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An inquiry into the green disciplining of capital

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Abstract. 'Following the money' has become a popular strategy for many NGOs trying to change corporate and institutional practice. Individual shareholders, pension funds, banks, and other investors capitalize projects that cause ecological degradation or social injustice. Pressuring shareholders to divest, invest responsibly, or encourage executives to alter undesirable practices has become de rigueur for civil-society groups working for social change. Such strategies produce value or norm change, greater accountability, activist networks across national boundaries, and improvements in environmental management. Disinvestment helped bring down apartheid in South Africa. But how far can these 'disciplining' strategies go in terms of significantly ameliorating ecological destruction and violations of human rights? I explore this question using the case study of the campaign by Friends of the Earth against the operations of Freeport – McMoRan Copper and Gold Inc. in Irian Jaya (West Papua).

1 Introduction

On 18 June 1999 the London Day of Action took place in the 'square mile' financial district in London. The Day was organized to illustrate how a few financial centers, principally London, New York, Chicago, Tokyo, Hong Kong, Singapore, and Frankfurt, 'control the planet'. One of the organizing nongovernmental organizations (NGOs), Corporate Watch UK, argued that "... capital (and the profit it demands), lies at the root of the world's social and ecological crises. Whether it's casualisation in the Merseyside docks or rising sea levels in Bangladesh, a path can be traced back to the City" (Corporate Watch UK, 2000a). The Day of Action represents the way in which NGO campaigners are increasingly targeting financiers, broadly defined, as a way to change corporate practices and share in the control of development. In their view, "... the $millions of capital that can be shifted around at the nod of an analyst provide quite a hefty level for hitting a company where it hurts: on the bottom line" (Corporate Watch UK, 2000b).

NGOs employ these strategies to deal directly with corporations, effectively bypassing the state. Manheim, a prominent writer on corporate campaigns, claims that these strategies emerged because activists lacked resources to force governments to change public policies (2000). Such strategies also fit the emergent form of governance or 'regulation' heralded by many 'ecological modernization' theorists.[1] For these theorists, market dynamics and economic agents are central to ecological restructuring and reform, as are more "decentralized, flexible and consensual styles of governance"

[1] Mol and Sonnenfeld (2000, page 5) ascribe to ecological modernization theory the following broad perspectives: "(i) moving beyond apocalyptic orientations to see environmental problems as challenges for social, technical and economic reform, rather than as immutable consequences of industrialization; (ii) emphasizing transformation of core social institutions of modernity—be it not beyond recognition—including science and technology, production and consumption, politics and governance, and the 'market', on multiple scales (local, national, and global); and (iii) positioning in the academic field distinct from counter-productivity/deindustrialisation, postmodernist/strong social constructionist, and many neo-Marxist analyses".

with less top-down, command-and-control regulation. These theorists claim that social movements increasingly are involved in public and private decisionmaking, in contrast to having been limited to the periphery or even outside of such processes and institutions in the 1970s and 1980s (Mol and Sonnenfeld, 2000, pages 6–7).

But how much change can we expect from a reformist process targeting investment? In his analysis of the efforts of Friends of the Earth (FoE) to change the way multilateral banks do business, Wapner concludes that, although the World Bank has "budged a bit in its commitment to environmental issues", these measures "have not made the World Bank a model environmental institution" (1996, page 140). We know from studies by institutionalists like North (1990) or, perhaps more specifically, by American business and legal historians (Bernstein, 1955; McCraw, 1984), that public policy and government regulation have improved corporate practices. Individuals and corporations learn, cultures change, and exploitative practices are stopped or dampened (see, for example, Alston et al, 1996; Kuttner, 1999; Roe, 1994). Many companies have become more responsive to shareholder activism. The world's biggest lumber retailer, Home Depot, for example, decided under pressure from shareholders to stop selling wood products from endangered forests. The Disney Corporation has committed, under shareholder pressure, to audit its subcontractors around the world for labor issues. Nevertheless, the most important objective of a corporation is to maximize profits, usually over the short term. What happens when this raison d'être conflicts with other, socially desirable, objectives? Will shareholders be willing to forego dividends to achieve such objectives? Will corporate leadership even consider such possibilities?

My objective in this paper is to examine, with the aid of a case study, the implications of the strategies environmental NGOs are employing to 'discipline' corporations financially. FoE has been organizing NGO lobbying of multilateral banks and transnational corporations (TNCs) since at least the early 1980s. Their shareholder campaign against Freeport–McMoRan Copper & Gold Inc., a large North American mining company operating primarily in Irian Jaya, offers a typical natural-resource-based case study of NGOs attempting to alter the 'bad practices' of a TNC operating 'offshore'. My intent is to illustrate some of the possibilities and limitations of these types of strategies and to provoke questions about the assumption in ecological modernization theory that existing institutions need only be reformed to reconcile economy, environment, and social justice.

The paper is organized as follows. In section 2, I review some of the reasons why NGOs are concerned about corporate power and practice. In section 3, I look concretely at what I am calling financial disciplining strategies and review some on-going examples of these strategies. In Section 4, I turn to a specific case study from the goldmining industry which involves campaigns by FoE and other NGOs against Freeport–McMoRan Copper & Gold Inc. and the company's mining operations in Papua, or Irian Jaya, Indonesia. In the conclusion, I try to draw out the implications of the particular campaign against Freeport and of financial strategies in general, keeping in mind my questions regarding the potential of ecological modernization.

2 Why corporate campaigns?

Concerns about the economic, political, environmental, and social consequences of large corporations have existed for more than a century in the United States. Environmental activists in the 1970s and 1980s focused campaigns upon corporations and industry sectors, both domestic and transnational. Consumer-based NGOs conducted boycotts against infant-formula companies that targeted Third World mothers in their advertising. There were campaigns against Dole, United Fruit, 'Ma Bell', and many

others perceived to have violated desirable principles of justice and morality. Similarly, in the late 19th and early 20th centuries, considerable political debate occurred regarding corporate practices, often resulting in government regulation. Antitrust, securities, banking, labor, consumer protection, the environment, and health and safety all were areas of regulation that focused on the responsibilities and obligations of corporations.

