

Corporate Social Responsibility: An International Perspective

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Introduction

Over the past decade, there has been increasing interest in the concept of Corporate Social Responsibility (CSR), and the proposition that corporations should take into account the interests of stakeholders other than their shareholders.¹ Support for this idea has come not only from corporations themselves, but from national governments, extra-national organizations such as the United Nations, and non-governmental organizations. As a result, recent years have seen legislative efforts to encourage or even mandate some form of CSR, with the reporting of CSR activities recently enshrined in Danish law², and proposed legislation in Canada which seeks to regulate the activities of Canadian mining companies in developing nations³. However, questions have arisen as to whether CSR advances a consistent set of interests and principles, and whether it effectively serves the societal interests it purports to advance.⁴

This paper will consider the varying definitions which have been advanced for CSR, and canvass the varying interests that it has been used to promote. It will identify the organizations and forces which have been termed the “drivers” of the CSR movement, and consider some of the criticisms which have been leveled against it. Finally, it considers the efforts that varying governments and international actors have taken to encourage CSR, and identifies trends which may be expected to play an increasing role in the CSR movement internationally.

Corporate Social Responsibility Defined

At some level, it might be suggested that the idea of CSR is self defining; corporations are encouraged to behave in a manner which is ‘socially responsible’. However, any such simplistic clarity is illusory. While various definitions for CSR have been advanced by different governments and organizations, common themes may be seen in their overarching concern for human rights, labour rights, safety standards and occupational health and safety, and issues relating to environmental responsibility.

Definitions of CSR Adopted by Governments, Commissions, and NGOs

CSR may be viewed as the principle that corporations should respond to interests apart from, and in addition to, those of their shareholders.⁵ However, the definitions of CSR advanced by governments and international organizations have tended to focus on corporate efforts to balance their economic activities with broader stakeholder interests. For example, the Government of Canada takes the position that “CSR is generally understood to be the way a company achieves a balance or integration of economic, environmental, and social imperatives while at the same time addressing shareholder and stakeholder expectations”.⁶ However, it also suggests that CSR is “an evolving term that does not have a standard definition or a fully recognized set of specific criteria”.⁷

A similar definition was adopted by the European Commission in 2006 as a part of its most recent policy communication on CSR, which defined it as: “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.”⁸

The United Kingdom defines CSR as: “how business takes account of its economic, social and environmental impacts in the way it operates – maximizing the benefits and minimizing the downsides.”⁹ Finally, what may be the broadest definition is offered by the United Nations: “CSR can be defined as the overall contribution of business to sustainable development”.¹⁰

The World Business Council for Sustainable Development (WBCSD) provides that “Corporate social responsibility is the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life”.¹¹ Amnesty International advocates for mandatory “global standards on business and human rights that will apply across borders to all companies ... (which) ... will provide governments with clear, common guidelines on how to address corporate behavior on human rights”.¹² A more specific call for action is made by the Corporate Responsibility Coalition (CORE), which argues that voluntary CSR efforts are insufficient and calls for “mandatory social and environmental reporting, enhanced directors’ duties, and access to justice for affected communities”.¹³

Despite this apparent diversity of definitions, some authors have identified underlying themes which they suggest may define the concept.¹⁴ They suggest that CSR may be viewed as an effort to integrate economic considerations with environmental and social needs, as well as corporate efforts to balance the interests of diverse stakeholders. As such, it may be viewed as a diverse set of practices which include “stakeholder engagement, company-wide commitments and strategies, measurable targets for improvement, training, CSR management practices, and public reporting”.¹⁵

It might be noted that each of these definitions is wide ranging and provides little information regarding the policies and practices which advocates of CSR may be expected to advance. However, it has been suggested that this need not be seen as

problematic, as what is “socially responsible” must be evaluated in the context of current issues and needs.¹⁶ Thus the broad scope of most conceptions and definitions CSR may permit it to adapt to novel or evolving social needs. As such, CSR may emerge as a constantly evolving concept, rather than a fixed set of goals or practices.¹⁷

Common Objectives for CSR

A single definition for CSR may be elusive or even undesirable, clear themes emerge when one considers corporate efforts to behave in a socially responsible manner. In particular, CSR activities appear to focus on four common ends: human rights, labour standards, safety standards and occupational health and safety, and issues relating to environmental responsibility.

The concern over human rights expressed by CSR advocates appears to have taken two primary forms. First, corporations are encouraged not to themselves engage in human rights abuses in the course of their operations.¹⁸ Additionally, while they may be compelled to comply with the national laws of the countries in which they operate, corporations are encouraged not to be complicit in encouraging or enabling human rights abuses carried out by governmental actors.¹⁹ In cases where compliance with national law would require human rights violations, corporations have been encouraged to withdraw their operations from those nations.

CSR has been used to advocate increased labour standards in the international context. This has included support for the right to representation by trade unions, the abolition of child labour and compulsory labour, and the abolition of discrimination based on grounds such as religion, race and gender.²⁰ As with the promotion of human rights, these labour standards may require corporations who practice CSR to adhere to a higher standard than that imposed by the prevailing national laws.

