

Introducing Legal Method When Teaching Stakeholder Theory: Enhancing the Understanding of Stakeholder Expectations in Relation to Human Rights and CSR Reporting

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Introducing legal method when teaching stakeholder theory: Enhancing the understanding of stakeholder expectations in relation to human rights and CSR reporting

Karin Buhmann¹

Key words: CSR reporting; stakeholder analysis; legal method; social expectations and CSR; UN Global Compact; Business & Human Rights; mandatory CSR transparency

Abstract. Governments are particularly salient stakeholders for business ethics. They act on societal needs and social expectations, and have the political and legal powers to restrict or expand the economic freedoms of business as well as the legitimacy and often urgency to do so. We draw on two examples: the Business & Human Rights regime from a UN Global Compact perspective; and mandatory CSR reporting. Supplying integrated teaching notes and generalising on the examples, we explain how legal method may help students of business ethics, organisation and management – future managers – in their analysis of governments as stakeholders and their interests that drive expectations on firms. With a focus on analysis for responding adequately to stakeholder concerns, this article contributes to the emerging literature recognising the relevance of public regulation for CSR. More specifically, we contribute to the business ethics literature by explaining how legal method complements stakeholder theory for organisational practice.

Key words: CSR reporting, stakeholder analysis, legal method, social expectations and CSR, UN Global Compact, Business & Human Rights, mandatory CSR transparency

1. Introduction

Recent years' increase in public policy, guidance and even legislation on Corporate Social Responsibility (CSR) has underscored the role of governments and intergovernmental organisations like the United Nations (UN) as stakeholders with a strong interest in CSR. CSR has shifted from being seen as firms' voluntary action to being a general concern about firms' impact on society. Indeed, the EU in 2011 changed its definition of CSR accordingly (EU 2011), at the same time effectively opening opportunities for explicit public regulation to promote CSR in response to United Nations (UN) developments in the area of Business & Human Rights. An increasingly active engagement by authorities and their constituencies means that firms need to consider and respond to the interests of this increasing group of stakeholders (Friedman & Miles 2006). In particular, governments in several regions of the world have taken to deploy CSR as modality to complement social or environmental

¹ Author information: Karin Buhmann, Dr.scient.adm., Ph.D., Master of International Law, cand.jur. et exam.art (East Asian Studies). While writing this article the author has been employed as an Associate Professor (Corporate Social Responsibility; Business & Human Rights), at Roskilde University, Dpt for Communication, Business and IT ('CBIT') DK-4000 Roskilde, Denmark; and an Associate Professor (CSR, Sustainability & Public-Private Regulation) at the Department of Intercultural Communication & Management, Copenhagen Business School (CBS), DK-2000 Frederiksberg, Denmark.

public policy objectives, complementing and collaborating with the expectations and concerns of civil society (Knudsen, Moon & Schlager 2013, Ruggie 2013, Buhmann 2014, Gond, Kang & Moon 2011, Scherer & Palazzo 2011, Steurer 2010, Matten & Moon 2008).

Governments are particularly salient stakeholders (Mitchell, Agle & Wood 1997) because they have the political and often legal powers to restrict or expand the economic freedoms of business as well as the legitimacy and often urgency to do so. Drawing on the examples of the Business & Human Rights regime and mandatory CSR reporting, this article explains how legal method may help managers in their analysis of governments as stakeholders and the interests that drive their expectations on firms. The legal basis of human rights as well as mandatory and much governmentally recommended CSR reporting makes the application of legal method a relevant tool for the identification of stakeholder interests pertaining to governments as stakeholders on their own as well as representative of a range of constituencies. This article explains how the legal method of studying normative chains and legislative history may help equip (future) managers understand and therefore respond to such stakeholder concerns. We do so through two examples demonstrating the rich normative chain informing the human rights principles under the UN Global Compact and the evolution of mandatory Danish CSR reporting. The examples are selected on this basis: the UN Global Compact is open to all sectors and its principles and guidance are accessible to all through the Compact website, and the website contains links to a range of sources of law. This makes it a better case for teaching that CSR schemes like ISO26000 Social Responsibility Guidance that is conditional on subscription/membership. The similarities between the UN Global Compact and many other transnational CSR guidance schemes in terms of the normative reference to human rights, labour rights and other standards developed in international law enables readers to apply the article's examples beyond the Global Compact. The Danish CSR reporting scheme illustrates how a flexible mandatory reporting scheme may become stricter if CSR reports do not deliver the information that regulators intended but which becomes apparent only from study of underlying sources of law. Both examples refer specifically to human rights. The international law provenance of human rights means that the international legal method of identifying sources of law is relevant for managers in diverse multinational and national contexts, regardless of the home or host state legal system. In other words, the global character of the concerns and their normative foundation in international legal norms which influence stakeholder expectations makes this method relevant to understanding and analysis of stakeholder concerns related to human rights and other international global concerns, regardless of whether the manager and company is hosted in or operates in a country that applies a different legal method at the national level.²

As demonstrated by a growing literature as well as established socio-legal streams, legal science offers important perspectives to the stakeholder approach as opposed to the shareholder view (Stout 2012) and to business ethics and CSR (Lan & Heracleous 2010, Heracleous & Lan 2012, Buhmann 2013a, 2013b, McBarnet 2008, Hess 2008, 1999, Teubner 1986). The emerging recognition of governments' role in shaping CSR through diverse measures ranging from 'soft' to 'hard' law (Gond, Kang & Moon 2011, Gilbert, Rasche & Waddock 2011) makes it pertinent to introduce method from the field of law when teaching business ethics. Accordingly, this article contributes to the emerging literature recognising the

² For example, Anglo-Saxon culture countries typically apply the 'Common Law' legal system which emphasises judge-made national law, and European continental states and many socialist countries apply varieties of the 'Civil Law' system that typically emphasises national governmental regulation. Both systems recognise international law as obligations on governments, which these must apply or if necessary transform into obligations for companies under national law. These characteristics of the national legal systems, however, are not of key significance in the current context that focuses on the expectations of stakeholders based on the way that CSR norms are influenced by international law as a source of norms, as further explained below.

relevance of public regulation for CSR. More specifically, we contribute to the business ethics literature by explaining how particular elements of legal method complement stakeholder theory. The article first and foremost targets instructors of students at business schools/business universities teaching stakeholder analysis, general CSR courses, CSR reporting and well as Business & Human Rights. Those who teach executive courses may also find the article useful, as may (advanced) students.

The article proceeds as follows: Section 2 explains the background for considering the interests of governments as stakeholders. Section 3 sets out the theoretical background, focusing on CSR reporting as a measure for organisations to learn about stakeholder expectations, and to provide society with transparency about business conduct. Section 4 explains legal method. This is done with emphasis on identifying international law based norms that inform social expectations of firms; and on studying legislative history and guidance for application of a normative legal instrument (whether hard law or soft law) to gauge the intentions and objectives of a public policy character. Section 5 exemplifies the application of that method through the examples of the UN Global Compact and the evolution of the Danish CSR reporting requirement. On that basis section 6 discusses the contributions of legal method to identification of stakeholder interests for the benefit of the firm and its engagement with stakeholders. Section 7 concludes by summing up how the introduction of legal method in teaching stakeholder theory may improve the ability of managers to analyse and respond to stakeholders' expectations. Teaching notes are offered at the end of sections 2, 4, 5 and 6.

2: Background

2.1. Why managers should pay attention to underlying interests of governments as stakeholders

Governments are obvious stakeholders in relation to the impact of business on society. Governments offer firms their legal licence to operate, and as a result may preserve, expand or restrict that licence. Through parliamentary processes as well as public-private networks that are sometimes less democratic but often no less influential (such as lobbying), governments channel social expectations and react to those, often with their own interests in mind but with an effect on the firm's social licence to operate. Governments are themselves charged with moral and legal obligations to protect and promote citizens' interests that may easily be affected by business in positive or adverse ways. The positive ones include employment, infrastructure and community development, and firms' contributions to the provision of social services like access to medicine and vocational training. The adverse ones include toxic fumes, water, air and land pollution, exploitation of local natural water resources leading to reduced access to clean water for the local population, land grabbing, projects that lead to resettlements of local populations, work injuries, involuntary or insufficiently remunerated labour, decisions made without sufficient consultation and informed consent of affected individuals and groups, and a host of other negative impacts. To governments and their international organisations like the United Nations (UN), firms may effectively help implement public policies (such as inclusive employment practices and occupational health and safety practices) and developmental goals (such as community and infrastructure development). Governments sometimes even perceive firms as actors who may act beyond their own territorial boundaries to promote, for example, specific labour practices in the supply chain, and to raise the bar below the legal minimum (Buhmann 2013b). Yet firms' adverse impact on society may also threaten the legitimacy of a government or international organisations, because adverse business impact showcases governmental inefficiency and governance gaps. As a result, governments have considerable interests in shaping business conduct both within and beyond their territory. Obviously, profitable firms may be of economic benefit to the government as a source of taxes, employment and economic transactions, as well as the creating of 'shared value'. Yet as the history of

the emerging Business & Human Rights regime shows, supporting business is not the only driver behind government regulation of CSR (Ruggie 2013).

