



1-1-2011

Corporate Social Responsibility and Firm Compliance: Lessons from the International Law-International Relations Discourse

Christiana Ochoa

Follow this and additional works at: <http://digitalcommons.law.scu.edu/scujil>

Recommended Citation

Christiana Ochoa, *Corporate Social Responsibility and Firm Compliance: Lessons from the International Law-International Relations Discourse*, 9 SANTA CLARA J. INT'L L. 169 (2011).

Available at: <http://digitalcommons.law.scu.edu/scujil/vol9/iss1/6>

This Article is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Journal of International Law by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

Corporate Social Responsibility and Firm Compliance: Lessons from the International Law- International Relations Discourse

Christiana Ochoa*

I. Introduction

The development of a set of global corporate social responsibility (CSR) institutions in the form of norms, laws, and organizations is the focus of Adefolake Adeyeye's contribution to the symposium and her article serves as the jumping off point for this essay.¹ *The Role of Global Governance in CSR* first discusses a number of CSR initiatives in the areas of human rights, environmental protection and corruption and ultimately argues that the proliferation of entities engaged in these initiatives has led to rapid norm development that would be improved by coordination and consolidation. This thesis is provocative for its core proposal, but also for more subtle reasons.

The development of the litany of institutions to which Adeyeye refers is only a bare sketch of what a comprehensive map of CSR developments would look like.² What is clear from the view of any observer, however, is that CSR institutions are becoming less the figments of normative hope and more the real embodiments of normative and institutional development—indeed, they are forming a nascent regime. This should be seen as a positive

* Professor, Indiana University Maurer School of Law, Indiana University, Bloomington. The author would like to thank the organizers of the Santa Clara Law Corporations and Human Rights 2010 Symposium, as well Siba Grovogui, Hannah Buxbaum, Brian Shoup and the editors of the Santa Clara Journal of International Law.

1. See Adefolake Adeyeye, *The Role of Global Governance in CSR*, 9 SANTA CLARA J. INT'L L. 147 (2011).
2. *Id.*

development by all, since no social structure can exist in the absence of normative structures and it is widely acknowledged that the structures that have existed and still predominate are viewed as having been outmoded by the increase in quantity and proportion of transnational business activity.³ Simply put, businesses and business activity have outgrown the grasp of law. As the proceedings of this symposium made clear, there have been a number of regulatory responses to this predicament. Much of what has developed to date is not law, but rather governance. Still, this regime is becoming effective at constraining the activities of business entities by creating norms, expectations and institutions that inhibit the ability of businesses to externalize social costs. But how is this happening in the absence of hard law?

Adeyeye points to a plethora of governance developments and is concerned that proliferation and decentralization are inefficient and will thus lack effectiveness, resulting in her proposal for coordination and streamlining.⁴ At the heart of *The Role of Global Governance in CSR* is Adeyeye's concern about effectiveness.⁵ These concerns bring me to a set of questions that have to date been almost entirely unexplored and have not been theorized, and which start to address why a non-law-based CSR regime is having measurable effect at all.

Readers of this essay will surely be aware that there has been a long and fruitful discourse between and among legal academics and political scientists, known as international law-international relations (IL-IR) scholarship. A great deal of that scholarship has discussed the effectiveness of particular IL regimes, usually as part of a larger discourse regarding the question of compliance with IL or international institutions more generally, including agreed norms and soft law. This field of IL-IR scholarship has taken a fairly Westphalian and Weberian view of international law and of international relations, viewing states as the subjects of international law and, thus, seeing states as its subjects of study. This literature theorizes the impact of law and legalization on state behavior. What it has not done, or not done much of, is think about how the theories that have been developed in the state-centric, hard law-centric context relate to and have relevance for areas of international legal processes, such as CSR global governance initiatives, that indisputably envision corporations as their subjects and have only recently begun to look law-like. This essay takes a step into this lacuna. Much like IL-IR scholarship asks why, and under what conditions, states comply with international law, this essay begins a discussion about why firms comply with global governance initiatives and seeks to uncover some of the useful analogies to the IL-IR literature, as well as to identify the reasons why existing IL-IR compliance theories are surely partially deficient in the CSR global governance context.

