

What part does the law play in corporate social responsibility?

Nweke, L.C and Chikaire

Department of Faculty of Business and Communication,

Article Info

Received: 22-12-2025 Revised: 02-01-2026 Accepted: 08-02-2026 Published: 18-02-2026

Abstract

The article challenges the idea that corporate social responsibility (CSR) is to do "more than the law requires" by examining different CSR contexts where law and legal standards are present. The triple bottom line is used as a starting point for discussing CSR, with an emphasis on social and environmental aspects. It is suggested that CSR operates as informal law and that significant legal concepts serve as a component of a broad set of values that direct a lot of CSR-related activities. It is suggested that the existing normative framework of CSR in terms of demands on multinational businesses may constitute pre-formal law, and that features of law in the abstract as well as in the statutory sense and as self-regulation impact the content, execution, and communication of CSR.

Key words: Human rights commitments, international law, corporate social responsibility, non-financial reporting, and informal law

Introduction

In order to contribute to a better understanding of the role that law plays in CSR content, implementation, and communication, the purpose of this article is to examine the link between CSR and law. In addition to being understood in terms of statutes and other regulatory components, law is also understood abstractly as a concept and philosophy. There is no attempt to provide a comprehensive study of the connection between CSR and the law. Simply put, the goal is to talk about some of the problems that come from the relationship between law and CSR, with a focus on standards that seem to be formal law but are not. The primary emphasis here is on the role that legal ideas play in CSR and whether CSR operates as informal or reflexive law. Following an overview of the advantages of comprehending the connection between law and CSR, a description of these concepts is given in the section below titled "Why bother about law and CSR." The next section (Norms, law, regulation, and CSR action) addresses instances of how law and CSR interact, concentrating on topics covered in that section of the article: First, sources and drivers of corporate social responsibility (CSR), that is, elements that contribute to the normative content of CSR and, in turn, elements that encourage actors to take action on sources. The normative content of

corporate social responsibility (CSR) is then influenced by company and society norms, as well as by international law, which influences CSR self-regulation and reporting. Third, the topic of government regulation is covered, including the stick-and-carrot method of conventional legislation and the promotion of corporate self-regulation supported by incentives, international law, and organisations that create laws. The topic of business action is then covered, with an emphasis on CSR self-regulation, which is often done to restrict government control and is frequently based on national or international legal norms. CSR reporting also makes reference to national or international legislation for benchmarking and indications. The penultimate section (Summing up: CSR-What kinds of law?) summarises these conversations and sets the stage for the last section's findings on CSR and the function of law.

As topics of CSR, the triple bottom line is taken as a point of departure, focussing on People (social) and Planet (environmental) dimensions, in particular human rights, labour rights and environmental protection.

This article does not discuss CSR as corporate law, audit law, or legal regulation of corporate managers' duties and liabilities.

Why bother about law and CSR?

CSR is not just an issue of relevance to corporations and their business stakeholders. CSR is also an issue of potential significance to governments in welfare states and in developing states. Social responsibility of corporations may assist a government in fulfilling welfare state goals of a political character or based in law as obligations.

Socially responsible companies may contribute e.g. to the integration of immigrants, education and training, access to health services and to employees' financial conditions after retirement. Where corporations act and fund activities "in place" of the government, government funds may be used for other purposes. Furthermore, corporate action based on social and environmental responsibility may assist governments in addressing social and economic development needs in developing countries, and may contribute to human rights implementation and to fighting corruption. Social responsibility demands in corporations that supply from, or produce in, third world states, may also benefit workers in the latter states. However, labour structures and employee surplus in third world states mean that improvement of conditions for third world workers is, however, a complex process that requires much more than a company making CSR demands on suppliers, to avoid that well-intended actions by political consumers in the North lead to unintended negative results for workers in the South.

Given the potential of CSR to society at large and the role that CSR plays for corporations, it may be useful to understand more about what drives CSR, what constitutes the substance of the concept, and the channels that are relevant to corporations and stakeholders in working with the substance of the concept. An understanding of the interplay between CSR and law will be of use to corporations and states in handling processes of change encountered by the welfare state, and responsibilities of corporations in a process of globalisation. Understanding processes leading to the formulation of norms that become part of CSR may also be of use to employees and their organisations, investors and other stakeholders. Such understanding may also assist stakeholders in contributing to the process of formulation through relevant fora and

tools and through corporate action,

Although there is not yet one generally accepted definition of CSR, CSR is generally understood to be "doing more than what is required by law",^[3] i.e. beyond legal compliance. Given this, we could ask, why discuss law at all in the context of CSR? Does legal science have a role to play in a study of CSR? Apart from the fact that to do more than the law requires, you need to know the law, the answer is partly given by the fact that norms of a legal character are widely used to inform or guide action and reporting within the sphere of CSR: Instruments and standards of international law (especially human rights and labour law) are referred to in reporting systems, some corporations use international and national law to define CSR efforts, and NGOs monitor human rights or labour rights issues.

