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Global Legal Ethics and Corporate Social Responsibility: Where’s the Beef?

Heidi Frotestad Kuehl†

ABSTRACT: This Article identifies the newer global soft law norms in international business transactions and unique synergies between cultural competency and corporate social responsibility (“CSR”) for corporate lawyers. With the advent of widespread and varied corporate human rights abuses in various contexts, the international community has struggled with appropriate responses to deter harmful corporate action. The United States and its corporate actors are subject to hard U.S. laws, such as those federal and state laws attempting to prevent international human trafficking, environmental harm, use of underage workers, and foreign corrupt practices. This Article provides an overview of the global epidemic of bad corporate actions in international business contracts and subsequent supply chains, and reviews the currently applicable conventions, domestic U.S. laws, and soft law norms which exist to deter illegal activities by multinational enterprises (“MNEs”). To better discourage U.S. and global legal actions in the future, international lawyers should advise MNEs to adopt more stringent CSR policies, anticipate possible harms or bad actors in the supply chain through cultural competence to promote more globally ethical behavior, and identify areas in the contract negotiation process that would favorably protect MNEs through inclusion of applicable soft law norms and hard U.S. law deterrents. This approach will incorporate the current U.N. and OECD Conventions and pave the way for furthering more widespread adoption of global ethics to deter illegal activities and ideally combat the very unfortunate tensions for corporate counsel between profit and harm to individuals, or will hopefully protect disadvantaged groups in countries throughout the world. Overall, the Article will provide a succinct and globally ethical approach

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for professors who are training corporate lawyers to convey the existing international and domestic legal norms and provide a checklist of items for corporate counsel to include in their international business contracts. This will ensure that the attorneys have discussed the vital issues of CSR, international human rights, and cultural norms at the outset of the discussion with clients and that they have researched plausible areas of liability. The three-step approach should better prepare our law students to practice in a global corporate practice.

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I. Corporate Social Responsibility (“CSR”) Norms: A Background

“The disparities between the world’s richest and poorest nations are wider than ever . . . . [T]he international community can’t continue with ‘business as usual!’”\(^1\)

CSR norms have evolved over time and with greater velocity in recent years. Imagine a multinational enterprise (“MNE”) that sells chocolate for over one hundred years, conducting business throughout multiple jurisdictions that each have different legal systems and, consequently, different labor laws and regulations.\(^2\) As the knowledge of international law grows in international business and the media increasingly sheds light on corporate abuse in the United States, consumers and their attorneys become more savvy about ethical sourcing of chocolate or other goods, and more aware of corporate abuses.\(^3\) Not surprisingly, consumers in the

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\(^3\) See PAUL O. HIROSE, PERKINS COIE LLP, CORPORATE SOCIAL RESPONSIBILITY IN
United States and abroad demand to know how corporations produce the chocolate to determine responsible sourcing and whether the MNEs are involved in any illegal activities within the various manufacturing jurisdictions. Some consumers have filed lawsuits under emerging State laws that require transparency in the supply chain. In addition, international efforts have been made in certain jurisdictions to prevent supply chain corruption and cultivate more transparency. Numerous human rights issues may arise during the procurement of a corporate factory in a third-world country, such as routinely overworking women and children, regularly subjecting these underprivileged individuals to poor work conditions and a factory in disrepair. Then, one day the factory
collapses, hundreds of workers are killed, and hundreds more injured in return for cheap labor and yield for the multinational corporation. These are just a couple of examples of recent bad corporate acts that have attracted media attention and a heightened public consciousness of CSR.

Opportunities are vast for integrating CSR training and cultural competency skills into law schools today. Modern corporate lawyers need to have knowledge of possible international corruption and other abuses in foreign jurisdictions and inculcate globally ethical conduct with the MNEs that they represent to prevent bad conduct and harm overseas.

Cultural competency training and conscious infusion of CSR doctrine in law schools may be the best countermeasure to preventing widespread corporate abuses in the future via more knowledgeable international corporate counsel.

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8 Barrett et al., supra note 7, at 5; see also Press Release, Amnesty Int’l UK, FOI Request Reveals UK Backed Shell and Rio Tinto in Human Rights Court Cases After Corporate Lobbying (Apr. 7, 2014, 1:10 PM) (“The UK government backed the oil giant Shell and mining multinational Rio Tinto in major human rights cases in the US Supreme Court after being lobbied for support[.]”).


With the advent of widespread and varied corporate human rights abuses in various contexts, the international community has struggled with appropriate responses to deter harmful corporate action. The United States and its corporate actors are subject to hard U.S. laws, such as federal and state laws that attempt to prevent international human trafficking, environmental harm, use of underage workers, and foreign corrupt practices. However, those laws often do not have adequate traction and enforcement overseas with U.S. subsidiaries or when providing responses to plaintiffs who are harmed in an extraterritorial context by MNEs. Further, corporations today must be cognizant of the potential nefarious conduct by commercial entities overseas and anticipate the possible


multijurisdictional criminal activity. These prevalent and tangible abuses in international business transactions may include human trafficking and criminal activity, environmental abuses and damages, use of underage workers, inherently dangerous employment conditions, and fraud or corrupt practices. This Article will first provide an overview of the global epidemic of bad corporate actions in international business contracts and subsequent supply chains and review the currently applicable conventions, domestic U.S. laws, and soft law norms which exist to deter illegal activities by MNEs. The evidence of widespread corporate harm and examples of abuse by MNEs demonstrate a need to further educate corporate counsel while harnessing the complementary tools of CSR norms in contract negotiation and arming attorneys with proficiency regarding foreign cultural norms and cultural competency.

To better discourage U.S. and global legal actions in the future, international lawyers should advise MNEs to adopt more stringent CSR policies that align with international and national hard and soft law norms, anticipate possible harms or bad actors in the supply chain through cultural competence to promote more globally ethical behavior, and identify areas in the contract negotiation process that would protect MNEs through inclusion of

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18 Id. at 41.
soft law norms and hard U.S. law deterrents. This article will finally provide a methodology for infusing CSR themes and cultural competency training into law school curricula to better prepare international corporate lawyers for ethical practice and, more broadly, to hopefully prevent the furtherance of widespread international corporate abuses in the future.