This concern for labour standards has also included calls for enhanced safety standards, and increased focus on Occupational Health and Safety (OHS). In particular, the exploitation of workers in the developing world has been tied to “devastating consequences on the health and safety of the workers involved”.²¹ Some organizations, including the WBCSD, have indicated that OHS should form a central part of any corporation’s involvement in CSR initiatives.²²

The WBCSD suggests that like labour standards, OHS forms a core part of a business operation, and as such, they may be expected to exert a high degree of control over them in practicing CSR. In contrast, any one business may have only a very attenuated influence over the legal regime in place at the national level. Recognizing this, support for OHS has been explicitly included in the CSR strategies of several nations, including The United Kingdom, France, and Germany.²³

Finally, CSR has also been used to encourage increased corporate consideration of environmental issues. Numerous aspects of corporate activity may be identified which have a large impact on the environment, including manufacturing, transport, resource

usage, and the generation of polluting emissions or by-products.²⁴ In attempting to minimize these impacts, the environmental aspects of CSR have been related to the sustainable development movement, in part due the observation that the environmental issues targeted by that movement are frequently seen as resulting from corporate action.²⁵ However, it has also been argued that, antagonism aside, this is a relationship of necessity, as the goal of environmental sustainability may be out of reach without the resources and innovation of the international corporate sector.²⁶

Drivers of Corporate Social Responsibility

It has been reported that the majority of companies currently publically report their efforts on environmental and social issues, with approximately 90% of European companies and 59% of American companies including such information in their annual reports, or separate companion reports.²⁷ In Canada, such activities appear to have increased dramatically over the past decade, where the reporting rate for companies listed on the Toronto Stock Exchange was 35% in 2001, but had risen to 60% in 2003, and stands at 80% as of 2007.²⁸ Meanwhile, even critics of CSR note that it has “won the battle of ideas”.²⁹ The impetus behind this dramatic rise in participation in CSR comes from several sources, including public demand, the activities of NGO’s, government encouragement or legislation, as well as voluntary action stemming from a corporation’s own business interests.

The General Community and Non-Governmental Organizations

Private citizens have increasingly come to question the role of corporations in society, and the manner in which they operate.³⁰ In part, this may be traced to the rise of transnational corporations, and the perception that such bodies may be effectively able to evade traditional forms of legal control.³¹ This in turn has lead to increased public pressure for corporations to behave in a manner which is socially responsible. Some corporations have responded to this social pressure by adopting CSR practices.³²

In Canada, growing public concern over the role of corporations led to the establishment of the Canadian Democracy and Corporate Accountability Commission (CDCAC), a privately funded body which studied how to encourage greater CSR on the part of Canadian corporations.³³ CDCAC conducted public opinion polls, and found that “72% believe that corporate executives should take social-responsibility concerns (impacts on communities, employees, the environment, and charitable activity) into account in pursuing profits.”³⁴ In contrast, only 20% believed that the only responsibility of a corporation was to enhance its competitiveness and profits.

Concern over corporate activity amongst the general public is reflected in the establishment of NGO’s to advocate particular policy positions. These bodies have grown in number from the 1960’s onwards, with some achieving considerable influence, including consultative status at the United Nations.³⁵ Many major international NGO’s, including Greenpeace, the World Wildlife Federation, and Oxfam, have specifically targeted the corporate sector to encourage action in areas as diverse as human rights, the

environment, labour, and other externalities, areas frequently advanced as a component of CSR.³⁶

Government

Governments have responded to the public pressure regarding the effects of corporate conduct on both the environment and the community at large with both legislation, and support for voluntary CSR initiatives.³⁷ These efforts may be illustrated by observing that a number of countries, including Canada,³⁸ the United Kingdom,³⁹ Germany,⁴⁰ France,⁴¹ and the European Commission,⁴² have departments which have specifically undertaken considerations of CSR.

The Business Case for CSR

A number of studies have supported the argument that corporate involvement in CSR activities may serve to enhance profitability. As early as 2001, the Financial Times noted that “Even on a sector-by-sector basis, shares of companies with a superior environmental or human rights record appear to outperform. Clean chemical companies will outperform dirty ones, clean oil companies will outperform dirty oil companies”.⁴³ Similar observations have been made in respect of the mutual funds industry, with socially responsible investing growing at a rate markedly faster than the industry as a whole.⁴⁴ Several possible explanations for these results suggest themselves.

First, the support for corporate accountability found amongst the population at large is also reflected in the ranks of investors. In the CDCAC studies on attitudes toward corporate responsibility, it was found that 72% of Canadians felt that corporations should have accountability that extends beyond their profit margins.⁴⁵ However, an even larger number of shareholders, 74%, accepted the same principle.⁴⁶ In contrast, only 20% of the shareholders surveyed felt that the only responsibility of the corporation was to operate competitively and generate profits.

