

CORPORATE SOCIAL RESPONSIBILITY OF A CORPORATION UNDER INTERNATIONAL LAW: A CRITICAL STUDY

PART I. [A.] INTRODUCTION

International law today addresses the conduct of private corporations in a variety of areas. With very few exceptions, however, international law regulates corporate conduct indirectly--that is, by requiring states to enact and enforce regulations applicable to corporations and other non-state actors.¹The 2001 European Commission Green Paper on Corporate Social Responsibility [hereinafter CSR] defines this responsibility as “a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment.”²Three generations of CSR are generally thought to have evolved. The first focused on short-term corporate interests and motives, the second on long-term success strategies; the present third generation is aimed at addressing the role of business in matters essentially within the public domain, such as poverty, exclusion, and environmental degradation.³

CSR has come to the forefront of corporate and economic concerns because of the increasingly globalized nature of business and the so-called New Economy, a knowledge-based, technology-driven environment that has, among other things, affected an increase in stakeholders' access to information.⁴ "The premise of the

¹ Carlos M. Vázquez, *Direct Vs. Indirect Obligations Of Corporations Under International Law*, 43 COLUM. J. TRANSNAT'L L. 927,928 (2005).

²Promoting a European Framework for Corporate Social Responsibility: GreenPaper, COM(01)366 final at 5, *available at* http://europa.eu.int/comm/employment_social/social/csr/greenpaper_en.pdf [hereinafter Green Paper].

³ H. DOSSING, THE BUSINESS CASE FOR CSR, IN INTERNATIONAL CHAMBER OF COMMERCE (ICC) UK, GUIDE TO GLOBAL CORPORATE SOCIAL RESPONSIBILITY 34 (2003).

⁴ Cynthia A. Williams, *Corporate Social Responsibility in an Era of Economic Globalization*, 35 U.C. DAVIS L. REV. 705, 731 (2002).

corporate social responsibility movement is that 'corporations, because they are the dominant institution of the planet, must squarely face and address the social and environmental problems that afflict humankind.'"⁵ As a mode of implementing human rights, labor, and environmental standards, CSR has long been discussed as a possible remedy to the inequalities created and exacerbated by globalization.⁶ It considers that a corporation is not just a self-centered profit-making entity, but that the company and its actions are also integral to the economy, society, and environment in which they occur.⁷

[B.] SOURCES OF CSR

CSR sources can be divided into four parts. The responsibility accruing from each one of these is subject to both subjective and objective variables. These sources comprise Public International Instruments, NGO guidelines (some of which encompass a CSR evaluation system), individual business codes of conduct, and Domestic Legislation relating to CSR.⁸

[I.] PUBLIC INTERNATIONAL INSTRUMENT

The most influential Public International CSR Instruments are the OECD Guidelines, the UN Global Compact, and the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Unlike other "soft law" that is addressed by particular bodies of international organizations to their member States, the OECD Guidelines are recommendations addressed by governments to MNEs. The OECD Guidelines, the Global Compact, and

⁵ Elisa Westfield, *Globalization, Governance, and Multinational Enterprise Responsibility: Corporate Codes of Conduct in the 21st Century*, 42 VA. J. INT'L L. 1075, 1082 (2002).

⁶ Kristina K. Herrmann, *Corporate Social Responsibility And Sustainable Development: The European Union Initiative As A Case Study*, 11 IND. J. GLOBAL LEGAL STUD. 205, 206 (2004).

⁷ OSCAR HANDLIN, THE DEVELOPMENT OF THE CORPORATION, IN THE CORPORATION: A THEOLOGICAL INQUIRY 1 (Michael Novak & John W. Cooper eds., 1981).

⁸ PETER MUCHLINSKI, MULTINATIONAL ENTERPRISES AND THE LAW 12 (2nd. Ed., 2007).

the ILO Declarations contain influential follow-up mechanisms, supplemented by strict disclosure requirements to which a significant number of companies have so far adhered.