II. Case Studies for CSR and Challenges

A. Substantial Harm by Corporations in Many Historic Cases

Corporations have long been expanding overseas and encountering difficulties with expansion through subsidiaries and negotiation of work overseas with varying national legal norms and cultural differences. This section will discuss five historic cases including U.S. involvement and attempted legal recovery and then will illuminate the corollary issues of poverty, slavery, and possibilities of bad conduct while multinational corporations are investing in many developing nations. These examples will reveal the challenges for plaintiffs when attempting to recover for egregious extraterritorial harms against corporations in U.S. courts. Sometimes, international dispute resolution and hefty


20 See, e.g., id.


settlements against corporate actors were the only way to resolve claims. These seminal cases still provide guidance for corporate lawyers today.

1. Bhopal Incident in India (1984)

The Bhopal environmental disaster is still considered one of the worst international environmental accidents and industrial disasters of our time. On December 3, 1984, thousands were killed and hundreds of thousands were harmed by the release of deadly gases and chemicals from a gas leak at Union Carbide India Ltd. plant in Bhopal, India. The remnants of the disaster and toxins locally lingered near Bhopal for over twenty-five years, and it is still considered one of the world’s worst industrial accidents. This case was impossible to resolve in U.S. courts even though it involved a U.S. corporation (Union Carbide Corporation) with over fifty percent ownership in Union Carbide India Ltd., which operated the factory, and was ultimately determined to be a corporate actor through its subsidiary. The Union Carbide Corporation in the


26 In re Union Carbide Corp. Gas Plan Disaster at Bhopal, India in December 1984, 809 F.2d 195, 197 (2d Cir. 1987).


United States, as is often the case, was not aware of how many risky toxins and gases were being used at the factory in India.\(^3\) This incident, fortunately, was the impetus for many environmental and industrial disaster laws and additional regulations in the United States,\(^3\) including the National Environmental Policy Act (“NEPA amendments”)\(^3\) and the Emergency Planning and Community Right to Know Act.\(^3\) The Second Circuit reviewed In re Union Carbide Corp. Gas Plan Disaster at Bhopal, India and decided not to allow claims in the United States in favor of recovery in India because of forum non conveniens concerns.\(^3\) On February 14, 1989, the Indian Supreme Court resolved the *Bhopal* case through a mutually agreeable settlement of claims for $470 million against the United States.\(^3\) The case left a host of lawsuits and tortious

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claims in the United States and India, though, highlighting the complexity and difficulty of resolving such claims against an MNE for bad acts outside the United States.\textsuperscript{36}

2. \textit{Unocal Oil Pipeline in Myanmar (1996)}

The seminal \textit{Unocal} cases,\textsuperscript{37} involving injuries and human rights violations to citizens of Myanmar by Unocal, a U.S. oil corporation with subsidiaries that were building the oil pipeline in former Burma, were the first to allow recovery from a U.S. corporation in California courts for injuries suffered abroad.\textsuperscript{38} For over a decade while building a pipeline in Southeast Asia, Unocal arguably facilitated and supported the Burmese military to overwork and commit human rights abuses such as raping, murdering, and torturing the workers involved in the Yadana gas pipeline project.\textsuperscript{39} A lawsuit was filed on behalf of the victims in the California courts under the Alien Tort Statute,\textsuperscript{40} and then it was appealed to the Ninth Circuit.\textsuperscript{41} It was the first lawsuit of its kind,


\textsuperscript{37} See Doe v. Unocal, 27 F. Supp. 2d 1174 (C.D. Cal. 1998) (dismissed for lack of personal jurisdiction), aff’d 248 F.3d 915 (9th Cir. 2001).


which involved a successful Alien Tort Statute claim of human rights violation by a multinational corporation, and successful recovery and compensation for those victims with human rights claims in a U.S. court.\textsuperscript{42} The State and Federal court cases had very long appeals processes and, in March 2005, Unocal finally agreed to settle the claims and compensate the victims out of court.\textsuperscript{43} The cases took almost ten years to get through the courts in the United States, and it was generally considered a victory to get compensation for the victims against a private U.S. corporation in the domestic courts of the United States.\textsuperscript{44} This paved the way for further Alien Tort claim lawsuits against complicit or bad behavior by American corporations on international soil under the Alien Tort Statute and provided an avenue for holding MNEs responsible for bad corporate actions abroad by the parent company or by subsidiaries.\textsuperscript{45}


In response to genocide and other mass atrocities that have occurred internationally, the doctrine against genocide and punishment for such acts in international human rights, especially during times of war, has solidified as a doctrine of customary international law.\textsuperscript{46} Genocide by corporate actors, though, and


\textsuperscript{42} Hall, \textit{supra} note 41, at 410.

\textsuperscript{43} \textit{Doe v. Unocal: Timeline} (1996-2005), \textit{supra} note 41.


\textsuperscript{46} See, e.g., \textit{Anthony D’Amato, The Concept of Human Rights in International Law,} 82 \textit{Colum. L. Rev.} 1110, 1129 (1982); José E. Alvarez, \textit{Crimes of States/Crimes of Hate: Lessons from Rwanda,} 24 \textit{Yale J. Int’l L.} 365, 368 (1999); Catharine A. MacKinnon,
punishment for death or genocide by MNEs is a relatively new concept.⁴⁷ The first case to involve testing of pharmaceuticals on human subjects by a U.S. corporation, Pfizer Inc.,⁴⁸ was brought in the U.S. District Court for the Southern District of New York in 2002 by Nigerian guardians for their minor children who suffered grave injuries while being tested with the Trovan drug in clinical trials abroad.⁴⁹ Beginning in 1996, Pfizer started clinical trials to test the drug Trovan⁵⁰ overseas after an outbreak of meningitis, measles, and cholera in Kano, Nigeria but did not receive proper informed consent for the trials.⁵¹ Some of the children who received the low-dose administration of the Trovan drug during clinical trials also sustained permanent injuries and, tragically, others died from the administration of the trials.⁵² After lengthy litigation in the United States and overseas in Nigeria, Pfizer finally agreed to a settlement to compensate victims who were substantially harmed during the clinical trials.⁵³ Although the U.S. courts seemed

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⁴⁸ See id.; see also Pfizer Lawsuit (re Nigeria), BUS. & HUM. RTS. RES.CTR., https://www.business-humanrights.org/en/pfizer-lawsuit-re-nigeria [https://perma.cc/53T7-6XU7].


⁵² See generally Jeanne Lenzer, Pfizer settles with Victims of Nigerian Antibiotic Trial, 343 BMJ CLINICAL RES. 387 (2011); Benjamin Fishman, Binding Corporations to
unwilling to apply the Alien Tort Statute extraterritorially, the Nigerian government put additional pressure on Pfizer through a lawsuit in the Nigerian Federal high court in 2007 which resulted in the eventual settlement for the victims. The Pfizer cases highlight a need for a clear international human rights standard for torts and genocide while medical corporations are conducting business in developing nations and testing new pharmaceuticals, which might endanger the already vulnerable local population who desperately need access to costly medicines.