These beliefs are reflected in the practice of Socially Responsible Investing (SRI), which has taken hold among some investors, and encourages the consideration of the “social and environmental consequences of investments”.⁴⁷ In the United States, SRI has been observed to be growing at a faster rate than all other investment assets under professional management, with the total value of SRI assets estimated at \$2.71 trillion in 2007.⁴⁸ Thus, the adoption of a corporate position on CSR may be seen in part as a response to shareholder demand.

In addition to this, it may be argued that the adoption of a CSR program has the effect of improving a corporation’s image, with potential attendant business upsides. Again referring to the CDCAC studies, 75% of Canadians (and a full 78% of Canadian shareholders) thought that the government should not make purchases from companies with a poor history of social responsibility. As the Canadian Federal Government already ties procurement contracts to the employment-equity performance of bidder’s for

contracts of over \$200,000, there is no reason in principal why this policy could not be extended to consider other matters falling under the rubric of CSR.⁴⁹

Apart from responding to the desires of individual investors, or acting out of concern for their public image and profits, corporations may also be encouraged to adopt CSR by other sources of corporate capitalization, including lending bodies and insurers.⁵⁰ To encourage this, the United Nations Environment Program (UNEP) has created the *UNEP Statement by Financial Institutions on the Environment & Sustainable Investment* (the “*UNEP Financial Initiative*”), which requires signatories to “...regard compliance with applicable environmental regulations and the use of sound environmental practices as important factors in demonstrating effective corporate management.”⁵¹ As of 2009, the *UNEP Financial Initiative* has been signed by over 180 financial institutions, including some of the largest banks in the United States, such as Citigroup, JP Morgan Chase, and the Bank of America.⁵² Likewise, both the World Bank, and the International Financial Corporation (The IFC) make their loans conditional on compliance with environmental and social standards.⁵³

UNEP has also issued a statement in respect of the insurance industry, the *UNEP Statement of Environmental Commitment by the Insurance Industry* (the “*UNEP Insurance Statement*”).⁵⁴ The *UNEP Insurance Statement* commits signatories to “reinforce the attention given to environmental risks in our core activities. These activities include risk management, loss prevention, product design, claims handling and asset management”.⁵⁵ As such, signatory insurance agencies may be expected to consider a company’s practices in relation to CSR in the provision insurance policies.

Criticisms of Corporate Social Responsibility

While CSR has attained both widespread attention and acceptance in recent years, its principles and assumptions have not gone without criticism.⁵⁶ These criticisms have tended to fall broadly into three categories, arguments that corporate responsibility directed solely to shareholder is socially beneficial, observations that in certain situations CSR may create new problems apart from addressing existing ones, and finally, the suggestion that some CSR initiatives may amount to little more than corporate promotion efforts, while distracting public attention from more effective means of addressing social issues.

Capitalism without CSR

The suggestion that corporate actors need to engage in activities loosely classed under the practice of CSR to benefit society has been criticized by those who believe that companies run solely to profit their shareholders not only provide a social good, but will naturally seek to accommodate their stakeholders.⁵⁷ That the pursuit of profit may serve a social purpose has been recognized from the emergence of free market systems in the 18th century. As memorably put by Adam Smith in “The Wealth of Nations”:

It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.⁵⁸

In the modern context, it has been suggested that profit may be viewed as a measure of the value that a corporation creates for society, if the price that people are willing to pay for goods reflects the value that people attach to them, and the costs associated with production reflects the cost incurred by society in their production.⁵⁹ Such a company run solely for profit would further benefit the public by supplying its employees with wages, its customers with a product they desire, and may in turn act as a customer to companies which supply it with the goods and materials it needs to conduct its own business.⁶⁰ Further, if the company is to persist, all of these groups must be satisfied in their transactions with it. Thus, the company's self-interest provides a powerful incentive to benefit groups with a direct interest in the corporation's actions, provided that it is properly situated in a competitive market.

Creation of New Problems or Deflecting Attention from Existing Ones by CSR

Some applications of CSR principles have attracted criticism when carried to their logical extreme. For example, while the promotion of Western ideals of human rights and labour standards in developing nations may appear to be laudatory, a refusal to deal with nations which do not meet these high standards may have adverse consequences. Such a refusal may not result in an improvement in the lives of the affected people, and may cause net harm.⁶¹

It has been observed even in the absence of Western labour standards, the citizens of such a nation may benefit from continued wages and employment, conditions which may not be otherwise available to them. Further, direct foreign investment may serve to stimulate economic development.⁶² As such, withdrawal from nations which do not meet international labour standards may result in reduced investment, with a loss of its attendant benefits, in some developing nations.

In some cases a corporate withdrawal from developing nations may occur in response to public scrutiny of their labour practices, and an attendant backlash which harms the corporation's image.⁶³ In such instances, withdrawal would be motivated by the corporation's financial interests, rather than a consideration of the actual best interests of the citizens of the developing nation. Problematically, some voluntary or mandatory codes may encourage such corporate behavior. An example of this may be viewed in the CDCAC Final Report, which suggested that where a corporation's activities in a country may result in violations of human rights standards, and protests to the government regarding this are ineffective, the company should be obliged to withdraw from that jurisdiction.⁶⁴ However, CDCAC continued to explicitly state that it was not calling for Canadian minimum-wage standards to be applied to corporations acting in the developing

world, noting that such calls would “remove a legitimate competitive advantage from an economically less developed part of the world”.

