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Corporate Responsibility and Regulating the Global Enterprise

*John G. Scriven**

I. INTRODUCTION

As anyone can see from the commentary attached to this Panel, there can be strong views of a negative nature regarding multinational enterprises (“MNEs”) and their conduct. We have recently witnessed violent demonstrations in the United States and Italy, which were essentially directed against the current form of the global economy and the role of MNEs.¹ What truly motivates these demonstrators is not entirely clear, except that they feel a deep frustration with the position the world is in today.

It is also probably worth remembering that there has been, in the last generation, a profound change in the political context of the global economy. Much of the earlier negativism towards MNEs grew out of a socialist view of economics and trade, which arose after the Second World War with the collapse of colonial power and the rise of the non-aligned movement. What might be called Marxist socialism is for the present discredited; yet many people believed in those concepts and feel the frustration of their failure.

The answer to the question of how a MNE should behave responsibly in the global economy is colored by each commentator’s personal view of politics, economics, and social issues, yet it might also be answered by a simple one-liner.

II. THE TWENTY-FIRST CENTURY CONTENT

The year 2001 is already the subject of much discussion and debate. Some of the events of that year will probably have a lasting impact on people’s lives and the way we do business. For the purpose of our discussion on corporate responsibility, I would like to mention just three of them—all rather obvious.

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1. See CNN, *Dozens Arrested at WTO Protest in Seattle*, at <http://euopre/cnn.com/2000/US/12/01/wto.anniversary.demo.02> (Dec. 1, 2000) (copy on file with *The Transnational Lawyer*); see also World Trade Organization, *Italy Grapples with Aftermath of Violence*, at <http://www.globalexchange.org/wto/financialtimes072301.html> (July 19, 2003) (copy on file with *The Transnational Lawyer*).

A. Global Industry Consolidation

Firstly, many national and regional economies within the global trading system have been in or touched by recession.² This has had the effect of encouraging consolidation within global industries. Examples exist in telecommunications, airlines, chemicals, and oil, as all these industries saw major consolidations certainly affecting the two major regional markets—North America Free Trade Area (NAFTA) and the European Union (EU). These consolidations have the obvious effect of throwing many people out of what they thought were secure jobs, thrusting them into the employment market. However, these consolidations must, I would anticipate, make it harder for new entries into those industries, particularly for those coming from less developed and under developed countries.

The consolidation phenomenon has also created great strain on the regional agencies that oversee competition law within the global economy.³ The application of rules for the protection of competition has never been entirely independent of the political process, and as the various economies of the world have become 'out of sync'—so to speak—the coordination of competition law enforcement by regional authorities is more difficult. We have seen this with Boeing/Airbus, Microsoft, and GE/Hewlett-Packard in the last few months. In all these cases, despite the profound cooperation and communication that exist between the United States and European competition authorities, we saw how different the outcome could be in what appeared to be industries operating in truly global markets.

B. China's Entry into the World Trade Organization (WTO)

As industrial consolidation has continued, we have had a major development in the consolidation of the global economy. That is, of course, the entry of both the People's Republic of China and Taiwan into the World Trade Organization (WTO).⁴ The entry of these two economic powers into the global economy will not only have a profound impact on their neighbors in Southeast Asia, but will provoke significant internal changes in the economy and the behavior of corporation-like institutions in Mainland China which are relevant for the subject of corporate responsibility.

2. For a discussion of the effect of the global recession, see Michael Mussa, *Prospects for the World Economy: From Global Recession to Global Recovery*, at <http://www.iie.com/policybriefs/news02-2.htm> (last visited Feb. 19, 2003) (copy on file with *The Transnational Lawyer*).

3. See *International Competition Network: European and the U.S. Search for Agreement*, EURO. NEWSL., Nov. 16, 2001.

4. See China Officially Joins WTO, CNN, at <http://www.cnn.com/001/WORLD/asiapcf/central/11/10/china.WTO/index.html> (last visited Feb. 13, 2003) (copy on file with *The Transnational Lawyer*).

