
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**CORPORATE SOCIAL RESPONSIBILITY- INTERNATIONAL
PERSPECTIVE**- Yasir Saifi¹**• INTRODUCTION**

The idea that British corporations ought to act in a responsible manner dates back several centuries. The Portuguese began the practice of enslaving Africans in 1440², and through Sir John Hawkins, England became involved in this reckless commerce by 1562.³ Slavery and how African slaves were treated had become social issues in Great Britain by the 1760s. By the late 1780s, the "social activists group of their time" had been established by Sir William Wilberforce, Thomas Clarkson, and Granville Sharp, two of his other parliamentary colleagues. The pressure group known as "The Abolitionists," which was created at that time, advocated for the end of the slave trade for 35 years in a nonviolent (responsible) manner. It makes sense that the influential confederation of shipowners, manufacturers, merchants, and planters used their positions in the House of Commons and Lords to mount a defensive against the initiatives of these social reformers. Ultimately, the Abolition of Slave Trade Act was passed on March 25, 1807. The Act outlawed the trade in slaves by British companies and by British ships carrying slaves. Essentially, the Act may be read as a legislative order compelling British corporations—including the church—to conduct themselves in a socially conscious manner with regard to the trade in human beings and all associated activities. Notwithstanding the 1807 Act, the slave trade persisted until the Slavery Abolition Act of 1833, at which point Robert Peel's Tory government was required to compensate the slave owners. The quantity of slaves possessed determined the amount of compensation. It was said

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²Rawley and Behrendt (2005)

³Du Bois 1896

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that Dr. Henry Phillpotts, the Bishop of Exeter at the time, received payment of \$12,700 for 665 slaves, or almost \$19 per slave.

A number of British businessmen and industrialists engaged in certain indirect forms of corporate social responsibility (CSR) during the 1750s–1830s Industrial Revolution. For example, the entrepreneur Richard Arkwright had identified that employees were 'human assets' who should be treated responsibly in order to get the best work performance from them. In 1775, Arkwright became the first industrialist in Derby to construct affordable housing for his workers close to his enterprises. As noted by Crowther (2002), Arkwright had started what would be considered a socially conscious venture by giving these homes away for free or at very low rent; this was the case even in the eighteenth century, when a company's primary goal was to turn a profit. Cook (2003) characterizes Titus Salt, the wool baron from Yorkshire, as a "pioneer of caring capitalism," while he is more accurately referred to as "the pioneer of modern environmentalism."⁴ He moved his woolen mill to Saltaire, outside Bradford town centre, in 1848, hoping 'to make a difference' in the lives of the people living in Bradford town, which at the time was regarded as the most polluted town in Britain. Salt built a model town with running water in every home for his personnel during a 20-year span. Cook (2003) recounts the socially conscious actions of Joseph Rowntree, the well-known philanthropist and manufacturer of candies, who constructed "Rowntree Village" in York in 1904 for his workers, consisting of dwellings centered around a community hall. Rowntree developed a profit-sharing plan for his employees in 1916, a pension fund for them in 1906, and staff holidays in 1918. At the time, all of these socially conscious actions were groundbreaking.

In her research on the historical foundations of corporate social responsibility (CSR) reporting in the UK, Maltby (2004) challenges the notion that CSR reporting in the country is a relatively new development. She points out that a number of UK manufacturing companies have been actively engaged in CSR reporting; Sheffield steelmakers, for instance, have been documented to have done so since the early 1990s.

Cook (2003) contends that the first known instance of state intervention in this area of corporate social responsibility worldwide was the UK National Insurance Act of 1911, which

⁴S. O. Idowu and W. L. Filho (eds.) Global Practices of Corporate Social Responsibility, Springer- Verlag Berlin Heideberg, 2009, p.13

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established Herbert H. Asquith's Liberal Government and required businesses to contribute for unemployment and sickness benefits for every employee. Thus, history suggests that the UK has made a fair contribution to the growth of the CSR industry.

- **Millennium Development Goals (MDG)**

Keeping in view the prevalent socio-economic situations prevailing all over the world, these goals were drawn up by the United Nations in 2000. All the 191 member countries, including India, have pledged to achieve these goals by 2015. The MDGs are given at MDGS Appendix-1.1. Several MDG goals aim at improving the Human Development Index (HDI). Some of the vital areas of concern to the developing countries have been discussed below.

Education

Goal 2 - Achieve universal primary education;

To ensure that all boys and girls complete a full course of primary Schooling. Goal 3 - Promotion of gender equality and empower women;

To eliminate gender disparity in primary and secondary education, preferably by 2005 and in all levels by 2015.

Health

Goal 4 - Reduce Child mortality;

Reduce by two thirds the mortality rate among children under five years. Goal 5 - Improve maternal health;

Reduce by three quarters the maternal mortality ratio

Goal 6 - Combat HIV/AIDS. Malaria, Tuberculosis and other diseases; Halt and begin to reverse the incidence of malaria and other diseases Access to Safe Drinking Water

Goal 7 - Ensure environmental stability

Stop the depletion of natural resources, cut in half the number of people who do not have sustainable access to clean drinking water, and significantly improve the lives of those who live in slums.