In Part II, this essay will discuss some of the key theories from IL-IR scholarship that inform compliance theory in the global CSR field. It will discuss, for example, the most impor-

3. 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 of Human Rights and Transnational Corporations and Other Business Enterprises*, ¶¶ 1-16, delivered to the Human Rights Council, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008) (by John Ruggie), available at http://www.unglobalcompact.org/docs/issues_doc/human_rights/Human_Rights_Working_Group/29Apr08_7_Report_of_SRSG_to_HRC.pdf [hereinafter *2008 Report*].

4. Adeyeye, *supra* note 1.

5. See *id.*

tant insights regarding compliance, effectiveness, obedience and enforcement, and will draw on a number of compliance theories, including regime theory, legitimacy theory, and observations about the importance of normative development, primarily for constructivist and managerial theories of compliance.⁶ This section will aim to illustrate that many of the theories that have been useful in explaining why and predicting when states comply with international law may also be useful in understanding the same question in the context of corporations and CSR governance. It will also suggest why this makes sense. Part III, in effect, critiques Part II and will discuss reasons to suspect that existing IL-IR scholarship is limited in its ability to explain the compliance of businesses with CSR governance and will require significant supplementation and amendments in order to fit this similar, but also different, context. This essay will conclude by offering a set of questions for further research. An open end seems appropriate for a subject worthy of significant further research, discussion and development.

II. IL-IR Compliance Theory and CSR Global Governance

In some ways, complex firms that operate in multiple jurisdictions are like states. Others have noted the emerging authority of private actors, including firms, to partake in various transnational processes. For example:

They claim to be, perform as, and are recognized as legitimate by some larger public (that often includes states themselves) as authors of policies, of practices, of rules and of norms. They set agendas, they establish boundaries or limits for action, they certify, they offer salvation, they guarantee contracts, and they provide order and security. In short, they do many of the things traditionally, and exclusively, associated with the state.⁷

Firms are like states, then, because the substance of some of their activities is similar or replaces the activities once carried out by states. But firms are also like states because some of their activities are not actually within the reach of any law at all. Parts of the activities of a complex firm may be governed by the laws of a particular state, but as the managers and lawyers of these firms well know, the ability to rearrange corporate structure, for example, by adding subsidiaries or special purpose companies, and the ability to do so many times in multiple jurisdictions, can insulate much of a firm's activities from the purview of any domestic legal system. The result is that, like states, firms can escape the grasp of any legitimate higher governing authority.⁸ Until recently this has resulted in significant corporate immunity from responsibility for human rights violations, environmental degradation and corrupt acts. It has also resulted in a public perception of firms as unassailable and as setting their own rules. Under the anarchical, Hobbesian view of international relations, the limits of municipal law on multinational corporations extend significant aspects of their behavior into a space with ostensibly no higher authority, making anarchy myths entirely plausible.

6. This will not be a full survey of that scholarship, both because those surveys have been well, and recently, written and also because the space limitations of this essay prohibit such a review.

7. Rodney B. Hall & Thomas J. Biersteker, *The Emergence of Private Authority in the International System*, in *THE EMERGENCE OF PRIVATE AUTHORITY IN GLOBAL GOVERNANCE* 3, 4 (Rodney B. Hall & Thomas J. Biersteker eds., 2002).

8. *2008 Report, supra* note 3, ¶¶ 1-16.

Indeed, in the not too distant past, anarchy stories dominated the state-based international relations field decades ago and were the root of international law's ontological difficulty.⁹ This was the case until compliance theories began capturing and conveying the observation that, despite the absence of higher authority, international law modifies states' behavior and often results in compliance. The emergence of CSR global governance regimes and indeed, firms' participation in their creation, similarly demands a more accurate narrative than is typically told about transnational firms and regulation. Such a narrative would be more nuanced and would delineate the boundaries of anarchy-myths—pointing to where they are accurate descriptions and also to where they have either outgrown their accuracy or where they are entirely fictive. This will require a theoretical framework for understanding firm compliance with the CSR governance regime, including their active participation in the creation of that regime.

The current absence of such a framework is similar to the theoretical deficit during the era of international law's crisis, before we better understood why states comply with international law, despite the absence of obvious enforcement institutions. This deficit eventually led to the IL-IR departure from theoretical crisis and arrival at compliance theory. The state-based story of the legal unassailability of states seems to have crested and fallen. A similar unassailability story is still dominant in the firm context, despite some evidence that it is not fully accurate.¹⁰ The observation that compliance theory can apply to firms in the CSR governance context is most clear if we view compliance as including two parts. First order compliance includes firms' active participation in the creation of the CSR regime as compliance. In other words, the act of engaging in establishing a regime should be viewed as compliant with the fact that a regime exists.