Not only must China truly privatize its industries and allow a free flow of foreign investment, but it must also remove what might be called negative elements from its existing corporate institutions. In particular, it will no longer be proper for the People's Liberation Army and other state agencies to invest in private enterprise. Dealing with this issue and the attendant problems of corruption will not be a simple task for the Chinese government, if only because so many officials and politicians in China have benefited from the existing system.⁵

But it is not only the Chinese government that will have to act to open its economy for investment, eradicate corruption, and enforce laws for the protection of intellectual property. Some established members of the WTO must do the same. India has been tolerating for many years the abuse of its anti-dumping laws by its citizens to keep out foreign competition. It has also failed to deal with the problem of corruption in federal and state governments, which inhibits foreign investment in India. Nevertheless, what is good for China and India is also good for North America and Europe where the anti-dumping rules and technical regulation have been used have been used to protect weak industries.

C. International Terrorism

The third significant development of 2001 was the demise of the world's only super-power. The outrages of September 11, 2001 have shown, amongst other things, that there are some world events where the power of the United States is not sufficient and the help of friends and even its former enemies is required. The establishment of a coalition was both a practical and political necessity in fighting international terrorism. The consequences of establishing that coalition have yet to be seen in full. Certainly, we can assume that states like Pakistan, and other entities such as the Palestine Administration, can look forward in future to far greater financial and political support from the United States and Europe; this despite the fact that both Pakistan and the Palestine Administration are among the most corrupt and undemocratic states on the globe.⁶

The same is true for Indonesia and many of the countries in and around the Arabian peninsula. What are their respective commitments to the establishment of democratic institutions, the elimination of corruption or the enforcement of environmental protection or competition regulations?

On the other hand, will an American political system, traditionally focused on domestic issues, have the long-term will to see through the commitments now being made in the fight against terrorism?

5. See Dr. Cyril Lin, *Private Vices in Public Places: Challenges in Corporate Governance Development in China* (2001), available at <http://www.oecd.org/pdf/M000015000/M00015772.pdf> (copy on file with *The Transnational Lawyer*).

6. See U.S. Department of State, *Bush-Musharraf Talks to Focus on Terrorism, Aid, Other Issues*, at <http://usinfo.state.gov/topical/pol/terror/02020816.htm> (last visited Feb. 13, 2003) (copy on file with *The Transnational Lawyer*).

The foregoing touches on some of the current developments that affect the circumstances in which the managers of a modern global corporation must lead their colleagues and serve their shareholders.

III. THE REGULATORY ENVIRONMENT

In the minds of most corporate executives the issues of corporate responsibility and corporate governance commingle.⁷ It has been suggested that corporate governance means both: (a) the relationships and ensuing patterns of behavior between different agents in a limited liability corporation, the way managers and shareholders, but also employees, creditors, key customers, and communities interact with each other to form the strategy of the company—the behavioral side of corporate governance; and (b) the set of rules that frame those relationships and private behaviors; thus shaping corporate strategy, such as company law, securities regulation, and also private self-regulation—the normative side of corporate governance.

Although corporate governance is, as I will discuss later, a key focus for modern managers in a commitment to corporate responsibility, it is not the whole story. Governance is essentially internal. Many issues related to corporate responsibility are external. Good examples are environmental protection, competition and the treatment of employees. These issues are dealt with in specific laws, whereas the main issue from a governance perspective is full and transparent compliance.

However, the emergence of the MNE in a world of regional economies that are steadily becoming more globalized provoked profound concerns in some communities and countries, that in the absence of global regulation MNEs might use their capacity of regulatory arbitrage between national systems to escape national requirements; or might use their power to shift resources in a way which might unduly hurt some economies in which they operate; or might engage in practices that many find wanting in terms of fairness, equity or simple morals.⁸ MNEs are both global and local citizens and are increasingly expected to act as such by the key constituencies upon which they depend.⁹

The major areas of focus for corporate responsibility can be categorized under the following issues:

Disclosure—transparent and full reporting and accounting practices;

Environmental Protection—which may be absorbed in the concept of sustainable development;

7. See *Corporate Citizenship*, at http://www.pg.com/about_pg/corporate/corp_citizenship_main.jhtml (last visited Feb. 3, 2003) (copy on file with *The Transnational Lawyer*); see also *Sustainable Development and Dow*, at http://dow.com/susdev/sd_dow/index.htm (last visited Feb. 3, 2003) (copy on file with *The Transnational Lawyer*).

8. For a further discussion on regulatory arbitrage, see Douglas M. Branson, *The Social Responsibility of Large Multinational Corporations*, 16 *TRANSNAT'L LAW* 121 (2003).