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Achievement of the Millennium Development Goals by the dead line of 2015 has been a matter of concern. Provision of quality education and health services is-not only desirable but also essential for sustainable development. It will be of far reaching consequences for the particular developing country as well as across countries all over the world. It has been found that effective health care reduces child mortality and leads the poor families to have less children, as they become more confident that their children will survive to adulthood. As such the investment in child health care can solve the problem of rapid population growth in the poor countries and thus will help in avoiding a possible disaster in future. However, the requirement of resources for achieving the desired goal for a country, particularly the poorer ones, is huge. It is estimated that about 3 billion dollars per year would be required for controlling malaria only in Africa. Similar will be the magnitude of requirement of fund for other issues and for all countries.

The recent report, "Investing in Development: A Practical Plan to Achieve the Millennium Development Goals" is however, optimistic that these goals²⁹ can be achieved. This has been based on two specific recent developments, namely development of powerful technologies and ability to raise resource in adverse conditions. It has been reported that adoption of proper and multi prong strategy based on use of insecticides, treated bed net to stop breeding of malaria transmitting mosquitoes and making medicines available at a reasonable price has made a big impact in checking illness and death from malaria, which was a major killer in the developing countries.

The other significant development is the response of people all over the world to provide aid for relief and rehabilitation of the families affected by the recent Tsunami, which hit several Asian Countries in the last week of December 2004. The response in terms of money and material mobilised within a short time for this humane cause has been phenomenal, which led Bill Clinton, former President of US, to call it a process of "Democratisation of development assistance". It is estimated that a merge contribution of just 3 dollar per person in a year in the development of world will generate adequate resource to solve the problem of child health care all over the world. Such is the potential of human civilization- the only question remains is how to mobilize it for just a cause? And how to sustain it in ordinary times? Further the quality of governance and delivery system of the country also play a critical role. Improvement of quality of governance depends on the public policies, participation of people

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and the local civil society which is largely dependent on the human development index i.e. literacy, education, health, employment etc. It leads to "a chicken and egg story- as to what should come first?" In short, a beginning has to be made and in that context the Corporate Sector will have to discharge their responsibility towards the society. Thus CSR will have an increasingly important role to play in achieving the Millennium Development Goals by 2015 in the coming days.⁵

Human Society, like the living human being, is distinguished from the dead by its responses, ability to respond and react to external stimuli. This is happening in the case of hunger, poverty, and deprivation as well. There are discussions, debates, which the society is taking note of. The corporate sector has changed its approach and expanded the concept of success, from a uni-dimensional single line "Profit" to a multidimensional "Triple Line"- taking "People and Environment along with profit". There have already been significant changes in the developed countries. The developing countries, like India, have also been changing. The Indian Corporate Sector has started responding to the need for playing play a more meaningful role in the development of the country and establishing a just and equitable society.

- **International Guidelines for CSR**

There are no universally accepted standards of Corporate Social Responsibility. However, over the past decade, the international community has made lots of progress in creating different guidelines for CSR. Companies, industry bodies, NGOs, inter- governmental bodies and multi-stakeholder groups have developed great amount of voluntary initiatives. These initiatives include for example voluntary guidelines and

codes of conduct, and different kinds of monitoring and reporting procedures. Under such initiatives, hundreds of corporations and governments worldwide have publicly committed to uphold specific CSR standards. Even though there are a variety of different CSR initiatives, the core challenges of CSR are often considered to be the same around the world: human rights, labor laws and the right of organization, environmental issues, and transparency and corruption.³⁰ Some prominent examples of international standards and initiatives regarding CSR in include United Nations Global Compact, United Nations Guiding Principles on

⁵Sachs Jeffrey D, "The Democratisation of aid" The Economics Time, February 19, 2005, p. 10

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Business and Human Rights, ISO 26000 Guidance Standard on Social Responsibility, International Labour Organization Tripartite Declaration of Principles concerning Multinational Enterprises on Social Policy, ILO Declaration on Fundamental Principles and Rights at Work, and Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. None of these Guidelines is legally binding. Some of these initiatives would be introduced in the later part of this study.

