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Corporate Social Responsibility in the Realm of Jurisprudence and International Law

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Abstract

Corporate Social Responsibility (CSR) is no longer a theoretical idea; it is now mentioned in treaties, international documents, state regulations and corporate decisions. Accordingly, CSR may be very effective to impact the IL in favour of social claims, using its soft power well established in developed countries and in the international arena. CSR could possibly change the culture which leads to change the legal texts itself, as the many treaties under revision to include more CSR obligations. And it can as well through its influence over the understanding of the existing texts, such as the sustainable development, make a difference in the application of the home state courts and the arbitral tribunals.

Accordingly as the CSR is primarily a social concept, about the role of the business within the society, that is when turned into a legal rule it might be quite problematic, but still a very important concept to understand and to spot a light on it, especially in the international arena. This paper will address firstly the definition of CSR, with mentioning the obstacles in the process of its defining. Secondly, the possible nature of the CSR legal rule. Thirdly, how CSR is represented on the international level. Lastly, how the CSR concept is represented in the international law instruments.

Keywords : Corporate social responsibility, international law, investment law.

الملخص العربى

المسئولية الاجتماعية للشركات في مملكة الفقه والقانون الدولي

على أحمد

رئيس نيابة بنيابة الأموال العامة العليا بمكتب النائب العام

لم تعد المسئولية الاجتماعية للشركات مجرد نظرية بحتة، لقد تعدت ذلک وأدرجت بالاتفاقيات والمواثيق الدولية، وتشريعات الدول بل وقرارات مجالس إدارة الشركات. وعليه، صارت المسئولية الاجتماعية للشركات أكثر تأثيرا بمجال القانون الدولي لصالح المطالب الاجتماعية معتمدة في ذلک على قواها الناعمة القانونية بالدول المتقدمة اقتصاديا أولاً، وبالمجال الدولي ثانياً. وإنه لتستطيع المسئولية الاجتماعية للشركات تغيير الثقافات السائدة بما قد يدفع نحو تغيير أو تعديل نصوص القوانين ذاتها، خاصة وأن هذا بالفعل يحدث الآن مع وجود العديد من المراجعات للعديد من الاتفاقات الدولية لتتضمن التزامات أكثر تجاه المجتمعات من الشركات، كما أن سيادة ثقافتها يؤثر في فهم النصوص القانونية، مثل اسهاماتها بمجالات التنمية المستدامة، بما قد يطور من تطبيقات القانون بالمحاكم المحلية وهيئات التحكيم على حد سواء.

وحيث أن المسئولية الاجتماعية للشركات، كما سنستعرض بورقتنا، هي بالأساس نظرية اجتماعية حول دور رأس المال في

المجتمع، فتحويلها من هذا السياق لفكرة قانونية ربما ينتج عنها بعض المشكلات، ورغم ذلك تبقى النظرية هامة لتسليط الضوء عليها. ولهذا نرى في هذه الورقة استعراض تعريف المسئولية الاجتماعية للشركات "أولاً"، مع استعراض عقبات تعريفها؛ ويلي ذلك استعراض طبيعة الالتزام القانوني للمسئولية الاجتماعية للشركات "ثانيا"، ثم يلي ذلك استعراض كيف برزت هذه نظرية المسئولية الاجتماعية للشركات على المستوى الدولي؛ وأخيرا كيف تمثل ذلك المفهوم بالمواثيق والاتفاقات الدولية وسنبينه.

الكلمات المفتاحية : المسئولية الاجتماعية للشركات، قانون الاستثمار، القانون الدولى.

The Republican President Theodore Roosevelt said in his annual message in 1901: "All the same, corporations must recognize their responsibility not merely to their shareholders but to the community at large."[1] Nowadays, corporations may own fortunes bigger than of some states; in 1990s only five hundred companies controlled more than quarter of the total market assets in US[2], which means more influence and control of people's lives. Apparently, activism towards corporations' policies is an expected reflection, especially with empowered idea that no institution by itself, even the labor unions[3], could be able to change the irresponsible or unethical corporate policies. The corporations' influence over governments is augmented as never before[4]. The emerge of new technological facilities, such as internet, people became more free and effective to deliver their opinions about corporations around the globe, effecting its reputation, and pressuring towards more sociable attitude.[5]

With the failures of both national and international regulations to cover the gap between businesses powers and governments willingness to regulate social interests, the concept of socially responsible investment could represent a good coverage[6]. For example, the World Trade Organisation (WTO) limited the governments' abilities to reject importing goods due to environmental or labour standards of the exporting country, with the lack of elaborative texts in most of international investment agreements (IIAs). On the other hand, the minimum standards of labour rights as established by ILO represents a non-voluntary application with no real enforcement capacity. Here, the CSR could fill the gap, especially with weak legal organisations for HRs and environmental concerns in developing countries[7].

