
The Transnational Corporate Social Responsibility in Oil and Gas Industry: From Soft Law to Mandatory Rule

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Corporate Social Responsibility (CSR) means transnational corporations (TNCs) are responsible for not only the interests of their shareholders, but also the interests and welfare of the local community of the area in which they operate. Therefore, TNCs have to furnish the local community beneficial and social services voluntarily and free of charge to help the local community achieve sustainable development. A question may arise whether it is legally feasible to oblige these corporations to abide by social responsibility in oil and gas industry and its resources specially petroleum laws, regulations and contracts as well as international investment treaties. This article shows that basically CSR in oil and gas industry is voluntarily enforced by TNCs who perform it for non-binding and moral reasons. Nonetheless, in oil and gas industry and its sources especially petroleum laws and contracts, it is feasible to require TNCs to undertake CSR and various dimensions therewith.

Keywords

CSR, Transnational Corporations, Oil and Gas Industry, Petroleum Laws and Regulations, International Investment Treaties

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1. Introduction

Between 1800 and 1930, the prevailing viewpoint of international trade theorists including John Locke, was that commercial companies were solely responsible for maximizing their profits and their shareholders.¹ Entering the 1930s, however, due to the exploitation of workers and disregarding their social and human rights by their employers, especially trade companies, significant and impressive movements emerged from many labor unions which consequently changed their work conditions. As a result, the employers began taking into account the interests of the society and the workers in line with their own profits such as social rights, environmental protection and so on. From 1960 onwards, employees and local communities of the area in which TNCs operate increasingly became aware of the negative environmental, social and human rights impacts of TNCs activities, especially petroleum. These local communities believed that since the TNCs were permitted to use natural resources owned by them in order to obtain more profits,² they should furnish the regional society where they are operating, beneficial and social services voluntarily and free of charge. Finally, a voluntary, ethical and normative approach was developed in international trade under the heading of ‘CSR.’ Accordingly, the TNCs are responsible for not only securing the interests of their internal stakeholders, but also the benefits, prosperity, welfare and the environment of external stakeholders including employees, customers and local communities in which they operate.³

Since the CSR was introduced, many sub-definitions have been produced for socially responsible TNCs. For instance, Barney and Griffin maintain that “social responsibility is the set of duties and obligations that companies shall perform to maintain, care for and assist the community in which they operate.”⁴ Keith Davies

¹ N. Rajput et al., Linking CSR and financial performance: an empirical validation, 10 *PROB. & PERSPECTIVES IN MGMT.* 42-9 (2012).

² K. Kercher, *Corporate Social Responsibility: Impact of globalization and international business*, 1 *CORPORATE GOVERNANCE J.* (Bond U.) 1-15 (2007), http://pdfs.semanticscholar.org/7876/63c3070b0f98949eba19fcb3950307ffb50a.pdf?_ga=2.15795318.1121124136.1582709044-1603465891.1582709044.

³ T. SAGAFI-NEJAD & J. DUNNING, THE UN AND TRANSNATIONAL CORPORATIONS FROM CODE OF CONDUCT TO GLOBAL COMPACT 136 (2008). See also K. Omoteso & H. Yusuf, *Accountability of transnational corporations in the developing world The case for an enforceable international mechanism*, 13 *CRITICAL PERSPECTIVES ON INT’L BUS. J.* 54-71 (2017); L. Calvano, *Multinational Corporations and Local Communities: A Critical Analysis of Conflict*, 82 *J. BUS. ETHICS* 793-805 (2008); S. Miles, *Stakeholders: essentially contested or just confused?*, 108 *J. BUS. ETHICS* 285-98 (2012); M. Uddin et al., *Three Dimensional Aspects of Corporate Social Responsibility*, 3 *DAFFODIL INT’L U.J. BUS. & ECON.* 199-212 (2008).

⁴ R. Griffin, *Podstawy zarządzania organizacjami*, WYDAWNICTWO NAUKOWE PWN 123-31 (2005). See also J. Barney, *Corporate Social Responsibility and Firm Performance: Investor Preferences and Corporate Strategies*, 32 *ACADEMY OF MGMT. REV.* 817-35 (2005).

is of the opinion that: “CSR means a sense of commitment by corporate executives to make decisions that along with earning profits for the company also improve the level of community welfare.”⁵ Henry Carroll likewise views CSR as “the economic, legal, moral and social expectations of the community from the companies.”⁶ In its Green Paper of 2001 and Renewed Strategy for CSR of 2011, the European Commission described CSR as a concept based on which the companies may take actions voluntarily to help create a better living standard and cleaner environment for society.⁷ In sum, it can be argued that CSR means TNCs are responsible for not only the profits of their internal stakeholders, but also the interests and welfare of external stakeholders specially the local community in which they operate.⁸ Under CSR, the most crucial interests of the local community may be delivered as follows:

1. The environmental interests, including pollution reduction, the use of new technologies, responsible use of natural resources and impact assessment environmental performance by companies.
2. The social interests covering the physical and mental health and safety, the enhancement of the welfare and the respect for the human rights of the local community in which companies operate and its sustainable development, etc.⁹

The international oil and gas industry means and includes the global processes of exploration, development, production, refining, transportation (often by oil tankers and pipelines), and marketing of petroleum products. So, the industry is divided into three segments: (1) Upstream: the business of oil and gas exploration, development and production; (2) Midstream: transportation and storage; and Downstream: which includes refining and marketing.¹⁰

⁵ K. Davis, *Can business afford to ignore social responsibilities?*, 2 CAL. MGMT. REV. 70-6 (1960).