- **UN Guiding Principles on Business and Human Rights, 1976**

The UN Guiding Principles on Business and Human Rights were created in 1976, but the latest update was done in 2011. The principles define what companies should do to avoid and address possible negative human rights impacts by corporations. The UN encourages all governments to develop a national action plan on business and human rights to implement the UN Guiding Principles. ⁶There are three main pillars to the UN Guiding Principles on Business and Human Rights. These are

- 1) The state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication,
- 2) The corporate responsibility to respect human rights, that is, to act with due diligence to avoid infringing on the rights of others and address adverse impacts with which they are involved, and
- 3) The need for greater access by victims to effective remedy, both judicial and non-judicial. As one of the first EU Member States, Finland launched a national action plan based on the UN Guiding Principles on Business and Human Rights in October 2014. The objectives of Finland's National Action Plan are to initiate procedures that will help businesses improve the way they take the human rights impacts of their activities into account. The Main goals of the plan in Finland are legislative report, definition of the due diligence obligation, application of social criteria in public procurement and increasing dialogue between businesses and civil society.⁷

- **Different Perceptions of What CSR Entails**

⁶Royal Norwegian Embassy, 2013

⁷UNHCR, 2015

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It is widely acknowledged that modern corporations have some social responsibility towards society; even the most adamant opponents of CSR agree with this assertion. There is, however, a different perception of what this responsibility entails, which in effect suggests that there are different paradigms of CSR. On the one hand there are some supporters of CSR who believe and argue fervently that an entity's social responsibility is a single one, which is that the entity must increase its profits whilst staying within the rules of the game. To argue otherwise they say in preaching pure and unadulterated socialism; after all businesses are not established for see purposes. On the other hand, Elkington⁸ in his triple bottom line reporting argues that the social responsibility of a business entity is three-fold: to create Economic value by being profitable; to create Ecological value, which is to engage in activities that are beneficial to the natural environment; and to create Social value, which is to engage in activities that are beneficial to life and the community. Carroll and Buchholtz (2003) have extended this idea and argue that the social responsibility of a business organization is four-fold. This responsibility, they argue, can be expressed either as a pyramid or in terms of an equation. When expressed as an equation, it is the sum total of four different responsibilities: Economic responsibilities (ECR) (which is to make a profit) plus Legal responsibilities (LGR) (to obey the law) plus Ethical responsibilities (ETR) (to do what is right, fair, and just at all times) plus philanthropic responsibilities (PHR) (to be a good corporate citizen).

When the arguments of these researchers are expressed mathematically, three equations emanate:

- a) Friedman (1962, 1970) : $CSR = Profit$
- b) Elkington (1997) : $CSR = ECV + ECLV + SOCV$
- c) Corroll and Buchholtz (2003) : $CSR + ECR + LGR + ETC + PHR$

When Carroll and Buchholtz's (2003) proposition is expressed in terms of a pyramid, it results in an entity's ECR at the base and its PHR at the top. The entity's CSR is therefore depicted in a hierarchical form in the order of ECR, LGR, ETR, and PHR.

Friedman (1962, 1970), Elkington (1997) and Carroll and Buchholtz (2003) all agree that making profit is a social responsibility of a business entity and that this is one of the

⁸Elkington, John (1997) Cannibals with forks: the triple botaom line of 21st century business.

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objectives of any profit-seeking concern. A not-for-profit corporate entity either has no social responsibility or has a different set of CSRs according to Friedman (1962, 1970). Interestingly, all but Friedman (1962, 1970) agree that there is more to CSR than just profit seeking. CSR covers a wide spectrum of other activities that seek to make life a lot better for stakeholders, societies and the environment.

This chapter is structured as follows: a review of the literature on CSR; a discussion of three organizations that are promoting CSR in the UK; an examination of the roles the UK governments have played in CSR either directly or indirectly since 1970s; an exploration the motivation behind corporate entities' involvement in CSR in the UK; a consideration of the question of how UK firms demonstrate that they are CSR conscious, including an exploration of the contents of CSR reports of a few UK companies; and finally a review of the future of CSR in the UK with some concluding remarks on the chapter.

- **Organizations Promoting CSR in the UK**

Several organizations are promoting the field of CSR in the UK and around the world. The following organizations have played a significant role in encouraging best practice in the UK.

- **Business in the Community (BitC)**

Business in the Community (BitC) is a movement in the UK of some 700 member companies. It was set up in 1982 by the then Conservative government's Secretary of State for the Environment. Tom King (now Lord King), against a backdrop of high levels of unemployment and urban rioting in the UK. It was an attempt to directly involve businesses in finding lasting solutions to some social problems of the time and it has continued to play this role within the UK and beyond. BitC states on its website that its purpose is to inspire, challenge, engage, and support businesses to continually improve their positive impact on society through the five stated principles:

- a) Inspiration
- b) Integrity
- c) Integration
- d) Innovation

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e) Impact

The aim was not driven by pure altruism but because it was the right thing to do from a business perspective. BITC believes from its origin that 'healthy back streets make for healthy high streets' and it engages in a series of programmes including annual awards for excellence, Cares. The Prince's seeing is Believing, and Corporate Responsibility (CR) Index.