Cottier concluded that linking IEL with CSR and HRs is essential to avoid increasing inequality in the international trade or an undermining to the legitimacy of the world trading system[8]. Thusthe idea of a social responsible investment (SRI), or the corporate social responsibility (CSR), isrequired to transfer from the liberal activism to the legal arena. It might raise questions about the shape or the nature of the legal rules here, where the legal texts is tending towards accuracy and clarity in its wordings and meanings, and

[1]Dieux X and Vincke F, 'Corporate Social Responsibility, Illusion Or Promise?' [2005] International Business Law Journal.

[2]Soule S, Contention And Corporate Social Responsibility (Cambridge University Press 2009)[3].

[3]Ibid [n2] 6

[4]Ibid [n2]4-5

[5]ibid [n2] 7

[6]Moon J and Vogel D,'Corporate Social Responsibility, Government, and Civil Society' in Crane A and others (eds),The Oxford handbook of corporate social responsibility (Oxford University Press 2008)307-314

[7]ibid

[8]Cottier T,'Poverty, redistirubution, and international trade regulation' in Schefer KN (ed), Poverty and the international economic legal system: duties to the world's poor(Cambridge University Press 2013)64-65

that might not be the case with CSR.

The issue is the existence of different, and sometimes contradicting, approaches and definitions for the concept of CSR, might make it a vague legal term. As Carol, in 1990, identified more than twenty-five different definitions for CSR, which the idea of the corporates' duty to be social responsible is common in all of them[(9)], but no further consensus on the later details[(10)]. The existence of so variable definitions creates by itself an inevitable vagueness in the concept of the CSR, which remains the main critique, besides some opinions about the contradictory nature of CSR with the free-market system or the liberal economy[(11)].

Carol points out that CSR "…encompasses the economic, legal, ethical and discretionary expectations that society has of organizations at a given point in time.[(12)]' Accordingly, CSR is more a representation of a vision for linking the business with the social morals, by claiming that profitability should not be the exclusive aim of corporation, and that social concerns, such as human rights and environmental claims, should be the priority of any business[(13)].

Accordingly as the CSR is primarily a social concept, about the role of the business within the society, that is when turned into a legal rule it might be quite problematic, but still a very important concept to understand and to spot a light on it, especially in the international arena.This paper will address firstly the definition of CSR, with mentioning the obstacles in the process of its defining. Secondly, the possible nature of the CSR legal rule.Thirdly,how CSR is represented on the international level. Lastly, howthe CSR concept is represented in the international law instruments.

I. What is CSR?

Defining CSR is not an easy task, especially with a broad range of definitions from different corporates, organisations, or even regulations. Using either normative or positive perspectives will not help that much in defining the concept, which is the main critique that being a flying concept in the nowhere[(14)]. Generally, CSR, or the corporate ethics[(15)], are not limited to corporates only, but it includes all businesses with broader obligations and duties from the legal context, and towards every person or organisation[(16)].

However, Garriga and Melé clarified the wide spectrum of theories about CSR, either based on instrumental concepts such as the shareholder value approach, or political visions such as the corporate constitutionalism and the macro social contract, or more integrative theories based on the principle of public responsibility and corporate social performance, or ethical theories such as normative stakeholder

[(9)]Crane A, The Oxford Handbook Of Corporate Social Responsibility (Oxford Univ Press 2012), Ch.3.

[(10)]Crane A, et al., Corporate Social Responsibility : Readings And Cases In A Global Context (2nd edn, 2014) 3-9

[(11)]Crane A, The Oxford Handbook [n9]

[(12)]Okoye A, 'Exploring The Relationship Between Corporate Social Responsibility, Law And Development In An African Context' (2012) 54 International Journal of Law and Management

[(13)]Mullerat R, 'A Responsible Future,' [2010] European Lawyer 1

[(14)]OOSTERHOUT JHV and Pursey PMARH,'Much Ado about NothingA Conceptual Critique of Corporate Social Responsibility' in Crane A and others (eds),The Oxford Handbook of Corporate Social Responsibility ('Oxford University Press')197-217

[(15)]Carroll AB,'The four faces of corporate citizenship'(1998)100Business and society review1

[(16)]OOSTERHOUT JHV and Pursey PMARH (n15)197-217

theory[17]. Carroll's pyramid focused on the economic, legal, ethical and philanthropic responsibilities[18]. The approach of Carroll is the citizenship theory[19], which means that every corporation is as a citizen has obtained a nationality of the state similar to the natural persons, is expected to obey the law, engage in ethical behaviour, and to be profitable, or in other words to be 'good corporate[20]'. Actually, CSR may represent all these ideas altogether, as it is not imaginable for the corporate to donate contributions as a philanthropic obligation, but violating the legal obligations on the other side[21], besides it may be based on constitutional text or moral right with no contradiction.

