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ARTICLES

The Corporate Conscience and Environmental Issues: Responsibility of the Multinational Corporation

*Alfred S. Farha**

I. INTRODUCTION

When I was asked by the Editors of this *Journal* to become involved in a written Environmental Symposium, I quickly accepted both the challenge and the opportunity. It is a challenge simply because of the subject matter itself—the environment—which ranks at the top of important issues facing the world today. Webster's Dictionary defines the environment as "the complex of physical, chemical, and biotic factors (such as climate, soil, and living things) that act upon an organism or an ecological community and ultimately determine its form and survival."¹ In a simple statement, the environment means life and its survival. It is difficult to comprehend a more important subject, and to address it is indeed a challenge.

This Symposium also provides an opportunity to view the subject matter based upon my own experience and responsibility within a mul-

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¹ WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 382 (1988).

tinational corporation for the past 25 years. I shall attempt in this Article to put forward my view of the multinational corporation's responsibility towards the environment in an objective manner, being constructively critical and adequately commending whenever appropriate. In so doing, however, it should be made clear at the outset that there is no intent to put forward the view of any industry as a whole, nor do I mean to imply that what I will have to say is any official position of my own company. This Article will reflect my individual view of how I believe my company and others have reacted and should react in the future on environmental issues.

II. THE CORPORATE CONSCIENCE

Legal ethics is a subject well covered in law schools. As a matter of fact, it is much more emphasized now than it was when I was studying law for a variety of reasons. One of the first things I learned in the study of criminal law was that a lawyer represents the client and not the criminal act which the client is accused of committing. This does not mean, however, that the lawyer is compelled to represent the client without ethical constraints, which may lead to conflicting situations.

A few years ago while I was visiting Harvard Law School, a student reminded me of this conflict when he told me about an exam he recently had written for a course in international law. One of the questions on the exam involved a hypothetical case wherein he was instructed to represent a deposed ruler of a Latin American country whom the revolutionary government claimed had stolen national assets for his own benefit and deposited the funds in U.S. banks. The deposed ruler was also seeking legal advice on how to avoid a freeze of his assets, and on his ability to extradite and take reprisal actions against the revolutionaries.

The student's initial response was based solely on ethical grounds, stating that he would prefer not to be involved in this case because his own views would oppose those of his clients. However, the student proceeded to respond to the issues in order to complete the exam, reserving the right not to represent the client if he deemed his position to be unethical or illegitimate. The student received an A on the exam, and the professor commended him for his ethical response.

The legal profession, not only in the United States, but throughout most of the world, attempts to set up certain ethical standards and professional codes of conduct which its members are expected to follow. Yet, the ethics of lawyers in the United States, the world's most litigious society, often are questioned. In civil suits, some might attribute this to the contingent fee arrangement, where the lawyer shares in his clients

recovery. In the area of criminal law (particularly in tax cases, insider trading or commercial fraud), ethical questions may arise where the accused has substantial means with which to pay his lawyer a princely fee.

Without subscribing to these reasons, one can state that money always has had the power to corrupt, and where there is a great deal to be gained, the temptation for corruption is even greater. The legal profession cannot be totally exempted from this temptation, but most lawyers believe that the ethical standards of the profession usually will prevail.

But what about the ethical standards of a corporation? Is there really such a thing as a "corporate conscience," and if so, how can it govern the actions of individuals within the corporation and management as a whole? Written standards within a company, whether they are called credo, a code of conduct, or corporate values, all aim toward a certain ethical behavior. However, as in the legal profession, money gained by whatever means, which inures to the company's profitability, can corrupt these ethical values. This will only be the case, though, if profitability alone is the *raison d'être* of the company.²

Frankly, I do not believe that any respectable company should be in existence solely to make a profit. A corporation certainly is in business to earn profits for its owners or shareholders in accordance with the precepts of the free enterprise system. At the same time, though, a corporation can be a responsible and productive member of the society it serves. The fact is that a company cannot continue to exist without being profitable and productive, *and* without exercising its responsibilities to society. Of course, the desired end result of any business endeavor is to make a profit. It is also clear that productivity, quality, and functioning as a benefit rather than a detriment to society are important means toward achieving that end.³

Profitability, as such, is easy to understand. How you become and remain profitable, on the other hand, requires some explanation. Productivity obviously is a key to profitability, and the term is generally understood to mean cost-effective production. In a broader sense, however, productivity is equivalent to product quality, and the term also means that what the company is doing has value. A company producing worthless goods or services might fool the public long enough to make a profit in the short term, but it certainly cannot continue to exist for very long.