It was precisely concern with the capacity of business to harm human rights that in 2011 led to the adoption of the UN Guiding Principles on Business & Human Rights (UN 2011). The Guiding Principles were adopted by the UN's Human Rights Council, which is made up by governments from all regions. The Guiding Principles add operational flesh to the UN '*Protect, Respect and Remedy*' Framework, adopted by in 2008 (UN 2008). Both are guiding and therefore 'soft law',³ but indicative of both the strong political interests of governments to reduce adverse social impact caused by business and of the power of governments to establish rules pertaining to business. Technically, the limit to governments proceeding from soft to hard (binding) regulation of business through an international instrument is political. Indeed, following the adoption of the UN Guiding Principles, a process has been set in motion to explore needs and opportunities for a binding international instrument (a treaty) on Business and Human Rights. Such an instrument would have transnational reach, covering businesses in their home as well as host states.

Indeed, much governmental regulation of business through CSR guidance takes place under 'the shadow of the law', that is, the possibility that authorities may adopt binding requirements. Mandatory CSR reporting, introduced by several countries, constitutes a middle way that uses binding law to promote transparency. This may be a way to promote firms' self-regulation without demanding explicit CSR action, with the option to introduce stricter requirements if such self-regulation is not perceived to effectively deliver on government objectives (Buhmann 2013b, author forthcoming c). Thus, whether firms welcome governmental regulation on CSR (Gjølberg 2011) or prefer a limited public regulatory regime, they and their managers will benefit from understanding the underlying public-policy interests and the normative standards (such as to respect specific human rights) that governments expect firms to observe.

There is an intricate connection between CSR reporting and the solidifying Business & Human Rights regime. The UN Guiding Principles on Business & Human Rights explicitly encourage authorities to recommend or even require businesses to report on their social impact. They have also influenced several voluntary CSR guidance standards and transparency/reporting provisions. Key examples include Global Compact guidance on human and labour rights and Global Compact Communication of Progress (CoP), social aspects of the ISO26000 Social Responsibility Guidance Standard (Wood 2011, Webb 2012) and OECD's Guidelines for Multinational Enterprises revised in 2011 (Buhmann forthcoming a). Indeed, due to the influence of the Guiding Principles these instruments increasingly require the same type of action of firms to respect human rights, in turn influencing non-financial reporting. Driven by a related concern with business related human rights abuse in relation to the extractive industries in states suffering from weak governance, the United States government has adopted transparency requirements on sourcing of certain minerals from particular countries and on firms' payments to governments (US 2010) and due diligence requirements for the trade in plant products (US 2008). Several European and Asian states require CSR reporting as a measure to deliver transparency (Ioannou & Serafeim 2012). China's 2005 Company Law requires firms to engage in CSR (PRC 2015); and India's 2013 Company Act requires certain firms to set up a CSR committee, invest 2 per cent of average turnover on CSR, and

³ Regrettably, organisational and legal studies do apply the terms hard and soft law with similar understanding. In line with legal usage, hard law in here refers to binding rules (typically rules that are enforceable), whether public or private, and soft law to non-binding rules. Thus, internal regulation in a firm is referred to as self-regulation, but a Code of Conduct is hard law if part of a legally binding contract. Some organisations studies refer to non-state regulation as soft law (compare Gjølberg 2011 footnote 4 and 5 with references).

report on the CSR policy and its implementation (India 2013). With effect from 2016, an EU Directive adopted in 2014 will require large companies to disclose information on policies, risks and outcomes as regards environmental matters, social and employee-related aspects, respect for human rights, anti-corruption and bribery issues, and diversity in their board of directors (EU 2013).⁴ The style of the Directive largely builds on the mandatory CSR reporting scheme introduced by one of the EU's member states (Denmark) in 2008 (Denmark 2008), which therefore serves as a regulatory precedent. The EU Directive allows firms to apply international, European or national guidelines which they consider appropriate (for instance, the UN Global Compact).

This growing public regulation of CSR underscores the importance of governments as stakeholders and of firms understanding the underlying concerns that drive governments' guidance or requirements on firms. Lawyers' analyses often focus on much of the same when they advise their clients or argue a case in court. The juridification of CSR and the increase in public soft, hard and mixed regulation offers an opportunity for business ethics and stakeholder analysis pedagogics to introduce students to the legal method of studying normative chains and legislative history as a help to understand and respond to the pertinent stakeholder concerns.

2.2. Initial teaching note

For teaching purposes, it is important to note that legal method is not a highly complex method, and that it may be applied to regulation in a broad sense that ranges from and includes the interrelationship between morals, social norms, soft law, hard law and incentives based 'mixed' regulation. Even so, students may benefit from an explanation of how legal method is applied by lawyers in the context of national or international law, as described below in section 4. Many will recognise this from what they already know about law-making in their own national context. It is suggested that students read section 4 of this article and that they are invited to think about and discuss what they know about law-making processes and 'sources of law' in their own context. They should be told that that exercise is about getting their minds tuned to thinking about normative chains and connection between public policy objectives and legal instruments aiming to implement such policy objectives.

As an introductory exercise students can be invited to discuss how the social norm of (not) smoking in a group with non-smokers has evolved in their community and country over the past 10-20 years. In many countries, a social norm that smokers would refrain from smoking if asked by a majority of persons present has evolved into a norm that smoking is not allowed if only one person asks that nobody smokes, an institutional regulation (like a University regulation) or even a statutory legal rule that smoking in public areas is banned. This is an example of a convergence of social norms and public policy interests to protect individuals against the negative effect of active or passive smoking. This example serves as a practical entry point for appreciating how norms on societal impact evolve from social expectations to public policy and public regulation based on a combination of concerns and underlying norms. It also shows students how insufficient response to changing social norms or social concerns on adverse impact of specific practices may result in public regulation, especially of those who cause the adverse impact.

⁴ The new rules in general apply to companies with more than 500 employees. This includes listed companies as well as some unlisted companies, such as banks and insurance companies. The scope includes approx. 6 000 large companies and groups across the EU.

3. Stakeholder theory, CSR reporting and the emerging regime of Business & Human Rights

According to Edward Freeman's well-established definition a stakeholder is any group or individual who can affect or is affected by the achievement of an organisations' objectives (Freeman 1984:46). A range of stakeholder theories have evolved around this, setting out diverse normative, instrumental or descriptive approaches (Donaldson & Preston 1995). These typically have regard to management and corporate strategy, often with the aim for the organisation to identify risks as well as opportunities related to CSR, in particular with regard to financial issues (Berman et al. 1999).

Stakeholder theory and the way it is taught typically relates to the immediate stakeholders of organisations, such as shareholders, suppliers, employees, customers and local communities (Friedman & Miles 2006: 13). Governments are recognized as stakeholders, typically for very large organisations (Freeman 1984: 55, Friedman & Miles 2006) but national and international policies have generally not been seen as highly relevant to stakeholder analysis. Yet public policy oriented issues, such as occupational health and safety, equal treatment (non-discrimination) and the environment have been recognized as issues to be considered in CSR policies and strategies (Carroll 1979, Rendtorff 2009). As a corollary, individuals or groups harboring those interests are stakeholders – *e.g.*, employees and local communities. Friedman and Miles (2006) note that the growth of stakeholder expectations for transparency is driving companies to report on CSR as voluntary measures going beyond mandatory financial or even non-financial reporting. They argue that the evolution of CSR reporting from PR-like reporting to transparency that does not only draw a green or socially responsible picture of the organisation is attributed in part to national regulation and formal voluntary guidelines (2006: 260-262). The Guiding Principles and UN Global Compact are among such guidelines, and CSR reporting requirements among the former.

Despite a risk that prescriptive reporting requirements may limit creativity and cause companies to do only the minimum, public regulation on CSR reporting is clearly on the rise, as illustrated by the introduction of mandatory reporting, reporting guidance or reporting guidelines backed by national or international governmental organisations (Ioannou & Serafeim 2012). So far, particularly environmental reporting has been shown to contribute to both societal and business value (Ambec & Lanoie 2008, Hopwood 2009). While mandated environmental or social disclosure like much voluntary CSR-reporting may ultimately have an objective of inducing organisational change (Buhmann 2013b, Hess 1999), the learning objective is only fulfilled if the organisation engages in order to learn rather than simply adapt (Gond & Herrbach 2006). Indeed, analyses of CSR reporting suggests that the learning potential may be greater with smaller organisations, whereas large companies may see (and deploy) CSR reporting as an externally oriented communication exercise (Baumann-Pauly *et al.* 2013). If firms engage passively, reports may only communicatively reflect current societal concerns without the internal reflection generating learning that is required for learning. This may seriously affect firms' legitimacy or social license to operate (Holmstrøm 2013). Engaging actively may be easier when firms understand the objectives behind required reporting and the intended aims for change. Unfortunately, these are not always obvious from the legal text itself or from a general reading of broad policies. This is demonstrated by examples of the literature on the Danish CSR reporting clause (Vallentin 2011, Knudsen & Brown 2014) which focus on the organisational and business-strategic aspect of 'shared value-creation' communicated in the government's 2008 Action Plan but disregard the underlying regulatory strategy and distinct public policy objectives. These are what may ultimately lead to hard(er) regulation if the soft (reporting) measure does not deliver the intended change. As explained below, limited reporting (and therefore evidence of potential change) on human rights led to the introduction of compulsory human rights reporting from 2013.

A potential organisational learning tool (Gond & Herrbach 2006), a CSR report and its drafting enables organisations to engage with selected stakeholders to gauge their impression of the organisation and to learn about or test their social expectations. A CSR report offers information on CSR policies, strategies and activities of the organisation and in its relations with supply chain or buyers. CSR reports are windows for an organisation to communicate with stakeholders and to show that it ‘walks the talk’ on CSR. Reports may influence important decisions by the firm’s stakeholders, such as whether to become (or remain) a consumer, buyer or investor. Adequate understanding of stakeholders’ expectations of firms in complex areas like human rights (including many labour rights which offer particular supply chain challenges) may help protect against reputational and ensuing economic risks. The quality of CSR reporting, therefore, is crucial for organisations wanting to respond adequately to stakeholders concerns, including those of governments. Whether a firm takes an adaptive, learning or combined approach to social reporting (Gond & Herrbach 2006) this relates not only to reporting as a matter of producing a report, but also reporting as a process.

