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The Role of Global Governance in CSR

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I. Introduction

Global governance aims to address common global concerns through the activities of governments, intergovernmental networks and non-state actors. These actors are involved in interactive decision-making and considerations of multiple policies and practices in the creation of instruments to address global concerns. Such global concerns include the elimination of corruption, human rights, and environmental abuses which are external Corporate Social Responsibility (CSR) issues.

The social and ethical problems corporations encounter in the pursuit of business has brought CSR to the forefront and placed it firmly under global governance. CSR focuses on the attempt to regulate corporate behavior in order to ensure that corporations carry out their activities in consideration to multi-stakeholder interests. In addition, CSR looks at the impact that such activities may have on the social, political, economic and developmental aspects of society. This paper will examine the impact of global governance on the elimination of corruption—especially bribery of senior public officials by corporations in the pursuit of contracts, human rights, and the environment.

International law plays a very important role in the effort to address CSR global concerns. For example, in the area of corruption, international law has developed many instruments, such as the United Nations Convention against Corruption (UNCAC), the Organisation for Economic Co-operation and Development’s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention), and the Organization of American States Inter-American Convention against Corruption (Inter-American Convention) in order to address the issue of corruption as a global concern. These instruments are created and implemented by states and non-state actors. International law, which traditionally concerned states and international organizations, is evolving to include a multitude of players on the global governance landscape. Global governance and its multitude of players are changing the scope of international law. Global governance gives legitimacy to the many actors on the global scene who ordinarily have no international legal personality. Global governance can therefore be seen as a means of bypassing some of the structural problems of international law in relation to non-state actors.

With the multitude of players on the global governance landscape interested in addressing CSR global concerns, there is no doubt bound to be a plethora of rules. This paper will consider whether global governance is leading merely to a multiplicity of rules for corporate responsibility or a convergence of such rules and whether global governance is leading to improvements in CSR. It will also examine the bigger role non-state actors are playing in global governance in relation to CSR. Finally, it will discuss the role global governance plays in the regulation of international business for social responsibility.

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II. What is Global Governance?

The Commission on Global Governance sees global governance as a broad, dynamic, and complex process of interactive decision making that is constantly evolving and responding to changing circumstances. It involves a wide range of actors and partnership building for developing joint policies and practices on matters of common concern. Global governance refers to more than formal institutions and organizations through which the management of international affairs is sustained. It extends to command and control mechanisms of social systems, including the private enterprise, and does not necessarily include legal or political authority. The possession of information and knowledge and the pressure of active or mobilizable persons, along with the use of careful planning, good timing, clever manipulation, and hard bargaining, all serve as examples of actions which foster control mechanisms that sustain governance without government.

The classification of global governance is not limited to legal, political or other kinds of authority. This makes it difficult to measure the relevance, if any, global governance may have on common global concerns such as anti-corruption measures. This is because, under such a view, it becomes difficult to determine what constitutes global governance and what does not. For example, the activities of an organized group such as nongovernmental organizations (NGOs) that mobilize others to subscribe to a particular view may be classified as global governance.

While such NGO activities should be welcomed, it is necessary to set some parameters before classifying such activities as global governance. It is not often clear whether it is the rules that may emanate from such activities that should be properly classified as global governance or the mere action of social systems, which may or may not lead to rules, which should be classified as global governance. Generally, it should be the former.

Global governance calls for interdependence and cooperation. Interdependence ensures that actions at one level create consequences at other levels. The cooperation and interdependence envisaged on such a large scale in global governance necessarily means there will be the need for compromises on how governance is achieved. In some situations, legal regulation and enforcement will take a back seat while market forces take the front seat. In other situations, there will be friction between opposing sides with different views on the way to move forward. For example, NGOs and trade organizations, such as the International Chamber of Commerce (ICC), are at loggerheads regarding the need for mandatory rules regarding CSR.

Many see global governance as an amalgamation of many rules, formal and informal, or-

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6. See James Rosenau, Governance in the Twenty-First Century, in THE GLOBAL GOVERNANCE READER, supra note 4, at 45.
ganized and unorganized, present on the global scene wanting to control global affairs. With such a system, it has been said that there can be no consensus or single institution with the capacity or authority to regulate such rules. This is true to an extent. However, there is need for consensus in global governance and for bodies or international institutions to be appointed to coordinate global efforts to control global affairs. This will ensure the effectiveness of global governance in addressing global concerns.

In the context of CSR, the need for such consensus is justifiable. The social and ethical problems faced by multinational corporations (MNCs)—which are major vehicles of globalization—have brought CSR to the forefront and placed it firmly under global governance. Attempts at 'global' corporate responsibility have proved futile. There has been partnership building on different levels to develop practices and policies relevant for CSR. However, it is argued that no consensus has been reached and perhaps none can be reached under the global governance agenda. This may be because CSR is very broad, encompassing many different issues. Different actors may have different agendas so the possibility of reaching a consensus is more difficult.