² See *Corporate Ethics: "A Report on Policy and Practice in Company Conduct"*, published by the Business Roundtable, 200 Park Avenue, Suite 222, New York, NY 10166. The companies included in that report are: Boeing, Champion International, Chemical Bank, General Mills, GTE, Hewlett Packard, Johnson & Johnson, McDonnell Douglas, Norton, and Xerox.

³ See *The Eye of the Needle*, Volume 14, Number 4 (1989) (120 N. Fourth Street, Minneapolis, Minnesota 55401).

In this latter sense, productivity is essential to a corporation's existence and growth.

The same can be said about a corporation's responsibility to the society it serves. A company recklessly seeking only profits without regard for the negative effects it imposes on society at large cannot exist very long. Eventually, society will recognize that the existence of the company is more of a detriment to a society than a benefit, and soon thereafter the company will be out of business.

These simply are the facts of life for a corporation, whether it does business only in a small town in Indiana, or whether it has operations all over the world. The days of the "Robber Barons" are long gone, and material gains do not accrue without a corporation also being productive and responsible.

This all leads us to the obvious conclusion that a "corporate conscience" must exist whether or not it is explained to the company's employees in credos. Whatever moves the company to action, be it a Management Committee, Executive Committee, Board of Directors or even the CEO alone, there is a conscience of the corporation which of necessity must dictate ethical standards for the good of society. It may not stem from a "do good" mentality but more out of necessity. But it does exist.

If, as stated above, the corporation has a conscience which dictates ethical conduct benefiting society as a whole, there should not be a problem concerning the environment and this article can come to an end here and now. Unfortunately, it is not that simple since the manifestation of such a conscience is neither universal nor uniform even in the best companies. Based upon my own experience the reason for this is clear: although the overall intention of a company and its long term planning certainly is based upon not only profitability but also quality, productivity and benefiting society, it is the immediate and short term actions which keep the company going and also create its image.

The employees all the way up to the CEO are usually measured in the short term (typically an employee has a yearly job performance review) and the most expedient measurement is profit contribution. Certainly there are exceptions. One example might be a research chemist being recognized and awarded for the development of a new and safer product which may or may not have apparent commercial value. But the quickest road to success and recognition is normally based upon a person's contribution to the bottom line of profit.

Thus, the transportation manager of a company, for instance, who has been able to keep transportation costs low by using sub-standard and

cheap carriers is in good shape until, of course, the first catastrophe occurs. And even when that takes place, there will be all sorts of attempts to cover mistakes and place the blame on someone outside the company. This is a natural reaction.

There might even be situations where a commercial manager responsible for a certain product continues to realize gains for the company from that product even though he or she knows that there might be better and safer competitive products on the market. This too is only natural because performance is primarily evaluated on the basis of profitability.

Therefore, the conflict becomes clear. Having said that a respectable corporation has a conscience guided by ethical standards, the manifestation of this conscience is subject to criticism due largely to the measurement of individual performance. It is simply not enough to say that a company's management will, in society's interest, refuse to have unsafe operations or market products which cause more harm than good, as long as these matters are brought to their attention.

The problem can only be resolved by making sure that ethical standards are not merely the prerogative of management at the higher levels, but that such standards and performance in this area is equated with profit contribution. As stated earlier, profitability alone cannot be the justification of the company's existence.

A number of companies have an Ethics Committee in their United States as well as foreign operations which decides issues involving employee dishonesty as well as any company action which could be considered to violate local or national laws, particularly allegations of corrupt practices. I would suggest that the responsibility of such a committee be extended or perhaps another committee be authorized to more broadly cover issues which could be socially adverse.

The committee's responsibility would cover the welfare of its employees or the public at large affected by the company's operations including production, distribution, and the quality and safety of its products per se. It should not be duplicative of Safety and Loss Prevention (a manufacturing function), Product Research and Development, or Marketing. Its purpose would be more of an overview of all of the company's operations with its obligations toward society through the activities of functions and individuals.