From the stakeholder approach, CSR is about the duties of the business to act in accordance with the interests of all stakeholders, not only the owners or shareholders. Stakeholder, here, means every person or group that affects the corporate business intercourse. It is usually criticised for not acting on the legal requirements of the corporate directors to maximise the corporate's profits[22]. However, the stakeholder's approach seems more representing the core of CSR, defining the stakeholders is very problematic. Stakeholders may be narrowly defined, to only the corporate labours and customers, or widely defined to include the wider society or governments[23]. Still, it does not matter how broad stakeholders could be defined as long as no corporation can consider the poor among its stakeholders, as no extreme poor own any stakes[24].

Nevertheless, the main dispute of CSR is in the decision making phase and whose interests should be the focus of the corporate directors' decisions[25]. The interests of shareholders are significantly important, since the decision of US Securities and Exchange Commission that corporate managers cannot exclude the proxy resolution of stockholders.The shareholders' supremacy approach is represented in the words of Friedman that corporation duties "… towards the society is the maximization of profits to the shareholders, within the legal framework and the ethical custom of the country."[26]

Although shareholder supremacy approach is effective in creating wealth for the shareholders and accelerating the development of the corporation itself, it neglects the external economic, social and political factors. The necessity to adapt to all factors to achieve a more sustainable growth of business should act as the primary motivation for businesses decisions[27]. The 2020 strategy of the EU adopted the CSR principles

[17]Garriga E and Melé D,'Corporate social responsibility theories: Mapping the territory'(2004)53Journal of business ethics51,52-61

[18]Carroll AB,'The pyramid of corporate social responsibility: Toward the moral management of organizational stakeholders'(1991) 34Business horizons39,42-45

[19]Carroll AB (n16)1-2

[20]Carroll AB (n16)1-2

[21]Garriga E and Melé D, (n18), 51

[22]Jensen MC, 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function' (2002) 12 Business Ethics Quarterly 235,243-244

(23)Melé D,'Corporate Social Responsibility Theories,'in Crane A and others(eds),The Oxford Handbook of Corporate Social Responsibility(2008)52

[24]Jenkins Rhys,'Globalization, Corporate Social Responsibility and Poverty' (2005) 81 International Affairs (Royal Institute of International Affairs 1944) 540

[25]Yap JL,'Considering the enlightened shareholder value principle' (2010) 31 The Company Lawyer 35, 1

[26]Melé D(n24)

[27]ibid

in the light of economically sustainable growth objectives[28]. It identified a number of factors such as the need for a balanced multistakeholder approach, with taking into account the views of the enterprises, the stakeholders and the member states[29]. This approach was hardly passed after criticism in the forum meeting in 2004, that CSR may conflict with the free market competitiveness. Back then, the common belief is that free market mechanisms are capable of overcoming any negative impacts[30].

Sometimes the supremacy of the shareholders acts as a barrier to develop CSR[31], especially that it is common in many legal texts such as the Section 172 of Companies Act in the UK.Directors may feel relieved within the shareholder supremacy[32], as may defend corporate actions on broad bases, such as supporting Nike in approaching the cheapest labour in Asia, as it protects the interests of the shareholders, which is the primary duty.[33]

Sarah Kiarie proposed that the enlightened shareholder value may be a mid-solution, to maintain the profit maximisation as an objective to the firm and to develop relationships with stakeholders, as the best way to ensure sustainability. It is hoped to ensure accountability to dispersed shareholders while using market forces to nudge companies towards the stakeholder model.[34]

Although such theories may lead to better understanding of CSR as a concept, but still no agreement on defining it. Some organisations like the Continental European Welfare Society define the CSR based on every regional culture. Accordingly, the definition in the USA will be different from another developing or transitional communities[35]. While, in the USA, companies consider philanthropy as a dominant factor of CSR, in the Northern economies companies, the social perspective is more dominant. So CSR is broadly an impact of corporate's decisions over society, and narrowly, it represents the awareness of the corporate for being responsible for such effect over stakeholders[36].

