Corporate Criminal Liability
National and International Responses

by Markus Wagner*
Visiting Associate

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The International Centre for Criminal Law Reform and Criminal Justice Policy
1822 East Mall, Vancouver, B.C. Canada
Tel.: (604) 822-9875 Fax: (604) 822-9317

I. Introduction

The process of globalization and the growth of interdependence in economic, social and environmental activities by corporate entities requires greater international cooperation between countries. At the same time, the amount of economic and white-collar-crime has grown substantially. One of the most pressing global issues is the predominance of national and multinational corporations in economic transactions and their accountability.

In this context, the development of corporate criminal liability has become a problem which a growing number of prosecutors and courts have to deal with nowadays. In the common law world, following standing principles in tort law, English courts began sentencing corporations in the middle of the last century for statutory offenses. On the other hand, a large number of European continental law countries have not been able to or not been willing to incorporate the concept of corporal criminal liability into their legal systems.[1] The fact that crime has shifted from almost solely individual perpetrators only 150 years ago, to white-collar crimes on an ever increasing scale has not yet been taken into account in many legal systems. At the same time, crime has also become increasingly international in nature.

This paper attempts to present the problems involved with the concepts of corporate criminal liability from a historical perspective (II), followed by an analysis of the approaches taken by different legal systems in both common law and civil law countries, but also in Japan and China (III).[2] International documents, in which corporate criminal liability has been reviewed (IV), have been summarized after these initial chapers. The next part will focus on the different approaches of sentencing which have been taken or which have been proposed (V).

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[1] *See* e.g. Friedrich Carl von Savigny, one of the most renowned German lawyers of the 19th century, who stated in his work "System of Roman Law" in 1840: "Criminal law has to do with natural persons as thinking and feeling persons exercising their free will. A legal person however is not such a person, but merely a property owning being, [...] with its reality based on the representative will of certain individual persons, which, by way of fiction, is attributed to its own will. Such a representation [...] can be acknowledged everywhere in civil law, but never in criminal law. Everything which is considered as a legal person's crime is always only the crime of its members or organs, this means of single human beings or natural persons. [...] If a legal person were to be punished for a crime, the basic principle of criminal law, the identity of the offender and of the sentenced person, would be violated." Quoted in: Möhrenschlager, Manfred. "Development on an International Level," p. 1. Paper presented at the *International Colloquium on Criminal Responsibility of Legal and Collective Entities.* 4-6 May 1998. Berlin, Germany.

[2] No attempt is made to review the Islamic world's view of the place of the corporate entity and accountability in the Shariah.

II. Historical overview

The approaches that have been taken by common law jurisdictions and continental European jurisdictions differ notably in a number of ways.

The first attempts to impose corporate criminal liability were taken by common law countries, such as England, the United States and Canada, which is at least in part due to the earlier bginning of the industrial revolution in these countries. Despite an earlier reluctance to punish corporations,[3] the recognition of corporate criminal liability by the English courts started in 1842, when a corporation was fined for failing to fulfill a statutory duty.[4] There were a number of reasons for this reluctance. The corporation was deemed to be a legal fiction, and under the rule of *ultra vires* could only carry out acts which were specifically mentioned in the corporation's charter. Other objections included the lack of the necessary *mens rea*, and the ability to appear in court personally. Finally, it proved difficult to punish the corporation for lack of adequate sanctions. Over time, the English courts followed the doctrine of respondeat superior, or vicarious liability, in which the acts of a subordinate are attributed to the corporation.[5] However, vicarious liability was only used for a small number of offenses, and later on replaced with the identification theory. In the United States, the approach was different. Instead of holding the corporation indirectly liable, the federal courts applied the concept of vicarious liability.[6] While the courts initially made use of this doctrine solely in cases where *mens rea* was not required, later decisions included this category of offenses. This meant a radical departure from the stance English courts had taken. [7]

The continental European systems' penal codes are based on the finding of individual guilt, and therefore, the incorporation of corporate criminal liability into their criminal codes has met a wide range of criticism in these jurisdictions.[8] Nevertheless, sanctioning the corporation in these jurisdictions also follows the principles of either vicarious liability or the identification theory.

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[3] In this context, the famous quote by Baron Thurlow, who was Lord Chancellor of England in the 18th century, is exemplary for the situation at the time. "Did you ever expect a corporation to have conscience, when it has no soul to be damned and no body to be kicked?" Quoted in: Coffee, John C. "No Soul To Damn: No body to kick. An Unscandalized Inquiry into the Problem of Corporate Punishment." *Michigan Law Review*, v. 79, p. 386.