The suggestion on compliance with ethical standards in a broader sense as stated above is one way in which a company may insure that the dictates of the "corporate conscience" are followed. I believe that multinational corporations most certainly recognize the need to be socially

responsible and indeed consciously try to do whatever necessary in this regard. The criticism I have raised, hopefully in a constructive manner, by suggesting how this obligation to society can be better practiced throughout the company is one which I think most managers would accept. The point here is that a company, and particularly the multinational corporation today faces challenges to its credibility in dealing with certain public issues. It is important, therefore, for the corporate entity not to be perceived as only acting in its self-interest but also concerned that it indeed make a contribution to the public at large through improving rather than destroying the quality of life.

III. ENVIRONMENTAL ISSUES

The overall operations including the ethical conduct of the multinational corporation are particularly challenged today by environmental issues. Some might say that the environment has even exceeded anti-trust in governing a company's actions. From a legal standpoint, this is substantiated by the fact that laws and regulations affecting the environment are enacted at the local, state, and federal level in the United States. In Europe, the situation is the same with an additional level of the European Commission in Brussels which has produced more than two-hundred Directives on the environment adopted by the Member States of the European Community over the past fifteen years.⁴ The Commissioner for the Environment through the Directorate General for Environment (DG XI)⁵ is constantly working on more Directives in view of the Single European Act which provides for the completion of the Community's internal market by the end of 1992.⁶

A. Costs of Environmental Protection

Financially, environmental protection has become a greater portion of the multinational corporation's capital and expense budget. Research

⁴ All Directives are cited in the Official Journal of the European Communities. Copies can be obtained from the Office of Official Publications for the European Communities, L-2985 Luxembourg.

⁵ The Directorate General for the Environment (DG XI) reports to the member of the European Commission responsible for environmental matters. Under Article 155 of the Treaty Establishing the European Economic Community which was signed in Rome on March 25, 1957. The European Commission initiates and enforces the implementation of legislation in the Member States. Hence there is no empowering statute for the Directorate General of which there are 22 in the EC reporting to the various commissioners responsible for a particular area. Reporting to the Director General of each Directorate are staff members in their particular area of responsibility.

⁶ Single European Act, OJ No. L169, 29 June 1987. See also Haigh, *EEC Environmental Policy of Britain* (2d Ed. 1987); Johnson and Corcelle, *The Environmental Policy of the European Communities* (1989).

into improved environmental control, operation of pollution control plants, investment in pollution control, toxicology, and safety in the use of products and raw materials typically cost the company much more than advertisements or other marketing methods to promote the sale of its products.

Some might say that the legal and financial costs a company must pay in protection of the environment are merely added to the sales price of its products or services so it is the customer not the company who ultimately pays the environmental bill. However, this is not entirely true since anyone with commercial experience would know that it is the marketplace and not the seller who sets the price. A company always has to compete and its costs are not infinitely recoverable by the price. So, whatever is spent on environmental protection may or may not be wholly or partially recovered, but it is a cost of doing business which is consuming a larger amount of the company's revenue.

The chemical industry is one with which I am most familiar, and by its nature, it has also been the industry most carefully scrutinized from the standpoint of environmental protection. On an average, the multinational corporations in this industry for a number of years have been spending about ten percent of their capital investments for health, safety, and environmental protection. In addition, for every dollar spent on the environment they spend about four dollars in operational costs for this purpose.⁷

As an example, a multinational chemical company with annual sales of say 10 billion dollars might earmark as much as fifteen percent of its sales in one year for capital spending. This amounts to 1.5 billion dollars. If ten percent of the capital spending is for health, safety, and environmental protection that amounts to 150 million dollars plus two times this figure (300 million dollars) for operational costs making a total of 450 million dollars or four and one half percent of its annual turnover being spent for environmental protection. In many multinational companies, 4.5% of annual turnover is equal to or in excess of their after tax profit return on sales.⁸

⁷ The source of this information is merely general industry knowledge. I can only speak for my own company regarding this information which is based on internal statistics. However, we believe there are other companies in the industry who have a similar pattern of spending for environmental protection. It should be noted that the chemical industry is more capital intensive than others.

⁸ See *Fortune*, 23 April 1990, listing the ten most profitable companies.

rank	company	sales(\$MM)	profit(\$MM)	% return
1	General Motors	126,974	4,224	3.33
2	General Electric	55,264	3,939	7.13
3	Ford Motor	96,933	3,835	3.96
4	IBM	63,438	3,758	5.92

So I think we can see that the chemical industry is spending a considerable amount on environmental protection. But it is in the results of this spending where we can see the actual beneficial impact of the dollars spent.

