to preempt climate related damage before it has taken place.

In 1999, 19 US-based NGOs petitioned the EPA (Environmental Protection Agency) to regulate CO<sub>2</sub> and other greenhouse gases arguing that it was required to do so by the Clean Air Act.<sup>35</sup> Following the EPA's rejection of the appeal, 13 of the groups<sup>36</sup> filed the case with the US Court of Appeals asking for a review of the decision. Such actions have prompted legal moves brought by states against the federal government, a form of *horizontal accountability* within

33. Betsill and Correll 2001; Newell 2005c; Arts 1998; and Gulbrandsen and Andresen 2004.

34. Young 1998; and Haas, Keohane, and Levy 1993.

35. Petition for Rulemaking and Collateral Relief Seeking the Regulation of GHG Emissions from New Motor Vehicles Under S. 202 of the Clean Air Act.

36. These included the International Center for Technology Assessment (CTA), Sierra Club, Greenpeace, Centre for Biological Diversity, Centre for Food Safety, Conservation Law Foundation, Environmental Advocates, Environmental Defence, FoE, National Environmental Trust, NRDC, Union of Concerned Scientists and US Public Interest Research Group.

the state triggered by civil society action. For example, 12 US states filed a petition which became the consolidated case *Commonwealth of Massachusetts et al v EPA*. Contending the petition and supporting the EPA stance was a coalition of states and industry groups that formed in 2005 including Maine, New Mexico, DC and Oregon together with the US Chambers of Commerce, the American Petroleum Institute and the AAM (Alliance of Automobile Manufacturers). In April 2007, the Supreme Court ruled that the US government does indeed have the authority to regulate carbon dioxide and other greenhouse gases, overruling President Bush's justification for not acting: that since the Clean Air Act does not specifically mention greenhouse gases as pollutants, the executive branch has no authority to regulate them.<sup>37</sup> Despite the hype around the ruling, it does not, as such, require the government to regulate greenhouse gases. Rather, it instructs the EPA to, *inter-alia*, reconsider its refusal to regulate emissions and to heed the growing scientific evidence of climate change. Also dismissed was the Bush administration's challenge against the plaintiffs that states did not have legal standing, because they could not show that they would be harmed by the government's failure to regulate greenhouse gases, and the claim that because the Department of Transportation (DoT) set fuel efficiency standards regulating CO<sub>2</sub>, the EPA would be encroaching on DoT's bureaucratic authority by regulating CO<sub>2</sub> emissions. Hence, as the International Council on Human Rights Policy (ICHRP) argue: "While the ruling's impact on federal policy remains unclear, it provides impetus and argument to those willing to challenge the actions of major emitters in other judicial fora both inside and outside the United States."<sup>38</sup>

A second case focuses on a civil society attempt to hold a government to account for its support to private polluters. In August 2005, Greenpeace and Friends of the Earth, together with a series of US cities,<sup>39</sup> alleged that the Export-Import Bank and Overseas Private Investment Corporation illegally provided over \$32 billion in finance and insurance for oil fields, pipelines and power plants for over 10 years without assessing their contribution to global warming or their impact on the US environment. In doing so, the claimants argued that these export credit agencies failed to meet their obligations under the US NEPA (National Environmental Policy Act). On March 31<sup>st</sup> 2007, the US District Court for the Northern District of California held that the NEPA *does* apply to major federal projects that contribute to climate change.<sup>40</sup>

A similar case has been brought by a coalition of German NGOs attempting to hold their government to account for the climate change externalities it permits through the support it provides to fossil fuel industries. In June 2004, GermanWatch and BUND (Friends of the Earth Germany) brought a legal challenge against the German Federal Ministry of Economics and Labour in the Ad-

37. "The Supreme Court rules on global warming," *International Herald Tribune*, 4 April 2007, 6.

38. ICHRP 2008, 15. See also Posner and Sunstein 2007.

39. Oakland, Arcata, Santa Monica and Boulder.

40. Climate Law 2006.

ministrative Court of Berlin. They successfully secured an order which forces the German government to disclose the contribution to climate change (in terms of tonnes of CO<sub>2</sub> released) made by projects supported by the German Export Credit Agency Eueler Hermes AG since 1997. The German government contested the order in 2006 on the grounds that the export credit agency is not bound by European environmental law in reference to directive 90/313 on citizens' access to environmental information and the even stronger directive 2003/4/EC which member states are meant to have adopted by 2005.<sup>41</sup> With such cases we see the global boomerang effects of localized accountability struggles whose environmental impacts have global repercussions as well as setting powerful political precedents about what states can be expected to be held to account for and the means by which they can be held to account.

Though characteristic of many global environmental threats, climate change perhaps brings into sharpest relief the social justice elements of global environmental change, where often those who have contributed to a problem least bear its negative impacts most severely. For example, the latest IPCC (Intergovernmental Panel on Climate Change) Assessment Report on the impacts of climate change demonstrates clearly the potential for further impoverishment of marginalized communities in already drought-prone areas where water scarcity will be exacerbated by climate change.<sup>42</sup> Those whose livelihoods depend on agriculture will be the worst affected and have the least capacity to adapt.<sup>43</sup> Campaigning groups such as World Development Movement in the UK have highlighted these justice dimensions clearly:

Climate change is perhaps the greatest global injustice. It is the richest people in the world who have produced and who are still producing most of the greenhouse gases causing climate change. Yet it is the poor countries—those who contribute little or nothing to the problem—who suffer the most severe consequences.<sup>44</sup>

Even in legal terms, the language of rights may help to express these injustices and could become a critically important and productive way of advancing claims about moral responsibilities for environmental pollution that imply the loss of the human rights of others. Faced with the complexity of the climate system, it is to be expected that the barriers to such claim-making are immense. Nevertheless, it is in these terms that Inuit groups in North America have sought to make their claims regarding the impacts of US government inaction on climate change, working alongside the legal NGOs EarthJustice and the Center for International Environmental Law.

