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## CHINA'S NEW APPROACH TO CSR IN CONGO: IS THE LEVERAGE TURNING TO CHINA?

Qingxiu BU\*

 keywords

China has been the world's fastest growing economy in the past 30 years with its enterprises rapidly emerging and becoming leading players globally. In particular, the progressive integration into the international system has been spurred by China's entry into the global trading regime of the World Trade Organisation (WTO) in 2001. The "go global" policy has been facilitating the rapidly growing engagement on the African continent of Chinese multinational companies (MNCs). As a promising tri-polar global economic entity, its growth of relations with Africa has been both unprecedented and impressive.

<sup>1</sup>As the Sino-Africa economic and business partnership surges forward,<sup>2</sup> the matter of corporate social responsibility (CSR) is increasingly becoming an imperative ingredient for any successful business. It is noteworthy that responsible corporate citizens should take account of the impact of their investment on both economic and social arenas. However, it still remains uncertain what role Chinese MNCs have been playing in the continent's sustainable development.

A Sino-Congo deal seems a positive way forward, accelerating the Democratic Republic of Congo's (hereinafter referred to as Congo) regional economy, depressed due to years of war. Meanwhile, the escalating investment into Congo has raised controversies for its no-attachment policy, with increasing pressure imposed on

China's MNCs to take CSR more seriously. Particular concerns are focused on the multinationals' inadequate environmental and human rights protection. The recent massive infrastructure investment is arguably perceived as a different interpretation of CSR, which has aroused a hot debate about whether China is heading for status as a responsible stakeholder in the international community. It is conducive to clarifying the paradoxical issue by addressing whether China's recent approaches have the potential to facilitate CSR initiatives or hinder them in the long run.

This article starts by establishing the context in which China's projects are undertaken, and then moves to current CSR theories and some cutting-edge practices with a landmark case of the Sino-Congo deal highlighted. The paper continues to examine feasible remedial regimes for victims and enforcement systems at both international and domestic levels, where anti-CSR practice may trigger litigation. By reviewing the "resources for projects" approach taken in relation to the deal and its consequences, the discussion will feed into the ultimate aim of addressing the question of how a modern corporate governance mechanism can be established from legal perspectives, so as to realise goals of human rights and environment protections. Arguably, an inherent issue which still remains unclear is whether the Chinese MNCs' contribution to addressing deep-seated social problems through developing Congo's public facilities will relieve or exacerbate the tension between China and the West, and whether such

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different approaches are ad-hoc cases or represent a benchmark for a strategic change in the future. Prior to a conclusion, the tri-pillar regulatory framework is explored with the aim of striking a balance between mandatory and voluntary perspectives.

### **TOP NATIONAL PRIORITY—SECURE ACCESS TO NATURAL RESOURCES**

There are many catalytic factors driving China's shift toward enhancing investment on natural resources. The skyrocketed consumption of energy and raw materials renders China the world's largest user of mining resources, with the United States second.<sup>3</sup> America's block of CNOOC's proposed acquisition of Unocal on grounds of national security<sup>4</sup> provides a classic illustration that China would not gain easy access to raw materials in the West. It is the setback that has facilitated the shift dramatically to form more strategic relationships with African countries, where natural resources are endowed tremendously. It is of the strong belief that only the ownership of raw material through China's own firms is the best guarantee of access.<sup>5</sup> Another driving force may be attributed to China's recent enormous loss resulting from its heavy investment in foreign financial institutions.<sup>6</sup> As a result, China desires to diversify part of its vast foreign reserves amounting up to \$2 trillion (£1.18 trillion) away from US Treasuries and other dollar securities.<sup>7</sup>

The overwhelming priority in acquiring access to the natural resources could shield its economy from potential price hikes or supply disruptions.<sup>8</sup> Particularly, a privileged access to the raw material may relieve China's concerns in case of deterioration of relations with the West. The strategic interests in Africa go well beyond resources have encouraged State Owned Enterprises (SOEs) to seek out exploration and supply contracts with resource-rich countries.<sup>9</sup> Congo is still a highly unexplored territory as far as business interest and investment are concerned. The domestic unavailability of some raw materials accompanied by their surging cost has driven China to gain a foothold to realise its economic and geopolitical strategies. The multiple approaches have been manifested in the landmark example of the Sino-Congo deal.

### **THE PARADOXICAL APPROACH TO CSR: A LANDMARK OF THE SINO-CONGO JOINT VENTURE 2008**

China endeavours strategically to portray itself as a peacefully-rising power in the pursuit of "win-win" solutions through a scheme of the "resources for projects". The SOEs typically invest in extractive and infrastructure projects, using China's development funds<sup>10</sup> to secure contracts where the West does not contemplate making the investment. More significantly, China's massive infrastructure investment for public health and education in Congo has been drawing increasing attention in terms of CSR perspectives. Although the infrastructure construction is commonly conceived as a prerequisite to exploit the natural resources, objectively, the Congolese economic boost has been triggered. It is worth examining whether China's unique approaches to CSR offer new solutions or further complicate local and international tensions. The testing stone is closely associated with an inescapable question, i.e. whether China's investment can be integrated with Congolese national development strategies to ensure long-term prosperity in this region.

#### **The Sino-Congo joint venture 2008: a win-win deal?**

Chinese MNCs commenced work on infrastructural projects in 2008 along the lines of five priorities, i.e. water, electricity, education, health, and transport. The \$9 billion comprehensive project is one of China's most ambitious forays into Africa yet,<sup>11</sup> which includes about 2,400 miles of road, 2,000 miles of railway, 32 hospitals, 145 health centres and two universities.<sup>12</sup> The agreement on developing infrastructure through "resource-backed finance"<sup>13</sup> has conferred on China considerable influence on Congo, that is, China invests in large infrastructure projects and is to be paid with Congo's immense copper and cobalt reserves. Chinese companies are building infrastructure that is essential to Congo's industrialisation at a fraction of the cost charged by western companies. Through a Sino-Congolese joint venture of Socomin, the mining company invested \$3 billion in mainly new mining areas. The profits of Socomin will be used to repay the investments in mining and infrastructure works. Congo will transfer its mineral resources to Socomin controlled by Chinese SOEs.

Notably, there is some evidence that Chinese companies have become aware of the need to attempt to conform to western CSR principles. The contract relieved concerns that Chinese infrastructure projects would under-utilise indigenous labour. Specifically, to avoid being criticised for damaging Congo's local labour market,<sup>14</sup> the contract stipulated that Socomin would hire more local workers while adhering to international safety standards.<sup>15</sup> In each of the projects 0.5 per cent of the investment must be spent on a transfer of technology and on training Congolese staff, with 1 per cent on social activities in the region, and 3 per cent to cover environmental costs. These projects have taken advantage of Congo's rich resources, offset its capital shortage, and greatly improved its under-developed infrastructure construction. While providing China with access to Congo's vast raw resources, the infrastructure investment would consolidate reunification of the country and bring down prices for basic goods. Chinese MNC's expansion into Congo assumes a win-win situation, accelerating Congolese economic development and yielding benefits for both sides.

With the influence in Congo growing stronger, China's dysfunctional home corporate governance framework is highlighted in MNCs' overseas operation. Chinese discourse of development without embedding pressures to reform and strengthen good governance and human rights has aroused considerable concerns as to whether the investment would facilitate Congo's local initiatives for a healthy sustainability. Arguably, the approach has essentially complicated international efforts to create a more effective architecture to address the social and environmental problems.

