

Effectively Enforcing Corporate Social Responsibility Norms in the European Union and the United States

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April 19, 2009

I. INTRODUCTION: IRRESPONSIBLE CONDUCT LEADS TO IRREPARABLE HARM

In the current market-based economy, consumers and directors all over the world are questioning whether corporations should exist solely to maximize shareholder profit. Many for-profit US and European corporations abide by the neoclassic assumption that in order for a manager to maximize profit, he must “take the wage demand as a given and produce its output at the lowest possible cost.”¹ Capitalism, as commonly understood to be the institution holding maximization of monetary wealth for enterprise owners as the utmost goal, has widely been criticized as a practice fostering such things as global warming, human rights abuse and labor violations.² Many of these claims are highly debatable, and aspects of profit maximization have certainly been applied positively to social betterment. However, the fact remains that much of the business world does not properly account for environmental and social impacts within third world countries.³

Some US and EU corporate directors no longer abide by Milton Friedman’s famous declaration that a corporation’s only social responsibility is to provide a profit for its owners.⁴ Now more than ever, businesses are refusing to define the highest social good as trading wealth and prosperity freely and fairly in open markets and are choosing to hold themselves to a higher standard of care; a “corporate social responsibility (CSR)” standard that goes beyond their legal obligations under European and American law. Appropriately, corporate directors are not legally required to abide by CSR principles. Defining CSR as a voluntary initiative essentially allows subsidiaries of EU companies to inflict human rights abuse in developing without any

¹ Daniel T. Ostas, *Deconstructing Corporate Social Responsibility: Insights from Legal and Economic Theory*, 38 AM. BUS. L.J. 261, 285 (2001).

² Institute for Economic Analysis, *Towards the Integration of Economic Science*, available at <http://www.iea-macro-economics.org/int-ec-sci-pol.html> (last visited Mar. 17, 2007) (“[I]t has become obvious that continued depletion of economic resources at the present rate cannot be sustained indefinitely, particularly if the rest of the world attempts to achieve the present U.S. standard of waste”).

³ *Id.*; see also MUHAMMAD YUNUS, *CREATING A WORLD WITHOUT POVERTY* 3-6, 18 (PublicAffairs 2007) [hereinafter “YUNUS, *WORLD WITHOUT POVERTY*”] (explaining that the “mainstream free-market-theory suffers from a ‘conceptualization failure,’ a failure to capture the essence of what it is to be human.”). Yunus further explains that people and businesses are multi-faceted and that business should not be bound to serve one single, purely-profit driven objective.

⁴ See Milton Friedman, Op-Ed, *The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES, Sept. 13, 1970, at SM17.

consequences. In order to effectively deter human rights abuse by corporations, EU parent companies should be held liable for actions committed by their subsidiaries and the EU should pass binding legislation requiring EU companies to report social and environmental harm incurred by the parent company and its subsidiaries.

II. A BRIEF HISTORY OF CORPORATE SOCIAL RESPONSIBILITY IN EUROPE AND THE US

a. Corporate Social Responsibility in the US

Social entrepreneurs in the US have adopted a sustainable corporate policy known as corporate social responsibility that attempts to benefit the society and environment in which they reside.⁵ This model, also known as the triple bottom line, was developed by John Elkington in 1994. The triple bottom line focuses on promoting the three “P’s”: people (human rights), profit (efficiency), planet (environment).⁶ This triple bottom line business model maintains fair and equitable business practices toward their employees, the community, and the region in which a corporation conducts business.⁷

CSR in the U.S. is “an ongoing commitment by business to behave ethically and to contribute to economic development while demonstrating respect for people, communities, society at large, and the environment.”⁸ CSR attracts an integrated community of global citizens who feel an innate calling to be environmental stewards and are interested in sustainable development. The main problem a socially responsible company faces is how to succeed in

⁵ See David G. Mandelbaum, *Corporate Sustainable Strategies*, 26 TEMP. J. SCI. TECH. & ENVTL. L. 27, 30 (2007).

