

# **CORPORATE ACCOUNTABILITY** **STRUGGLES**

The UN barons and diplomats have traditionally been contemptuous of business firms as mere "tradesmen," as evidenced by their annoyance at the idea that UN system organizations should adopt a "businesslike approach." However, the new title of the UN system coordinating body, composed of the heads of the organizations, was recently changed from the Advisory Committee on Coordination (ACC) to the "Chief Executives Board for Coordination" (CEB), and all the changes in management being forced by a very competitive global economy and modern computerized management systems are gradually changing this overall attitude.

Among the most enthusiastic UN supporters, the change is coming more slowly: some of them were distraught when Secretary-General Annan launched his "Global Compact" to urge corporations toward more moral behavior, for fear that the association would contaminate the UN. This moral superciliousness, in light of the UN's own ongoing mismanagement, abuses, waste, and fraud problems, is discussed further in the Recent Developments section of this archive under Other Major Problems .

The corporate world has indeed entered into a period of severe scandals, beginning in the United States, but spreading strongly to Europe since late 2003, and very much present in other regions of the world as well. As discussed in the introduction to the UN Management Accountability Struggles subsection on Corruption , corruption is regrettably but indeed everywhere -- in the private sector, the public sector, and among international organizations.

In fact, the private sector has much to teach the UN. For one thing, the organizational governance issues are increasingly similar, if one substitutes "Board of Directors" for the international organizations' "governing bodies." Equally important, however, is the fact that the egregious private sector abuses are at least being countered by vigorous press coverage, many initiatives during the past decade to enhance corporate

oversight and good governance, and above all, the rule of law.

These efforts provide many important and useful benchmarks and examples for the dawdling and unaccountable UN in matters of governance, performance, transparency, accountability, oversight, and the rule of law. In fact, there are some rather significant similarities between the UN, as it presently operates its global activities, and the centerpiece of the new corporate scandals -- Enron -- that are explored much further in the subsection on The UN, Alone and UNaccountable subsection of this archive.

One point, above all, cannot be stressed enough in differentiating the international versus these public and private groups: the rule of law. As discussed throughout the rest of this archive, management accountability in the UN is very weak, or almost nonexistent. In the private sector, however, an extremely potent and painful element -- "prosecutorial integrity" -- exists.

Quite unlike the immunity and impunity enjoyed by UN senior officials, chief executives and other top managers in the private sector (and senior officials in national governments) can and are sent to court in both civil and criminal trials. They also can be, and are being, sentenced to prison. Such firm sanctions and application of the rule of law are obviously a very powerful encouragement to much more careful management decision-making and diligence.

IO Watch will develop the extensive accountability and oversight initiatives in the private sector further in the future (in the context of the major corporate scandals which may well continue on for quite some time).

For the moment, the following quotes introduce the similarity of public and private sector accountability and transparency issues. They also indicate the extensive efforts which the corporate sector, and its very active watchdogs, are taking (or being forced to take under the rule of law, especially as emerging in 2005) to strengthen oversight and governance, and to detect suppress and scandalous management behavior.

" ... serious ethical issues face public officials at the highest levels of our national government that have a lot in common with the critical issues facing corporate executives. ...

The interaction of the [dynamic traits of] effective leadership ... and the pressure

of complex decisions in the face of limited information ... creates similar ethical dilemmas for corporate leaders and high public officials. In both sectors, the temptations to shade the truth or minimize the risks are greatest when the stakes are highest. Moreover, if some highly placed individuals yield to these temptations, the credibility of the whole sector is at stake. ...

Legislators, regulators, and market participants are working hard to tighten and clarify the accounting rules, improve corporate governance, and find ways of holding executives and board members, especially audit committees, personally responsible for the veracity of their information. ...

[I believe] that the answer in [both sectors lies in [continuing dynamic leadership while] requiring more information and asking more probing and skeptical questions. ...

A far more thorough job must be done by independent analysts, the press, and an increasingly well-informed public. In other words, we all have to take on this problem."

Alice M. Rivlin, "Greed, ethics, and public policy," Public Integrity, vol. 5, no. 4, 2003, pp. 347-354 [348, 351, 353.]

[Note: the author is a distinguished policy analyst, with much experience in both the public and private sectors, who also held top management and analytical positions in the US government.]