[II.] NGO GUIDELINES ON CSR

This number is in the hundreds. They can be broken down into three categories: those that simply provide a set of CSR guidelines (most often entailing reporting standards), those that act as CSR indicator self-assessment mechanisms (self-performance standards), and those that are a combination of the two. Some have a very specific focus, such as Social Accountability 8000, which concerns labor issues, but most have a broader focus encapsulating social, labor, and environmental aspects. In this section we shall examine the most influential among these.⁹

Perhaps the oldest initiative was that launched by the Reverend Leon Sullivan in 1977, providing guidelines to companies doing business in South Africa during apartheid. These Sullivan Principles were reformulated in 1999 (currently known as Global Sullivan Principles) with the input of several MNEs, focusing on eight broad directives on labor, business ethics, and environmental practices of MNEs and their business partners. They act as a reporting standard whereby companies publicly pledge to integrate the principles into their operations and provide an annual letter to the Reverend Sullivan restating the company's commitment and its progress.

[III.] CORPORATE CODE OF CONDUCT

Corporate codes of conduct are policy statements that outline the ethical standards of conduct to which a corporation adheres.¹⁰ This may take the form of a general policy statement or be inserted in the corporation's contracts with suppliers,

⁹ R. SULLIVAN, *THE INFLUENCE OF NGOS ON THE NORMATIVE FRAMEWORK FOR BUSINESS AND HUMAN RIGHTS* 245(1st ed., Cheltenham: Edward Elgar, 2005).

¹⁰ Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 *GEO. L.J.* 439 (2001).

buying agents, or contractors, in the sense that they must agree to abide by the company's ethical standards.¹¹ While not all corporations possess such codes, recent years have witnessed a proliferation that is due in large part to corporate scandals in a number of industries and the growth of public awareness and concern. Corporate codes have limited legal enforceability.¹² With the exception of domestic legislation that perceives a breach of the code as affecting the contractual relationship between the consumer and the corporation.¹³

[IV.] CSR THROUGH DOMESTIC LEGISLATION

The whole rationale behind CSR is premised on de-regulation. Therefore, any reference to CSR legislation raises questions of paradox. In the U.K., the 2003 Corporate Responsibility Bill, whose adoption is almost certain, is in some sense a response to the British government's perceived failure in its White Paper on Modernising Company Law to specify transparency rules or hold corporations accountable to their stakeholders.¹⁴ In France, the newly amended Nouvelles Regulations Economiques (NRE) is a Law that imposes reporting obligations (public disclosure) on all nationally listed companies, pertaining among others to the environment, domestic and international labor relations, local community, and other. There is increasing pressure from society in all developed countries to impose legally enforceable public disclosure requirements upon corporations.¹⁵ This trend

¹¹ J.A.C. Hetherington, *Fact and Legal Theory: Shareholders, Managers, and Corporate Social Responsibility* 21 STAN. L. REV. 248, 291 (1969).

¹² Terry Collingsworth, *Corporate Social Responsibility, Unmasked*, 16 ST. THOMAS L. REV. 669, 670-71 (2004).

¹³ In *Kasky v. Nike*, 45 P.3d 243 (Cal. 2002).

¹⁴ Lisa M. Fairfax, *The Rhetoric of Corporate Law: The Impact of Stakeholder Rhetoric on Corporate Norms*, 31 J. CORP. L. 675, 715 (2006).

¹⁵ . Picciotto, *"Rights, Responsibilities and Regulation of International Business"*, 42 COLUM. J. TRANSNAT'L L 131,142 (2003).

is in line with and closely connected to recent litigation concerning CSR issues, thus opening the way for further regulation in the near future.

PART II. CORE PRINCIPLES OF CSR

This part will analyze the core principle of CSR for e.g, human rights, labor rights, and environmental rights, only insofar as they pertain to MNE operations, utilizing as a point of reference the OECD Guidelines and the UN Global Compact.

[A.] HUMAN RIGHTS

MNEs face a series of human rights concerns when deciding to invest in LDCs, particularly as regards an appropriate standard of working and their position on human rights issues outside their scope or impact of operations.¹⁶ As far as the first of these is concerned, both the Global Compact and the OECD Guidelines refer to the 1948 Universal Declaration of Human Rights (UDHR) as the most appropriate standard, but few MNEs have incorporated a commitment to the UDHR in their codes of conduct.¹⁷ While this has given rise to critical concern by human rights organizations,¹⁸ it should also be acknowledged that the implementation of the UDHR by socially responsible corporations in an LDC whose social and legal system is underdeveloped is not a straightforward exercise.¹⁹

¹⁶ Joe W. (Chip) Pitts, *Business, Human Rights, and the Environment: The Role of the Lawyer in CSR & Ethical Globalization*, 26 BERKELEY J. INT'L L. 479, 488 (2008).