- **FTSE 4 Good Indices**

FTSE4 Good Index Series is a set of benchmark and tradable indices on the London Stock Exchange. The indices can be used for investment, research, reference, and benchmarking and is similar to the Dow Jones Sustainability Index in New York. The index was launched in 2001 with the main objective of meeting the information needs of socially responsible investors who seek to:

- 1) Invest in companies that demonstrate good standards in corporate responsibility
- 2) Actively encourage companies to be more responsible
- 3) Minimize the social, ethical, and environmental risks within their portfolios
- 4) Capitalize on the benefits of good corporate responsibility
- 5) Avoid investing in traditionally excluded socially responsible investment sectors, for example, tobacco, defence, and nuclear power

In an attempt to encourage financial institutional to improve on their CSR performance through the use of the FTSE4 Good index, some large fund managers in London are building CSR league tables and assessing the lending record of banks. Most large to medium sized UK Pleas are now included in the index.

The ACCA Best Practices for Sustainability Reporting

The Association of Chartered Certified Accountants (ACCA) (a UK-based professional accountancy body), one of the largest professional accountancy bodies in the world, launched the 'ACCA Sustainability Reporting Awards' in 1990. The ACCA website states that the aim of the awards is 'to promote greater transparency in the reporting of organizations' social and environmental impacts' and the objective is 'to identify and reward innovative attempts to

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communicate corporate performance but not the performance itself'. Those judging how the performance is reported the three criteria:

- a) Completeness
- b) Credibility
- c) Communication

The awards operate in more than 20 countries in Europe, Africa, North America, and Asia. Companies in the following countries appear to have benefited in winning the awards: Hong Kong, UK, Ireland, Singapore, Pakistan, Australia, New Zealand, Malaysia, Sri Lanka, South Africa, Canada, and the USA. Several awards are given to companies in different countries each year.

▪ **The Role of UK Governments since the 1970s**

UK governments have been involved in different aspects of the field of CSR either directly or indirectly. Moon (2004) notes that the two ostensibly very different governments of Thatcher (Conservative, 1979-1991) and Blair (Labour 1997-2007) have helped the growth and institutionalization of CSR in the UK. Idowu and Towler (2004) argue that initially it was the rights of employees that were first recognized as needing government attention. Acts of Parliament have been passed including the Equal Pay Act 1970, Health and Safety at Work Act 1974, Sex Discrimination Act 1975, Data Protection Act 1998, Human Rights Act 1998, and Public Information Act 1998, just to mention a few. All these were concerted attempts by the government to ensure that employees had legal protection during employment, as they have been generally perceived as the weaker of the two sides in an employer/employee relationship.⁹

▪ **France**

By the middle of the first decade of the twenty-first century, almost 400 French companies had joined the United Nations Global Compact, almost a fifty of all participating companies at that time. Since the 2001 economic reform of public procurement contracts, strengthened

⁹S. O. Idowu and W. L. Filho (eds.) Global Practices of Corporate Social Responsibility, Springer- Verlag Berlin Heideberg, 2009, p. 18

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in 2004, sustainable development criteria have been incorporated into tenders and this has somewhat modified public-private relations in terms of adopting corporate social responsibility. Lastly, there are almost a dozen significant legal texts in existence on the application of CSR in France. More recently, after the May 2007 presidential elections, the new government introduced an important institutional development with the appointment of a high-ranking Minister, number two in the hierarchy after the Prime Minister, with special responsibility for ecology, sustainable development, and planning. With a high level of corporate participation in the dynamics of CSR, activism on the part of local organizations and local government, and a substantial legal framework to back it up, do these indicators suggest that CSR is with established in France, despite several studies showing that the concept is intrinsically linked with a more Anglo-American tradition? Here, it is hoped to shed some light on the CSR situation in France by describing some of the specific features of the current situation in this country and them highlighting the characteristics of corporate and organizational practices.

- **Voluntarist Companies: From Strategists to Opportunists**

The first group is made up of companies that are in one way or another very concerned about CSR and have integrated it in a voluntarist fashion into their strategy. First in this category are companies that we have called 'strategists': they have integrated corporate social, and environmental responsibility into their global strategy as a result of both strong pressures and strategic opportunities. The most often quoted French example is Lafarge.

- **When CSR becomes a Constraint: 'Target' and 'Entrant' Companies**

Many French companies are slowly taking sustainable development into account simply because they have no choice. Rather later than other companies, they are gradually integrating it into their strategic position, and for the larger companies at least, it is now difficult to avoid. Under this heading are, first of all, companies that to some extent constitute 'ideal targets' in relation to environmental and social issues. Sustainable development can become a real constraint that companies must nevertheless endure. When this is the case, they will devise avoidance strategies by developing specifically targeted actions according to company type and sector of operation that try to minimize their environmental and social impact. Total is a good illustration of this type of company. The history of this sector and of

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this company have been plagued by controversy with affairs like the accusations that have lingered since 1992 of complicity with the regime in Burma over the contract to exploit the Yadana gas deposits, the oil spill from the tanker Erika off the Brittany coast in 1999, and also the explosion of the AZF factory near Toulouse. In such cases, strategy will be concentrated on actions that minimize the risk to the company's image and on recovering a degree of credibility over the accusations, as the Total example seems to show.