### **Behind the business investment opportunities**

CSR strives to ensure that businesses operate in an ethical and sustainable way, underlying principles to safeguard human rights, labour interests and environmental protection. Nevertheless, China's investment attaches little importance to the issue of CSR-orientated governance, which creates overwhelmingly comparative advantages over those of the West.<sup>16</sup> Due to the pervasive non-compliance with the CSR rules, particular concerns are focused on the extent to which the no-strings attached policy would undermine

accountability and efforts by the international community to promote anti-corruption, environmental protection and governance reform,<sup>17</sup> and further result in detriment to the western strategic goal to spread democracy and free trade.<sup>18</sup> In this regard, a level playing field enabling both Chinese and western MNCs to share well-established practice may relieve the disadvantaged position caused by such asymmetry.<sup>19</sup> The principle of CSR levels the playing field for increasingly competitive Chinese MNCs that face fewer regulations or restrictions at home.<sup>20</sup> It makes significant sense to consider how far the interaction will go to reshape the playing field with the CSR integrated in the process of Chinese MNCs' presence in Congo.

### ***Fewer regulations but more opportunities?***

Chinese MNCs' behaviour in Congo represents an epitome of value and culture inherently originating from China, whose regulatory infrastructure is normally not subject to the same degree of criticism as encountered in the West. Chinese firms may not be constrained by such barriers as civic activism, reputational threats and legal challenges domestically which are imposed on their western counterparts.<sup>21</sup> Fewer regulations, resulting in larger project contracts concluded by Chinese MNCs, have rendered western firms at a disadvantage. Most state-controlled multinationals lack a tradition of transparency to shareholders or communities,<sup>22</sup> which is a key CSR element in fostering accountability and good governance. The West has been attempting to impose a market economy on some developing countries which are arguably not ready for it.<sup>23</sup> Western firms under much greater social and environmental scrutiny are very likely to be deterred by political considerations including sanctions or political instability; weak legal systems, long administrative delays and privilege networks also deepen Western firms' hesitance over the projects. The vacuum is only to be filled by Chinese companies recognising Africa as a new investment target.<sup>24</sup> Apparently, China's objective was rather to exploit the unique opportunity of putting down roots while the country was still on the international blacklist and marginalised by the West.

China has been consistently refusing to attach investment to concerns over governance and

environmental impacts, but emphasised its commitment to the principle of non-interference in Congo's internal affairs as a key tenet of its foreign policy. China insists that business should be free from political conditions, and what the international community should be involved in is to provide a positive assistance that is compatible with local social settings. Under the non-intervention rubric, China shows little concern that Congo has a poor record on governance, transparency and respect for human rights, regardless of the inherent and inseparable nature of economic, political, social and ethical issues. China has trumpeted such a policy of respecting sovereignty and not mixing business with politics as a strong selling point in establishing large deals, which always go ahead commercially.<sup>25</sup>

The non-intervention policy has been rendering China as a more reliable partner for the Congolese regime, and its MNCs extraordinarily competitive in acquiring many a geo-political strategic project. The traditional powers such as the European Union and the United States may have found themselves marginalised in the rebuilding process.<sup>26</sup> However, it remains highly unclear as to whether political stability and sustainable development could be achieved without decent governance and adequate protection of human rights underpinned by the rule of law. The no-attachment policy in substance does pose a genuine challenge to western commitment to improving governance in the region.

### **Short-term loss versus national top priorities**

China's top priority is to secure access to raw materials to maintain its economic competitiveness.<sup>27</sup> This strategy requires massive investment in auxiliary infrastructures, such as pipelines, roads, railways, power plants and transmission lines. Most SOEs' investments under the direct supervision of the State-owned Assets Supervision and Administrative Commission (SASAC) do not have to be profitable provided they serve such a strategic objective,<sup>28</sup> even at the expense of the short-term loss. Thus, Chinese state-controlled MNCs are less averse to potential risks than their western counterparts. The Sino-Congo deal shows China's competitiveness in infrastructure investments, which western commercially-minded investors would never contemplate,<sup>29</sup> also because the unexploited area

is commonly considered to be too remote or politically risky.<sup>30</sup> China's objective was rather to exploit the unique opportunity of putting down roots. The long-standing initiative is to develop strategic and bilateral relationships to ensure long-term commitments.<sup>31</sup> The willingness to pay for long-term engagement that would not be viable if perceived in the short term<sup>32</sup> has been enabling China to secure many business opportunities.

### **Increasingly international concerns**

China's exploitation of natural resources has led to certain serious concerns. The MNCs' ignorance of certain implications has fuelled suspicion and resentment of Chinese dominance in Congo. As Bergsten observed:

"inducing China to become a responsible pillar of the global economy system will be one of the greatest challenges of coming decades".<sup>33</sup>

Chinese MNCs' operations, characterised by weak labour and safety standards as well as low levels of pay, arouse growing unease. They infringe labour norms and safety standards and sometimes even egregiously violate laws to gain profits at the expense of workers' health and lives.<sup>34</sup> Further, the necessary environmental disclosure helps promote CSR, and serves an ultimately good strategy to ensure sustainable economic returns of investments.<sup>35</sup> China's investments in Congo are primarily concentrated in environmentally sensitive sectors of mining, hydropower and other infrastructure projects. The strategy of making previously virgin resources accessible compounds high environmental risks including the potential for ecological disasters. The failure to undertake mandated environmental impact assessment prior to initiating a project has not only caused serious environmental pollution and biodiversity damage, but also triggered a broader race to the bottom regarding the environmental standards.

More controversially, China's traditional response to the concerns about Congo's poor governance and rampant corruption seems that it does not interfere in Congolese domestic affairs. Although such a policy seems to be justified to a certain extent,<sup>36</sup> the silence regarding the

degradation hampers progress in good governance and social reform, which are essential for Congolese sustainable economic growth. Chinese strategy is not to change Congolese internal structure, but rather to focus on bilateral political, diplomatic and trade relationships for China's own economic gain. From a geo-economic perspective, China does pose a genuine threat to western interests. It leaves uncertain whether western CSR could afford the challenges in the long run. It might be worth exploring the extent to which "China-version CSR" would compromise the existing well-recognised CSR standards.

CSR provides MNCs with the bedrock of internationally well-accepted principles on which to base their social conduct. It is commonly conceived as part of the mainstream of any company's strategy to reduce the occurrence of main threats to sustainable development. The stimulation of economic growth should not be achieved at a social or environmental cost, nor undermine the long-term foundations of growth and prosperity. Chinese MNCs are still less exposed to more transparent regulatory regimes.<sup>37</sup> Aligning with CSR principles may help Chinese MNCs fill gaps in corporate governance of their outbound operation in Congo. A subtle issue is focused on whether China's measurable benefit to the Congolese local community would be simultaneously sustainable.

#### **DOES INFRASTRUCTURE INVESTMENT COMPROMISE WESTERN CSR STANDARDS?**

China has been using its strong infrastructure development capability to help Congo build railways, highways and power stations in return for securing the access to its natural resources. It would be positive for Congo in that the rebuilding has commenced immediately, rather than wait until the infrastructure is sufficiently financed. The "resource for project" approach is arguably considered as a promising way to kick-start the Congolese economy.<sup>38</sup> Against such a paradox, it may be more meaningful to examine whether China's unique approach to CSR can offer new solutions or further complicate local and international tensions.