It is argued that one way global governance may bring about consensus is by breaking down CSR issues into identifiable sections. These identifiable sections would include CSR anti-corruption, human rights, labour, and environmental concerns. By identifying specific areas of CSR, global governance has a better chance of being effective in bringing opposing views together, thereby impacting CSR in a tangible manner. The next section will focus on the CSR aspect of anti-corruption, human rights, and the environment in the context of global governance.

III. Global Governance and CSR Concerns

A. Anti-Corruption

Corruption is the misuse of entrusted power for private gain. Corruption includes bribery, embezzlement, concealment and laundering of proceeds, and trading in influence. Corruption can be petty or grand. Grand corruption is 'the misuse of public power by heads of states, ministers and top officials for private, pecuniary profit.' Grand corruption involves two main activities: bribery payments and the embezzlement and misappropriation of state assets. This paper will focus on bribery because it raises CSR issues. Bribery is "a widespread phenomenon in international business transactions, including trade and in-

10. See breakdown infra.
vestment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions."

In many situations, corruption is linked to governance or government in the sense that bad governance or government decisions lead to corruption. Most writings on governance and corruption address governance in relation to governments and corruption. Here, the attempt is to link global governance—decision-making giving rise to a multiplicity of rules involving multi-actors—to corruption. Specifically, the role global governance can play in reducing corrupt activities carried out by MNCs, and the need for reformed and strengthened institutions—public, private and intergovernmental—to ensure effective adherence to global frameworks for the elimination of corrupt business practices.

Global governance can reduce corrupt activities carried out by MNCs through the impact of efforts carried out by states and non-state actors on the international, regional and national sectors. As mentioned in the introduction to this paper, international instruments to address corrupt business practices include the United Nations Convention against Corruption (UNCAC), the OECD Anti-Bribery Convention, and the Organization of American States Inter-American Convention against Corruption.

The Inter-American Convention Against Corruption was adopted on 29 March 1996 in Caracas, Venezuela and entered into force on 6 March 1997. The convention aims to (a) promote and strengthen the development by each of the State Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption and (b) promote, facilitate and regulate cooperation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance.

With regards to transnational or overseas bribery, which is the offering or granting, directly or indirectly of undue pecuniary or other advantage to a foreign public official, the Convention does not make the act an offence to which all States Parties should adopt legislative or other measures to establish as a criminal offence. Rather, it is only an act of corruption among States that have established it as an offence. States which have not established transnational bribery as an offence are only required to provide assistance and cooperation with respect to the offence. The Convention deals with deterrence of transnational bribery applicable to all State Parties through preventive measures which require the establishment of "mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts."

15. See OECD Convention, supra note 2.
17. See generally UNCAC, supra note 1.
18. See generally Inter-American Convention, supra note 3, at 724.
19. Id. at 728.
20. Id. at 730 (stating that the acts of corruption listed in Article VI are the acts requiring legislative or other measures).
21. Id.
22. Id. at 728, ¶ 10.
The OECD Anti-Bribery Convention was signed on 18 December 1997 and entered into force on 15 February 1999. The Convention aims to end bribery in international business transactions by requesting that State Parties take measures to establish the crime of bribery of a foreign public official. The Convention deals with the "active bribery" or "supply side" of corruption, which is defined as the offering of bribes by natural or legal persons to foreign public officials in international business transactions. The Convention stipulates that bribes of foreign public officials shall be punishable by "effective, proportionate and dissuasive criminal penalties" but where the legal system of a party does not recognize criminal responsibility for legal persons, non-criminal sanctions may be used.

The UNCAC was adopted on 31 October 2003 and entered into force on 14 December 2005. The UNCAC aims to prevent and combat corruption efficiently and effectively on a global scale; ensure international co-operation and technical assistance in the anti-corruption fight; and promote integrity, accountability and proper management of public affairs and public property. The provisions of the Convention include preventive measures and criminalization and law enforcement measures.

The preventive measures include several anti-corruption policies and practices. State Parties are required to endeavour to establish and promote effective practices aimed at the prevention of corruption and periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption. The Convention criminalizes the bribery of national public officials, foreign public officials or officials of public international organization. It requires State Parties to adopt legislative and other measures to establish liability of legal persons (corporations) for par-

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23. See OECD Convention, supra note 2.
24. Id. art. 1. The offences set out in Article 1, paragraph 1 and Article 1, paragraph 2 of the OECD Convention constitute the crime of bribery of a public official.

Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

Id. ¶ 1.

Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.

Id. ¶ 2.
26. See OECD Convention, supra note 2, art. 3, ¶¶ 1–2.
28. UNCAC, supra note 1, ch. 1, art. 1.
29. Id.
30. See generally id. ch. 2, art. 5.
31. Id. ch. 5, art. 3.
32. See generally id. ch. 3, art. 15.
participation in any offence established with the Convention. Such liability may be criminal, civil or administrative. In particular, legal persons held liable are to be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

These instruments aim to curb corruption. The discussions above have briefly illustrated the impacts they have on foreign corrupt practices carried out by MNCs. However, the creation and implementation of these instruments involve both state and non-state actors. International organizations such as the United Nations are also involved in multi-stakeholder initiatives to address corruption and other CSR concerns. The UN Global Compact, initiated by former UN Secretary-General Kofi Anan, aims to bring business, government, civil society, and the United Nations into partnership to ensure that businesses are committed to aligning their operations and strategies with ten universally accepted principles in the area of human rights, labour, environment and anti-corruption. Principle 10 relates to anti-corruption. Businesses are required to work against all forms of corruption including extortion and bribery; businesses should also develop policies and programmes to address corruption.

The Organisation for Economic Co-operation and Development (OECD), another international organization, has developed voluntary guidelines to promote responsible business conduct. These guidelines address a number of CSR issues including human rights, labour, environment and bribery. With regards to anti-corruption, businesses are required to: refrain from offering, promising, giving or demanding bribes to retain business or other undue advantage; reject solicitation of bribes; not use subcontracts, purchase orders or consulting agreements for channeling payments to public officials; ensure appropriate and legitimate remuneration of agents; and adopt management control systems, financial and tax accounting and auditing practices preventing secret or “off the book” accounts.

Moreover, non-state actors have also established soft law mechanisms to address foreign corrupt practices. Such actors include Transparency International (TI), a well-known NGO at the forefront of anti-corruption measures. For example, TI and the Social Accountability International facilitated and developed the TI Business Principles in 2002. Private sector companies, other NGOs and trade unions were very useful and active in the development of the TI principles. The TI principles aim to provide practical guidance for countering bribery, creating a level playing field and providing a long-term business advan-

33. Id. ch. 2, art. 25
34. Id. ch. 3, art. 26.
35. See generally UN GLOBAL COMPACT, supra note 9.
38. Id. ch. VI.
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tage. The TI principles call for companies to have a zero tolerance for bribery and commitment to implementation of an anti-bribery programme. TI has also published a guidance document to help companies implement or review their anti-bribery programmes/practices.

Another example of non-state actor activity in curbing foreign corruption is the Partnering Against Corruption Initiative (PACI) launched by World Economic Forum (WEF) in partnership with TI and the Basel Institute on Governance. The WEF believes MNCs have a particularly important role to play in upholding and advancing principles on human rights, labour, environment and anti-corruption. The aim of PACI was to rally business leaders, governments, civil servants and legislators behind the fight against corruption, as well as consolidate private sector efforts to fight bribery and corruption and shape the evolving regulatory framework. The PACI Principles are based on TI Business Principles and, like the TI Business Principles, they call for a commitment to a zero tolerance policy towards bribery and development of a practical and effective implementation programme by companies.

The International Chamber of Commerce (ICC) is another non-state actor involved in curbing corruption. The ICC established the ICC Rules of Conduct and Recommendations for Combating Extortion and Bribery. The Rules call for enterprises to prohibit bribery and extortion at all times and in any form; make sure agents and other intermediaries are compliant with policy and payments to agents are legitimate and appropriate; ensure that joint venture partners accept the company’s anti-bribery provisions; implement corporate policies or codes; and ensure proper financial recording and auditing. The ICC has published a corporate practices manual which aims to provide detailed practical guidance for


42. *Id.*


51. *Id.*
compliance with the ICC rules and OECD Convention.\textsuperscript{52}

The activities of all these state and non-state actors are examples of the roles global governance plays in reducing corrupt activities carried out by MNCs. The activities of these actors and the impact these activities have on changing CSR attitudes have been pivotal. Arguably, some activities are more effective than others. For example, the use of corporate liability to hold corporations accountable for foreign bribery, as can be seen through the several prosecutions that have taken place under the application of the U.S. Foreign Corrupt Practices Act (FCPA).\textsuperscript{53} may be more effective than calling for companies to have zero tolerance to bribery with no effective mechanisms to ensure corporations comply. Nevertheless, all the activities at least create awareness that corruption operates on the global scene and aims to address CSR issues such as curbing of foreign corruption.