4. Rana Plaza Factory Collapse in Bangladesh (2013)

International labor violations and injuries also abound throughout recent corporate history, and international MNEs are not immune. The Rana Plaza garment factory with numerous clothing exports was an accident waiting to happen according to a governmental report of its construction and numerous reports of structural issues plus bribing to build an additional floor of the structure to house more workers and promote illegal work


58 Aizawa & Tripathi, _supra_ note 57, at 145.

59 See id. at 148.
conditions such as very low wages and long hours.⁶⁰ So, when the clothing factory collapsed in 2013 in the industrial suburb of Dhaka, Bangladesh, and killed 1,134 people, it was not a complete surprise to the clothing manufacturers and management who had received notice of the unsafe conditions.⁶¹ Although the victims and their families have not yet received compensation, it invigorated the international community and MNEs to develop more stringent standards and worker protection regulations in the garment factory industry.⁶² It is estimated that over one billion dollars is needed to address unsafe work conditions in the international labor community after Rana Plaza for better protection of workers.⁶³ Some international initiatives through the International Labour Organization (“ILO”) and Better Work Bangladesh⁶⁴ have improved the work conditions in the country; however, many other international labor protections and investments are needed to protect workers in other impoverished nations.⁶⁵ In addition,


⁶¹ BARRETT ET AL., supra note 7.


⁶⁵ Id.

⁶⁶ See id.
international corporate actors for garment industries need to be more aware of their direct control over the garment factories and manufacturing companies overseas and take efforts to eliminate illegal conduct.67

5. Kiobel v. Royal Dutch Petroleum68 in Nigeria

Many oil companies also perpetrate subtle environmental and human rights atrocities overseas; the most recent examples stem from the Niger Delta and have been litigated in front of the U.S. Supreme Court in the Kiobel case.69 The Shell and Royal Dutch Petroleum oil companies have been having issues with numerous oil spills and containment of environmental damage in the Niger River Delta for a decade.70 In addition to the alleged environmental harm by the oil corporations abroad, though, the Center for Constitutional Rights, Nigerian families, the Kiobel family (on behalf of the late Dr. Barinem Kiobel), and representatives for eleven other Nigerian activists who were tortured and killed by the Nigerian military dictatorship filed a suit against Shell/Dutch

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69 See id.

Petroleum in the Southern District of New York for a violation of the Alien Tort Statute. They alleged that the corporation was complicit in the torture and killing of activists in their execution by the Nigerian military dictatorship in the Niger Delta. The case made it to the U.S. Supreme Court and then did not survive the jurisdictional application of the Alien Tort Statute, and the Court decided that corporations like Shell or Dutch Petroleum could not be held liable for human rights abuses and torture overseas. This was a huge defeat for international human rights advocates, especially for prosecuting abuses and injuries overseas by corporate actors. However, some jurisdictions have had some success with creating norms through legislative or regulatory models of CSR and subsequent judicial enforcement. The United Kingdom, Germany, and the European Union have articulated more specific CSR plans and regulations with tangible enforcement mechanisms.


72 Kiobel, 621 F.3d at 131–40.

73 See id. at 125.

74 See Kiobel, 569 U.S. at 115–25.


77 Id.
B. Corollary Historical Challenges for International CSR Enforcement

With international corruption and multinational corporate development in numerous developed and developing countries, the corollary issues of poverty, slavery, and surreptitious supply chain bad conduct persist and still present challenges for the international legal community. The lack of incentives to act with proper global ethics and in accordance with the accepted principles of international CSR still pose numerous challenges to global development, and cases of impropriety still exist and persist.

Many posit that this is due to several innate issues of international corporate development and investment, labelled as “corollary issues” in this paper. The three corollary issues that seem to drive both international corruption and bad actors in international business transactions are poverty, slavery, and greed in the form of bad acts in the supply chain to gain profit. A 2018 Economic Intelligence Unit report revealed through a study of 800 supply chain executives that two-thirds of the respondents, all from major companies, generally agree with the issues described above.

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developed economies, ignored major supply chain corruption issues. Some of the supply chain management issues included child labor, living wages, working hour limits, gender equality, workplace safety, compensation for injury, pollution, climate change, corruption and bribery, and sourcing from violent areas or regimes. For example, only 23% of the corporations addressed climate change issues and 22% addressed child labor issues. The gap between the G20 nations and poorer nations for international development and investment continues to widen. Further, although there is heightened awareness now to international and domestic human trafficking in the U.S. and international community, slavery still persists and influences international business, and sometimes is a factor for procurement of business and manufacturing. The U.N. Office on Drugs and Crime has tried to prevent the continued human slave trade through the U.N. Convention on Transnational Organized Crime and its


84 ECONOMIST INTELLIGENCE UNIT, supra note 83, at 20.

85 Id.


protocols for trafficking in persons and smuggling of migrants.89 Finally, supply chain corruption is being uncovered in a variety of contexts in international business and human rights organizations, and the ILO is confronting this issue in the context of corporate greed and human capital.90 These historically tricky issues in the international business context for CSR and the aspirations of globally ethical behavior have also been identified by numerous scholars.91 More recently, though, the international community has determined a need to more carefully audit the hard and soft law norms applicable to MNEs while conducting international business overseas.92 The next section of this Article will identify the current established legal standards (“hard law” norms) for CSR and then give an overview of the aspirational norms for corporate behavior in an international context (“soft law” norms) from a U.S. corporate perspective. Then, the Article will briefly give a few comparative law examples of “hard law” CSR initiatives from the United Kingdom, Germany, and the European Union.