#### **Incentives in compliance with CSR-orientated practice**

There is a long-standing strategy embodied in the interconnectedness of China's political, diplomatic and economic interests.<sup>39</sup> In a geopolitical arena, China attempts to secure Congo's resources to sustain its growing economy, and foster diplomatic ties to support its aspirations to be a global influence.<sup>40</sup> CSR plays an indispensable part in realisation of such aspirations and goals. CSR is widely acknowledged as an integral part of the wealth-creation process, and further promotes Chinese MNCs to raise marketability at an international level. There should be self-interest in strengthening the rules on the social and environmental spheres of China's overseas projects. If managed properly, CSR should provide firms with tangible, as well as intangible, resources and enhance businesses' competitiveness. Nevertheless, China's CSR development is still in its infancy, considerably unmatched with its dramatic growing engagement in the global market. Under both African and other international pressures,<sup>41</sup> China attempts to promote a positive and constructive image for its engagement in Congo, so as to gain acceptability,<sup>42</sup> and serve China's best interest in the long run.<sup>43</sup> Otherwise, CSR violations would trigger both significant reputational costs and potential litigation expenses.<sup>44</sup>

#### **Does China's redefinition compromise western CSR?**

A modern CSR has been interpreted as the continuing commitment by business to behave ethically and contribute to economic development while improving the life quality of the workforce as well as of the local community and society at large.<sup>45</sup> China's engagement in Congo is social and cultural as much as economic and strategic.<sup>46</sup> The cooperation with Congo thus far has achieved great success in reaching Chinese business goals. The international pressure underscores the need for those MNCs to make socially responsible investments through shifting from pure emphasis on economic growth to an overall balance. The MNCs prompt the development of infrastructure indispensable to the access to natural resources. The economic boost has objectively triggered a great leap forward by its infrastructure investment in health and education facilities as well as roads and bridges. The heavy

investment in infrastructure has posed a clear challenge against the Western commitment to promoting CSR in the region by defining CSR in ways that suits their own priorities.<sup>47</sup> Against the consequential asymmetries, the key issue arises as to whether the embedded western CSR would be compromised during the competition between China and traditional western powers. It remains vague as to whether China's rising economic dominance in Congo will change the strategic playing field.<sup>48</sup> The argument may relate closely to how to determine the priorities between developments in governance and human rights vis-à-vis economic growth.

### ***Is there a hierarchy issue in CSR?***

Chinese MNCs' growing commercial presence presents a most controversial challenge to prevailing norms of CSR. The interpretations are likely to apply different criteria and perceptual lenses on the assessment of outcomes of CSR-related activities.<sup>49</sup> The promotion of "CSR with the Chinese characteristics" presents both challenges and opportunities.<sup>50</sup> The intricate strategies undertaken by the Chinese government through its overseas MNCs to meet the challenges and take advantage of opportunities have, *prima facie*, reshaped the economic and geopolitical framework in Congo.

Companies' deepening integration as a part of society calls for defining the proper contour of the business-society relationship.<sup>51</sup> It is vital to understand properly those genuine values rooted in other cultures and priorities that underpin CSR, especially in a substantially different society that does not share the same cultural and societal norms.<sup>52</sup> Arguably, a CSR agenda reflecting the concerns of stakeholders in the West would not necessarily address the real needs in developing countries, with a more accurate ranking of priorities taken into account.<sup>53</sup> At least, there are unique aspects to issues such as poverty and sustainability in the developing world that demand different solutions from those in developed economies.<sup>54</sup> This may partly account for why crucial CSR issues are always excluded from or less prioritised than the long-established western CSR contents, on which basis the West has determined to divest in Congo. The present challenge ahead is how to assess the "made in China" approach to CSR that underpin Chinese

rooted nature while at the same time addressing global expectations and values. It would be highly advantageous for both China and the West to focus more on opportunities for fruitful collaborations while maintaining a healthy level of competition.

### ***China's version of CSR***

It may be conceived that the rising economy of China is changing the strategic playing field in Congo and gradually developing China-version CSR standards.<sup>55</sup> The approach rooted in a unique traditional Chinese cultural context might trigger a shift from the market economy to the largest emerging market, with its own norms, values and priorities. China insists that CSR needs to be tested and adjusted to Congo's local conditions, which is somewhat similar to Maslow's theory of hierarchy of needs.<sup>56</sup> Despite the well-recognised international values in place, a one-size-fits-all approach to CSR may not work well, and what is right for the West may not be appropriate for China.

It is worth ascertaining whether there is a hierarchy among public interests, prior to defining what an overwhelmingly top priority is. Such a hypothesis may lead to vacuum of authority, i.e. whether it is a non-discretionary duty for the MNC to implement the well-established CSR practice.<sup>57</sup> Different stockholders may have different priorities and CSR therefore means different things respectively.<sup>58</sup> China embodies a hierarchical degree of importance in the CSR discourse and argues that Congo's priorities may not converge with those of the West, and further justifies the economic needs prevailing over social and environmental concerns. The well-being of some groups in developing countries may be jeopardised by the very pursuit of CSR.<sup>59</sup> Some developing countries have even considered CSR as a hindrance which has been reflected through judicial recognition.<sup>60</sup> In this vein, Congo seems to readily render any demonstrable benefit a justification for a critical CSR agenda. The paradoxical conflict during the past decades apparently has not alleviated the Western multinationals' hesitancy about investing. Such an orthodox has been exemplified by China's double-standard CSR approaches through adopting lower standards of CSR in Congo than in other developed host countries. Chinese MNCs seem

perfectly capable of abiding by international standard rules and norms while operating in developed countries with strong systems of corporate governance.

Fundamentally, China considers the concept of CSR based on Western values that does not necessarily reflect the values of the Chinese who have inherently greater regard for social harmony and stability.<sup>61</sup> China's substantial achievements in gaining business opportunities out of its non-intervention policies do impose far-reaching influence on CSR standardisation and have complicated the universal compliance. For instance, the European Investment Bank (EIB) claimed that China's Export and Import Bank (EXIM) has lower ethical and environmental standards when financing firms' outbound expansion.<sup>62</sup> EIB even implied that it might lower its standards to compete for potential projects. The perceived "race to the bottom" may threaten the healthy operation of CSR-driven practice. Assumingly, the cost of protecting the environment and upholding human rights and improving governance must be weighed against the cost of more visible and imminent goals like the provision of health services, education and other economic development.<sup>63</sup>

Theoretically, there are no watershed contradictions between the perspectives of CSR priorities, but positive relationships between the variables, i.e. preference in economic and highlighting social and governance issues within the ambit of CSR. Both a passive sanction or withdrawal and a non-intervention policy would jeopardise Congo's sustainable development. The financial leverage may have led to Congolese tolerance over the MNCs' violation of CSR principles, so as to attract Chinese investment. The causation undermines the compatible feasibility of compromise between China's version and internationally well-established norms of CSR. It is of high importance in establishing a more accessible regime imminently so as to eliminate such as vicious circle between weak regulation, poor governance and unsustainable development. A tri-pillar framework (to be analysed below) would align those MNCs' practice with sound CSR-driven practice.

## THE TRI-PILLAR LEGAL FRAMEWORK

MNCs' behaviour should be governed pursuant to both national laws and international normative standards, of which the latter aims to accelerate a higher standard of social and environmental responsibility on a voluntary basis, while the former contributes to the enhancement of CSR's compliance through creating the bottom-line below which no business is allowed to fall. A combined regime may serve as a potent tool to safeguard the public interest and to ensure compliance with publicly acceptable ethical standards.<sup>64</sup> The efficient national regulatory system associated with international soft laws would play a pivotal role in shaping MNCs' behaviour to avoid challenges against their global operations.