Legal scholarship recognises linkages between CSR and law in terms of both mutuality (McBarnet 2008) and regulatory strategy to promote social responsibility within firms (Hess 1999, 2008, Sjøfjell & Anker-Sørensen 2013, Buhmann 2011, 2013a). A ‘Nordic’ model with governments seeking to regulate company conduct towards the benefit of society (Gjølborg 2010, Strand 2009) is not unique. Regulators elsewhere in Europe as well as in Asia, Africa and the United States increasingly deploy mandatory or recommended disclosure towards similar ends (Singh & Verma 2014, Ioannou & Serafeim 2012, Lambooy & Van Vliet 2008, Drimmer & Phillips 2011).

With the globalisation of trade and expansion of global supply chains and multinational business, insufficient implementation of human rights in one (typically supplier) state translates into public policy objectives of others wishing to promote better implementation (typically home states or states with international development policies on human rights). Even in states without severe governance problems there is growing debate on how business can be included to strengthen the delivery of and protection of public goods. CSR reporting features as an element in this, partly due to the assumption that reporting may contribute to businesses’ internalising external needs and expectations through self-regulation (Teubner 1983, Hess 1999, Buhmann 2013b). Usage ranges from voluntary to mandatory, but increasingly even voluntary reporting is subjected to formal requirements. A case in point, UN Global Compact reporting has undergone increasing requirements in terms of issues and frequency, sanctioned by exclusion (‘de-listing’) for non-observant firms. The reporting requirement was changed to avoid the Global Compact being seen or abuses as ‘blue-washing’.

Voluntary non-financial reporting entails internal corporate governance functions (Johansen 2010, Palenberg, Reinicke & Witte 2006). This aspect of steering companies’ conduct has been adopted by regulators when mandating reporting. Although company self-regulation, including through reporting, has been questioned as insufficient to avoid adverse impact on society (Sjøfjell 2010, Richardson 2011), a regulatory potential of CSR reporting has been recognised in the socio-legal regulatory literature. Under system-theory inspired reflexive law, CSR reporting may be considered a modality to induce self-regulation in organisations (Hess 1999, Orts 1995, Buhmann 2013b). According to this theory, public authorities may induce self-regulation in organisations in order to address public policy needs or concerns (Teubner 1983, 1984, 1986, Luhmann 1986). Much of such indirect public regulation occurs under the shadow of the law, entailing the possibility that authorities may introduce binding (‘hard’) law demanding specific action, such as environmental safeguards, CO2 emission limitations or occupational health and safety measures if business self-regulation is insufficient. The regulatory potential of indirect

regulation such as CSR reporting accords with an inclination of organisations to self-regulate in order to pre-empt binding public regulation (Schwartz and Carroll 2003).

Legal method is particularly apt for firms' understanding of authorities' efforts to engage business in the implementation of goals established in international law relating to social and environmental sustainability, such as under the United Nations (UN). According to its foundational Charter (UN 1945), the UN has extensive objectives related to social progress but only limited powers to implement these. That is particularly the case in relation to sustainability related concerns, including human rights, labour standards and the environment. These are increasingly at risk of infringements caused by firms, especially when governments neglect to implement their international obligations in national law. Among scholars of Business & Human rights it has long been acknowledged that CSR holds potential to promote public goods, such as – in human rights terms – access to land, food, health services, education and employment, the strengthening of employment conditions and occupational health and safety, and the elimination of child labour and forced labour. All are covered by hard and soft international law of the UN or its organisations. When governments do not effectively and efficiently fulfil their obligations, expectations shift to firms to respect or even promote human rights in place of the weak or underperforming state.

The UN Guiding Principles on Business and Human Rights encourage disclosure where there are risks of severe adverse impact on human rights. That applies whether the risk is directly associated with the specific business operations or whether it is associated with or a result of operating contexts (UN 2011 Principle 8-9 and 21 with Commentary). Firms operating in host environments with particularly problematic human rights practices, such as forced locations or governments' procurement of forced labour as part of its contributions to joint ventures, are cases a point. The Guiding Principles recommend that states encourage or even require firms to communicate how they address their human rights impacts (UN 2011 Principle 3d). Such communication may range from informal engagement with affected stakeholders to formal public reporting.

Human rights issues related to business operations are often not presented by stakeholders in human rights terminology (Ruggie 2013). Understanding of human rights may assist the organisation in identifying what stakeholders to consult, and how to tease out the human rights relevant issues among a range of CSR concerns.

Due to their power (to regulate), legitimacy (to develop and enforce rules) and urgency (charged with the implementation of public policy and often wishing to be seen to be efficient in dealing with public concerns), regulators and other authorities enjoy all three attributes to make them definitive stakeholders according to Mitchell, Agle & Wood's (1997) stakeholder salience model. The broadness of their power and urgency to deal with societal challenges, however, means that underlying motives or expectations may not always be clear to firms. Legal method offers a way to gain more clarity.

To regulators, CSR reporting is not only about transparency but also about engagement in taking responsibility for their impact on society (Buhmann 2013). From this perspective, mandatory CSR reporting is not only an invitation to share information with society about an organisation's impact on society, but equally importantly an invitation to learn, self-regulate and show this. This has both a market based and a legal regulatory aspect: The market based aspect is related to the 'non-state-market driven' (NSMD) approach on which many private CSR schemes build (Cashore 2002): being seen to be acting responsibly may serve to retain and gain customers or investors. The legal regulatory aspect connects to the interest of business organisations to avoid stricter regulation (Ruggie 2013:37), even

within a framework setting out general guidance (Gjølberg 2011). The ‘shadow of the law’ applies not only at the national level of a host or home state, but also at the international.

Accordingly, CSR reporting relates to stakeholder theory in terms of identification of stakeholders’ interests, and in terms of self-regulation. In deciding what information to place in a CSR report, managers may make various decisions in collaboration with their CSR and communications departments. The process of developing the report may be used actively by the firm to engage with stakeholders and learn about their concerns. This may assist the organisation in avoiding incidents that may be costly in terms of finances or reputation damage. Aptly, research demonstrates that risks to companies resulting from business related human rights abuse may not only affect a business organisations’ social licence to operate: it may lead to financial costs due to local labour market antagonism, reduced output, and project cancellations. It may result in delays in the granting of permits, construction, operation and as a consequence increased expenses (Ruggie 2013: 137-139). To steer clear of such conflicts and their costs, businesses need to understand the underlying normative concern, the provisions and objectives of related international or legal standards that may inform social expectations, and the policy objectives that drive requirements or recommendations on disclosure.

4. Legal method

4.1. Analysis of legislative history and guidance for application

Applied by legal scholars or practitioners, legal method mainly comprises document study combined with compilation and assessment of facts. Its purpose is context-specific (like identifying soft or hard law applicable to a given situation, or to determine the background and objective behind a specific rule), but the method is general. Whether the background is national law (such as national disclosure rules) or international law (such as human rights), legal method entails the study of a set of ‘sources of law’ in order to determine how to understand and apply a rule in a given context. Like sources of a river, sources of law are individual currents that together shape and combine into what become the main line (the rule or regulatory instrument)

At its basic level, legal method is a rather simple method of following a chain of events or documents to understand what the drivers or underlying social norms and political and economic concerns were that led to a particular rule or regulatory document. Events may be political or express societal concerns, often in combination; depending on context or setting documents may be political, consultation reports, or other national or international legal instruments, also often in combination. Drawing on the example of norms and rules on smoking on non-smoking in public settings, this may be illustrated through *figure 1*.

The figure has the rule (norm) in focus at the uppermost level. Underlying norms and concerns that led to that rule (or norm) and contribute to understanding its objective and intended application at lower levels. This structure applies to all figures in this article.

Even where case law is a core source of law, such as in Anglo-Saxon cultures, it is not definitive. In contexts surrounding the role that law plays for CSR, case law is still limited. Many court cases lodged under statutes such as the US Alien Torts Claims Act have been dismissed or settled out of court (Ruggie 2013, Clapham 2006). While existing case law is not insignificant and certainly underscores the importance of social expectations of business, it does not provide the guidance that companies need in order to fully appreciate what these social expectations are for a business not to be claimed to be in violation with potentially costly reputation damage even if the case is dismissed. Nor does it provide the information that firms need to gauge underlying objectives behind disclosure requirements or recommendations in order to respond adequately. Thus, for purposes of appreciating social expectations