There is a need for reform and strengthening of institutions to address foreign corruption. In relation to asset recovery which is concerned with public officials who stash stolen assets in the financial centers of developed countries, it is important to note that such assets are comprised of foreign bribes from MNCs originating in developing countries.\textsuperscript{54} The launch of the Stolen Asset Recovery (STAR) initiative by the World Bank and United Nations office on Drugs and Crime (UNODC) to help developing countries recover stolen assets is therefore welcome. It is also a good example of how global governance can impact corruption positively.

The STAR initiative calls for the ratification by all countries of the UNCAC and makes essential the collective effort of multilateral and bilateral agencies, civil society and the private sector.\textsuperscript{55} The initiative will help member states who have signed the UNCAC strengthen their capacity to implement chapter V on Asset Recovery.\textsuperscript{56} Although the UNCAC chapter on asset recovery is not directed at MNCs, asset recovery which curtails the use of financial centres in developing countries to store stolen assets indirectly impacts MNCs.

This can be seen especially where in the process of tracing the assets, MNCs are implicated as the providers of these stolen assets. For example, in the Singapore case of Sumitomo Bank, Ltd. v. Thahir,\textsuperscript{57} which involved the tracing of assets related to bribes, two German contractors, namely Klockner Industrie Analgen and Siemens A.G., paid bribes to a senior employee (General Thahir) of Pertamina, an Indonesian state corporation entrusted with the task of developing a number of projects vital for Indonesia. The bribes had been given in order for the companies to obtain better contractual terms and preferential treatment where payments were concerned. General Thahir had deposited the proceeds into

\begin{thebibliography}{99}
\bibitem{52} See ICC, FIGHTING CORRUPTION: A CORPORATE PRACTICES MANUAL (Francois Vincke & Fritz Heimann eds., 2003).
\bibitem{54} See STAR INITIATIVE, supra note 14.
\bibitem{57} [1993] 1 SLR 735 (Sing.)
\end{thebibliography}
nineteen Asian Currency Units accounts in Sumitomo Bank Singapore. Seventeen accounts were denominated in Deutschmarks and totaled DM 53 million while two accounts were denominated in US Dollars and contained $593,249.31 and $608,959.42, respectively. Following the death of General Thahir, three different parties, namely his wife, his estate and Pertamina, claimed entitlements to the proceeds of his account. The court held the seventeen accounts denominated in Deutschmarks were bribes paid by Siemens and Klockner to Thahir.  

Therefore, asset tracing claims which implicate MNCs will have a negative impact on the reputation of such MNCs. There is evidence to suggest that such negative impacts are not in the best interest of MNCs. This is more so in light of the recent global climate against foreign bribery. MNCs do not want to be associated with bribes. Indeed, Siemens, which was implicated in the 1993 Sumitomo Bank case, has in recent times had its own fair share of corruption scandals. Siemens has been prosecuted, in both Germany and the U.S., for the illegal conduct of giving bribes to win overseas contracts over a period of time spanning 2001—2007. According to one newspaper report, “[t]he scandal has cost Siemens, a symbol of German engineering excellence and corporate probity, not only its reputation and that of former senior executives but more than €1.6 billion in costs.” In 2007 Siemens agreed to pay a fine of €201 million and then €395 million in 2008 to settle the case in Munich courts. In 2008, Siemens agreed to pay the U.S. Department of Justice $450 million to settle charges of bribery and trying to falsifying corporate books. The U.S. Securities and Exchange Commission also received $350 million on similar charges under the FCPA. The cost of the case to Siemens totals €2.5 billion.

The UNODC also has a number of publications on corruption. These include the Global Action Against Corruption: The Merida Papers, and the Compendium of International Legal Instruments on Corruption. The Merida papers were compiled from a side event during the signing of the UNCAC in 2003. The event had four panels; Panel One was on Preventive Measures against Corruption: the Role of Private and Public Sectors; Panel Two was on The Role of Civil Society and the Media in Building a Culture against Corruption; Panel Three was on Legislative Measures to Implement the UNCAC; and Panel Four was on Measures to

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58. Id. at 737.
61. Id.
Combat Corruption in National and International Financial Systems, respectively. The panels agreed that a comprehensive and integrated anti-corruption strategy targeting the political, social and economic domains was needed in the fight against corruption. Supreme audit institutions, public prosecution, police, financial oversight institutions, public administration, private sector and civil society all had a part to play in a successful anti-corruption strategy. The panels emphasized the importance of the role of civil society and the media.