9. See *id.*

Employment—including child and slave or forced labor;

Corruption—which may address the behaviors of both private individuals and corporations and public officials;

Competition—which includes the issues of proper protection of consumer interests and the wider spread of science and technology; and

Corporate Governance—both in the developed and developing economies.

A. *The Supranational Context*

In terms of output and precision, the most comprehensive body of regulatory norms has issued from the Organisation for Economic Cooperation and Development (OECD). Although that body's membership consists of the twenty-nine countries with the most developed economies and a commitment to free-market economics and democratic rights, its positions on the subject of MNE corporate behavior, however well intentioned, are not necessarily well received by counties with under developed or less developed economies or perhaps less than democratic systems of government.¹⁰

This overview is not the place to discuss any regulations or guidelines in detail, but some reference to such is appropriate. Perhaps a key document is the recently updated and revised Guidelines for Multinational Enterprises (Guidelines) issued by the OECD.¹¹ The Guidelines' general policies provides a template for what many leaders in the world's great democracies think should be the goal of responsible corporate behavior. For example, enterprises should take fully into account established policies in the countries in which they operate and consider the views of other stakeholders. In this regard, enterprises should:

1. Contribute to economic, social, and environmental progress with a view to achieving sustainable development. ("Sustainable development" means for the OECD in this context "[d]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs.");
2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments;
3. Encourage local capacity building through close cooperation with the local community, including business interests;

10. *See id.*

11. *See The Guidelines for Multinational Enterprises: Ministerial Booklet, available at www.oecd.org (June 27, 2000) (copy on file with *The Transnational Lawyer*).*

4. Encourage human capital formation—employment and training locally;
5. Refrain from seeking exemption from host country legislation and regulations;
6. Good corporate governance behavior;
7. Establish voluntary practices that establish trust and confidence with local communities;
8. Promote employee awareness of and compliance with company policies;
9. Refrain from disciplinary or discriminatory action against bona fide whistleblowers;
10. Encourage business partners to adopt principles of corporate conduct compatible with the Guidelines; and
11. Abstain from any improper involvement in local political activities.

These Guidelines are intended to be non-binding in a legal sense. As the commentary states: “Obeying domestic law is the first obligation of business. The Guidelines are not a substitute for nor should they be considered to override local law and regulation. They present supplementary principles and standards of behavior of a non legal character.”

It goes on to state that MNEs should cooperate with governments in the development and implementation of laws. It also anticipates that there will be no contradiction between the activities of MNE’s and sustainable development.

Since the OECD is at pains to emphasize the voluntary nature of the Guidelines, it has adopted a procedure in June 2000 for the monitoring by national governments of the implementation of the particulars of the Guidelines in member countries.

Supplementing the Guidelines for MNEs, the OECD has published what it calls *Principles of Corporate Governance*, which of course, focus on the internal aspects of corporate behavior.¹²

The principles cover five aspects of governance: the rights of shareholders, the equitable treatment of shareholders, the role of stakeholders, disclosure and transparency, and the responsibilities of the board.

These are not particularly surprising categories to those of us living in the United States or the European Union. Problems of transparency are very relevant today with the collapse of famous companies like Enron and Swissair.¹³ And this aspect of openness is at the heart of the principles.

12. See *OECD Principles of Corporate Governance*, available at www.oecd.org/documentation (May 26, 1999) (copy on file with *The Transnational Lawyer*).

13. See John Rossant et al., *The Corporate Clean-Up Goes Global*, at http://www.businessweek.com/magazine/content/02_18/b3781709 (May 6, 2003) (copy on file with *The Transnational Lawyer*).

The principles are intended to assist Member and non-Member governments in their efforts to evaluate and improve the legal, institutional, and regulatory framework for corporate governance in their countries and to provide guidelines and suggestions for stock exchanges, investors, corporations, and others who are interested in the process of developing good corporate governance.

As with the Guidelines to MNEs, the OECD is at pains to emphasize the responsibility of national governments in establishing the legal framework for good corporate governance. Completing this OECD supranational framework for good corporate responsibility is the OECD *Convention on Combating Bribery of Public Officials*,¹⁴ which entered into effect in February 1999. The Convention along with the Recommendation on Combating Bribery in International Business Transactions of 1997 and the Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials of 1996 essentially achieve the same objectives as the Foreign Corrupt Practices Act and related U.S. legislation. Since the Convention has been signed by thirty-four countries, the playing field for U.S. corporations has in this respect become a bit more level.

