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CORPORATE SOCIAL RESPONSIBILITY: THE ROLE OF CODES OF CONDUCT IN FOSTERING ENVIRONMENTAL SUSTAINABILITY IN LATIN AMERICA¹

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Abstract

Spanish multinational enterprises (MNEs) are a prime example of how companies benefit from globalization and expand their activities worldwide through foreign direct investment. This paper has a legal perspective, focusing on the environmental performance of Spanish MNEs in Latin America and their corporate social responsibility (CSR) through the adoption of codes of conduct. As a result of a set of factors, Spanish MNEs have implemented voluntary CSR initiatives, strategies and standards in their day-to-day operations. This paper analyses the scope of codes of conduct that are aimed at achieving environmental sustainability in Latin America. The guiding question is whether these codes of conduct are able to influence the environmental performance of Spanish MNEs operating in the region.

Key words: codes of conduct, environment, sustainable development

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1. INTRODUCTION

In an era of globalization, multinational enterprises (hereinafter MNEs) play a leading economic and political role in the international economy (Kinley, Joseph, 2002; Abdul-Gafaru, 2009; Gatto, 2011). These enterprises tend to relocate their industrial activities, the most visible trend being from the Global North to the Global South (Weschka, 2006). Many Spanish MNEs, for instance, have entered Latin America during recent decades seeking efficiency, economic growth and resources (Casanova, 2003). They are attracted by the wide range of natural resources and raw materials (minerals, metals and hydrocarbons), cheaper labor, weaker competition between companies operating in the same sector, proximity to destination markets, and lax environmental, social and indigenous standards (Casanova, 2003; Guillén, 2006).

In the context of global environmental change, MNEs are part of the problem. Even though they may be central to the solution, their activities usually involve negative economic, political, social and environmental impacts. As regards the environmental effects, MNEs have abundant resources in terms of technologies and R&D capabilities for improving environmental conditions. However, the empirical evidence shows that they contribute greatly to environmental degradation (Muchlinski, 2007; Morgera, 2009; Yoke Ling, 2012).

The performance and behavior of MNEs is therefore important when it comes to fostering environmental sustainability. As Choucri points out, “their actions and strategies are crucial in determining the environmental landscape” (Choucri, 1991, p.52). Unfortunately there is no global regulatory regime to ensure that companies commit themselves to environmental sustainability. All efforts have so far relied on voluntary, non-binding initiatives from intergovernmental organizations, especially international and regional codes of conduct. Insofar as these initiatives are voluntary, MNEs maintain an advantage, so although most companies have adopted and/or adhered to codes of conduct, the environmental consequences of their activities are still mostly negative.

In this paper we discuss this background by looking at the operations of Spanish MNEs in Latin America, where these companies occupy an important economic and social position. The paper is based on theoretical research. The methodology used is a comprehensive, systematic, comparative and conclusive analysis of relevant peer-reviewed literature (mainly journal articles) and reports concerning Spanish companies’ environmental impacts and contributions to environmental sustainability in Latin America. In our hypothesis, the analyzed CSR initiatives do not fill the legal gaps concerning the environmental performance of MNEs and contribute minimally to foster environmental sustainability. In addition, their adoption has an adverse effect because they could legitimize the negative environmental impact of MNEs’ operations.

2. THE ENVIRONMENTAL PERFORMANCE OF SPANISH MNEs IN LATIN AMERICA

During the 1990s, the economic, financial, ideological and political adjustments deriving from the «Washington Consensus» created the ideal setting for MNEs. Many Latin American countries implemented these neoliberal adjustments within their national regimes. This meant opening up economies to foreign direct investment (FDI) and privatizations, reducing trade barriers and limiting state intervention in economic and commercial activities, thereby benefiting private agents and companies. These circumstances together with the subsequent coming into force of the Treaty of Maastricht on European Union (1993) brought the implementation of neoliberal economic policies in Europe too. Spanish companies reacted to the opening up of the Latin American economies and the threat of acquisitions by larger rivals by internationalizing their operations with the aim of becoming bigger and diversifying in order to meet the challenge of foreign competition (Paz et al., 2005; Álvarez, 2007; Pulido, Ramiro, 2009; Pérez, 2012; Iglesias Márquez, 2014).

Spain soon became the largest European investor in Latin America (Verger, 2003; Paz et al., 2005; Pérez, 2012).