As of right now, companies are exempt from the legal requirements imposed by international law. Despite this, a lot of businesses and CSR stakeholders seem to behave as if international law—especially international labour, environmental, and human rights law—applies to businesses in a legally enforceable manner. Numerous instances of NGOs and the media exposing companies accused of direct or indirect participation in breaches of international human rights legislation, labour rights law, or environmental principles have occurred during the previous ten years. Despite not having a specific legal obligation, certain stakeholder organisations effectively hold businesses accountable by their activities. Customers that are politically inclined may avoid purchasing goods made or sold by these companies. Investors, particularly certain institutional investors, are increasingly screening investments based on corporate social responsibility (CSR) and steering clear of companies that can provide such risks. Perhaps most importantly, many businesses carry out social, environmental, or (human) rights impact assessments in or before operations to reduce the possibility of actions that might be deemed to be against human rights, labour law, or environmental principles, or to take action to improve conditions that might fall under the same issues. Regarding labour rights based on ILO conventions, it can be argued from a political perspective that employers (and

employees) are bound by the conventions because of the ILO's unique tripartite structure, which includes organisations representing employers and employees in addition to states in the creation of conventions. However, legal theory maintains that states are still in charge of implementation, with national implementation carried out in accordance with each state's own procedures, including via collective agreements (Constitution of the ILO art. 19 (5) (d); Nielsen and Rehof 1998: 6, 9–11, 47–48).

Moreover, governments are beginning to introduce legislation that requires companies to report on CSR issues, and the EU Commission has publicised documents encouraging CSR action that takes ILO standards and OECD Guidelines as minimum standards. Most recently, the 60th session of the United Nations Human Rights Commission in Geneva in April 2004 discussed a set of proposed draft norms on the responsibilities of corporations with regard to human rights.

Accordingly, CSR demands arise from a number of actors in society. It is not possible to point squarely to one or a few specific actors that generate CSR norms. The role of the corporate sector in defining the substance of CSR seems to be relatively weak, in the sense that companies seem to be following and acting on external demands rather than setting the agenda.[4] At the same time, some companies undertake voluntary action such as voluntary reporting or adoption of voluntary Codes as a way of influencing or delaying legislation (Adams 2002, Angel and Rock: 2004).

For this purpose, we may ask: What form, or forms, of law is CSR? As indicated, in here, this question will be raised in relation to informal law and reflexive law. The role of principles of law will be addressed an overall level.

Informal law is a set of normative ideas and patterns of behaviour and action that are not based on a sharp distinction between law and morals, or between law and fact. It is not formulated by a central, state or national authority. Its validity does not rely on state sanctions, but on its actual observance that is obtained through means particular to the semi-autonomous area in which it functions. Its sanctions are of a moral or practical character.

In some cases, informal law is pre-formal law. This is the case where norms of informal law at a later stage obtain the status of formal law. As pre-formal law, informal law may be a result of a societal development on a topic that has not yet been the subject of formal regulation.[5]

Neither self-regulation, nor informal norms that are observed as if they were formally legal binding are new phenomena in the corporate sector. Collective agreements are an example of a widely accepted form of self-regulation of corporate action.[6]

Reflexive law concepts have been established by Göther Teubner and debated by a number of other legal scholars. In summary, reflective law does not specify objectives to be fulfilled in a functional view of the welfare state, nor does it create particular rights and obligations as law in the Rechtsstaat. Instead, it focuses on procedures: Decisions are presumed made by stakeholders who are directly representative of the interests impacted by the choice because appropriate decisions are considered to be made based on protocols that specify who should participate in making a given decision. Decisions are presumably accepted and followed as a consequence, and individuals impacted do not see them as the product of outside influence. Self-regulation and careful consideration of the common interests may coexist under reflexive legislation. Decisions should ideally only be based on reasoning rather than political or economic influence (Dalberg-Larsen 2004, Dalberg-Larsen 1999, Petersen 1991).[7] According to Teubner (1985, esp. pp. 159-166), CSR may help a company cooperate with its wider surroundings, and the legislation can encourage internal reflection.

The normative development of CSR may also be approached from the perspective of the role that principles of law play. Principles of law have been discussed by a number of legal scholars. The brief discussion here is based primarily on a new publication by a group of researchers at the Institute of Law at the University of Aarhus, Denmark. Principles of law are defined as a type of legal norms that differ, through their general character, from other norms of a more specific character. They are expressions of basic values in the use of law. Some find a close relationship between principles of law, and ethics and other values,

including welfare state values (Dalberg-Larsen and Lemann Kristiansen 2004, Dalberg-Larsen 2004 esp. pp. 34-44 with references).