¹⁷ ARVIND GANESAN, HUMAN RIGHTS, THE ENERGY INDUSTRY, AND THE RELATIONSHIP WITH HOME GOVERNMENTS, IN HUMAN RIGHTS AND THE OIL INDUSTRY 48 (Asbjørn Eide et al. eds., 2000).

¹⁸ Id.

¹⁹ Sarah Joseph, *Taming the Leviathans: Multinational Corporations and Human Rights*, 46 NETHERLANDS INT'L L. REV. 171, 178 (1999).

Principle 1 of the Global Compact, in which the emphasis (as in the OECD Guidelines) is on material capacity to act, is more useful in this regard. It reads:

Businesses should support and respect the protection of internationally proclaimed human rights within their sphere of influence.²⁰

Unlike traditional human rights law, CSR-related human rights recognizes a “collective” right of host State local communities living in or peripherally to the investment project, or which are directly impacted by the project’s operations, relating to environmental and social well-being.²¹ Besides the individual elements of this right, such as specific compensation for loss of one’s land plot and relocation, MNEs and their lenders have not denied that many big investment projects, particularly those involving construction and extraction, have an effect on the environmental and social life of adjacent communities, whether indigenous or other.²²

[B.] LABOUR RIGHTS

Both the OECD Guidelines and the Global Compact focus on six core labor principles that MNEs must observe. These are;

- Freedom of association and effective recognition of the right to collective bargaining;
- Elimination of all forms of forced or compulsory labor;
- Effective abolition of child labor;
- Elimination of discrimination in respect of employment;
- Encouragement of human capital formation; and

²⁰U.N.GlobalCompact,The Ten Principles Principle1(2000),available at <http://www.unglobalcompact.org>

²¹ John J. Keller, *Multinational Business and Human Rights*, 88 AM. SOC’Y INT’L L. PROC. 271, 273-74 (1994).

²² T. Bridgeford, " *Imputing Human Rights Obligations on Multinational Corporations: The Ninth Circuit Strikes Again in Judicial Activism*", 18 AM. U. INT’L L. REV. 1009, 1010 (2003).

- Observance of effective health and safety regulations.

The latter two are not expressly identified in the Global Compact, but they are implied, since the Compact adheres to the principal ILO treaties and the ILO's Declaration on Fundamental Principles and Rights at Work. The OECD Guidelines, on the other hand, make explicit reference to these principle. Finally, both the Guidelines and the EC Commission Green Paper on CSR recognize the social impacts, especially those related to redundancies, associated with MNE mergers, closures, and other actions that result in actual or potential job losses. Those impacts are the reason constant consultation is necessary in order to mitigate and prevent social calamities.

[C.] ENVIRONMENT RIGHTS AND SUSTAINABLE DEVELOPMENT

International environmental treaties are addressed to States, who in turn address some of the obligations contained therein to natural or corporate persons in their domestic legislation. Besides domestic environmental legislation, no other instrument legally binds corporations in environmental matters, and the situation is similar to that described with regard to human rights and labor rights in the previous sections.²³ The primary objective of the "soft law" analyzed in this article that is addressed to States, corporations, civil society, and intergovernmental organizations is that of sustainable development.²⁴ The concept essentially means that the pursuit of economic objectives should coincide with environmental and social growth.²⁵ Environmental considerations are integrated into the policy of

²³ DAVID VOGEL, *THE MARKET FOR VIRTUE: THE POTENTIAL AND LIMITS OF CORPORATE SOCIAL RESPONSIBILITY* 9 (2005).

²⁴ Cynthia A. Williams, *The Securities and Exchange Commission and Corporate Social Transparency* 112 HARV. L. REV. 1197, 1223-26 (1999).