B. Preventing Industrial Pollution

In this connection, I can give you the example of one of my own company's major chemical plants located in The Netherlands in the town of Terneuzen in the southernmost part of the country. The Plant site is on a waterway called the Schelde River which flows into the North Sea. This same waterway goes on to the major port of Antwerp, Belgium and is an essential element of the industrial and commercial activity in the area. It is also the largest plant site owned by Dow in Europe.

A large range of chemicals and plastics are manufactured at the Terneuzen site from world-scale ethylene and propylene cracking of naphtha to liquefied petroleum gas (LPG). To give some idea of the size of this operation, the value of the product manufactured on an annual basis is about 2.5 billion dollars.

For many years, Dow has spent large sums of money to reduce the contaminants in the effluent to the Schelde river in Terneuzen. The result is a reduction in contaminants to the waste water since 1971 by ninety-five percent. Even though very little of this contamination is toxic or considered to be harmful, per se, if it adversely affects the oxygen balance in the river, the company will continually strive to reduce it further with a goal of zero contamination. Reaching this goal will not be easy and it will be costly, but the company feels it well worth the effort.

By reducing the total pollution load in effluent to such an extent despite increasing production over the years, Dow in Terneuzen was selected as a winner of the European Better Environment Award for Industry in 1987. This award was co-sponsored by the Commission of the European Communities and the United Nations Environment Program (UNEP).⁹

There are other examples which could be cited where industry has reduced, and where possible, eliminated pollution at manufacturing loca-

5	Exxon	86,656	3,510	4.05
6	Phillip Morris	39,069	2,946	7.54
7	Dow Chemical	17,730	2,487	14.02
8	DuPont	35,209	2,480	7.04
9	Texaco	32,416	2,413	7.44
10	Atlantic Richfield	15,905	1,953	12.27

⁹ The award was announced in a booklet entitled, *European Better Environment Awards for Industry 1987*. It was published by the Commission of the European Communities, 200 Rue de la Loi, 1049 Bruxelles, Belgium. There are no page numbers.

tions in effluent as well as harmful emissions into the atmosphere. In fact, industry has realized for some time that it makes sense to reduce waste and my own company has coined the acronym WRAP (Waste Reduction Always Pays).¹⁰

Frankly, I believe we are bringing industrial environmental pollution under control. But the products manufactured by industry and the actual or potential harm they can cause is quite another problem. Many of these products are required by the consumer and to some extent have contributed to the higher standard of life enjoyed by people throughout the world. However, they have also raised the environmental issues which may override their benefits.

C. Depletion of the Ozone Layer

One of the most talked about environmental issues in this regard is the depletion of the ozone layer. Ozone is the form of oxygen which has three atoms of oxygen per molecule rather than the two atoms of the ordinary oxygen which we breathe. It is located in a frigid region of the atmosphere called the stratosphere between 10 and 30 miles above the Earth's surface. This layer of ozone is so important that many scientists believe that life could not have existed outside of the sea until ozone was formed 500 million years ago to block harmful ultraviolet rays.¹¹

Ozone is a natural filter to protect living beings and the Earth itself from ultraviolet rays which cause dangerous sunburn and skin cancer, cataracts and other eye damage, weaken immune systems in humans and in animals, destroy plankton (a tiny but important animal at the base of the ocean's food chain), and cause harm to food sources such as wheat, rice, corn and soybeans. Finally, some scientists claim that the depletion of the protective layer of ozone contributes to the warming of the Earth's atmosphere through the "greenhouse effect" which is another issue discussed later in this article.

The threat to the ozone was first discovered in 1983 when British scientists observed that concentrations of ozone in the stratosphere were dropping at a dramatic rate over Antarctica each austral spring and gradually became replenished by the end of November. It was discovered that the main cause of this depletion was a group of man-made

¹⁰ The WRAP slogan was developed by the Dow Chemical Company in 1986 and is a Service Mark of the Dow Chemical Company.