The anti-bribery Convention of the OECD is supplemented by the United Nations Declaration against Corruption and Bribery in International Commercial Transactions of 1996,¹⁵ which is quite similar in substance to the Convention.

In addition, there are supranational positions taken to support sustainable development such as the Rio Declaration on Environment and Development of June 1992 by the United Nations Conference on Environment and Development and the Kyoto Protocol on global warming.¹⁶ All the above are some of the main principles at the supranational level by which companies in the discharge of their corporate responsibility will be measured.

B. The National Context

Beneath this there exists a mass of modern national legislation in the United States, the European Union, and other developed countries that defines each state's expectations of corporate behavior and the consequences for failure to live up to those expectations. Such legislation mirrors the 'wish-list' of the Guidelines for MNEs and has been usually in advance of it. From the days of the Sherman Act at the turn of the last century right through the Securities and Exchange Commission of the thirties and the establishment of the Environmental Protection

14. See *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Instruments*, available at www.oecd.org/documentation (copy on file with *The Transnational Lawyer*).

15. See *Declarations Against Corruption and Bribery in International Commercial Transactions*, U.N. G.A.O.R., 51st Sess., 86th mtg., U.N. Doc. A/RES/51/191 (1996), available at www.un.org/documents/ga/res/51/a51r191.htm (copy on file with *The Transnational Lawyer*).

16. See *Report of the U.N. Conference on Environment and Development*, U.N. Doc. A/Conf.151/26 (vol. I) (1992), available at www.un.org/documents/ga/conf151/aconf15126-1annex1.htm (copy on file with *The Transnational Lawyer*).

Agency (EPA) by the Nixon Administration¹⁷ and the Civil Rights legislation, the United States has been at the forefront of establishing ever higher parameters for corporate behavior. Many other states have followed the U.S. lead. So there is now a huge body of law in the United States and Europe which deals with the environment, employee protection, competition, shareholder rights, and public disclosure.

Sometimes these laws are conflicting or not quite the same in different countries. The United States has for sometime had a tendency to try to legislate for the world. Since at least the time of Judge Learned Hand's decision in the *Alcoa*¹⁸ case, the United States has followed an extraterritorial approach, unusual in countries with common law tradition.

This has created problems for the United States and its corporations. The boycott legislation of the Reagan era, which sought jurisdiction over foreign subsidiaries of U.S. corporations, created resentment and pushback from European allies, especially in the case of the so-called Russian pipeline boycott.

There have been recent conflicts in the competition law area between the European and U.S. competition authorities; examples are the *Boeing* and *GE/Honeywell* cases.¹⁹ There are conflicting approaches to environmental protection in [say] Germany, Holland, and the United States. Disclosure issues have long been a source of controversy between various states.

In some of these areas we see a convergence in the substance of legislation. As global financial markets become established, the accounting and disclosure rules become more consistent. There are initiatives in place to develop a common approach to the regulation of mergers and the break up of cartels. The OECD has again taken the lead with the recent creation of the International Competition Network, which brings together the European Competition Commissioner and his NAFTA counterparts.²⁰

The U.S. Justice Department is trying hard to have Europe do things the U.S. way. Perhaps one of the consequences of September 11th and the emergence of the global marketplace with economies in Europe and China at least potentially as strong as that of the United States will mean that America will have to adopt a more consensual approach to its initiatives in a number of areas, including that of corporate responsibility.

17. See *Kyoto Protocol to the U.N. Framework Convention on Climate Change*, available at <http://unfccc.int/resources/docs/convp/kpeng.html> (last visited Feb. 9, 2003) (copy on file with *The Transnational Lawyer*).

18. See *Alcoa Steamship Co. v. U.S.*, 175 F.2d 661 (1949).

19. See Dimitri Giotakos, *Can We Regulate Competition Internationally? A Case Study of the Attempted GE/Honeywell Merger*, 23 U. PA. J. INT'L ECON. L. 469 (2002); see also Eric S. Hochstadt, *The Brown Show of European Union Competition Law*, 24 CARDOZO L. REV. 287 (2002).