²⁵ Phillippe Sands, *International Law in the Field of Sustainable Development*, 65 BRIT. Y.B. INT'L L. 303, 318 (1994).

the WTO and increasingly into the decisions of its Appellate Body seeking to respect non-trade priorities.²⁶ While the vast majority of MNEs have incorporated environmental perspectives into their business codes, these are not necessarily aimed at sustainable development, but may have to do with the environmental exigencies of a particular investment project. CSR-related sustainable development is reinforced through the lending or insurance mechanisms of inter-governmental institutions, and is also prominent in the OECD Guidelines, the Global Compact, and Agenda 21, among others.²⁷

PART III. ENFORCEMENT OF CSR UNDER INTERNATIONAL LAW

CSR is akin to a voluntary assumption of obligations toward stakeholders; external enforcement mechanisms would seem to be redundant. Some of the enforcement mechanisms are mentioned below.

[A.] VOLUNTARY SOCIAL REPORTING

The two major public international CSR guidelines, the UN Global Compact and the OECD Guidelines, do not themselves contain a particular reporting mechanism to which corporations are invited to subscribe. Nonetheless, the Global Compact requires that participating companies publish in their annual report (or similar corporate report) a “description of the ways in which [they are] supporting the Global Compact and its nine principles,” advocate the principles at the same time through other public communication vehicles, and incorporate them at the management level.²⁸ Corporations are further encouraged to attend the Compact’s Global Policy

²⁶ Terra Pfund, *Corporate Environmental Accountability: Expanding SEC Disclosures to Promote Market-Based Environmentalism*, 11 MO. ENVTL. L. & POL’Y REV. 118, 119 (2004).

²⁷ Erik Assadourian, *The State of Corporate Responsibility and the Environment*, 18 GEO. INT’L ENVTL. L. REV. 571, 593 (2006).

²⁸ Ralph Luken & Rodney Stares, *Small Business Responsibility in Developing Countries: A Threat or an Opportunity?*, 14 BUS. STRATEGY AND ENV’T 38, 43-52 (2005).

Dialogues, establish local promotional structures, share their knowledge and experience, and establish partnership projects with UN agencies and civil society organizations that are aligned with UN development goals. The OECD Guidelines similarly promote high quality standards for disclosure, accounting, and audit of financial and non financial information, all of which should be publicly reported. This concept includes information relating to corporate governance structures, company objectives, share ownership, and voting rights.²⁹

[B.] CSR INTEGRATED MANAGEMENT AND CORPORATE GOVERNANCE

Since CSR is founded on the reasoning that the company owes duties not only to its shareholders but also its stakeholders, it follows that corporate governance structures and management regimes that accommodate the former to the detriment of the latter must be replaced. Contemporary corporate governance, whether law-based or otherwise, requires transparency with regard to major share ownership and voting rights, independence of board members and key executives, precise information on their remuneration, and consultation with stakeholders and others.³⁰

The necessity of such transparency is confirmed not only by recent corporate scandals, but has even prior to these been incorporated into major international initiatives, particularly the 1999 OECD Principles of Corporate Governance, and the OECD Guidelines for MNEs, which adopt the corporate governance provisions of the Principles.³¹ The OECD Corporate Governance

²⁹ Diana C. Robertson & Nigel Nicholson, *Expressions of Corporate Social Responsibility in U.K. Firms*, 15 J. BUS. ETHICS 1095, 1098 (1996).

³⁰ Joseph E. Stiglitz, *Regulating Multinational Corporations: Towards Principles of Cross-border Legal Frameworks in a Globalized World: Balancing Rights with Responsibilities*, 23 AM. U. INT'L L. REV. 451 (2008).

³¹ Veronica Besmer, Note, *The Legal Character of Private Codes of Conduct: More Than Just a Pseudo-Formal Gloss on Corporate Social Responsibility*, 2 HASTINGS BUS. L.J. 279, 291-92 (2006).

Principles moreover, encourage member States to provide effective redress for violation of stakeholder rights where these are protected by law.

Ultimately, the adoption of a CSR approach requires that it become an integral part of corporate strategic planning and routine operational performance.