Currently, corporations are the targets of campaigns because of corruption, power concentration, and lack of transparency or accountability in decisionmaking. Columnists Mokhiber and Weissman (1999), noting that fifty one of the biggest one-hundred economies in the world are corporations, argue that the multinational corporation is the "most powerful institution of our time" and that it dominates not only global economics, but politics and culture as well.[2] The World Trade Organization, the North American Free Trade Agreement, and the proposed Multilateral Agreement on Investment enhance the rights of investors, increase the flows of foreign direct investment (FDI), and increase the power of TNCs without addressing many of the controversial and harmful implications. In the view of FoE, a major corporate watchdog, global trade and investment agreements put significant constraints on the ability of governments to regulate FDI operations, and introduce and implement minimum environmental and social standards. Franco, a writer for FoE, observes, "... opposition to these global trends creating an 'all rights and no responsibilities' economy has reinvigorated the debate about corporate accountability and has made clear the urgent need for alternative models" (Franco, 1998, page 3).

The statistics on TNCs are noteworthy. US-based TNCs account for more than a quarter of US gross domestic product (GDP)—\$2 trillion of \$7.3 trillion; top corporations had sales totaling more than the GDP of many countries in 1997 (UNDP, 1999). General Motors was ahead of Thailand, Norway, Saudi Arabia, Poland, South Africa, Greece, Malaysia, Israel, Colombia, Venezuela, and the Philippines. The combined sales of Japan's top six *sogo shosha*, or trading companies, were nearly equivalent to the combined GDP of all of South America (Karliner, 1997, page 5). Eight companies earned more than did half the people in the world combined and nearly 60% of US-controlled corporations and 74% of foreign firms doing business in the US paid no federal taxes in 1991, the last year that figures were available (US Office of Management and Budget, 1996 courtesy of Public Education Network).

The growth of NGOs and of people's movements has developed in parallel with the expansion of the business sector. Over 100 000 NGOs are now working, in some capacity, for environmental protection (Wapner, 1996). Although it is arguable that relations between business and NGOs should be "cast in a permanent confrontation or antagonism" (Ramphal, 1998, page ii), a key message of a 1998 survey of 133 worldwide NGOs found that TNCs "urgently need to reassess their global responsibilities if they are to overcome the prevailing skepticism among NGOs" (Enderle and Peters, 1998, page iii).[3] Although many NGOs such as the Coalition for Environmentally Responsible Economies of Boston and the Nautilus Institute of San Francisco take a less confrontational approach to corporations, others are quite confrontational. Corp Watch US, an online magazine and resource center designed to provide activists,

[2] These authors have chronicled the crimes of corporations from the price-fixing of Archer Daniels Midland, to Blue Cross/Blue Shield of Illinois, which pleaded guilty to eight felony counts and will pay \$144 million after admitting it concealed evidence of poor performance in processing Medicare claims for the federal government, to Decoster Egg Farms in Maine, Iowa, Ohio, and Minnesota which was slapped with \$2 million in penalties for violations of numerous health and safety and wage and hour laws (Mokhiber and Weissman, 1999, page 83).

[3] Survey results show that despite the rather negative view many NGOs have of corporations, NGOs do expect to see improvement and more cooperative relations emerge in the future (Ramphal, 1998, page ii).

journalists, students, teachers, and policymakers with an array of tools to investigate and analyze corporate activity, claims that it is committed to "... exposing corporate greed by documenting the social, political, economic and environmental impacts of these transnational giants" (Corp Watch US, 2000). FoE acknowledges that it, along with others in what it calls the "international public interest community", has questioned the economic and political power of TNCs, their influence in public policy, their role in facilitating capital flight, and their respect for environmental protection and basic human and labor rights (Franco, 1998, page 1).

FoE is disturbed that as much as one third of the world's FDI is owned by only 100 corporations representing 0.3% of all TNCs, and that a total of 40 000 TNCs control 80% of trade and 90% of patents worldwide. One third to one half of all FDI flows are directed towards mergers and acquisitions, further concentrating power. They cite the influence that Shell has in Nigeria and that United Fruit had in Guatemala in 1954 as examples of corporate practice they find objectionable. FoE is also concerned that TNCs fail to use abroad the same environmental and labor standards they have to use at home and cite a 1993 UN study of environmental management of TNCs that found that only 45% of the respondents had arrangements between headquarters and subsidiaries to coordinate environmental policies, and concluded that little consideration is given by TNCs to the international application of their environmental guidelines.

Clearly, the power of corporations, especially TNCs that have the wealth of nations, without the accountability of governments, is reason for concern. As described by the United Nations, TNCs are the "productive core of the globalizing world economy" (Karliner, 1997, page 5). They mine, refine, and distribute most of the world's oil and gasoline; they extract most of the world's minerals; they grow and distribute much of the world's food; and they hold 90% of all technology and product patents worldwide. Someone is providing funds to these environmentally destructive projects. Who are they and what environmental guidelines, if any, are being applied?

3 Financial disciplining strategies

Because of the tremendous surge in capital flows throughout the global financial system and the enormous increase in private FDI over and above public investment within the past few years, a number of environmental NGOs have turned to investors or financiers to change corporate behavior and practice. Efforts to affect financing include: (1) leveraging international financial institutions, that is, putting pressure on or negotiating with the US Overseas Private Investment Corporation (OPIC) and other lending agencies such as the World Bank, etc; (2) shareholder activism; (3) fostering socially responsible investment (including approaching fund managers); and (4) efforts to increase environmental and social disclosure as part of the reporting requirements to regulatory agencies like the US Securities and Exchange Commission (SEC). I provide a brief overview of each prior to discussing the case.