Principles of law may play various roles, such as the basis for assessment of other more specific norms or actions, or as a decisive point of departure for systematisation of law into patterns. For example, the principle of legality may be argued to be a basic principle of law, encompassing a general obligation not just to ban discrimination but also to undertake action to address inequality (Justesen 2004 esp. p 203). Due to the role that human rights play in CSR,[8] it is worth noting also that it may be argued that human rights feature as a common principle of law, and as a principle in many initiatives for development in the third world (Bruun Nielsen 2004).

Norms, law, regulation and CSR action

Sources and drivers

In looking at factors that play a role in the creation of CSR norms and regulation, a distinction can be made between sources and drivers. "Sources" are basically factors that serve to inform the normative substance (like sources of law in a wide understanding, encompassing also ethics, values, voluntary Codes of Conduct, etc.). Drivers are factors that motivate actors to act on sources.[9]

Sources of CSR comprise non-legal (or social) norms as well as legal norms. Non-legal norms that serve as sources of CSR include, for example, ethical norms, corporate values, behavioural norms deriving from consumer groups and other interest groups, and Codes of Conduct that are only guiding and do not create enforceable legal duties or rights.

Legal norms relevant for CSR comprise, for example, international law on human rights, labour and environmental protection; national and sub-national legislation in home or host country (in particular on non-discrimination, security, participation, occupational health and safety, remuneration, working hours, minimum ages, social or environmental impact assessments, environmental protection); legislation on reporting and information of CSR topic; collective agreements; and Codes of Conduct that create enforceable duties or rights, for example between a company and its

employees, or between a company and its suppliers.

CSR related actions are often based on a mix of non-legally and legally binding norms. Legal requirements of reporting of non-financial issues are becoming increasingly common in countries in the EU and elsewhere. To some extent this may represent a formalisation of former informal law or pre-formal law, drawing on non-legally binding norms. In other cases, the boundaries tend to blur between norms of a legal character but not directly binding on corporations (for example, international human rights law), and corporate action that draws on such norms (for example social reporting on labour issues, or responding to a possible environmental risk for investment purposes).

A normative sense of obligation (based on ethics, responsibility to local society, global sustainability considerations, law that is not legally binding on the corporation but is taken as guiding, agreements, politics, etc.), economic conditions and market factors, marketing and recruitment considerations, and a desire for legitimacy (societal "licence to operate") are some of the factors that count as CSR drivers, or factors that motivate action. CSR is also motivated by the potential or danger of penalties, which may be either good (rewards) or negative (punishments, loss of market opportunity, or reputation), as well as a desire to be among the first movers or to set an example. The motivations behind corporate social responsibility (CSR) seem to be a combination of marketing and economic factors as well as those pertaining to the sociology of law, such as the need for legitimacy and the desire to avoid unfavourable consequences from stakeholders. The normative "message" of a provider of CSR standards will often have an impact on drivers. For instance, if a company is motivated to engage in CSR activities in order to gain social legitimacy, the subjects chosen may be impacted by things like corporate principles, NGO activity, or recommendations from global organisations such as the UN.

Drivers often blur in real life. Being a first mover, for instance, often comes with benefits in the form of recognition, which also touches on reputation and market variables. This might be shown by the following example: Selected businesses who have been nominated for their

socially conscious actions get public acknowledgement (a prize in and of itself) from the Minister of Labour, along with a formal award and a sculpture, during "The Network Day," an annual event held in Denmark since 1999. Celebrities from the Danish public and private labour sectors participate in the event, which is covered by national and local television and printed media. A celebrity also presents the prize.[10]

As we see in the following, non-legally binding norms, legally binding norms and drivers of CSR feature in various degrees the way that CSR and law interact in practice. This relationship between corporate values, other sources of CSR norms, drivers of CSR action, forms of regulation of CSR, and corporate action, indicates that the development of CSR norms is a multi-pronged process in which sources and norms may have reflexive effects on each other, feeding an on-going chain in the formulation and adjustment of what constitutes CSR.

In what ways is CSR related to development of new norms based on values?

To many companies, internal values, such as decency in operation, are just as important as, if not more than, external expectations. Values may also be partly based on (maybe not fully recognised) external demands or expectations, creating a chain of sources.