[C.] A MARKETING APPROACH TO VOLUNTARY COMPLIANCE

Corporations are not philanthropic institutions, even if at times they purport to also serve that function.³² Not only have they never led social or environmental developments, they have been the prime beneficiaries of the evils associated with colonialism and oppression in the developing world. Why give it up when you can have it on the plate? Law cannot adequately explain the voluntary drive towards CSR, nor the strategic marketing choices associated with it. While most choices are driven by market forces, others are premised on optimal productivity indicators.³³

Exposure of a corporation's egregious social or environmental record to public attention is often followed by brand image deflation (which frequently results in reduction of sales), a drop in share price and loss of share confidence, difficulties in attracting investment, possible law suits, and other negative effects. The relationship, therefore, between a good brand image or profile and CSR is apparent.³⁴ This has given rise to a marketing mechanism that maximizes good brand image, so-called Cause-Related Marketing (CRM). Cause-related marketing is "[a] commercial activity by which businesses and charities or good causes form a partnership with each other to market an image,

³² Thomas McInerney, *Putting Regulation Before Responsibility: Towards Binding Norms of Corporate Social Responsibility*, 40 *Cornell Int'l L.J.* 171, 172, 184-90 (2007).

³³ *Id.*

³⁴ Lisa M. Fairfax, *Easier Said Than Done? A Corporate Law Theory for Actualizing Social Responsibility Rhetoric*, 59 *FLA. L. REV.* 771, 773-75 (2007).

product or service for mutual benefit.”³⁵ Most, if not all, MNEs are now associated with independent charitable organizations, or similar foundations which they have established.³⁶

PART IV. CSR AND INTERNATIONAL INITIATIVES

[A.] CSR INITIATIVES OF GENERAL APPLICATION

[I.] THE OECD GUIDELINES FOR MNEs

Initially drafted in 1976, the OECD Guidelines for Multinational Enterprises (“OECD Guidelines” were the first intergovernmental CSR initiative of general application aimed at multinational enterprises (“MNEs”). Updated in 2000, the OECD Guidelines are extremely broad in scope. Incorporating the 1999 OECD Principles of Corporate Governance, the OECD Guidelines purport to apply to “all major areas of business ethics, including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition and taxation.”

The OECD Guidelines are directed primarily towards OECD member-states – including Canada – and provide guidance as to how national policies ought to contemplate the regulation of MNEs that are nationals of such states. Their most distinctive feature is that they are the only international CSR initiative that obliges member-states to monitor their implementation. This is done through what are called National Contact Points. These are government offices charged with promoting the OECD Guidelines and handling enquiries and complaints at the domestic level.

³⁵ DAVID HESS, CORPORATE SOCIAL RESPONSIBILITY AND THE LAW, IN CORPORATE SOCIAL RESPONSIBILITY 154 (José Allouche ed., 2006).

³⁶ CHRISTOPHER D. STONE, WHERE THE LAW ENDS: THE SOCIAL CONTROL OF CORPORATE BEHAVIOR 3 (Waveland Press, Inc. 1991).

Given their broad scope, the OECD Guidelines are also generally seen by industry as too generic to be of much practical value. For example, in their section dealing with environmental concerns, the OECD Guidelines call upon MNEs to “establish and maintain a system of environmental management appropriate to [their specific circumstances],” and to “provide adequate education and training to employees in environmental health and safety matters.” As it would be impossible for such a document to detail exactly what would be an “appropriate” environmental management system for all MNEs, or similarly what level of environmental training would be “adequate”, it is equally impossible for the Guidelines to be translated directly into practical directions for MNEs on how to conduct their operations, let alone into legally binding rules.

[II.] THE ILO TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING MULTINATIONAL ENTERPRISES AND SOCIAL POLICY

Stemming as it does from an organization with a more narrow mandate, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (“Tripartite Declaration”) is somewhat more focused than the OECD Guidelines. Developed in 1977, the Tripartite Declaration focuses exclusively on issues pertaining to employment and industrial relations.

Like the OECD Guidelines, the Tripartite Declaration – together with its supplement, the 1998 Declaration on Fundamental Principles and Rights at Work – is directed first-and-foremost towards member-states, and focuses on how their policies ought to contemplate the regulation of MNEs to better respect the interests of labour. Also like the OECD Guidelines, the Tripartite Declaration is a largely hortatory document that espouses broad-sweeping and general principles – principles that provide little by way of concrete guidance to MNEs on how to conduct their business overseas.

For example, the Tripartite Declaration states as follows: “Multinational enterprises, particularly when operating in developing countries, should

endeavour to increase employment opportunities and standards, taking into account the employment policies and objectives of the governments, as well as security of employment and long-term development of the enterprise.”

While laudable in intent, the ambiguity of such statements does little to clarify the concrete steps that MNEs might take to achieve this goal. Unfortunately, such ambiguity is an inherent and inescapable aspect of all international Declarations. Indeed, this is in part why such instruments are not intended to be legally binding in the first place.