The SD report by the Total group focuses on two main areas of action. The first concerns environmental management, with a systematic policy of certifying sites, both upstream and downstream from production. As an extension of this activity, the group will concentrate its research and development efforts on renewable energy, wind power, and photovoltaic energy in particular. A corporate foundation dedicated to preserving biodiversity completes this area of activity. The second area of action covers the ethical dimension. An ethics committee was created in 2001, reinforced by an ethical assessment procedure, carried out by a body from outside the units that make up the group. Over a 2- year period (2004-2005) a training programme in this ethical procedure has involved almost 2,000 executives from the group and a confidential whistle blowing system makes it every employee's duty to refer to the ethics committee in case of practices that do not conform to company ethics. Lastly, a certain number of actions have been introduced with local communities, especially in areas where total operations are seen as questionable, as in Burma.

A final category of companies called 'entrants' contains a large number of companies, all those that consider that CSR, though not putting them under any pressure, is nevertheless implicitly becoming the new standard to be adhered to. There are more and more companies that fall into this category and that are now trying to put in place what we might call adaptation strategies. These usually consist of a series of actions that are not properly coordinated with the company's global strategy.

This overview of French companies and their strategic positioning in relation to environmental and social issues shows again that, as in most developed countries, there is a fundamental shift: one that seems to be growing towards an increased awareness of the importance of SD in corporate strategy. This underlying trend reinforced by the obligations of the NRE law, has resulted over the last 3 years in much higher level of company reporting.

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- ***Federal Republic of Germany***
 - **Sustainability in German Companies: The Changing Role of Business in Society**

For many years, the prevailing outlook on the role of business in society could be summarized with the following words of Milton Friedman: 'there is one and only one social responsibility of business to increase its profits' (Friedman 1970). At the beginning of the twenty-first century, the main objective of an enterprise still revolves around the bottom line. There are, however, broader aspects that businesses now have to consider. The changing context within which companies operate, shaped by environmental and globalization forces, affects the way that the role of business is perceived. Multinational companies are expected to conduct business ethically, no matter where they operate. The pressure to clean up the corporate act is largely amplified by the fast-growing Socially Responsible Investment (SRI) movement that raises the importance of good social and environmental performance. Scrutiny of the public opinion, enhanced by ubiquitous media, forces companies to acknowledge the growing expectations those government activists, NGOs, consumers, and many other stakeholders have of them. Therefore, companies are confronted with the challenge to recognize and fulfill their environmental and social responsibilities.

At the heart of this challenge lie the notions of corporate sustainability, Corporate Social Responsibility (CSR) - which has already been extensively discussed elsewhere in this book - and Corporate Citizenship (CC), to name a few. Although all these concepts refer to the role of business in society, they differ significantly in their scope, reports on the topic. Companies communicate their commitment to sustainable development, CSR, CC, social responsibility and many more, often confusing the reader with the abundance of terms. In order to gain more clarity, this chapter will also look at some of the influential political actors (mostly from Germany and the European Union (EU), which shape the way companies understand their responsibilities with regard to environment and society. Further to that, this chapter will analyze how companies perceive their responsibilities from a German context.

- **Corporate Social Responsibility from a German Perspective**

Corporate strategies for sustainable development have, for some time now, been acknowledged as an emerging field (Banerjee 2001, 2002). Bansal and Roth (2000) have analyzed how companies adopt green policies, under what Hart (1995) defines as a natural-

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resource-based view, in line with what Christoff (1996) describes as 'ecological modernization'.

Doppelt (2003) has listed the various challenges that need to be met in leading such complex change processes as part of what Gladwin et al. (1995) see as a paradigm change. Naturally, corporate social responsibility strategies need to consider the interest of the various stakeholders and need to be supported by a sense of ethics.

Still from an international perspective, when discussing the social and ethical role of business, organizations tend to refer to the term CSR. CSR has been incorporated as an international goal in the action plan of the World Summit on Sustainable Development, held in Johannesburg in 2002. A new feature is perhaps the fact that, albeit not widely known, the issue was also on the agenda at the G8 Summit in Heiligendamm, Germany, held in the summer of 2007. With the amount of publicity and attention it now receives, CSR has without doubt become one of the buzzword of our times.

The experience gathered by the authors in respect of the perception of CSR in Germany is that there is a lot of ambiguity with regard to the term, as no internationally recognized definition is widely used in the country. Some experts - or companies-take a view that CSR is nothing more than philanthropic engagement of a company. Others perceive the term in a much broader sense, acknowledging that business has responsibilities within the environment it operates in. Given a number of different interpretations, definitions coined by the renowned international initiatives (often of political character), with an emphasis on Germany, will be discussed in this section.

The World Business Council for Sustainable Development (WBCSD) states that 'Corporate Social Responsibility' is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large'. Reference to business case of CSR is the central assertion of WBCSD's approach.