Arguably, the World Bank, a specialized agency involved with economics and global trade, can play a pivotal role in assisting with efforts to curb corruption. Indeed, its work with the UNODC suggests it is already playing that role. In 1997, the World Bank developed an anti-corruption strategy focusing on prevention of fraud and corruption in bank projects; mainstreaming corruption concerns and lending active support to international efforts to address corruption. The StAR initiative, as previously discussed, is an integral part of the anti-corruption strategy. To accomplish these strategies, the World Bank lends active support to international efforts through sponsorships of major conferences and support for adoption of international conventions. The World Bank has procurement guidelines in place and carries out intensive audits of projects. The World Bank has more than 330 firms and individuals debarred from carrying out World Bank projects, for periods lasting a year to permanent debarments.

B. Human Rights

MNCs are involved in rights violations in countries where they carry out their business activities. Such rights violations include right to life, economic, social and cultural rights. For example, MNCs have been complicit through partnership with repressive governments in the extractive industry in developing countries. Examples include Shell in Nigeria, where there were allegations of environmental degradation, health problems, and murder; and Unocal in Burma, where there was complicity with the military government in human rights crimes against humanity, forced labor, torture, loss of home and property. These

67. See generally id. at 45.
69. See generally STAR INITIATIVE, supra note 14.
70. See id.
71. Id.
complicities led to litigation under the U.S. Alien Tort Claims Act, which allows U.S. district courts to hear civil claims of foreigners for injuries caused by actions in violations of the law of nations or a treaty of the U.S.\textsuperscript{75} The litigation was brought by NGOs such as Earth-Rights International and Centre for Constitutional Rights. The cases eventually settled out of court. They illustrate the litigation and reputational risks companies face if they do not conform to human rights practices.

These allegations and implications also led to calls for tighter direct corporate responsibility in international law. An attempt at such direct responsibility was the 2003 Draft Norms on the Responsibility of Transnational Corporations and other Business Enterprises with Respect to Human Rights ("Draft Norms").\textsuperscript{76} The Draft Norms, considered by the United Nations Charter, aimed to promote universal respect for and observance of human rights and fundamental freedoms. It aimed to produce standards applicable to all corporations in areas of human rights, labor, environment, and anti-corruption and hold corporations directly responsible for human rights norms. However, critics were quick to point out that the norms went beyond current international law's obligatory requirements of state responsibility.\textsuperscript{77} Traditionally under human rights, states were responsible for ensuring third parties such as MNCs do not violate human rights. Corporations could not be held directly responsible under international law. This was in effect because corporations lacked legal personality under international law.

Current events have eroded the relevance of the Draft Norms. John Ruggie, the U.N. Special Representative, was appointed to deal with the impasse from the Draft Norms. He concluded that the Draft Norms exaggerated legal claims and conceptual ambiguities.\textsuperscript{78} In areas other than those involving international crimes, legal responsibility is greatly debatable, but there is potential for the use of soft law standards and initiatives in the future development of corporate responsibility.\textsuperscript{79} Ruggie also proposed a framework in which he stated that the state has a duty to protect human rights while corporations have a duty to respect human rights.\textsuperscript{80} For companies to effectively discharge their duty to respect, they need to carry out due diligence which should include policies, impact assessments and integration and tracking performance.\textsuperscript{81}

\begin{itemize}
\item \textsuperscript{75} See Wiwa v. Royal Dutch Petroleum, 226 F.3d 88 (2d Cir. 2000); Doe v. Unocal, 963 F. Supp. 880 (C.D. Cal. 1997), rev'd on other grounds sub nom. Doe I v. Unocal Corp., 395 F.3d 932 (9th Cir. 2002), rev'd on reh'g (en banc). 403 F.3d 708 (9th Cir. 2005); Adeyeye, supra note 73, at 151–52.
\item \textsuperscript{79} Id. ¶ 36.
\item \textsuperscript{80} Id. ¶ 1.
\item \textsuperscript{81} See U.N. Special Representative of the Secretary-General, Protect, Respect and Remedy: A Framework for Business and Human Rights: Rep. of the Special Representative of the Secretary-General on the Issue
\end{itemize}
Apart from the work of John Ruggie, which was requested by the U.N. Commission on Human Rights (which has had a great impact on the debate about the relationship between human rights and business) governments and civil society have also greatly impacted corporate responsibility for human rights abuses. A useful resource for research on human rights and business is the Business and Human Rights Resource Centre. Many codes, guidelines, standards and initiatives have been developed to guide corporations against human rights abuses. These include the Voluntary Principles on Security and Human Rights ("Voluntary Principles"). The Voluntary Principles were developed in 2000 to address human rights and security issues that involved business in countries with an extractive industry. The United Kingdom and United States governments brought together leading companies such as Freeport McMoran, Shell, BP, Rio Tinto, Chevron, and Texaco and NGOs such as Amnesty International, Human Rights Watch, International Alert, International Business Leaders Forum, and Business for Social Responsibility to deliberate on setting up guidelines. The Voluntary Principles address three key areas: risk assessment in security arrangements, state security relations, and private security force relations.