⁶ John Elkington, *Towards the Sustainable Corporation: Win-Win-Win Business Strategies for Sustainable Development*, CAL. MGMT. REV., Winter 1994, at 90-100.

⁷ Darrell Brown, et al., *Triple Bottom Line: A Business Metaphor for a Social Construct*, available at <http://www.recercat.net/bitstream/2072/2223/1/UABDT06-2.pdf>. For a more detailed analysis, see HARVARD BUSINESS SCHOOL PRESS ET AL., HARVARD BUSINESS REVIEW ON CORPORATE RESPONSIBILITY (2003); TOM CHAPPELL, THE SOUL OF A BUSINESS: MANAGING FOR PROFIT AND THE COMMON GOOD (1993); STUART L. HART, CAPITALISM AT THE CROSSROADS: THE UNLIMITED BUSINESS OPPORTUNITIES IN SOLVING THE WORLD’S MOST DIFFICULT PROBLEMS (2007); ANDREW W. SAVITZ & KARL WEBER, THE TRIPLE BOTTOM LINE: HOW TODAY’S BEST-RUN COMPANIES ARE ACHIEVING ECONOMIC, SOCIAL AND ENVIRONMENTAL SUCCESS -- AND HOW YOU CAN TOO; BOB WILLARD, THE SUSTAINABILITY ADVANTAGE: SEVEN BUSINESS CASE BENEFITS OF A TRIPLE BOTTOM LINE (2006).

⁸ See WHAT MATTERS MOST, *supra* note 3, at 29 (citing *Business: The Ultimate Resource* (2002)).

implementing a heightened standard of “socially responsible” values without being overburdened by the financial demands from pragmatic execution of such values.⁹

b. CSR in Europe

The definition of CSR in the U.S. mirrors that in Europe to a certain extent. According to the European Commission, CSR is “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.”¹⁰ CSR has three main features in Europe. First, it is a behavior by businesses over and above legal requirements, voluntarily adopted because businesses deem it to be in their long-term interest.¹¹ Further, it promotes sustainable development of a business by integrating the economic, social and environmental impact of their activities.¹² Lastly, CSR is not an optional “add-on” to business core activities; instead, it represents the way businesses are managed above and beyond its legal obligations.¹³ Although the European and the U.S. definitions are vague, both embody a conviction that a corporation’s existence should not relate solely to making money for the sake of making money but that a corporation has a social responsibility to contribute and improve the community in which it operates.

European interest in CSR promoted the European Council in Lisbon¹⁴ in March 2000 during which the European Council encouraged companies to become more socially responsible by taking into consideration “lifelong learning, work organization, equal opportunities, social

⁹ *Id.* at 192.

¹⁰ *Communication from the Commission concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development*, at 3, COM (2002) 347 final (July 2, 2002), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0347:FIN:EN:PDF>.

¹¹ *Id.* at 5.

¹² *Id.*

¹³ *Id.*

¹⁴ *Commission Green Paper on Promoting a European framework for Corporate Social Responsibility*, at 3, COM (2001) 366 final (July 18, 2001).

inclusion and sustainable development.”¹⁵ Further, the European Commission recognized that shareholder value is not achieved merely through maximizing short-term profits, but also through “market-oriented yet responsible behavior.”¹⁶ Since the first EU communication on CSR, European support of CSR businesses has been increasing exponentially.¹⁷ On March 13, 2006, the European Commission enacted a Resolution entitled, “Corporate Social Responsibility: A New Partnership.”¹⁸ In this resolution, Europe acknowledged that CSR has become “an increasingly important concept for competitiveness both globally and within the EU, and is part of the debate about globalization, competitiveness and sustainability.”¹⁹ The resolution led to the creation of the European Alliance for CSR, which recognized that all stakeholders must be taken into account when making business decisions.²⁰ This Alliance operates around three core principles: 1) raising awareness and improving knowledge on CSR and reporting on its achievements; 2) helping to mainstream and develop open coalitions of cooperation; and 3) enabling the environment for CSR.²¹

In December 2008, the European Alliance produced the first-ever tool box for CSR companies as a practical guide for implementing CSR principles in EU businesses. More recently, on February 10, 2009, the European Commission held the second multi-stakeholder forum on Corporate Social Responsibility in Europe. The European Union invited more than 250 key stakeholder groups in order to review progress on CSR in Europe and globally, and

¹⁵ *Id.*

¹⁶ *Communication from the Commission concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development*, at 5, COM (2002) 347 final (July 2, 2002), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0347:FIN:EN:PDF>.