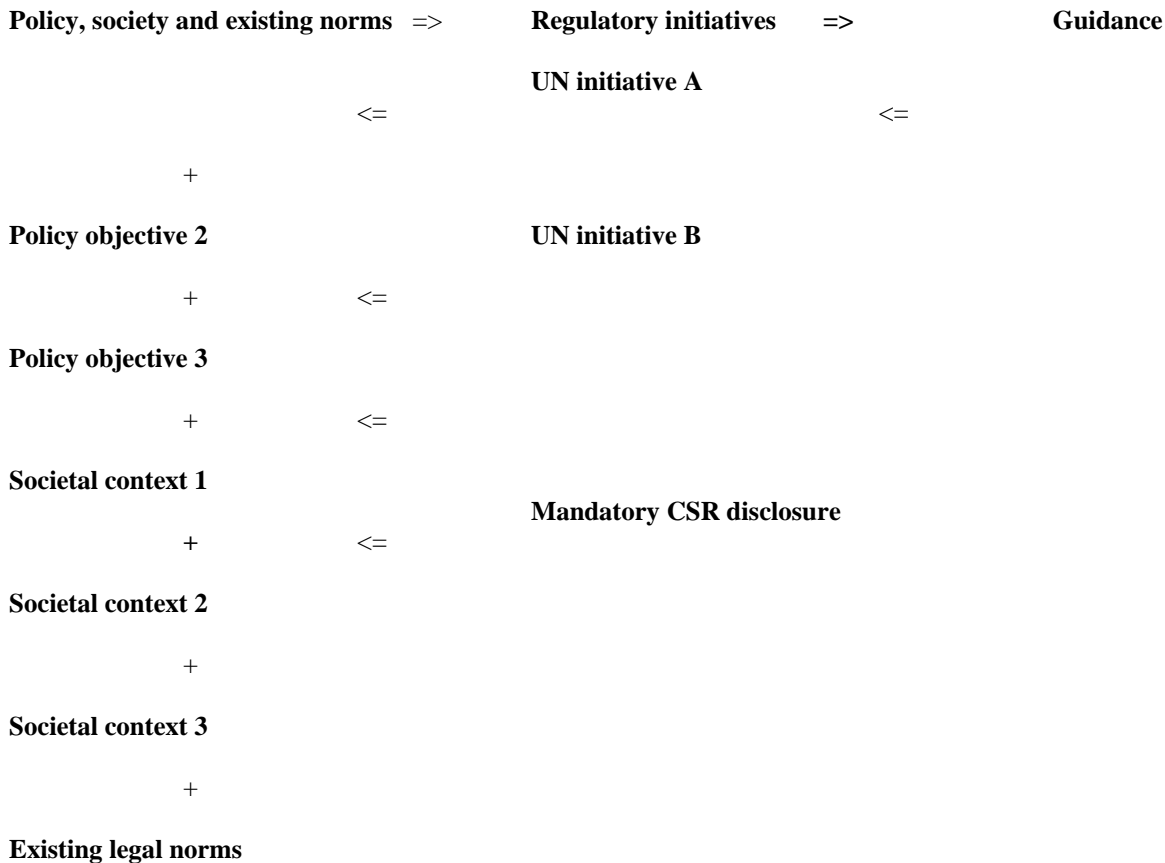
and public policy objectives informing the solidifying CSR regime, other sources of law are highly relevant. Aptly for CSR issues, McLeod (2007) recommends including sources of a broader historical character for topics related to social or political objectives.

Figure 1: Legal method – a simple representation

=> : chronological development

<= legal method analysis: going backwards in the chronological chain

+ : factors that add up/may be included

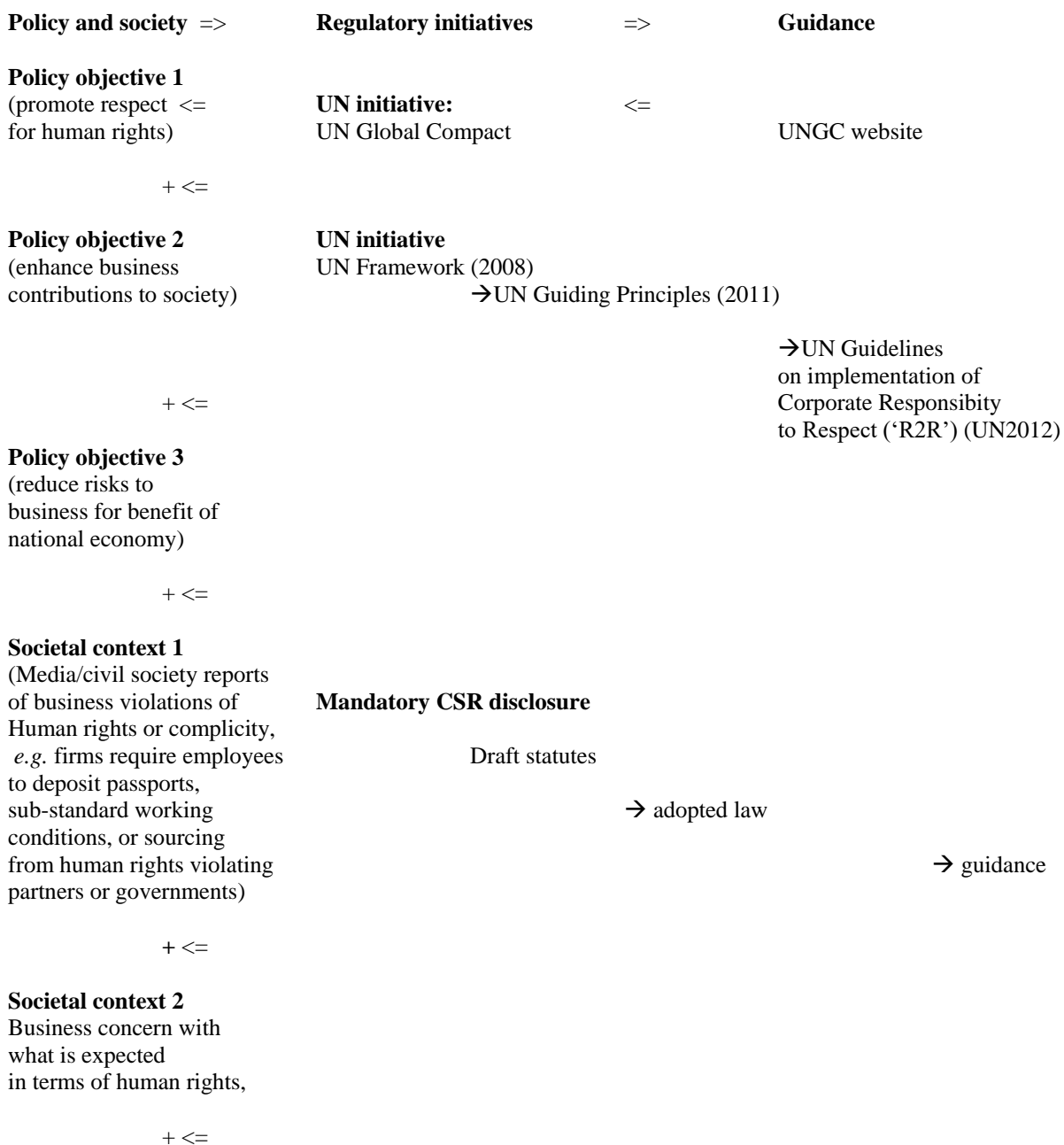


Applied to the Global Compact as a soft law guidance instrument, the basic range of sources of law corresponds to the Global Compact ten principles covering the four issue areas of human rights, labour rights, environment and anti-corruption; the international instruments that inform each of the four issue areas; key documents leading to the Compact (like Kofi Annan's speech at the World Economic Forum in Davos in January 1999 (Annan 1999), which effectively encouraged business leaders to collaborate with the UN to develop the Compact principles); and the international Declarations which inform the four issue areas and the ten Principles as shown in *figure 2*.

For the application of a specific rule, legal method typically involves a close textual reading of that particular provision or text. For studies analysing the intention of regulators as well as soft rules and multi-stakeholder regulation, the textual reading of documents seeks to identify underlying objectives expressed in policy documents, explanatory comments issued by authorities, consultation responses and other texts that place a particular rule into context. With some variations between countries, the sources of law for national public law typically comprise bills (draft laws) and committee reports, authorities'

explanatory comments, consultation responses, parliamentary debates, as well as the general legislative context which in today's globalising world frequently includes international developments (Olson 2009, Zahle 1999, Goodrich 1986). Application of legal method to this range of sources also offers insight into affected interests expressed organisations that submit consultation responses or otherwise offer views. Studying policy objectives, consultation comments and other elements in the history and guidance for application also forms part of the legal method for many countries and legal systems (Olson 2009, Knowles 2009, Mersky & Dunn 2002, Zahle 1999, Evald 2000). This also applies to EU law and international law, such as UN hard or soft law of topical relevance to CSR issues like human rights, labour standards and the environment.

Figure 2: Legal method – unfolding the human rights and CSR disclosure interconnection



Societal context 3

Business engagement with
CSR standards/guidance
on Business and Human Rights

+ <=

Existing legal norms

International Bill of Rights:

=

Universal Declaration on
Human Rights (1948)

+

International Covenant on
Economic, Social and
Cultural Rights (1966)

National human rights law

General Comments

+

International Covenant on
Civil & Political Rights (1966)

National human rights law

General Comments

ILO conventions (labour
conditions, workers rights)

National labour law

ILO 1992 Declaration on
Fundamental Principles and
Rights at Work

Rio Declaration (1992)

For studies focusing on the intended application of a rule (rather than contesting its application, as is often the case in disputes in front of courts), guidance materials explaining such intentions, clarifying or elaborating issues related to the application or carrying instructions for particular organisations covered by the rule are often an important source of norms.

For practical purposes, the set of sources to be identified is typically relatively limited and straightforward. The key, therefore, is to know the currents to be followed and how to look for information providing precision and concreteness to transfer broad terms, such as human rights, into specific business contexts. There may be important steps between committing to respecting human rights as a matter of principle, and the capacity to analyse an action with regard to its potential human rights infringement risks. For example, making the connection between the use of water as a resource for rinsing recycled glass bottles and the risk of infringing on human rights in terms of local village inhabitants' access to water requires an appreciation of access to water as a human rights although it is not stated explicitly in the Universal Declaration on Human Rights or other major UN human rights instruments. Or, if a mine pollutes water sources of the local communities so that people do not have the same access to safe drinking water as before, it has infringed on the enjoyment of the right to safe drinking water (UN 2012). Similarly, possible human rights infringements flowing from how an employer deals with employees' identity documents or to handle security issues require a level of analysis that may be enhanced by the ability to follow a chain or current of sources of law.