"Almost every year, it seems, some scandal envelops a Fortune 500 company and causes a new spasm of public distrust of big corporations. ...

Lately, however, corporate America seems to be doing more than just paying lip service to standards of management behavior. ... a growing number of big companies are enacting strict ethical guidelines and backing them up with internal mechanisms to enforce them. ...

The corporate title of ethics officer, ... almost unknown a decade ago, has become ... [more familiar.] The Ethics Officer Association ... says membership has soared to 706 today from 12 in 1992. ...

Nobody doubts that the companies ... [act] partly to polish their image. But the commitment goes deeper than that for a very practical reason ...: taking a strong ethical stand helps shield senior officers from legal troubles.

First came [the US Justice Department's sentencing guidelines in 1991] which, in effect promised more lenient treatment for convicted corporate executives if their companies had established good-citizenship ethics programs. Then in 1995, the Delaware Court of Chancery warned that corporate directors could be held personally liable for subordinates' wrongdoing if they had failed to establish programs to ensure compliance with the law."

Amy Zipkin, "Management: Big corporations are getting religion on ethics," New York Times, **October 18, 2000**.

"The Enron-Andersen debacle has cast an unforgiving light on corporate bookkeeping, but the growing demand for accountability could extend far beyond financial statements. ... Pressure ... is pushing more companies, particularly multinational ones, to report their nonfinancial performance, detailing the impact of their businesses on the environment and human rights. ...

A handful of companies like Royal Dutch Shell ... and Ford Motor, have been producing sustainability reports since the middle to late 1990's. A Web site that tracks social reporting, CorporateRegister.com, counts 487 sustainability reports published last year, up from 194 in 1995 and 7 in 1990. (Social reports of all kinds, including environmental and safety, number in the thousands.)

In another sign that social reporting is growing, some large accounting firms are jumping in, looking to expand their auditing and consulting services. Only 40 per cent of

social reports are now audited. ...

Indeed, social reporting ... is becoming more serious. The Global Reporting Initiative drafted guidelines a few years ago, and 100 big companies are following them. In Europe, some countries -- the Netherlands, Denmark, Norway and France -- require some sort of social reporting. ..."

Amy Cortese, "The new accountability: Tracking the social costs," New York Times, **March 24, 2002**.

"Stupefying, is it not, how selfish behavior in the executive suite continues even as managers claim to care deeply about corporate governance issues.

But ... a new study by GovernanceMetrics International, an independent corporate governance ratings agency in New York, ... confirms a correlation between corporate performance and an attention to governance.

The firm studied companies in the Standard & Poors 500-stock index ...[where] the average decline of a stock for the three years ending March 20, 2003 was 2.3 percent.

[However, It] found that ... the five companies earning the firm's highest score rose 23.1 on average over [those] three years ...The top [rated] 15 companies averaged total returns of 3.4 percent and the bottom 50 [rated] companies fell on average 11.1 percent in the last three years.

To identify good governance citizens, [the firm] takes roughly 600 measures. These include a company's labor practices, environmental activities, workplace safety approach and litigation history. The firm also ... checks for independence among a company's board members ...

GovernanceMetrics is tough to please. As of March, the firm had given only five companies its highest rating, 10."

Gretchen Morgenson, "Good governance: Good business," International Herald Tribune, **April 29, 2003**.

"Like 2002 and 2001 before it, 2003 has been a year in which scandals have dominated the business headlines. ... On top of this were trials, and talk of still more trials, of errant executives ... [which are far from over.]

Some corporate crook may be busy at this very moment fiddling figures. But if he is, he is more likely to be caught earlier. There are many signs of improvement, and those most clearly visible are at the top of the corporate tree. Chief executives ... with their imperial swagger ... have learnt the hard way that, to avoid humiliation, they need to be on their best behaviour, and they have spent the past two years cleaning house.

Crucial, too, has been the recent focus of managers, investors, regulators, and politicians on improving corporate governance. This has been faster and more thorough in America than in Europe, though there has certainly been significant progress in many continental countries. ...

True, there remain reasons to fear that governance standards may, as ever, become too relaxed ... But for the time being, there seem to be plenty of corporate watchdogs alert enough to catch most miscreants."

"Another scandalous year. Yet, despite the headlines, things are looking up in the boardroom," The Economist, **December 20th, 2003**.