On December 7<sup>th</sup> 2005, the Inuit Circumpolar Conference (ICC) submit-

41. This, in turn, was driven by the *Aarhus Convention on Access to Information, Public Participation and Access to Justice on Environmental Matters*.

42. IPCC 2007; and UNDP 2007.

43. Adger 2001.

44. WDM 2007.

ted a *Petition to the Inter-American Commission on Human Rights seeking relief from violations resulting from global warming caused by acts and omissions of the United States*. The US was targeted as the world's largest contributor to greenhouse gas emissions. With the help of legal advisers, Sheila Watt-Cloutier, Inuk woman and Chair of the Inuit Circumpolar Conference, submitted the petition on behalf of herself, 62 other named individuals "and all Inuit of the Arctic regions of the US and Canada who have been affected by the impacts of climate change."<sup>45</sup> The petition calls on the Inter-American Commission on Human Rights to investigate the harm caused to the Inuit by global warming, and to declare the US in violation of rights affirmed in the 1948 *American Declaration of the Rights and Duties of Man* and other instruments of international law such as the *International Convention on Civil and Political Rights* and the *International Convention on Economic, Social and Cultural Rights*. Specifically the petition alleges:

The impacts of climate change, caused by acts and omissions by the United States, violate the Inuit's fundamental human rights protected by the American Declaration of the Rights and Duties of Man and other international instruments. These include their rights to the benefits of culture, to property, to the preservation of health, life, physical integrity, security and a means of subsistence and to residence, movement and the inviolability of the home.<sup>46</sup>

The plaintiffs had to show that in bringing the case to the Commission, all domestic remedies had been exhausted. The Commission rejected the petition as inadmissible, though reasons for the refusal were not given. For Martin Wagner who helped file the petition, "it is possible that the Commission wasn't ready to tell a government what to do about global warming . . . advising a government of its human rights responsibilities . . . it was uncomfortable demanding specific science-driven remedial steps."<sup>47</sup> Importantly, the human rights issues raised by the case were not disputed by the Commission. If the Commission had ruled in favor of the Inuit, it could have referred the US to the Inter-American Court of Human Rights for a legal judgment, which works within the American Convention on Human Rights. Though the ruling would be largely symbolic, it could have been used in national litigation through the domestic legal mechanism of an Alien Tort Claim which allows non-US citizens to bring cases in the US in the instance of a violation of international law by a US party. The case prompted aggressive interventions from US government officials such as a Senator from Alaska who threatened the Inuit group that if they proceeded with the case, "you will not another dime from us" in state financial support.<sup>48</sup> One positive outcome of the case has been that the Commission invited petitioners to request a public hearing on the matter which took place on March 1<sup>st</sup> 2007. At the time of writing, however, the Commission had not yet issued a report based on the hearing.

45. Earthjustice 2008.

46. Earth Justice 2008.

47. Presentation by Martin Wagner at the ICHRP, Geneva, 12–13 October 2007.

48. Reported by a participant at the ICHRP workshop, Geneva, 12–13 October 2007.

Reflecting on the use of such cases, one activist lawyer put it the following way: “our approach is to try and sue everyone we can. Most cases will fail but we may just do it anyway.”<sup>49</sup> The value comes from catalyzing the financial backers of industries and projects contributing to climate change, such as the insurance industry and banking sector, into re-considering their investments in these sectors (if the injuries are large enough) as well as raising awareness of the range of harms being generated by climate change (educational value). It may also galvanize US support for the climate regime in the face of legal liabilities as a form of regulatory defense. This perspective reinforces the point made above about the broader political goals that legal-based strategies can serve. Indeed as a report by ICHRP notes:

Even if lawsuits cannot themselves provide long-term or far-reaching solutions to the human rights problems raised by climate change, litigation can nevertheless be an effective strategy. At a minimum, a well-constructed case draws attention to harmful effects that might otherwise sink below the public radar- and in particular, puts a name and a face to an otherwise abstract suffering of individuals. Further, legal actions provide impetus and expression to those most affected by the harms of climate change, and can thus become a motor of social or civic mobilisation for policy change. . . . tort litigation can present polluters with costly trials and the uncomfortable prospect of debilitating damages and reputational costs, all of which encourage behavioural change.<sup>50</sup>

A notable characteristic of these forms of mobilization is their transnational and multi-actor nature; involving coalitions between states, cities, communities and civil society groups working together to engineer change through multiple leverage points associated with key accountability providers. Accountability demands have been made of governments and corporations by diverse actors regarding process based issues of transparency and disclosure as well as substantive demands regarding regulation and compensation. An assessment of the effectiveness of these strategies is hindered by the fact that many cases have not yet been settled. This, indeed, is one of the disadvantages of litigation in particular: the time cases take to resolve and the complexity of the claims involved, including high demands for proving causality beyond reasonable doubt, comprise a barrier inhibiting resource-poor groups from bringing cases in the first place.<sup>51</sup> An advantage of legal activism, however, is not necessarily the short-term outcome, but the long-term signal that it sends out to polluters. The potential for future legal liabilities serves as an incentive for firms to address climate change in their corporate strategies, including greenhouse gases in their registries of emissions or engaging in the bewildering array of voluntary, market-based and offset projects that are now available to image-conscious firms.