¹⁷ *Id.*; In the past decade, numerous reports have been published on CSR. “The Sustainable Development Strategy for Europe” adopted during the Goteborg European Council of June 2001 acknowledged that the long-term, economic growth, social cohesion and environmental protection go hand in hand and encouraged businesses to adopt such policies in their own bylaws. Additionally, the EU Multi-Stakeholder Forum on CSR (CSR Forum) was formed in 2002, and the European Coalition for Corporate Justice (ECCJ) formed in 2006. For more information see http://www.corporate-responsibility.org/C2B/document_tree/ViewACategory.asp?CategoryID=35.

¹⁸ *Communication from the Commission to the European Parliament, The Council and the European Economic and Social Committee Implementing the Partnership for Growth and Jobs Making Europe a Pole of Excellence on Corporate Social Responsibility*, COM (2006) 136 final (March 22, 2006), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0136:FIN:EN:HTML>. (hereinafter “2006 CSR COMMUNICATION”)

¹⁹ *Id.* at 2.

²⁰ *Id.*

²¹ *Id.* at 11.

discuss possibilities for future joint initiatives. At the end of this forum, stakeholders agreed that there must be more binding legislation on accountability and reporting in the EU. Günter Verheugen, Vice President of the EU Parliament, proposed that the Commission launch a study to assess and clarify the applicable legal framework for EU companies in their operations abroad. Commissioner Verheugen states:

“I will therefore encourage my fellow Commissioners responsible for the different aspects of this matter to further deepen our knowledge about the nature and scope of the existing EU legal framework applicable to European companies operating in third countries, for example through an analytical report with multi-stakeholder involvement. It is in our interest and in the interest of obtaining a level-playing field for our businesses to remind each and everybody that human rights are universal and should be globally respected.”²²

Essentially, the study is intended to unveil the gaps that allow companies to violate human rights and environmental rights abroad. The commission has allocated until March 2010 to publish the report. This report will be one way in which to assess whether EU subsidiaries are the source of a substantial amount of human rights abuse and may inform the Commission as to whether subsequent legislation on EU parent company liability is necessary. .

III. THE CONSEQUENCES OF VOLUNTARY COMPLIANCE WITH CORPORATE SOCIAL RESPONSIBILITY PRINCIPLES

a. Problems with integrating CSR principles into the legal order

Despite the adoption of CSR into the European agenda in 2002, and into the US corporate dialogue in 1984, CSR remains a voluntary initiative in both the US and Europe. In 2006, the commission took an explicit political decision to refrain from proposing binding legislation on CSR principles.²³ Even after the most recent multi-stakeholder forum on CSR, the EU restated its intention to keep CSR as a voluntary measure. One of the main problems with the lack of

²² See http://www.corporatejustice.org/IMG/pdf/CSR_Forum_-_speech_GV_-_delivered.pdf

²³ See 2006 CSR COMMUNICATION *supra* note 18.

binding EU legislation on CSR is that EU companies have no incentive to abide by these norms and have even used CSR as a marketing incentive to attract more customers. Although much progress has been made, the lack of a binding regulation on CSR principles, has allowed certain EU and US companies to mislead consumers into thinking they are investing in CSR companies when, in fact, they are not. It could be argued that EU companies are bound to abide by a higher set of norms than US companies due to the strict regulations the EU legislation has implemented in the specific areas of social law, labor law and environmental law. In regards to human rights, EU companies are not obliged to implement certain principles found in the EU charter of fundamental freedoms because there is no horizontal effect of the charter. Thus, the main legislation relevant to CSR principles in Europe would fall under the EU social policy and environmental law.