Values, whether internal or external, may be influenced by broader sociopolitical or geopolitical developments. For instance, several Danish businesses have made an effort to hire workers who may otherwise have trouble entering the employment market, with support and encouragement from the Danish government under the banner of creating an inclusive labour market. Immigrants, refugees, and persons with disabilities have found work that are partially tailored to their talents with some financial help. This might be seen by a business as upholding the value of decency. A public, partially government-led discourse on the inclusive labour market (presented for many practical reasons as the Danish portion of CSR) has fostered the adoption of inclusive recruiting as part of values-based management. In order to manage the integration of migrant workers or refugees who are themselves the product of

geopolitical trends and who would otherwise be supported by public finances, the government receives corporate "assistance."

Corporate values may also impinge on a company's decisions in relation to social services that it makes available to its staff, its presence and form of presence in the third world (as a contribution to the socio-economic development of the host country), or decisions on maintaining or cutting links with suppliers that do not themselves live up to the values of the buyer corporation (World Bank 2003).

Demands from stakeholders and society at large that corporations make their values clear and take responsibility for social and environmental development and sustainability locally and globally, force large, medium sized as well as small enterprises to embark on an organisational learning process, and to systematise and institutionalise internal values. Through this process, values may become more important as a source of norms. Internationalisation internally in Europe and in relation to third world countries also force companies to (re-)define, assess and clarify their values and decide to what extent, and how, they are willing to accept social responsibility beyond simple legal compliance. When a company takes on responsibility as if it were legally binding, although a possible legal basis of the responsibility is not directly legally binding on the corporation, the basis of the responsibility may be said to acquire a value based character. Values that thus become norm-setting for corporate choice and action, take on a character of being sources of (informal) law.

CSR relevant values may be influenced by such sources as general societal or political formulation of non-legal norms that are perceived by corporations (and some stakeholders) as norms that should be observed, and international standards or instruments that do not directly bind corporations legally, but provide for norms that investors, consumers and buyers and other stakeholders perceive as binding for the corporation.

International Law plays a considerable role in CSR. As apparent elsewhere in this issue (Rudolfsson Goyer), international human rights law is an important aspect in CSR. Also

international labour law and international environmental law and principles play a considerable part for the substance of CSR and for self-regulation and reporting on CSR.

In relation to the topic of this article, the significance of international law is precisely in the fact that it plays such a considerable part for formulations of the substance of CSR, as guidance for CSR self-regulation and for reporting and benchmarking, and for government regulation pertaining to CSR issues. The striking feature is that although CSR is generally understood as being beyond legal compliance, many CSR demands from stakeholders and much corporate CSR action appear to be based exactly on assessments of compliance with international law, especially human rights and labour law. As discussed below, government regulation of CSR (and attempts at such regulation, including through encouragement to voluntary action), especially at supranational and international level, refers heavily to international law.

Developments in external stakeholders' expectations to corporations, and examples of corporate behaviour, indicate that CSR does not only pertain to observance of human rights and labour rights inside the company or in its direct actions, but also to the observance of rights and indirect consequences of corporate action for such rights. Corporations that are present in, or supply from, states with poor rights records have been met with arguments that through their indirect support (financial and moral through presence) to the government, they act in a way that it is not socially responsible.

The draft UN Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (Commission of Human Rights 2003) refer extensively to international human rights law. The Norms are the product of a process of about five years of elaboration under the Sub-Commission on the Promotion and Protection of Human Rights, set up under the UN Commission on Human Rights. The Norms assert that states have the primary responsibility to respect, ensure respect for, prevent abuses of, and promote human rights "recognised in international as well as national law" but adds that transnational corporations and other business enterprises within their spheres of activity or influence have the obligation to respect, ensure respect for, prevent abuses of, and promote those same rights.[11]

The Danish CSR communication platform, the CSR Scorecard, bases its questionnaires on nine ILO conventions on core labour rights.[12]

Apart from the examples given in several places above, the importance of international law for CSR is confirmed by the role which international law has been given in reporting and management systems that have been developed in later years and are recommended to or used by CSR conscious companies. The Global Reporting Initiative (GRI),[13] SA8000,[14] and Accountability1000 (AA1000)[15] operate with indicators or standards based on conventions (treaties of international law) and declarations on human rights, labour standards and environmental protection. The fact that general UN Human Rights instruments like the Universal Declaration of Human Rights, the Covenant on Social, Economic and Cultural Rights, the Covenant on Civil and Political Rights, and the Convention on Rights of the Child have been acceded to or ratified by a large number of states serves as an argument of validity across borders to communicate information on value based action in sometimes sensitive topic areas (Goyer in this issue, Thorsen 2003).

Regulation

Government regulation of CSR has a variety of forms and emanates from regulatory bodies at different levels. As a point of departure, government regulation may be formal, binding law, or it may be recommendations that are intended to have a guiding effect but have no legal standing. Public regulation may be issued by bodies at local level (e.g. municipal), regional (sub-state), national, supra-national based on delegated state government powers (e.g. EU), and international (e.g. at OECD, UN and specialised organisations with regulatory powers, e.g. ILO and UNICEF) that are based on state membership.