III. International and U.S. Promotion of CSR

A. Which Laws Apply? — International Soft and Hard Law Norms

One of the struggles for domestic and international corporate actors when envisioning enforcement is identifying the international


and soft law norms for CSR.\textsuperscript{93} Two international organizations, the Organisation for Economic Co-operation and Development (“OECD”) and the United Nations, have taken the lead in developing global ethical standards for MNEs.\textsuperscript{94} This section will discuss the OECD norms, the U.N. norms of the “Ruggie Principles” and “Responsibility to Protect and Respect,” the U.N. High Commissioner for Human Rights norms, the ILO norms, the U.N. Environment Programme Guidelines, and U.N. Conference on Trade and Development (“UNCTAD”) Guidelines for international business.\textsuperscript{95} All of these international norms by established international organizations have guided MNEs during recent years and have guided courts when analyzing Alien Tort Statute lawsuits based on injuries overseas by U.S. corporations.\textsuperscript{96} They provide goalposts for enforcement in the international community and in the United States according to established and widely-recognized international rules in line with treaties and international principles that are recognized by scholars.\textsuperscript{97} When the principles are not widely recognized, though, they provide “soft law” guidelines for corporate counsel to add to the CSR checklist of discussion items for advising their clients in international business transactions.\textsuperscript{98}

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\textsuperscript{98} See generally Nicolas Croquet, Asif Hameed & Tolga R. Yalkin, Corporate Social
1. OECD Guidelines

The OECD Guidelines provide non-binding international norms for MNEs operating in a global context and in varying national jurisdictions. It is the only attempt to create a comprehensive code of global ethics for multinational corporations. There are currently forty-two countries, OECD and non-OECD, that have agreed to the norms and the 2011 revisions, which include a substantially new human rights chapter that is consistent with the United Nation’s “Protect, Respect, and Remedy” principles for businesses and a new approach to due diligence and supply chain management. The most recent 2011 revision to the OECD Guidelines for Multinational Enterprises require governments to encourage a global corporate code of ethics that regulates MNEs to respect “economic, environmental and social progress,” “human rights of those affected by their activities,” uphold “good corporate governance principles,” and seek to “prevent or mitigate an adverse impact where they have not contributed to that impact,” among other goals.


100 OECD, supra note 94, at 3.

101 Id.

102 Id.

103 Id.

104 Id. at 4.

105 Id. at 19.

106 OECD, supra note 94, at 19.

107 Id.

108 Id. at 20.

standards for disclosure of bad acts in the supply chain\textsuperscript{110} and codification of the standard that States have a duty to respect human rights and must seek ways to “prevent or mitigate adverse human rights impacts that are directly linked to their business operations.”\textsuperscript{111} The guidelines also include provisions on combatting bribery, solicitation, and extortion,\textsuperscript{112} and procedural assistance in the form of national contact points for reporting purposes in each jurisdiction.\textsuperscript{113} The effectiveness of the national contact points for reporting bad corporate acts and preventing corruption or bribery in OECD countries will be tested during the next decade of mutual legal assistance under the new 2011 OECD guidelines.\textsuperscript{114}

2. **U.N. Guidance: Ruggie Principles and “Responsibility to Protect and Respect” Framework**\textsuperscript{115}

The United Nations (“U.N.”) also has several overarching norms for CSR, including the U.N.’s *Guiding Principles on Business and Human Rights* ("Ruggie Principles"),\textsuperscript{116} “Responsibility to Protect and Respect” framework,\textsuperscript{117} and other conventions that protect basic human rights such as the *Universal Declaration of Human Rights*.\textsuperscript{118} The ILO has also adopted a Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.\textsuperscript{119} The efforts of such international

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\textsuperscript{110} OECD, supra note 94, at 27.
\textsuperscript{111} Id. at 31.
\textsuperscript{112} Id. at 47–50.
\textsuperscript{113} Id. at 71.
\textsuperscript{114} See id. at 78.
\textsuperscript{115} See U.N. Guiding Principles: Protect, Respect & Remedy, supra note 6.
\textsuperscript{116} Id.
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organizations bolster the efforts of the U.N. and the OECD, but one common critique is that there is not enough coordination and communication among international bodies. The additional international normative framework for human rights in a corporate context includes the ILO Declaration on Fundamental Principles and Rights at Work, the 1992 Rio Declaration, the Millennium Development Goals, the Johannesburg Declaration on Sustainable Development (2002), the U.N. Convention Against Corruption, and the 2005 World Summit Outcome. More general public international law norms that might also have synergies with corporate accountability and CSR include the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), the International Covenant on Civil and Political Rights (“ICCPR”), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (“CAT”), the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”), and the Convention on

[https://perma.cc/3H87-CKR8] [hereinafter TRIPARTITE DECLARATION].


126 G.A. Res. 60/1, 2005 World Summit Outcome (Sept. 16, 2005).


the Elimination of All Forms of Discrimination Against Women ("CEDAW"), and the Convention on the Rights of the Child ("CRC").

3. U.N. High Commissioner on Human Rights

The U.N. High Commissioner on Human Rights ("OHCHR") and her special rapporteurs internationally monitor a variety of human rights norms and instruments, and these issues often relate to the international business issues of CSR and corruption. The OHCHR assists foreign governments with the implementation of international human rights standards, monitors the work and human rights progress in countries through special procedures like special rapporteurs and independent experts or working groups, and serves as Secretariat of the Human Rights Council. Further, the process of Universal Periodic Review ("UPR") for U.N. Member Nations furthers human rights work and enforcement of human rights treaties plus highlights deficiencies in various nations where countries develop businesses, so it is useful to analyze the business ecosystems of the U.N. member nations through data available at the OHCHR. There are also separate independent fact-finding missions for country-specific issues by the U.N. Human Rights Council, and these may also be helpful for corporate counsel to advise their clients on specific human rights conditions. UPR,
which was established by the Human Rights Council in 2006, shares the best practices for human rights and provides a regular monitoring mechanism for independent review by working groups or special rapporteurs in U.N. Member countries. There is currently no other global procedure that is similar to this robust review mechanism. The review and critique procedures through the Human Rights Council are straightforward with regular cycles of review and dissemination of reports and other observations to U.N. Member States, and the human rights instruments often interplay with private international law issues and would be relevant for international business lawyers as foundational knowledge.

4. International Labour Organization

The ILO has devoted substantial resources toward the codification of international regulatory norms for MNEs. This includes development of ethical standards in the workplace and prevention of bad acts or corruption in the supply chain for multinationals or small and medium enterprises that develop globally. The ILO has made great strides through the *Tripartite Declaration of Principles Concerning Multinational Enterprises*

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139 *Basic Facts About the UPR*, supra note 138.


and Social Policy (“MNE Declaration”)\textsuperscript{145} to monitor workplace conditions and create an understanding for good work conditions that will strive to be congruent among nations.\textsuperscript{146} Overall, the text of the MNE Declaration provides clear guidance for MNEs and promotes corporate adherence to a uniform ethical resolve to promote good work conditions and corporate behaviors.\textsuperscript{147}

5. \textit{U.N. Environment Programme Guidelines}

The U.N. Environment Programme (“UNEP”) also has standard guidelines\textsuperscript{148} that are applicable to multinational businesses and should be generally known by international attorneys.\textsuperscript{149} The UNEP initiatives mainly stem from sustainability and accounting initiatives related to the environment.\textsuperscript{150} However, corporate counsel should also be aware of the unique environmental sustainability goals and globally responsible behavior requirements for MNEs that are members of the U.N. from an investment standpoint.\textsuperscript{151} MNEs have an ethical duty to refrain from damaging the environment, such as facilitating climate change, when globally developing their businesses.\textsuperscript{152} The \textit{Johannesburg Declaration on Sustainable Development} from 2002 states that businesses have a duty to “contribute to the evolution of equitable and sustainable communities and societies” and “enforce corporate

\textsuperscript{145} \textit{Tripartite Declaration, supra} note 119.