Table 1 and Figure 1 show the increase in net Spanish FDI in several Latin American countries during the 1990s:

Table 1

		Net Spanish FDI (million US\$)								
Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	
Million US\$	7309	11563	13185	11860	25682	38157	38157	58500	58100	

Source: Own based on Durand, 2007

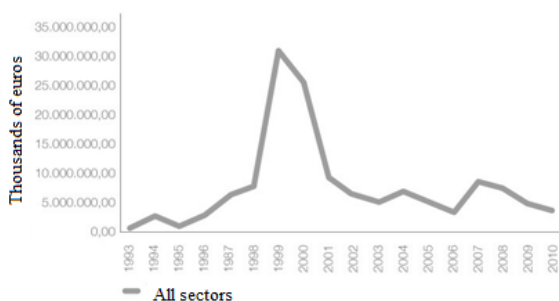


Figure 1: Spanish FDI in Latin America (1993–2012)

Source: OMAL, 2014

As can be seen in Table 2, Spanish MNEs are today leaders in several Latin American sectors including telecommunications, energy and banking (Verger, 2003; Guillén, 2006; Pulido, Ramiro, 2009):

Table 2
Fortune Global 500 (2014)

Company	Ranking position	Revenues (Millions)
Banco Santander	73	\$ 98,506
Telefónica	109	\$ 75,752
Repsol	126	\$ 69,148
ACS	202	\$ 50,941
BBVA	206	\$ 49,966
Iberdrola	244	\$ 43,554
Gas Natural Fenosa	360	\$ 33,147
Mapfre	415	\$ 29,864

Source: Own based on Fortune Global 500, 2014

Examples of economically successful Spanish MNEs in Latin America by sector include:

- Telecommunications: Telefónica leads this sector, maintaining a presence in 19 countries in the region (Álvarez, 2007; Carrión et al., 2013). Between 1990 and 2002 alone, Telefónica invested 30,500 million dollars in acquisitions in Chile and Argentina (1991) and Peru (1994) (Chislett, 2003; Illán, 2010). According to the Economic Commission for Latin America and the Caribbean (2012), in 2010 the company had revenues of 22,000 million dollars, 60% of which came from its operations in the region.
- Energy: the electricity sector is controlled by just a few large companies. Endesa became the largest private company in Latin America when it bought the Chilean company Enersis (Kucharz, 2007, Greenpeace, 2009). Iberdrola is the second most important private company in the region, operating in six countries. Meanwhile over 27% of Gas Natural Fenosa's total installed power capacity to produce electricity comes from countries in Latin America (Álvarez, 2007). As regards the income these companies obtain from their operations in Latin America, Iberdrola, Gas Natural Fenosa and Grupo Prisa obtained 32.22%, 25.23% and 23% of their revenues respectively from these countries, which accounts for nearly a third of their net revenues (Carrión et al., 2013). Finally, Repsol has become the largest transnational oil company in Latin America,

targeting 78% of its FDI in the region (Álvarez, 2007). Today Repsol maintains a presence in 12 countries in Latin America (Gavaldà, 2003; Gavaldà, Carrión, 2007; Pulido, Ramiro, 2007).

- Banking: Santander and BBVA are the largest banks in Latin America (Pulido, Ramiro, 2009). The Santander Group (hereinafter Santander) tops the list of Spanish companies in Latin America. The bank took advantage of financial liberalization (Chislett, 2003) and began operations in Chile, where it acquired several banks before moving on to other countries in the region. BBVA has also positioned itself as one of the largest banks in the region. In 2009, Santander recorded profits of 2,096 million euros from Latin America, mainly Brazil, Mexico and Chile, while BBVA recorded total profits of 1.38 billion euros, 588 million of which were from the region (Guillén, 2006). The operating revenues of Santander and BBVA contributed 30% and 49% of their global profits respectively (Observatorio de la RSC, 2010: 19).

Taken together, these companies are responsible for 95% of total Spanish investment in the region (ECLAC, 2012).

However, despite the huge importance of Latin America for the largest Spanish MNEs, the empirical evidence shows that there are countless examples where corporate involvement results in environmental degradation. These negative socio-environmental externalities are often borne by the society and not the enterprise (Martínez-Alier, 2004).