One of the difficulties in assessing when a rule issued by a public regulatory body concerns CSR and when it does not, is in simply deciding when government regulation of a CSR topic is or should be characterised as CSR regulation.

Although generally accepted and also the point of departure for this paper, the understanding of

CSR that CSR is to do more than the law requires, may result in some dilemmas and confusion that are probably not intended, nor conducive for wider implementation of CSR. This is the case even if legal requirements for the purpose of this definition are taken narrowly to refer to statutory legal requirements. For example, we may ask whether supra-national or national anti-discrimination legislation or legislation setting a minimum age for employment is regulation of CSR? Or is a topic lifted out of CSR (back into "simple" compliance) when it is, or becomes, regulated by national law? More examples could be stated but are omitted due to space limits.

Already, despite the formal understanding that CSR is action beyond legal requirements, some legislative initiatives are referred to by various actors as CSR legislation.

In several EU states and other countries, national laws pertaining to reporting on CSR matters are emerging. Belgium, Germany, Great Britain, and Sweden enacted laws requiring pension institutions to record or provide information on how social, environmental, and ethical factors are taken into account in investment portfolios over the two-year period 2001–2002.[16] Since 1995, Danish legislation has mandated that certain categories of polluting businesses maintain and make public environmental accounts (also known as "green accounts," Act on Environmental Protection, section 35a). In the late 1990s, laws mandating environmental information to be published in the annual accounts of (certain kinds of) firms were enacted in Belgium, the Netherlands, Norway, and Sweden.[17] In 2001, the Danish Act on Annual Accounts was modified to mandate that certain kinds of businesses report on their knowledge resources, how their operations affect the external environment, and how they avoid, lessen, or mitigate environmental harm. This reporting is not a significant step toward CSR reporting standards since it must be at an aggregate level and include just the information required to provide an accurate and fair picture of the company's assets and liabilities, financial status, and yearly performance. Outside of the EU, Australia has enacted laws requiring financial advisers and investment product providers to disclose SRI

products, and ongoing corporate law reform initiatives may have an impact on other CSR-related concerns. Legislation on corporate social responsibility (CSR) has also been used to describe various US legislative efforts that were enacted in response to corporate governance problems in subsequent years.

While local, regional and national regulation may address itself directly to corporations, supranational legislation may do so (if passed in the form of a regulation according to art. 249(2) EC) but may also (if passed in the form of a directive) address itself to national governments that must ensure implementation in national law. According to classic international law, only states are subjects of international law. States may enter into agreements with each other (treaties). They may agree in treaties to create legislation providing for obligations for corporations inside their national law jurisdiction. When accepting a treaty obligation, states undertake an obligation under international law, towards other states parties to that treaty, to honour the treaty obligation. However, as corporations are not subjects of international law, treaties cannot create obligations for corporations. This classical system is obviously not very well suited for regulating MNCs that work across boundaries. OECD's Guidelines for Multinational Enterprises are exactly what they say, that is, non-binding guidelines. These recommendations are made by governments and addressed to corporations. Corporate observance of the Guidelines is voluntary and not subject to legal enforcement. In terms of form of regulation, the Guidelines are a sort of public regulation that seeks to encourage corporations to undertake self-regulation.

The UN has started along a path that might result in binding regulation, most likely via national legislation but eventually perhaps through international law with technically legally binding effect for businesses, even if there is now no binding effect for corporations. The governments that make up the UN pledge to "develop strong partnerships with the private sector and with civil society organisations in pursuit of development and poverty eradication" in the UN Millennium Declaration, which was approved by the UN General Assembly in 2000. (Principle 20, Part III).

Governments have pledged to improve corporate environmental and social responsibility and accountability via the Plan of Implementation, which was approved at the Johannesburg Summit in 2002 (paragraphs 13 and 17). One proposal that might eventually impose obligations of international law on businesses if it is accepted as a legally binding document is the draft UN Norms on Responsibilities of Transnational businesses and Other Business Enterprises with Regard to Human Rights. If this occurs, even though there are now no concrete signs that it will, the outcome will be a legally enforceable government legislation that is created by international governments and directed against companies.

Action

In a number of other European countries, including Denmark, the general trend has been until now that corporations have taken on social responsibility on a voluntary basis, i.e. without a legal obligation to do so (see also Hansen 2002, Oxford Research 2002). Often, such self-regulation is based on Codes of Conduct prepared by the individual corporation, or in some cases by NGOs or consultancies, in some cases with broader applicability (World Bank 2003).