International law shares a number of features with the legal method for the study of national law. The key difference between international law and national law as legal systems is that international law is primarily addressed to states, whereas national law is addressed to both individuals and business organisations within a state and to authorities within that state. The emergence of CSR standards like the UN Global Compact, UNGP and ISO 26000 that partly take their normative foundation in international law on human rights, workers rights, environment and anti-corruption have caused a shift

of actors looking to international law for normative guidance: although business have only a limited formal role in the international legal system as formal duty holders, the practical implications of international law have grown immensely for CSR conscious firms.

For the purposes of the current article, the method which has been recognized for a particular branch of international law, namely international human rights law, is of particular relevance. Compared to much other international law (like international trade law), human rights law has strong focus on individual persons and their communities. Human rights law overlaps with several aspects of international labour law, in particular as regards such CSR relevant issues as occupational health and safety, salaries, working hours as well as other working conditions, the freedom of association and collective negotiation, non-discrimination in the work place, and the elimination of child labour, slavery and forced labour. Indeed, the four core labour rights covered by the Global Compact's Principles 3-6 (freedom from discrimination, trade union freedom, elimination of forced labour and elimination of child labour) correspond to human rights. Thus, international law method as a modality for identifying elaborations of what types of activities and standards of conduct are associated with often broadly understood human rights may be of considerable importance for firms in the context of CSR.

It is no coincidence that Global Compact Principles 3-6 are defined to encompass the issues covered by ILO's core labour treaties (also known as conventions). Treaties (like UN human rights conventions or ILO labour conventions) are a key source in international law. Like the national law method described above, international human rights law method (Shaw 2008, Cassese 2005, Ovey and White 2010) includes the analysis of the legislative history and process in order to gauge policy objectives and issues of contention raised by various stakeholders. It also includes the study of elaborative statements and events, such as expert comments, guidance and practice. Both legislative history and current public policy objectives are recognised to form an important source of human rights law (Ovey & White 2010).⁵

For international law on human rights and labour rights, both of which are relevant to the Business & Human Rights regime, guidance for application is issued by expert committees under specific international treaties. These are typically known as 'General Comments'. The UN Special Representative on Business and Human Rights, John Ruggie, has urged the committees to devote more attention to business related human rights issues in the future (UN 2008). As a result, it can be expected that important guidance will be developed in the years ahead.

In sum, in its general and simple form, which spans both national and international law, legal method basically entails the identification and studying of texts. While specific knowledge can be useful for national law contexts, at a basic level legal method can be mastered without a background in law.

4.2. Teaching note

It is encouraged that students be invited to apply the method introduced in 4.1. to one or more sets of codes or public set of rules related to CSR that they are already familiar with through previous sessions in the course or previous business ethics/CSR courses. For example, students may be invited to identify the sources of law that feed into and inform the CSR process standard SA8000, the FSC certification

⁵ For example, in rulings based on the European Convention on Human Rights, the European Court on Human Rights' case law on the freedom of association and closed-shop agreements has changed from emphasising the freedom to organise in trade unions, which was felt to be the appropriate human right to protect when the European Convention was adopted in 1950, to the freedom to not be a member, which has been seen by the Court to accord with contemporary European policy and needs.

standard or ISO26000 and draft a figure (based on the style of figure 1 or 2) to show the elements (social concerns, policy, legal instruments and other elements) that lead to the standard. Students may also be invited to apply the method to identify the sources leading to a Code of Conduct for a particular company or to a legal statute in their country or region that relates to CSR. For students in the US, this could be the Dodd-Frank Act's CSR transparency requirements (US 2010) or the amended Lacey Act requiring CSR related due diligence for the import and trade of plant products, including tropical timber (US 2008). For students in the EU, this could be the 2014 Directive requiring CSR reporting of large companies with effect from 2016 (EU 2013). For students in China, this could be the 2005 provision in the Company Code (article 5) that requires firms to engage in CSR (PRC 2005), or the textile industry Code CSR9000T (International Trade Centre, no year), which resembles SA8000 in several respects. For students in India, the national case could be the statute that requires firms to set aside 2 per cent of their income for CSR (India 2013).

This exercise may be structured at two levels: An introductory one, building on the information in Section 4.1., to get students engaged in identifying sources of law and looking into the how the legislative history has shaped a regulatory instrument related to CSR, whether this is a soft or hard instrument. At the next level students can be encouraged to apply the information in Section 5 to add insights to the findings they identified in the introductory exercise and to analyze connections between diverse CSR instruments or normative drivers, as explained in Section 5.3.

5. Examples

5.1. *The international level: The UN Global Compact*

Despite being a voluntary initiative to promote CSR, the UN Global Compact is directly based on international law instruments. Participants commit to ten principles on human rights (Principle 1-2), labour standards (Principles 3-6), environment (Principles 7-9), and anti-corruption (Principle 10). In these four issues areas, the Principles build on as many international law instruments: the Universal Declaration on Human Rights (UDHR) (UN 1948), the International Labour Organisation's 1998 Declaration on Fundamental Principles and Rights at Work (ILO 1998), the Rio Declaration of the United Nations Conference on Environment and Development in 1992 (UN 1992), and the United Nations Convention against Corruption (UN 2003) respectively.

The very rich internet site that serves as the main means of information and communication of the Global Compact (www.globalcompact.org) looks deceptively simple. Accessing the website and the ten principles (<https://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>) may give the impression that Global Compact participation simply entails a broad commitment to the Principles. Yet sub-links add ever greater detail and guidance to each of the principles.

Working from the general and overall commitment to the detailed standards to which a firm may be held to account based on social expectations as well as its report, much of the website builds on a 'sources of law' approach. Its richness with increasingly detailed information, however, offers challenges in order to identify the relevant information. Knowledge of legal method to identify sources of law of international law in general or in the issue area in question assists this navigation. That will be demonstrated in the following through the example of human rights.

Legal method as modality to support business understanding of Global Compact Principles

A discussion of the ways in which the legal method of identifying sources of law works in the specific contexts, such as the UN Global Compact, requires making some reference to legal instruments. The discussion below keeps this to a minimum, taking as its point of departure in some instruments that will

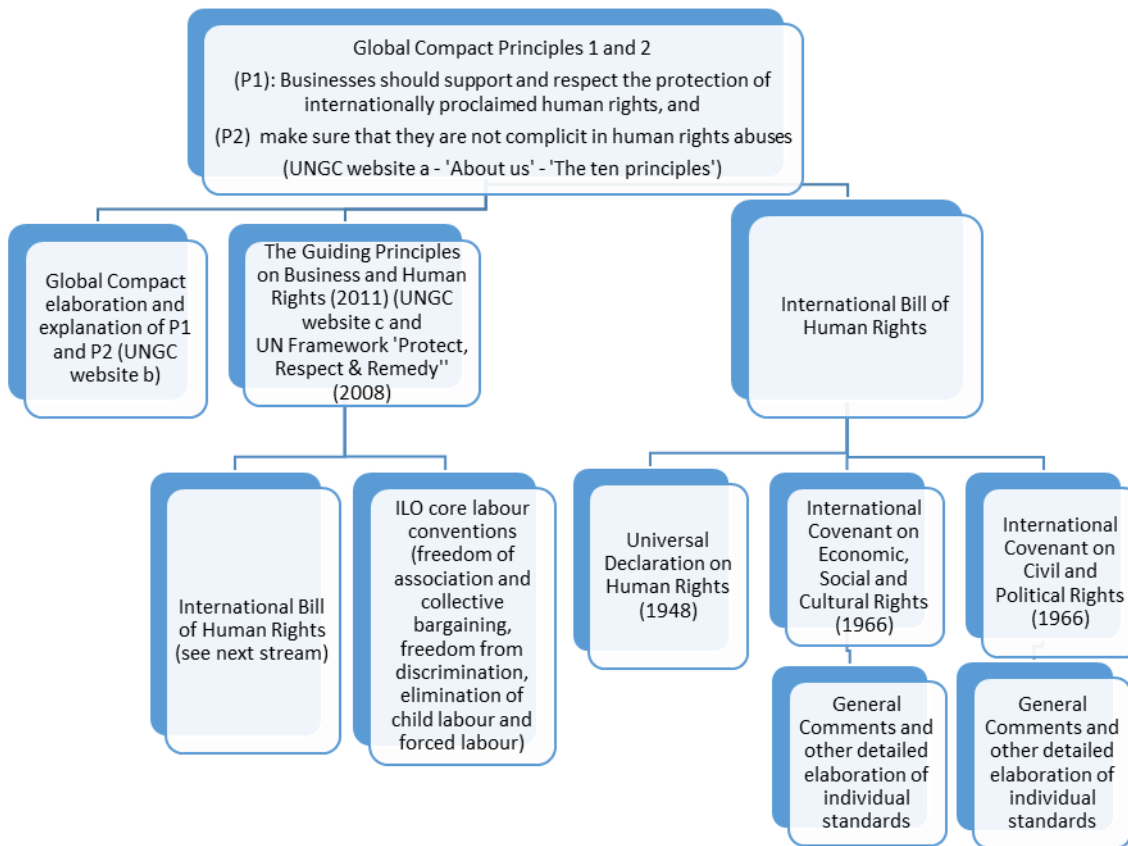
already be familiar to some students, teachers and managers of CSR. Teaching and applying legal method in relation to stakeholder theory in practice will typically require a higher level of detail.