US environmental and social laws impose an even lower standard.²⁴ In fact, US companies may be penalized for environmental and social decisions that do not maximize shareholder profit.²⁵ Even though European companies must abide by a high standard in relation to US companies, they are not liable for human rights abuse committed by their subsidiaries abroad.²⁶ This is a huge problem for deterring companies from merely outsourcing certain operations so that it is less costly and less restrictive.

Corporate social responsibility is even more difficult to enforce in the US because US companies are only governed by the corporate code of the state in which it is incorporated. Consequently, most US companies incorporate in Delaware because the company law is most favorable to the directors and to maximization of profit and therefore have a very low standard of

²⁴ Ludwig Kramer *Regional Economic Integration Organizations: The European Union as an Example* in BODANSKY, BRUNNEE AND HEY, *INTERNATIONAL ENVIRONMENTAL LAW*, 873.

²⁵ Daniel T. Ostas, *Deconstructing Corporate Social Responsibility: Insights from Legal and Economic Theory*, 38 *AM. BUS. L.J.* 261, 285 (2001).

²⁶ European Coalition for Corporate Justice, *Fair Law: Recent proposals to Improve Corporate Accountability for Human Rights and Environmental Abuses* available at www.corporatejustice.org.

environmental and social obligations. The most stringent regulations for maintaining a high level of accountability and transparency are imposed upon public companies.²⁷ These companies, however, do not have an obligation to abide by certain human rights norms.

b. Encouraging voluntary adoption of CSR principles through private certification schemes

Despite the lack of governmental regulation on businesses, US socially responsible businesses are dedicating more resources than Europe to providing social and environmental benefits.²⁸ In addition, government and social-sector organizations are beginning to emulate for-profit businesses by adopting earned-income governance models as a way to acquire the necessary capital to sustain their social mission.²⁹ The convergence of the mission and methods of these non-profit and for-profit companies is producing a new type of “CSR” company, which pursue social purposes while engaging in business activities. This CSR company emulates a new generation of value-driven consumers and shareholders who are demanding that corporations benefit their communities. In order to assess and identify businesses that are trying to position themselves in the category of CSR corporations in the US, a number of different rating systems have been developed.³⁰ One of the most comprehensive of these rating systems was developed in 2004 by S-Bar.³¹ More recently B-labs, a 501(c)(3) non-profit corporation, developed a certification scheme, derived from S-Bar and other rating systems, which it uses to identify

²⁷ 15 U.S.C. § 7262 (also known as “Sarbanes-Oxley Act 2002”). Title III of the Sarbanes-Oxley Act holds senior executives individually responsible for the accuracy and completeness of corporate financial reports. It also specifies limits on the behaviors of corporate officers and delineates the civil penalties for non-compliance. See also Bernhard Kuschnik; *The Sarbanes Oxley Act: “Big Brother is watching” you or Adequate Measures of Corporate Governance Regulation?* 5 Rutgers Bus. Law Journal 64 - 95 (2008) available at <http://businesslaw.newark.rutgers.edu/RBLJ_vol5_no1_kuschnik.pdf>

²⁸ Heerad Sabeti, *The Emerging Fourth Sector* 3 (2008), http://fourthsector.net/prepdocs/FSEExecutiveSummary_Draft.pdf.

²⁹ *Id.*

³⁰ See OpenSRI, <http://www.opensri.com> (last visited Sept. 18, 2008); Oekom Research AB in Germany, <http://oekom.ve.m-online.net/index.php?language=ukd#home> (last visited Sept. 18, 2008); Dow Jones Sustainable Index, <http://www.sustainability-indexes.com> (last visited Sept. 18, 2008); Ethibel, http://www.ethibel.org/subs_e/4_index/main.html (last visited Sept. 18, 2008); FTSE4Good, http://www.ftse.com/Indices/FTSE4Good_Index_Series/index.jsp (last visited Sept. 18, 2008); KLD’s Domini 400 Social Index, <http://www.kld.com/indexes/ds400index/index.html> (last visited Sept. 18, 2008); Corporate Governance Quotient (CGQ), http://www.investopedia.com/terms/c/corporate_governance_quotient.asp (last visited Sept. 18, 2008); and Blabs in 2007, <http://www.bcorporation.net> (last visited Sept. 18, 2008).