The EU Commission makes the case for voluntariness in its 2001 Green Book on CSR (Commission 2001) and its subsequent 2002 Communication (Commission 2002). Nevertheless, the Commission makes clear that businesses should show social responsibility to both EU and third-world workers, and it specifically urges businesses to adopt ILO labour standards and the OECD's Guidelines for Multinational Enterprises as minimum standards (i.e., a specific reference to international law and standards) (Commission 2002). It's unclear what will happen if EU businesses don't follow these explicit guidelines. However, corporate activity on CSR may not be entirely voluntary due to the chance that the Commission would adopt statutory obligations. Furthermore, by issuing these suggestions, the Commission—and consequently the EU—has taken on the role

of a stakeholder, demanding, or at the very least anticipating, corporate CSR activity.

The UN Global Compact[18] that was launched in 2000 is another example of state backed voluntary CSR action. Corporations that participate in the Global Compact commit their support to ten principles on environmental protection, labour rights and human rights. These principles build on declarations and conventions (the Universal Declaration on Human Rights, the Rio Declaration on Environment and Development, ILO's Declaration on fundamental labour rights and principles, and the UN Convention against Corruption) that are instruments of international law. In international law, declarations are not legally binding, but may be seen as morally and politically guiding. When corporations commit themselves to such declarations, they express a willingness to voluntarily observe and respect non-binding international law.

nations make decisions on UN activities since membership in the UN is for nations represented by their governments. The UN and its members somewhat circumvent the challenge presented by the restricted opportunities under international law to govern multinational enterprises by agreeing (or not disagreeing) to establish the Global Compact as a voluntary effort supported by the UN Secretary General. Simultaneously, the Global Compact provides corporations with an opportunity to exhibit social responsibility in line with values incorporated in UN international law (e.g., the values underlying human rights, particularly with reference to the Universal Declaration of Human Rights, which serves as the foundation for some of the nine principles). Under the umbrella of sustainable development, the UN and its member states enlist corporations through the Global Compact to address the enormous development needs, especially in the third world, which may be somewhat mitigated by corporate action to improve social and economic conditions and environmental protection. Additionally, the Global Compact may encourage businesses to refrain from making investments, producing goods, or engaging in other economic operations in or with nations that have a bad record regarding civil and political rights or corrupt governments. A member of the Global Compact should refrain

from doing business with corrupt partners simply because corruption nearly always leads to human rights breaches.

By sometimes honouring voluntariness with financial rewards, voluntary action is imbued with a certain degree of expectation or a government strategy that companies should regulate themselves within a framework established by politicians and civil servants (also often by indirectly by stakeholder groups). From this perspective, voluntariness becomes somewhat conditioned: The legislative or the executive have indicated the direction that “voluntary” action should take.

Voluntary reporting, although closely related to self-regulation, is discussed below as an aspect of reporting.

Reporting on CSR topics may be voluntary or required by law. As indicated above, legal requirements are emerging for certain types of business enterprises to report on social and environmental responsibility and ethics. Within voluntary reporting, there is considerable variation. More or less specific information in lyrics or numbers is issued under titles as social, environmental, sustainability or yet other names of reports (Pietras-Jensen 2002).

Various tools have been developed to assist in CSR reporting. NGOs (like GRI and Social Accountability International) have been active in this, but initiatives have also been supported by governments. What is interesting in this context is that, as indicated above, some of these refer to international and national law as a point of departure for formulation of indicators and benchmarks.

Voluntariness is observed in non-financial reports that an increasing number of companies produce without a legal obligation to do so. Voluntary reporting becomes an important part of the basis for stakeholder judgments on whether a particular corporation lives up to the ethical standards of each individual stakeholder. A recent study indicates that alternative reports are indeed studied, not just by financial stakeholders but also by consumers (GlobeScan

2004). The report enables stakeholders to sanction the way the corporation acts: If the information provided in the report is judged in accordance with the norms that the particular stakeholder group expects the corporation to follow, the sanction may be positive, such as an improved public perception of the company's reputation, or increased investment or market share. Negative judgments may lead to negative sanctions, such as loss of image, investment or market share. To the modern corporation, such a loss may matter more than having to pay a fine for a breach of formal law.

In Denmark, voluntary reporting of non-financial issues is used as a communication tool by such Danish based corporations as Novo Nordisk, Novozymes, Danisco, Danfoss and Grundfos, all of which have large parts of their markets outside Denmark. Others keep a lower profile in terms of public communication but use voluntary Codes of Conduct to ensure that corporate stands and politics on CSR are observed internally and with suppliers. Among these are Lego and Abena. Lego has formulated a Code of Conduct for suppliers with regulations concerning child labour, compensation and working hours, discrimination, coercion and harassment, forced and compulsory labour, health and safety, freedom of association, and the environment (Lego Company 2003).