Explanations and guidance materials on the Global Compact website provide information on the international instruments and specific standards of conduct. The Compact website is set up through a ‘pyramid’ like structure, with increasingly elaborate pages and deeper links which offering detailed information on the Principles. The guidance falls into ‘currents’, some of which are general explanations, while others link explicitly to actual sources of law. Links under the overall Human Rights Principles 1 and 2 explain what the Universal Declaration on Human Rights means for business organisations (UNGC website a). Deeper links lead to more elaborate information on each of the two Human Rights Principles (UNGC website b), which in turn contains links to even more detailed information and guidance, including the Guiding Principles on Business and Human Rights (UNGC website c). This page also contains a link to the International Bill of Human Rights (UNGC website d), which comprises two international Human Rights treaties, one on Socio-Economic and Cultural Rights (UN 1966a), of which many are relevant to working, living and health conditions of employees and communities; the other on political and civil rights (UN 1966b). The specific rights and the standards of conduct implied by these conventions are explicated by General Comments as well as scholarly writing and international legal practice. Because the ‘pyramid-like’ structure essentially builds on the method of international law and its sources of law, understanding of what precisely is required or expected by a business organisation in relation to a specific human right will be deeply enhanced by applying legal method. Similarly, identifying stakeholder salience and developing a CoP report may benefit from insight into the specific human rights issues at stake, and from managers being able to diagnose particular stakeholder concerns in terms of the human rights that may be at risk of violation.

As *figure 3* shows, the sources for the Global Compact Principles (illustrated through Principles 1 and 2) flow in three currents: one contains general guidance provided by the Global Compact secretariat. This explains the two human rights principles in a general sense, but leans on the two other currents for details. The second is the UN Guiding Principles, which are rather soft international law in the sense that it is a novel and highly guiding form, which in turn relies on the International Bill of Rights and ILO core conventions for detailed standards. The third current, then, is the International Bill of Rights, which contains detailed human rights standards. The General Comments, which provide further details, are not noted directly. Yet stakeholders such as human rights NGOs may expect firms to act in accordance with these too, and hold them to account for this. In other words, the expectations inherent Principles 1 and 2 presume an appreciation that detailed guidance on conduct must be sought by following diverse but complementary currents of ever greater technical detail.

To concretize, access to *water* has been subjected to detailed elaboration as a human right in later years. Water as a right or resource is not explicitly addressed in the Universal Declaration on Human Rights or the Conventions forming part of the International Bill of Rights. Yet water as a resource has significant implications for the life of individuals, and therefore may be related for example to human rights on health and an adequate standard of life. Water is necessary for growing crops and producing food that can feed farmers, their families and customers. Clean water is necessary for hygiene and health. Insufficient access to water may cause disease and kill crops and individuals. All of this has human rights effects, which may be understood through a close reading of the instruments which spell out the Universal Declaration into details and further elaborated through additional sources, in particular General Comments.

Figure 3: Currents of guidance and sources of law: Global Compact Principles 1 and 2

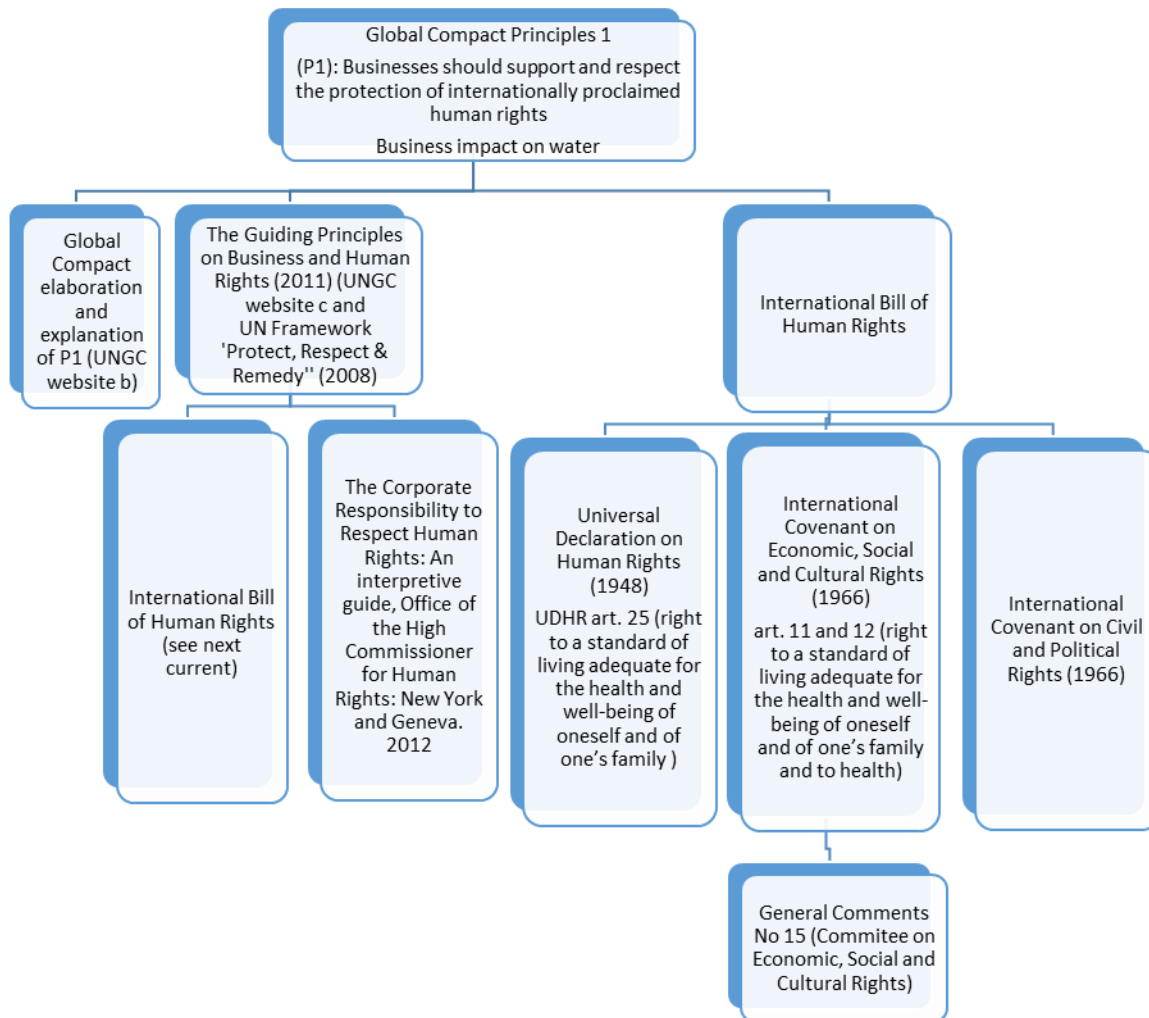


Indeed, a General Comment issued by the expert Committee on Economic, Social and Cultural Rights adopted in 2002, elaborates on the right to water. The Comment opens by stating that “The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights”. It defines the right to water as the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses, and elaborates on implications (UN 2002). Further and more recent information on the right to water can be found in a Resolution (a soft law instrument) adopted by the UN General Assembly in 2010. In this Resolution the United Nations General Assembly explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights. The Resolution encourages the provision of financial resources, capacity-building and technology transfer to help – in particular developing – countries provide safe, clean, accessible and affordable drinking water and sanitation for all (UN 2010). Companies which wish to address water in their CSR policies and practices and/or their CoP Report can gain important insight from these texts. In addition to issues to address in a CoP report, they can gain information on the issues of relevance to diverse stakeholders, which they may wish to identify through other methods or instrumental stakeholder theories. Understanding of such issues may assist a company in deciding whether a stakeholder is, for example, dangerous or demanding (Mitchell, Agle & Wood 1997) as regards the organisation’s impact on water.

Underpinned by the theory basis of what constitutes sources of international (human rights) law, the legal method of document study helps identify the relevant documents (*figure 4*). The method’s focus on

document chains elaborating a general resource or social good into human rights and setting out in details what this entails in terms of rights, duties and recommendations provides deep insight into the human rights expectations that society may hold of firms in regard to water as a resource.

Figure 4: Business impact on water: currents of guidance and sources of law under the Global Compact



To understand the implications for business, students or managers will gain useful insight by accessing the Guiding Principles (UN2011) as well as, importantly, additional guidance that has been developed particularly on the Corporate Responsibility to Respect Human Rights. The United Nations' specialized office on Human Rights in 2012 developed such a guide (UN 2012).

Legal method to improve the quality of reporting

The Global Compact functions as a learning forum intended to promote social responsibility through companies' internalization of social expectations as expressed in the ten Principles. Seen in the general context of the Global Compact as a learning instrument (Kell & Ruggie 1999, Kell & Levin 2002) and a measure which can strengthen stakeholder dialogue (Global Compact 2010), CoP reporting may support

the internalisation of the ten principles (Buhmann 2009) towards learning along the active approach suggested by Gond and Herrbach (2006).

The CoP policy requires business participants to issue an annual report on their progress in implementing the ten principles. With the CoP policy referring to transparency towards “all stakeholders” (UN Global Compact 2012), the report is intended to address an organisation’s stakeholders in a very broad sense. A CoP must provide information on activities and policies the company has taken to implement the Global Compact principles and to support broader development goals.