II. Voluntary or obligatory?

While considering CSR as the duty of "Corporate largesse towards the less fortunate", implementing of CSR represents more a discretionary activity[37]. If CSR should represent the voluntary social rules, the laws represent on contrary the mandatory rules[38]. Here is the dilemma raised from the concept, that by

[28]Plan Action,'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions'(2011)European Commission1-4

[29]ibid5-7

[30]De Schutter O, (n31) 203

[31]Okoye A, (n12) 364

[32]ibid

[33]Eyre B,'The crusade for CSR'(2004) European Lawyer20

[34]Kiarie S,'At crossroads: shareholder value, stakeholder value and enlightened shareholder value:Which road should the United Kingdom take?' (2006) International Company and Commercial Law Review329

[35]Rahim MM, 'Corporate Governance as Social Responsibility: A Meta-regulation Approach to Raise Social Responsibility of Corporate Governance in a Weak Economy' in Boubaker S and Nguyen DK(eds),Board Directors and Corporate Social Responsibility(Palgrave Macmillan UK 2012)15

[36]ibid

[37]Crane A, Matten D and Spence LJ,'Corporate social responsibility in a global context' in Crane A, Matten D and Spence LJ (eds),Corporate Social Responsibility: Readings and Cases in a Global Context (Routledge September 1,2013)3-9,Available at SSRN:https://ssrn.com/abstract=2322817

[38]Okoye A(n12)7

following the inclusive approach, CSR may not require any obligation beyond the law. On the contrary, Carroll's definition of CSR considers it as a part of the law, either through the compliance with the law as a part of duties, or an obligation within the law spirit. This debate about the legal nature of CSR made the business role in consideration of HRs very questionable[39]. McGuire and Davis insisted that the firm has more obligations further than laws or economic duties[40].

Following the UK BIS definition of the CSR as a voluntary action "over and above the legal requirements", the EU commission[41] and many other organisations and corporations confirmed the voluntary nature of CSR, defending it as a core value of the nonbinding principle[42]. The EU commission defined it as "essentially a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment"[43].

The argument for voluntary nature is based on the idea about the main role of law to create the procedural and regulatory rules and its framework, but not to organise every moral or right even if it represents the morality of society. Accordingly, the voluntary nature is not in conflict with laws, and it creates a more dynamic application of it[44].

Arguably, it is mentioned that laws by nature provide the minimum obligation which is not compared to social, moral and ethical understandings. Also, corporations will be more active, under voluntary CSR, to include all other social obligations under the scope of protection, more than the strict legal texts[45].

From a realistic vision, keeping CSR as voluntary may, as a preliminary step, spread the CSR culture and motivate corporates[46]. Giving examples of fast food companies actions, such as KFC, Pizza Hut, and McDonald's, to comply with the Department of Health Voluntary Programme in the UK, and show the calories value per each product[47].

This approach could be understood through the role of law in shaping the social behaviour, by implementing either facilitative or expressive rule. It will be through prohibiting certain actions, which are expressive rules as preventing polluting air and water sources or facilitating the relationship between the market and the state to satisfy both interests. The challenge, especially for underdeveloped countries, is to implement both types of laws with a general context of governance that helps in development.[48]

However, there are some opposition to the voluntary approach based on the expected dangers from

[39]Buhmann K, Introduction, in Buhmann K and others (ed.)'Corporate social and human rights responsibilities: global legal and management perspectives'(Palgrave Macmillan 2011)1

[40]Jamali D and Mirshak R,'Corporate Social Responsibility (CSR):Theory and Practice in a Developing Country Context'(2007)72Journal of Business Ethics 243,245-246

[41]Plan Action, European Commission(n29)

[42]Crane A, Matten D and Spence LJ(n38)

[43]Buhmann K(n40)

[44]Okoye A(n12)7-8

[45]Thirarungrueang K,'Rethinking CSR in Australia: time for binding regulation?'(2013) International Journal of Law & Management173,175

[46]Yap JL(n26)4

[47]Crane A, Matten D and Spence LJ(n38)

[48]Okoye A(n12)

the reduction of the governmental control. The corporate may turn into separate authority out of a social supervision and the public accountability. Also, companies may use it to escape from the mandatory obligations, to operate freely constructively and flexibly[(49)].