[4] *Birmingham & Gloucester Railway Co.* (1842) 3 Q.B. 223.

[5] This doctrine prescribes that the master is responsible for the acts carried out by the servant in the course of the servant's employment. This doctrine was created in the law of torts in the 17th century in order to provide compensation for third parties, when the servant acted for the master, and caused an injury to the third party. It was justified because the master acquires the benefits and should therefore also carry the burden for wrongdoings. Furthermore, servants were impecunious and therefore the third party should be able to hold someone liable. *See* Ferguson, Gerry. "Corruption and Corporate Criminal Liability," p. 4. Paper presented at *Corruption and Bribery in Foreign Business Transactions: A Seminar on New Global and Canadian Standards*. 4-5 February 1999. Vancouver, Canada.

[6] For a further discussion of this theory, *see* III.

[7] A third approach, which is promulgated by legal theorists, is to locate fault in the corporation's organizational structure, policies, culture and ethos, *see* Chapter III, Australia.

[8] However, it should be noted that before the French Revolution, the French *Grande Ordonnance Criminelle* of 1670 provided for the punishment of a corporation. This idea was rejected and ultimately disposed of during and after the French Revolution. *See* Stessens, Guy. "Corporate Criminal Liability: A Comparative Perspective." *International and Comparative Law Quarterly*, v. 43, July 1994, pp. 496-497.

III. Corporate criminal liability in today's legal systems

United Kingdom

Despite the pronouncement of a judgment in 1842 to that end, "true" corporate criminal liability was not firmly established until this century in the UK. Corporate entities could only be held liable for crimes which did not require *mens rea*, since the mere existence of a master-servant relationship was not a sufficient basis for imputing personal fault to the master.[9] There were, however, three common law crimes, which did not require *mens rea* - public nuisance, criminal libel and contempt of court. An additional category where *mens rea* was not required were regulatory offenses created by statutes, and which were held to be absolute liability offenses.[10] The final obstacle that needed to be overcome was the criminalization of the corporation for *mens rea* offenses. In 1915, the House of Lords, in a civil liability case entitled *Lennard's Carrying Co. Ltd.*, laid down a general principle for attributing fault to a corporation - the directing mind principle. Under this concept, the acts and state of mind of certain senior officers of the corporation - the directing minds - are deemed to be the acts and state of mind of the corporation.[11] That means that the directing minds are identified as the corporation, and thus the corporation is directly liable, rather than vicariously liable.[12]

United States

While the pattern of courts in the United States with regard to corporate criminal liability paralleled that of the English courts at first, they soon departed from the position taken by their English counterparts. At the beginning of the century, some American courts started to expand the concept of corporate criminal liability to include *mens rea* offenses, a move which was confirmed by the U.S. Supreme Court in *New York Central & Hudson River Railroad Company v U.S.*[13] This confirmation came after Congress had passed the Elkins Act, which stated that the acts and omissions of an officer acting within the scope of his employment were considered to be those of the corporation, thus promulgating the concept of vicarious liability.[14] Although the case before the Supreme Court was concerned with a statutory offense, the lower courts rapidly expanded its scope of offenses at common law.[15] Several decades later, in 1983, the 4th Circuit Court stated that "a corporation may be held criminally responsible for antitrust violations committed by its employees if they were acting within the scope of their authority, or apparent authority, and for the benefit of the corporation, even if … such acts were against corporate policy."[16]

Canada

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[9] Ferguson, *Supra*, note 5, p. 4.
[10] *Ibid*.
[11] *Ibid*, p. 6.
[12] *Ibid*. The leading case in the UK is *Tesco Supermarkets v Nattrass*, [1972] A.C. 153, [1971] 2 All E.R. 127 (H.L.).
[13] *New York Central & Hudson River Railroad Company v U.S.* 212 U.S. 481 (1909).
[14] Stessens, *Supra*, note 8, p. 497.
[15] *Ibid*.
[16] *U.S. v Basic Construction Co.*, 711 F. 2d 570 at 573 (4th Cir. C.A. 1983).