¹¹ Although the facts asserted are generally well known to the writer, a good source on the subject of the ozone layer and the greenhouse effect is found in a publication entitled, *The Ozone Layer and the Greenhouse Effect*, by A. McCulloch, Environmental Department, ICI Chemicals & Polymers Limited, P.O. Box 8, Runcorn, Cheshire WA7 4QD, England.

chemicals called chlorofluorocarbons (CFCs) which are used, among other things, as coolants in refrigerators and air conditioners and in aerosol sprays. Mounting evidence has demonstrated that under certain conditions these compounds, rising high into the stratosphere, set off chemical reactions that rapidly destroy ozone.

Since the ozone layer circles the whole earth, any action to protect the layer must be international. Thus, through the United Nations Environment Program (UNEP), many nations of the world in 1985 signed the Vienna Convention on substances which can deplete the ozone layer.¹² This was the first time that humankind has sought to limit the production of a compound through an international treaty.

The Montreal Protocol of 1987 to this treaty is a description of the mechanism for achieving the limits to production and emission of CFCs. Earlier action such as the ban on aerosol uses in the United States were ineffective whereas the Montreal Protocol on an international level seeks the prevention of such harmful emissions into the atmosphere.

Contrary to belief, preventing the depletion of the ozone layer rests more with the consumer than with industry. If we are to accept the science which says that CFCs are the main culprit and if safer alternatives are not available, is humankind, accustomed to a more comfortable way of life around the world, prepared accept the consequences?

Modern refrigeration for food and air conditioning for comfort have become essentials rather than luxuries. If safer alternatives to CFCs are available, they may be more costly or less efficient. Yet such alternative products may become necessary if we are to protect our environment or as stated at the beginning of this article "life itself and its survival."

D. The Greenhouse Effect

Potentially more damaging than ozone depletion, and far harder to control, is the greenhouse effect, caused in large part by carbon dioxide. The effect of carbon dioxide in the atmosphere is comparable to the glass of a greenhouse: it lets the warming rays of the sun in but keeps excess heat from radiating into space. Indeed, man-made contributions to the greenhouse effect, mainly carbon dioxide generated by the burning of fossil fuels, may be hastening a global warming trend that could raise average temperatures between five and ten times the rate of increase that marked the end of the ice age.¹³

¹² The Vienna Convention for the protection of the ozone layer, final act, was adopted on March 22, 1985. The Montreal Protocol, Final Act, to the Convention was opened for signature on September 16, 1987.

¹³ See *supra* note 11 and accompanying text.

However, without a greenhouse effect there would be no life on earth. It is the very existence of a greenhouse effect that keeps the planet warm. It works this way: radiation from the sun is absorbed by the earth, and much of the heat is then radiated back into space. Gases in the atmosphere, such as carbon dioxide and methane, create a shield which traps some of the heat. Without that shield, the heat would escape and earth would be lifeless, frozen planet with an estimated surface temperature of -20 degrees centigrade. On the other hand, too much carbon dioxide would mean that too much heat is trapped, leading to the surface of the planet becoming hotter.

Problems arise from humankind's influence on the atmosphere; in this case mainly their conversion of fossil fuels into carbon dioxide. As society has become more complex, more technological and more comfortable, energy and hence fuel demands have accelerated. Today, on a global basis, 19 billion tons of carbon dioxide are released annually into the atmosphere, all from burning coal, oil and gas. The United States alone releases 5 billion tons per year. And the rates are growing: 35 years ago only 6 billion tons of carbon dioxide was released globally, and in the same 35 years the carbon dioxide content of our atmosphere has gone up by 10 per cent.

Carbon Dioxide accounts for 60 per cent of the increase in greenhouse effect, while methane, the next most important contributor, will account for another 20 percent but it is rising twice as fast. Methane gas is linked to intensive farming. More cows and sheep belch more methane and generate more from their manure. CFCs are also greenhouse gases and their contribution to the greenhouse effect is estimated to be 15 per cent. However, they are the only gases regulated worldwide and, under the terms of the Montreal Protocol, their contribution should diminish relative to carbon dioxide.

Admittedly, science is divided on the subject, and there is a respectable body of opinion which refutes the claims that there is an abnormal warming of the earth.

However, if, as some scientists claim, the earth's atmosphere is now hotter than it has been for the past 125,000 years and that the greenhouse effect, if allowed to continue could be catastrophic, what can we do about it? We can stop destroying the tropical rain forests and even plant more trees which can absorb carbon dioxide, but it is all too easy to convert the wood back into carbon dioxide or worse, methane when trees die. To stop this, the wood must be buried which is exactly what happened when the coal was formed million of years ago. Tropical rain forests have a

number of valuable virtues, but control of human's release of carbon dioxide is not one of them.