The definition of the European Commission (EC) goes a step further in defining that, through CSR, companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.⁴¹ The scope of CSR therefore embraces both social and environmental issues, in spite of the misleading term

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'Corporate Social Responsibility'. The definition also highlights the voluntary character of the engagement as well as importance of communication with stakeholders. Furthermore, activities within CSR are said to vary from business to business. For this reason, no concrete legislation enforcing social responsibility on companies is presently envisaged at the European level. It is worthwhile to note that the definition of EC has been officially acclaimed by the German Government.⁴²

Launched by the EC, the European Multi-Stakeholder Forum on CSR provides a platform for discussions on the topic among business representatives, non-governmental organizations (NGOs), scientists, etc., and this is being widely used by German companies. The Forum's work has led to the conclusion that companies should 'identify what items are pertinent with regard to the company's vision and specific objectives, the risks and opportunities associated with its environmental and social footprint and the views of relevant stakeholders.'¹⁰

In Germany, there is the impression that more concrete guidelines on social responsibility could be expected from the International Standardization Organization (ISO). The reason for this is because ISO is well respected in the country and has taken up the goal to create an international guidance document to assist organizations of all kinds in implementing the tools for corporate sustainability. Although the final outcomes are to be made public in 2009, it has been preliminarily accepted that organizations have a 'social responsibility for the impacts of its decisions and activities (including products and services) on society and the environment, through transparent and ethical behaviour that:

- i) Is consistent with sustainable development and the welfare of the society
- ii) Takes into account the expectations of stakeholders
- iii) Is in compliance with applicable law and consistent with international norms of behaviour
- iv) Is integrated throughout the organization' (Hager 2007).

- **Scope of Corporate Social Responsibility in German Enterprises**

¹⁰European Commission 2001. 42 Franz and Pretschker 2007. 43 Loew 2005.

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An element that cannot be ignored in the debate on CSR in Germany is the fact that a key role is played by the German Ministry of Environment (BMU), an organization whose remit has been instrumental to general sustainability management. As the Ministry of Environment, it provides the legal framework upon which industrial activities take place and industry operates.

Having dealt with the basic aspects of CSR and its level of understanding by German companies, it may at this stage be helpful to analyze a further important element of CSR in Germany, namely the scope of CSR activities in the country. Typical activity areas that can be aggregated under the umbrella term of 'CSR' in Germany' are described here - which are much in line with what the European Commission (EC) defines as internal and external dimensions of CSR.

Internal-

- a) Human resources management
 - b) Health and safety at work
 - c) Adaptation to change (business restructuring)
 - d) Management of environmental impacts and natural resources
- External -
- a) Communities
 - b) Local Business partners, suppliers, and consumers
 - c) Human Rights
 - d) Global environment concerns (European Commission 2001)

While the internal dimension reflects the aspects that stem directly from business operation, external dimension pertains more to local communities and issues 'outside' of the company. It is however, a feature of CSR in Germany that both dimensions are regarded as intertwined. This means that in the mindset of most German enterprises, internal dimensions are regarded as priorities, but without neglect to the external dimensions, which are important to business operations and to a company's image.

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The BMU differentiates between aspects related to core business processes and the engagement in local communities as well as governance and management system area. Governance can be understood here as a system of management of the organization that includes aspects as vision, strategy, and communication with stakeholders (MBU 2006). According to BMU, core business processes have a wider scope than the internal dimension in the EC's classification.

- **Corporate Responsibility from a Company's Perspective and some CSR practices in Germany**

Although the theory discussed in the earlier sections of this chapter a distinction between corporate sustainability and corporate social responsibility, for corporate practice in Germany, the difference as also seen elsewhere as also seen elsewhere appears irrelevant.⁴⁴ Companies talk either about CS or CSR, often using these terms interchangeably. There are of course differences in interpretations, and this state of affairs is also seen in Germany. Some companies see their role in society solely to be philanthropy. Many companies address their impacts on both environment and society, whilst others discuss their business in all three dimensions of sustainable development. Whereas the first approach is by no means complete, the latter two will in practical terms address similar issues. Whether economic responsibility is also relevant perspective for a company to address is unquestionable. Economic responsibility is a component of corporate sustainability and, together a company's role in society. It may be assumed, however, that financial dimension has been at the top of the agenda ever since private enterprises came into existence. There are already well-developed organizational 'tools' that deal with economic performance. Financial institutions, commercial law, and shareholders have forced companies to publish reliable and transparent financial information on development of business for many years now. For this reason, companies address the financial side of business in any case; therefore, in practice, CSR and corporate sustainability can be treated equal.

Many German companies talk about CSR in a way that implies that they are also concerned with sustainability, i.e., they refer to CSR implicitly meaning that it means corporate sustainability, incorporating all three dimensions of sustainable development.

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In order to make the principles and practices outlined on this chapter a little more concrete, some examples of CSR practices will be provided in this section. This list of examples is by no means comprehensive, nor does it have the ambition to be complete. Rather, its sole purpose is to illustrate some of the activities going on the ground and to offer readers an overview of the diversity of CSR practices in the country.