### Non-legal binding international initiatives

As MNCs operate across boundaries in a manner that can exceed the national regulatory capacity, there is clearly a need to adopt a set of internationally-agreed principles. With the evolution of customary international law, the rights and duties of individuals, rather than of states, have drawn more and more attention.<sup>65</sup> Such a new development could assumingly be critical to the success of CSR-focused practice, under which efforts have been made to regulate corporate obligations.

### International initiatives

CSR-driven initiatives have increased rapidly, with an aim to align the MNCs with the commitment to universal international standards. The Organisation for Economic Co-operation and Development (OECD) Revised Guidelines for Multinational Enterprises 2000 represent an international consensus that MNCs must conduct business with the highest regard to preservation of human rights in host countries. In terms of legal status, the OECD Guidelines are purely voluntary recommendations to business.<sup>66</sup> Some more specific initiatives have been well-recognised: the United Nations Declaration of Human Rights is the most widely-referred human rights benchmark; the International Labour Organisation (ILO) Tripartite Declaration of Principles provides guidance to MNCs on labour-related aspects of CSR; while the Extractive Industries Transparency Initiative (EITI)



aims to "ensure that the revenues from extractive industries contribute to sustainable development and poverty reduction".<sup>67</sup> It is noteworthy that the United Nations Global Compact 2005 encapsulates a broader framework related to CSR, with human rights, labour standards, the environment and corruption highlighted.<sup>68</sup> However, it lacks clear implementation measures. In contrast with the OECD Guidelines and the ILO Tripartite Declaration, the Global Compact is not equipped with a monitoring mechanism, relying on accountability, transparency, self-regulation and voluntary initiatives. At a regional level, the European Union (EU) has also made significant efforts, beginning with the parliamentary resolution in 1999 on standards for European companies operating in developing countries and a Green Paper adopted in 2001, "Promoting a European Framework for CSR".<sup>69</sup> These developments were followed at a global level by the adoption in August 2003 by the Sub-Commission on the Promotion and Protection of Human Rights of the UN Norms for Transnational Corporations,<sup>70</sup> which provides for the implementation of best practices for CSR.

The international initiatives have far-reaching implications, with the ultimate aim of regulating multinationals in respect of good governance, as well as decent environmental and human rights protection. They are conducive to raising compliance awareness in terms of establishing a common set of standards of corporate accountability for MNCs, which may also be used to inspire and even interpret national legislation where necessary. In view of the weak rule of law in China and Congo, voluntary approaches may encourage MNCs to introduce a higher level of performance than those required for local legal compliance. Besides, it would make practical sense provided that the non-legally binding international initiatives could serve as a stepping stone on the path to better national legislation in the two undeveloped jurisdictions. CSR-orientated principles enshrined in soft law may accelerate such a transformation process given that China has traditionally failed to impose sanctions on those violations of CSR-relevant practice. The good practice principles enshrined in the above regimes do not seem sufficient to ensure MNCs' socially responsible conduct, despite the assertion that MNCs have a duty to comply with CSR principles. It is worth questioning the degree to

which such voluntary initiatives promote Chinese MNCs' accountability, in particular regarding how best to use these guidelines and ensure the MNCs are effectively monitored.

### ***Is soft law the right answer?***

Given the non-legally binding nature of CSR, some complicated violations may go unpunished due partly to the heavy reliance on voluntary measures.<sup>71</sup> It may attribute the inefficiency mainly to the general lack of any constructive enforcement mechanism. Human rights and environmental problems continue to affect a broad range of corporate operations, particularly in the oil and mining sectors.<sup>72</sup> It seems premature at the current stage for victims to gain sufficient remedies out of MNCs' violation of CSR principles, due largely to prevalently undeveloped legal systems in Congo and China.

The rationale for opening the door of the international court to MNCs seems well-founded. However, transnational litigation against the violation of CSR is by no means straightforward. One incidence of MNCs' abuse may give rise to several claims across a broad range of jurisdictions. Another serious consideration is always given to whether and to what extent parent companies should be responsible for their subsidiary companies' breaches. It is crucial to clarify a principle of separate legal personality. A parent company would not escape liability if it could be shown to be a joint tortfeasor, especially where the subsidiary has insufficient assets to meet the claims. Although the doctrine of "piercing the veil" could possibly offer a means of justifying group liability for damage caused abroad by its subsidiaries, the separate legal personality may constitute an insurmountable barrier to the initiation of litigation in the home state against parent MNCs. There are reasonable concerns about the extent to which a means of controlling the violations of the initiatives can be achieved without resort to formal jurisprudence.<sup>73</sup>

An inherent issue remains unanswered as to how international law could govern MNCs and become enforceable in the courts when international law traditionally imposes obligations only on states. It is desirable that the Court of Justice should develop and establish clear jurisprudence in the area of resource exploitation including, among other things, environmental disputes.<sup>74</sup> A

more technical challenge that is inevitably confronted arises as to how to ensure abiding by CSR in specific situations, due to the application of the international norms appearing vague and inaccurate.<sup>75</sup> In most cases, practical difficulties usually result in tortfeasors' avoidance of legal responsibility, due largely to substantive and procedural obstacles substantially discouraging victims from bringing claims in MNCs' home countries.

Hypothetically, domestic mechanisms may serve more efficiently in shaping corporate behaviour, regardless of both national legal systems being far from effective. The importance of a transparent and well-functioning legal system, as a critical part of an implementation mechanism, will never be overemphasised. As Nwete observed, core issues of environmental degradation, human rights abuse and corruption should be subjected to the scrutiny of hard law.<sup>76</sup> To ensure that victims have effective avenues to obtain justice in both host states and MNCs' home countries, it appears to make practicable sense to ascertain the role and enforcement at a national level, so as to strike an optimum balance between the voluntary and mandatory perspectives. As Wick opined:

"MNCs are obliged to abide by the host countries' laws and regulations... meanwhile taking prevailing international principles into consideration."<sup>77</sup>

It is worth ascertaining how both international soft law and national laws could be well proportionately interacted to govern potential violations.

### **Weak DRC legal institutions**

MNCs have an unrelenting duty to maintain the integrity of the host countries' jurisdiction. Even so, the insufficiency of the Congolese legal system to cope with complex claims, such as determining the court of jurisdiction and transnational enforcement<sup>78</sup> has considerably impeded deterrence against MNCs' social and environmental violations. There are many factors contributing to the ineffectiveness, e.g. failures to regulate and adjudicate such violations within its jurisdiction are prevalent.

### ***Underdeveloped legal capacities***

Congo may not be capable of adequately controlling MNCs' activities, due to the lack of capacity or political will, of which the latter particularly constitutes a formidable challenge to effective regulations. Its regulatory regime is seriously undermined by weak political and regulatory institutions,<sup>79</sup> which further diminishes the potential to hold MNCs accountable for their abuses. In most cases, national legislation concerning human rights or environmental degradation cannot be readily applied to foreign subjects, including MNCs' violations. In this respect, CSR represents a response to the imbalances resulting from globalisation,<sup>80</sup> largely because Congo may be willing to compromise with the social and environmental issues due to a desperate need for Chinese MNCs' investments. Otherwise, the potential bad publicity for China's MNCs involved in litigation resulting in possible enormous punitive damages would force Chinese MNCs to abandon their investment and resettle somewhere else. The unease poses a genuine threat or even deteriorates a potential legal regulatory reform.

### ***National legislations vis-à-vis international initiatives***

The OECD Guidelines 2000 have proved to be a well-respected norm. Controversy arises as to whether ensuring the MNCs' operations in harmony with host countries' policies would be absolutely justified,<sup>81</sup> especially when the national regulatory framework seems incompatible with the well-established norm of CSR. Put differently, the issue still remains unresolved about whether MNCs' behaviours should be conceived as responsible by merely observing the weak laws of the host country, and whether multinationals have an obligation to refer to higher standards.