Furthermore, the main question is how the law could build an obligation beyond its limits. Such a paradoxical nature of the problem requires a wider consideration for both hard and soft laws. As Parker suggests, CSR should be the obligation to use every available mechanism to enforce other legal duties and to achieve the most responsible outcome for both social and legal aspects[(50)].

In reality, CSR is not flying without borders, considering the existing environmental, health or HRs regulations which create a legal standardisation of the concept. The definition of a responsible corporation should be more than going "beyond compliance" to include efforts of raising the compliance standards[(51)]. The social priorities and demands are changeable by nature, which require a shape of a hybrid regulatory system to allow and follow its development. For example, in air pollution laws, several standards are generally identified for the vehicles industry, with no specification to allow the legal development and evolution. Such expectations of development may turn the discretionary rule of law into a mandatory requirement[(52)].

Generally, laws are a response to specific needs which leave a very little opportunity for firms to be proactive. Accordingly, laws never define ethics, although legal obligations are morally originated[(53)]. Besides that, spending money on CSR by companies is not a vague voluntarily action, it is empowered by the fear of losing wither reputation or profits, for the non-compliance with CSR so that the soft law may be effective as well[(54)].

As a conclusion, the relation between voluntary and mandatory arguments should provide a pathway to build a better protection for HRs and the environment. The voluntary approach cannot substitute the obligatory in that sense, but it may fill the uncovered areas by regulations. If the voluntary aspect fails, then states shall interfere with legal documents for stronger legislation to regulate the corporate activities and to prevent any violation to HRs and environmental standards. The struggle between both criteria will not end soon, and if states require a better regulatory system to interfere and protect the HRs, that should be through national and international context, which seems not a common area between activists or civil society and governments[(55)].

Still, the legal role of CSR is very doubtful in the weak legal regimes of the developing countries. Bennett referred to the possible corporate role in solving disputes by own initiative, via negotiations and indirect lobbying with governments. Specifically, in post-conflict situations, corporates may help, not only in the reconstruction activities but also through contacting the drivers of the conflict, especially to handle issues

[(49)]Thirarungrueang K,(n46)3-4
[(50)]Okoye A(n12)
[(51)]Ibid3
[(52)]Ibid7
[(53)]Jamali D and Mirshak R(n41)
[(54)]Eyre B(n34)
[(55)]Thirarungrueang K,(n46)15

of corruption, poverty and social inequality[56].

III. CSR on the International level:

The 'international corporate social responsibility' (ICSR) focuses on the foreign investor mainly, as a reaction to the loss of accountability of many corporations by exploiting liberalisation process of developing states. It is justified by the social contract concept and the need to protect the HRs by all players, such as investors, states and civil society[57].

ICSR may be criticised as a contradiction to the purpose of international investment system. However, these calls ignore that corporate accountability is an extension of the principles of the civilised nation in the international arena and national regulations, and protecting the HRs is its core[58]. Besides that ICSR is benefiting investment as well as the international investment agreements and economic rules such[59].

Taking a glance at the International level is enough to find several political, economic and legal instruments addressing the ICSR, such as the EU green paper which provided a comprehensive inventory for CSR to be followed by the European governments and corporates[60].

Deliberately, the Multilateral Investment Guarantee Agency (MIGA) aimed to protect private sector investors in developing countries. It emphasised on the importance of FDI flows in developing countries to support the economic growth and poverty reductions. Usually, the political instability and embryonic markets discourage investors from entering the new evolving markets.Accordingly, MIGA provides a political risk insurance for the foreign investments in developing countries and to prevent disturbances in the business sequence[61].

Also, the OECD Guidelines for Multinational Enterprises described in its general policies the social obligations of multinational corporates (MNCs). It encourages the consideration of the interests of the stakeholders to achieve sustainable development, with respect to the HRs values in connection to host states obligations. Also, the OECD Guidelines for Multinational Enterprises described in its general policies the social obligations of multinational corporates (MNCs). It encourages the consideration of the interests of the stakeholders to achieve sustainable development, concerning the HRs values in connection to host states obligations. Besides that, there are obligations towards creating employment, upholding good corporate governance and refraining from the uncontemplated exemptions and the discriminatory or disciplinary action against employees, and any improper involvement in local political activities[62].