\textsuperscript{146} \textit{See generally id. (providing corporate guidance via uniform ethical principles promoting quality work conditions and corporate behavior).}


\textsuperscript{150} \textit{See id. at 31–42; see also About the PRI, PRINCIPLES FOR RESPONSIBLE INV., https://www.unpri.org/pri [https://perma.cc/4FXF-3R9P] (last visited Jan. 1, 2020).}

\textsuperscript{151} \textit{See OECD DUE DILIGENCE GUIDANCE FOR BUSINESS CONDUCT (2018), supra} note 99, at 105–07.
accountability[].” The implementation plan for the declaration noted the need to “enhance corporate, environmental, and social responsibility and accountability.” Finally, the U.N. Framework Convention on Climate Change and the Convention on Biological Diversity were also signed by a majority of governments, and corporate counsel must be attuned to those public international environmental norms.

6. U.N. Conference on Trade and Development Guidelines (“UNCTAD”) 158

The UNCTAD also promotes globally ethical behavior and CSR in trade and international business.159 UNCTAD promotes initiatives and research for international finance, investment and enterprise, technology and innovation, trade agreements and regulations, and trade, culture, and the environment, as well as commodities.160 As a result, it produces many relevant guidelines and publications for CSR and provides a wealth of datasets for corporate counsel.161 The World Bank also compiles similar comparative data that would be useful for international attorneys in its annual “Doing Business” project compendium of economic data


154 Johannesburg Declaration, supra note 153, annex.


157 UNEP 2002 ANNUAL REPORT, supra note 153, at 3.


160 Themes, supra note 159.

by country or topic.\textsuperscript{162} International organizations, in general, are essential tools and vital resources for international corporate counsel to comprehensively understand the current international business norms for CSR.

\subsection*{B. How to Enforce Domestically? — An Outline of CSR in the United States}

The United States has evolved in its development of hard and soft law norms for MNEs and standards for international and U.S. corporations. The legislation in the United States is sometimes an implementation of an international standard, such as a treaty or international agreement, but it is sometimes separate Federal or State legislation or a unique common law development for the United States.\textsuperscript{163}

1. \textit{Foreign Corrupt Practices Act}

Corporate counsel in the United States should be generally aware of the history of corruption and bribery by MNEs and the regulation of extraterritorial acts by U.S. corporations and public officials abroad through anti-bribery conventions.\textsuperscript{164} The United States spearheaded the international anti-corruption movement after the Watergate scandal put international corruption in the spotlight in the 1970s.\textsuperscript{165} Until the Foreign Corrupt Practices Act ("FCPA")\textsuperscript{166} passed in 1977 after illegal payments to foreign officials were uncovered, the United States had not adequately addressed foreign corrupt practices in the context of extraterritorial

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\item \textsuperscript{164} See, e.g., U.N. Convention Against Corruption, \textit{supra} note 125.
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business. The Watergate scandal uncovered a myriad of bribery payments by U.S. businesses to foreign public officials. In historically uncharted territory, the United States addressed the illegal, and sometimes criminal, activities that businesses should not undertake when conducting international business.

Few prosecutions ensued from the FCPA in its early years because the anti-bribery statutory language was unclear to the U.S. Department of Justice (“DOJ”) and the U.S. Securities and Exchange Commission (“SEC”) in the 1980s and 1990s. However, the 1998 amendments to the FCPA implemented the treaty obligations of the OECD’s Anti-Bribery Convention. With this 1998 revision, the DOJ and SEC began to more vigorously prosecute FCPA violations for facilitating procurement of business deals in foreign jurisdictions through bribes or other payments to public officials.

Since 1998, the DOJ has increased prosecution of FCPA violations, making the United States the leader in foreign corrupt practices enforcement. Two recent cases highlight this recent


168 See id.

169 See id.


174 See generally Koehler, supra note 167, at 169–233 (providing a history of and rationale for the FCPA).
vigor in prosecution, which often leads to settlement.\textsuperscript{175} During the Wal-Mart scandal in Mexico and several other countries in 2011\textsuperscript{176} involving illegal payments made to facilitate store openings in Mexico, the DOJ was at the forefront of foreign corrupt practices exposure because a major U.S. corporate entity revealed bribery violations in conjunction with foreign business expansion.\textsuperscript{177}

2. \textit{Alien Tort Statute}\textsuperscript{178} and \textit{Torture Victims Protection Act}\textsuperscript{179}

Corporate counsel in the United States should be generally aware of recent private and public international law litigation under the Alien Tort Statute and Torture Victims Protection Act.\textsuperscript{180} Further, MNEs and their corporate counsel should also be aware of the succinct nature of the statute and its jurisdictional applicability to corporations post-\textit{Kiobel} because of the prominent line of Alien Tort Statute and Torture Victims Protection Act Supreme Court cases.\textsuperscript{181} There is now a more restrictive approach in U.S. Federal


\textsuperscript{178} 28 U.S.C. § 1350 et seq.


\textsuperscript{180} See id. See generally Jesner v. Arab Bank, PLC, 138 S. Ct. 1386 (2018) (revealing injuries by terrorist acts committed and facilitated by Arab Bank and a claim of CHIPS payments to benefit terrorists via New York branch); \textit{Kiobel}, 569 U.S. 108 (revealing human rights and environmental harm by Royal Dutch Shell); Sosa v. Alvarez-Machain, 542 U.S. 692 (2004) (invoking the FTCA and detention of a Mexican national); \textit{Abdullahi}, 562 F.3d 163 (detailing Pfizer’s medical experimentation of drug on human subjections, including children, in Nigeria); Kadic v. Karadzic, 70 F.3d 232 (2d Cir. 1995) (involving genocide and war crimes); \textit{Filártiga} v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980) (including statute use of torture).