20. See Memorandum on the Establishment and Operation of the International Competition Network, available at <http://www.internationalcompetitionnetwork.org/mou.pdf> (last visited Feb. 10, 2003) (copy on file with *The Transnational Lawyer*).

It remains to be said that there are many countries where the basic institutional and legal frameworks are incomplete or non-existent. The recent problems with governance in the Bank of China is a striking example. To the credit of the Chinese government, there is now in some instances a requirement to use one of the big five global auditing firms in addition to a local one in performing audits in China.²¹

IV. THE PERSPECTIVE OF THE CORPORATION

Today in every boardroom around the world there must be plenty of discussion on the issues of corporate responsibility. The collapse of Enron, the fourth largest corporation in the United States, with all the attendant scandals is exciting intense public scrutiny not only of the corporate processes, but the public and political processes as well.²²

How could this come to pass in a country so highly regulated in the area of financial control? Perhaps one answer is that the financial world has become so complex that no government can find the resources sufficient to monitor it effectively so that the system relies for all practical purposes on self-regulation and the threat that random exposure brings.

The problems of Enron in the United States are mirrored in less dramatic style in Europe and Asia. How could the collapse of so prestigious an airline as Swissair happen to the surprise of so many? The answer again was a failure of the corporate governance systems. Additionally, the oversight authorities and financial control regulations are not so ubiquitous and powerful in Switzerland and other parts of Europe as they are in the United States.

The same is true to a far greater extent in Asia where a major scandal has just been unearthed in the Bank of China. It has shown what most people very well knew already: that corporate governance and responsibility are concepts in their infancy in China, whose business traditions have relied much more on family ties and government connections.

So one must recognize that there are corporations and corporations. Not all MNEs now have their home base in the United States or even in the United Kingdom and other parts of the European Union. As the economies of the world globalize, we will see powerful corporate entities based in far different homes competing in the global market place. This is already the case in the Arabian peninsula with the semi-private state oil companies which have become powerful investors in the developed countries. Turkey has corporations starting to play an

21. See *Auditors to Keep Eye on the Malpractice in State Firms*, at http://english.peopledaily.com.cn/200301/22/print20030122_110557.html (last visited Feb. 9, 2003) (copy on file with *The Transnational Lawyer*) (reporting that the China Construction Bank and the Agriculture Development Bank of China were under scrutiny because auditors discovered evidence of some "51 economic crime cases, which involved 74 bank officials and 2.274 billion yuan (US \$274 million)").

22. See *Enron Collapse, Congress Heats Up Enron Scrutiny; SEC Focuses on Financial Disclosure*, POWER MKT. WK., Dec. 17, 2002, at 5.

important role as regional MNEs and the same is becoming true for new Russian corporations.

What these various developments mean is that the debate on corporate responsibility has become more intense and also more complicated. We see at the present time corporate executives being lectured or lecturing at the World Economic Forum on the need for more socially responsible behavior; yet in Brazil, a vociferous minority talks about an alternative world economy which it cannot describe with even modest articulation but only with fierce some frustration.

In all of this, the leadership of a MNE must or should address the meaning of corporate responsibility for its company. Each company's history, present and future, are different and since many aspects of corporate reasonability are voluntary or, at least, unlegislated, each MNE's attitude will be different. Just as, I suppose, every individual has a different view of his or her place in and responsibility to society.

It is my impression that MNEs do not usually form their definitions of corporate responsibility on issues affecting developing economies. There are, of course, exceptions. Nestle, one of the world's most respected corporate names, is still addressing the issue of breast feeding and advertising aimed at children in response to behavior which was severely criticized many years ago and has long ceased.²³

Most MNEs focus on their home base in looking for definitions of corporate responsibility. For American and European corporations that is inevitable because of the mass of domestic legislation that addresses many aspects of this issue. But it is also the natural response. A MNE's main stakeholders are mostly situated in its homeland. It is still true today that the majority of its shareholders are based in a corporation's homeland; that is also usually true for its employees and customers and perhaps suppliers. Many of the communities to which it feels a responsibility will also be within the homeland. Additionally, given their proximity to the headquarters of a MNE these particular stakeholders are bound to have a better chance of being heard by the managers of the MNE.