3.1 Setting performance requirements and leveraging international financial institutions

Holding accountable public institutions like the World Bank, the International Monetary Fund, other multilateral development banks, and OPIC and its counterparts around the world, despite their new secondary role (compared with private direct investment), continues to be an important NGO strategy because these public institutions remain important players in international finance. NGOs can push for full monitoring and enforcement of existing standards. Direct efforts to get the World Bank to stop financing mining, logging, or other extractive development, and to get OPIC to withdraw or refuse to give companies risk insurance, are examples of this

strategy, and have been on-going since the 1970s (the case study of Freeport – McMoRan in section 4 provides an illustration).

Because overall levels of development aid declined one quarter between 1995 and 1996 alone, while at the same time private investments have increased from $44 billion in 1990 to $234 billion in 1996, NGOs and other institutions have begun trying to establish new international codes for private finance (Ganzi and Tanner, 1997, page 1). One example is the "Financial Institutions Initiative on the Environment" from the United Nations Environment Programme (UNEP). The idea is to foster endorsement of the UNEP "Statement by Financial Institutions on the Environment and Sustainable Development", which commits signatories to incorporating environmentally sound practices into their operations. A secondary objective of the initiative is to foster private-sector investment in environmentally sound technologies and services.

NGO proposals for the global regulation of FDI are another example. The fight against the proposed Multilateral Agreement on Investments (MAI) led NGOs from a number of countries to develop proposals for a 'progressive' global investment regime. NGO groups stalled the MAI negotiations and this opened up opportunities for civil-society groups to put forth proposal alternatives. At least five proposals for a global investment regime have been circulated and all proposals develop a framework convention on investment for sustainable development that would guarantee environmental protection, adequate social and labor standards, and corporate accountability (Franco, 1998, page 3).[4] "Screening Foreign Investment", Greenpeace International's list of principles that should be required of foreign investors, states that TNCs should adhere to the highest standards and practices of any country in which they operate. FoE has issued a list of similar directives and also cosponsors, with the National Wildlife Federation, the Quantum Leap Project which in 1998 began hosting training seminars on international finance.

3.2 Shareholder activism

Shareholder activism to achieve 'moral' accountability is not new—the Interfaith Center on Corporate Responsibility has been involved in this arena for nearly twenty-five years. Within the past ten years, however, this form of activism has increased both in terms of NGO actions and in terms of pension funds and other large investors trying to make corporations more accountable and profitable (Charkham and Simpson, 1999; Clark, 2000; Roe, 1994). Though shareholder resolutions rarely pass, they can provide leverage at the corporate bargaining table to achieve changes in corporate practice, to get corporations to adopt voluntary codes, to enforce voluntary codes, to pressure companies to adopt independent social and environmental monitoring, and so forth. They are also good advocacy and public-education tools. Shareholder resolutions of groups like the Interfaith Center on Corporate Responsibility contributed, together with international sanctions and national laws, to forcing many companies to halt their operations in South Africa during the apartheid regime (see Manheim, 2000).

Shareholder activism involves not only NGO investors but also increased activism by large institutional shareholders such as CalPERS (California Public Employees Retirement System), the Florida State Board of Administration, TIAA – CREF (Teachers' Insurance and Annuity Association—College Retirement Equities Fund), and the State of Wisconsin Investment Board (Opler and Sokobin, 1998). Institutional investors have been successful in forcing divestitures, CEO turnover, and change in governance structure in a number of prominent corporations including Eastman Kodak, General

[4] The UN "Code of Conduct on Transnational Corporations" represented the most advanced step in the direction of a global agreement on corporate behavior. It was rejected because of US opposition. However, see the OECD guidelines for multinational enterprises adopted 27 June 2000 and found at http://www.oecd.org/daf/investment/guidelines/mnetext.htm.

Motors, IBM, and Sears (Pound, 1992). Efforts to influence shareholders to vote on particular proxies or to change corporate practices are less about 'capital' or finance at times than they are about corporate behavior or management practices. However, the assumption is that some of these campaigns and inducements to 'greener' or more socially just behavior will affect stock prices in the long run and thereby the economic value of the company.(5) There is evidence that raters of corporate stock do pay attention to some of the proxy fights and we will see that in the case study in the following section.

Although most proxies request rather small corporate changes (for example, report writing on sensitive subjects), more radical proxies are proposed as well. As You Sow is a California-based foundation that works with religious shareholders and others to increase corporate accountability in several areas. The foundation teamed up with the Interfaith Center on Corporate Responsibility—300 religious institutions and social investors who bring their $150 billion in stock to bear on corporate responsibility—to introduce proxies directed at seventeen companies urging them to stop producing genetically engineered food until more data is available on the potential health and ecological risks (see http://www.asyousow.org/genetic4.htm; visited on 17 May 2000). A similar bold move was made by Greenpeace recently when it introduced a resolution at BP Amoco's annual shareholder meeting calling for the company to cancel its Arctic expansion plans. Over 9.5 billion shares were voted against the resolution and 1.491 billion shares were voted in favor. This 13.5% in favor vote was one of the highest votes for an environmental shareholder ever recorded (see http://www.greenpeaceusa.org/arctic/media/apr1300text.htm; visited on 9 June 2000).

3.3 Socially responsible investing

On 10 April, 2000, six days before the IMF and World Bank protest in Washington, DC, Corporate Watch US and other NGOs in eleven countries, including South Africa, Ecuador, and Pakistan, launched a boycott against World Bank bonds. As the World Bank raises 80% of its funds through bonds that are sold to investors on private capital markets, the fact that labor unions, churches, universities, and municipalities own these bonds gives people the power to discipline these institutions (at least in the eyes of Corp Watch US). Several socially responsible investment firms including Trillium Assets Management of Boston and Progressive Assets Management of New York have pledged not to buy World Bank Bonds. In addition, the city of Berkeley, California and Local 9423 of the Communications Workers of America in San Jose, California have passed resolutions to boycott the future purchase of World Bank bonds.