\textsuperscript{181} See \textit{Kiobel}, 569 U.S. at 108. For more on the prominence of the Alien Tort Statute litigation in the Supreme Court, see generally MULLIGAN, supra note 96; STEPHEN MULLIGAN, \\textit{CONG. RES. SERV., THE ALIEN TORT STATUTE (ATS): A PRIMER} (2018); Ernest A. Young, \textit{Universal Jurisdiction, the Alien Tort Statute, and Transnational Public-Law
courts to invoking the Alien Tort Statute and Torture Victims Protection Act for injuries incurred by individuals overseas due to human rights violations or other death or injuries caused by a U.S. corporate entity after the *Kiobel* and *Jesner* cases.  

3. **Dodd-Frank CSR Mandates**

Corporations should also be generally aware of the new CSR Sections 1502-1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and associated SEC regulations for conflict minerals from the Democratic Republic of Congo (“DRC”). Sections 1502 through 1504 of the Dodd-Frank Act require greater transparency by businesses overseas for chain of custody for certain minerals like tantalum, tin, gold or tungsten and their commercial development from unstable country regimes, such as the DRC and others, to prevent human rights violations in developing countries. The regulation also focuses on conflict minerals, which are minerals from politically unstable regions that may be used to finance armed groups or corruption, and their disclosure requirements for corporations doing business internationally and procuring business in developing countries.

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182 See, e.g., *Mulligan*, supra note 96.


184 SEC Fact Sheet, supra note 183.


187 See 17 C.F.R. pts. 240 & 249b; see also Fatima Alali & Sophia I-Ling Wang,
4. California State Law on Supply Chains

The State of California has furthered the effort of globally ethical behavior by MNEs by enacting the new California State law on transparency in corporate supply chains.\textsuperscript{188} The recent law requires qualifying companies, including retailers or manufacturers with more than $100 million in global receipts and with assets or payroll over $50,000 in California, to disclose through a link on their website homepage the precise nature and scope of their efforts (or lack of efforts) to eradicate forced labor from their worldwide supply chains.\textsuperscript{189} This is the first U.S. State effort to hopefully eradicate unethical and corrupt behavior from the corporate supply chain and other nefarious conduct that might flow into our domestic stream of commerce.\textsuperscript{190}

5. Human Trafficking Statutes

Human trafficking continues to be both an international and domestic issue with the investment in overseas ventures and international business transactions, generally.\textsuperscript{191} In addition to the U.N. Protocol to Prevent, Suppress, and Punish Trafficking as a Supplement to the U.N. Convention on Transnational Organized Crime\textsuperscript{192} and European and Inter-American Conventions Against Trafficking of Human Beings,\textsuperscript{193} the United States also has enacted

\begin{itemize}
  \item HARRIS, supra note 188.
  \item See id.
  \item See UNODC on Trafficking in Persons and Smuggling of Migrants, supra note 89. See generally Gerald T. Hathaway & Matthew A. Fontana, Business and Human Rights: Threading the Needle of Multiple Jurisdictions in Supply Chain Integrity, Including Human Trafficking Compliance, 2018 A.B.A. SEC. PUB. LAB. & EMP. L. 10
  \item See Convention on Action Against Trafficking in Human Beings, May 16, 2005,
legislation to prohibit trafficking of women, children, and others through the Trafficking Victims Protection Act of 2000. This Federal statute ensures that any human trafficking is criminally prosecuted and, hopefully, prevented within the United States. Polaris, a U.S. organization devoted to combatting trafficking, provides a helpful U.S. national hotline to help survivors of human trafficking and to report human trafficking cases in coordination with the FBI.

6. Environmental Statutes

The United States has enacted several environmental statutes, such as the Clean Air Act, Clean Water Act, and National Environmental Policy Act, which MNEs and corporate counsel should be generally aware of in addition to the international conventions and norms. These Federal domestic statutes often work in tandem with their overarching international conventions.


195 See Trafficking Victims Protection Act §§ 7101 et seq.


198 Clean Air Act, 42 U.S.C. §§ 7401-7515.


would behoove corporate counsel to generally be aware of the environmental standards in the United States when expanding corporations and creating corporate policies. Law students should also learn those basic principles of environmental laws and, likewise, how they may differ from international environmental norms.

7. U.S. Labor Law Standards

There are also established prohibitions against underage workers and labor law regulations for overtime work and fair pay in the United States\(^\text{202}\) that align with the international standards and are important for U.S. corporate counsel. These Federal Acts, including the Fair Labor Standards Act\(^\text{203}\) and Lilly Ledbetter Fair Pay Act of 2009,\(^\text{204}\) have provisions for equitable wages, minimum age of employment, agricultural work, and regulation of foreign laborers.\(^\text{205}\)

IV. Harnessing the Complementary Tools of Cultural Competency and CSR in International Business Contracts

A. Overview of Cultural Competency

Awareness of cultural competency in the health sciences, business, and education sectors began in the United States in the mid-1960s in conjunction with the Civil Rights Act of 1964\(^\text{206}\) and

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\(^{203}\) FLSA, as amended, 29 U.S.C. et seq.


has only grown as an educational movement today. Cross cultural training has been particularly emphasized and successful in the health and business fields with an emphasis on clinical settings. The practice of law is increasingly cross-cultural when dealing with interactions with diverse clients and providing appropriate legal advice. Both Harvard Law School and Stanford Law School have clinical training programs in cultural competency for their clinics.
Cultural competency is generally defined as a recognition and overall awareness of the implications of individualist, moderate, and collectivist cultures. Some cultural competency curricula, such as the program at Fordham Law School’s Feerick Center for Social Justice, also integrate “difference” training to develop a more client-centered approach and analyze the impact of poverty. The more traditional Purnell Model for Cultural Competence, which is used in health sciences, may also shed light on a useful definition and application in clinical settings through a detailed chart of concepts of cultural consciousness for variant cultural norms: “age, generation, nationality, race, color, gender, religion, educational status, socioeconomic status, occupation, military status, political beliefs, urban versus rural residence, enclave identity, marital status, parental status, physical characteristics, sexual orientation, gender issues, and reasons for migration (sojourner, immigrant, undocumented status).” One of the most prominent studies in


211 LIVERMORE, supra note 207. See generally DAVID LIVERMORE, EXPAND YOUR BORDERS: DISCOVER TEN CULTURAL CLUSTERS (2013) (identifying ten cultural clusters of the world and associated characteristics within the broad individualism/collectivism framework as Anglo, Arab, Confucian Asia, Eastern European, Germanic Europe, Latin America, Latin Europe, Nordic Europe, Southern Asia, and Sub-Saharan Africa).