In comparison to England, the situation in Canada is characterized by the fact that the directing mind concept can be instituted at a lower level within the corporation. This was clearly defended in *Dredge & Dock*, the leading case on corporate criminal liability in Canada.[17] *Dredge & Dock* established the existence of a corporate *mens rea*, a point that has been defended by a number of authors.[18] Despite this move, a recent civil damages case before the Supreme Court, *The Rhone v The Peter A.B. Widener,*[19] suggests at least implicitly that in future cases directing minds will only be found at higher levels of authority.[20] The court held that the "key factor which distinguishes directing minds from normal employees is the capacity to exercise decision-making authority on matters of corporte policy, rather than merely to give effect to such policy on an operational basis, whether at head office or at sea."[21] The other two categories in question, absolute and strict liability offenses allow natural persons to be held criminally liable without the proof of *mens rea*. However, while strict liability provides the defendant to exculpate himself by due diligence on his part, this opportunity is not given to the perpetrator of an offense which falls under the category of absolute liability.[22]

Australia

After applying the concept of vicarious liability unitl 1995, the Austrialian legislature changed the criminal code to base corporate criminal liability on a test of the "corporate culture." This term is defined as "[meaning] an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities take place."[23] It is thus a departure from earlier approaches, and has been termed to be more direct and realistic than the more mechanical and abstract identification doctrine.[24] The corporate culture approach chosen by Australia provides four ways in which fault may be proven. Among these are a "corporate culture which directed, encouraged, tolerated or led to a non-compliance with the relevant provision;" or that the corporation failed to created and maintain such a corporate culture.[25] In addition, it is sufficient to establish that the board of directors "intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence," or that a "high manegerial agent [...] knowingly or recklessly engaged in relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence."[26] With regard to the latter, a defense of

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[17] *Canadian Dredge & Dock Co. Ltd. v The Queen* (1985), 19 C.C.C. (3d) 1 at p. 23, 45 C.R. (3d) 289 at p. 313, [1985] 1 S.C.R. 662. The decision clearly states that "[t]he application of the identification rule in *Tesco* may not accord with the realities of life in our country." It is furthermore stated that the sheer size necessitates corporations to spread their operations. Therefore, it is inherent that "directing minds" can be found in different geographic locations in such a decentralized corporate environment.
[18] *See* e.g. Hanna, Don. "Corporate Criminal Liability." *Criminal Law Quarterly*, v. 31, n. 4, p. 462.
[19] *The Rhone v The Peter A.B. Widener*, [1993] 1 S.C.R. 497.
[20] Stuart, Don. "Punishing Corporate Criminals with Restraint." *Criminal Law Forum*, v. 6, n. 2, p. 253.
[21] *Ibid*, p. 526.
[22] *See* Stessens, *Supra*, note 8, p. 497.
[23] *Criminal Code Act*, 1995, §12.3(6) (Austl).
[24] Stuart, *Supra*, note 20, p. 253.
[25] *Criminal Code Act*, *Supra*, note 23, §12.3(2).
[26] *Ibid.*

due dilligence exists, if the "body corporate [can prove] that it exercised due dilligence to prevent the conduct, or the authorisation or permission."[27]

France

Although France had not recognized corporate criminal liability since the French Revolution, the new Code Pénal of 1992 makes specific mention of this concept in section 121-2. The resistance to not including corporate criminal liability in the criminal code had increased over the years, and in 1982 the Conseil Constitutionnel had made it clear that the French Constitution did not prohibit the imposition of fines on a corporation.[28] However, there are rather tight restrictions on the application of this provision. Since France's model is based on the directing mind concept, and section 121-2 is restricted by the requirement that each crime needs to mention specifically that a corporation can be punished, the application of corporate criminal liability is confined to a limited number of crimes.[29] Moreover, corporations can only be held liable under the French Code Pénal when one of the legal representatives or organs of the corporations has acted. On the other hand, the violation of supervisorial duties is considered to be sufficient to warrant proceedings on the basis of corporate criminal liability.