49. Meeting with legal environmental activist from US. Identity protected.

50. ICHRP 2008, 9.

51. Newell 2001.

In sum then, the assessment of the International Council on Human Rights Policy on litigation as a tool of change seems appropriate. They note:

Litigation is an important response to policy failures. However when it comes to the larger climate change challenge, it will likely bring too little relief too late; its utility will lie rather in pointing the way towards, and mobilising support for, the adoption of better policies to prevent or minimise climate change related violations.<sup>52</sup>

### *Multilateral Development Bank Campaigns*

There is now a substantial body of climate activism concerned with holding governments to account for the public funds they provide to bilateral aid agencies and Multilateral Development Banks and the extent to which this is compatible with their national and international climate change commitments. This builds on a long history of activism targeted at the social and environmental performance of these institutions.<sup>53</sup> Strategies include petitions, monitoring and advocacy with and on behalf of affected communities, aimed at constructing mechanisms of answerability between powerful financial actors and those whose local and global environment they affect through their actions and inactions. Activists have claimed that public finances should only back projects that lead to a shift away from fossil fuel and mining investments and that those projects that are funded should be made with the consultation of local communities affected and their environmental impact rigorously assessed.<sup>54</sup>

Civil society responses have in many ways mirrored the course of the climate negotiations and particularly the increasing focus on mechanisms by which the largest polluters can pay for greenhouse gas reducing projects in parts of the world where it is cheaper to do so. The allocation of projects under the Clean Development Mechanism (CDM) and the popularity of carbon sink projects (those which absorb CO<sub>2</sub> most popularly through tree cover) have each given rise to watchdog activism aimed at scrutinizing the conduct of these carbon deals and exposing what activists consider to be phony projects where environmental gains are unlikely to be forthcoming or the social costs high or ignored.<sup>55</sup> SinksWatch, for example, is an initiative of the World Rainforest Movement (WRM) set up in 2001, hosted by the WRM's Northern Support Office and implemented by Forests and the European Union Resource Network (FERN). SinksWatch monitors the accountability and impact of the financing and creation of sinks projects; to highlight the threat they pose to forests and other ecosystems, to forest peoples as well as to the climate. A particular concern is the exclusion of marginalized groups from their own forest resources once they become the property of a distant carbon trader for whom they represent a

52. ICHRP 2008, 2.

53. O'Brien et al 2000; Edwards and Gaventa 2001; and Fox and Brown 1998.

54. FoEI 2007.

55. Lohmann 2006.

valuable investment opportunity. For example, Heidi Bachram notes the case of a Norwegian company operating in Uganda that leased its lands for a sequestration project which resulted in 8,000 people in thirteen villages being evicted.<sup>56</sup>

SinksWatch has focused in particular on projects funded by the World Bank Prototype Carbon Fund (PCF). The Planter project involves planting 23,100 ha of eucalyptus tree plantations to produce wood for charcoal, which will then be used in pig iron production instead of coal. The project also claims carbon credits for sequestration of carbon through the trees planted. Over 50 Brazilian NGOs, movements, churches and trade unions have been urging PCF investors since March 2003 to refrain from buying carbon credits originating from the project. Among the main reasons to reject the project, they cited its significant environmental and social shortcomings as well as its lack of contribution to sustainable development in the region.<sup>57</sup> Likewise, CDM Watch was set up to inform local communities about their rights to information regarding CDM projects that they may be expected to host and their rights to participate in the design of such projects, emphasizing strongly themes of process accountability. The Carbon Trade Watch group, meanwhile, occupies itself with oversight of the dealings of the rapidly expanding market for the trading of greenhouse gas emission rights. Closing accountability gaps between North and South, between investors and host communities, seeking to pressure in both sites, will be key to playing this watchdog function effectively. Activists may yet be overwhelmed by the challenge of tracking the scale of flows of private finance through voluntary carbon markets as well as the thousands of CDM projects in the pipeline awaiting approval. The challenges will be multiplied in trying to monitor developments in countries where access to projects and the media are heavily restricted, such as China, currently one of the largest recipients of CDM projects.

Though dispersed coalitions and communication technologies allow many more groups to construct new forms of accountability politics over multiple scales and on a more regular basis, global effectiveness as an accountability actor is still in the first instance often a function of good relations with a powerful state. The effectiveness of many of the campaigns in the US aimed at improving the environmental performance of the World Bank rested on groups' access to Congress, which had a pivotal role in approving funds to the institution.<sup>58</sup> This provided a key point of leverage unavailable to groups elsewhere. Some groups, therefore, exercise disproportionate influence in exporting particular models of environmental accountability based on their location in a centre of global power.

56. Bachram 2004.

57. Sinks Watch 2005.

58. Fox and Brown 1998; and O'Brien et al 2000.



### *Hybrid Accountabilities*

The focus in this section is on the use of public accountability mechanisms to hold private actors to account. The point of departure is often the perceived failure by states to use public regulation to hold private actors to account for their environmental responsibilities, a theme explored further below in relation to the increasing uptake of civil regulation. This is distinct from the use of the law to hold governments to account for their failure to act on climate change discussed above, since the onus is on private sector contributions to the problem. Likewise, whereas in the section above on Multilateral Development Banks, the basis of accountability claim-making was the (ab)use of public funds in multilateral bodies, (albeit often for the benefit of private actors), here our attention turns to the use of national and international public law as a means to increase the accountability of the private sector to the public. In reality, the close ties between the state and business produce a crossover or hybridization of accountability claims that means both are targeted simultaneously.

There are many examples of using the law to hold a private actor to account. In June 2004 New York Attorney General Eliot Spitzer, eight states, and New York City, filed an unprecedented lawsuit against 5 of North America's largest power companies as contributors to public nuisance under common law, between them contributing over 10% of the nation's CO<sub>2</sub> emissions.<sup>59</sup> Invoking liability claims that build on earlier judicial activism against the tobacco and asbestos industries, they demanded that these companies cut their CO<sub>2</sub> emissions in light of global warming and the damage their emissions were causing in terms of impacts on human health, economic impacts on agriculture and tourism, among other things.<sup>60</sup> In September 2005, the District Court dismissed the case on the basis that regulating power companies was an issue for the political domain and not appropriately settled through judicial means, a judgment the claimants appealed in December of the same year. The attorney general was not, it seems, seeking to secure monetary damages common to such cases, but rather to set a precedent that firms are accountable for the emissions they produce and should put steps in place to reduce these. Time will tell whether future such cases exercise a deterrent effect in persuading firms to internalize the negative externalities of their activities.