Socially responsible investing is a growing movement in the United States. Divestiture of investments in corporations doing business in South Africa was an early and powerful example of the potential of shareholder responsibility. In fact, one of the first social-investment screens to be developed was the Sullivan Principle screen for companies doing business in South Africa. The principles served as the index for 'good actors' and 'bad actors' until institutions and individuals began divesting entirely. Now there are many sets of principles, codes of conduct, and social or environmental screens. The number of mutual funds using social or environmental screens increased from 55 in 1995 to 144 in 1997 and the amount of money invested through social screens is estimated to have increased from $639 billion to $1.185 trillion over the

(5) Studies by the Investor Responsibility Research Centre (IRRC) and Vanderbilt University, and by the Environment Protection Agency (EPA), show that there is a positive relationship between environmental and financial performance. ICF Kaiser International, using elements of the IRRC's environmental-management data, found that firms making environmental investments that go beyond regulatory compliance will increase shareholder value.

same period (Williams, 1999). Depending upon the source, these funds constitute from 8% to 9% of all monies invested in the stock market in the United States.

A primary NGO strategy is to approach fund managers directly. A London-based NGO, Forest Monitor, wrote to individual fund managers to apprise them, from the perspective of financial prudence, of a logging company's egregious and unsustainable practices. A few years ago, the group successfully convinced many money managers to divest from the logging company. According to Forests Monitor, fund managers appreciated the information and found it easy to drop the company's stock, which typically comprised only a small percentage of their portfolios, and invest elsewhere. This initiative attracted media coverage from *The Financial Times* and other international papers. In the United States, the same effort has been pursued by FoE regarding Freeport – McMoRan's operations in Indonesia and the Three Gorges Project in China (Franco, 1998). In Canada, British Columbia Mining Watch stopped a mine through this approach (Young, 1999, personal interview). By the end of 1999, fifteen mutual funds had pledged to environmental NGOs not to invest in Mitsubishi unless the firm abandoned its plans for a salt works in Mexico near the whale birthing grounds in the Gulf of California.

Efforts to educate, develop, and augment codes of financial conduct have also become more common, directed toward organizations like the World Bank, OPIC, and other multilateral and bilateral funding institutions, as well as private funders. These are nonbinding voluntary rules that define how businesses can become better corporate citizens. The adoption of corporate codes of conduct is no guarantee that businesses will become better citizens, but it does give NGOs a platform for monitoring and advocacy.

Increasing disclosure and augmenting transparency are an important part of socially responsible investing. Since the US Securities and Exchange Commission (SEC) requires all public securities to be rated by an independent agency, the ratings process is a critical step in project finance. Environmentalists and some business people argue that sustainable projects make good financial sense. However, most ratings companies do not take sustainability into account. In 1979, the National Resources Defense Council (NRDC) sued the SEC regarding the scope of environmental disclosure that could be required of publicly held companies. As early as 1971, the NRDC petitioned the SEC to amend its rules to require additional filings designed to disclose the effect of corporate activities on the environment and upon civil rights. The SEC considered the NRDC proposals, along with alternatives, in a rulemaking action and ultimately adopted environmental-disclosure rules which were much more modest than those proposed by the NRDC (see, for example, Caron, 1987, and Williams, 1999).

3.4 Summary

This section of the paper was intended to be a brief overview of some of the ways that NGOs are attempting to improve corporate social and environmental accountability. There are thousands of ongoing projects that reflect the groundswell of civil society movements to use the market and other related venues to create what NGO representatives consider a more desirable state of affairs. Socially responsible investment and corporate accountability are both large growing movements and have received considerable attention in the business, political-science, economics, and law literatures. The question of to whom giant corporations are accountable and how much their investors should be involved in their decisionmaking is an old one that has risen again with a vengeance.

Now we turn to the specific case study to illustrate further the machinations of environmental and other NGOs to 'discipline' a mining corporation operating

in Indonesia. The case study shows in more detail shareholder activism and other strategies relative to finance work, and it illuminates the antagonism and truth conflicts between NGOs and the corporation.

4 Friends of the Earth and Freeport – McMoRan Copper & Gold Inc.

The case of FoE and other NGOs campaigning to improve the practices of Freeport – McMoRan Copper & Gold Inc. is one of the earlier and more long-lived examples of the attempts at financial disciplining of a corporation. In the first portion of this section, I provide a short description of the corporation and its history. This is followed by a description of the NGO actions against Freeport and the corporation's responses.

4.1 Background on the corporation

Freeport – McMoRan Copper & Gold Inc. is a natural-resource corporation with headquarters in New Orleans, Louisiana. It has several operations in the United States and a smelter in Spain, but its principal operating unit is PT Freeport Indonesia (PT-FI), the subsidiary of the company that manages the huge Grasberg mine in Irian Jaya. The mine is purportedly the largest gold and third largest copper mine in the world, and Freeport – McMoRan Copper & Gold Inc. is the world's lowest-cost copper producer (Freeport – McMoRan Copper & Gold Inc., 1999). In 1999, PT-FI reported sales of over 1.4 billion pounds of copper and more than 2.4 million ounces of gold, placing it among the world's leading producers of both metals (Freeport – McMoRan Copper & Gold Inc., 1999, page 1).

Freeport went to Irian Jaya in the late 1960s during the early days of the Suharto dictatorship (the first contract of work was awarded by the Indonesian government in 1967). Irian Jaya, the western half of New Guinea (an independent nation), had been invaded by Suharto's troops and nearly half a million people were killed. The corporation began building the Ertsberg mine in 1970 and production began in 1973. In 1974, the corporation signed a concession agreement with Suharto allowing the company to operate in the ancestral lands of the Amungme and Komaro people.[6] The current mining contract for Grasberg was signed in 1991. It provided a thirty-year mining concession plus two ten-year extensions. By 1999, PT-FI's contracts of work with the government of Indonesia covered approximately three million acres.