A first step in the description of trends in Germany may be taken by considering a ranking produced every 2 years by the German Institute of Ecological Economics (IOW) and the NGOs. The ranking samples 150 large German enterprises and assesses the extent to which they pursue their corporate responsibilities and transparency. According to the ranking, whose results are summarized in the top 10 reports are not dominated by companies from any single sector. Rather, enterprises engaged in areas as varied as the chemical industry, banking, or even publishing are investing substantial efforts in pursuing CSR a number of which under the heading of sustainable development.

One first example of CSR practice in Germany can be taken from the chemical industry. The chemical company Bayer has produced the integrated concept 'Bayer Climate Program' across the whole business, in the context of which it intends to reduce the CO₂ emissions deriving from its operations. In addition, the company intends to, as part of its CSR concept, seek new solutions that can assist moves towards greater environmental protection and in addressing the challenges of climate change.

A further example comes from BMW, a company representing the automobile sector. With the opening of the 'Love Life' prevention centre for the youth in South Africa, the BMW Group provides a contribution to the social-political problems posed by AIDS in developing countries. BMW Group provides a contribution to the social-political problems posed by AIDS in developing countries. BMW has set up and supports an institutional setting, namely the Love Life Trust, which opened a Centre in November 2007 in Knysna, South Africa.

Developed Nation's Approach Towards Corporate Social Responsibility

By having a comparative study on the approaches or perspectives of developed and developing nations like U.S.A., U.K., India, China, etc., on corporate social responsibility we could easily assess the marked difference in discharging their socio-economic responsibilities.

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- **United States of America**

The concept of corporate social responsibility emerged and the United States of America as a social and political reaction to the rapid growth of capitalism during the thirty years following the American civil war. The American government assumed responsibility for correcting the social behaviour of big corporations as early as the 1890s and it passed laws on child labour, safety at industrial sites, and on workers' rights to form trusts. Talking about the 21st century scenario which has drastically changed in every sense, so the U.S Government has also acted upon these changes in business activities by legislating several acts and laws. For instance, the federal Government has passed legislations such as the National Environmental Protection Act, the Clean Air Act; the clean Water Act, the Safe Drinking Water Act, the Toxic Substances Control Act and a host of others just to protect the environment, consumers as well as the organizations in those industries Governmental CSR policies do not only assist consumers or organizations, they assist both the consumer and the organisation.

- **Corporate Liability under ATCA in USA**

It is felt necessary here to refer some of the cases decided by US court on Corporate Liability.

a) Kbulumani v. Barclay National Bank Ltd.¹¹

On October 12, 2007, the Second Circuit Court of Appeals issued its opinion in *Kbulumani v. Barclay National Bank Ltd.*,⁴⁵ a consolidated case brought on behalf of South African plaintiffs who alleged that they, or their family members, were the victims of human rights abuses during the apartheid.

The defendants in the litigation included more than fifty corporations who operated in South Africa during the time of apartheid. The plaintiffs alleged that the defendants "aided and abetted" apartheid and its associated human rights violations by operating in South Africa. The per curium opinion vacated an earlier decision by the District Court for the Southern District of New York to dismiss the plaintiffs' claims.

In decision, the Second Circuit endorsed the theory of aiding and abetting liability under the Alien Tort Claims Act (ATCA), a notable determination due to ongoing controversy regarding the viability and definition of this form of indirect liability under the ATCA.⁴⁶

¹¹504 F. 3d 254 (2d Cir. 2007) (per curium)

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The panel was split in its decision, with two judges issuing concurring opinions finding that plaintiffs could bring claims of aiding and abetting liability under the ATCA, while disagreeing on the legal source of the appropriate "test" for aiding and abetting liability. One judge looked to federal common law and the other looked to an international legal standard set forth in the Rome Statute of the International Criminal Court by which a defendant must have provided assistance for the purpose of facilitating a crime in order to be found liable for aiding and abetting that crime, and specifically concluded that

A defendant may be held liable under international law for aiding and abetting the violation of that law by another when the defendant

- (1) Provides practical assistance to the principal which has a substantial effect on the perpetration of the crime, and
- (2) does so with the purpose of facilitating the commission that crime."

Although the panel's third member did not concur that the plaintiffs may file claims for assisting and abetting under the ATCA, he did say that the Rome Statute's standards would be the most appropriate if such responsibility were to be established. The majority of the panel decided that the Rome Statute's elements should define aiding and abetting responsibility, with one vote coming from the majority opinion and one from the dissent. This is a major federal appellate court affirmation of a certain criterion for aiding and abetting liability. Although it is unclear if other appellate decisions would support this test, the *Sosa* ruling clearly endorses a certain international law standard for aiding and abetting responsibility.

b) Rodriguez v. Drummond Co.