It has traditionally been easy to rank the importance for a corporation of its various stakeholders. Even the idea that there were different constituencies that had a stake in a corporation is a relatively new articulation. The popularity of socialism and social democracy in the last century place a different emphasis on the rights of various stakeholders; but in the last two decades as the free market system has come back into its own, there has been a readjustment in that emphasis.

23. See *Babymilk Issue Facts . . . Why Is Infant Formula Sold in Developing Countries?*, at www.babymilk.nestle.com/pages/page1_0001_1b.html (last visited Jan. 25, 2003) (copy on file with *The Transnational Lawyer*) (documenting the emergence of public health concerns surrounding milk formula).

A. Shareholders

Thus, today it is fairly easy to maintain that any corporations' first responsibility is to its shareholders. Perhaps the fact that the most prescribed areas of corporate governance, both at the supranational and national levels, relate to shareholders' rights and protections confirms this. The OECD Principles on Corporate Governance devote by far the most detail to this aspect, and we have already discussed how voluminous the national legislation in developed economies is on the subject.²⁴

But what is the responsibility of a corporation in today's world to its shareholders, and do all shareholders have the same view about it? Take tobacco companies. They are very profitable even today after such profound litigation. Many funds still buy Philip Morris stock. It is a good investment. Other funds will not invest in tobacco. Which is right or wrong here? But I think it is clear that shareholders' interest today extends beyond profit and the return on investment. Shareholders are interested in how a company is run in a wider sense than the purpose of the company described in its articles of association.

A little while ago, the "Sullivan Principles" had a big influence among shareholders not only at General Motors but also impacting the behavior of many corporations with investment in the Republic of South Africa during the era of apartheid.²⁵ So much so that many corporations were eventually forced under pressure from shareholder groups to divest of their holdings in South Africa. Whether the Sullivan Principles really helped Black Africans in South Africa or whether their importance was more in domestic racial politics in the United States is a difficult question to answer. However, it is clear that Dr. Sullivan did influence the behavior of many corporations vis-à-vis their respective shareholders in the area of corporate responsibility.

Shareholders have become more conscious of the sort of reputation the company they are investing in has. Corporate reputation is even more important for managers these days. Adverse publicity stays in the public's mind for much longer than one might expect. The example of Nestle and mothers' milk has already been mentioned. Jury pools in Texas still recall Dow Chemicals' supposed problems with Agent Orange.

So we can conclude that even the corporation's prime responsibility—that is, to its shareholders—has taken on a broader meaning in recent times. There is no doubt, particularly for American MNEs, that the primary obligation corporate management feels for its shareholders is to grow the stock price which means

24. Organization for Economic Co-Operation and Development, *OECD Principle of Corporate Governance* (1999).

25. See *The Global Sullivan Principles of Social Responsibility*, at <http://www.globalsullivanprinciples.org/principle.htm> (last visited Jan. 25, 2003) (copy on file with *The Transnational Lawyer*) (noting the focal point of these principles to be in: human rights, equal opportunity for employment, freedom of association among employees, proper compensation, ensuring safe working environments, promoting free competition, and embracing cultural heritage).

making a profit and growing the business. Nevertheless, shareholder interest can cover a wide range of concerns from forced labor in China to protection of the rain forest of Brazil to minority rights for employees. Annual stockholder meetings are relatively democratic affairs where any shareholder can have his or her say. Chief Executive Officers feel a need to respond to almost any question from the floor, and most shareholder questions have some impact on the corporate consciousness. Independent directors have also become more aware of their particular responsibilities and thus pay more attention to shareholder initiatives than previously.

B. Employees

After reading various MNE corporate vision statements there can be no doubt of the responsibility managers feel towards their co-workers. For example, Proctor & Gambles' Core Values and Principles state in part: "We act on the conviction that the men and women of Proctor & Gamble will always be our most important asset The interests of the company and the individual are inseparable."²⁶ As Dow Chemical states in its Core Values: "People are the source of our success. We treat one another with respect, promote teamwork and encourage personal freedom and growth"²⁷

Yet, it is fairly obvious that a MNE's commitment to its people has a different context to its commitment to its shareholders. A company's shareholders can get rid of the company; the company cannot get rid of its shareholders.