One simple answer is for humankind to reduce energy consumption drastically. Switching from coal to natural gas gives out half the carbon dioxide for the same amount of energy, but coal is currently more economical to use. Nuclear, hydroelectric, and solar power give out no carbon dioxide but bring their own problems and require more development.

Against the background of the rapidly growing world population, and the desire of that population to increase its standard of living, the only solutions are : global government action, new technology developed by industry, or doing nothing and live with the possible consequences of an increased greenhouse effect. It is in effect, a social problem, which, in the end, will have to be resolved by science and society as a whole.

E. The Waste Issue

Having discussed the issues of industrial pollution and waste reduction, products which effect the depletion of the ozone layer and the issue of the greenhouse effect, the remaining overall issue of waste is one which is of increasing importance to the health of our environment. In Europe, this was emphasized during the course of the past year when the EEC introduced its Proposal for a Council Directive on Civil Liability for Damage and Injury to the Environment Caused by Waste.¹⁴ The Significant elements of this Proposed Directive, *inter alia*, are as follows:

- (1) It covers all types of waste generated by an economic activity, with the exception of nuclear waste or waste and pollution caused by oil which are already covered by international conventions in force within the Member States.
- (2) Under the "polluter pays" principle, liability is attributed to the producer of the waste that causes damage or injury to the environment.
- (3) The liability system introduced covers not only damage to persons and property, but also injury to the environment which concerns society rather than the individual.
- (4) The doctrine of "strict liability" was also introduced whereby the producer of waste shall be liable irrespective of fault on his part.

Although European industry through trade associations as well as individual companies are not necessarily in agreement with parts of this Proposed Directive, they recognize that such legislation is required. There is a need for some harmonization of environmental laws and regu-

¹⁴ Proposal for a Council Directive on Civil Liability for Damage Caused by Waste, COM(89) 282 final - SYN 217.

lations within the European Community in view of the applicability of the Single Act by the end of 1992.

As contrasted with industrial waste from production which industry can and must bring under control, there is the subject of post-consumer waste which needs to be considerably reduced. In order to accomplish this, however, we must come to the beginning of the end of the "throw away society."

Statistics on the waste produced in the more developed countries of the world are astounding. The result is that land-fills are less available and safe incineration is in jeopardy due to toxic emissions produced from certain waste material.¹⁵ The reason for all of this is clear: as humankind prospers and the standard of living is raised, there is a natural tendency to waste more. The more we consume, the more we waste. Moreover, industry manufactures products which quite often are made to throw away. The consumer has become more accustomed to throwing things away, hence the term "throw away society." The environmentalists have rightly registered their concern that something must be done for us to avoid being buried in our own refuse.

Where possible, some companies have adopted the concept of being responsible for their products "from cradle-to-grave." The Chairman of a leading European automobile manufacturer has stated that he believes that the environment was the greatest single challenge today facing the automotive industry. He said further that in his opinion, vehicle makers have a responsibility to their product at the end of the life cycle. As a result, his company is building a car recycling plant to pioneer research into waste and car scrappage.¹⁶

The overall issue of waste is far too involved to cover in one article. There are so many elements and types of wastes which cause problems to the environment including ordinary household waste, both organic and inorganic such as glass, paper and plastics. There is a tremendous amount of agricultural waste ranging from animal manure to pesticides which pollute the ground water and cause potential human health risks. There are many post-consumer wastes which cause a variety of environmental problems. The one type of waste which I would like to briefly discuss can be controlled jointly by the consumer and industry and that is plastics waste.

The plastics industry has had a huge growth in supply and demand over the past 50 years. Basically, plastics is a material developed from hydrocarbons and is used so extensively that it has become a staple in our

¹⁵ *Id.*

¹⁶ *Financial Times*, January 6, 1990, at 22.

life standard. It is impossible to list all of its uses but suffice it to say that it has replaced more costly and less efficient materials in applications ranging from piping, food packaging, household goods and appliances, automobiles, apparel, electronic equipment, airplanes and so on *ad infinitum*.