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[56]Kolk A and Lenfant F, 'MNC Reporting on CSR and Conflict in Central Africa'(2010)93 Journal of Business Ethics241,244

[57]Muchlinski P, 'Corporate Social Responsibility' in Muchlinski P, Ortino F and Schreuer C (eds), The Oxford Handbook of International Investment Law(Oxford University Press 2008)643-645

[58]Ibid 638-643

[59]Ibid 643-645

[60]Moon J and Vogel D(n6)316-317

[61]Schneuwly AM,'International Investment Law and its Instruments: Managing Risks to Investors and Host States' (2012),https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2200347,44-47

[62]Muchlinski P (n58)643-645

The UN Global Compact (UNGC), which established upon a call of Kofi Annan[63], is more specified about CSR standards. It supports the areas of HRs, labour, the environment, and anti-corruption[64]. Those principles rights are internationally acceptable as duties and rights on the international legal system. It considered that global economic order success in crises such as climate change or poverty should be through attaining equilibrium between states, civil societies and corporations or business. There should be governing macro-level values to be incorporated into the micro-level standards in the conduct of companies[65]. The UNGC succeeded through the numerously signed corporates to establish well-known moral obligations of CSR. Its mechanism is based on spreading the culture of social business attitude, such as initiating learning and dialogue events or supporting partnerships such as the German Development Agency (GTZ) partnership to tackle HIV/AIDS in South Africa[66].

Even critiques to the UNGC revolve around the fear of the corporate control over UN, the inability of it to establish an enforcement to its principles due to its vagueness. Rasche saw all of these critiques as invalid because UN cooperated severally with businesses, where the NGOs always represented in its mechanisms, which always keep the balance between representatives of states, civil society and business. Besides that, the purpose of UNGCis not creating a regulatory code but spreading the culture of CSR. The UNGC also has a list of corporates that is updated depending on the compliance with its principles, which could be an enough monitoring tool to build upon in the future investigation and regulatory role[67]. The UNGC solves a problem of common legislation failures especially by developing countries, so the ability of UN to impose an international understanding is protected better[68].

Moreover, the "Protect, Respect, Remedy" framework, established by UN norms on business and HRs draft, represents more emphasis on HRs. Through this context, states shall protect HRs from any violations including those by companies, the business shall respect HRs through diligence and other measures, and victims shall have better access to effective remedies[69]. The importance of the framework, according to Sara Seck, is initiating a debate about home states role in supervising its national corporate abuses[70]. Such extraterritorial application is possible, as long as it is not accompanied by intervention in the internal affairs of the host states[71]. The framework is imposing an integrated vision between business and HRs, that require balancing the public values and the economic efficiency through a more progressive liberalisation

[63]Moon J and Vogel D(n6) 315

[64]Muchlinski P (n58)643-645

[65]Rasche A,'A necessary supplement'- what the United Nations Global Compact Is (and Is Not)' in Buhmann K and Others (eds), Corporate social and human rights responsibilities: global legal and management perspectives (Palgrave Macmillan 2011)54-56

[66]Ibid58-61

[67]Ibid65-68

[68]Ibid62-65

[69]Buhmann K(n40)4

[70]Seck SL,'Conceptualizing the Home State Duty to Protect Human Rights', Corporate Social and Human Rights Responsibilities (Springer 2011)

[71]Ibid 26,also Framework in UN Hum. Rt. Council, promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Protect, respect remedy A HRC /8/5 7 Apr 2008.

process in the world[72].

IV. CSR in IL instruments:

The legalisation of CSR represents a new hybrid policy between the public and the private interests. The governments, in its defence to the public interests, feel more obliged to ensure the CSR behaviour with the investors especially towards labour and HRs[73].

The relationship between the investor, home and host states seems to be a triangular relationship. It is a combination of bilateral relationships, between the investing company and its home state, between the home and host states, and between the investor and the host state, as described by Amstutz[74]. Such interconnections could help in understanding the obligations of the three players in consistency with all the legal documents[75]. The inclusion of CSR understanding, concept and obligations within the international investment law(IIL) instruments, turn such triangular relationship to include a fourth player in the sequence of the IIL, the stakeholders[76]. Because, the international investment agreements (IIAs) do not represent only a legal relationship, but further, it is a part of a broader strategy to develop the economic development.[77]

As the world is no longer divided into capital-importing and capital-exporting countries, and it is natural to see Europe and US among the biggest receipts of FDI; the CSR is more flourished within IIL documents[78]. For example, the US-Canada treaty permits the host state to take any regulatory actions to preserve the environment[79].

In 1990's the new liberal policies led the OECED to attempt a draft of Multilateral Agreement on Investment (MAI),which despite its failure, spread the ideas of free entry establishment dominated since then.The criticism of the MAI is that the states are more protected than investors in the IIL, including environmental and development rights protection[80].