³¹ The Sustainable Business Achievement Ratings (S-BAR) was created in 2004 in response to the inability of the California state legislators to agree upon a working definition of “social business.” As a result, a 2004 California bill giving state procurement preference to “social businesses” was tabled. S-bar is “the first comprehensive system with a market-based, broadly applicable, and transparent means of assessing a company’s environmental, economic and social performance.” See <http://www.sustainabilityratings.com/about/index.html>.

socially responsible for-profit businesses that it brands as “B corporations.”³² In order to be “B certified,” a corporation must score eighty points out of two hundred on a test to determine whether it meets a set of social and environmental performance standards.³³ Once the corporation has passed this initial test, it must institutionalize stakeholder responsibility by inserting certain language into its corporate bylaws that allows managers to consider the interests of employees, the community and the environment, which may, in some cases, require companies to reincorporate into a state with a constituency statute allowing for such an amendment.³⁴ B-Lab’s founders adopted their stakeholder accountability approach from Upstream 21, a holding company which pioneered the idea of incorporating stakeholder language in the articles of its portfolio companies.³⁵ Once the corporation has become a B corporation, it must donate one-tenth of one percent of its revenue to B-labs.³⁶

The idea of certification remains an initiative implemented on a national level in Europe. For example, BV-SERM is rating system by Bureau Veritas, an international company based in Belgium, and SERM Rating Agency, a UK based company, which analyzes the financial impact of safety, environmental and social risks to be quantified for individual companies.³⁷ Another popular ratings system is Vigeo, a French limited liability company established in 2002. Vigeo took over Arese, the first Socially Responsible Index (SRI) rating system in France and assesses the environmental, social, societal and corporate governance objectives of corporations and public companies.³⁸ All these systems are important, but are insufficient because there is no governmental body that certifies the ratings systems used. Moreover, the lack of a uniform CSR

³² “B corporation” is a trademark of B-lab

³³ See <http://www.bcorporation.net>.

³⁴ Hannah Clark, *A New Kind of Company*, Inc. Mag., July 2007, available at <http://www.inc.com/magazine/20070701/priority-a-new-kind-of-company.html>

³⁵ *Id.* Upstream 21 was co-founded by Leslie Christian. For more information see <http://www.upstream21.com/>

³⁶ *Id.*

³⁷ <http://www.prnewswire.co.uk/cgi/news/release?id=62138>

³⁸ <http://www.vigeo.com/csr-rating-agency/business-and-values.html>

definition gives a wide range of interpretation on what counts as “CSR” activity. In essence, the ratings systems criteria are easy to achieve and therefore, do not achieve the goal of holding companies to a higher standard of social and environmental responsibility. Something must be done on a European level to raise the level of corporate responsibility.

IV. FINDING A SOLUTION: ENFORCEMENT OF SOCIAL RESPONSIBILITY THROUGH MANDATORY ACCOUNTABILITY AND REPORTING STANDARDS

One way to indirectly enforce CSR norms is to hold companies accountable for reporting human rights and environmental abuse. In general, companies rely on reputation and quality to sell a product or service to consumers. Thus, if a company is required to be transparent about the types of human rights abuse that it has committed through a reporting requirement, it will have less incentive to continue its abuse in fear that consumers will no longer buy its product or use its services. Europe has initiated some binding reporting on CSR related issues. The Accounts Modernisation Directive³⁹ requires European public companies to report “...where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.”⁴⁰ Although a company must report on information relating to environmental and human rights issues, this obligation is qualified by the condition that the information is relevant to the particular business operations. Thus, for the most part, reporting on human rights abuse will not be required.

Additionally, a company may be held liable for misleading consumers under Directive 2005/29/EC on Unfair Commercial Practices⁴¹; however, this directive does not provide any relief for damages for human rights abuse; it merely provides relief for a lack of transparency.