However, plastics have also caught the eye of environmentalists and governments alike who see these materials as another element of pollution in our environment. As a result, there have been municipal ordinances and legislation throughout the United States to ban the use of plastics in shopping bags and packaging. Member states within the EC now have legislation dealing with plastics waste. An example is in Italy where presidential decree No. 475/88 of November 9, 1988 imposes a 100 Lira tax on plastic shopping bags. The same decree also calls for a recycling tax of ten percent on plastic resins imported or domestically produced for the manufacture of beverage containers. As an incentive to voluntarily reduce plastics waste at this time and at some point in the near future, a plastics waste directive proposed by the commission is expected.

The European plastics industry is proposing to meet this challenge in a three-fold manner: (1) Reduction of plastics materials at the source, (2) Material recycling and (3) Energy recycling, i.e., safe incineration with energy recovery.¹⁷

Source reduction requires industry to provide optimized products which reduce source material excess. As an example, the key function of plastics is to maintain the required level of protection for packaged goods. However, less material can be used.

Material recycling of plastics is technically feasible although the economics are dependent on the prevailing prices of plastics and markets for the recycled material. Another problem to overcome is in the collecting, separating and cleaning of the post-consumer plastics waste which requires the cooperation of the consumer and the municipalities as well.

Safe incineration of plastics with energy recovery is a way to finally dispose of the last element of plastics waste, after source reduction and material recycling. It is interesting to note that plastics entering the waste stream have a higher calorific value than fuel oil. Hence, this type of disposition of plastics waste has the additional benefit of an energy source which is both efficient and clean with the utilization of appropriate technology.

¹⁷ Press release accompanying the Association of Plastic Manufacturers in Europe (APME) newsletter, Number 33, November 1989.

Frankly, I believe that the plastics industry will meet this challenge and its existence as a viable, productive and profitable industry will require it do so. I also believe that concern for the environment will require the consumer, governments and municipalities to do their share in cooperation with industry.

Finally, I have discussed in this section of my article a variety of environmental issues which we are confronted with today. There will be more and different issues in the future as these are resolved. Issues may change, but the world we live in, i.e. our environment, remains and it is in its protection where we all share a common responsibility.

III. THE RESPONSIBILITY OF THE MULTINATIONAL CORPORATION

Perhaps it is no coincidence that one of the greatest periods of economic growth has occurred throughout most of the world during the past ten years while at the same time, environmental awareness has become more important than ever. Could it be that economic progress has meant environmental carelessness? And if so, to what extent has industry and especially the multinational corporation been responsible and what should it do to correct environmental regresses in the future?

It is clear that the environment sometimes suffers as man's apparent standard of life improves which presents us with a dichotomy; i.e., the standard of life will eventually go down as the environment is destroyed. The only answer to this dilemma is to maintain a constant awareness for the environment as the economic progress leads to various improvements in the standard of life. One should not exclude the other.

It is also true that the multinational corporation has played a role in improving the life standard of man while in some instances, destroying his environment. However, such harm to the environment has been more the result of carelessness in the rush for economic gain than by design as some may suggest.

I have heard the comment from law students, businessmen, environmentalists and journalists alike that some companies by design have sought to evade the environmental problems of their operations by locating plants in less developed countries. The idea would be to save money in capital and operations since there would be fewer environmental concerns in such countries. I can say that I have never known of a company to do such a thing, and this is also based on my experience as General Manager of my company's Middle East Region for a number of years.

This region included the oil rich countries with a high per capita income as well as some of the poorest countries like Egypt and the Sudan. It also included a country like Turkey with a substantial agricul-

tural and industrial economy along with one of the world's most fascinating and polluted cities, Istanbul.

However, the pollution and environmental problems in general which exists in many developing countries is more related to inadequate water treatment and waste facilities, and harmful emission from vehicles, heating fuel, power stations as well as local industrial pollution. Although it may be that some companies operating in a global basis without regard for environmental protection have located plants in countries where environmental restrictions are insufficient or non-existent, such action can only be defined as irresponsible and should be condemned.

Actually, a truly responsible company should maintain the same standards of environmental protection anywhere it operates in the world. These standards should be set by the "corporate conscience" first and made sure that they are at least as stringent as the laws and regulations in the country they are operating in. There is no reason to treat a plant in a less developed country any differently than one in Western Europe or North America. By definition, a multinational corporation's responsibility is global, and its standard of care for the environment must be uniformly applied wherever its operations exist.