Increasing number of IIAs address the CSR obligations, either directly or indirectly in its contexts, as shown in the figure below[81]. Some treaties name CSR among its obligations or refer to its duties. Especially among the new drafts of IIAs, or the recently adopted treaties, for example, the Joint Declaration concerning Guidelines to Investors, the EU-Chile Association Agreement (2003), the EU-Cariforum

[72]Weiss F,'Trade and Investment'in Muchlinski P, Ortino F and Schreuer C(eds),The Oxford Handbook of International Investment Law(Oxford University Press 2008)188-192

[73]Peels R and others,Corporate social responsibility in international trade and investment agreements: Implications for states, business and workers(ILO Research Paper April 2016)

[74]Schneuwly AM(62)35-38

[75]ibid

[76]ibid

[77]Cosbey A,International Investment Agreements and Sustainable Development: Achieving the Millennium Development Goals September2005,3-5

[78]Sornarajah M and Dawson B, The international law on foreign investment (3rd edn, Cambridge University Press 2010)24-25

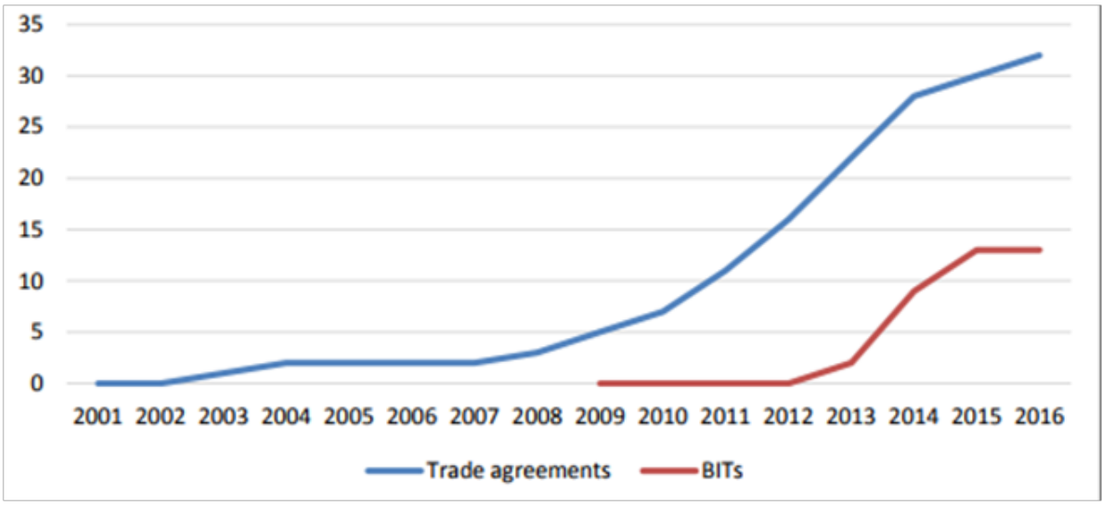
[79]ibid

[80]Ibid25-27

[81]Peels R and others(n74)

Economic Partnership Agreement, and the US-Chile Trade Agreement[82].

-Figure 1 shows the increasing CSR clauses in the IIAs, Source: Peels R and others, ILO research[83].



Also, the Generalised Systems of Preferences (GSPs), which is concluded by some states such as the US and EU GSPs models, to assist the developing countries, through incentivising their local products exportation with nearly zero tariffs. Those GSPs required as an obligation to the investors to respect human and labour rights, such as the prohibition of children labour and organising the working hours rights[84].

Additionally, the European Parliament called for the systematic integration of CSR clauses in all future international trade and investment agreements. And, Canada inserted CSR voluntary rules in all Foreign and Investment Promotion and Protection Agreements and Free Trade Agreements signed since 2010 to achieve voluntary ICSR in its practices[85]. Also, the inclusion of OECD guidelines within the practices of international investment, and the adoption of the Equator Principles under which a number of the world's major banks[86], enhanced the relationship between investors and stakeholders[87].