In other instances, corporations have trumpeted their withdrawal from nations with poor labour standards.⁶⁵ Such actions may not adequately weigh the interests of stakeholders in developing nations, effectively keeping them in poverty, where they might otherwise have made an income well above the standards of their nation.⁶⁶

While it may be difficult to find fault with the donation of funds to what may be admittedly worthy causes, it has been suggested that the equation is less clear when the money you choose to give is not your own. In the case of corporate executives, the donation of corporate funds represents an outlay of money ultimately owned by the shareholders of the corporation, rather than the executive in their personal capacity.⁶⁷ In turn, this may have the effect of simply shifting the source of money given to charity; shareholders, who might have expected to give money to charity on their own behalf, may now find the company they invest in making these decisions for them.

Questions have also been raised regarding whether executive officers are the persons most suited to deciding which social initiatives are most deserving of funding. While a corporation’s profits, or lack thereof, may be easily measured, concepts such as “social justice” or “environmental sustainability” may be less susceptible to evaluation.⁶⁸ Further, questions may arise as to which objectives are most worthy of the finite pool of resources dedicated to CSR, and whether a particular proposal may work to those ends more efficiently than another. It is uncertain that corporate executives are better placed to answer these questions than government officials, or indeed, private citizens, and whether numerous corporations, acting separately, can produce an optimal or even effective policy to address global problems.⁶⁹

Concerns such as this may be exacerbated by the observation that almost all attempts to institute CSR would involve some initial costs, namely, the costs the corporation incurs to undertake their chosen initiative.⁷⁰ In cases where these initial costs are not outweighed by a net social benefit, or worse, where they create unintended social costs themselves, society would have been better off in the absence of such well meaning, but ill executed CSR endeavors. The accountability of such corporate decision makers in respect to their CSR practices has also been questioned.⁷¹ Unlike politicians who may be expected to face public scrutiny come election time, the mechanisms of accountability for corporate charitable contributions are primarily internal.

Well-meaning encouragement of CSR on the part of government or NGO’s may also be perverted in instances where they act as a barrier to the entry of new firms into the marketplace.⁷² In such cases established corporations may support even initiatives which will result in costs to them as they may benefit over time from reduced competition. However, such anti-competitive effects do not obviously act in the public interest.⁷³

CSR as an Ineffectual PR Exercise

Some CSR practices have the potential to benefit both the community, and increase the corporation's profitability, through enhanced public goodwill, or access to diversified sources of funding. While this may present opportunities for scenario in which both corporations and external stakeholders benefit from CSR practices, it may also encourage corporations to engage in token CSR to gain public goodwill without placing too much of a burden on their finances. As a result this "token CSR" may fail to create the lasting benefits that advocates of CSR would hope for, and may serve to prevent actions which would effectively regulate corporate behavior.⁷⁴

It has been suggested that CSR undertaken as a public relations exercise may serve to distract attention from issues relating to business ethics or practices while doing little to alleviate the underlying problems.⁷⁵ Further, by focusing attention on the corporation's relations with the environment and social stakeholders at large, some CSR may offer little to address problems with corporate management which focus their harms on corporate shareholders, such as misleading financial disclosure, or excessive executive compensation.⁷⁶

In some instances, the public impression of action created by CSR initiatives may serve as a substitution for, or an argument against, or legislation or regulatory control which may have served as a more effective control of corporate behavior.⁷⁷ This potential has led some organizations which create voluntary standards, such as UNEP to caution that "Voluntary initiatives must be seen as part of an integrated policy and regulatory framework", and should not be used as a replacement for substitutions for regulation.⁷⁸

Voluntary vs. Mandatory Corporate Social Responsibility

Voluntary and Mandatory CSR Contrasted

CSR is driven by a number of factors, including the corporation's self interest, public pressure, NGO's, lender and insurer requirements, and government regulation or legislation. It may be observed that some of these drivers, such as public pressure, or non-binding covenants, act to constrain corporate behavior only as far as the corporation decides to regulate its own behavior. In this sense they may be termed 'voluntary' CSR. In contrast, compliance with legislation is typically mandatory, and as such may create hard requirements for corporations to engage in specified CSR practices.

Apart from the apparent bright line division between the voluntary nature of some covenants, and the binding nature of legislation, other forces may operate to mandate CSR practices without the requirement for governmental action. For example, requirements for the adoption of CSR practices may become effectively mandatory when they are adopted by large lending agencies or insurers as a condition of doing business. Likewise, socially responsible investing may exert strong pressures to engage in CSR where it is adopted by institutional investors, or perhaps by stock exchanges as a condition for listing.⁷⁹ In such cases there may be an overwhelming business argument for adopting at least some CSR practices. A similar effect may be imagined if CSR

requirements were to be implemented by professional regulatory bodies, such as the Ontario College of Pharmacists, or the College of Physicians and Surgeons of Ontario. In such a scenario, compliance with the specified practices would become a non-legislated requirement for practicing in a given profession.