In this regard we can see clear examples of the environmental problems caused by Spanish MNEs by looking at Repsol's activities in Latin America, where the company has received various complaints about the environmental degradation caused by its operations. In Argentina it has been accused of causing oil spills and air pollution as well as lead poisoning due to the presence of abandoned and unsealed wells in Comodoro Rivadavia (Ramiro, Pulido 2007; Greenpeace, 2009). In Colombia, negative impacts include the environmental degradation and destruction of both the ecosystems and the livelihoods of thousands of families in Putumayo and Arauca (Ortega, 2005; Gavaldà, Carrión, 2007; Greenpeace, 2009; Ramiro et al., 2007). In Bolivia it operates in the territory of the Guarani of Itika Guasu in Chaco, whose communities accuse the company of conducting its industrial activities without meeting the requirements for free, prior and informed consultation, affecting indigenous peoples in particular (Rodríguez-Carmona, 2008; CEDIB, 2008). In Ecuador numerous complaints have been made by environmental NGOs and indigenous groups regarding the damage caused by its operations in the Yasuni National Park (Ramiro et al., 2007; Greenpeace, 2009; CEAR, 2012; Uharte, 2012).

In the electricity sector, Spanish MNEs have also been accused of environmental damage and human rights violations. With investments in power generation projects based mainly on fossil sources, the greatest impacts are caused by carbon dioxide (CO₂) emissions, though companies are also

responsible for impacts caused by the construction of large-scale dams. Endesa has been involved in socio-environmental conflicts in various countries. In Chile the company is responsible for several projects with a high environmental impact (Kucharz, 2007; Ortega, 2005; Paz, 2006). In Colombia, Emgesa (a subsidiary of Endesa) is responsible for the highly contested El Quimbo dam, a hydroelectric project under development which will affect the most important river in the country, the Magdalena (Pulido, 2014).

Iberdrola has also been responsible for negative environmental impacts in the region, most significantly those caused by its thermal power plants in Mexico and Brazil. In Mexico, 96% of its total generation capacity comes from combined-cycle gas and cogeneration, which produces large amounts of CO₂ emissions. The company has also been accused of destroying natural habitats and impacting on biodiversity in the Brazilian Amazon rainforest, where it is part of a consortium operating the heavily contested Belo Monte project, which affects native biodiversity and the river volume flow rate (Uharte, 2012; Del Moral, Bermann, 2012).

Finally, Gas Natural Fenosa is also responsible for causing negative environmental impacts from the projects it runs. One repercussion of the La Joya hydraulic plant in Costa Rica is the drying-up of springs located in the vicinity of its infrastructures (Ortega, 2005). In Colombia its hydraulic plants have flooded areas of huge natural and cultural value and its operations have resulted in several spills (Ramiro et al. 2007; Ortega, 2005). The company has also impacted negatively on the environment in Panama, Guatemala and Nicaragua (Ortega, 2005).

Last but not least, financial entities such as Santander and BBVA have been indirectly responsible for environmental impacts through the financing of projects with potential environmental risks. Santander has financed at least three controversial hydroelectric dams, two in Brazil (the Jirau and Santo Antonio dams) and a third in Colombia (the Hidrosogamoso dam) (Avendaño, Duarte, 2012; Ejolt, 2014). BBVA financed Endesa-Chile's plans to construct five large-scale hydroelectric dams in Patagonia which are expected to flood nearly 6,000 hectares, including the farmlands of local communities in nine regions (Sáez et al., 2008).

3. CORPORATE SOCIAL RESPONSIBILITY, CODES OF CONDUCT AND ENVIRONMENTAL SUSTAINABILITY

Both academia and international society have called on companies to promote environmental sustainability in their activities. Morelli (2011, p.6) defines environmental sustainability as “a condition of balance, resilience, and interconnectedness that allows human society to satisfy its needs while neither exceeding the capacity of its supporting ecosystems to continue to regenerate the services necessary to meet those needs nor by our actions diminishing biological

diversity”. Indeed, some authors argue that MNEs play an important role in achieving environmental sustainability through their technologies and R&D capabilities (Morgera, 2009, Muchlinski, 2007) and their ability to implement better environmental standards. However, their current *modus operandi* contributes little to fostering environmental sustainability, as is clear from the above empirical evidence on the operations of Spanish MNEs in Latin America.

As a response to the socio-environmental challenges arising from industrial activities, corporate social responsibility (CSR) has become a key element for MNEs, although companies’ concerns for society can be traced back centuries (Carroll, 1999). In fact CSR is rooted in environmental responsibility initiatives within environmental management frameworks (Welford, 1998; Welford, Starkey, 2001). Today it is a very important subject in both professional and academic literature. It became a mainstream factor and gave rise to organizational changes due to the benefits and increasing competitive advantage it brings companies (Arjalies, Mundy, 2013).