[C.] THE UN GLOBAL COMPACT

In contrast to the OECD Guidelines and the ILO Tripartite Declaration, rather than addressing MNEs only through the intermediary mechanisms of nation-states, the U.N. Global Compact purports to apply to MNEs directly.³⁷ Launched at the behest of U.N. Secretary General Kofi Annan in 2000, the Global Compact draws from the aforementioned declarations – together with the Rio Declaration on Environment and Development – and invites MNEs to observe ten guiding principles ranging from matters concerning human rights, environmental protection, labour rights and anti-corruption within their respective “spheres of influence”. The Global Compact further invites MNEs to use its institutional framework to engage in constructive dialogue and interactive learning with governments and NGOs.

Like the OECD Guidelines and ILO Tripartite Declaration, the Global Compact provides little by way of ready-made and concrete guidance to MNEs in terms of what specifically they can do to render their operations more sustainable. Indeed, the text of the Global Compact is so minimalist that – without any further elaboration – it simply calls upon MNEs to, for example, “support and respect the protection of internationally proclaimed human rights” and “undertake initiatives

³⁷ RAISING THE BAR: CREATING VALUE WITH THE UNITED NATIONS GLOBAL COMPACT 22 (Claude Fussler et al. eds., 2004).

to promote greater environmental responsibility.”The intent is clearly not to provide detailed guidelines as to how MNEs might accomplish these goals; rather, it is simply to invite them to engage in a wider process by which they might learn how to translate for themselves such general principles into more specific programs of action.

[D.] THE U.N. NORMS ON THE RESPONSIBILITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH REGARD TO HUMAN RIGHTS

The U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (“U.N. Norms”) is a recent and extremely controversial document drafted by the U.N. Sub-Commission on the Promotion and Protection of Human Rights.³⁸ While much of their content echoes and consolidates wide-ranging principles espoused by already existing international human rights documents, the U.N. Norms also go well beyond established international human rights law.³⁹ They do so by outlining an incredibly broad set of the rights MNEs are called upon to safeguard; indeed, it might be argued that they stretch the boundaries of what constitutes a ‘human right’ beyond all recognition.⁴⁰

As with all other international CSR initiatives, the U.N. Norms make ample room for such generalities, yet are considerably more parsimonious when it comes to specifics on how to put them into practice.⁴¹ While the U.N. Norms are replete

³⁸ Fleur Johns, *The Invisibility of the Transnational Corporation: An Analysis of International Law and Legal Theory*, 19 MELBOURNE U. L. REV. 893, 900 (1994).

³⁹ NICOLA JÄGERS, CORPORATE HUMAN RIGHTS OBLIGATIONS: IN SEARCH OF ACCOUNTABILITY 30-32 (2002).

⁴⁰ Jane C. Hong, *Enforcement of Corporate Codes of Conduct: Finding a Private Right of Action for International Laborers Against MNCs for Labor Rights Violations*, 19 WIS. INT’L L.J. 41, 52 (2000).

⁴¹ M. ADDO, HUMAN RIGHTS STANDARDS AND THE RESPONSIBILITY OF TRANSNATIONAL CORPORATIONS (Boston: Kluwer, 1999).

with substantive provisions such as these, their most controversial feature is a procedural one: specifically, the U.N. Norms attempt to force MNEs to incorporate their terms into their contractual undertakings with one another – in effect bypassing the traditional primacy of state sovereignty in international law. This represents an unprecedented innovation in international law – one that has generated a significant amount of controversy. Due to such expansive and controversial provisions, it is important to note that the U.N. Norms remain only a draft document, and one with a seemingly bleak future at that. Indeed, it would appear that they will neither be endorsed by the U.N. Commission on Human Rights (“UNCHR”), nor by consequence by the U.N. Economic and Social Council, at least not in their current form.

[E.] THE INTERNATIONAL FINANCE CORPORATION’S PERFORMANCE STANDARDS ON SOCIAL AND ENVIRONMENTAL SUSTAINABILITY

A still more recent approach to the regulation of MNEs may be found in the IFC’s Performance Standards on Social and Environmental Sustainability (‘Performance Standards’), which were updated on April 30, 2006. These are standards the IFC applies to all the projects it finances – projects aimed at promoting sustainable private sector investment in developing countries .Central to the Performance Standards is the requirement for those companies that receive financing from the IFC to develop a “social and environmental assessment and management system” (“EMS”). This EMS must be “appropriate to the nature and scale of the project and commensurate with the level of social and environmental risks and impacts.”