Definitely, it is insufficient for a MNC's behaviour to be considered in an ethical and sustainable manner through pure compliance with Congolese legal regulations, largely because their standards are far lower vis-à-vis those well-recognised CSR-driven practices. MNCs should by all means abide by a stronger governance system, which otherwise would encourage local systems to race to the bottom. The argument may account for why Chinese MNCs have not operated in Congo with

the same vigour as they appear to have performed in developed countries. In this arena, the MNCs' cannot escape their responsibilities resulting from those irresponsible practices by arguing that they have had abided by the Congolese laws. The indispensable value intrinsically embedded in soft law has been perfectly manifested, particularly in the absence of effective national hard laws. There is also a broad consensus that certain acts are prohibited by universal rules of *jus cogens*. The utmost issue seems to be converted to another universal doctrine that the MNCs are still held accountable in the case of violating the *jus cogens* rule<sup>82</sup> regardless of their conformity with the host state's laws.

### China's CSR-related regulatory system

Market incentives and litigation are not exclusive but integrally reinforce each other. The prospect of market accessibility may accelerate the voluntary compliance and litigation defines the minimum level beneath which the MNCs' operation should not fall. The two dimensions of the corporate governance regime shape China's CSR-orientated practice through adjusting institutions' role in financing outward investment as well as strengthening CSR-related laws. In particular, efforts to strengthen environmental protection and respect for core labour standards have been highlighted through a collective laws and regulations.

### Market incentive mechanism

The Chinese government plays a prominent role in supervising MNCs' corporate governance and financing outward investment.<sup>83</sup> Although there will be a long way to go before China becomes recognised as a fully-fledged market economy, it has created strong incentives for companies to comply with environmental laws and guidelines. The China Securities Regulatory Commission (CSRC) promulgated a "Code of Corporate Governance for Listed Companies" in 2002 (2002 Code) stipulating that:

"a listed company, while maintaining its sustainable development and maximising shareholder interests, shall pay attention to 'the welfare, environmental protection of public interests of the community in which it

resides, and shall pay attention to the company's social responsibilities'"<sup>84</sup>

China's State Council also issued nine principles governing foreign investments in October 2006, through which the MNCs are required to:

"fulfil the necessary social responsibility to protect the legitimate rights and interests of local employees, pay attention to environmental resource protection, care and support of the local community and people's livelihood cause, and to preserve our good image and a good corporate reputation".<sup>85</sup>

In August 2007, China's State Environmental Protection Administration (SEPA, now Ministry of Environmental Protection or MEP), the People's Bank of China and the China Banking Regulatory Commission jointly adopted a green credit policy regulating that:

"it will be limited for banks to make loans to MNCs that do not pass environmental assessments or fail to implement environment-protection regulations".<sup>86</sup>

More recently, the MEP signed a deal with the International Finance Corporation in January 2008 to introduce the Equator Principles strengthening "the environmental standards of international private banks".<sup>87</sup> The regulations are essential to inspire MNCs to foster a CSR-compliance culture so as to potentially export the good practice abroad.

The benchmark has been highlighted in the initiatives taken by the China Export and Import Bank (EXIM) which are of the most relevance to MNCs' operation abroad and seem to play a leverage role for their compliance with the CSR standards.<sup>88</sup> After pledging to commit approximately \$20 billion for loans to Africa over the next three years in May 2007,<sup>89</sup> the EXIM made an environmental policy that:

"once any unacceptable negative environmental impacts result during the project implementation, the EXIM will require the implementation unit to take immediate remedial or preventive measures. Otherwise, it will discontinue financial support".<sup>90</sup>

Apparently, EXIM has tied overseas investment loans with its social and environmental safeguard policies, rendering MNCs' proposed investment subject to social and environmental assessment. EXIM uses threat of divestment to ensure adequate and efficient compliance. EXIM may monitor the MNCs' performance against certain standards enshrined in the guidance, and reserve the right to cancel a loan if environmental impacts are not adequately addressed.<sup>91</sup> In August 2007, EXIM issued more specific guidelines on social and environmental impact assessment, requiring the MNCs to comply with host countries' policies governing the environmental assessment.

The rationale behind the incentive system implies that MNCs which take social and environmental issues seriously will be best placed to gain access to capital and markets in the future.<sup>92</sup> It shall become a potentially significant leverage tool to facilitate conducting business in a responsible manner. With the CSR-related practice embedded into the assessment system, respect for human rights and environmental standards could be made a legally-binding part of the loan agreements between the EXIM and the MNCs.

### ***Immature Chinese judicial systems***

There is a prevalent weak oversight over Chinese MNCs' overseas practice, regardless of CSR-related provisions scattered among various newly-enacted laws, such as the Company Law of the People's Republic of China (hereinafter referred to as the Company Law 2006)<sup>93</sup> and the Labour Contract Law 2008.<sup>94</sup> The concept of CSR is embedded in the Company Law 2006, which unequivocally makes it clear that companies must maintain CSR in the course of pursuing profits:

"In conducting business operations, a company shall comply with the laws and administrative regulations, social morality, and business morality. It shall act in good faith, accept the supervision of the government and general public, and bear social responsibilities."<sup>95</sup>

Such a provision can be interpreted as an overarching rule for CSR. It is the first time that Chinese company law has explicitly put forward that enterprises should bear social responsibilities. In

particular, the public supervision may be undertaken by consumers, communities, investors and other stakeholders.<sup>96</sup> The articulation of art.5 symbolises that CSR standards are established on a statutory basis and must be compulsorily incorporated into every business operation. The protection of labour's basic rights is specified in the newly-enacted Labour Contract Law 2008. More specifically, the Company Law 2006 strengthens the protection by obligating companies to enter into formal labour contracts with their employees.<sup>97</sup> Furthermore, China used to prioritise economic growth over environment. The Chinese government had set in place laws, regulations and institutions to protect the environment, but with limited success. The Environmental Protection Law 2008 strengthens protecting the environment throughout enterprises' activities.<sup>98</sup>

The provisions have accelerated structuring China's MNCs to import best CSR practice that is consistent with raising labour standards, encouraging protection of the environment and human rights. Recent efforts to hold China's MNCs legally accountable for their outbound violations are bound to have far-reaching effect. Framing adherence to domestic environmental and labour laws in CSR terms may level the playing field and raise "Brand China" in the long run. The incentive mechanism associated with the hard law provisions would integrate sound CSR standards in Chinese MNCs' activities. Irrespective of CSR emerging as an opportunity to drive business forward for success, China's relentless focus on economic growth leaves the most room for improvement to be a responsible stockholder in Congo.

Finally, China has just realised the significance of CSR. There is still a long way to go from acceptance of the concept to the efficient exercise of CSR practice domestically as well as overseas. The efficiency depends on whether and to what extent the legal framework can facilitate a sustainable and responsive regime for the exploitative activities. Formal regulatory and monitoring institutions may exist in book, but it will still remain uncertain as to how the internationally recognised norms will be integrated into the Chinese legal regimes under reform. Furthermore, the lack of judicial independence and the weak enforcement system pose genuine challenges to the effective implementation. More proactive steps need to be

taken for the enforcement system to achieve sufficient deterrence effect through holding MNCs accountable for their failure of compliance. It always takes a considerable time to foster a corporate governance culture to facilitate the efficient compliance with the CSR standards.