A predictable objection here is that firms participate in order to ensure that the substantive content of the regime is as firm-friendly and weak as possible. This may be a real and important factor, particularly because firms, despite their power and influence, are ultimately subject to state-imposed domestic and international law. But this is not the only choice firms have to weaken the CSR regime. Until roughly a decade ago, firms chose largely not to participate in this process and chose to actively resist all such efforts. Their resistance was indeed debilitating and, for example, was instrumental to the failure of the UN Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights.¹¹

There is also reason for optimism for second order compliance. There are clear indications that firms have begun to comply with various CSR governance mechanisms. This occurs despite the absence of a comprehensive legal system governing the human rights, environmental and corruption-implicating behaviors of firms. That should lead us to inquire

9. Helen Milner, *The Assumption of Anarchy in International Relations: A Critique*, 17 REV. INT'L STUD. 67 (1991).

10. How true this story has been historically is surely a matter of debate that must be resolved in another paper.

11. Econ. & Soc. Council, Subcomm'n on Promotion & Prot. of Human Rights, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (Aug. 26, 2003), available at <http://www.unhchr.ch/huridocda/huridoca.nsf/0/64155e7e8141b38cc1256d63002c55e8?OpenDocument> (revised edition)

why.

Regime theory within the state-centric discussion maintains that states establish only those regimes that serve their long term interests. It is possible, of course, that business' participation in the development of CSR regimes reflects an internal calculation that this participation, and the norms and institutions that are emerging from it are good for business over the long term. It could also be that the calculation is much more short term—reflecting a calculation that mere participation is good in the short term and the long term impact of CSR initiatives on traditional business models that rely on the externalization of social and environmental costs are heavily discounted by firms. It is possible, in other words, that the insights of regime theory explain the reasons that firms are participating in CSR regime-creation, even though the long term impacts of the regime may be detrimental to a firm's bottom line. But there are other possibilities worth exploring.

A. Constructivism / Process

The IL-IR convergence around compliance theory¹² may be very helpful, given the similar position of states and firms with respect to the legal inaccessibility of some of their activities. Constructivist IR scholars¹³ have built their theories around the importance of rules and the power of shared knowledge and dialogue in altering states value systems, normative beliefs and identities.¹⁴ Similarly, international legal process scholars have argued that the discourse and process of norm articulation is effective in moving states toward compliance.¹⁵ Louis Henkin, like later constructivist compliance theorists, asserted that the process of discursive engagement in the creation of knowledge and the elaboration of norms and expectations is, itself, the thing that brings states closer to compliance.¹⁶ It is this joint endeavor that has a deep effect on the identity of the affected actors.¹⁷ Under this view, it is not so much the strategic self-interest of a given regime's creators that causes compliance, but rather the shared ownership over knowledge and norms that arises from the discourse that births the regime.¹⁸ This would certainly help to explain why firms are complying with the CSR governance regime, despite seeming to have much to lose as the increasing sinew of normative development eliminates the possibility of externalizing the costs of behaviors that violate human rights, environmental and anti-corruption values.

-
12. See Kal Raustiala & Anne-Marie Slaughter, *International Law, International Relations and Compliance*, in HANDBOOK OF INTERNATIONAL RELATIONS 538, 544 (Walter Carlsnaes, Thomas Risse & Beth A. Simmons eds., 2002).
 13. The connection of constructivist approaches to the development of the CSR regime is no coincidence, of course. John Ruggie, who was the architect of the Global Compact and is the United Nations' Special Representative on Business and Human Rights, is a leading constructivist IR scholar.
 14. See, e.g., Robert Keohane, *When Does International Law Come Home?*, 35 Hous. L. Rev. 699 (1998).
 15. LOUIS HENKIN, *HOW NATIONS BEHAVE* (2d ed. 1979).
 16. *Id.*
 17. FRIEDRICH V. KRATOCHWIL, *RULES, NORMS AND DECISIONS ON THE CONDITIONS OF PRACTICAL AND LEGAL REASONING IN INTERNATIONAL RELATIONS AND DOMESTIC AFFAIRS* (1989).
 18. Raustiala & Slaughter, *supra* note 12, at 540 (suggesting that this, together with factors such as reputation and domestic politics, tilts states in the direction of compliance).