⁶ A. Carroll, *The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders*, 34 BUS. HORIZONS 39-48 (1991).

⁷ European Commission, Green Paper: Promoting a European Framework for Corporate Social Responsibility, COM 366 (2001), <https://ec.europa.eu/transparency/regdoc/rep/1/2001/EN/1-2001-366-EN-1-0.Pdf>; The European Economic and Social Committee and the Committee of the Regions, A Renewed EU Strategy 2011-14 for Corporate Social Responsibility 681 (Nov. 4, 2011), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>.

⁸ M. Kitzmueller & J. Shimshack, *Economic Perspectives on Corporate Social Responsibility*, 50, J. ECON. LITERATURE 51-84 (2012). See also M. Blair, *Ownership and Control: Rethinking Corporate Governance for the Twenty-first Century*, in THEORIES OF CORPORATE GOVERNANCE 174-89 (T. Clarke ed., 2004).

⁹ Sh. M. Hum. Taufiqurrahman, *Regulatory on the corporate social responsibility in the context of sustainable development by mandatory in the world trade organization law perspective (case study in Indonesia)*, 3 JURIDICAL TRIBUNE 45-65 (2013).

¹⁰ A. INKPEN & M. MOFFETT, THE GLOBAL OIL & GAS INDUSTRY MANAGEMENT, STRATEGY & FINANCE 20-6 (2011); J. HILYARD, THE OIL & GAS INDUSTRY: A NONTECHNICAL GUIDE 16 (2012).

The international oil and gas industry has been among the leading sectors in manifesting, supporting and advocating CSR especially in the least-developed and developing countries. This is due to not only the highly obvious negative impacts of petroleum operations by TNCs such as oil spills, but also the resulting protests and objections by local communities and indigenous people. Thus, TNCs in this sector have been at the center of CSR issues as well as the above-mentioned protests and negative environmental and social impacts.¹¹ For example, in the Niger Delta, TNCs including ExxonMobil, Shell, Eni and BP have neglected human and social rights such as the welfare of indigenous people by providing the corrupt army and the government of Nigeria with the costs of weapons to confront and suppress people and insurgent groups.¹²

These companies were accused of violating environmental regulations, too.¹³ Amnesty International declared that between 1960 and 2000, two major TNCs, Shell and Eni, created 204 and 349 times oil pollution cases in Nigeria, respectively, without liability and compensation for the damages.¹⁴ Even worse, Nigerian people faced underdevelopment and lack of social welfare, civil war and poverty. In this process, the people in Nigeria were by no means benefiting from the financial revenues generated from the development of the oil and gas fields. According to the petroleum contracts, Shell paid the Nigerian government taxes and royalties, but most of that money went to the corrupt Nigerian officials, or spent in armed conflicts with insurgent groups. Many Nigerians accused these companies, particularly Shell, of having a corrupt relationship with the government resulting in the plunder and exploitation of oil and gas resources and lack of social welfare.¹⁵

Afterwards, Shell faced widespread public protests especially from an insurgent group called, "Movement for the Survival of Ogoni People." Ken Saro Wirva the leader of the Movement was arrested by the government and sentenced to death. Then, indigenous peoples, NGOs, and human rights organizations protested against the government's action, some of which, including the US citizens, considered Shell as

¹¹ G. Frynas, *Corporate social responsibility in the oil and gas sector*, 2 J. WORLD ENERGY L. & BUS. 178-95 (2009); N. Koolwal & S. Khandelwal, *Corporate Social Responsibility (CSR) Implementation in Oil & Gas Industry: Challenges and Solutions*, PROC. OF INTERNATIONAL CONFERENCE ON SUSTAINABLE COMPUTING IN SCIENCE, TECHNOLOGY AND MANAGEMENT (SUSCOM), AMITY UNIVERSITY RAJASTHAN, JAIPUR - INDIA 4 (2019).

¹² C. Williams, *Civil Society Initiatives and "Soft Law" in the Oil and Gas Industry*, 36 N.Y.U. J. INT'L L. & POL. 457-502 (2004). See also D. Spence, *Corporate Social Responsibility in the Oil and Gas Industry: The Importance of Reputational Risk*, 86 CHI.-KENT L. REV. 59-85 (2011).

¹³ O. Osobajo et al., *Fostering Sustainable Development: A Corporate Social Responsibility Approach*, 9 J. MGMT. & SUSTAINABILITY 62-72 (2019).

¹⁴ Frynas, *supra* note 11, at 181.