Corporations may also bind themselves to selected CSR practices through the contracts they choose to sign with suppliers, financial institutions, or other corporations. Such contractual provisions may find their origin in the internal codes of conduct adopted by one party to the contract.⁸⁰ For example, some corporations such as Bombardier Inc. have included provisions in their Code of Ethics which require their suppliers and partners to also adhere to its standards, which include provisions for OHS as a component of CSR.⁸¹

While such CSR initiatives may have been agreed to by the corporation as a part of the contract negotiation, after the execution of the contract, they would be binding in their effect on the parties to the contract. Further, some situations may present a corporation with little choice other than to agree to bind themselves to the CSR initiatives required by a business partner. For example, small or medium sized businesses may have little negotiating power in regards to standard procurement contracts offered by major suppliers.

Finally, corporations may be bound to standards of behavior similar to CSR through court decisions which find contrary practices to be tortious. For example, in the United States, the tort of public nuisance may be invoked where a public right is interfered with, by the defendant's unreasonable conduct, and the defendant failed to take reasonable precautions to prevent, control or minimize the harm resulting from their conduct.⁸²

Such claims have frequently been brought against corporations accused of engaging in environmentally irresponsible practices.⁸³ While these claims have frequently been rejected on the ground that they raise non-justiciable political questions, a recent decision of the Second Circuit overturned such a dismissal, allowing a claim from eight state attorney generals to proceed against a collection of American electric power companies on the premise of their greenhouse gas emissions.⁸⁴ Should this claim, or others based on similar principles, ultimately result in a finding that the corporation was liable and result in an award of damages, the threat of similar litigation may act as a potent, preventative constraint on corporate behavior.

The Benefits and Limitations of Voluntary Initiatives

The number of voluntary initiatives promoting compliance with numerous CSR standards has expanded in recent years so that they now number in the thousands.⁸⁵ As they are created without the need for a legislative process, such initiatives may be implemented more quickly than a legislative response.⁸⁶ As such, they may offer a means to address sudden or rapidly developing issues.⁸⁷ Further, as such standards are privately adopted

and implemented, they do not require administrative or financial support from the government in order to operate.⁸⁸

The lack of a legislative process also provides a greater ability for voluntary initiatives to be tailored to the needs of the industries they are targeted at.⁸⁹ This stems in part from the fact that they may be drafted and implemented by the very corporations or industry groups they are ultimately intended to apply to.⁹⁰ In turn, this adaptability to corporate needs may encourage greater compliance, or more rapid adoption. The process of drafting, adopting and implementing voluntary CSR programs may also encourage cultural changes within the corporation, promoting proactive actions by the management responsible for adopting the standard.⁹¹

However, while voluntary initiatives thus have several advantages, they have been criticized, particularly with regard to their non-binding nature, which has led to questions regarding their effectiveness in practice.⁹² In fact, a 2003 study by the Organization for Economic Cooperation and Development has suggested that few voluntary initiatives in respect of the environment have resulted in improvements significantly above the outcome which might have been expected without them.⁹³

Several explanations may be offered for this lack of effectiveness. First, due to their voluntary adoption, voluntary CSR initiatives inevitably fail to capture all industry members.⁹⁴ This problem may be particularly acute where those corporations which resist the adoption of voluntary standards are also those with the worst records in the field the standards address. Further, in the absence of effective enforcement measures, even those companies that do adopt a voluntary code may be able to disregard it where they are motivated to do so by other business interests.⁹⁵

Problems also may arise where voluntary standards are drafted by industry members and fail to adequately address the social or environmental concerns they are addressed to. However, such an insufficient standard may still be used to create a show of action to garner public support, possibly all they were intended to do in the first place.⁹⁶ A particular damaging instance of this has been termed “regulatory capture”, and occurs where the existence of voluntary standards are used to argue against the adoption of mandatory regulations or legislation.⁹⁷ In such cases, meaningful action may be prevented by ineffective voluntary actions.

The Benefits and Limitations of Mandatory Initiatives

While several organizations such as the European Commission have defined CSR to encompass only voluntary initiatives, others, such as the government of Denmark, have passed legislation which mandates some minimum forms of CSR.⁹⁸ Legislative measures are also being contemplated in Canada, where the current Bill C-300 would regulate the behavior of Canadian mining companies in developing countries. Such mandatory initiatives, whether they arise from legislation or other sources, have a number of benefits which are missing in voluntary initiatives.

The clearest difference between mandatory CSR initiatives and voluntary initiatives is the enforceability of the former.⁹⁹ Where mandatory CSR requirements emerge from legislation, the specific mode of enforceability may be provided by that legislative document, and may include specific penalties which transgressors will be subject to, often through access to the courts.