The problems that NGOs have with the corporation relate to its treatment of local indigenous people and its environmental effects. The Amungme people have consistently resisted the alienation of their communal tribal lands. In 1977 a revolt of local indigenous people was put down by a purportedly ruthless military operation called 'Operasi Tumpas' to which Freeport allegedly contributed $1 million. Some claim that thousands of indigenous people were killed (http://www.foe.org/international/anatomy/multinats.html; visited on 15 June 2000). The corporation ran into trouble again in 1995 when it was accused of participating in human-rights violations committed by the military which is, at least in part, assigned to the territory to protect the mine operations. The Australian Council for Overseas Aid (ACFOA), a non-governmental consortium concerned with development and human-rights issues, released a report in April 1995 that suggested the company turned a blind eye while the Indonesian military killed and tortured dozens of native people in and around Freeport's 5.75-million-acre concession between June 1994 and February 1995 (Bryce, 1997).

[6] The Ertsberg mine was ready to wind down operations in the mid-1980s when the company found the Grasberg deposit, some 2.2 km away. Freeport took 33 billion tonnes of ore out of Ertsberg, or 3 billion pounds of copper, during its twenty-year life. The company did not have the money for exploration during low copper prices in the 1980s but when metal prices began to rise in 1986 – 87, new Freeport chief Jim-Bob Moffett revitalized the search. The corporation secured a 2.5 million ha expansion in 1989.

The Roman Catholic Church of Jayapura, in August 1995, published a report supporting many of the contentions of the ACFOA report. In 1996, the company made the news again when it was forced to close down as thousands of indigenous people attacked shops, buildings, and vehicles around the Freeport concession. Various efforts have been made in the US Congress to force divestment from Indonesia on the basis of their track record of human rights and labor abuses—Freeport has been one of the main lobbyists against these initiatives.

Environmentalists, both in Indonesia and in the United States and elsewhere, have been concerned for years with the amount of sediment discharged to the local river system—recently approximating 200 000 tonnes per day.[7] Because of the surrounding terrain and the elevation of the mine, the tailings from mining are disposed of directly into the Ajkwa River. The accelerated sedimentation of the river system has exaggerated braiding of the river, which in turn has led to sheeting over into the neighboring Minajerwi River. In 1994, Freeport admitted that the flood plain that was created extended over at least a 15 km^2 area of forestland, the traditional habitat of Mimika tribal hunter-gatherers who rely on it for wild-growing sago and other food. By 1996, the deposition area (as reported by Freeport in its rebuttal to the Seattle Mennonite Church) had grown to nearly 160 km^2, bounded by two levees. The company claimed that, despite the murkiness of the water (because of the sediment), there was no threat to marine life and the water quality met the standards of the World Health Organisation (McBeth, 1994, page 53).

4.2 NGO action: leveraging public institutions

Over $50 million in World Bank guarantees and $100 million from OPIC supported Freeport's Indonesian operations by 1995. Several NGOs including the International Rivers Network, the Wahana Lingkungan Hidup Indonesia (WALHI), and Friends of the Earth US, saw these monies as public and not to be used for private gain at the expense of the environment and local peoples. Lori Udall of International Rivers Network, in June of 1995, brought Indonesian activists to Washington, DC where they met Harvey Himberg, OPIC Director of Investment Policy and Environmental Affairs. The subjects of the meeting were Freeport's environmental practices and the charges that Freeport was responsible for the military attacks on civilians.

In October of 1995, four months after meeting Udall and the WALHI representatives, OPIC terminated the company's political risk insurance, citing concern about the expansion of PT-FI's mining operation and related environmental issues.[8] In a letter dated 10 October, OPIC told Freeport that the mine "had created and continues to pose unreasonable or major environmental, health, or safety hazards with respect to the rivers that are being impacted by the tailings, the surrounding terrestrial ecosystem and the local inhabitants" (http://www.igc.org/trac/feature/humanrts/cases/in-ziman.html; visited on 22 June 2000). The company argued that those concerns were unfounded and that OPIC had no right to terminate the insurance and commenced an arbitration proceeding to require continuation of the insurance. Days before the decision was announced, former secretary of state, Henry Kissinger, a member of the Freeport–McMoRan board, called the State Department to stop the cancellation, according to the *Los Angeles Times*. The newspaper reported that Kissinger and his consulting firm

[7] Because the gold and copper constitute so little of the actual mined material, the tailings comprise about 95% of the mined material. Production was at 55 000 tonnes per day in 1990, 115 000 tonnes per day in 1995, and it averaged 220 700 metric tonnes of ore per day in 1999. During the early months of 2000 it averaged 230 000 tonnes per day until the new government stepped in and insisted on a reduction following a tailings dam disaster that killed four people.

[8] When OPIC made the original agreement with Freeport, their production was at 55 000 tonnes per day. By 1995 they were at 115 000 tonnes per day (and are now at 230 000).

received \$600 000 from Freeport in 1994 (Chatterjee, 1996, page 4). President Suharto of Indonesia, also made a personal appeal to President Clinton when they met at the White House, to no avail. The company also apparently threatened to file a protracted lawsuit against the federal agency if the insurance policy was not reinstated. James Woolsey, a former Central Intelligence Agency chief, represented Freeport in arbitration proceedings regarding the cancellation.

A settlement was reached following the release of an environmental audit of PT-FI's operations. OPIC agreed to reinstate the insurance coverage through 1996, and PT-FI agreed to create a trust fund that would accumulate \$100 million over the life of the mine to finance "environmental remediation initiatives" (Freeport-McMoRan "Request for no action", page 5, letter to the Securities Exchange Commission, 31 December 1996).(9) The fund was created and the first contribution was made in 1996. Later in 1996, however, Freeport canceled its insurance policies both with OPIC and with the World Bank's Multilateral Investment Guarantee Agency (MIGA). Freeport claimed the monies from the World Bank and OPIC were unnecessary given the magnitude of its operations (it reportedly had over \$2.5 billion invested); however, environmentalists and human-rights activists saw the cancellation as a way to avoid an imminent investigation by the World Bank.