¹⁵ T. Samuel, *Potential and Limits of Corporate Social Responsibility in the Niger Delta*, 19 NIGERIAN L. J. 385-408 (2016).

an accessory and accomplice of this crime and the poverty and underdevelopment of the society alongside the Nigerian government. Because of weakness and corruption in the Nigerian judiciary system, they filed criminal lawsuits in the US courts demanding a conviction for Shell.¹⁶ If Shell were to be convicted, its global reputation and credibility would be damaged; therefore, Shell decided to reconcile and settle with the plaintiffs outside the court. Shell finally paid the plaintiffs USD 15.5 million in 2009 because the company saw its reputation and even its shares in the energy markets at risk. If, in this situation, a conviction was also issued against Shell, it would be forced to leave Nigeria after the decades of activities and investments. Moreover, the neighboring countries might not welcome it for this case and its background.¹⁷

China's National Oil Company (CNPC) was another case which also faced with insurrection and concern from local communities at Alahdab and Halfaya oilfields in Iraq in 2010. The local community was concerned about the lack of prosperity, welfare and employment of the local people in the oil projects, as well as the environmental pollution. Local people attacked the site and operating area of the CNPC, beat Chinese workers, and confiscated their money and other properties.¹⁸

Furthermore, Australia's Woodside Petroleum Company on January 27, 2022 announced it was unable to work in Myanmar following the military coup nearly one year ago and the regime's continuing human and social rights abuses and violence against civilians. Woodside Petroleum Co. was pressed by human rights groups who called on petroleum companies to stop business in Myanmar and cut off the flow of money to the illegal military regime called Junta. Yadanar Maung, a spokesperson for "Justice for Myanmar," welcomed the withdrawals as "a major step in cutting off funds to the Junta. It is essential that the companies exit responsibly, mitigating negative social impacts..."¹⁹

It can be thus deduced from the above examples that in the international oil and gas industry, the basic dimensions of social responsibility (i.e., environmental and social) have been more targeted by assault and aggression. These assault and aggression are mostly due to the lack or weak implementation of laws and regulations relating to

¹⁶ A. Shavers, *Human Trafficking, the Rule of Law and Corporate Social Responsibility*, 9 S.C.J. INT'L L. & BUS. 39-89 (2012).

¹⁷ Spence, *supra* note 12, at 73.

¹⁸ K. Al-saleem, *The Legal Framework for the Sustainable Development of Iraqi Oil and Gas: A Study in Particular Reference to the Kurdistan Region, and with Special Emphasis on the New Delhi Declaration* (Jan. 2015), 15 (unpublished DPhil thesis, University of Portsmouth).

¹⁹ B. Butler & B. Doherty, *Woodside Petroleum to pull out of Myanmar one year on from military coup*, GUARDIAN, Jan. 27, 2022, <https://www.theguardian.com/world/2022/jan/27/woodside-petroleum-to-pull-out-of-myanmar-one-year-on-from-military-coup>.

dimensions of CSR in the least-developed and developing countries.²⁰

Against this backdrop, this research will address whether transnational companies in oil and gas industry are legally required to comply with CSR-a voluntary, ethical and normative approach and conception - in accordance with international and domestic laws including international investment treaties and petroleum contracts. To answer this question, the author will examine mainly international and domestic laws, international investment treaties as well as petroleum contracts. Finally, some non-binding and moral reasons to perform CSR are analyzed.

2. CSR for TNCs under International Law

As the international community has been transforming in diverse aspects, there are controversies whether TNCs, one of the most influential actors in international petroleum industry, can be a subject of international law.²¹ As of today, TNCs are not an official subject of international law, so that they are reluctant to comply with current international laws related to CSR such as international environmental and human rights conventions.²² Moreover, TNCs used to regard the government as their shield to defend their profits regardless of international and domestic laws for responsibility.²³ In this context, TNCs bears no social responsibility directly under international law. Even if accepting commitment thereupon, TNCs will just unilaterally and voluntarily adhere to CSR for the trust of the people in the host countries in order not to be highly criticized by the world's public opinion.²⁴

Although TNCs have no obligation with respect to CSR under public international law, it should be noted that the issue of CSR has been today recognized in international investment law and in some bilateral and multilateral investment treaties.²⁵ For example, some governments such as the Netherlands, the United States,

²⁰ A. Olufemi, *Corporate Social Responsibility, Social Contract, Corporate Personhood and Human Rights Law: Understanding the Emerging Responsibilities of Modern Corporations*, 33 *AUSTL. J. LEGAL PHILOSOPHY*, 100-33 (2008).

²¹ J. Woods, *A Human Rights Framework for Corporate Accountability*, 17 *ILSA J. INT'L & COMP. L.* 321-34 (2011).

²² N. Frost, *Transnational Corporations as Agents of Legal Change: The Role of Corporate Social Responsibility*, 5 *CAMBRIDGE J. INT'L & COMP. L.* 502-28 (2016).

²³ M. Pentikäinen, *Changing International 'Subjectivity' and Rights and Obligations under International Law-Status of Corporations*, 8 *UTRECHT L. REV.* 145-54 (2012).