While this is reminiscent of similarly vague provisions in the OECD Guidelines, the Performance Standards go into considerably greater detail as to what such systems might entail. For example, they must include a consideration of risks and impacts of a particular project. Furthermore, such considerations must accord to the project’s “area of influence” over “key stages of the project

cycle, including preconstruction, construction, operations, and decommissioning or closure.

PART V. CSR AND WORLD ECONOMY RESPONSE

This part will analyze the response of the world leading economies towards the CSR Principle.

[A.] UNITED STATE OF AMERICA

Traditionally, U.S. executives favored "leadership and vision, knowledge, and quality" over the triple-bottom-line attention to environmental, financial, and social credibility given higher significance by their European counterparts.⁴² Accordingly, in Europe, "CSR has focused on the environmental and social impact of companies' business functions," whereas in the United States, CSR historically was seen as mainly "donations to social and artistic causes and other such acts of corporate philanthropy."⁴³ As regards codes of conduct, the United States shows considerable leadership. But as for legal developments underpinning the CSR principles, it has lagged behind the European Union and its member states, undoubtedly due in part to the more individualist form of liberal capitalism practiced in the United States.⁴⁴

This situation is evolving. When a company the size and complexity of General Electric, with over 300,000 employees and a vast range of businesses that in many ways reflect the global economy, commits itself to the Universal Declaration of Human Rights, and decides to audit and verify that commitment in conformity with its own world-class operational reviews and metrics, that decision ripples throughout the U.S. and global economies. CSR is spreading

⁴² Ravid Donse, *The Measure of Things: Surveys on Corporate Citizenship*, 11 J. CORP. CITIZENSHIP 18 (2003)

⁴³ *Id.*

⁴⁴ PETER A. HALL & DAVID SOSKICE, *VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE* 345(2001).

widely and endorsed to one degree or another by the major U.S. companies and a surprising number of small to medium-sized firms, it is understood in very different ways at this point, with the lowest common denominator being simple philanthropy. U.S. businesses as a whole still have a long way to go to truly understand and effectively apply CSR principles. Still, the longest journey begins with a first step, and more and more companies have taken it.

[B.] EUROPEAN UNION

The European Union's commitment to CSR is globally significant. As the largest market in the world, with correspondingly greater powers to dictate rules,⁴⁵ the source of most of the world's foreign investment, and a community built explicitly on a blend of market and social values, the European Union's standards, requirements, and expectations influence companies and suppliers from every region. That can be affirmed even before considering the European Union's role as the largest source of development assistance globally, including significant aid and technical assistance specifically aimed at promoting CSR and sustainable development. At least with regard to CSR, the European Union has more influence and "soft power" than the United States.

The next frontier in Europe is enhancing accountability for corporations in light of the detour taken by the Green Paper's 2001 emphasis on voluntary aspects of CSR. However, substantial pressure is being exerted both within the official European bodies and by the European Parliament,⁴⁶ and by civil society organizations, such as the European Coalition for Corporate Justice, to enhance the ability now existing in theory under the Brussels Convention to hold European companies accountable for harms caused abroad. Some existing legal rules and practices, such as the "loser pays" rule in lawsuits and the fact that contingency

⁴⁵ ALBERT O. HIRSCHMAN, NATIONAL POWER AND THE STRUCTURE OF FOREIGN TRADE (Berkeley: Univ. Of California Press, 1945).

⁴⁶ See Resolution of 13 March 2007 on Corporate Social Responsibility: A New Partnership, EUR. PARL. DOC. P6_TA(2007)0062, ¶¶ 27, 29, 37 (2007).

fees are disfavored outside of the United Kingdom, serve to temper litigation in Europe. Yet other pressures combined with the continental reluctance to block lawsuits using procedural rules such as *forum non conveniens*⁴⁷ make it likely that the future will bring more lawsuits in the European Union to enforce notions of corporate accountability.