### **Optimum framework: putting teeth into CSR-related legal regimes**

Both law and soft regulations raise MNCs' awareness that they must contribute to sustainable development by ensuring environmental protection and promoting social governance. CSR initiatives need to be considered at the heart of the corporate governance. There is generally far less pressure imposed on China's MNCs to operate in a CSR-driven manner. Voluntary initiatives are conducive to promoting a culture of abiding by CSR-orientated laws and regulations. More importantly, there is a dearth of specialised legislation that both adjudicates MNCs' abuse and provides victims with specific causes of action against MNCs for their violation of such rights. Some relevant legislation is still inadequate, for instance, China lags behind its Western counterparts in terms of incorporating human rights issues into the legislation.

As discussed above, both host and home state laws as well as relevant international legal instruments lack substantive and procedural provisions against the adverse impact of resources exploitation. Thus, it is generally difficult to hold MNCs legally accountable for their abusive behaviours. Apart from costs serving as an almost formidable obstacle, the victims of MNCs abuses face paramount hurdles in accessing justice and obtaining remedies either in their own countries or in which the alleged offending MNC is incorporated. This weakens further the ability of claimants to obtain redress in Congo.

The ultimate aim in designing a mechanism is to align business practices with legal principles embodied in national and international laws. It might make more reasonable sense when MNCs are subject to China's law and regulations in relation to their overseas operations. The development of an effective domestic legal system is critical to creating a global regime that not only provides effective redress to victims, but also instills the necessary condition for social stability and peace with developing countries.<sup>99</sup> The jus-

tification behind the hypothesis is that domestic laws to encourage CSR are uniquely powerful, largely because the standards established by laws and regulations have a particularly strong influence on establishing social expectations about responsible corporate behaviour.<sup>100</sup> A strong signal is sent to the MNCs through the laws which may create incentives for them to meet the expectations within a sound corporate governance regime,<sup>101</sup> that is, the minimum level of behaviour below which no business should be allowed to fall. However, the national law does by no means represent the floor. The question is how the minimum standard of acceptable behaviour enshrined in those voluntary international norms could be well positioned. At least, one visibly substantive difference may be reflected through applications of domestic laws, which may make more tangible sense to enhance the compliance with the CSR-orientated practice.

Both jurisdictions over the MNCs' abuse and availability of cause of action will also depend upon the domestic rules of private international law for the given jurisdiction. It remains a critical factor in determining the extent to which MNCs are directly bound to international laws, such as human rights and environmental standards. A unitary international mechanism which allows for extraterritorial legal responsibilities seems to be demanded in an urgent agenda. In essence, a grey area has been formed where lesser social and environmental standards may be deployed with little consequence. Apart from integrating well-defined international initiative principles into domestic laws, a decent achievement of the ultimate goal of harmonisation, better governance and timely disclosure largely depends upon whether the enforcement machines could be well positioned in both home and host jurisdictions. Otherwise the functions of the international instruments would be undermined by an inefficient and weak legal system.

### **CONCLUSION**

As a rising global power, China's global strategic goals are manifested by its every effort to secure natural resources fuelling China's booming economy, with an ultimate aim to maintain long-term competitiveness. Although it is widely acknowledged that alignment with CSR practice

would be creating value, apparently, China's international mindset in CSR has not kept pace with its breathtaking economic ascent. Modern CSR requires MNCs to mainstream labour conditions, environment and human rights throughout their operations in a responsible manner. Chinese MNCs' less transparent and accountable approaches present a substantial challenge largely because China does not provide conditionality with investment to enable it to intervene in Congo's social or human rights conditions, but instead highlights the primacy of national sovereignty. Substantial asymmetries have thus come into being during the competition for investment opportunities for natural resources. From the economic façades, the competitiveness and development strategies reflected in its securing access to natural resources make substantial sense in the long term. After all, CSR must be a vital part of Chinese MNCs' future if they are to address the enormous social and environmental development challenges confronting them now.

The economic engagement in Congo that is tied to conspicuous objectives garners increasing concerns about Chinese MNCs' outbound CSR compliance. Obviously, China puts more weight on economic values and political influence over other social and governance issues. In this vein, whether China is a responsible stakeholder in the international community has been under an unprecedented scrutiny. The MNCs' operation is jointly assessed at the intersection of economic development, governance, environment and human rights, rather than purely on profit maximisation. Although its strategic objectives, to a certain extent, are reconciled with social objec-

tives, China's MNCs' CSR-driven performance are far from being perfect, largely due to the lack of domestic laws that still need to be compatible with well-established international initiatives. In addition, neither Congolese nor Chinese laws can govern efficiently the MNCs' activities. Although there is potential through China's newly-enacted laws and regulations to strengthen dramatically corporate accountability for abuses, CSR-orientated practice is still at its infant stage.

Currently, uncertainty remains as to whether Chinese enterprises may end up supporting human rights, good governance and transparency, regardless of Chinese MNCs taking CSR more seriously than before. With China's dramatic economic growth and its world-wide foothold, it is worth reconsidering the different version of CSR. Arguably, it is impossible for China to adopt the whole set of criteria and norms of Western CSR framework. Some functional convergence may take place in the near future with China's MNCs' acceptance of the western-dominated discourse on how companies should behave. However, one inevitable and most controversial issue may be concluded that western standard CSR could not possibly be compromised under the current circumstances. China's approach in Congo does not add up to a genuine challenge to the status quo of CSR well-established by the West. It may take another more flexible approach by exploring whether there is room for common objectives, some ways in which China can act side by side with its western counterparts to design a new route to develop CSR. It will have enormous implications not simply for China but for other global players.

## Notes

1. A Huliaras and K Magliveras, "In Search of a Policy: EU and US Reactions to the Growing Chinese Presence in Africa" (2008) 13 (3) *European Foreign Affairs Review* 399, 420 at 400.

2. The value of trade between China and Africa has increased by 45 per cent between 2007 and 2008: total trade for 2008 was approximately US\$107 billion; World Trade Organization, "International Trade Statistics" (WTO, Geneva 2008).

3. "China Scoops Up Minerals, Infrastructure Contracts" SouthScan (London, June 30, 2005) available at <http://allafrica.com/stories/printable/200507060674.html> [Accessed September 4, 2010].

4. Chairman, US-China Economic and Security Review Commission, Statement of Hon C Richard D'Amato Congressional Testimonies, July 13, 2005; There is widespread controversy as to whether there would be legitimate threat to national security resulting from the proposed acquisition. Available at [http://www.uscc.gov/testimonies\\_speeches/testimonies/2005/05\\_07\\_13\\_testi\\_damato.php](http://www.uscc.gov/testimonies_speeches/testimonies/2005/05_07_13_testi_damato.php) [Accessed September 4, 2010].

5. Ricardo Soares de Oliveira, "The Geopolitics of Chinese Oil Investment in Africa" in C Alden, D Large and R Soares de Oliveira (eds), *China Returns to Africa: A Rising Power and A Continent Embrace* (London, C Hurst and Co, 2008) 157, 158 at 159.

6. The \$200 billion sovereign wealth fund was burned by investments in foreign financial institutions Blackstone and Morgan Stanley in 2008, both of which were hit by the financial crisis and saw share prices plunge.