²⁴ E. Wokoro, *Beyond Petroleum Production to Community Development: International Oil Companies as Proxy Governments*, 5 *TEX. J. OIL, GAS, & ENERGY L.* 324-51 (2010).

²⁵ L. Thomas, *Using Bilateral Investment Treaties to Promote Corporate Social Responsibility and Stimulate Sustainable Development*, 15 *RUTGERS BUS. L. REV.* 1-25 (2019).

Canada, Norway and Brazil have included CSR in their investment treaties. Also, the European Union has incorporated the issue of CSR in its Association Agreements and Free Trade Agreements.²⁶

It is worth noting that, the governments, not investors (TNCs), are the addressees of the CSR obligations outlined in most of international investment treaties. Therefore, this commitment does not exist directly for the investors and TNCs. Furthermore, government's commitment is to encourage their investors to promote CSR and incorporate it into their policies and practices under certain international standards, including the OECD Guidelines, the UN Global Compact, and the ILO Tripartite Declaration.²⁷ For example, Article 16 (Corporate Social Responsibility) of the 2013 Benin-Canada BIT provides:

Each Contracting Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of corporate social responsibility in their practices and internal policies... such as labour, the environment, human rights, community relations and anti-corruption.²⁸

Recently, investors have been the direct addressees of the CSR provisions in some international investment treaties. For instance, in the 2016 Morocco-Nigeria BIT, 2016 Argentina Qatar BIT, 2015 Brazil-Angola Agreement on Cooperation and Facilitation of Investment (ACFI), the 2015 Brazil-Mozambique ACFI, the 2015 Brazil-Malawi ACFI and the 2015 Brazil-Mexico ACFI, the CSR provisions require investors to strive or take the best effort to achieve the highest possible level of contribution to the sustainable development of the host state and the local community.²⁹ Unfortunately the CSR provisions in the above-mentioned treaties have a soft character by using the terms 'encourage' and 'voluntarily' without an effective enforcement mechanism.

³⁰ As a result, TNCs have no obligation with respect to CSR under international investment treaties, but recognizing the CSR in these documents will be a turning

²⁶ *Id.* at 3-6.

²⁷ Y. Levashova, *The Accountability and Corporate Social Responsibility of Multinational Corporations for Transgressions in Host States through International Investment Law*, 14 UTRECHT L. REV. 40-55 (2018). See also *supra* note 25, at 3-12.

²⁸ Agreement between the Government of Canada and the Government of the Republic of Benin for the Promotion and Reciprocal Protection of Investments, (Jan. 9, 2013), CAN TS 2014 No 13, art 16 (entered into force on May 12, 2014), <http://investmentpolicyhub.unctad.org/Download/TreatyFile/438>.

²⁹ Z. Ying, *Corporate Social Responsibility and International Investment Law: Tension and Reconciliation*, 1 NORDIC J. COM. L. 91-119 (2017). See also *supra* note 27, at 45.

³⁰ A. Peters, *Checking in: How Soft Law and Corporate Social Responsibility Are Filling Governance Gaps to Combat Human Trafficking in the Global Travel and Tourism Industry*, 49 GEO. J. INT'L L. 1487-513 (2018).

point for the evolution and development of CSR in the future international legal system.³¹

3. CSR for TNCs under Domestic Laws: States and IO Practice

Many developed countries and international organizations such as the European Union would have progressive and advanced petroleum laws and regulations in which the concept of CSR has been clearly stipulated. These countries have regulated and codified the relationship between TNCs and the external stakeholders and beneficiaries of the company, including the public. As per these laws and regulations, the companies are liable for certain components of social responsibility, including environmental, human and social rights.³² For example, in the case of the oil spill in the Gulf of Mexico and the environmental damage caused by BP, Transocean and Halliburton,³³ the disputes and lawsuits were quickly resolved and compensated under the US legal system. That is mainly because numerous environmental laws and regulations including CSR were codified by the US government such as the Clean Air Act, the Clean Water Act of 1977 and the Hazardous Substances Act of 1973. These laws require oil companies, both the US and non-US, to comply with contemporary environmental standards beyond those set by the investor in the contract. These acts hold the companies liable to pay compensation in case of any damages to the environment. Based on these Acts and in line with CSR, a Settlement Agreement was finally reached by the court decree, according to which BP compensated the disputed damages.³⁴

Section 116 of the Nigerian Minerals and Mines Act 2007 obligates contracting

³¹ N. Wall, *Investment Arbitration and Corporate Social Responsibility in the Trans-Pacific Partnership*, 16 *ASPER REV. INT'L BUS. & TRADE L.* 315-47 (2016).

³² M. Rahim, *Raising Corporate Social Responsibility: The Legitimacy Approach*, 9 *MACQUARIE J. BUS. L.* 66-81 (2012). See also J. Yin, *Corporate Social Responsibility in Contemporary China*, 2 *BUS. & HUM. RTS. J.* 181-4 (2017); C. Ene, *Brief Analysis of the International Legal Framework of Corporate Social Responsibility*, 8 *JURIDICAL TRIBUNE* 690-6 (2018).