Prior to Freeport's cancellation of the public funding, the company offered the World Bank officials a free trip to the mine site in the personal jet of CEO Jim-Bob Moffett. The World Bank officials declined but twenty-one representatives of major investment companies—fifteen from the United States, three from England, two from Canada, and one from France—were taken to the mine site in Indonesia and the smelter in Spain (Chatterjee, 1996, page 5). This move on Freeport's part was undertaken because the company recognized how damaging the OPIC cancellation could have been to its public image and its financial ratings. OPIC had never done such a thing before and its action had a far-reaching impact on private companies. One lawyer claimed that the OPIC case brought in at least \$200 million in business for his law firm from companies that wanted to make sure that the environmental aspects of their overseas operations truly met OPIC standards (Chan-Fishel, personal interview). FoE, WALHI, and International Rivers Network had pressured the public institutions to live up to their mandates; Freeport evidently decided the accountability and transparency that go along with public funds were not worth the extra trouble.

Freeport's willingness to shrug off partnership with OPIC suggests that disciplinary strategies targeted at multilateral lenders will be successful only if corporations have no recourse to other funding. If firms can 'opt out', NGOs may have to engage in institutional searching to uncover other ways of running around these blockages. In fact, none of the financial disciplining strategies will have much clout where firms raise capital internally.

4.3 Shareholder activism

FoE, realizing that Freeport could no longer be reached via leveraging public institutions, decided to continue its campaign through shareholder action. Orchestrated by Michelle Chan-Fishel from FoE, now the coordinator of the Green Investments Program, the first action was undertaken by the Sisters of Charity of the Incarnate Word and the Maryknoll Fathers and Brothers who filed shareholder proposals "painting Freeport as a menace in Indonesia" (McMenamin, 1996, page 130). This proxy,

(9) In late 1994, Freeport voluntarily agreed to have an independent consultant conduct a comprehensive environmental audit of its Irian Jaya operations under the supervision of the Indonesian environmental protection agency, known as BAPEDAL. With BAPEDAL's approval, the company employed Dames and Moore.

submitted for hearing at the 1996 shareholders' meeting, was withdrawn after the company offered to open a dialogue with the religious groups who made the proposals. The dialogue took place and the proposals were withdrawn. But FoE was unsatisfied and elected to continue to pressure the company.

It was FoE's position that Freeport and the Suhartan government worked in "tandem to displace Irianese people, exploit their lands, and forcibly suppress opposition" (http://www.foe.org/international/anatomy/multinats.html; visited on 22 June 2000). The NGO was joined in its campaign by Project Underground, an activist group based in San Francisco which aids communities fighting the environmental degradation and human-rights issues associated with natural-resource development—primarily mining and energy. Project Underground began a media campaign against the corporation in 1996. This involved web-site information, press releases and involvement with some of the people who were engaged in fighting the mine and the corporation's practices locally. Reputedly, by 1996, the Grasberg mine was producing 8% of the world's copper. These organizations were not only concerned about the alleged environmental and human-rights violations, they were also appalled at the salary of Freeport's CEO, Jim-Bob Moffett. Moffett was the tenth most highly paid CEO in the United States in 1996. "Looking at it another way", reported Bryce of the Austin Chronicle, "Moffett's pay was nearly three times the total amount that Freeport has agreed to pay several thousand Amungme tribal members who have been displaced by the company's mining project in Indonesia" (Bryce, 1997).

The Seattle Mennonite Church and the Sisters of the Humility of Mary filed a second shareholder resolution on 16 November, 1996. The Seattle Mennonite Church owned 3000 shares of Freeport – McMoRan Copper & Gold Class A stock (FCXA) at the time of the filing. The shares were part of a portfolio that were bequeathed to the Church. FoE identified the Church as a shareholder through the vast network of the Interfaith Center for Corporate Responsibility. The original two-page resolution made five assumptions about the operating conditions of PT-FI and then proposed four resolutions. The original filing is outlined below:

Original 1997 Freeport – McMoRan Resolution Filed 15 November, 1996

Whereas: Since 1967, PT Freeport Indonesia Company (PT-FI), an operating unit of Freeport – McMoRan Copper & Gold, Inc. (FCX) has been operating on lands traditionally inhabited by indigenous people, especially the Amungme and Komoro;

Whereas: PT-FI currently dumps over 110,000 tons of mining waste per day into local Irian Jaya rivers and is considering the expansion of milling operations to exceed 190,000 cubic tons per day. According to the Overseas Private Investment corporation (1995), a US government agency which provided political risk insurance to this operation, the mine "created and continues to pose unreasonable or major environmental, health, or safety hazards with respect to the rivers that are being impacted by the tailings, the surrounding terrestrial ecosystem and the local inhabitants";

Whereas: PT-FI has attempted to ameliorate the social and environmental damages by proposing the "One Percent Trust Fund Offer" and the establishment of an Amungme Foundation. But the Amungme Tribal Council (LEMASA), representing the indigenous people most affected by PT-FI operations in Irian Jaya, has issued a resolution "unconditionally and absolutely" rejecting these two proposals;

Whereas: The $6 billion class action law suit brought against FCX and Freeport-McMoRan Inc. by indigenous peoples affected by PT-FI's operations is likewise indicative of local animosity against PT-FI and presents a potential for considerable financial liability;

Whereas: It is unclear how much environmental liability, cleanup responsibility, and remediation cost may exist because PT-FI's environmental audits have not been made public or have been only partially released;

> Resolved: That shareholders request the Board of Directors of PT-FI to institute a comprehensive review of its Indonesian operations and prepare a report to be made available to shareholders by September 1997, and to take steps to:
>
> 1. Postpone the expansion of milling operations until a just, accepted, peaceful and permanent resolution of local indigenous concerns can be reached in concensus-based process with all stakeholders.
> 2. End company cooperation with the Indonesian military as soon as legally possible so that PT-FI does not provide food, transportation or shelter to Indonesian military personnel; and urge Indonesian military to drastically reduce military presence in and around PT-FI's Contract of Work area.
> 3. Publicly release in their full entirety the 1996 Labat Anderson social audit, the March 1996 Dames and Moore environmental audit, and all other environmental audits on the Indonesian operations from the last five years.
> 4. Allow independent environmental monitoring of PT-FI operations and local river and ecosystems by non-governmental organizations.
>
> Submitted by Seattle Mennonite Church, 3120 N.E. 125th Street, Seattle, WA 98125
> 15 November 1996