There is a lack of consensus regarding the definition of CSR (Lindgreen, Swaen, 2010; Zaho et al., 2012). Broadly speaking it consists of voluntary initiatives, strategies and standards adopted by MNEs, including international instruments, national-based standards, certification schemes, mainstream financial indexes and tools, meetings and other initiatives that foster sustainable development through good business practices. Codes of conduct are just one of the instruments to be found among the above. In principle these CRS initiatives, strategies and standards are motivated by external pressure, mainly from society and socio-environmental NGOs, and are aimed at satisfying demands for better corporate behavior, transparency and disclosure in day-to-day company activities.

In this regard codes of conduct, which are essentially voluntary and non-binding, attempt to cover these issues in order to encourage more environmentally friendly behavior. These instruments have therefore gradually been integrated into day-to-day company operations, especially those supported by international organizations and international society such as the 1976 “OECD Guidelines for Multinational Enterprises” (OECD Guidelines), the 1999 “Global Compact”, the 2003 “UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights” (UN Norms) and the recent “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” (Guiding Principles) adopted by the UN Human Rights Council in 2011.

The OECD Guidelines, which consist of non-binding principles and standards, include a chapter on the environment (Section VI). This provides general standards of environmental protection and a list of specific tools for corporate environmental accountability. These tools include environmental management systems (EMS), communication and stakeholder involvement, life-cycle assessment and environmental impact assessment (EIA), risk prevention and mitigation, continuous improvement of corporate environmental

performance, education and training of employees, and contribution to public policies. Companies are therefore expected to take environmental concerns into account in their business decision-making processes.

The Global Compact is considered to be the world's largest corporate citizenship initiative and is intended to promote good corporate practices through a variety of engagement mechanisms including learning, dialogue and projects. Three of its ten principles focus on the environment (Principles 7, 8 and 9). Global Compact Principle 7 is aimed at motivating companies to take a responsible, preventive and proactive stance as regards environmental challenges. Global Compact Principle 8 encourages MNEs to develop initiatives to promote and divulge socio-environmental responsibility. Global Compact Principle 9 inspires companies to develop and disseminate environmentally responsible technologies.

In 2003 the UN Norms constituted an advance in the sphere of international codes of conduct for business since they were the result of a formal UN consultation process that had already produced soft law in other fields. The Norms emphasized implementation and enforcement (Murphy, 2005). However, the lack of political endorsement by states forced them to be abandoned in 2005. "Most of the States expressed strong reservations, emphasizing their determination not to depart from the traditional framework of international law, which stresses the central and pivotal role of the state as a legal subject of public international law" (Miretski, Bachmann, 2012, p. 9). The UN Norms imposed obligations on MNEs in the area of environmental protection (Section G of the UN Norms). MNEs were expected to conduct their activities in accordance not only with the laws, practices and policies of the country in which they were operating but also with international agreements, principles and standards regarding environmental perseverance. They were also required to periodically assess the impact of their activities on the environment and human health, especially that of groups such as children, the elderly, women and indigenous peoples.

Finally, the Guiding Principles is a set of guidelines that operationalize the UN Framework (UNHRC, 2011) on the basis of three pillars: protect, respect and remedy. The first pillar involves the state's duty to protect against human rights abuses by third parties, including MNEs. The second involves corporate responsibility to respect human rights and implies a societal expectation that companies "do no harm" and exercise "due diligence" (Morgera, 2012). The third pillar involves access to remedy for victims of human rights abuses. The Guiding Principles make few references to the environment, although they acknowledge that environmental harm due to MNE activities impacts a significant number of human rights (UNHRC, 2008). However, under the Guiding Principles it should be understood that both states and companies must take proactive steps to prevent environmental damage (Carneiro et al., 2013). In this context, Pigrau and Jaria (2014) have defended the applicability of the Guiding Principles to activities that can adversely affect the environment. After analyzing several SRSG reports, they

concluded that environmental matters fall neutrally within the scope of the Guiding Principles.