³³ *United States v. BP Exploration & Production Inc., et al.*, Case No. 10-4536 in MDL 2179 (E.D. La. Dec. 15, 2010); *State of Louisiana v. BP Exploration & Production, Inc.*, Case Nos. 11-cv-0516 and 10-cv-03059 in MDL 2179 (Apr. 19, 2011); *State of Texas v. BP Exploration & Production Inc., et al.*, Case No. 1:13-cv-315 (E.D. Tex. Apr. 18, 2013); *State of Mississippi v. BP Exploration & Production, Inc., et al.*, Case No. 1:13-cv-00158 (S.D. Miss. Apr. 20, 2013); *State of Florida v. BP Exploration & Production, Inc., et al.*, Case No. 5:13-cv-00123 (N.D. Fla. Aug. 15, 2013).

³⁴ Consent Decree Among Defendant BP Exploration & Production Inc. (BXP), The United States of America, and The States of Florida, Louisiana, Mississippi, and Texas, Case 2:10-md-02179-CJB-SS Document 15436-1 Filed 10/05/2015.

a binding Community Development Agreement (CDA) between the mineral (oil and gas) title holder and the host communities where the companies are to operate, in order to provide social facilities to aid the economic, environmental and human rights development of the related communities.³⁵ These social and economic benefits and facilities include educational scholarship, apprenticeship, technical training and employment opportunities for indigenous people; financial or other forms of contributory support for infrastructural development and maintenance such as education, health, or other community services, roads, water and power; assistance with the creation, development and support to small-scale and micro enterprise; and agricultural product marketing.³⁶

Furthermore, Article 172, paragraph 1 of the British Companies Act of 2006,³⁷ Article 7, paragraph 2 and Article 72, paragraph 4 of the South African Companies Act of 2008³⁸ have further obliged the companies and members of the board of directors to be responsible for their actions that have social, environmental, ethical or human rights impacts. Likewise, Article 116 of the Law on the Reporting and News of the Performance of Economic Activities of France (Nouvelles Régulations Économiques) requires companies to report on the effects of their activities on the environment, social relations, as well as the local community in which they operate.³⁹ These countries have required oil and gas companies to comply with and be committed to their social responsibility.⁴⁰

The same attitude has been followed by legislative bodies of Asian countries. For instance, Article 74 (1) of the Limited Liability Companies Act 2007 of Indonesia and Article 40 (1) and (6) of Indonesia Law No. 22 of 2001 on Oil and Natural Gas have incorporated the concept of CSR. They stipulate that companies operating in the field of natural resources (including oil and gas) are required to comply with and implement social responsibility.⁴¹ Article 5 of Company Law of the People's Republic of China (2005 No. 42) stipulates “when engaging in business activities, a company shall abide by laws and administrative regulations, observe social morality and

³⁵ A. Adedoyin, *The Effects of Legislation on Corporate Social Responsibility in the Minerals and Mines Sector of Nigeria*, 7 J. SUSTAINABLE DEV. L. & POL'Y 97-115 (2016).

³⁶ The Nigerian Minerals and Mines Act, 2007, §116 (3) (a) (b) (c) & (d).

³⁷ British Companies Act 2006 (ch. 46) § 172 (1).

³⁸ South African Companies Act 2008 (Act No. 71 of 2008) §§ 7 (2) & 72 (4).

³⁹ LOI No. 2001-420 du 15 mai 2001 relative aux nouvelles régulations économiques NOR: ECOX0000021L, <https://www.legifrance.gouv.fr/eli/loi/2001/5/15/2001-420/jo/texte>; JORF No. 113 du 16 mai 2001 Texte No. 2.

⁴⁰ I. Bantekas, *Corporate Social Responsibility in International Law*, 22 B.U. INT'L L. J. 309-48 (2004).

⁴¹ *Supra* note 9, at 46. See also Y. Bakti et al., *Regulation on Corporate Social and Environmental Responsibility (CSER) in Indonesia: Changing Concept of Corporate Social Responsibility (CSR) from Voluntary to Mandatory*, 81 J. L., POL'Y & GLOBALIZATION 75-81 (2019).

business ethics, act in good faith, accept supervision by the government and the public, and bear social responsibilities.”⁴² In Mauritius, the government has enforced that companies registered in the country are mandated to pay 2 percent of their annual book profit to aid the social and environmental development under corporate social responsibility.⁴³ Also, Section 135 of the Companies Act 2013 of India provides that companies with a net asset value of USD 100 million or more, or an average income and net profit of USD 1 million over three years, shall be required to allocate and spend 2 percent of such income for social responsibility schemes.⁴⁴ These schemes include poverty alleviation, education, health, environmental sustainability, gender equality and the development of occupational and professional skills.⁴⁵ Similarly, Note 1 of Article 80 of the National Iranian Oil Company (NIOC) Statute 2016 provides: “NIOC is obliged, in the geographical areas of its activity, to take appropriate action to carry out its social responsibilities in the form of sustainable development and environmental protection, directly or through its contractors within the framework of its annual budget.”⁴⁶

Meanwhile, Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 (CSR Directive) requires the listed companies with more than 500 employees across the EU to publish an annual report containing information to environmental matters, social and employee-related matters, and respect for human rights, anti-corruption and bribery matters.⁴⁷ Pursuant to CSR Directive, the EU member States were required to enact laws and regulations regarding such CSR.⁴⁸

⁴² Y. Min, *Corporate Social Responsibility versus Shareholder Value Maximization: Through the Lens of Hard and Soft Law*, 40 *Nw. J. INT’L L. & BUS.* 47-86 (2019).