B. Legitimacy

This concept is closely tied to other theoretical contributions to the compliance literature, including legitimacy, obedience and managerial theories. Thomas Frank's explanation about the role of legitimacy in facilitating compliance, for example, is crucial to understanding when and why firms will comply with CSR governance efforts.¹⁹ Briefly stated, Frank made a very Kantian argument that the effectiveness or "compliance-pull" of a rule will hinge on how legitimate the rule is perceived to be by the subjects it is meant to govern.²⁰ Legitimacy, in Frank's view, is contingent on four independent factors, including the clarity of the rule, the consistency with which the rule is applied and the degree to which a new rule fits with existing accepted practice or rules about how rules are made.²¹ The marked increase in participation by firms, international organizations and civil society in developing the CSR regime strongly suggests a higher degree of perceived need for such a regime and, as the prolonged continuation of those efforts suggests, improvements in the perceived legitimacy of the developing regime. This also resonates with other theories that suggest compliance can be improved by reducing ambiguity and incorporating transparent information systems,²² like those developing in the CSR field, such as information portals (e.g., the Business & Human Rights Portal)²³ and publically accessible databases (e.g., Global Compact Company Reports).²⁴

C. Effectiveness, Obedience and Enforcement

The cynical—or perhaps realistic—view would state that full firm obedience with governance initiatives is unlikely. It is not at all clear (borrowing from Henkin's observation about states) that "almost all [firms] observe . . . almost all of their obligations almost all of the time."²⁵ This, however, does not mean the CSR regime is ineffective. It may be effective, even with far from perfect obedience. If the CSR regime results in changed behavior that furthers CSR goals or substantially reduces the social costs that would otherwise be externalized by business operations, one has to concede at least some level of effectiveness.²⁶ The optimal level of obedience can be increased, at least arguably, by modifying the CSR regime-making process and its perceived legitimacy. It simply does not suffice to permit the sense that firms deviate from their obligations at a high rate—perhaps at a higher rate than states deviate from state obligations—to derail all theories of compliance. In fact, a substantial body of research demonstrates that firms have significant incentives to comply with their obligations, and actually do so, even when not strongly monitored or consistent-

19. Thomas Frank, *Legitimacy in the International System*, 82 AM. J. INT'L L. 705 (1988).

20. *Id.*

21. *Id.* For a fuller synopsis of Frank's argument, see *id.* at 712–59.

22. See, e.g., Abram Chayes & Antonia H. Chayes, *On Compliance*, 47 INT'L ORG. 175 (1993).

23. *Corporate Accountability Legal Portal*, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, <http://www.business-humanrights.org/LegalPortal/Home> (last visited June 20, 2011).

24. *Participants & Stakeholders*, UNITED NATIONS GLOBAL COMPACT, <http://www.unglobalcompact.org/participants/search> (last visited June 20, 2011).

25. HENKIN, *supra* note 15, at 47.

26. ORAN YOUNG, *COMPLIANCE AND PUBLIC AUTHORITY: A THEORY WITH INTERNATIONAL APPLICATIONS* 140–62 (1979).

ly or strongly sanctioned for deviance.²⁷

There are surely many explanations for this phenomenon. Managerial theory is helpful here. It argues that the creation of institutionalized performance measures strongly promotes obedience, even when enforcement is lacking.²⁸ These measures typically include regular collection of pertinent information, performance reviews of various sorts, and opportunities to modify norms and institutions in light of increased or changing knowledge.²⁹ All of these features can be found in the Global Compact structure and many can be found in the Organisation for Economic Co-operation and Development (OECD) Guidelines and National Contact Point structure and in the work of the Special Representative on the Issue of Business and Human Rights.³⁰ This very likely helps to explain firm compliance in the CSR field, especially when combined with the surveillance role filled by civil society organizations and the accountability platforms provided by information portals on CSR-related issues.

III. Firms are Not States

Firms are, however, not states. The previous section pointed to some similarities between states and firms in order to assert that the insights of state-based compliance theory may be useful to developing theories for why, when and how firms comply with global governance regimes. But firms are not states and this is crucial to keep in mind. The essential profit-seeking logic of firms pulls them in directions in which states are not pulled. This fact is often reinforced by legal requirements to serve shareholders, a mandate that is often interpreted as an exclusive obligation to maximize profits.³¹

This legally reinforced *raison d'être* of firms can be perceived as a strong challenge to CSR global governance because, of course, there are two ways to maximize profits: increasing revenues or reducing costs. Cost reductions can be accomplished by many routes, including elevating environmental and social risks and by externalizing social and environmental costs. These harms and risks often take the form of environmental degradation, human rights harms, labor violations, lowered precautions, engagement in corrupt activities, etc., all of which impinge on CSR norms.