The State of California, represented by then State Attorney Bill Lockyer, also sought legal redress from car companies regarding their contribution to climate change, which collectively amount to 20% of the US's total emissions.<sup>61</sup> The action was also based upon the common law principle of "public nui-

59. The firms in question were AEP, Southern Company, Tennessee Valley Authority, Xcel Energy, and Cinergy.

60. CERES 2005a.

61. The six defendants are Chrysler Motors Corporation, General Motors Corporation, Ford Motor Company, Toyota Motor North America Inc., Honda North America, and Nissan North America.

sance," in the form of CO<sub>2</sub> emissions, and sought monetary compensation for damages caused by these emissions.<sup>62</sup> The lawsuit was the first of its kind to seek to hold manufacturers liable for the damages caused by greenhouse gases that their products emit (as opposed to energy generators as in the case above). In September 2007, California lost the case against the car companies. The Court found that "injecting itself into the global warming thicket at this juncture would require an initial policy determination of the type reserved for the political branches of government."<sup>63</sup> This has not prevented corporations from using the law to challenge states' authority to regulate the fuel economy of cars, a subject they claim is appropriately addressed at federal level. In the *Green-Mountain Chrysler-Plymouth-Dodge et al v. Crombie et al* case, fourteen states were sued by a group of carmakers for attempting to regulate CO<sub>2</sub> emissions from cars. A Vermont court ruled on September 17<sup>th</sup> 2007 in favor of the states on this occasion, though the companies look set to appeal the decision.<sup>64</sup>

Alongside these cases, there has been a wave of legal activism which does not explicitly invoke climate change as a rationale but seeks forms of action, nevertheless, which constitute action on climate change and which also invoke rights-based claims as an accountability strategy to challenge public and private actors simultaneously; specifically their collusion in producing environmental harm. A relevant case would be that of the Iwerekani community of the Niger delta. The communities, supported by Earth Rights Action in Nigeria, filed a legal action against the Nigerian government, the Nigerian National Petroleum Corporation (NNPC) and the Shell, Exxon, Chevron, Total and Agip ventures in Nigeria to stop gas flaring.<sup>65</sup> The Federal Court of Nigeria ordered that the gas flaring must cease as it violates constitutional rights to life and dignity. When it did not, contempt of court proceedings were brought against Shell and NNPC. The case is currently adjourned, but shows how legally-induced changes, prompted by concerns other than climate change may, nevertheless, have a positive impact on action for climate change, drawing as they do on a long history of legal-based community activism to hold oil companies to account for their social and environmental responsibilities.<sup>66</sup>

By contrast, attempts to hold transnational corporations (TNCs) to account for their environmental responsibilities through international law have a long and largely unsuccessful history. This includes the establishment of a UN Centre on Transnational Corporations (UNCTC) which produced a code of conduct for TNCs in 1978 that was never adopted. Under pressure from opponents to a treaty regulating TNCs, most notably the US, the UNCTC was reduced to the status of a division within UNCTAD (United Nations Conference on

62. Under the law, a "public nuisance" is an unreasonable interference with a public right, or an action that interferes with or causes harm to life, health or property.

63. *People of the State of California v General Motors et al*, September 17th 2007.

64. AAM 2007.

65. Climate Law 2005.

66. Frynas 2000.

Trade and Development).<sup>67</sup> The OECD has issued guidelines for multilateral enterprises which rely on a voluntary system of enforcement and the International Labour Organization issued the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in 1977. Many of these agreements were a product of a concern at the time about the rising power of multinational firms and the risk this posed to state sovereignty.<sup>68</sup> More recent incarnations, also reflective of current concerns about globalization, include activist demands for a UN Corporate Accountability Convention, raised at the World Summit on Sustainable Development in 2002, but currently without backing from state leaders. Unlike trade and finance, multinational corporations are not governed by a coherent international regime.<sup>69</sup> We have, however, seen great emphasis on multilateral, regional and bilateral investment agreements which proscribe the rights and responsibilities of states and investors alike, mainly in favor of the latter and with the implication that the options available to governments to hold foreign investors to account are circumscribed. In accountability terms, this privileging of one actor's rights over those of another serves to remove key checks and balances over private authority. Stephen Gill refers to this as the "new constitutionalism,"<sup>70</sup> whereby the rights of capital over states are protected through international law, producing a form of lock-in which safeguards them from forms of active democratic control. In this sense, the potential of international law to serve as an accountability mechanism for weaker nations and poorer peoples is reversed, and instead law is used to ensure that private capital accumulation trumps the legitimacy of other political and social objectives. Carried over to the arena of climate politics, the consequences of protecting investor rights irrespective of the climate related damage they bring in their wake would be devastating for effective global policy.

## Civil Regulation

As in other arenas of global politics, the accountability of a private sector portrayed as exercising power without responsibility in environmental politics has come under increasing scrutiny.<sup>71</sup> This is particularly so amid the increased ability of companies to operate in and move between multiple jurisdictions which can be played off against one another to secure a favorable business climate. As Koenig-Archibugi argues, "In a sense, the TNCs' opportunities for 'exit' turn the accountability relationship upside down by making governments accountable to TNCs."<sup>72</sup> Many globalized forms of environmental and social campaigning have sought to close the accountability gap that derives from the distance be-

67. Muchlinski 1999.

68. Vernon 1971.

69. Koenig-Archibugi 2005, 122.

70. Gill 1998.

71. Hertz 2001.

72. 2005, 118.

tween the site of production and consumption in the global economy which protects companies from scrutiny and accountability for the human and ecological costs of the ways in which their products are produced.