Currently, the participants for the Voluntary Principles include the governments of United Kingdom, United States, Norway, Netherlands, Canada, Colombia, and Switzerland. Companies participating are those involved in the energy and extractive industry such as Anglo American, BP, Chevron, ExxonMobil, Freeport McMoran, Rio Tinto, Shell, and Statoil. Many NGOs, including some of those involved in the development of the Voluntary Principles, are also involved in them. In an overview of company effort to implement the Voluntary Principles, there have been calls for home governments and NGOs to be more involved and lend greater support and commitment to the implementation effort, especially in the area of host government engagement. Companies have also requested tools and implementation guidelines to help them implement the Voluntary Principles, yet there is still a need for independent verification.

For an insight into civil society participation in the Voluntary Principles, Amnesty International has advocated for a more credible process. It has called for the establishment of a

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82. Id.
85. See id.
86. See id.
88. See id.
90. See id.
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As mentioned under the discussions on anti-corruption above, the Global Compact addresses human rights issues. Principles 1 and 2 require businesses to support and respect the protection of internationally proclaimed human rights and to not be complicit in human rights abuses. The Global Compact and the Office of High Commissioner for Human Rights have done tremendous work on the issue of business and human rights. For example, they have provided guidance to the global compact human rights principles (and its relations to concepts such as sphere of influence and complicity), good management practices on human rights, reporting on human rights performance, and human rights impact assessments. The Global Compact also has a requirement for companies that join the initiative to report on their progress in upholding the principles of the Global Compact. The aim is to ensure greater corporate accountability and transparency to multi-stakeholders. Companies which fail to communicate their progress may have their status changed and eventually be delisted and removed from the Global Compact website. The Global Compact website reports that as of March 2009, over 1000 companies have been delisted. Since the Global Compact was launched in 2000, more than 5200 companies in 130 countries have subscribed to the principles. This means that each of these companies would be required to submit a communication on their reports. The communication on progress therefore raises issues about the monitoring and measuring of corporate performance. The Global Compact has made it clear that it is not designed to monitor or measure corporate performance, hence suggesting the bulk of the work of performance monitoring should be done by civil society, the media, and the companies themselves.

94. See generally UN GLOBAL COMPACT, supra note 9.
95. See Ten Principles, supra note 36.
97. See UN GLOBAL COMPACT, supra note 9.
98. Id.
99. Id.
Nevertheless, it is commendable that the Global Compact at least provides a means whereby company reporting can be scrutinized by stakeholders if so desired.

Also mentioned in discussions on anti-corruption were the OECD Guidelines for Multinational Enterprises. The guidelines call for businesses to respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments. Implementation of the guidelines is vested in National Contact Points (NCPs), which are government offices responsible for encouraging the observance of the guidelines and creating awareness of the guidelines within national business communities. There have been questions as to the overall effectiveness of the guidelines. In June 2009, at the OECD ministerial meeting, further consultation on updating the guidelines to enhance their relevance and clarify the responsibilities of the private sector was welcomed. Issues which have been identified as necessary to be included in this update include reinforcement of the human rights components of the guidelines, NCP procedure for specific instance facility, and NCP performance. The OECD notes that it will require the expertise of business, labour and civil society in the consultation process.

C. Environment

The lists of environmental issues corporations can be implicated in are non-exhaustive. They include climate change, pollution and environmental degradation. A case which illustrates the impact of corporations on the environment is the 1984 Bhopal Gas Plant Tragedy which, according to official records, killed 3000 and disabled 50,000; up to 15,000 more subsequently died from exposure to the poisonous gas. The plant was operated by Union Carbide India Limited (UCIL), which was fifty-percent owned by Union Carbide Corporation. The tragedy was a result of a poisonous gas, which leaked from the factory into the surrounding environs. The tragedy led to litigation in the U.S.; the U.S. courts dismissed the case in favour of litigation in India. The Indian case was settled out of court for $470 million. It is important to note that there is still an ongoing case in the U.S. courts with regards to property damage brought about as a result of the Bhopal incident.

The plaintiffs in that case claimed that for a period of twenty years (1972—1992) Texaco released massive quantities of toxic waste into waters, thus contaminating the wa-

103. See OECD Guidelines, supra note 37.
104. Id.
105. See id. Part II.
108. Id.
109. Id. at 4.
113. See Bano v. Union Carbide Corp., 273 F.3d 120 (2d Cir. 2001).
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ter. The district court dismissed the case for forum non conveniens and held the case should be heard in Ecuador. The U.S. Court of Appeals for the Second Circuit affirmed this decision. The case is ongoing in Ecuador. These cases and many others illustrate the need for corporate responsibility for environmental concerns.