212 See generally Feerick Center for Social Justice, FORDHAM U. SCH. OF L., https://www.fordham.edu/info/20693/feerick_center_for_social_justice [https://perma.cc/BN6D-EPDR] (last visited Dec. 6, 2020) (integrating a discussion of the impact of the more than 2.3 million litigants without appropriate counsel each year in New York, the number of New Yorkers [over 6.5 million] who are living at or below poverty level, and a discussion about the United Nations definition of poverty); Kimberly E. O’Leary, Using a “Difference Analysis” to Teach Problem-Solving, 4 CLINICAL L. REV. 65 (1997) (identifying how “difference analysis” might be used in a clinical classroom setting to teach multicultural analysis within client interviewing); Christine Zuni Cruz, [On the] Road Back in: Community Lawyering in Indigenous Communities, 5 CLINICAL L. REV. 557 (1999) (analyzing lawyering within native communities and how instructors/students might prepare and confront communities across cultures within a clinical legal setting).


214 Id.
legal education and cultural competency, though, by Professors Susan Bryant and Jean Koh Peters, identified “Five Habits” and two questions to ask when training culturally competent attorneys:215 “(1) what is effective cross-cultural lawyering and (2) how can we help ourselves and our students learn to be effective cross-cultural lawyers?”216 With these background questions in mind, Professor Bryant sets out Five Habits to learn cultural competency in lawyering and recognition of the cross-cultural backgrounds of clients:

Habit One provides students with a framework to identify similarities and differences between themselves and their clients, forcing them to focus consciously on the possibility that cultural misunderstanding, bias, and stereotyping can occur.

Habit Two asks students to identify the similarities between the client and the legal system and the lawyer and the legal system in order to explore all the ways in which culture may influence a case.

Habit Three challenges students to explore alternative explanations for their clients’ behavior.

Habit Four focuses on cross-cultural communication, identifying skills that students may leverage in cross-cultural encounters.

Habit Five asks the students to engage in self-analysis rather than self-judgment, resulting in more effective lawyering.217

Later scholars adapted the Bryant and Koh “Habits” to an international law context and considered navigating culture in the context of clients around the world or in clinical settings via international human rights clinics within law schools today.218


216 Id.

217 Id. at 64–78.

Overall, implementation of cultural competency skills training and discussions about what a culturally competent lawyer should be have traditionally been isolated to a clinical or seminar setting.\textsuperscript{219} The time is ripe for inclusion of cultural competency training and discussion of the necessary skills in all doctrinal and experiential learning to enable law students to grapple with diverse clients in an increasingly global practice, assess cultural differences, and acknowledge the impact of poverty\textsuperscript{220} on clients for more adequate representation.

\textbf{B. Consideration of Cultural Perspectives and CSR Norms}

Globalization is an increasingly important part of law school curricula in the United States and must be responded to in the same proactive way as technological innovation and its effect on legal

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Fundamentally, poverty is a denial of choices and opportunities, it is a violation of human dignity.

It means lack of basic capacity to participate effectively in society. It means not having enough to feed and clothe a family, not having a school or a clinic to go to, not having the land on which to grow one’s food or a job to earn one’s living, not having access to credit. It means insecurity, powerlessness and exclusion of individuals, households and communities. It means susceptibility to violence and it often implies living in marginal and fragile environments, not having access to clean water or sanitation.

\end{quote}
Traditionally, the pedagogical response to globalization and, in turn, curricular response has been to establish or increase the number of study-abroad programs or clinical experiences in legal education. This approach, however, does not always address the specific need of training lawyers in cultural competency or a more global range of clients. As such, law schools should examine the relatively vast number of study-abroad programs in relation to the relative dearth of offerings in cultural competency and come up with a cogent plan for the future training of attorneys in cultural competency skills.

International human rights clinics, international business courses, or seminars devoted toward cultural competency in a global setting might be an initial solution, but legal educators or curriculum committees should work toward a


223 See, e.g., Roy T. Stuckey, Preparing Students to Practice Law: A Global Problem in Need of Global Solutions, 43 S. Tex. L. Rev. 649, 650 (2002); see also Janus & Smythe, supra note 218 (describing lessons learned from Stanford Law School’s clinic that can aid cross-cultural competency).


225 See generally Marci Seville, Chinese Soup, Good Horses, and Other Narratives: Practicing Cross-Cultural Competence Before We Preach, in Vulnerable Populations and Transformative Law Teaching: A Critical Reader, 277 (2011) (“Before we undertake teaching our students about cross-cultural competence, we need to examine carefully our own practices, and those of our colleagues and institutions, to ensure that we are not complicit in the very practices of cross-cultural ‘incompetence’ that we hope to train our students to avoid.”); Antoinette Sedillo Lopez, Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic, 28 Wash. Univ. J.L. & Pol’y 37, 38 (2008) (“Cultural knowledge, awareness, and skills can be taught and learned in a clinical program using a variety of methods, including research, reading, roleplay, case rounds, observation, and group discussion.”); Ascanio Piomelli, Cross-Cultural Lawyering by the Book: The Latest Clinical Texts and a Sketch of a Future Agenda, 4 Hastings Race & Poverty L.J. 131, 133 (2006) (“The importance of training lawyers to become cross-culturally adept is likely self-evident to readers of this journal, as it generally is now in the literature on progressive lawyering and clinical education.”); Janus & Smythe, supra note 218.
more experiential approach of infusion of cultural competency skills throughout first-year and doctrinal courses, when it would be intuitive, as part of the class discussion or via assignments as a learning outcome.\footnote{See, e.g., Mary Lynch, *The Importance of Experiential Learning for Development of Essential Skills in Cross-Cultural and Intercultural Effectiveness*, 1 J. EXPERIENTIAL L. 129, 131–32 (2014) (arguing that the time is ripe to systemize the development of cross-cultural communication and experience-based courses are the best environment for law students to learn about cross-cultural issues); Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 STAN. L. REV. 1731, 1732 (1993) (exploring presumptions and assumptions of clients that exist within the classroom); Laurie Shanks, *Whose Story Is It, Anyway?—Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 CLINICAL L. REV. 509, 510 (2008) (“My goal is to change the students’ focus to the client, to hear what the person across the desk, in the chair, or behind the lock-up bars is saying - what her story is, and what that story says about her and the law.”).} A professional development series approach for cultural competency training might also be considered to provide further preparation and baseline skills for current students, alumni, or other members of the practicing bar.\footnote{Amy Timmer & John Berry, *The ABA’s Excellent and Inevitable Journey to Incorporating Professionalism in Law School Accreditation Standards*, 20 PROF. LAW. 10, 18 (2010) (citing cultural competency as one of the ethics electives that schools might create in conjunction with the new ABA accreditation standards).}