Despite the obligations of CSR still a soft law obligation, but the imposed obligations over states tend to encourage corporates to work in a more CSR manner[88]. As shown before the depth of debate of voluntarism of CSR, and as many thinkers consider such voluntarism encourage the investments to be friendly to development.[89]

Still, soft law approach may be for a different reason, which is the less attention by IIAs to the sustainable development goals in comparison to the investment goals. The UNCTAD (2015) proposes that to achieve

[82]ibid
[83]ibid
[84]B C and others,'A Call for a WTO Ministerial Decision on Trade and Human Rights'in Cottier T and Delimatsis P(eds),The Prospects of International Trade Regulation: From Fragmentation to Coherence (Cambridge University Press 2011)336-339
[85]Peels R and others(n74)
[86]Schneuwly AM(62)
[87]ibid
[88]Cosbey A(n78)19
[89]ibid

sustainable development, CSR should be included as a "core principle for sustainable investment"[90]. Other authors, such as Mann et al. (2005), proposed to connect the protection of investors under the IIAs to the CSR commitment[91]. Some treaties refer to the obligations of CSR under other International instruments such as the ILO MNE Declaration, the Global Compact, followed by the Netherlands-United Arab Emirates BIT[92].

The BITs requirements by its parties, either investor, home and host states, to comply with certain legal standards related to the environment, labour rights turned CSR into more hard law tool. CSR is more obligatory through social obligations to respect HRs, economic obligations to respect free market policies and regulations, and the ecological obligations towards the environment. Accordingly, some principles such as the "fair and equitable treatment" may turn the good governance obligations and CSR to find its way into the realm of hard IL[93].

Many observers see that more social and environmental rights should be included in the relationship between states and investors to reflect a balance between the rights and responsibilities[94]. Although, both treaties and agreements are made to protect investors primarily, nevertheless, each is a legal instrument that imposes obligations as well protecting rights for investors and states. Those rights may include the stakeholders as well, through labour, consumers or HRs. Through investment agreement between governments and investors, new employment chances could be created, and additional support to the national market could be presented. Such output is directly influencing to the entire socio-economic environment in the host country, which is consistent with the legal interrelationships including stakeholders as well[95].

It is possible to figure that CSR obligations by the company directors may breach other constitutional rights of equality, or contradict with other laws, such as the case in India. The Indian laws distinguished between companies on several bases, such as being national or foreigner or based on the revenue values. As a result, corporations may be obliged to fund CSR activities even if it did not meet the profit goals, such as having marginal gains[96].

V. CONCLUSION

In conclusion, CSR has undergone historical developments in order to raise the responsibility of corporations towards society. However, the required responsibilities still remain voluntary, with minimal consequences for breach. Although the voluntary codes of conduct and Ruggie Principles are international requirements, they are not practised to a uniform standard and are simply too "soft". This has led to worldwide disasters as a result of corporations not taking enough responsibility towards society and having no consequences to face once they have undertaken an abusive activity. Although plausible reasons

[90]Peels R and others(n74)

[91]Cosbey A(n7)

[92]Peels R and others(n74)

[93]Schneuwly AM(n62)

[94]ibid

[95]ibid

[96]Kumar A and others,'Corporate social responsibility under Companies Act 2013 - a critical analysis' (2015)36 The Company Lawyer 383,387-391

may be given against imposing responsibilities on corporations, it is nevertheless indisputable that the policy reasons that underpin the measures to curb corporate abuse weigh far more than the promotion of business argument. As proposed, there is a desperate need for an international treaty on corporate social responsibility and possibly an International Convention on Corporate Social Responsibility in the future, in order for corporations to have prescriptive rules and regulations to follow. Although there are difficulties in introducing this in practice, international hard law would raise standards universally and in the event of corporate abuse, corporations would finally be held responsible[(97)].

The main approach that corporation directors should consider is that CSR is more a strategic approach, which will benefit on the competitiveness level, beside the risk management, cost savings, and improvement of customer relationship[(98)]. The problem is that laws did not state clear hierarchy of interests to be followed, or clarifying the required priority in case of conflict between the interests of both shareholders and stakeholders[(99)].

But those criticisms may be solved through following the enlighten shareholder principle, that shareholder rights may require wider consideration for others, such as employees and customers. It put into consideration the sustainable growth objectives, beside it defined more the definition of stakeholders that will be considered by the corporation[(100)].

CSR is no longer a theoreticalidea; it is now mentioned in treaties, international documents, state regulations and corporate decisions. Accordingly, CSR may be very effective to impact the IIL in favour of social claims, using its soft power well established in developed countries and in the international arena. CSR could possibly change the culture which leads to change the legal texts itself, as the many treaties under revision to include more CSR obligations. And it can as well through its influence over the understanding of the existing texts, such as the sustainable development, make a difference in the application of the home state courts and the arbitral tribunals.

[(97)]Hassan J and others,'International business and human rights: time for hard law'(2016)International Company and Commercial Law Review
[(98)]Plan Action,European Commission(n29)
[(99)]Yap JL(n26)3
[(100)]Yap JL(n26)2