An attempt to promote such corporate responsibility can be seen in the adoption of Agenda 21 during the Earth Summit, or the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992. Agenda 21 is a comprehensive programme or global action in all areas of sustainable development. Agenda 21 is especially useful for corporations as it recommends ways to strengthen the role of major groups including business, industry, and NGOs in achieving sustainable development. Chapter 30 of Agenda 21 calls on business and industry to: participate in the implementation and evaluation of activities related to Agenda 21; reduce impact on resource use and the environment; and make environmental management the highest corporate priority and a key determinant to sustainable development.

Agenda 21 proposed two programme areas for companies: the promotion on cleaner production and responsible entrepreneurship. Accordingly, in order to promote cleaner production, companies were required to increase efficiency of resource utilization, including increasing the reuse and recycling of residues, and reducing the quantity of waste discharge per unit of economic output. Furthermore, companies are encouraged to report annually on environmental records, use of energy and natural resources; and adopt and report on implementation of codes of conduct promoting best environmental practice. For responsible entrepreneurship, companies are advised to encourage the concept of stewardship in management and utilization of natural resources; increase the number of entrepreneurs engaged in implementation of sustainable development policies; and establish worldwide corporate policies on sustainable development.

116. Id.
117. See Amicus Brief, supra note 114.
119. Id.
120. Id.
121. Id. ch. 30.1.
122. Id. ch. 30.2.
123. Id. ch. 30.3.
124. Id.
125. Id. ch. 30.6.
126. Id. ch. 30.10.
127. Id.
128. Id. ch. 30.18.
129. Id. ch. 30.22.
Businesses responded to these calls through the adoption of soft law initiatives developed by governments, international organizations, and NGOs. These include the ICC Business Charter for Sustainable Development ("Charter"), Responsible Care Initiative, the Coalition for Environmentally Responsible Economies' Ceres Principles, the Global Compact and OECD Guidelines for Multinational Enterprises. The Charter was developed in 1991. There are sixteen principles involving issues such as corporate priority and compliance and monitoring. Principle 1 calls for the recognition that environmental management should be among the highest corporate priorities and is a key determinant of sustainable development. The website for the Charter acknowledges that many companies now implement environmental management systems which go much further than the basic elements of the Charter. It cites the UN Global Compact as playing a leading role.

The Responsible Care Initiative arose as a result of environmental issues faced by chemical companies such as Bhopal. Responsible Care is the chemical industry's environmental, health and safety initiative to drive continuous improvement in performance in the chemical industry. It calls for companies "to use resources efficiently and minimise waste"; "report openly on performance, achievements and shortcomings"; engage in stakeholder dialogues and engagements; "cooperate with governments and organisations in the development and implementation of effective regulations and standards"; and "foster the responsible management of chemicals." There are criticisms that the Responsible Care Global Charter is "a public relations effort to polish the image of" the chemical industry. The criticism goes on that principles "are not higher standards for the chemical industry that can be objectively and openly verified by the public, independent scientists or government regulators." The charter itself notes that Responsible Care will "continue to undertake actions consistent with the environmental principles of the United Nations Global Compact."

The Coalition for Environmentally Responsible Economies (Ceres) is a national network
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of investment funds, environmental organisations, other public interest groups, and companies working to find solutions for complex environmental and social challenges. Ceres developed the Global Reporting Initiative, which is used by companies for corporate reporting on environmental, social and economic performance. The Ceres principles were designed to help companies conduct business as responsible stewards of the environment. The principles include “sustainable use of natural resources, reduction and disposal of wastes, risk reduction, audits and reports.”

The United Nations Global Compact Principles relate to environmental matters. Companies are required to “support a precautionary approach to environmental challenges”; “undertake initiatives to promote greater environmental responsibility”; and “encourage the development and diffusion of environmentally friendly technologies.” The United Nations Environment Programme (UNEP) is the core U.N. agency that works closely with partners in business, labour, and NGOs to promote “new approaches in sustainability management and supply chain management” and improve “understanding of key corporate responsibility issues on the sustainable development agenda,” amongst other concerns.

The OECD Guidelines also require companies to contribute to economic, social and environmental progress to achieve sustainable development, and “develop and apply effective self-regulatory practices and management systems.” In the chapter on the environment, companies are required to take account of environmental protection and sustainable development within the framework of relevant national laws, regulations and administrative practices and international agreements, principles, objectives and standards.