And yet as Koenig-Archibugi suggests, "It might be less obvious why corporations should be accountable to the general public, since no delegation of authority seems to occur between them."<sup>73</sup> Added to the fact that they wield significant influence over the use and misuse of environmental resources in global society is the fact, however, that corporations are issued with charters to operate according to some notion of the public good and have a legal personality which provides possibilities for accountability checks on their activities.<sup>74</sup> "The idea that corporations should have a special duty of accountability to the wider public is therefore justified in light of their owners' enjoyment of limited liability."<sup>75</sup> In market terms of course, their continued existence comes down to their ability to persuade consumers and other buyers to purchase their products. Withholding that purchasing power as buyer or consumer provides leverage to make and extract accountability demands. Corporations are in reality then subject to a variety of accountability sanctions that go beyond the strict public regulation of their activities.<sup>76</sup> Moves towards voluntary and self-regulation, as part of the embrace of ideas and practices of Corporate Social Responsibility (CSR), can be seen as an attempt to re-claim some control over the content of accountability to which they are subject as well as those who can subject them to such claims.<sup>77</sup> Pellizzoni argues that voluntary regulation produces a form of unresponsiveness through the "self-referential, self-validating definitions of goals and evaluation of results." Voluntary arrangements, he argues, "take for granted the autonomy of economic and technical choices from public scrutiny . . . the self-specification of what is to be accounted for, and how, acts as a means of preventing any substantial empowerment of the relevant stakeholders, to the extent that their own questions and concerns remain unexpressed and unaccounted for."<sup>78</sup>

The focus of this section is upon the use of informal non-state based mechanisms of accountability to hold the private sector to account for its contribution to climate change. The broad repertoires of protest and society-based attempts to exercise social control over capital are described as civil regulation.<sup>79</sup> Zadek describes them in the following way:

Civil regulations . . . are manifestations of essentially political acts that can effect business performance through their influence on market conditions

73. 2005, 112.

74. Korten 1995.

75. Koenig-Archibugi 2005, 112.

76. These include the infliction of financial penalties as we saw above in relation to tort law, criminal prosecution, withdrawal or non-renewal of a licence to operate, termination of financial support, and a more personal level reduction in responsibilities or removal from a job.

77. Newell 2005d.

78. Pellizzoni 2004, 558.

79. Newell 2001; and Bendell and Murphy 2002.

... they can best be understood as non-statutory regulatory frameworks governing corporate affairs. They lie between the formal structures of public (statutory) regulation and market signals generated by more conventional individual and collective preferences underpinned by the use and exchange value of goods and services.<sup>80</sup>

Not only do they provide “an instrument of accountability for ecological performance,”<sup>81</sup> a critical dimension of their effectiveness derives from the construction of mechanisms of *civil redress*.<sup>82</sup> Loss of market value or consumer confidence, tarnished public reputation and disaffection among shareholders are the tools of persuasion and coercion that serve to “harden the environmental accountability demands levelled at corporations.”<sup>83</sup>

Given the limitations of achieving change in the law at the national and international level with its high demands for resources and legal and scientific expertise, it is unsurprising that we have witnessed a rising tide of activism aimed at engaging the private sector directly in a debate about its responsibility to address climate change. This has taken a number of forms. It has been argued elsewhere that civil regulation can be broadly divided into two types of strategies. *Liberal* strategies aim at engagement, reform of business practice and often make use of market mechanisms to incentivize and achieve change. *Critical* strategies on the other hand are more confrontational, employ protest tactics and pose more fundamental challenges to business as usual activities.<sup>84</sup> As suggested earlier in the discussion, each approach also draws on a different understanding of the purposes and practices of accountability politics and in particular whether they reinforce neo-liberal modes of governance or contest them. There is not space here to systematically explore the full spectrum of activist strategies being deployed in these ways. The following examples seek instead to illustrate briefly some of the ways in which activists are using a diverse range of tools and strategies to hold private sector actors to account for their climate change impacts.

### *Shareholder Activism*

Shareholder activism refers to a mechanism which allows shareholders in a company to compel corporate management to hold a shareholder vote on a proposed issue. Shareholder activism has a long history of being used by activists to contest the apartheid regime in South Africa as well as to hold oil and mining companies to account for irresponsible investment practices in host countries.<sup>85</sup> It has now been adopted by climate activists.

80. Zadek 2001, 56.

81. Mason 2005, 150.

82. Mason 2005, 150.

83. Mason 2005, 151.

84. Newell 2001.

85. Marinetto 1999.

The year 2005 saw a record number of shareholder resolutions on global warming. State and city pension funds, labour foundations, religious and other institutional shareholders filed 30 global warming resolutions requesting financial risk and disclosure plans to reduce GHG emissions.<sup>86</sup> This is three times the number for 2000–2001.<sup>87</sup> Firms affected include leading players from the automobile sector such as Ford and General Motors; from the oil sector such as Chevron Texaco, Unocal and Exxon Mobil; the chemical giant The Dow Chemical Company; and market leaders in financial services such as JPMorgan Chase & co.<sup>88</sup> Groups such as CERES (Coalition for Environmentally Responsible Economies) and ICCR (Interfaith Centre for Corporate Responsibility), a coalition of 275 faith based institutional investors, have been using their financial muscle to hold firms to account for their performance on climate change. They demand both information disclosure (process accountability) and management practices that reflect the values of their shareholders (accountability outcomes). This accountability tool often serves as a trigger for action after which the sanction of enforcing a resolution is withdrawn.<sup>89</sup> Approximately one half of the resolutions filed in 2005 were withdrawn by the shareholders after the targeted companies agreed to take actions against global warming that the filers judged to be adequate.<sup>90</sup> CERES also produces ratings of firms' performance in handling climate risks. This is a form of transparency, which is essential for accountability. The report serves as a benchmarking guide for institutional investors such as the ICCR. It uses the 14-point "Climate Change Governance Checklist" introduced in the 2003 report to assess company action on climate risk in five areas: board oversight, management performance, public disclosure, greenhouse gas emissions accounting, and strategic planning.<sup>91</sup> In many ways this resonates with the work of the Carbon Disclosure Project. In its own words:

The Carbon Disclosure Project (CDP) provides a secretariat for the world's largest institutional investor collaboration on the business implications of climate change. CDP represents an efficient process whereby many institutional investors collectively sign a single global request for disclosure of information on Greenhouse Gas Emissions. More than 1,000 large corporations report on their emissions through this web site. On 1st February 2007 this request was sent to over 2400 companies.<sup>92</sup>

In the UK, pressure from individual shareholders belonging to the UK university pension (superannuation) scheme brought about moves to ensure members' savings were not being invested in activities accelerating climate change. An "Institutional Investors Group on Climate Change" resulted following meet-

86. CERES 2005b; and Mongabay 2005.

87. Institutional Share Owner 2005.

88. CERES 2005b.

89. Dhir 2006.

90. Mongabay 2005.

91. Institutional Share Owner 2005.

92. CDP 2008.

ings with over 100 senior city executives. Beyond the ethical claims invoked, a strong case was made that investors' interests were poorly served by investments exacerbating climate change. As a result, demands were made to (i) report their climate change exposures and management of climate change risk strategies, (ii) report to financial institutions their frameworks for systematic action to manage climate change as a key part of company valuation and, finally, (iii) to work with policy makers in making long-term investments in carbon-saving technology and infrastructure.<sup>93</sup>

In the US in 2004, faith-based investor networks filed resolutions against AEP, Cinergy, Southern Company, TXU and Reliant Energy to disclose their impact on the environment. AEP, Cinergy, Southern Company and TXU complied with the resolutions, agreeing to prepare and issue reports measuring their ecological footprint and their plans to address the financial implications of their contributions to global warming.<sup>94</sup> Reliant Energy, meanwhile, agreed to the disclosure of an environmental issue assessment in its 10-K securities filings, to amend its Board Audit Committee Charter, to undertake annual reviews, and to post environmental information on their website.<sup>95</sup> Overall, the resolutions led to distinctive agreements, but with some common links: acknowledging climate change impacts in securities filings and on corporate websites, assigning board-level responsibility for overseeing climate change mitigation strategy, and benchmarking and greenhouse gas emissions reduction goals.

Further back in 2003 a group called Ethical Funds submitted a shareholder proposal to steel manufacturer IPSCO calling on the company to "establish a policy of disclosing facility-specific toxic and greenhouse gas emissions"<sup>96</sup> which it had previously refused to do. At the company's annual meeting the proposal managed to secure 49.2% of the shareholder vote, giving it the highest ever recorded level of support for a shareholder resolution on "social" issues in Canada. The company adopted the proposal in the wake of the meeting.

Amid the apparent success of these initiatives in bringing about change, it is important to reiterate the limitations of shareholder activism as an accountability tool. There is no obligation upon a firm to implement resolutions. In May 2005 Exxon censored a 28.4% vote for a climate change resolution asking for disclosure of plans to comply with GHG reduction targets in Kyoto jurisdictions, organized by CERES and ICCR at the AGM. It omitted the petition from its proxy statement, after being authorised by the SEC (Shareholder Executive Committee) to do so.<sup>97</sup> A further commonly acknowledged limitation of shareholder activism is its restriction to Anglo-Saxon capitalist economies. Though there is some evidence of growing interest in SRI (Socially Responsible Investment) in Japan, for example, the globality of this strategy is limited. Differences

93. USS 2005.

94. Institutional Share Owner 2005.

95. Institutional Share Owner 2005.

96. Dhir 2006, 406.

97. Institutional Share Owner 2005.

in corporate structure and culture also mean that the spaces for changing corporate conduct from within are uneven depending on the firm in question and the region in which they operate. In the US shares are more widely held than in Canada, where the majority of publicly traded corporations are closely held. Yet, according to Kazanjian, the relationship between Canadian corporations and investors is defined more by “consultation and less towards the adversarial expression of individual rights,” as in the US.<sup>98</sup>

The popularity of shareholder activism in recent years has also provoked moves by companies aimed at regulating the terms of their use, seeking to bar proposals submitted “by the shareholder primarily for the purpose of . . . promoting general economic, political, racial, religious, social or similar causes,” as has happened in Canada for example.<sup>99</sup> The definition of “proper subject for action” is heavily contested.<sup>100</sup> In the US a resubmission rule operates that prevents activists from proposing successive resolutions on the same theme, which they do in the hope of garnering support over time. Another attempt to minimize the use of this tool has been to impose a “threshold:” requiring shareholders to own a certain percentage of shares in the company before they can make a proposal. This automatically excludes smaller investors, including of course activist investors.<sup>101</sup> Often, if a shareholder wishes to dispute a management decision to exclude a proposal, it has no recourse but to seek a review in court, a time-consuming and costly way of proceeding. As the Social Investment Organisation argues, “many shareholders . . . lack the legal and financial resources to mount a court battle. The effect of this will be to give management an arbitrary veto over shareholder proposals with no practical way for shareholders to appeal the exclusion.”<sup>102</sup> One of the interesting things about shareholder activism from an accountability angle, however, is the capacity it confers upon shareholders to proactively initiate action. This is *ex-ante* accountability, rather than *ex-post*, where shareholders can only react to the actions of management and hold them to account for decisions already made. Even if not successful in altering company strategy in the near term, “By generating debate and raising the level of discourse within the corporation, proposals play an educational function and can cause otherwise passive shareholders to rethink their sometimes uncritical support of management. Of primary importance is the fact that management is compelled to put forth a defense of its position.”<sup>103</sup> Rather like boycotts and direct action strategies discussed below, this form of civil regulation draws private actors into public-political arenas of debate, creating answer-

98. Kazanjian 1997.

99. Dhir 2006, 368.

100. Dhir 2006, 377.

101. Related to this is a provision, used in Canada, which allows management to exclude a proposal if it relates to operations that account for less than 5% of the company's total assets at the end of its most recent fiscal year and for less than 5% of its net earnings and gross sales for its most recent fiscal year.