This reality of firms as profit-seekers pulls hard against the earlier section, which argues that compliance theory is useful for thinking about why and when firms will comply with global governance norms. For example, much of compliance theory has been built with

-
27. See George Downs et al., *Is the Good News about Compliance Good News about Cooperation?*, 50 INT'L ORG. 379, 379–406 (1996) (advancing a political economy view of compliance and arguing that the strength of enforcement is central to compliance).
 28. David Victor et al., *Introduction and Overview*, in THE IMPLEMENTATION AND EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL COMMITMENTS, 1–49 (Davis Victor et al. eds., 1998).
 29. *Id.* at 11.
 30. This is consistent with Harold Koh's argument that compliance and obedience are maximized through transnational legal processes that allow for the subjects of a regime to internalize international rules and norms into their particular internal legal structures. See Harold Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181, 199 (1996); Harold Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2602 (1997).
 31. *2008 Report*, *supra* note 3. States may also seek profits, and I do not mean to imply that states do not do this. But profit-seeking is not the chief motivator of states, as it is for firms.

foundational assumptions that don't fit the firm context. Those fall into two categories: community composition and normative orientation of the community.

In the state-based IL-IR context, the community is composed of a limited number of states. Similarly, those states tend to be relatively stable and enduring. The composition of the community of firms is quite different. It is made up of so many members that it is not possible to attach particular reputations and identities to all members. In addition, firms are created, collapsed, sold, disaggregated and combined in ways that states simply cannot be, making the composition of the community of firms far less stable than the community of states. In addition, the motivation of the members in the state context is, at least ostensibly, different than in the firm context. A benevolent, law-abiding state's motivations and obligations in the environmental, human rights and anti-corruption areas are relatively clear: Protect the environment, protect and promote human welfare, and ensure that public wealth benefits populations. The motivations and obligations of firms are quite different and are primarily profit-driven, rather than public-welfare driven.

These differences are likely to influence the applicability of compliance theory in at least three ways. Much of state-based compliance theory has been built around the idea that the inevitability of long-term relationships with a limited number of players lends itself to reasonable explanations of why states cooperate with one another. Rationalist regime theorists relied on this community characteristic more explicitly than have constructivists, but all arguments about the importance of dialogue and process assume the consistency and durability of the composition of a limited number of participants. This consistency does substantial work in explaining how deviance from, or non-participation in, transnational legal process or regime-formation can damage the reputation of individual states, just as it explains how non-compliance with actual norms damages state reputations. In addition, the consistency of the community of states works for constructivists by assuming the institutional memory of states that participate in regime creation.

The relative instability of the community of firms requires rethinking many of these assumptions. Firms may cooperate with one another, but they also are built on an explicitly competitive ethos. Their relative instability also means that any particular firm may appear or disappear with an ease and speed unimaginable for states and, as a consequence, firms' intuitional memories and contributions to the CSR regime-establishment process will be left to remaining members and participants to retain, if they are to be retained at all.

This challenge should caution against over-simplistic analogies of firms to states, but it should not be seen as dealing a fatal blow to the applicability of compliance theory for at least two reasons. First, some characteristics of firms make an analogy apt, and as was briefly argued in the previous section, current CSR approaches suggest that IL-IR compliance theory and precepts are helpful in understanding firm compliance. Second, there is strong work in various areas of legal scholarship that suggests that, despite the profit-seeking motive of firms (or perhaps because of it) and the pull of profit maximization, firms regularly comply with legal and normative regimes. Synthesizing the full body of this literature is, unfortunately, not possible in the small space allotted for this essay, though such a study would certainly inform future scholarship seeking to develop understandings of CSR compliance.

For now, it should suffice to note a few features of this literature, starting with the caveats. First, the available empirical information is incomplete, for obvious reasons. Second, when information is available, it is susceptible to a variety of interpretations regarding compliance, particularly because of the gap between full obedience and effectiveness. Some authors may see imperfect compliance and focus their analysis on the failure of firms to comply with legal directives while others will note that a large number of firms do comply, even in low-enforcement contexts—pointing to compliance in situations where one might expect deviance. For the purposes of understanding why firms comply, this approach will surely be more fruitful.