Understanding the Global Compact Principles through the application of legal method offers the company opportunities for targeted stakeholder engagement, for example around specific human rights issues related to access to resources like water, and therefore to address these issues from diverse stakeholder perspectives in the CoP with a high degree of precision as to the relevant concern. While disclosure is no guarantee against reputational damage, stakeholder engagement around a precise identification of concerns that may be framed as relating to specific Global Compact principles and associated standards of conduct may contribute to managing risks and for demonstrating a firm’s willingness to self-regulate within a broad normative framework.

Studies of reporting patterns under the Global Compact indicate low reporting rates for complex issues like human rights and anti-corruption when issue reporting is at the discretion of the firm (UNGC 2010). This led to the CoP policy being strengthened and limited flexibility in firms’ choice of reported issue areas. This underscores that for firms to retain some flexibility in terms of CSR issues and action, they need to understand and respond adequately to issues of particular concern at a given time. The latter point is underscored by the evolution of Denmark’s mandatory CSR reporting, as discussed in the following.

5.2. The national level: Mandatory CSR reporting

With effect from 2009 annual CSR reporting has been required of certain large Danish companies.⁶ These companies must provide information on their CSR policies, the implementation of these policies, and outcomes. Companies that do not have CSR policies must disclose this. The reporting provision defines CSR as the voluntary “consideration of” human rights, societal, environmental and climate conditions as well as combating corruption in their business strategy and activities (Denmark 2008, section 99a).

Originally, companies had discretion to choose the CSR issues to include in the report. Reporting could be on one or all the issues included in the definition, but had to be consistent in the sense that information on policy, implementation and outcome all had to relate to the selected issue(s). However, in 2013 this changed. For companies with policies related to human rights, the CSR report now must include this issue.⁷

⁶ Technically, CSR reporting is required by companies in what Danish law refers to accounting class C, and listed companies and state-owned companies in accounting class D. Accounting class C companies have total assets/liabilities of DKK 143 million (roughly Euros 19 million), net revenue of DKK 286 million (around Euros 38 million), and/or an average of 250 full-time employees). Accounting class D comprises listed private and state-owned companies.

⁷ The strengthened reporting requirement also includes climate change mitigation. For reasons of focus, this point is not further addressed in here as the policy background differs from the human rights issue.

The change from flexible to strict disclosure was caused by findings in studies of reporting patterns (Ministry of Growth and Commerce 2011, Danwatch 2011, Ministry of Economics and Commerce 2010) and supported by recommendations by the Danish Council on Social Responsibility, a multi-stakeholder body that advises the government on CSR issues.

Resembling Global Compact reporting patterns, Danish CSR reporting patterns during the years when reporting was flexible indicated fairly consistently that around 90 per cent of reports included environment and climate change mitigation policies, closely followed by reporting on social issues in Denmark, including labour issues within the Danish firm (around 80 per cent). By contrast, reporting on human rights and labour issues in facilities outside Denmark as well as anti-corruption was much lower (around 35 per cent of reports) (Ministry of Growth and Commerce 2013, Ministry of Growth and Commerce 2011, Danwatch 2011, Ministry of Economics and Commerce 2010). With considerable substantive overlaps between human rights, labour rights and anti-corruption, this suggested that companies hesitated to report on these typically politically sensitive issues, which are often complex and, given their media appeal, may give reason to considerable reputational damage.

A legal method based legislative history analysis shows that the introduction of the original reporting provision was based on a strong policy objective of inducing self-regulation with firms, and that human rights and supplier-country related labour issues were key among these (Buhmann 2013b). Thus, if firms had paid attention to the underlying policy objective and had responded by more extensive reporting, the regulatory framework might have remained more flexible.

The original reporting requirement

The introduction of mandatory CSR reporting was announced in the Government's first CSR Action Plan (Danish Government 2008). The Action Plan was worded in language suggestive of business case approaches to CSR (Vallentin 2011) but with recurrent references to the Government's interest in making Danish companies internalise principles based in international law. Indeed, explanatory comments provided by the government to the reporting proposal clearly indicate that mandatory reporting was intended to provide companies with insight and tools to base their CSR policies and practices on what is referred to as "internationally recognised principles" (Draft for consultation 2008, Explanatory Comments 2008). This term includes the Global Compact, the UN Guiding Principles and the sources of law on which the four Global Compact issue areas build. Legislative history analysis shows that the governments' objectives exceeded simple transparency: it intended companies to self-regulate to address specific problems related to issues outside the government's territorial reach. In particular, the government was concerned with human rights issues related to the supply chain, such as working conditions (Draft for consultation 2008 section 2.1). These objectives were underscored by the guidelines for application, which the government issued prior to and after the first round of reporting (DACC 2009a, DACC 2009b, DACC 2010). The significance of this governmental objective in relation to companies' assessment of stakeholders' interests came out with the subsequent introduction of compulsory human rights reporting.

The compulsory human rights reporting requirement

Effective from financial year 2013, compulsory human rights reporting for large firms with policies on the issue was introduced through a 2012 amendment to the original CSR reporting provision. The legislative history of the new human rights reporting requirement indicates that the discrepancy between, on the one hand, the government's and civil society's concern with business impact on human rights, and on the other, the low number of businesses reporting on human rights played a major part. Civil society concern and lobbying added to this by drawing focus to a limited self-regulation in firms,

which was seen to follow from the flexible CSR reporting requirement. A documentary aired on Danish television in March 2010 suggested that child labour was prevalent in the cocoa production supply chain in Western African countries supplying to European chocolate producers (Mistrati 2010). Although the evidence was limited as to large Danish producers sourcing from the countries and suppliers in question, the trailer (the ‘appetizing’ pre-announcement on TV of the programme) and subsequent media debate framed the issue of child labour as not having been successfully addressed by Danish business in relation to their supply chain, nor by the Danish government through its efforts to regulate business conduct and sourcing. The issue generated pressure on the government to be seen to be acting (Danish Broadcasting 2011). The results went beyond the reporting requirement in ways that affect business action through both soft guidance and complaint modalities based in law. Preceding the adoption of compulsory human rights reporting requirement, which was two years in the making, the Government asked the Council for Social Responsibility to develop guidelines for socially responsible sourcing. Not requiring the same level of political process and agreement as a statute (law), these came out soon after (Council for Social Responsibility 2010). The adoption of the UN Guiding Principles and their recommendations for governments to upscale reporting added further to the pressure (Explanatory Comments 2012), and the government took the step to change human rights reporting from discretionary to compulsory.

Concurrently with the introduction of compulsory human rights reporting, the Danish National Contact Point (NPC) was subjected to a major overhaul. NCPs are complaints bodies on CSR that states which adhere to OECD’s Guidelines on Multinational Enterprises undertake to establish. The Danish NCP was the first ever to be based directly in a national law (as opposed to a policy decision), enabling it to enjoy the legitimacy of a statutory basis. Along with enhanced substantive powers to deal with complaints, this move was intended to underscore its status and importance as a complaints handling agency. The connection with the compulsory human rights reporting requirement and the background and policy objectives at stake are underscored by the fact that the reporting requirement was introduced in the same law that established the revised National Contact Point (Denmark 2012).

Thus, the legislative history analysis shows that compulsory human rights reporting was introduced on a combined background of a policy objective of promoting human rights outside Denmark, limited reporting by firms on human rights as compared to other CSR issues, critique against the government for not doing enough to counteract adverse business impact on human rights, and the solidification of a regulatory regime on Business & Human Rights through the UN Guiding Principles. Although the strengthened disclosure requirement does not require particular action except for reporting, by contrast to the original CSR reporting requirement it does entail an obligation on businesses to undertake particular action on a defined issue.

5.3. Teaching note

To encourage students to apply the method, they are encouraged to analyze the cases they worked with based on the teaching note in 4.2. at the deeper level corresponding to 5.1. and 5.2. In this exercise, students should be invited to identify how and what public policy objectives have shaped specific national or regional CSR statutes or guidance, and to identify and analyze connections between different CSR instruments (for example suggestions or requirements that issues are accounted for or reporting according to specific CSR schemes), and to work with and apply the Global Compact website’s guidance to identify the underlying public policy objectives and legal sources that inform the expectations of governments, civil society and other stakeholders who may channel their concerns through governments.

As a start, instructors are advised to ask students to work on a particular CSR issue on which the Global Compact website offers details. It is recommended that students start by applying the information in section 5.2. and *figure 3* to a particular CSR issue around water as a resource, for example based on a company, sector or affected community in their country or region. Next, students could move on to another Global Compact issue to explore and apply the guidance offered by the website. Some may find the issue of child labour particularly useful for these purposes. Eliminating child labour is a public policy objective for many governments whether home to supplier or sourcing companies. A large number of public and private CSR guidance instruments and Codes of Conduct cover child labour. Under the Labour Principles and particularly Principle 5 (the abolition of child labour) the website offers specific and detailed guidance by explaining the minimum age requirements that build on ILO conventions No. 138 and 182 on child labour.⁸

Next, students should discuss a CSR Code or public CSR-related regulation or guidance instrument to assess how public policy shapes CSR requirements or guidance. They should be invited to identify, explore and discuss the specific influence of sources of law and what this helps them understand about what is required or expected of firms by public policy makers or regulators as CSR stakeholders.

6. Discussion

6.1. What can be gained from legal method

The following focuses on the gains related to the solidifying Business & Human Rights Regime and CSR transparency practices.