⁴³ A. Perry, *A Legal Review of Corporate Social Responsibility*, 83 *J.L., POL’Y & GLOBALIZATION* 1-5 (2019).

⁴⁴ K. Sharma, *Corporate Social Responsibility (CSR): An Overview of the Indian Perspective*, 3 *INDIAN J. L. & PUB. POL’Y* 1-17 (2016). See also *The Companies Act [of India] 2013*, <http://www.mca.gov.in/Ministry/pdf/CompanicsAct2013.pdf>.

⁴⁵ A. Thrasyvoulou, *Corporate Social Responsibility: Here to Stay*, 4 *J. LEGAL ISSUES* 69-74 (2016).

⁴⁶ *The National Iranian Oil Company (NIOC) Statute Act [of Iran] 2016*, <https://rc.majlis.ir/fa/law/show/967531>.

⁴⁷ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups Text with EEA relevance. OJ L 330, (CSR Directive). Recital 6, art. 19 (a), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>.

⁴⁸ W. Constance, *Evolving Norms of Corporate Social Responsibility: Lessons Learned from the European Union Directive on Non-Financial Reporting Transactions*, 19 *TENN. J. BUS. L.* 619-708 (2018).

4. CSR for TNCs under Petroleum Contracts

The principle of the “freedom of contract” at the performance stage of specially petroleum contract has numerous legal effects, the most important of which is the binding and mandatory principle. Respect for the parties’ willingness to enter into a contract requires to be respected and binding unless the contract is legally cancelled or terminated. So, within a contractual framework, the parties of the petroleum contracts may be bound by CSR. According to the principle of freedom of contracts, the parties are considered to be autonomous in concluding the petroleum contract which shall be valid and effective unless contrary to the law and public order.⁴⁹ Currently, in some international petroleum contracts, CSR has become an important issue with a binding effect. Given the contemporary international practice of contracts, TNCs can be obliged to undertake and implement social responsibility voluntarily and unilaterally.⁵⁰ For instance, according to Article 80 of the Statute of the National Iranian Oil Company Act, NIOC may satisfy this obligation through its contractors in the petroleum contracts.

5. Non-binding and Moral Reasons for Performing CSR

Today, there are various non-binding and moral reasons why TNCs engage in social responsibility in their activities voluntarily and freely, some of which will be examined below.

A. Soft Law Development and Conversion into Customary Rule

Recently, there are soft and flexible laws that directly address TNCs, including the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights, Rio Declaration on Environment and Development, Codes and Standards of Conduct of TNCs Norms on the Responsibilities of Transnational

⁴⁹ N. KATOUZIAN, GENERAL RULES AND PRINCIPLES OF CONTRACTS [اهداد رارق یچومع دواعوق] 153 (23th ed. 2013). <available only in Persian>

⁵⁰ R. Olowonirejuaro, *Implementation of “Beyond Compliance” Tools and CSR Efforts by Oil Multinationals in Brazil: Is There a Link?*, 1 U. DUNDEE CEPMLP ANNUAL REV. 1-13 (2013).

Corporations and Other Business Enterprises with regard to Human Rights,⁵¹ the ILO Tripartite Declaration,⁵² the ISO 14001 and ISO 26000-Social Responsibility, etc.⁵³ First, Principles 5 and 27 of the Rio Declaration 1992 stipulate that the obligations related to sustainable development should be observed and implemented by all governments and all peoples. Second, the preface of the Universal Declaration of Human Rights 1948 includes the phrase: “We the People of the United Nations ...” It is inferred from the word “the people” that TNCs which have been constituted of the individuals, can thus be bound by these rules and regulations.⁵⁴ Third, Article 20 of the UN Millennium Declaration 2000 explicitly refers to the role of TNCs in the development of poor and underdeveloped countries. Subsequently, in 2002, Article 27 of the Johannesburg Declaration adopted at the World Summit on Sustainable Development explicitly stipulates that the private sector (including TNCs) has the obligation and responsibility to contribute to the development and evolution of different communities. Article 29 of the same Declaration also provides that there is a need for the private sector and commercial companies to execute their corporate responsibility, which should be within a transparent and stable legal framework and sphere.⁵⁵ Fourth, in 2000, the UN Global Compact—a codification program - sought to match and harmonize global efforts in the realm of CSR.⁵⁶ The Global Compact is considered to be the world’s largest corporate responsibility initiative, with 3000 corporate participants and other stakeholders involved.⁵⁷ The UN Global Compact and the UN Guidelines on Trade and Human Rights call on companies worldwide to participate in the protection of human rights standards, labor standards, environmental activities and the fight against corruption. Both demand that companies adhering to these principles within the framework of their activities respect and support CSR, and compensate if they are violated.⁵⁸

Despite the positive functions of controlling the present business activities of

⁵¹ 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, pmbL., at 3 (Aug. 12, 2003), <http://www1.umn.edu/humanrts/links/norms-Aug2003.html>.