102. Quoted in Dhir 2006, 400.

103. Dhir 2006, 403.



ability by demanding statements and the issuance of justifications to shareholders and the media in defense of their claims to be also serving some notion of the public, as well as shareholder, interest.

From an accountability point of view, the attraction of targeting the climate investments of key investors is the ripple and spill over effect of this to other investors and the scale of change that can be achieved by shifting the position of just one powerful financial actor. In response to shareholder pressure, for example, JPMorgan now assesses the financial risks of GHG emissions in its loan evaluations. It uses carbon disclosure and mitigation in its client review process to assess risks linked with high carbon dioxide emissions. In the company's own words:

Our featured climate change investment research looks across sectors and asset classes to examine topics such as potential liabilities of carbon emissions, developments in sustainable and clean fuels, carbon capture, and cap and trading schemes. In particular, we concentrate on macro-economic, legislative and business developments and company valuations in light of current and proposed carbon operating constraints.<sup>104</sup>

The Rainforest Action Network (RAN) is also credited with the shift in JPMorgan's policy. RAN has organized demonstrations and protests at various JPMorgan shareholder meetings and branches since 2000. JPMorgan deny caving into pressure, but do accept that external organizations helped draft the new policy.<sup>105</sup> Indeed, in February 2008 three of the US's leading banks (Citi, JPMorgan Chase and Morgan Stanley) released their own "Carbon Principles," which call for greater due diligence by banks and utilities in assessing the climate and economic risks associated with the construction of new coal power plants. In many ways they are a reflection of the "tremendous pressure felt by members of the financial industry for their investments in coal and other greenhouse gas intensive industries."<sup>106</sup> Since January 2007, RAN and its allies have organized more than 60 public protests at Citi bank branches across the US as well as orchestrating on-line actions to pressure the firm. Though welcoming the announcement of the principles, RAN also chimed a note of caution about the extent of the commitment, stating;

. . . the Carbon Principles are an important step toward recognizing the climate risks associated with financing coal plants but are limited by their lack of any binding commitments and their failure to address the impact of destructive coal extraction methods such as mountain top removal mining.<sup>107</sup>

A key challenge for groups wanting to use shareholder power to hold companies to account for their climate change responsibilities is to make the case that

104. JPMorgan 2008.

105. Mongabay 2005.

106. RAN 2008.

107. RAN 2008.

by *not* acting the firm is exposing the firm to risks and liabilities which will impact the economic performance of the firm, its returns to shareholders, as well as attract reputational risks associated from being seen as a laggard on climate change. This is about mobilizing arguments associated with the business case for action on climate change, even if driven primarily by environmental rather than bottom-line financial concerns.

### *Corporate Accountability Movements*

The issue of corporate accountability has become a focus for critics of globalization concerned about the imbalance between the rights that globalized and increasingly mobile corporations have acquired and the lack of corresponding duties and obligations they assume. In many instances, it reflects a conscious attempt to challenge the language of responsibility and philanthropy which many companies have adopted in preference for clearly defined and often legally enforceable obligations and duties that firms wield towards society.

There is a different theory of accountability being invoked here in which the corporation is a social entity and not merely the property of shareholders. Instead, managerial powers are held in trust for the entire community and not just for shareholders. This is what Dhir<sup>108</sup> refers to as a “communitarian” conception of the firm in which the corporation has a clear public purpose, operating as a legal construct through a charter approved by government which entitles it to carry out welfare-enhancing activities that benefit society. This is the point of departure for critical groups such as the Community Environmental Legal Defense Fund, demanding that companies’ charters be revoked where they fail to serve the public interest.<sup>109</sup>

In relation to climate change, a range of strategies aimed at exposing, persuading, cajoling and confronting the private sector about the consequences of its (in)actions have been adopted by activists. This has included the “Expose Exxon” (US-based)<sup>110</sup> and “Stop Esso” (UK) campaigns aimed at drawing public attention to the oil giant’s opposition to action on climate change. These coalitions, claiming a membership of 500,000 in the case of the US and 10,000 in the case of the UK, have protested outside the AGM of the company, sought media publicity as an outlet for their claims (even receiving coverage on the global media channel CNN), and organized petitions and set up boycotts at Esso garages, leafleting the public about the company’s poor track record on climate change. Though the campaign ended after 3 years, the Co-operative Bank calculated that in the UK, for example, people who boycotted petrol retailers over a

108. 2006.

109. CELDF 2005.

110. Expose Exxon was established by a coalition of NGOs including Defenders of Wildlife, NRDC, Sierra Club, US PIRG, UCS, PLUS Alaska Wilderness League, Corporate Accountability International, Ecolodge, FOE, Environmental Action, MoveOn, National Environment Trust, Oil Chance International, Public citizen, and True Majority.

6 week period cost the business £454 million in 2003.<sup>111</sup> Through an accountability lens, however, the significant impact was the way in which the company was forced to defend its reputation and engage in public and media arenas regarding its responsibilities to act on climate change. Indeed, such claim-making may have been driven by the concern to reduce further losses at the petrol pump. Despite evidence of a softer line on the issue, the absence of a clear overall change of direction on the part of the firm cannot be read as a failure in accountability terms, therefore. The challenge for activists is to ensure *accountability as spectacle* becomes *accountability as usual*: a steady flow of pressures for reform rather than a media-fuelled flurry of scrutiny followed by a return to business as usual practices.

The Climate Justice movement in many ways defines itself in opposition to the accountability politics more mainstream environmental activists have sought to pursue through formal public and inter-governmental arenas in the ways described above.<sup>112</sup> It focuses instead on the way in which climate change has the potential to exacerbate existing social inequalities and draws much of its critique from broader challenges to neo-liberal globalization. For the activists spearheading the movement, Climate Justice means

holding fossil fuel corporations accountable for the central role they play in contributing to global warming. . . . challenging these companies at every level—from the production and marketing of fossil fuels themselves, to their underhanded political influence, to their PR prowess, to the unjust “solutions” they propose, to the fossil fuel based globalization they are driving.<sup>113</sup>

The movement works through popular education and protest and seeks to provide a space for the articulation of claims by those most affected by climate change, but who contribute least to the problem. Among the Climate Justice activists that had a strong presence at the 2002 UN climate summit in Delhi were fisher folk, farmers and others whose livelihoods are being affected by climate change. The protests raised critical accountability issues of whose voices were being heard and whose interests were being served by the sort of marketized solutions being proposed in the formal negotiating arenas.