On the other hand, a company can get rid of its people or at least large numbers of them. That is what the "synergy" aspect of most mergers or acquisitions means. How many jobs can be eliminated? As modern electronic control systems have been developed, many jobs in accounting, logistics, sales, and manufacturing have become redundant. Many corporate processes today are designed to do more with less people.

The responsibility of a MNE to its people around the world is again a complex one which clearly no longer focuses on the implication of guaranteed life-time employment. Most corporate responsibility initiatives, policies, etc. can be covered under the concept of diversity. For example, Dow Chemical is committed to providing a work environment that values diversity.²⁸ The company's human resources policies and activities are intended to create a "respectful workplace" in which every individual has the opportunity to reach his

26. See *Core Values . . . P&G Is Its People and the Core Values by Which They Live*, at http://www.pg.com/jobs/who_we_are/pvp.jhtml?document=%2Fcontent%2Fen_US%2Fxml%2Fjobs (last visited Jan. 25, 2003) (copy on file with *The Transnational Lawyer*).

27. See *Why Choose Dow? . . . Culture and Values*, at <http://www.dow.com/careers/why/culture.htm> (last visited Jan. 23, 2003) (copy on file with *The Transnational Lawyer*).

28. See *Diversity at Dow*, available at <http://www.dow.com/webapps/lit/litorder.asp?objid=09002f138003cdf0&filepath=/noreg> (last visited Feb. 18, 2003) (copy on file with *The Transnational Lawyer*).

or her highest potential.²⁹ In addition, Dow Chemical has stated that its policy is to provide employment opportunities equitably to all individuals throughout the company regardless of race, color, religion, sex, national origin, age, veteran status or disability.³⁰ One can find similar statements, more or less eloquent, in the corporate responsibility positions of almost any Fortune 100 company. They focus today on workplace concerns and giving the employee a chance to grow, earn a good wage, and if necessary, move on.

However, some diversity issues can be complicated for a MNE. More growth takes place these days in countries where the western Christian ethic does not dominate. Quite what this means for diversity is not clear. But, for example, one thing September 11th has forced on us is a better knowledge and understanding of the Muslim world.

What this means for governance, women's rights, and customer relations is not clear. How, for example, does a MNE deal with workplace concerns [say] in a small plant in Indonesia where the workers are Muslim and the supervisors Christian? Is harassment the same in the United States and Japan? If not, how do you treat an American female employee who feels she has been harassed in Japan by a male co-worker, and how do you treat the co-worker?

Are these issues more or less complicated for the leadership of a MNE than those raised by shareholder issues? I think one thing is more certain today. MNEs do feel a commitment to treat all their employees around the world more or less fairly.

C. Customers

No company that hopes to be successful will ignore its customers, and to a great extent, the position of suppliers is synonymous. Proctor & Gamble wants "to provide products and services of superior quality and value that improve the lives of the world's consumers [its customers]."³¹ For Dow Chemical, "customers are the reason [it] exist[s]."³² In the context of corporate responsibility, a large question has been how much of its own commitment in this respect can a MNE impose on its customers and suppliers. Should a company sell to a customer who will not enter into undertakings in this respect? Should a company buy from a supplier who will not commit [say] not to use child labor? How much inquiry should a company make of its customers and suppliers commitment to corporate

29. See *Corporate Social Responsibility: The 13 Global People Policies*, at <http://www.dow.com/public/report/2001/responsibility/thirteen.htm> (last visited Feb. 19, 2003) (copy on file with *The Transnational Lawyer*).

30. See *This Is Dow . . . Vision*, at <http://www.dow.com/about/aboutdow/vision.htm> (last visited Jan. 25, 2003) (copy on file with *The Transnational Lawyer*).

31. See *About Our Company*, at http://www.pg.com/about_pg/sectionmain.jhtml (last visited Feb. 19, 2003) (copy on file with *The Transnational Lawyer*).

32. See Sandy Ewing, *Values in the Workplace Series*, at www.kairocommunications.com/DoingBusiness/Values.htm (last visited Feb. 19, 2003) (copy on file with *The Transnational Lawyer*).

responsibility? Should an American MNE impose the same commitment to diversity on its Saudi Arabian oil suppliers as it imposes on itself?

Of course, in some instances the answer is provided for the MNE. For many MNEs questions of trading with Iraqis is dealt within national boycott legislation. The same seems likely to happen in the case of Zimbabwe right now. Compliance with the law makes the decision simpler.