4. CODES OF CONDUCT AND THEIR APPLICATION BY SPANISH MNEs

In line with all the above, Spanish MNEs have implemented voluntary CSR initiatives, strategies and standards so as to avoid negative effects in their commercial and economic relations and a negative public image caused by campaigns against the environmental impact of their activities in Latin America (Observatorio de RSC, 2010). Along with human capital, corporate reputation is a key factor in business because it generates many favorable consequences for the company (Hall, 1992). However, it is a fragile factor that takes time to create and can easily be damaged (Hall, 1993). Therefore companies have chosen to adopt and/or adhere to ethical codes, guidelines and principles such as codes of conduct that address environmental concerns and values. In this regard most companies have voluntarily adhered to and expressed their commitment to international codes of conduct such as the OECD Guidelines and Global Compact. At least 821 Spanish businesses from all sectors today participate in Global Compact, including the largest Spanish MNEs operating in Latin America.

These companies have also enacted their own internal codes of conduct expressing their commitment to environmental concerns. For example, Santander's "General Code of Conduct" stresses the company's responsibility to the preservation of the environment by respecting legal requirements. Regarding the financing of projects such as hydraulic and sanitation infrastructures, energy, forest resources and defence sectors, the General Code establishes that the company shall follow internal policies on social and environmental responsibility. Meanwhile Endesa's "Code of Ethics" states that the company undertakes to reduce its environmental footprint and the impact of its business activities on the landscape and to prevent risks to the population and the environment by upholding prevailing environmental regulations. In the same vein, Repsol's "Code of Ethics and Conduct for Employees" aims at minimizing any negative impact on the environment arising from the company activities. To achieve these goals, Repsol sponsors training in environmental protection for all its employees, especially those involved in the management and maintenance of the facilities and those who have direct contact with clients, stakeholders, suppliers and contractors. Telefonica's "Our Principles", Gas Natural Fenosa's "Code of Ethics", Iberdrola's "Code of Ethics" and BBVA's "Code of Ethics" follow the same line whereby the companies commit to reduce environmental impact by complying with standards established by environmental laws and regulations. Most internal codes of conduct point out that the scope of application for these instruments includes all corporate bodies, including subsidiaries in third countries.

MNEs can reap several potential benefits by adopting and adhering to codes of conduct. Firstly, it creates a public image of a socially and

environmentally responsible company. Secondly, codes have a positive effect on consumer purchasing habits (Öberseder et al., 2013) when they are used as a marketing strategy because a growing number of environmentally aware consumers are demanding more environmentally responsible products. A significant number of consumers buy green (environmentally friendly) products and services (Tinne, 2013), so if MNEs fully applied the environmental standards outlined in the codes of conduct, they could cover the now highly competitive green market. Thirdly, in terms of risk management, the costs incurred by being an environmentally friendly corporation are lower than those incurred by causing environmental damage, which can be extremely high if they impact on sales and/or investment or if the corporation is held liable for the damage caused (Perry-Kessaris, 2010).

Despite the existence of these codes of conduct, their impact on the behavior of Spanish MNEs in Latin America is insufficient. The cases mentioned above show that these instruments are weak and ineffective. Despite adopting these codes, large MNEs continue to have an impact on the environment. One of the main reasons for this is the lack of enforcement and monitoring mechanisms to ensure compliance (de Jonge 2011, pp. 26-27). Most of the codes do not go as far as to set up independent bodies to observe or monitor how they are applied. The effectiveness and benefits of these codes therefore rely on MNEs modifying their behavior in order to mitigate the negative impacts of their operations or their product on the population and/or the environment. Their ineffectiveness as regards the behavior of MNEs highlights the need for a more effective regulation of business activities both nationally and internationally in order to foster environmental sustainability.

5. CONCLUSIONS

Despite their ineffectiveness, codes of conduct may contribute to solving extreme situations. They could be the first step in the right direction toward promoting environmental sustainability insofar as they may improve the behavior of a company that previously had few or no standards at all. They may also be used to hold companies publicly to account if their practices contravene their principles and, if used inclusively and transparently, they may be seen as a basis for developing “best practice” and serve as platforms upon which binding regulations can later be developed (Abdul-Gafaru, 2009, p.61). However, the evidence shows that CSR in Latin America is a tool for Spanish MNEs to adapt effectively to the socioeconomic context of the region and thereby gain social legitimacy for their activities. The contribution of these companies to environmental sustainability in the area remains weak and insufficient. More effective, legally-binding regulations are required to achieve real environmental sustainability and prevent environmental abuses by MNEs in Latin America and the rest of the world.

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