The penalization of those who contravene mandatory CSR requirements might be expected to encourage higher levels of compliance with mandatory requirements. For example, the threat of a sufficiently substantial monetary penalty would be expected to engage the self interest of the corporation so as to encourage it to proactively comply with the standard. This ability may be particularly important in situations where it is necessary to force corporate compliance with a CSR standard that is unlikely to be adopted voluntarily.¹⁰⁰ Such situations may arise where the CSR initiative will require dramatic corporate outlays to achieve, or will require the drastic alteration of normal business practices to achieve a pressing social or environmental need. Further, as this enforceability applies equally to all corporate actors who are subject to the CSR requirement, mandatory requirements avoid to some extent the problem of the refusal of some corporations to sign on to voluntary initiatives.¹⁰¹

There are several drawbacks associated with mandatory methods of imposing CSR, particularly when they emerge from legislative efforts. In contrast to the speed of adoption which may be achieved through voluntary measures, the time consuming nature of legislative undertakings may make regulatory solutions less responsive to quickly evolving situations.¹⁰² Further, it has also been observed that legislation tends to be less tailored to industry needs, an issue which may be important where the regulation will apply to corporations in different sectors and of different sizes.¹⁰³

Interestingly, while the potential for enforcement action and penalties have already been noted as benefits of mandatory CSR, these same attributes also create downsides. For instance, with regard to regulation, the costs of enforcement are placed on the government, and limited enforcement resources may lead to increased evasive activity.¹⁰⁴ Further, some commentators have noted that monetary penalties may be insufficient to encourage compliance in all cases, and may come to be seen as merely another cost associated with the business.¹⁰⁵ In such instances, even mandatory regulations may be insufficient to regulate corporate behavior.

While both voluntary and mandatory CSR have advantages and disadvantages, the debate as to whether CSR is best pursued through voluntary or mandatory means has been ongoing for some time.¹⁰⁶ Some governments, such as the European Commission, have defined CSR to include only corporate actions which are made on a “voluntary basis”.¹⁰⁷ Likewise, as early as 1992 the United Nations supported the use of private voluntary initiatives to address both environmental and social issues.¹⁰⁸ In contrast, some governments, such as that of Denmark, have introduced mandatory CSR reporting

requirements, while non-governmental organizations have cautioned that “Voluntary initiatives should not be proposed and adopted as substitutes for regulation”.¹⁰⁹

Some commentators have suggested that the debate between voluntary measures and mandatory measures is largely “futile”, noting that while both approaches have advantages and drawbacks, they are not mutually exclusive, and voluntary initiatives may evolve into legal requirements. Thus, both mandatory and voluntary initiatives may play a “complementary role in promoting CSR.”¹¹⁰

This approach of supporting voluntary measures with mandatory requirements has been supported by NGO’s such as CORE and Save the Children, which have stated “specific regulatory actions can, and should, *strengthen* voluntary CSR commitments”.¹¹¹ Further, in some cases mandatory initiatives have attracted widespread corporate support. An example of this may be seen in the “*Bali Communiqué*” which was supported by a large number of international businesses prior to the United Nations Climate Change Conference in 2007.¹¹² The *Communiqué* called for an “ambitious” and “legally-binding” agreement, arguing that it was necessary to promote investment in low carbon technologies. This observation suggests that the debate between voluntary and mandatory CSR measures need not always be painted as a war between corporate interests and social needs.

International Perspectives on CSR

CSR initiatives have developed along different routes in different jurisdictions, varying from the encouragement of voluntary initiatives by the European Commission, to the adoption of mandatory reporting of CSR activities by Denmark. This section will consider the status of efforts to implement CSR in the United States, Canada, Denmark, and the European Union.

The United States

CSR in the United States has primarily been approached through the initiatives of its corporations, rather than through the legal developments or government actions seen in other jurisdictions.¹¹³ Currently, approximately 59% of American companies report information relating to their actions regarding the environment and social policies publically.¹¹⁴ Further, major American corporations have actively promoted both voluntary CSR initiatives, and have called for the adoption of mandatory standards. An example of this may be seen in the United States Climate Action Partnership, which counts corporations such as the Ford Motor Company, Chrysler, Shell and General Electric as members, and calls for “strong national legislation to require significant reductions of greenhouse gas emissions”.¹¹⁵

Apart from the initiatives of individual corporations, and participation in voluntary CSR initiatives, there are interesting requirements for the reporting of corporate activities pertaining to the environment in the United States as a part of securities

regulation. These requirements emerge from *Regulation S-K* of the United States Securities and Exchange Commission (The SEC), which specifies that listed companies must report any material effects that environmental laws may have upon their earnings, or competitive position.¹¹⁶ Companies are also required to report any legal proceedings they are involved in regarding these laws, where the potential penalty exceeds a certain threshold.¹¹⁷ These reporting requirements may serve as valuable sources of information regarding a company's environmental activities for individuals or institutional investors wishing to undertake SRI, as well as third parties such as lenders or insurance agencies wishing to confirm compliance with contractual CSR obligations.

Additionally, it has been suggested that the SEC requirement to report any "unusual or infrequent events" which may materially affect reported income, may encompass the reporting of consumer boycotts or campaigns targeting their poor environmental or social performance.¹¹⁸ Should this interpretation be correct, this reporting requirement could also serve as a source of information regarding the corporation's compliance with CSR principals.