" ... The issue of prison time for our era's famous white-collar criminals is finally advancing, you might say, from the theoretical to the concrete. ... Lea Fastow [of Enron] asked to serve her one-year sentence at a minimum security camp but instead was

scheduled for ... the Federal Detention Center in Houston, where she'll spend her days alongside various killers, crack dealers, and thugs. ...

[Eric Stein, 45] knew he might get caught ... but he and his associates thought if they limited the [fraud size] ... any eventual prison sentence would be minimal and they'd spend [it] ... 'someplace elegant where we'd play golf and go swimming.' But they were mistaken.

Instead of a wrist slap, Stein got an eight-year sentence and soon learned Club Fed no longer exists. ...

The grim reality of prison life for today's white-collar criminal -- the utter absence of privacy, the body-cavity strip searches, standing in line 90 minutes, much of it outdoors in any weather, to get unspeakable food -- is definitely worse than they or the public expect.

Stein's message to the outside world is simple. 'If you are considering committing a financial crime, do not do it.'

Geoffrey Colvin, "White-collar crooks have no idea what they're in for", Fortune International, **July 26, 2004**, p. 30.

"The financial sector is being increasingly scrutinized for its role in funding projects associated with human rights abuses ...

The issue is rising on the corporate agenda although there is little consensus on how the risks can be managed, the report, by F&C Asset Management and KPMG, said.

Nine institutions took part in the survey, which identified concerns including employee rights, staff security, litigation, loan default and risks to reputation.

'We are concerned about the reputational risks lenders may incur through their association with controversial clients and projects' ... said Karina Litvack, head of governance and socially responsible investment at F&C Asset Management.

... in the United States, international financial services institutions have been taken to court over their alleged past roles in the former apartheid regime in South Africa.

The report said that companies should develop a comprehensive human rights policy, communicate it to staff and investors and ensure that senior executives are accountable for enforcement."

"Briefcase: Rights become a corporate issue," Reuters, International Herald Tribune, **October 30-31, 2004**.

[Note: Would that the UN Secretariat could be as straightforward in this central matter!]

"As companies increasingly recognize that good corporate governance can enhance their reputations and reduce business and legal risks, there is also a growing interest in indices and standards that measure best practice which investors can use and trust. This report looks at the new FTSE/ISS index which aims to calculate which markets have the most well-governed companies.

The key issues:

- US: The struggle to control corporate America can be viewed as a battle between the private and public sector -- and between the regulators and the regulated.
- Europe: Auditors are a major line of defense.
- Asia: Scandal has put the spotlight on deficiencies.
- Corporate responsibility: effective boards and well-managed companies go beyond mere box-ticking to face key issues that influence the heart of corporate culture."

"At a glance" summary of a special report by the Financial Times (UK), "Focus on fresh ways to measure best practice that investors can use and trust", **December 15, 2004**, 4 pp.

[Note: the full Special Report is also on FT.com at [www.ft.com/corpgov2004](http://www.ft.com/corpgov2004) .]

" ... [Experts say that] an intensifying battle [has emerged] over efforts to revamp corporate governance. It is one that pits influential members of the business community ... against institutional investors pushing for greater power over the direction of troubled companies. ...

None of this means that corporate America will be returning to the complacency of the pre-Enron days. And indeed, the criminal and civil pursuits of corporate wrongdoing continue at a breakneck pace.

The Justice Department's corporate fraud task force, formed ... in the immediate aftermath of the WorldCom debacle, has racked up an impressive series of victories. By June 2004, the latest period for which full statistics are available, the task force had obtained more than 500 corporate fraud convictions or guilty pleas and charged more than 900 defendants, including more than 60 top corporate officers, with various types of fraud. During that same time period, the [Securities and Exchange Commission] filed almost 600 separate civil enforcement actions involving financial fraud or reporting.

As the big fraud trials unfold over the coming months, public anger may build as the excesses of the bubble years ... are again trotted out."

Kurt Eichenwald, "Pendulum is swinging back in U.S. corporate crackdown", International Herald Tribune, **January 15-16, 2005**.

"The conviction of Bernard Ebbers ... [chief executive of WorldCom] is bad news for more than just Ebbers and his family. ...

Legal experts said ...the government has shown that juries are willing to hold top officers of major corporations -- who rarely are involved in the nitty-gritty of daily operations -- accountable for wrongdoing, even if the proof rests largely with the testimony of a single cooperating witness. ...