IV. Overall Goals of Global Governance

An important issue which should be considered in discussions on global governance and CSR is the determination of the overall goal of global governance. Does global governance aim “to bring a measure of coherence to the multitude of jurisdictions proliferating” on the global scene or does it aim to simply create a proliferation of frameworks with no coherence or agreement? To put it another way, the tendency of global governance is to produce a multiplicity of frameworks. Should it aim to produce agreed global frameworks?

In the area of CSR, global governance has created a “vast number of rule systems” in an interdependent world. It is argued that global governance needs to focus on ensuring that frameworks are agreed upon, coherent and effective, rather than simply on the

143. Id.
145. See Ten Principles, supra note 36.
146. Id.
148. OECD Guidelines, supra note 37, at 14.
149. See id. at 19–20.
150. Rosenau, supra note 6, at 18.
151. Id. at 17.
process of creating more frameworks. This would involve an examination of the actors on the global scene contributing to rules affecting global affairs. Accordingly, there may be the need to streamline the relevant actors on the global scene. Clearly, governments and international organizations automatically qualify. Governments qualify because they are the peoples' chosen mandate to affect global change. International organizations qualify because they have authority or legitimacy for decision making in global affairs. The activities of NGOs and civil society may need to be scrutinized more carefully. The authority and legitimacy of NGOs must be considered. However, the problem such a proposition faces is the growing perception that global governance should consist of all the rules, formal and informal, which affect management of common affairs.

While it cannot be disputed that NGOs are a substantial and active part of global governance as generally understood, the need to streamline their concerns in reaching agreed goals may be necessary. The common criticism is that they have their own agenda. However, it is important to stress that their activities must not be undermined. Their roles should increasingly be considered and factored into attempts by intergovernmental institutions and national governments to reach global governance in the sense of agreed global frameworks which are workable and produce positive results.

It may be said that there will always be a conflict between the role of global governance to produce agreed frameworks and the role of global governance to create multiple frameworks which need not necessarily be agreed on. If global governance is seen in the light of multiple frameworks with no need for coherence, it would be difficult to determine the effect of global governance on CSR. Alternatively, it may be that global governance in the real sense of the word may not be able to address CSR in any measurable way, but rather contributes to CSR in a haphazard way.

Global governance is best seen as governance that includes both formal and informal rules aiming for consensus. Global governance takes away the need to address issues in international law such as international legal personality, but should still aim to reach consensus. A principle of global governance is that it legitimizes the rights of non-state actors to participate on the global scene. In other words, it removes the pitfalls that, international lawyers often argue, prevent non-state actors from participating in global affairs. It brings an informal air to global affairs. Nevertheless, for such informality to be effective there needs to be consensus. The main writers in global governance are in the field of political science. They dismiss the need for global consensus in global governance. It is argued that attempts to improve CSR via the avenue of global governance calls for agreed consensus.

The emergence of a concerted effort towards the elimination of corruption, human rights and environmental abuses by a multitude of players has produced a clear consensus that CSR is needed. The next step is to ensure that wrong corporate practice is discouraged by effective deterrence mechanisms. Both the emergence of consensus and the need for effective deterrence are examples of global governance at work.

152. See THE GLOBAL GOVERNANCE READER, supra note 4.
153. Id.
V. Conclusion

This paper examined the activities of states, international organizations and non-state actors in addressing CSR concerns. Global governance is relevant for CSR because it is a means whereby corporate misbehaviours are addressed on a global scale by multiple actors. The activities of these actors are leading to a multiplicity of policies and practices for addressing CSR concerns. Yet, for global governance to be effective in the CSR agenda, there needs to be consensus and co-ordination of efforts. This paper argued for the need to break CSR into specific sections in order to bring opposing views together and be successful in attempts at consensus. In the area of corruption, the paper showed that UNODC is at the forefront of reforming, strengthening and coordinating efforts to curb corruption. In the area of human rights, the Office of High Commissioner for Human Rights in conjunction with the Global Compact Initiative is at the forefront of reform and co-ordination, while in the area of environment, the United Nations Environmental Programme is at the forefront. These efforts are in line with the Commission on Global Governance, which believes the United Nations must continue to play a central role in global governance.154

The paper also discussed the bigger roles non-state actors are playing in impacting CSR. It discussed a number of initiatives, policies and practices developed by non-state actors or in partnership with them. Many states, the U.N. and international organizations have come to realize the importance of these actors in reaching consensus and ensuring effective adherence to rules and promoting goals. There is also a realization that the issues of global concern facing the world cannot be solved by one entity. Rather, there is the need for partnership on different levels. There is also the need to scrutinize the non-state actors to ensure their authority and legitimacy to partake in global governance is unquestionable. Non-state actors such as civil society need to be accountable and responsible, working in the best interest of society, not merely advancing their own agendas.

154. See Wilkinson, supra note 5.