⁵² ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (Mar. 2017), https://www.ilo.org/wcmsp5/groups/public/multi/documents/publication/wcms_094386.pdf.

⁵³ L. Garipova, *Corporate Social Responsibility in the Arctic*, 104 GEO. L. J. 973-92 (2012).

⁵⁴ B. Nwete, *Corporate Social Responsibility and Transparency in the Development of Energy and Mining Projects in Emerging Markets; Is Soft Law the Answer?*, 8 GERMAN L. J. 311-39 (2007).

⁵⁵ *Id.* at 319.

⁵⁶ UN Global Compact, <https://www.unglobalcompact.org/what-is-gc/mission/principles>.

⁵⁷ Ene, *supra* note 32, at 690-8 (2018).

⁵⁸ R. Evita, *Human Rights and the Social Licence to Operate*, in OIL AND GAS CONTRACTS: PRINCIPLES AND PRACTICES 395-415 (P. Roberts ed., 2016).

TNCs, these documents are neither legally binding and nor guaranteeing performance, but just voluntary towards TNCs as soft-law⁵⁹ Therefore, although TNCs are not an active subject of international law, there might be emerging customary practices in international oil and gas industry which expect TNCs to be important international actors (without creating and imposing binding obligations on them).⁶⁰ To use their power to obtain the goal of international law, this expectation has been well reflected and manifested in soft law documents and mechanisms such as the 2008 report by John Ruggie, the UN Special Representative on Trade and Human Rights.⁶¹ These soft law-oriented principles mentioned in such various legal instruments have remained as a normative character regarding TNCs. It will take time for this normative character to have positive legal binding force as a rule of law. If realizing the material elements of such custom by continuing and repeating the practices and *opinio juris*, these principles could be customary rules of international law in the foreseeable future.⁶²

In practice, international financial institutions so far are very sensitive to social responsibility. For instance, the World Bank evaluates these dimensions before processing loans.⁶³ If these dimensions are proved to be justified, it will grant the loan. Therefore, observing these dimensions is a prerequisite for obtaining loans from the World Bank and other similar international financial institutions.⁶⁴ Statistics of the World Bank show that companies' commitment to today's social responsibility is becoming more influential than before in achieving and realizing the goals of international development such as eradicating poverty and hunger, increasing and enhancing public health, establishing schools, hospitals, constructing roads and pipelines for sewage, etc.⁶⁵

⁵⁹ J. Bone, *Legal Perspectives on Corporate Responsibility: Contractarian or Communitarian Thought?*, 24 CAN. J. L. & JURISPRUDENCE 277-287 (2011).

⁶⁰ *Supra* note 54, at 315.

⁶¹ J. Ruggie, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises: Protect, Respect, and Remedy: A Framework for Business and Human Rights' Human Rights Council. See U.N. Doc. A/HRC/8/5 (June 18, 2008), <https://www.asil.org/insights/volume/12/issue/12/2008-ruggie-report-framework-business-and-human-rights>.

⁶² K. Gehne & R. Brillo, *Stabilization Clauses in International Investment Law: Beyond Balancing and Fair and Equitable Treatment*, National Centre of Competence (Research on Trade Regulation Working Paper, Feb. 29, 2014), <http://telc.jura.uni-halle.de/sites/default/files/BeitraegeTWR/Hef9%20143.pdf>.

⁶³ The World Bank, Introduction to Environmental and Social Assessment Requirements and Procedures for World Bank-Financed Projects (Jan. 1997), <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/479901468174250106/introduction-to-environmental-and-social-assessment-requirements-and-procedures-for-world-bank-financed-projects>; World Bank Institute Corporate Governance and Corporate Social Responsibility Program, <http://www.csrwbi.org>. See also B. Scholtens, *Finance as a Driver of Corporate Social Responsibility*, 68 J. BUS. ETHICS. 19-33 (2006).

⁶⁴ L. MOEREL, BINDING CORPORATE RULES: CORPORATE SELF-REGULATION OF GLOBAL DATA TRANSFERS 277 (2012).

⁶⁵ *Id.* at 187. See also Frynas, *supra* note 11, at 187.