Abena makes strict environmental requirements on suppliers and reportedly reacts strongly in case of doubts of whether the requirements are observed.

The use of legal instruments and standards in CSR reporting underscores that such instruments and standards are relevant not just as expressions of general values or principles, but also for the actual implementation of CSR policies and strategies in corporations. Legal instruments and standards are used to define qualitative benchmarks and indicators for action where quantitative goals or assessments are often insufficient. Although CSR is ostensibly to do more than required by law, the unambiguity of legal standards appears to be operational in the process of making plans for implementation or reporting on issues that are not only often more qualitative than quantitative, but also often imbued with political sensitivity.

Summing up: CSR - What forms of law?

From the discussion above, it is clear that law and legal standards in various forms (statutory and other instruments (treaties, recommendations and declarations of international law)) play a considerable role in relation to the substance of CSR, and for implementation and communication of CSR. We have seen that international law and specific standards serve as a source of CSR, and that statutory law also used by governments to demand or encourage corporate actions that relate to CSR, for example through reporting. In an intriguing chain of interrelationships, backed in part by reporting systems like GRI and SA8000 that incorporate legal instruments, law is so much a basis for CSR, that in many actors' understanding, CSR appears to be to comply with applicable national law and do "something more". This "something more" is often based on non-binding law (e.g. recommendations or declarations of international law) or law that is not binding on the specific corporation. Such non-binding law comes to serve as guidance for the types of action that corporations may undertake as CSR, as a basis for implementation (for example through Codes of Conduct), and as a basis for the information communicated to stakeholders (for example through voluntary reports). At least, this seems to be the case in areas touching on human rights and labour rights. In environmental protection, the situation appears somewhat less clear cut. This may be due to the limited amount of general international "hard law" (treaty law) on the environment, combined with the fact that national environmental law, at least in Europe, makes such comprehensive demands on corporations that they may not feel inclined to undertake voluntary environmental initiatives. Granted, precisely because international law does not pertain directly to corporations, corporations can be said to be "doing more" than what is required by law, when they respect and fulfil standards of international (human rights and labour) law on a voluntary basis. Nevertheless, it does not seem that institutional investors, political consumers or journalists pay much attention to the fact that these standards

do not legally bind corporations unless they have been made into nationally binding law by a state with jurisdiction over the corporation.

Probably because international law formally poses obligations on states and not on private legal persons such as corporations, it appears to be generally accepted that where national law is absent or insufficient in comparison with relevant international law, a company that takes on obligations set by international law will be acting "ethically" or "in accordance with CSR", i.e. doing more than required by (applicable, national) law.

In areas touching on human rights and labour rights, international law does not only serve as guidance for companies. It also serves as norms that important stakeholder groups simply hold corporations responsible to, even though there may not be any such formal legal responsibility. Punishments may not be in the form of fines or other sanctions issued by a court of law, but are instead issued by what are effectively "courts" of stakeholders, in the form of decreased market or investment shares, decreased attractiveness with employees or recruits, or negative media reports.

The fact that for many practical purposes, even in the absence of a general understanding of CSR, the concept of CSR seems to be generally understood to cover responsibility for human rights, labour rights and environmental issues, also indicates a very close relationship between CSR and law in terms of the values that underlie, as principles, specific legal standards. With variations across countries, human rights, labour rights and environmental protection are heavily regulated in Western countries, but less so in many developing countries. Nevertheless, many developing countries with inefficient national regulation of human and labour rights have acceded to or ratified relevant treaties of international that provide them with a duty, as states, to ensure that human rights and labour rights are protected and ensured nationally.

The fact that international law is made by states and binding on states only, until the rule becomes binding on private legal subjects (like corporations) according to the relevant state's own system of law, does not seem to lessen the expectations that civil society stakeholders have to corporations' observance of international

human rights or labour rights, or to have uniformly strong validity among corporate managers as an argument against stakeholders' demands and expectations.

This takes us back to CSR as a value based issue, because corporate decisions in this chain of sources and drivers often build on those values that international human rights, labour and environmental law and principles are based on. It also demonstrates that corporations consider and act on the basis of rules that are not legally binding, as if they were. In other words, law that is not formally binding on corporations, has an effect as if it were.