7. Report to Congress of the US-China Economic and Security Review Commission (2008) 110<sup>th</sup> Congress 2<sup>nd</sup> Session, available at [http://www.uscc.gov/annual\\_report/2008/annual\\_report\\_full\\_08.pdf](http://www.uscc.gov/annual_report/2008/annual_report_full_08.pdf) [Accessed September 4, 2010].
8. Ricardo Soares de Oliveira, "The Geopolitics of Chinese Oil Investment in Africa" in C Alden, D Large and Ricardo Soares de Oliveira (eds), *China Returns to Africa: A Rising Power and A Continent Embrace* (London, C Hurst and Co 2008) 157, 158 at 159.
9. D Zweig and J Bi, "China's Global Hunt for Energy" (2005) 84 (5) *Foreign Affairs* 26.
10. China announced the creation of a US\$5 billion China-Africa development funds at the FOCAC Summit in Beijing in November 2006, which is often simply used to finance the entry of Chinese firms into the African economy.
11. W Wallis, "Congo Outlines \$9bn China Deal" *Financial Times* May 9, 2008.
12. T Whewell, "China to Seal \$9bn DR Congo Deal" BBC: Newsnight, April 14, 2008.
13. J Vandaele, "China Outdoes Europeans in Congo" *Asia Times* February 12, 2008, available at [http://www.atimes.com/atimes/China\\_Business/JB12Cb01.html](http://www.atimes.com/atimes/China_Business/JB12Cb01.html) [Accessed September 4, 2010].
14. This approach differs considerably in that China SOEs previously arrived with their own workforce with tens of thousands of Chinese nationals moving to Africa; DJ Muekalia, "Africa and China's Strategic Partnership" (2004) 13 *African Security Review* 5, 6.
15. Under the joint venture agreement, 10-12 per cent of the work shall be subcontracted to Congolese companies, and only 20 per cent of workers can be Chinese.
16. B Gill, C Huang and JS Morrison, "Assessing China's Growing Influence in Africa" (2007) (3) 3 *China Security* 3-21 at 7.
17. R Manning, "Will Emerging Donors Change the Face of International Co-operation?" (2006) 24 (4) *Development Policy Review* 371, 385.
18. G Rozenberg, J Clayton and G Duncan, "Thirst for Oil Fuels China's Grand Safari in Africa" *The Times* July 1, 2006.
19. "China's African Affair: Africa's Western Partners Need to Talk to Beijing" *Financial Times* (June 26, 2006).
20. E Wickeri, "IR 2008: Maximising the Impact of CSR in China" (2006) 3 *China Rights Forum* 132-138 at 134.
21. J Nelson, "CSR and Public Policy: New Forms of Engagement between Business and Government" Corporate Social Responsibility Initiative (May 2008) Working Paper No.4, Cambridge MA John F Kennedy School of Government Harvard University; Western companies were once accused of poor CSR-related performance, which has already improved greatly under the pressure of media, legislation and even litigation at home.
22. S Frost and M Ho, "Going Out: The Growth of Chinese Foreign Direct Investment in Southeast Asia and Its Implications for Corporate Social Responsibility" (2005) 12 (3) *Corporate Social Responsibility and Environmental Management* 157, 167.
23. H French, "China in Africa: All Trade and No Political Baggage" *New York Times* August 8, 2004.
24. L Wild, "China, Africa and the G8: The Missing Link" available at [http://www.opendemocracy.net/globalization-institutions\\_government/china\\_africa\\_g8\\_3725.jsp](http://www.opendemocracy.net/globalization-institutions_government/china_africa_g8_3725.jsp) [Accessed September 4, 2010].
25. Ricardo Soares de Oliveira, "The Geopolitics of Chinese Oil Investment in Africa" in C Alden, D Large and R Soares de Oliveira (eds), *China Returns to Africa: A Rising Power and A Continent Embrace* (London, C Hurst and Co, 2008) 157, 158 at 162; it could be considered as an illustration that China's recent offer under an integrated investment package to invest \$1 billion in Nigeria's crumbling railway system cemented Nigerian good will.
26. S Frost and M Ho, "Going Out: The Growth of Chinese Foreign Direct Investment in Southeast Asia and Its Implications for Corporate Social Responsibility" (2005) 12 (3) *Corporate Social Responsibility and Environmental Management* 157-167 at 165.
27. Substantial construction and infrastructural projects, as well as increased manufacturing activity and the emergence of a consumer culture, have created demand for a range of natural resources, including iron ore, zinc, copper, coal and oil. China is interested because China gets a slice of the Democratic Republic of Congo's precious natural resources to feed its booming industries – 10m tons of copper and 400,000 tons of cobalt.
28. P Lyman, "China's Rising Role in Africa" available at [http://www.cfr.org/publication/8436/#\\_ednref14](http://www.cfr.org/publication/8436/#_ednref14) [Accessed September 4, 2010]. Thus the representative of China's state owned construction company in Ethiopia could reveal that he was instructed by Beijing to bid low on various tenders, without regard for profit. China's long term objective in Ethiopia is access to future natural resource investments, not construction business profits. China can use aid, investment and technical inputs to win long-term gains and access, with a willingness to "lose" much in the short term to gain in the long term.
29. Ricardo Soares de Oliveira, "The Geopolitics of Chinese Oil Investment in Africa" in C Alden, D Large and R Soares de Oliveira (eds), *China Returns to Africa: A Rising Power and A Continent Embrace* (London, C Hurst and Co, 2008) 157, 158 at 162.
30. P Bosshard, "China's Environmental Footprint in Africa", Pambazuka News-Weekly Forum for Social Justice in Africa, available at <http://www.pambazuka.org/en/category/comment/48442> [Accessed September 4, 2010].
31. C Hurst, "China's Oil Rush in Africa", available at <http://fmso.leavenworth.army.mil/documents/chinainafrika.pdf> [Accessed September 4, 2010].
32. Ricardo Soares de Oliveira, "The Geopolitics of Chinese Oil Investment in Africa" in C Alden, D Large and R Soares de Oliveira (eds), *China Returns to Africa: A Rising Power and A Continent Embrace* (London, C Hurst and Co, 2008) 157, 158 at 162.
33. CF Bergsten, "A Partnership of Equals-How Washington should Response to China's Economic Challenge" (2008) 87 *Foreign Affairs* 57.
34. L Lin, "Corporate Social Accountability Standards in the Global Supply Chain: Resistance, Reconsideration and Resolution in China" (2007) 15 (2) *Cardozo J Int'l & Comp L* 321-371 at 324.
35. G Oduntan, "The Emergent Legal Regime for Exploration of Hydrocarbons in the Gulf of Guinea: Imperative Considerations for Participating States and Multinationals" (2008) 57(2) *I.C.L.Q.* 253, 302.