B. International Reputation and Credibility and Financial Profitability

In the past decades, the international reputation and credibility of TNCs have been severely damaged and undermined in the public opinion of the world as a result of ignoring the social responsibility and creating environmental, sanitary and human rights hazards to indigenous workers and people in their operating areas. In addition to maximizing profit, therefore, managing such risks is a top priority of TNCs and their business. In this regard, nowadays, TNCs have unilaterally and voluntarily committed themselves to CSR in the host country for their reputation and credibility. CSR taking policy will enable them to attract and gain the people's trust in the operating areas.⁶⁶ By creating trust among local people, legal risks and costs arising out of the potential lawsuit for environmental or other human rights issues will be decreasing which would eventually save money for the company.⁶⁷ As a consequence, this process will make financial contribution to the company.⁶⁸

Some may argue that CSR has recently gone too far from its voluntary nature. Many TNCs mandatorily adopt and implement CSR as one of their corporate strategies and policies because enforcing social responsibility is believed to improve their reputation and increase their profits.⁶⁹ Higher reputation and credibility of such companies in the public opinion will lead the host countries to favor them with more confidence and reliance. In this case, the host countries can conclude more contracts with the TNCs. Finally, this strategy will bring a positive impact on their shares.⁷⁰ Furthermore, the CSR mechanism has a favorable influence on the cost-effectiveness of the company because it is considered the best commercial promotion for them in the local communities and indigenous people of the host country. If CSR is well implemented, these companies can reduce the cost for advertisement and diminish the financial risk.⁷¹ All in all, social responsibility is an efficient tool for TNCs to enhance its credibility and business reputation in the global market contributing significantly to realizing and achieving sustainable development.⁷²

⁶⁶ J. Macey, *Corporate Social Responsibility: A Law & Economics Perspective*, 17 CHAPMAN L. REV. 331-54 (2014).

⁶⁷ L. Emilsson et al., *CSR and the quest for profitability using Economic Value Added to trace profitability*, 2 INT'L J. ECON. & MGMT. SCI. 43-54 (2012). See also S.Kiran et al., *Corporate Social Responsibility and Firm Profit Ability: A Case of Oil and Gas Sector of Pakistan City*, 5 PAK. U. RES. J. 110-9 (2015).

⁶⁸ Emilsson et al., *id.* at 44.

⁶⁹ V. Mensah, *The Role of Corporate Social Responsibility on Sustainable Development: A Case Study of the mining community in the Obuasi municipality 29* (unpublished M.A. thesis, University of Agder, June 2009).

⁷⁰ G. Frynas, *The false development promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies*, 81 INT'L AFF. 581-98 (2005).

⁷¹ *Supra* note 1, at 43.

⁷² P. Susiloadi, *Implementation of Corporate Social Responsibility to Support Sustainability*, 4 DEV. SPIRIT PUBLIC 123-8

6. Conclusion

TNCs have faced many challenges in their activities in the oil-rich countries of the world. Both procedures and statistics show that their operations in the host country, despite the huge financial revenues it brings, had a lot of risks and hazards that restrict the social and environmental rights as well as welfare of the indigenous people of the contract area. So, it was argued that as the society permit these companies to use natural resources and provide them with a favorable and suitable environment for obtaining profits, they have to provide social services for the people of the contract area voluntarily and freely in order to gain community satisfaction and trust. This is the social, economic and legal ground for CSR.

Still, the global responsibility has been assumed only by sovereign states and international organizations under international law. Although the legal status of TNCs has so far been a subject of controversy, these companies have never been placed on the side of duties and obligations. As a result, TNCs are not currently direct parties of international treaties in the context of CSR. In domestic laws, regulations and contract of petroleum, however, CSR may bind TNCs. Today, domestic laws of Iran, England, France and India and etc. have obliged their companies to observe and perform CSR for the people of the contract area. Also, based on the principle of necessity and freedom of contracts, TNCs may be required and obliged under the petroleum contracts in oil and gas industry to observe and perform social responsibility.

Today, for various non-binding and moral grounds, TNCs are mandated to implement CSR through such activities as the development and expansion of soft laws to customary rule with global reputation and credit in the local communities where they are operating. In this article, the author has found that TNCs are voluntarily enforcing CSR in oil and gas industry for moral reasons. Nonetheless, it would be feasible to require TNCs to undertake CSR in various dimensions therewith in the future. For example, the United Nations International Law Commission (ILC) has come up with challenging international oil and gas industry issues. An obvious example of the ILC's activity in this field is to draft a plan for transboundary aquifers (including oil and gas).⁷³ The Commission tried to fill the legal gap in this regard by codifying this plan and took an important step to resolve international disputes over

(2008). *See also supra* note 70, at 36.

⁷³ ILC, Draft Articles on the Law of Transboundary Aquifers (Shared Natural Resources) (May 7, 2008), https://legal.un.org/ilc/texts/instruments/english/draft_articles/8_5_2008.pdf; https://legal.un.org/ilc/documentation/english/a_cn4_595.pdf.

the issue of shared natural resources (oil and gas). Thus, it is hoped that in the not-too-distant future, the ILC will consider other issues, in particular, CSR in oil and gas industry.

Hopefully, by including and incorporating social responsibility in international and domestic legal systems, self-regulatory instruments of TNCs as well as petroleum contracts, some of which mentioned in this study, CSR can be gradually changed from an incentive, voluntary and non-binding status into a binding and mandatory principle or customary rule in the future. This will lead TNCs to create a reasonable balance and harmony between commercial interests and the social, environmental and human rights needs of the local communities in which they operate.

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