Observations on the sources and drivers of CSR and the way that (especially) international law informs CSR indicate that CSR in many ways fits the definition of informal law as defined above in this article: Corporate action in relation to CSR indicates that CSR is an expression of normative ideas and patterns of behaviour and action. Its value based foundation and numerous references to ethics and moral behaviour indicate that CSR is not based on a sharp distinction between law and morals. Stakeholders' (and some corporations') concern with the actual effects of corporate action, rather than the legal foundation for the effects and for whether the corporation may be held legally responsible, indicate that in CSR there is not a strict distinction between law and fact. Although government regulation of CSR topics is emerging, and although (international) law underpins the topics and actions associated with CSR, CSR as a set of normative ideas is not made by government authorities. It is made by corporations and stakeholders, although sometimes indirectly. The validity of CSR does not rely on state sanctions – except where a corporation neglects to observe legal requirements in terms of for example reporting – but on awards or punishments meted by stakeholders on the basis of their assessments, or judgments, of the corporation. These sanctions are of practical character, and sometimes also of a moral character (for example when a corporation is condemned publicly by media or NGOs for disregard of the principle of non-discrimination or

environmental protection). CSR, in other words, seems to work as informal law. – Depending, i.a., on the future fate of the draft UN Norms on Transnational Enterprises, the role that international law has had for corporate action in the area of CSR over the past decade may also be an example of pre-formal law.

Considered as a possible example of reflexive law, CSR does not, on the basis of the information and assessments in this article, seem to come fully within the definition. The main argument in favour of CSR as reflexive law is that CSR is widely based on self-regulation, and that this self-regulation may be combined with the interest of the collective (sustainable development, observance of human and labour rights and protection of the environment in greater society). However, CSR is strongly imbued with duties (with corporations as the duty holders) and, to a less specific degree, rights (with stakeholders or society at large as beneficiaries). Although stakeholders have an extensive part in deciding and assessing CSR behaviour, CSR does not specify procedures except to the degree that stakeholder participation is considered by various theory and in some social reports to be useful and “good corporate citizenship”. There is, however, no definite requirement that stakeholders must be actively involved. However, to follow the argument by Teubner above, law may serve towards promoting corporate processes of reflexion on CSR internally and externally.

In terms of the role that principles of law play for CSR, we have seen that, at least, human rights may be observed in various ways. Whether human rights underpin CSR as a principle of law cannot be fully concluded on the basis of the above. However, it seems that human rights seem to feature as part of a general set of values that guides much action on CSR not just with regard to human rights as such but also with regard to labour standards, and environmental protection (as a prerequisite for the human right of an adequate standard of living). It also seems that human rights feature as an underlying value as well as with respect to specific voluntary initiatives, reporting and government regulation to combat discrimination in the work place and to create an inclusive

labour market that contributes to integration of immigrants and others. And human rights, as a principle of law underpinning more specific norms, feature as the basic foundation for international and national specific human rights standards, EU references to ILO core labour standards as a recommended minimum for corporate action in the developing countries, and for law in the making, i.e. the draft UN Norms on Transnational Enterprises.

Concluding remarks: CSR – the role of law

With some exceptions, CSR has mainly been approached from other angles of practice and science than that of law. However, the above examples demonstrate that even though CSR is ostensibly to do more than the law requires, CSR seems to work as informal law and to be based on a set of fundamental principles of law. In several ways, law in the abstract as well as the statutory sense informs the substance of CSR, and implementation and communication of CSR: Principles of law underpin the substance of CSR. So do specific instruments of international and national law, and standards contained therein. By requiring that some types of corporations report on CSR topics, statutory law is used by governments as an instrument to make corporations undertake specific types of action. Through references to international law in recommendations from governments and supra-national organisations, governments make use of law to encourage corporations to take specific action. When they hold corporations responsible for their (lack of) respect for human rights, labour rights and environmental protection, NGOs, investors, current or prospective employees, consumers and other stakeholders base their assessments on law, including principles of law.

The examples do not stop here, but suffice to demonstrate a close relationship between CSR and law.

Given the relatively brief number of years since CSR began to play the role that it currently does, it is premature to make any specific statements on the normative developments of CSR. Nevertheless, the normative and regulatory trends in and of CSR seem to indicate a shift in certain normative foundations for corporate action and governance. This shift

appears to be characterised by an increased expectation that informal norms are observed by corporations as if they were formally legally binding, with enforcement served not by a state legal enforcement system, but by an informal system of stakeholder sanctions; and formal government regulation is to some extent being replaced by voluntary corporate self-regulation. Finally, we may be observing steps in a shift in long held notions of the basic foundations of international law according to which the legal subjects of international (human rights, labour and environmental) law are states - but not private legal persons (such as corporations) or natural persons.

With the growth in CSR, value based expectations on the private sector may be reflected in increasing demands or expectations of the public sector to take social responsibility beyond formal legal requirements. A reflective effect between private and public sector CSR action may have effects for the substance of CSR, maybe particularly in local or national contexts, and in the use and forms of government regulation of CSR. Values as a source of CSR may also be reflected from the private to the public sector as the basis of expectations and specific action. As indicated, values already serve as a source for the normative substance of CSR as informal law. In this sense, values as a source of law are becoming an important part of the normative foundations of corporate and stakeholder action.

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