Recent legal developments in the United States also have implications for CSR. These include the previously discussed decision of the Court of Appeal for the Second Circuit which permitted a lawsuit to proceed against a collection of energy companies on account of their greenhouse gas emissions.¹¹⁹ This decision may have implications for companies whose environmental actions might constitute public nuisances.

An earlier decision of the Supreme Court of California also has implications for companies who voluntarily choose to declare their CSR related activities. In *Kasky v. Nike*, Nike was the subject of a lawsuit over its claim that its products were produced without the use of sweatshop labour.¹²⁰ The Court found Nike's statements to constitute commercial speech, as they were made by "a commercial speaker to a commercial audience" and contained representations regarding the speaker's business conduct. As a result, the company's representations were subject to California's unfair competition legislation, which prevents such statements from being false or misleading. As a result, American companies which make claims in respect of their CSR activities should be cautious that their claims are true.

Canada- Bill C-300- "Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries"

As in the United States, the corporate law of Canada has a tradition of shareholder primacy. However, it also has a greater tendency to recognize stakeholder interests to a greater degree through the regulatory actions of the Federal Government.¹²¹ Exemplary of this is legislation which has recently been introduced in the Canadian Parliament, which if passed will specifically regulate the behavior of corporations in the mining and gas industries when they operate in developing countries.¹²²

Bill C-300 would require the Ministers of Foreign Affairs and International Trade to issue guidelines to corporations involved in these sectors. The Ministers would

be empowered to investigate complaints that companies in that sector had violated the guidelines, and, if a complaint was found to be substantiated, to take action which would prevent that company from gaining access to government support from Export Development Canada for its foreign activities.¹²³

While a set of potential guidelines under Bill C-300 have not been released, the Bill specifies that they will incorporate the IFC's *Policy on Social & Environmental Sustainability*, the *Performance Standards on Social & Environmental Sustainability*, and the *Environmental, Health and Safety General Guidelines*.¹²⁴ As such they would include requirements to provide workers with a "safe and healthy work environment", and to mitigate the conversion or degradation of natural habitats.¹²⁵ By adopting standards initially adopted by another organization, Bill C-300 provides an example of the use of legislation to both expand the application of, and provide enforcement means for existing CSR standards.

Bill C-300 has received support from NGOs such as Amnesty International which declared that it both supported the Bill, and called for the Canadian government to "adopt stronger legal and policy frameworks to hold corporations to account for their abuse of human rights". However, whether this bill will become law remains uncertain. To date, it has passed both first and second reading in the House of Commons, and was referred to the Standing Committee on Foreign Affairs and International Development.¹²⁶ While the committee is not currently sitting due to the prorogation of Parliament on December 30, 2009, it appears that it has heard criticism of Bill C-300 from both industry members, and Export Development Canada.¹²⁷ As such, it is not possible to state whether the Bill will pass as currently drafted, will face amendments, or will die on the order table.

Denmark: The Mandatory Reporting of CSR

In 2008, the Danish Parliament adopted the "Act amending the Danish Financial Statements Act (Accounting for CSR in large businesses)".¹²⁸ The Act defines CSR to include the manner in which "businesses voluntarily include considerations for human rights, societal, environmental and climate conditions as well as combating corruption in their business strategies and corporate activities".¹²⁹ However, the Act does not mandate that any specific activities need to be undertaken by corporations in respect of CSR, instead leaving it "up to the businesses to decide how it makes sense for them to work on corporate social responsibility".¹³⁰

Where a corporation chooses to undertake such activities, there is a mandatory requirement to report them. This requirement applies only to a subset of larger Danish corporations, which have assets of over DKK 143 million (approximately USD 25 Million), net revenues of over DKK 286 million (approximately USD 51 Million), or an average of 250 employees.¹³¹ The reporting requirements placed on such companies include the need to report information on their CSR policies, how these policies are translated into action, an evaluation of the results achieved by these actions, and their

expectations on future work.¹³² Businesses which do not have CSR policies are merely required to state this in their report.¹³³

The Danish Government has also adopted an “Action Plan for CSR”, of which the legislation of mandatory reporting for CSR formed a part. The Action Plan identified four “Key Goals” for CSR: (1) propagating business driven CSR, (2) the promotion of CSR through state action, (3), climate responsibility, and (4) responsible growth.¹³⁴ Currently, the Action Plan is being promoted by the ‘Danish Government Centre for CSR’, which operates under the Ministry for Economic and Business Affairs.¹³⁵

The European Union

The European Commission, the executive body of the European Union, has stated that the incorporation of social and environmental concerns into a corporation’s operations is “fundamentally about voluntary business behavior”.¹³⁶ As such, it has suggested that approaches involving increased regulation may be “counter productive”. Instead, in its most recent Communication in respect of CSR, issued in 2006, it proposed a series of actions for the promotion of CSR practices. These proposals include raising awareness about CSR through the promotion of voluntary environmental initiatives, and increased involvement for stakeholders and NGO’s.¹³⁷