Scholarship in a number of areas that are highly relevant to CSR global governance suggests that firms regularly comply with legal regimes, even when enforcement is lacking or sanctions—and/or the likelihood of sanctions—is low. Articles in the areas of labor law, environmental law, anti-corruption law, taxation and occupational safety and health point to the possibility that compliance is common.

There are certainly counter-arguments and counter-examples. In fact, the literature and evidence of firm non-compliance is significant.³² This essay does not aim to dismiss that reality. Rather, it merely seeks to suggest that in addition to regularly cited cases of non-compliance, it is surely useful to study cases of compliance as well. In asking why firms do not comply, it is surely useful to understand when and how regularly firms *do* comply, and then to ask why they do. It is clear that additional theoretical work is necessary in this area.

In addition, there is simply not enough empirical information about firm compliance. Scholarship in this area has only begun and, indeed, methodological approaches for this empirical research are currently being developed.³³ There may be useful data sources for such work. For example, the annual reports firms are required to submit in order to remain members in good standing for the Global Compact are searchable and these reports will soon be more accessible, better indexed and easier to search.³⁴ As of June 2010, the Global Compact has received 8334 Communications on Progress from the more than 5000 Global Compact companies.³⁵ In addition, it has recently partnered with the Global Reporting Initiative³⁶ to improve company reporting methods. These databases, coupled with the ample

-
32. Much of the Business and Human Rights website is devoted to cases of non-compliance, as are the reports of non-governmental organizations (NGOs) working in the area of business and human rights, corruption, transparency, labor, environmental law, etc. There are also articles focused on non-compliance. *See, e.g.*, William Bradford, *Because That's Where the Money Is: Toward a Theory and Strategy of Corporate Legal Compliance* (Jan. 1, 2007) (unpublished manuscript) (on file with the University of Florida, Warrington College of Business), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=955428 (stating that firms violate the law about two-thirds of the time).
 33. *See, e.g.*, Christine Parker & Vibeke Nielsen, *The Challenge of Empirical Research on Business Compliance in Regulatory Capitalism*, 5 ANN. REV. LAW & SOC. SCI. 45 (2009) (suggesting methods for such research).
 34. Ursula A. Wynhoven, Head, Policy & Legal, United Nations Global Compact Office, Remarks at the Santa Clara Law Symposium: Corporations and International Law, in Santa Clara, Cal. (Mar. 12, 2010) (transcript on file with the Santa Clara Journal of International Law).
 35. United Nations Global Compact, *UN Global Compact Bulletin* (June 2010), http://www.unglobalcompact.org/NewsAndEvents/UNGC_bulletin/june_2010.html.
 36. Press Release, United Nations Global Compact, UN Global Compact and Global Reporting Initiative Announce New Collaboration (May 28, 2010), <http://www.unglobalcompact.org/news/34-05-28-2010>.

sources for data on lack of compliance, can serve as very useful tools for understanding firm compliance.

IV. Concluding Suggestions

Clearly, all of the above does not result in a full theory of firm compliance. It does, however, illuminate a path that should be pursued further, in significantly more space than has been allotted here. Since the purpose of this essay is less to advance a theory than to propose further discussion and exploration, it is premature to provide a conclusion. Instead, a set of suggestions for further research is appropriate. There are a number of areas that call out for further work.

The treatment this essay has given to the applicability of IL-IR state-based compliance theory to firms is a roadmap for further discussion. Compliance theory has developed over decades of discussion. It is likely that a similar hammering-out would be useful in order to fully understand why firms comply (and also why they do not). Further exploration into the role of enforcement, the role of surveillance, the role of reputational enhancement and reputational harm and the role of law itself will be important, as will close studies of firm management theories and empirical work on firm compliance with law in weak enforcement contexts. Most of the existing empirical work on firm compliance discusses compliance with domestic law. Currently, the potential methods for studying the behavior of firms with respect to the global CSR regimes are being mapped.³⁷ The field is wide open for empirical studies in this area. Investigations into the forgoing will surely provide a better understanding of why firms comply with the emerging CSR regime and, perhaps more importantly, will suggest tools and approaches for increasing firm obedience and the overall effectiveness of the norms and institutions developing within the CSR regime.

37. See Parker & Nielsen, *supra* note 33.