Germany

Without taking recourse to criminal law itself, Germany has developed an elaborate structure of administrative sanctions,[30] which includes provisions on corporate criminal liability. These so-called Ordnungswidrigkeiten are handed down by administrative bodies. The key provision for sanctioning the corporation is § 30 Ordnungswidrigkeitengesetz,[31] which calls for the imposition of fines on corporate entities. There has been a great deal of debate in legal circles about the incorporation of corporate criminal liability in Germany with arguments both for an inclusion and against such a move. This debate is due to the increase in economic, but also environmental crimes. Reasons for "true" corporate criminal liability include the inadequacy of existing sanctions and of the deterrent effect of an administrative fine. A further problem is the "organized absence of responsibility."[32] On the other hand, there are a number of reasons which are mentioned against the inclusion of the concept of corporate criminal liability. First and foremost, the lack of capacity to act and the lack of criminal capacity are mentioned. These arguments are based on the notion that corporate entities are unable to act in a criminal law sense, due to the absence of a will. The second argument is grounded on the belief that corporate entities are not capable of being culpable. Other arguments include the inability to undergo punishment, and a possible violation of the principle "non bis in idem."[33] Nevertheless, the German legislature has instituted a working group in early 1998, which is given the task to

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[27] *Criminal Code Act*, *Supra*, note 23, §12.3(3).
[28] Stessens, *Supra*, note 8, p. 501.
[29] *Ibid*.
[30] Administrative sanctions are imposed by an agency of the executive branch, as opposed to being imposed by the judiciary.
[31] Several translations for this law exist, among them are Regulatory Offences Act and Law of Administrative Sanctions.
[32] Fieberg, Gerhard. "National Development in Germany: An Overview," p. 3. Paper presented at the *International Colloquium on Criminal Responsibility of Legal and Collective Entities.* 4-6 May 1998. Berlin, Germany.
[33] *Ibid*.

review and improve the current situation by strengthening the role of criminal law with regard to corporate entities.[34]

Japan

Corporate criminal liability is an integral part of Japanese law. There are currently more than 700 criminal provisions on the national level alone, which can punish entities other than individuals, and this number is likely to increase in the coming years.[35] In addition, the Japanese Supreme Court decided that corporate entities must establish and implement policies and systems that prevent their subordinates or employees from committing crimes in the course of doing business. If such policies are not implemented or not updated accordingly, the entities can be held criminally liable on grounds of negligence on the part of the directing minds in supervising the subordinates.[36]

China

China's Criminal Code, which was first introduced in 1979, did not contain a provision on corporate criminal liability until 1997. Prior to the introduction of "unit crime" into the Criminal Code in Article 30,[37] the Customs Law of the People's Republic of China was the first law to stipulate that "enterprises, institutions, state organs or public organizations" could commit a crime.[38] Between 1987 and today, more than 50 kinds of unit crimes have been put into place in over 20 criminal, civil, economic and administrative regulations.[39] The large number of unit crimes in different laws has lead to some criticism, mainly because of the (1) vagueness of the responsibility of individuals in the context of unit crime; (2) the large number of designations that exist in the context of unit crime, such as "enterprises, institutions, organs or public organizations," or "enterprises and institutions" or simply "units;" and (3) inconsistencies with regard to the punishment of unit crimes, since some laws provide for a dual-punishment system, while others rely on a single-punishment system.[40]

IV. Corporate criminal liability in international documents

Apart from individual countries' penal codes, administrative regulations or civil statutes, corporate criminal liability is also mentioned in a number of international documents. It is

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[34] This possible departure is due to significant pressure from the latest directives and conventions, both on the EU- and OECD level.

[35] Ito, Kensuke. "Criminal Protection of the Environment and the General Part of Criminal Law in Japan." *International Review of Penal Law*, v. 65, n. 3-4, p. 1043.

[36] *Ibid*, p. 1044.

[37] Article 30 of the Chinese Criminal Code reads: "Any company, enterprise, institution, state organ, or organization that endangers society, which is prescribed by law as a crime committed by a unit, shall bear criminal responsibility."

[38] For an analysis of the situation prior to the introduction of unit crime in 1997 and the unique implications of the concept of corporate criminal liability in China, *see* Yang, Vincent Cheng. "Corporate Crime: State-Owned Enterprises in China." *Criminal Law Forum*, v. 6, n. 1, pp. 143-165.

[39] *See* Liu, Jiachen. "The Legislation and Judicial Practice on Punishment of Unit Crime in China," p. 1. Paper presented at the *International Colloquium on Criminal Responsibility of Legal and Collective Entities.* 4-6 May 1998. Berlin, Germany.