There is also an expectation—see the OECD Guidelines for MNEs—that a company's concern for responsible behavior should extend beyond its own employees to that of its customers and suppliers. How this can be put into practice is, however, not specified. Is this one area where the global enterprise is supposed to take on some of the characteristics and responsibilities of this sovereign state? Is it Nike's job to teach China not to use forced labor? It seems hardly likely, especially as Nike's home government has just supported the entry of China into the WTO.

Having said that, Nike and other companies do have policies and practices on this issue. Proctor & Gamble states: "P&G does not use child or forced labor in any of our global facilities We expect our suppliers and contractors with whom we do business to uphold the same standards. Should a pattern of violation of these principles become known to the company and not be corrected we will discontinue the business relationship."³³

D. Communities

Many of the points made in relation to other stakeholders are applicable to communities as well. In a sense, communities are an extension of the MNE's employees since many of them will live in the communities where the MNE has its manufacturing operations.

One aspect of corporate responsibility which might be particularly apposite for communities is the issue of environmental protection. However, today this issue together with sustainable development figures very strongly in corporate vision statements.

"At Dow protecting people and the environment will be a part of everything we do Each employee has a responsibility in ensuring that our products and operations meet applicable government and Dow standards, which ever is more stringent."³⁴ This is very typical of the myriad of corporate statements on the environment made by leading MNEs. The most emphatic statements come from

33. See *P&G Sustainability Report 2002, Policies, Organization & Management System*, at http://www.pg.com/about_pg/corporate/sustainability/pgslinks02.html (last visited, Feb. 19, 2003).

34. See *Environmental, Health & Safety*, at <http://www.dow.com/environment/ehs.html> (last visited Feb. 19, 2003) (copy on file with *The Transnational Lawyer*).

some of the global oil companies like BP and Shell—perhaps because in the past they have faced very negative incidents affecting the environment.³⁵

It is hard to imagine any MNE leader denying a responsibility to operate around the globe according to the principles of sustainable development with a commitment to environmental protection.

It is more likely that such a leader will focus his or her concern on issues of local enforcement of environmental regulations or the varying standards for environmental protection around the globe. Many European leaders presently feel a great frustration at the United States' apparent lack of commitment to the Kyoto Protocol, by way of example.

Most site managers in a MNE are measured for performance today not only by their productivity, but by such issues as community outreach and communication. Some MNEs with difficulties in the past are now leaders in this respect. For example, look at the website "Nestle in the Community" to see what that company is doing for Indian farmers or for education in Argentina.

V. CONCLUSION

There are really two questions posed in considering MNE responsibility. One relates to the effect, positive or negative, that MNE behavior has within the global economy. The enforcement of such standards once in place is almost as important, so that foreign and local industry in each country compete on an equal and fair footing.

Would a solution to the unevenness of national legislation within the global economy be some forms of supranational legislation? There is current discussion on some sort of supranational competition law agency. Such ideas scarcely merit discussion in the foreseeable future because they involve the infringement of national sovereignty. This, the United States will not support. For it, there is only one Supreme Court. The discussion on the use of the International Criminal Court of Justice in the context of the Al Qaida terrorists shows this quite clearly.

What would help MNEs discharge their corporate responsibility would be a series of supranational norms which would be adopted into national legislation and then enforced consistently. This would greatly facilitate the discharge of a MNE's fundamental responsibility in the global economy, that is, to observe its own standards of conduct or those required by national legislation, which ever is the higher.

That all MNEs do not maintain such behavior at all times is quite clear at the moment. The global economy becomes increasingly complex and fast moving, communication almost instant and the popular media most effective. The leaders of MNEs are human and subject to the same failings as the rest of their race. My

35. See *Environmental Performance: Protecting the Environment*, at <http://www.shell.com/home/Framework?siteId=royal-en&FC1=FC2=%2FlefthandNav%3>, (last visited Jan. 25, 2003) (copy on file with *The Transnational Lawyer*).

experience tells me that most managers in MNEs live up to the standards expected of them. In fact, they have little choice today.

So long as the free market system dominates the global economy, MNEs will be the engines of its development. However, this does not abrogate the responsibility of national governments, hopefully democratically elected, to ensure a national, social, and legal structure in which MNEs can make their contribution to global development on a national basis.