'People at the top are not going to be able to just blame the underlings when a fraud occurs', said ... a former Federal prosecutor ...

In each case, the chief executives have argued that they had no intent to commit any crimes, that they had relied on the assurances of managers who worked for them and of the professional advisers, such as lawyers and accountants, that their actions were legal. ...

[Ironically,] ... chief executives [had argued] that ... the success of the company could not have happened without their hard-driving involvement. ...

'It obviously proved very difficult to accept that someone ... [so highly paid] could simultaneously not be held responsible for the vast wrongdoing in the culture', said [another] former federal prosecutor."

Kurt Eichenwald, "Ebbers case bodes ill for other chiefs", International Herald Tribune, **March 16, 2005**.

"[A jury ... has found former WorldCom boss Bernie Ebbers] ... guilty of fraud, conspiracy and filing false documents... [in] ... an \$11 billion accounting fraud ...

The conviction ... [is] ... the most significant yet in America's latest crusade against corporate crime ...

An initial bout of post-Enron public fury had died down ... [but] WorldCom ... convinc[ed] the American public that Enron was not a solitary event ...

Most experts expect [Mr. Ebbers] to receive a 20-to-25 year jail sentence. ...

[He] ... had argued that, although a massive fraud took place, it was masterminded by ... [his] chief financial officer, and that he was unaware of it. This was

dubbed the 'aw, shucks' defense by prosecutors, who argued that he feigned ignorance ...

.... The verdict will encourage prosecutors in upcoming trials of other senior businessmen.

... In future, American bosses should assume that they could be sent to jail for large-scale frauds perpetrated at their firms, even if there is no paper trail or smoking gun memo linking them directly to wrongdoing. Working as a bus driver in Manhattan may be much less well paid, but it also now looks a lot less risky."

"WorldCom's cowboy bites the dust", The Economist, **March 19th, 2005**.

" ... After the collapse of Enron and other companies ... corporations and their boards are adopting zero-tolerance policies and increasingly holding their employees to lofty standards of business and personal behavior.

The result is a wave of abrupt firings as corporations move to stop perceived breaches of ethics by their employees that could result in law enforcement action, or public relations disasters. ...

The seemingly frantic reach for the moral high ground is driven as much by self-interest as by any attempt at righteousness, now that boards and chief executives have seen how public scandals can torpedo stock prices, alienate customers and end careers.

'There is a new kind of puritanism' said Marjorie Kelly, the editor of *Business Ethics* magazine, replacing what Kelly said was an era of 'arrogance and ignorance, an attitude that boys will be boys.'

... The reaction has been most severe on Wall Street, where investment banks, mutual funds and insurers have felt the sting of legal prosecution for ethical lapses most acutely."

Landon Thomas Jr., "Nervous about ethics, firms are fast to fire", International Herald Tribune, **March 30, 2005**.

[Note: IO Watch finds nothing "frantic" in the situation at the UN, where, other than some crowded press conferences, the senior "old boys" of the Secretariat continue quietly and calmly on with "business as usual" -- lots of talk (though none whatsoever from the General Assembly) and **no** legal action.]]

"BP sacked 252 people last year as part of a drive by the world's second biggest oil company to weed out bribery and corruption.

In its annual report on environmental sustainability, social responsibility and corporate governance, the company blamed the 50 percent yearly rise in sackings for 'unethical behaviour' on theft, fraud and harassment.

Lord Browne, chief executive said 'Human ingenuity will always find something to get up to. It is our job to track it down.'

BP has established a new team to govern legal compliance and business ethics across the group after the spate of high-profile scandals over the past few years.

It said in the report: ... 'Very clear rules on business relationships are essential when there is any scope for bribery or fraud in dealing with suppliers or governments. ...

BP is introducing a company-wide code of conduct and measures such as forcing staff to disclose gifts worth more than \$50.

Lord Browne did not provide details on the investigation into last month's explosion at BP's Texas refinery, which killed 15 people. He said the tragedy was a 'forcible reminder' that BP needed to 'learn from our imperfections.'

James Boxell and Fiona Harvey, "BP sacked 252 for unethical behaviour", Financial Times (UK), **April 12, 2005**.

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*(Note: informally assembled by IO Watch, roughly ranked from "most useful" on down, and subject to change as new sources are added)*

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