Following the filing of the proxy with the firm and the Securities and Exchange Commission (SEC), Freeport had to decide whether to include the document with its proxies to be mailed at least thirty days before the annual meeting. A company can exclude a resolution for a number of reasons as specified by the SEC (see http://www.sec.gov for particulars). Freeport did request "no-action" claiming that the Mennonite Church was misinformed and "... appears to have accepted at face value the propaganda of certain activist groups". Freeport argued that the resolution was "... in many respects false and misleading, ... in certain respects beyond the power of the Company to effectuate, ... in certain respects moot and ... deals in certain respects with matters relating to the ordinary business operations of the Company" (McMillan, 1996, page 1). In particular, the company objected to the Church's use of the term "dumping" as it "creates the false impression that the method used by PT-FI to dispose of tailings is improper, illegal, irresponsible or immoral and that it is hazardous to the indigenous population". The company claimed that it was subject to extensive regulation by the Indonesian environmental authorities and that "PT-FI's tailings management program is the most appropriate method of tailings disposal available under the circumstances" (page 4). Freeport also objected to the statement about the OPIC finding: "The statement presumes without any factual basis that positions taken by OPIC prior to a recently settled dispute with the Company are still held by OPIC" (pages 4–5).

Another objection was lodged against the statement that LEMASA represents the indigenous people most affected by PT-FI's operations in Irian Jaya. The company letter stipulated that the Kamoro people, who are affected downstream by the company's actions, are not represented by LEMASA but by another group with whom they shared good relations. The company also denied that the class action suit was a serious consideration as the class had not been certified and both cases were likely to be dismissed (which they later were). The final statement that the company considered misleading was the statement that PT-FI's liability for environmental cleanup and remediation was "unclear" because PT-FI's environmental audits "have not been made public or have been only partially released". The company argued that it accounts for mine closure and remediation expenses in accordance with generally accepted accounting principles (page 7). These principles require that a loss contingency be recognized only when it is probable that it will be incurred and the amount can be estimated with reasonable accuracy. Prior to 1996, the company "... did not establish a reserve for mine closure or reclamation expenses because the foregoing tests were not met. Mine closure was too far in the future ... for the cost to be estimated with reasonable accuracy"

(approximately thirty to forty years). This was also because there were no reclamation laws in Indonesia that the company needed to take into consideration.

Freeport considered that postponement of expansion until an accepted peaceful, permanent resolution of local indigenous concerns could be reached was beyond its power to effectuate. Also beyond its power was a shift in the company's cooperation with the Indonesian military. Because of the remote location it had to provide food and shelter to the security forces. Furthermore, the presence of the military in Irian Jaya was determined by the Indonesian government and beyond Freeport's control.

Finally, Freeport claimed that the timing of milling expansion was ordinary business of the company and that stockholders should not dictate to the board of directors how the business and affairs of the company should be managed, "... including how the Company should apply its resources, and whether it should continue, discontinue or modify a planned and partially implemented expansion of its current business operations" (page 12).

The SEC, after considering the statements both of Freeport and of the Church, decided that the resolution was not beyond the power of the company to effectuate, not moot, and not ordinary business; the SEC did decide that some of the language should be revised to avoid what could be construed as false and misleading in the original proposal. The Church changed "dumps" to "discharges" and "mining waste" to "tailings". Furthermore, the statement about the $6 billion lawsuit was dropped because the statement that this might represent considerable liability was thought by the SEC to be misleading.

Along with the final proposal by the Church, Freeport submitted a statement of opposition itemizing its objections to the proxy (as specified above). The statement of opposition was submitted by the board of directors and encouraged shareholders to vote against the Church's proxy. Freeport argued that the proxy proposal would be a "disservice to the Company, its stockholders and the people of Irian Jaya, as compliance with the proposal would substantially damage the Company's future operating results and stockholder values, would harm its relations with Indonesian authorities, and would reduce employment opportunities in Irian Jaya" (Statement by the Board of Directors in opposition to the Stockholm Proposal, 1997, page 2). The board argued that it could not reduce military authority in the region because that was the province of the Indonesian government and would jeopardize the safety of company employees and local citizens.

The Seattle Mennonite Church further rebutted the board's statement. The rebuttal included several appendices including reports of human-rights violations, written by the head of the Catholic Diocese office in Jayapura. The Church stipulated that independent environmental audits had been conducted other than those that the company made public, and defended their efforts to speak with the company beforehand (which the company had asserted the Church had avoided). The company was then required by the SEC to say that its dialogue with the shareholders was not fruitful, rather than saying that the shareholders refused to meet with the company (http://www.foe.org/international/shareholder/fights.html; visited on 22 June 2000).

The proxy did not pass; it received only 2.9% of the vote. Freeport itself owned a number of shares, as did board members, and those were used to vote against the proposal.[10] Because the favorable vote did not reach 3%, the proxy cannot be refiled.

[10] Other US institutional investors included J P Morgan and Co., New York State Common Retirement System, IBM Retirement Funds (Equity), Mass Mutual Life Insurance, Harvard University, Oppenheimer and Co., First Interstate Bank Corporation, and Scudder, Stevens and Clark but the voting orientation of these investors is unknown. Generally, the big institutional investors do not attend the annual shareholder meetings. They vote by mail and usually in favor of the management, although the latter is changing—especially in the case of organized public pension funds and universities (Chan-Fishel, personal interview).

Despite the low vote, FoE considers the Freeport campaign to have yielded some positive results (Chan-Fishel, personal interview). Freeport is taking stakeholder involvement much more seriously, a leader of LEMASA was appointed to the board of commissioners of PT-FI, Freeport has met FoE and other NGOs outside of shareholder meetings, and NGO input was sought during the process of undertaking another environmental audit. Freeport also developed a reinvigorated human-rights policy.