Most recently, the Commission has issued a memorandum reiterating its support for the voluntary implementation of CSR.¹³⁸ The Commission stresses that the role of the European Union in CSR is primarily in raising awareness and organizing discussion to “further debate and action”.¹³⁹

The Commission argues that corporations should adopt CSR, as it offers a direct benefit to productivity by encouraging the well being of employees, and stimulating the development of new skills and technologies. Further, CSR may provide a benefit to the corporation’s public image and reputation, and allow it to act in accordance with its corporate values. To achieve these aims, the Commission has established a High Level Group on Corporate Social Responsibility, which meets twice yearly to “facilitate the sharing of knowledge and information on new initiatives in the field of CSR between the member states and the Commission.”¹⁴⁰

Conclusion: The Future of Corporate Social Responsibility

It has been observed by critics of CSR, that the stage has largely been ceded to those who advocate it.¹⁴¹ Few corporate leaders would be expected to stand up and argue in public against efforts to reign in what may be seen as harmful corporate practices.¹⁴² Thus, while there are still concerns as to the efficacy of CSR, and debate over its implementation, it appears to be positioned to remain on public and corporate agendas for some time. With this in mind several trends for the future of CSR may be identified, including a trend towards stronger legislative measures, increased involvement by developing nations, and the coming issuance of ISO 26000, a guidance standard from the International Standards Association on social responsibility.

The Trend Toward Stronger Legislation

Voluntary initiatives have been met with increasing skepticism in regards to their ability to effectively motivate changes to corporate behavior.¹⁴³ To remedy this, calls have been made for such voluntary measures to be supported by binding regulatory measures.¹⁴⁴ Such a policy appears to be widely popular with the public as well, with one survey finding that 80% of the Canadian population would support the government setting social responsibility standards.¹⁴⁵ However, some commentators have questioned the effectiveness of such strategies, noting that the increasing globalization of both the capital and products markets may weaken the ability of legislation at the national level to effectively govern corporate behavior.¹⁴⁶ As a result, it has been suggested that increasing regulation from international bodies will be necessary for CSR to effectively protect human rights.

Despite these misgivings, some tendency towards the increased use of regulation at the national level has already been observed, such as in Canada, where legislation has been introduced that would encourage the mining industry to conform to presently non-binding initiatives such as the IFC's *Policy on Social & Environmental Sustainability* through the threat of losing access to government financial support for their overseas initiatives. Other countries, such as Denmark, have already adopted binding regulation, even though, as a member state of the European Union, it is encouraged by the European Commission to recall that CSR should be voluntary.¹⁴⁷ It remains possible that the coming years will see this trend continued, with further legislation introduced to encourage new CSR practices, or to solidify compliance with existing voluntary standards.

An Increasing Voice from the Developing World

The developing influence of Brazil, Russia, India and China, has been noted as a possible "historic shift", in the global distribution of power and wealth.¹⁴⁸ As a result, the standards and policies of these nations have been identified as an emerging influence on global standards, potentially including CSR practices.

This possibility has met with some trepidation, particularly due to the observation that while China has issued positive statements in respect of CSR, its human rights record remains of concern.¹⁴⁹ Indeed, several international corporations have been implicated in complicity in human rights abuses occurring in China.¹⁵⁰ Nevertheless, it has been suggested that increased conformance to global CSR standards may emerge in China as a result of the increasing possibility that its companies may face either consumer backlash or exclusion from some SRI funds due to non-compliance.¹⁵¹ Indeed, one study has noted that the best predictor of whether Chinese corporations have a CSR policy is their ranking amongst the Fortune 500.¹⁵²

ISO 26000: The International Standards Organization's Standard for Corporate Sustainability

As a final future consideration, the International Standards Association (The ISO) is currently finalizing ISO 26000, a voluntary guidance document regarding social responsibility which is intended to “distil a globally relevant understanding of what Social Responsibility is and what organizations need to do to operate in a socially responsible way”.¹⁵³ ISO 26000 has been released as a Draft International Standard (The DIS), which provides an indication as to the shape the final text will take. Comments on the draft text were collected until February 14, 2010, and the final text is expected to be published as an International Standard in late 2010.¹⁵⁴

The DIS posits that CSR has seven core elements, organizational governance, human rights, labour practices, the environment, fair operating practices, consumer issues and community involvement and development, and provides detailed guidance in respect of each.¹⁵⁵ Additionally, the DIS provides information regarding how these principals may be put into practice within an organization, including how to identify areas of action which are relevant to the operation of the corporation, and how organizations may best exercise influence with others so as to promote social responsibility.¹⁵⁶

ISO 26000 is intended to apply widely to both private and public organizations, whether they operate in the profit or non-profit sectors.¹⁵⁷ However, it explicitly provides that it is not intended as a management system standard.¹⁵⁸ As such, the ISO does not intend it to be used for certification purposes, or regulatory or contractual use. Thus, ISO 26000 may be considered a voluntary guidance document on the practice of CSR.

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