[40] *Ibid*, pp. 1-2.

reflective of the differing developments in common law and civil law countries that the topic was not taken up on an international level until the late 1920s at the 2nd Congress of the Association Internationale de Droit Penal in Bucharest. A number of conferences have dealt with the same issues since the end of World War II. Among them are the 8th International Conference of the Society for the Reform of Criminal Law in 1994 in Hong Kong and the International Meeting of Experts on the Use of Criminal Sanctions in the Protection of the Environment in Portland, in 1994.[41]

While the wording of international resolutions towards the introduction of corporate criminal liability was somewhat cautious at the beginning,[42] the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders of 1985 in Milan mentioned that "[d]ue consideration should be given by Member States to making criminally responsible not only those persons who have acted on behalf of an institution, corporation or enterprise, or who are in a policy-making or executive capacity, but also the institution, corporation or enterprise itself, by devising appropriate measures that could prevent or sanction the furtherance of criminal activities."[43]

Another document, which advanced the formulation of corporate criminal liability on an international level and is considered a milestone by some commentators was Recommendation (88) 18 of the Committee of Ministers [of the Council of Europe] to Member States concerning Liability of Enterprises having Legal Personality for Offenses committed in the Exercise of their Activities. It mentioned on the one hand the "application of criminal liability and sanctions to enterprises, where the nature of the offense, the degree of fault on the part of the enterprise, the consequences for society and the need to prevent further offenses so require," and on the other hand the "application of other systems of liability and sanctions, for instance those imposed by administrative authorities and subject to judicial control, in particular for illicit behavior which does not require treating the offender as a criminal." In 1998, the Council of Europe passed the Convention on the Protection of the Environment through Criminal Law, which stipulated in Article 9 that both "criminal or administrative sanctions or measures" could be taken in order to hold corporate entities accountable.[44]

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[41] International Centre for Criminal Law Reform and Criminal Justice Policy. "International Meeting of Experts on the Use of Criminal Sanctions in the Protection of the Environment: Internationally, Domestically and Regionally." Portland/OR, March 1994.

[42] *See* Möhrenschlager, *Supra*, note 1, p. 3.

[43] A/RES/40/32. *Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order.* 29 November 1985.

[44] ETS No. 172. Council of Europe. *Convention on the Protection of the Environment through Criminal Law.* 4 November 1998.

The Member States of the OECD agreed on the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 17 December 1997. It obliges the parties to introduce at least the possibility to impose non-criminal monetary sanctions on legal persons for the bribing of foreign public officials.[45]

There are numerous other international documents that include provisions on corporate criminal liability. This includes documents that were passed either by the European Communities or the EU, but also documents which originated in the United Nations, such as the 1988 United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the draft Convention on Transnational Organized Crime.[46] The latest attempt to include the concept of corporate criminal liability is Article 5 of the draft United Nations Convention against Transnational Organized Crime.[47] These international documents have put a considerable amount of pressure on a number of European countries, which currently to not contain provisions pertaining to corporate criminal liability, to consider reforms to their criminal laws.

V. Sanctioning corporate entities

With respect to sanctioning a corporate entity, the conventional, and for the most part only, approach has been to impose a *fine*. This has obvious drawbacks, since a fine, whether imposed by an administrative agency or a judicial body, has only a limited preventive effect and must be considered to be reactive rather than proactive,[48] or preventive. Over the last few years however, there have been numerous suggestions, as well as a considerable number of attempts to remedy this situation.

A wide variety of sanctions is available for legislators. However, it must be submitted that a single solution on how to sanction a corporation probably does not exist, and that a combination seems to be the most promising approach to bringing this problem to a satisfactory "solution."

Monetary sanctions are still widely used for imposing penalties on corporations. This is mainly due to the extreme versatility with which monetary sanctions can be used. These sanctions can range from *recognizance* and *fines*[49] to the total *confiscation of property*.[50] Inbetween these two

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[45] Möhrenschlager, *Supra*, note 1, p. 12.
[46] For a more thorough analysis of the law of the European Communities and the European Union, *see ibid*, pp. 6-11.
[47] A/AC.254/4/Rev.2. Ad hoc Committee on the Elaboration of a Convention against Transnational Organized Crime. *Revised draft United Nations Convention against Transnational Organized Crime.* 12 April 1999, p. 13.
[48] Heine, Günter. "Sanctions in the Field of Corporate Criminal Liability," p. 1. Paper presented at the *International Colloquium on Criminal Responsibility of Legal and Collective Entities.* 4-6 May 1998. Berlin, Germany. *See also* Schünemann, Bernd. "Placing the Enterprise Under Supervision ("Guardianship") as a Model Sanction Against Legal and Collective Entities," pp. 1-2. Paper presented at the *International Colloquium on Criminal Responsibility of Legal and Collective Entities.* 4-6 May 1998. Berlin, Germany. The cases of two major German companies reveal that fines do not have any, or only little, effect on the companies' future behavior.
[49] The imposition of fines creates problems mainly because it can prove difficult to determine which amount is both fair and effective when punishing a corporate offender. In countries where fines are relatively low, companies can include these fines into their operating costs, while large fines can drive companies out of business, thus having a tremendous impact on the employees of the company, as well as other secondary results. For an analysis of the imposition of fines, *see* Heine, *Supra*, note 48, pp. 3-6.