In 2007, for the first time, an ATCA case against a corporation proceeded to trial. The case, *Estate of Rodriguez v. Drummond Company*,¹² involves the murders of three Colombian trade union leaders who had worked for Drummond's Colombian coal mine operations. The paramilitary forces killed the three leaders of the Sintramienergetica labor union in 2001 after removing them from buses that Drummond had chartered. On the basis of claims for wrongful death under the ATCA, plaintiffs moved to trial in the District Court for the Northern District of Alabama against Drummond's Colombian subsidiary. The Court

¹²256 F. Supp. 2d 1250 (N.D. Ala 2003)

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permitted the plaintiffs to proceed under a theory of aiding and abet-nag responsibility. The jury ruled in Drummond's favor in the end of July 2007. The verdict was appealed by the plaintiffs. After years of litigation in more than forty instances of this type, the case is significant because it is the first corporate ATCA case to go to trial.

Sarei v. Rio Tinto

In *Sarei v. Rio Tinto, PLC*, a case initially filed in 2000, the Ninth Circuit held a rehearing en banc on October 11, 2007. The plaintiffs claimed they were the victims of multiple international law violations as a result of Rio Tinto PLC's mining operations on the island of Bougainville, Papua New Guinea. The circuit withdrew an earlier ruling from August 2006 and issued a superseding opinion in November 2007, which led to the rehearing. The decision to rehearse the case en banc has also resulted in the withdrawal of the April 2007 opinion, which had made a substantial contribution to the current discussion among the federal judiciary regarding the appropriate jurisdictional showing required for plaintiffs to bring actionable claims under the ATCA. The majority of opinions issued after the *Sosa* case have focused on evaluating whether the claims made by plaintiffs meet the "specific, universal, and obligatory" norms of international law. However, the Ninth Circuit, in its now-retracted April 2007 opinion, concluded that this analysis was superfluous, as the required jurisdictional showing for ATCA claims is identical to that required for claims asserting federal question jurisdiction. Additionally, the court declared that "as long as plaintiffs alleged a non-frivolous claim by an alien for a tort in violation of international law, the district court had subject matter jurisdiction under the ATCA. Additionally, the circuit court found that the "legal question of whether plaintiffs have properly invoked a federal court's power to recognize actionable international law torts under the ATCA must be decided after and not before the court has assumed jurisdiction over the controversy. In other key findings, the court found that the ATCA does not require plaintiffs to exhaust local remedies in foreign courts,¹³ and that a statement of Interest submitted by the U.S. Department of State raising concerns about the litigation's impact on the conduct of foreign relations did not render the case non-justiciable pursuant to the political question doctrine. Whether these holdings survive the Ninth Circuit's rehearing en banc remains to be seen.

c) Bowoto v. Chevron

¹³*Sarei v. Rio Tinto*, 499 F.3d at 923 (9th Cir. 2007) (mem.)

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Bowoto v. Chevron, a case originally filed in 1999, involves allegations by Nigerian plaintiffs that Chevron Corporation was complicit in abuses committed by the Nigerian military and police in two separate incidents in 1998 and 1999. On August 14, 2007, the District Court for the Northern District of California ruled that plaintiffs had put forward sufficient evidence to survive summary judgment on their claims that Chevron, through its Nigerian subsidiary, knew that security forces would commit the alleged torts and agreed to the attacks. The courts allowed plaintiffs to proceed on aiding and abetting, conspiracy and agency theories of liability. The case is expected to go to trial in 2008. Notably, the Bowoto case involves companion litigation brought in California state court, involving claims brought under the California Business & Professions Code, 17200.¹⁴ The state case is expected to go to trial in August 2008.

d) Arias v. DynCorp.

In a decision on May 21, 2007, in *Arias v. DynCorp*, the District Court for the District of Columbia found that plaintiffs had presented a justiciable question of law under the ATCA in a case involving allegations that Dyn Corp, pursuant to a contract with the US Government, sprayed fumigants in the border areas of Ecuador while trying to eradicate cocaine and heroin crops growing in Colombia⁵⁴ Plaintiffs are Ecuadorian nationals who allege that they suffered severe harm to their health and their livelihoods as a result of contamination from the fumigation. They claim that the defendants were aware of the possibility that winds would carry the poisonous spray to the plaintiffs' region or deliberately disregarded it. Defendants had contended that, since Congress had approved the aerial fumigations, defendants' activities could not have breached customary international law, and so, plaintiffs' ATCA claims should be partially dismissed. Even if the defendant's acts were approved by Congress, the court determined that there would still be a conflict between any such authorization and international law since Congress had not expressly intended for its approval to abrogate international law. Following the decision, *Quinteros v. DynCorp*¹⁵, an additional lawsuit brought by Ecuadorian plaintiffs against DynCorp, was combined with the case for the purposes of case management and discovery.

¹⁴*Bowoto v. Chevron Corp.* No. 03-417580 (Cal. Super. Ct. filed Feb. 20, 2003).

¹⁵517 F. Supp. 2d 221 (DDC, 2007).

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