Financially, the effects of the 'negative' public relations campaign are difficult to estimate. From 1996 through to 1998, FoE sent quarterly reports on the company's political risk to all buy-and-sell side gold-mining analysts. Standard & Poor analysts telephoned FoE before they did Freeport's report during that period. *BusinessWeek* placed Freeport – McMoRan Copper & Gold Inc. lowest in the Standard & Poor's 500 index for 1997 with a 53.9% decline in share price. *USA Today* ranked Freeport – McMoRan's stock the fifth worst for 1997 because the stock was worth 49.6% less than a year before. By comparison the Standard & Poor's 500 index as a whole rose by 27.8%. The company lost something in the region of $3 billion in market capitalization in the midst of the bull market. But some of this was because gold prices plunged from close to $400 per troy ounce in 1996 to below $300 per troy ounce in November of 1996, a 12.5-year low, and copper prices hit a three-year low from US $1.25 a pound in 1995 to 93 cents in late 1997.

FoE recently reported Standard & Poor's downgrade of the company's credit rating and preferred stock. The downgrade reflected political instability in Indonesia, especially in Irian Jaya, and the $6 billion lawsuit against Freeport filed by Yosepha Alomang, a Papuan civilian who was ostensibly tortured by the Indonesia military and kept in a Freeport container for over a month (http://www.foe.org/pressreleases/freeport/index.html; visited on 22 June 2000). According to the news release on the downgrade, Freeport had promised the shareholders a year ago to allow independent human-rights and environmental investigations of the Grasberg mine—neither of which had happened.

In general, however, Freeport's Indonesian profits are up. In 1999 the company announced total revenues that rose by 7% over 1998 to $1.9 billion "buoyed by record sales volumes from PT Freeport Indonesia and slightly higher average market prices for copper, offset partially by lower average market prices for gold" (Freeport – McMoran Copper & Gold Inc., 2000, page 3). Net income was approximately 9% below 1998; however, cash flow was almost $90 million higher than in 1998. The higher cash flow was used to pay down $318 million of outstanding debt and redeemable preferred stock and to reinvest $160 million in capital assets. This high cash flow allowed for considerable flexibility to invest in exploration opportunities and operating assets, and to reinvest in the company. They bought FCX common stock in the open market—0.8 million shares of Class A and Class B common stock for $7.8 million (an average of $9.20 per share) and during 2000 through the date of the annual report, they purchased 3.5 million shares for $60.6 million (an average of $17.17 per share). Since the repurchase programs began in 1995, the company has purchased a total of 54.5 million common shares, a 25% reduction in the 214.5 million common shares available for purchase during the period, for a total of $1.1 billion (an average of $20.10 per share). The company now has 160 million common shares outstanding with approximately 5.5 million shares remaining available under the share purchase programs (Freeport – McMoran Copper & Gold Inc., 2000, page 4).

In the end, then, Freeport has made some marginal adjustments to its ecological and social practices. The corporation has also made efforts to relieve itself of shareholder and other public pressure. These actions suggest that even failed shareholder

resolutions may have some effect in constraining or shaping future actions by the company. The publicity that the shareholder resolution garnered in the Freeport situation undoubtedly increased public scrutiny and demanded increased accountability. The question is whether these marginal improvements are enough: enough to achieve ethical economic practices, enough to achieve any form of truly sustainable development, and enough to compensate for the damages done to lives and livelihoods?

5 Conclusions

It is clear from all of the work that NGOs, pension funds, mutual funds, and others are doing that the stakeholder or engaged shareholder concept has taken hold in corporate United States. In essence, the concept is that corporate directors owe a duty to a host of constituencies beyond management and unengaged shareholders: local communities, employees, suppliers, creditors, and socially interested shareholders. The merits of these 'financial' strategies are several: (1) private corporate decisions become somewhat more transparent and publicly accountable, (2) norms or values are established that presumably reduce environmental degradation and human-rights violations, and (3) NGOs can influence TNCs and states well beyond their locales.

The theory is that companies will be disciplined by the marketplace when they need to raise new capital; but whether this is the case or not is questionable. When the heat is on, corporations can simply repurchase shares; with fewer outstanding shares, less shareholder pressure can be applied. Furthermore, raising finance capital is not necessarily related to shareholder action. Most companies raise investment capital internally and thus, as several writers have pointed out, the stock market is not the primary source of finance (Henwood, 1998). That means stockholder pressure is important enough for companies to pay it some attention, but it is not of tremendous significance, especially in the absence of a large press campaign or given current public standards for corporations. Freeport – McMoRan was not the subject of a significant press campaign, a fact that the *Village Voice* remarked upon disparagingly in 1998.

So what can be expected of these campaigns that are conducted at great expense to NGOs, given their scarce resources? The case of Freeport – McMoRan and FoE demonstrates that financial disciplining does elicit some measure of corporate policy change, albeit incremental. Disciplining strategies are demonstrably plausible methods to reform the worst corporate social and environmental behavior. Methods of stakeholder involvement used to push corporate responsibility have been effective strategies in many cases. And with the increasing number of socially responsible investors and investment opportunities, and increasing pressure on the SEC to expand transparency and accountability concepts at the very heart of neoliberal orthodoxy—the culture of corporate responsibility may be gradually turning toward a greater emphasis on environmental and social justice.

This strategy, however, puts an enormous strain on the scant resources of NGOs and cannot be expanded without a considerable increase in the capacity of the NGO community. Essentially one person, Michelle Chan-Fishel, ran the campaign for Friends of the Earth. Her assessment of financial disciplining strategies as exemplified by the Freeport case emphasizes their limitations. She argues "peripherals, like clinics and social services, are okay, but the center, the cake [meaning power sharing], is out of bounds" (personal interview). The Freeport case demonstrates that fundamental practices like control over decisions about technology choice and the location and timing of investment are unlikely to change. And, basically, good corporate citizenship only takes us so far; it cannot cut too much into profits and it does not significantly reduce the flow of material and energy in the global economy—a flow that is roughly related to resource use and degradation. So while Freeport – McMoRan

may be running an ecologically modernized operation in West Papua, the mountain is still coming down.

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