³⁹ Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings. (*OJ L 178, 17.7.2003, p. 16–22*)

⁴⁰ See Article 46 of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, and Article 36 of Seventh Directive. (*OJ L 222, 14.8.1978, p. 11–31*)

⁴¹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council. (*OJ L 149/22, 11.6.2005, p. 22-39*)

As was mentioned, *supra*, the lack of proper EU legislation on accountability and reporting was properly recognized by Vice president Günter Verheugen in his closing speech at the second European Commission's Multi-stakeholder Forum on CSR. Appropriately, the commission has undertaken a study on whether or not EU companies are committing human rights abuse abroad in order to assess whether more stringent reporting standards are needed. Holding subsidiaries accountable is of equal importance to European company transparency because most of the human rights abuse takes place in developing countries where the labor laws and human rights standards are lower than developed countries. In this respect, the European Court of Justice has held that parent companies are required to include subsidiary undertakings in the annual accounts summary under the European Seventh Company Directive on Consolidated Accounts.⁴²

The aforementioned EU legislation is a step in the right direction, but more binding legislation is needed on social and environmental reporting. The European Coalition for Corporate Justice (ECCJ), the largest civil society network devoted to European corporate accountability and established in 2006, realized the need for such legislation and recently drafted legislation that will hold European parent companies liable for human rights abuse committed by their subsidiaries.⁴³ In this draft, ECCJ proposes three main amendments to EC law: 1) strict liability of parent companies for abuses of their subsidiaries; 2) establish a duty of care to prevent abuses in the corporate sphere of responsibility; and 3) mandating environmental and social reporting.⁴⁴ ECCJ is correct to conclude that one of the most effective ways to improve human rights and environmental standards is to require both the parent company and its subsidiaries to abide by the same reporting and accountability standard. In fact, the ECCJ's

⁴² Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts (*OJ L 193, 18.7.1983, p. 1–17*).

⁴³ Fair Law: Recent proposals to Improve Corporate Accountability for Human Rights and Environmental Abuses available at www.corporatejustice.org.

⁴⁴ *Id.* at pg 10.

proposal for holding a parent company correlates to the current standard in the US. The American Disabilities Act⁴⁵ and the 1964 Civil Rights Act⁴⁶ imposes an obligation for corporations to monitor their subsidiaries in foreign countries so that they will comply with US law.⁴⁷

In the US, Robert Hinkley, a corporate securities attorney, claims that one way to encourage corporations to abide by human rights norms is to amend the corporate code in every jurisdiction.⁴⁸ According to Hinkley, under the current corporate code, “corporations are established for one purpose – to make money for shareholders.”⁴⁹ Consequently, under Hinkley’s “Code for Corporate Citizenship Amendment” (“Hinkley Amendment”), a director will still have a duty to make money for shareholders “but not at the expense of the environment, *human rights*, the public safety, the communities in which the corporation operates or the dignity of its employees.”⁵⁰ After more than seven years of advocacy, California and Minnesota attempted to enact legislation to incorporate Hinkley’s Amendment but to no avail.⁵¹

Although the Hinkley Amendment is a promising solution to the problem of human rights abuse by corporations, in fact, amending state corporate codes is extremely difficult. For example, a 2004 California Assembly bill which would preclude directors from making decisions that will cause deleterious effects on, *inter alia*, the environment, human rights, and

⁴⁵ 42 U.S.C. § 12101 (1990)

⁴⁶ 42 U.S.C. § 2000 (1964)

⁴⁷ See *Oil Spill by Amoco Cadiz off Coast of France*, 699 F.2d 909 (7th Cir. Ill. 1983) (finding a parent corporation to be liable for environmental damage off the coast of France caused by its subsidiary)

⁴⁸ Hinkley, *Redesigning Corporate Law Business Ethics*, available at <http://www.mailarchive.com/sustainablelorgbiofuel@sustainablelists.org/msg32019.html>; see also Robert Hinkley, *Citizenship: Oxymoron or Necessity*, available at <http://www.commondreams.org/archive/2007/11/30/5521/>; see e.g., <http://www.c4cr.org/>.