### *Civil Society Accountability*

The more civil society actors assume a front-line role in constructing and enforcing mechanisms of accountability, either activating existing mechanisms which reside within public institutions or constructing alternatives, the more they invite scrutiny of their own accountability. In particular, questions arise about whose interests they represent and how. Gaps in their own accountability can lead both to failure to reflect, learn from mistakes and adjust strategy accord-

111. Stop Esso 2005.

112. Pettit 2004.

113. Corporate Watch 2007.

ingly on the part of civil society,<sup>114</sup> as well as risk exclusion from policy-making arenas by governments and international institutions on grounds of lack of representation.

There are a number of limitations to assuming that civil society actors can deliver effective forms of accountability from state and private actors. Many of these replicate the limitations and democratic challenges that derive from the practice of civil regulation.<sup>115</sup> With regard to answerability, critical questions include who has the right to demand accountability? This raises, in turn, the issue of the right to have rights and, by implication, notions of citizenship.<sup>116</sup> With regard to the second key element of accountability, enforceability, the lack of enforceable sanctions available to nonstate actors continues to constrain their ability to act as effective accountability enforcers. The forms of accountability that civil regulation often succeeds in producing are often temporary, unenforceable, subject to tokenism and publicity cycles and are as likely to reflect the campaign priorities of vocal or media savvy groups as address the largest and most serious contributors to climate change. In so far as such activism responds to, and is defined by, global political responses to the issue of global warming, the way in which its popularity and impact also vary with the ebb and flow of attention to the issue emerges as a further constraint on its ability to sustain itself as a force for effective accountability. To take one example, at a time of recession the environmental image of a company may be of less concern to shareholders and publics alike, making voluntary initiatives vulnerable to cost-cutting measures associated with periods of economic downturn.

The accountability demands that will be made of civil society actors differ according to whom they claim to represent and the impact and “public-ness” of their actions. Though I have focussed here on more confrontational and antagonistic forms of civil society campaigning, it is important to recognize that there is also a great deal of liberal civil regulation aimed at working privately with business actors as partners in seeking solutions to climate change. Groups such as the Pew Centre and the Climate Group have played an important part in constructively engaging firms, creating incentives through providing positive publicity and performance rankings and providing support for leaders on the issue. Some of the interventions of these groups may be considered to have substantial accountability effects on the firms they work with. For example, 2004 saw the establishment of the Global GHG Registry between the International Emissions Trading Association, the Pew Center on Global Climate Change, the World Business Council for Sustainable Development, the World Energy Council, the World Resources Institute, the World Wildlife Fund, Deloitte Touche Tohmatsu and the World Economic Forum: a potentially powerful tool for holding actors to account for their performance with regard climate change.

114. Scholte 2005, 107.

115. Newell 2001.

116. Newell and Wheeler 2006.

As with many such initiatives, enforcement mechanisms are currently weak. Verification is done through spot checks by the GHG registry or independently. Those making the checks do not go to sites, but stay in head office, taking the facts as given. There are no penalties for withdrawal or using false figures and the GHG registry does not comment publicly on withdrawals.<sup>117</sup> The important point, however, is that virtually none of these groups makes their claims in terms of accountability. As elite, non-public membership based organizations, they do not claim to speak for, let alone represent, broader public constituencies. It is less likely that such groups will attract critical scrutiny about their own accountability, however, because the question “who do you represent” only applies to those that claim to represent.

## Conclusions

It is clear from the analysis above that civil society groups have succeeded in bringing a significant and often under-estimated degree of democratic accountability to the global politics of climate change. From making government (at all levels) and business answerable for their (in)actions on climate change and providing a range of incentives and disincentives towards compliance with social demands, political action on the issue has undoubtedly gone further than it would otherwise do. The shifting course of climate activism has reflected, and to some extent contributed to, changing relations of power and authority in the global system and in relation to protection of the environment specifically. It has rightly diagnosed and responded to an increasingly critical role played by private sector actors in climate politics. From targeting the largest polluters in the fossil fuel economy, attention has increasingly turned also to the financial sector actors, whose investments in industry and demands for a short-term return play such a decisive role in the contemporary global economy.

It should be clear that the discussion and analysis of the accountability effects produced by civil society activism is not meant to imply that civil regulation and civil society activism aimed at enhancing public accountability is an adequate or desirable substitute for public democratic oversight of power exercised at the international level. Indeed, it has been argued throughout this article that such strategies are often adopted as an alternative or supplementary means to achieve political goals in the perceived absence of effective interventions by state actors. At the moment, therefore, the effect of their contribution to global governance is to plug the many governance gaps that exist in the contemporary architecture of global environmental governance. It is probable and preferable that their role continues to be one of highlighting accountability deficits and advocating for them to be addressed through public regulation, but willing and increasingly able in the meantime, to draw upon their campaigning resources to provide interim, short-term and often isolated forms of accountabil-

117. Pew Centre 2007.

ity. Unless and until governments take seriously their responsibilities to act on climate change within public international arenas and vis-à-vis private sector actors, we can expect the continued and expanded use by civil society groups of all tools and resources available to them: legal and non-legal, national, regional and international, liberal and critical, constructive and coercive. As evidence mounts of the severity of the threat posed by climate change to all aspects of our lives, such interventions will be fuelled by the urgency of acting now to avoid the worse consequences of a problem for which future generations will surely want to hold us to account.

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