36. "... they ought to comply with, and not to interfere with, host-state social, political and economic decisions." See SR Ratner, "Corporations and Human Rights: A Theory of Legal Responsibility" (2001) 111 (3) Yale L.J. 489, 522.
37. S Frost and M Ho, "'Going Out': The Growth of Chinese Foreign Direct Investment in Southeast Asia and Its Implications for Corporate Social Responsibility" (2005) 12 (3) Corporate Social Responsibility and Environmental Management 157-167 at 166.
38. J Vandaele, "China Outdoes Europeans in Congo" *Asia Times* February 12, 2008.
39. DM Tull, "China's Engagement in Africa: Scope, Significance and Consequences" (2006) 44 (3) Journal of Modern African Studies 459, 479.
40. B Gill, C Huang and JS Morrison, "Assessing China's Growing Influence in Africa" (2007) 3 (3) China Security 3-21 at 9.
41. In October 2006, Gabon ordered the Chinese energy firm Sinopec to halt exploration in Loango National Park after a US conservation group accused it of desecrating the forest and operating without an approved environmental impact study.
42. It was a shock for PetroChina to find itself targeted by campaigners for disinvestment in Sudan.
43. B Gill and J Reilly, "The Tenuous Hold of China Inc. in Africa" (2007) 30 (3) The Washington Quarterly 37-52 at 47.
44. "Organizational Irrationality and Corporate Human Rights Violations" (2009) 122 (7) Harvard L. R. 1931-1952 at 1933.
45. The EU Green Paper on Corporate Social Responsibility defined it as: "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis"; McWilliams and Siegel define it as "... actions that appear to further some social good, beyond the interests of the firm and that which is required by law."
46. CE Anyaso, "Implications of Chinese Economic Expansion in Africa" 15<sup>th</sup> Annual PanAfrica International Business and Healthcare Conference (Nashville, Tennessee, October 31, 2008), available at <http://www.state.gov/p/af/r/s/rm/2008/111598.htm> [Accessed September 4, 2010].
47. "Going Global" The Economist, January 17, 2008, available at [http://www.economist.com/surveys/displaystory.cfm?story\\_id=10491136](http://www.economist.com/surveys/displaystory.cfm?story_id=10491136) (Subscriber only) [Accessed September 4, 2010].
48. P N Lyman, "China's Rising Role in Africa" (Presentation to the US-China Commission July 21, 2005) available at <http://www.cfr.org/publication/8436/> [Accessed September 4, 2010].
49. Ralph Hamann and Paul Kapelus, "Corporate Social Responsibility in Mining in Southern Africa: Fair, Accountability or Just Greenwash?" (2004) 47 (3) Development 85, 92.
50. E Wickeri, "IR 2008: Maximising the Impact of CSR in China" (2006) 3 China Rights Forum 132-138 at 133.
51. M Genasci and S Pray, "Extracting Accountability: The Implications of the Resources Curse for CSR Theory and Practice" (2008) 11 Yale Human Rights and Development L. J. 37-58 at 39.
52. M Blowfield and JG Frynas, "Setting New Agendas: Critical Perspectives on Corporate Social Responsibility in the Developing World" (2005) 81 (3) International Affairs 499-513 at 510.
53. M Genasci and S Pray, "Extracting Accountability: The Implications of the Resources Curse for CSR Theory and Practice" (2008) 11 Yale Human Rights and Development L. J. 37-58 at 41.
54. M Blowfield and JG Frynas, "Setting New Agendas: Critical Perspectives on Corporate Social Responsibility in the Developing World" (2005) 81 (3) International Affairs 499-513.
55. "CSR on the Agenda in Beijing" (2003) China Rights Forum 1 at 67.
56. AH Maslow, *Motivation and Personality* (3rd edn, Harper & Row, 1987).
57. J Zerk, *Multinationals and Corporate Social responsibilities: Limitations and Opportunities in International Law* (Cambridge University Press, 2006), pp 15-44.
58. EC Mujih, "Co-deregulation of Multinational Companies Operating in Developing Countries: Partnering against Corporate Social Responsibility?" (2008) 16 African Journal of International and Comparative Law 249-261.
59. M Blowfield and JG Frynas, "Setting New Agendas: Critical Perspectives on Corporate Social Responsibility in the Developing World" (2005) 81 (3) International Affairs 499-513 at 508.
60. The judge in a Nigerian case of *Allan Irou v Shell BP* expressed his ratio decidendi that nothing should be done to disturb the petroleum trade which plays a vital role in the national economy; AA Idowu, "Human Rights, Environmental Degradation and Oil Multinational Companies in Nigeria: The Ogoniland Episode" (1999) 17 (2) Netherlands Quarterly of Human Rights 161-184 at 181.
61. HP Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (Oxford University Press, 2004), pp 318-25.
62. "EIB Accuses China of Unscrupulous Loans" *Financial Times* November 28, 2006.
63. AA Idowu, "Human Rights, Environmental Degradation and Oil Multinational Companies in Nigeria: The Ogoniland Episode" (1999) 17 (2) Netherlands Quarterly of Human Rights 161-184 at 176.
64. JE Parkinson, *Corporate Power and Responsibility* (Clarendon Press, Oxford, 1993), p.24.
65. "Alien Tort Statute: Federal Jurisdiction and Federal Common Law-*Sosa v Alvarez Machain*" (2004) 118 (1) Harvard L.R. 446-456.
66. Development (OECD) Revised Guidelines for Multinational Enterprises 2000, art.1(1).
67. The scheme was launched by the UK government following the Johannesburg World Summit on Sustainable Development 2002.
68. <http://www.globalcompact.org> [Accessed September 4, 2010].



69. B Stephens, "Translating Filartiga: A Comparative and International Law Analysis of Domestic Remedies for International Human Rights Violations" (2002) 27 Yale J.I.L. 25-26.
70. "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" (UN doc. E/CN.4/Sub.2/2003/12/Rev.2) available at <http://www.unhchr.ch/html/menu2/2/55sub> [Accessed September 4, 2010].
71. For instance, the UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights are too vague to apply for the norms on MNCs due to the lack of clear jurisdiction on their legal entity.
72. K Slack, "Putting Teeth in Corporate Social Responsibility" Policy Innovations (November 21, 2006), available at <http://www.globalpolicy.org/socecon/tncs/2006/1121csrteeth.htm> [Accessed September 4, 2010].
73. DFID, *DFID and Corporate Social Responsibility* (London, Department for International Development, 2003), p.9; M Blowfield and JG Frynas, "Setting New Agendas: Critical Perspectives on Corporate Social Responsibility in the Developing World" (2005) 81 (3) International Affairs 499-513 at 509.
74. G Oduntan, "The Emergent Legal Regime for Exploration of Hydrocarbons in the Gulf of Guinea: Imperative Consideration for Participating States and Multinationals" (2008) 57(2) I.C.L.Q. 253-302.
75. R Dufresne, "The Opacity of Oil: Oil Corporations, Internal Violence, and International Law" (2003) 36 N.Y.U. J. Int'l L. & Pol. 332.
76. "Corporate Social Responsibility and Transparency in the Development of Energy and Mining Projects in Emerging Markets: Is Soft Law the Answer?" (2007) 8 (4) German L.J. 311-339.
77. L Wick, "Human Rights Violations in Nigeria: Corporate Malpractice and State Acquiescence in the Oil Producing Deltas of Nigeria" (2003) 12 Mich. St. J. Int'l L. 63.
78. The jurisdiction where a company has its registered office, central administration or principal place of business has jurisdiction over claims against it wherever the activities out of which the claim arises took place. Even so, it seems premature for the principles to be applied both in China and Congo.
79. D Haglund, "Regulating FDI in Weak African States: A Case Study of Chinese Copper Mining in Zambia" (2008) 46 (4) Journal of Modern African Studies 547-575 at 548.
80. Generally, such imbalances can be summarised as: imbalance between the rapid process of liberalisation and the time necessary to elaborate the international regulatory framework for these exchanges; imbalance between the advanced governance systems in industrialised countries and the lack of such governance and rule of law in developing countries as well as at an international level.
81. "OECD Guidelines for Multinational Enterprises" June 27, 2000, available at <http://www.oecd.org/dataoecd/56/36/1922428.pdf> [Accessed September 4, 2010].
82. A principle of international law which cannot be set aside by agreement or acquiescence as laid down by the Vienna Convention on the Law of Treaties (1969): "a peremptory norm of general international law"
83. D Haglund, "Regulating FDI in Weak African States: A Case Study of Chinese Copper Mining in Zambia" (2008) 46 (4) Journal of Modern African Studies 547-575 at 557; China's EXIM Bank uses loans as a mean to secure contracts, as most MNCs are viewed by the Chinese government to fulfil both political and economic roles.
84. 2002 Code. art.86.
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