Opportunities abound for integration of cultural competency skills and consciousness within law schools today. Legal education should be responsive to continued changes in diversity, poverty, and the scope of international legal practice. Curricular goals for cultural competency should acknowledge and analyze the differences between the attorney and clients within the patchwork of society and the evolving nature of legal practice in conjunction with globalization plus the intersection of international law with doctrinal subjects.\footnote{For a complete discussion of the intersection of private international law and public international law and doctrinal legal subjects in a choice of law framework, see generally Symeon C. Symeondides, *Choice of Law in the American Courts in 2014: Twenty-Eighth Annual Survey*, 65 AM. J. COMP. L. 299 (2017).} Legal educators have a duty to challenge students’ preconceived notions of what it means to be attorneys within the framework of today’s diverse clientele and an increasingly international practice. At the very least, law schools may help students grapple with competency in foreign legal traditions in the international business or public international law context and provide a basic foundation for the legal systems of nations, cultural norms, and knowledge of legal challenges for developing countries.

\footnotesize{226 See, e.g., Mary Lynch, *The Importance of Experiential Learning for Development of Essential Skills in Cross-Cultural and Intercultural Effectiveness*, 1 J. EXPERIENTIAL L. 129, 131–32 (2014) (arguing that the time is ripe to systemize the development of cross-cultural communication and experience-based courses are the best environment for law students to learn about cross-cultural issues); Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 STAN. L. REV. 1731, 1732 (1993) (exploring presumptions and assumptions of clients that exist within the classroom); Laurie Shanks, *Whose Story Is It, Anyway?—Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 CLINICAL L. REV. 509, 510 (2008) (“My goal is to change the students’ focus to the client, to hear what the person across the desk, in the chair, or behind the lock-up bars is saying - what her story is, and what that story says about her and the law.”).}

\footnotesize{227 Amy Timmer & John Berry, *The ABA’s Excellent and Inevitable Journey to Incorporating Professionalism in Law School Accreditation Standards*, 20 PROF. LAW. 10, 18 (2010) (citing cultural competency as one of the ethics electives that schools might create in conjunction with the new ABA accreditation standards).}

\footnotesize{228 For a complete discussion of the intersection of private international law and public international law and doctrinal legal subjects in a choice of law framework, see generally Symeon C. Symeondides, *Choice of Law in the American Courts in 2014: Twenty-Eighth Annual Survey*, 65 AM. J. COMP. L. 299 (2017).}
V. The Three-Step Approach and Illustrations

This section will provide a three-step strategy for infusing CSR themes and cultural competency training into the law school curriculum to better prepare international corporate lawyers for ethical practice. This three-step international business research process and best practices list for simulation in appropriate law school classes will help pave the way toward edification for corporate counsel in a variety of settings in law schools:

1. First, search for a company’s outlined CSR obligations and also research actions in subsidiaries or correlating obligations in the supply chain.
2. Second, thoroughly research governing international conventions or acts that would apply for the corporate action or international contract.
3. Find any national obligations and cooperative international, regional, or domestic agreements or non-binding (“soft law”) efforts for globally ethical corporate behavior based on the foreign jurisdictions involved.

In addition, comparative examples or hypotheticals for CSR or ethical corporate advice for an MNE would illuminate class discussions in doctrinal, skills, clinical, and moot court settings. Efforts in other countries could also be used as concrete examples for class application of the complementary principles of cultural competency and CSR. The following three examples may be used as selective case studies of CSR efforts:

A. Comparative Example #1: United Kingdom Slavery Act 2015

The United Kingdom recently enacted a prohibition against slavery in the supply chain to criminalize the use of forced labor and facilitation of any form of servitude in the supply chain.\(^{229}\) The Act requires all companies doing business in the United Kingdom with a business of approximately $51 million or at least £36 million, regardless of the industry, to disclose what they are doing to prevent slavery and human trafficking in the supply chain.\(^{230}\) This may include policies that the company has adopted, due diligence, risk

\(^{229}\) Modern Slavery Act 2015, c. 30 (Eng.)

assessments, training, or other disclosures. This new “hard law” U.K. anti-slavery norm aligns with the broader international “soft law” norms of the ILO, such as the 1930 ILO Forced Labour Convention and the 2000 Palermo Trafficking Protocol.

B. Comparative Example #2: German Legislation

Germany has implemented the European Union Non-Financial Reporting Directive (2017) into hard law through Section 289c of the German Commercial Code. Corporations in Germany must now adhere to the human rights standards and consider environmental, labor, and social concerns to represent CSR for companies which employ more than 500 people. Germany is also actively involved in a National Action Plan for Business and Human Rights, which was adopted in 2016. The goal for the National Action Plan is to align with the U.N. Guiding Principles and articulate the government’s expectations for globally ethical

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231 Walter, supra note 230.


behavior in supply and value chains.239

C. Comparative Example #3: European Foreign Tort Claims Act

The European Union (“EU”) has also regulated corporate behavior240 and articulated a doctrine of CSR through the European Foreign Tort Claims Act.241 The Brussels I Regulation242 includes regulation of cyber-torts243 and also other disputes involving corporate harm in the context of torts.244 In addition, the EU has a formal strategy for CSR and an action plan for human rights.245 The European “hard law” norms align well with the OECD soft law norms for CSR in international business transactions.246

These examples may be tethered to discussion of deterring harmful corporate behavior and how to introduce comparative aspects of practice to clients. Case studies and tangible regulations in the international context provide powerful examples of regulation in practice.247 News commentary may also be useful to set the

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239 See id.


242 See Brussels I Regulation, supra note 241.

243 Id.

244 Id.


247 See, e.g., Cristina A. Cedillo Torres, Mercedes Garcia French, Rosemarie Hordijk,
VI. Conclusion: We Must “Find the Beef” for CSR Norms and Enforcement

We must improve the landscape of global ethical norms by enlightening students in law school to better prepare for the realities of international corporate lawyering. Internationally and nationally, corporate counsel with U.S. ties will continue to strive toward including CSR norms and cultural competency considerations into contractual negotiations. U.S. lawyers must be knowledgeable about the hard and soft law norms in international contract negotiation and for adequate representation of MNEs. The international climate for businesses is becoming more promising than ever, especially with the “beef” of more universally recognized and normative CSR norms, and the economic outlook for globally ethical behavior has a clear path with the existing and emerging hard and soft law foundations to more certainly train our law students for a multinational practice.