extremes, there exist confiscation and *forfeiture*, *compensation* and *restitution*, as well as the *exclusion from advantages*.

Apart from imposing monetary sanctions, legislators have the opportunity to introduce a variety of restrictions on corporate entities. This category of sanctions is wide and has lead to a number of innovative proposals, reaching far beyond the mere imposition of *fines*. Sanctions which fall under this category can include "*corporate imprisonment,*" i.e. restraining the company's ability to take action by either seizing its physical or monetary assets, or restricting its liberty to act in a specific manner. The ultimate restriction of *entrepreneurial liberty* is the *closure* or *winding-up* of the corporation. The aim for such action is the protection of the general public from criminal organizations. Such criminal behavior can include a high degree of practical danger to the public, a history of dangerous corporate mismanagement, or management which demonstrates a high degree of irresponsibility.[51] Less drastic action includes the prohibition of certain activities, such as participation in public tenders, the production of specified goods, as well as contracting and advertising.

Other measures which are not judicial in nature include the *sequestration* and the *appointment of a trustee*. The latter can bring about serious consequences. If the trustee's decisions are binding, the question arises who is responsible for wrong decision-making and possible consequences.[52]

A number of other sanctions are available, such as the *equity fine* or *corporate probation*. The probation order for a corporate entity is similar to the probation order for individuals.[53] It can include "community service" or "other reasonable conditions."[54] Further, the *publication of the judgment* has been proposed in several jurisdictions. While this sanction can "force" a company to comply for fear of adverse media attention, it can have unpredictable results. It is hard to quantify the consequences that a company could face in such a situation.

Another aspect which must be addressed is the aftermath of finding that a corporation should be sanctioned, i.e. what institution should have the power to determine the appropriate corporate sanction? It has been pointed out that broad *discretion* may function in countries with only a small number of specialized courts or if the only available sanction is a fine.[55] Apart from that however, *sentencing guidelines* have been established in a number of countries, which aid courts in determining sanctions, while avoiding inequality in decisions.[56]

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[50] *Ibid*, p. 2.
[51] *Ibid*, p. 6.
[52] But *see* the proposal by Schünemann, *Supra*, note 48, who describes the role of the guardian, who is appointed by a court of law. Schünemann regards this proposal as the "philosopher's stone." The guardian's position would make the company's actions more transparent.
[53] Préfontaine, Daniel C. "Effective Criminal Sanctions Against Corporate Entities - Commentary: Canada," p. 4. Paper presented at the *International Colloquium on Criminal Responsibility of Legal and Collective Entities.* 4-6 May 1998. Berlin, Germany.
[54] *See* e.g. *Canadian Environmental Protection Act.* R.S.C. 1985, c. 16 (4th supp.).
[55] Heine, *Supra*, note 48, p. 9.
[56] *See* e.g. Mrazek, Joseph C. Jr. "Organizational Sentencing." *American Criminal Law Review*, v. 33, n. 3, pp. 1065-1078, on how a fine is calculated by going through a complicated and complex seven-step process, which consists of the determination of (1) the base offense level, (2) the base fine, (3) the culpability, (4) multipliers, (5) disgorgement, (6) implementation, and (7) departures.

VII. Conclusion

As this paper has tried to point out, the field of corporate criminal liability is a multi-faceted issue. There are no simple solutions to the problem. Some countries have to overcome constitutional hurdles, while others are faced with problems of implementation of international documents. Another question is whether corporate liability should be criminal in nature, or whether the unique circumstances of punishing a corporate entity merits different approaches. It is apparent that action should be taken in the field of corporate criminal liability, and it also seems clear that a singular approach will not be sufficient to deal with either the conviction of corporations, or the sanctioning of corporations.