The examples show that analysis building on legal method complements stakeholder analysis in two important aspects: by offering information into the details of a particular reporting issue – such as human rights – that stakeholders may consider as particularly salient; and by offering that which may support identification of stakeholders and stakeholder interests that are the most salient to the reporting requirements.

The UN Global Compact reporting example shows the detailed level of understanding of standards that is necessary for ‘walking the talk’, for example in the complex field of Business & Human Rights. The information for firms to identify and gain insight to respond to stakeholder expectations may be obtained through the application of legal method. The Danish case and the continually strengthened Global Compact CoP policy indicate that if regulators find that reporting intended to promote business organisations’ internalisation of societal needs and social expectations does not generate sufficient results, they may decide to introduce stricter requirements. In turn, this confirms what was noted above on soft regulation and self-regulation taking place under the shadow of hard law. The implications for stakeholder theory are that an understanding of the pertinent stakeholder concerns – such as governments’ underlying policy objectives – may avert the introduction of strict legal requirements of businesses to engage in particular forms of action. Such action may include but is not necessarily limited to disclosure. The Danish case shows the importance of mastering the ability to investigate underlying policy motives.

⁸ This information is available at <https://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle5.html> (last accessed on 12 December 2014).

Legal method may complement the normative, instrumental or descriptive approaches to stakeholder analysis that a student or manager normally uses. It complements the *normative* approach by offering information on specific standards of conduct which in practice inform many aspects of business ethics or particular CSR standards, such as the Global Compact, the UN Guiding Principles on Business & Human Rights, or ISO 26000 which in terms of social and environmental issues is inspired and informed by both the aforementioned CSR instruments. Legal method may complement the *instrumental* approach by offering insight into the particular concerns that stakeholders harbour with regard to business conduct. For example, workers as well as civil society organisations focusing on labour standards will be concerned with the standards of conduct expressed by international human rights or labour law. Communities as well as civil society organisations will be interested in seeing that a business identifies its impact on, for example, access to water, and that it shows what steps it takes to avoid adverse impact. It offers insight into CSR issues on which authorities may introduce binding law if they do not find business self-regulation sufficient, or if they do not find that businesses deliver sufficient information within broad transparency requirements. Finally, legal method may complement the *descriptive* approach by offering a specific point of departure for analyzing and describing a company's impact on society.

Insight into human rights as standards of conduct established in international law may assist managers in identifying the normative basis for their CSR policies or reporting and to tease out specific human rights issues at stake with particular stakeholders. Legal method offers detailed insight based on specific standards and elaboration on which the company can decide its policy and practices. Human rights issues will often be associated with a degree of urgency. Identifying stakeholders' concerns as linked to human rights or being able to define to what extent they actually do connect to human rights may assist analysis on stakeholder salience (Mitchell, Agle & Wood 1997) to determine whether such stakeholders are demanding, dependent or definitive. In this context too, the background to the introduction of compulsory human rights reporting in Denmark illustrates the way in which public policy and stakeholders' interests and powers may influence the evolution of CSR requirements on firms. This underscores that stakeholder analysis should consider the pertinent interests. In view of the potential financial costs that businesses may incur by not paying sufficient attention to human rights (Ruggie 2013), reporting as a learning tool can benefit from insight into the complexities of the broad array of human rights that may be affected by a business.

It is as yet unclear whether and to what extent reporting in practice sets in motion internal learning within companies (Baumann & Scherer 2010 on Global Compact reporting). Still, the Global Compact insists on CoP reporting by businesses, and in practice makes this function as a modality for stakeholders to monitor companies' performance and react through the market. CoPs are made available through the Global Compact website, allowing other companies, NGOs and other interested parties to monitor the reports of each participant. The idea is that the transparency provided through reports will allow stakeholders to decide whether they want to have a relationship with the company. Reporting that skirts issues considered important by authorities may lead to pressure on regulators by civil society stakeholders to introduce strengthened reporting requirements or, in principle, mandate other action on companies. Regardless of preferences of formal regulation of business impact on society or voluntary approaches, legal method may complement stakeholder theory in assisting companies in identifying and addressing issues that are perceived to be complex, such as human rights, and allows them to identify such issues and public policy oriented stakeholder concerns in order to be confident in reporting on them.

6.2. Teaching note

The usage of legal method to analyze stakeholder concerns goes beyond the specific issues of human rights and CSR reporting. It is encouraged that students be invited to reflect on what the legal method adds to stakeholder analysis and other aspects of CSR work from a broad CSR perspective not limited to the specific issues addressed in the examples above. How did the exercises add to their ability to analyse what stakeholders and stakeholder concerns are important in particular contexts? How can legal methods help explain what stakeholder interests drive CSR, how stakeholder concerns are shaped by already existing CSR norms or public law or policy, and add insight on how diverse CSR schemes interact and shape each other? What parts of the exercise did students see as particularly valuable in terms of equipping them for tasks as CSR managers or business ethics leadership?

7. Conclusion and final teaching note

CSR reporting is a method for companies to inform stakeholders such as owners, investors, customers, employees and general society about their strategies, techniques and specific decisions in relation to the company's impact on society. CSR reporting is also a method for companies to keep track of their impact on the environment, human and labour rights, climate, and other CSR issues. Based on insight gained through the reporting process, companies and their managers may enhance their awareness of the way in which firms' practices affect particular stakeholders and assess whether these should be altered or discontinued. This article has shown that the legal method of identifying and studying sources of law may provide important information on stakeholders and stakeholders' concerns.

To shape business action in accordance with public policy objectives, such as respecting human rights, improving labour conditions or engaging in environmental protection, governments basically have two options: either binding legislation that sets out specific action required of companies, or non-binding measures that leave companies more discretion but provide guidance or incentives for companies to (hopefully) self-regulate. Both options may seek to generate business activity towards the implementation of international law obligations or public policy objectives, such as in relation to human rights or other CSR related concerns within and outside the state's territory. Binding law is more likely to be imposed when authorities perceive a need to specify directly what they want from businesses. Non-binding soft law may apply where governments trust businesses to self-regulate, as well as when the political will to adopt binding law is not yet present. Invoking the capacity of firms to learn through reflecting on society's needs and expectations, mandatory CSR-reporting is a mixture, which requires businesses to provide transparency with the ultimate aim that they will self-regulate in order to uphold their social licence to operate.

The intent of regulators as stakeholders may be elicited through the method of analysing legislative history, objectives and subsequent guidance for application, and by identifying underlying detailed standards of conduct and elaborations of the implications. That knowledge can assist business organisations in addressing the relevant concerns in their CSR reports.

Adequate response to stakeholders' socio-economic concerns, such as on human rights affected by business, is important for business to prevent economic risks and uphold their social licence to operate. Adequate response to stakeholders' concerns and detailed reporting on the issues considered to be important by public authorities and the civil society stakeholders whose interests regulators seek to address may be important for authorities' political will to leave businesses the freedom to self-regulate. For firms that prefer to decide on socially responsible action as a matter of voluntary activity as compared to action mandated by authorities, legal method may increase the quality of CSR reporting to demonstrate adequate business response to stakeholders' interests and concerns.

Theory, research methods and teaching relating to business ethics related stakeholder issues typically relates to what companies do or what they should do, and what the impact is for business organisations. The application of legal method to the business ethics field has so far been limited. This article has explained how legal method offers a unique entry point for analysis of stakeholder interests through focus on expectations of business. The cases which have served as examples have all focused on human rights. This has shown linkages between CSR reporting at several levels, ranging from UN Global Compact voluntary reporting to mandatory reporting based on national requirements. These interlinkages underscore the case for applying legal method as a way to assess stakeholder concerns broadly and comprehensively at the diverse levels of interaction a business may have in order for it to report consistently.

At a basic level legal method can be mastered without a background in law. Even where detailed knowledge is an advantage, such knowledge may often be found in the legal departments or among legal advisers of companies. A basic insight into legal method, which can be taught in the context of stakeholder theory targeting business ethics, can assist future managers in identifying these issues and, where they are complex, engaging with legal departments and advisers. The introduction of legal method in teaching stakeholder theory in the business management class room may improve the capacity of future managers to analyse and respond to stakeholders' expectations on CSR. This includes, but is by no means limited to business impact on human rights.

Future perspectives to stakeholder theory and teaching of business ethics, which may be addressed both in case based teaching and in research, could entail an analysis of the stakeholder insights that business organisations gain from the application of legal method. Dividing cases and analysis between the key issue areas addressed by the Global Compact as well as ISO 26000 and other CSR instruments could generate important information on whether legal method is equally relevant for all or whether it may be particularly relevant for those fields which already have a strong link to law, such as human rights or labour standards.

For teaching, the cases in here are suggested to be applied by instructors and students in ways that reflect the particularities and contributions of the two examples above in relation to the specific CSR issues, policy drivers, social expectations, sectors and national and regional settings in which a specific course of CSR and Business Ethics or stakeholder analysis is taught. The Global Compact example trains students in navigating the Global Compact website and its links to sources of law, and to study the latter with a view to identifying information relevant to business conduct and guidance of use for managers. Working with the Global Compact website will offer students insight into the substantive guidance on CSR expectations that are of importance to governments and those whose interests they represent, in turn offering important guidance for CSR policies, their implementation and reporting and other CSR communication. Because of the similarities with CSR schemes like ISO26000, SA8000, FSC and the UN Guiding Principles, this exercise may be broadened to include one or more of these to enhance students' awareness of these business governance instruments' interaction. The example of the evolution of the Danish CSR reporting requirement may be deployed to ask students think about CSR reporting schemes in their own country or region, the backgrounds and evolution of these, and to practice the legal method to investigate public policy objectives.

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