About a year ago, the Chemical Manufacturers Association in the United States and the Canadian Chemical Producers Association in Canada sponsored an initiative know as "Responsible Care: A Public Commitment."¹⁸ This initiative was designed to improve the chemical industry's performance in health, safety and environmental quality. Participation in this initiative became an obligation of membership in the association and included the signing of the following Guided Principles Statement by each member company's CEO:

"As a member of the Chemical Manufacturers Association, this company is committed to support a continuing effort to improve the industry's responsible management of chemicals. We pledge to manage our business according to these principles:

*To recognize and respond to community concerns about chemicals and our operations.

*To develop and produce chemicals that can be manufactured, transported, used and disposed of safely.

*To make health, safety and environmental considerations a priority in our planning for all existing and new products and processes.

*To report promptly to officials, employees, customers and the public, information on chemical related health or environmental hazards and to recommend protective measures.

¹⁸ The "Responsible Care Code" was approved by the United States Chemical Manufacturers Association in November of 1988 and the name received a trademark in December 1989.

- *To counsel customers on the safe use, transportation and disposal of chemical products.
- *To operate our plants and facilities in a manner that protects the environment and the health and safety of our employees and the public.
- *To extend knowledge by conducting or supporting research on the health, safety and environmental effects of our products, processes and waste materials.
- *To work with others to resolve problems created by past handling and disposal of hazardous substances.
- *To participate with government and others in creating responsible laws, regulations and standards to safeguard the community, workplace and environment.
- *To promote the principles and practices of Responsible Care by sharing experiences and offering assistance to others who produce, handle, use transport or dispose of chemicals."

It is hoped that the above or similar principles will also be adopted by chemical producers around the world. How this will actually effect the operations of these companies on a day to day basis remains to be seen, but the very fact that major multinational corporations, in an industry particularly susceptible to environmental concerns, have come forward with such a strong position on environmental awareness is significant.

I do not believe that anyone can honestly deny the fact that environmentalists, and more particularly those represented by public interest groups, have had some effect on the concern of the multinational corporation for the environment. The most well known of such public interest groups, "Greenpeace" and "The Friends of the Earth," have been quite vociferous in their condemnation of environmental destruction by large corporations.

Moreover, many companies which have taken positive actions toward environmental protection are being motivated to do so by their own employees. Additionally, recruiters at universities are often confronted by students being interviewed to work for corporations with all sorts of questions about the company's concerns for the environment. But I submit that there is nothing wrong with a corporation being made aware of problems through public pressures as long as the law is not violated and that the civil and property rights of corporation are respected.

The multinational corporation not only has a responsibility in protection of the environment through its operations and the products it produces. It must also cooperate with local, state and federal officials responsible for passing and implementing laws and regulations on environmental issues. In Europe, this responsibility extends to the EEC. It is a two way street, of course. The governmental agencies and law making

bodies must agree to the assistance and cooperation of the corporation. Too often, we have seen only confrontation in this area and it should be changed to cooperation.

The European Commissioner responsible for environmental affairs, Carlo Ripa di Meana, has declared his willingness to defend the chemical industry to both the European Parliament and the Green Lobby. During an interview on October 19, 1989 he said:

"Without the chemical industry, the whole struggle to improve the environment would be lost. This is absolutely clear to me. When I see Chemical companies taking an environmentally-minded approach, I am not in any way embarrassed to defend them in front of the European Parliament or in the face of the environmental movement."¹⁹

In my opinion, the above quoted statement of the Commissioner says it all. The challenge of the environmental responsibility not only applies to the chemical industry but to all companies and particularly to the multinational corporations. I believe this challenge must be accepted because it will be as important in their future growth and development.

IV. CONCLUSION

This article has attempted to put forth the role a multinational corporation should take in the area of environmental concerns. Ethical behavior was covered and the corporate entity was viewed in a personal sense by defining its conscience and its role in benefiting society as a whole. The environmental issues which were discussed identified some of the principle problem areas which require resolution. The multinational corporation's responsibility toward the environment is emphasized along with the need to cooperate with governments and the public at large.

Finally, I would like to express my appreciation to the Editorial Staff of this journal and to The Northwestern University School of Law for this timely and important Symposium. I hope that this article, which reflects some of my experience as a lawyer and in the management function of a multinational corporation, will be of interest to anyone who is concerned about the welfare of our environment.

¹⁹ Time, November 20, 1989 (European Edition).