[D.] INDIA

Companies in India also show increasing enthusiasm for CSR. Precedents such as the long-standing mandatory environmental reporting⁴⁸ and the support for the precautionary principle by the Supreme Court of India undoubtedly prepare the ground. But the Indian concept of CSR nevertheless remains somewhat thin, being associated mainly with corporate philanthropy and voluntary community investment, including such activities as digging wells, planting trees, health clinics in partnership with the government, and training youth. This is the usual starting point in most countries.

One recent estimate is that many large businesses in India dedicate about a half-percent of profits to charity and consider it to meet their CSR commitment. Some industries, such as the publicly owned steel companies, reportedly earmark 2% to CSR, focusing in areas such as "environment, family welfare, education, health, cultural development as well as building social infrastructure, water supply and sanitation activities." The "CSR as charity" approach is changing as Indian businesses include new world-class competitors. A University of Nottingham study found that Indian businesses were the most likely in Asia to engage in CSR reporting on their websites, with globally active companies being the most likely

⁴⁷ Id.

⁴⁸ The Companies Act, 1956, No. 1, Acts of Parliament, 1956. The Board of Directors Report, attached to every balance sheet tabled at a company annual general meeting, must contain information on energy conservation. at § 217(1)(e).

to report, despite India's economy being driven more by domestic demand than, say, China's economy.

The increasing share of global manufacturing being taken up by Indian suppliers also drives CSR in India, as they cooperate with the Indian government, home country governments, such as the U.S. State Department (which invests in "social compliance" in Indian supply chains), and major TNCs to receive training on codes of conduct and more sophisticated understandings of the human rights and environmental requirements. Of course, there are also countervailing pressures on suppliers from TNCs and domestic companies to cut corners, and in keeping with the CSR principles these should be viewed critically.

The top Indian government officials now support CSR as a "basic competitive requirement" for successful participation in the global economy, and Indian chambers of commerce and industry associations show similar enthusiasm (spurred on by the burgeoning number of Indian and foreign consultants offering CSR services of various sorts).⁴⁹ Indian Prime Minister Dr. Manmohan Singh publicly endorsed CSR in a speech before the Confederation of Indian Industry annual meeting in 2007, including calling for business, among other things, to share the benefits of economic growth, factor in community needs, engage in affirmative action for women and minorities, adopt more caring policies for workers, engage in environmental sustainability, and avoid corruption.⁵⁰

The Prime Minister, Finance Minister, and business leaders continue to carry this message forward.⁵¹ At the time of writing, nearly 200 Indian companies, trade

⁴⁹ See, e.g., Chidambaram Asks Industry to Help Inclusive Growth, ECON. TIMES (India), May 16, 2008, available at http://economictimes.indiatimes.com/News/Economy/Indicators/Let_the_rupee_appreciate_to_check_inflation/articleshow/articleshow/3047073.cms. (Last accessed on 17 October, 2009).

⁵⁰ Manmohan Singh, Ten Point Social Charter, FIN. EXPRESS (India), May 25, 2007, available at http://www.financialexpress.com/old/latest_full_story.php?content_id=165194. Last accessed on 6 October, 2009).

⁵¹ Id.

associations, and civil society organizations participate in the U.N. Global Compact. Nevertheless, serious child labor, other labor, environmental, health and safety violations persist in India, especially among the less globally integrated small- to medium-sized businesses and in the informal sector.

PART VI. CONCLUSION

The rise of voluntary CSR initiatives has been meteoric. As the CSR market matures, it would be advisable for MNEs to assess the extent to which voluntary initiatives are being promulgated in ways that best serve the needs of the business community and society at large. Piecemeal attempts to improve performance in particular sectors, while leading to positive improvements, are unlikely to fully serve those needs, nor are very general, broad-brush initiatives that set out a loose framework for the consideration of CSR values by MNEs.

In relation to both the OECD Guidelines, formal enforcement mechanisms would benefit both legal instruments and the accountability of MNEs that have adopted the Guidelines, and would enhance the robustness of the rules provided. On the other hand, formal legal redress substantially may discourage adoption of the Guidelines. A fundamentally different approach to CSR that accrues benefits not just to its stakeholders but to the company itself should be implemented. If properly done, this would have the effect of encouraging MNEs to engage in more extensive CSR activities to improve shareholder value and create net gains for the external beneficiaries of CSR.

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