⁴⁹ *Id.*

⁵⁰ Robert Hinkley, *28 Words to Redefine Corporate Duties: The Proposal for a Code for Corporate Citizenship*, available at <http://www.multinationalmonitor.org/mm2002/02july-aug/july-aug02corp4.html>; see also Ron James, *President Bush’s Economic Reform* (2002), available at <http://www.c4cr.org/ethicalbiz.html>; Gili Chupak, *The Code for Corporate Responsibility: Widening the Perspective of Management* (2004), available at <http://www.c4cr.org/paper01.html>.

⁵¹ California Senate Bill (SB) 917, available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0901-0950/sb_917_bill_20030221_introduced.pdf (amends section 309 of California’s Corporate Code, requiring corporate directors to ensure that profits do not come at the expense of the environment, human rights, public health and safety, the welfare of communities, and employee dignity); Minnesota also tried to enact a similar bill: Bill S.F. 1529, available at <http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=S1529.0&session=ls83>. (Both bills have been tabled and are no longer active as of 2004.).

public health and safety,⁵² was tabled. A new bill was proposed in 2008 that would allow directors to take stakeholder interests and the environment into consideration when making business decisions.⁵³ After the bill was approved by both the Assembly and Senate, it was rejected by the Governor on September 30, 2008 because it allowed directors to consider factors other than the strict financial interest of corporate shareholders.⁵⁴ Although Governor Schwarzenegger condoned strict adherence to the shareholder primacy doctrine, he also urged the California legislature to consider and study “alternative models of corporate governance.”⁵⁵ Hence, California is currently drafting a new chapter to the corporate code and will propose the draft to California legislators in May.

After much pressure from the Corporate Responsibility Coalition, the United Kingdom enacted the Companies Act,⁵⁶ similar to the Hinkley Amendment. The Companies Act requires directors to take into account how their business activities will affect employees, communities and the environment.⁵⁷ Although this act is a positive turn in the right direction, companies have received no pragmatic guidance or help as to how exactly they should respond. Moreover, corporations are left unsure as to whether they will be held liable for a breach of their fiduciary duty to stakeholders in addition to shareholders. Indeed, much more work is left to be done in the EU as well as the respective Member States.

⁵² *Id.*

⁵³ See California Assembly Bill 2944 available at <http://info.sen.ca.gov/cgi-bin/postquery>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Section 172(1) of the Companies Act 2006 states that: (1) A director of a company must act in a way that he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to (a) the likely consequences of any decision in the long term, (b) the interests of the company's employees, (c) the need to foster the company's business relationships with suppliers, customers and others, (d) the impact of the company's operations on the community and the environment, (e) the desirability of the company maintaining a reputation for high standards of business conduct, and (f) the need to act fairly between the members of the company. Companies Act, 2006, c.46, §172 (United Kingdom).

⁵⁷ See *Marking the Moment: Implementation of The Companies Act*, <http://www.corporate-responsibility.org/C2B/PressOffice/display.asp?ID=86&Type=2>.

V. CONCLUSION: ENFORCING CORPORATE RESPONSIBILITY IN EUROPE AND THE US

In a 1999 Environics International Millennium Poll, where more than 25,000 citizens across six continents were interviewed, two out of three citizens wanted companies to go beyond the historical role of making a profit.⁵⁸ The international community is ready for companies to contribute to broader societal goals, and more binding US and EU regulation is needed to fulfill these needs. The EU must implement a binding measure for social and environmental reporting so that there is a higher standard for transparency. In order to effectively enforce CSR principles in Europe, parent companies must be liable for human rights abuse committed by their subsidiaries. In the US, state corporate codes should require public and private annual reporting on social and environmental reporting for the parent company and its subsidiaries. Instead of CSR being a voluntary code of conduct that goes beyond the legal obligations of a corporation, it should become an obligatory standard so as to reduce the amount of social and environmental harm caused by EU and US companies. As Woodrow Wilson so gracefully states: “You are not here merely to make a living. You are here to enrich the world - and you impoverish yourself if you forget the errand.” Companies are legal persons and have a legal duty to act accordingly.

⁵⁸ WHAT MATTERS MOST, *supra* note 3, at 47.

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