Understanding Corporate Responsibility and Sustainability:

A Practioner's Guide

Module 1: Introduction

2023

Excerpt

[Note: publication required terminology around corporate responsibility and sustainability that was recognisable in two languages].

1 Introduction

2.1 What is corporate social responsibility?

Corporate Social Responsibility (CSR) is a rapidly evolving area of business practice through which companies integrate environmental, social and governance (ESG) concerns into their business operations and interactions with their stakeholders. The nature and content of CSR has evolved significantly since the millennium and continues to develop in response to rising sustainability pressures faced by companies and societies.

Historically, CSR was centred on voluntary acts of corporate philanthropy. Where companies engaged in CSR, it was generally secondary to the company's primary purpose of profit maximisation. As such, CSR was often viewed more as a marketing tool than a core business practice. Businesses would decide for themselves the content, form and depth of their CSR efforts, if any. This perspective saw a proliferation of CSR claims that were often unsubstantiated, and sometimes used to draw attention away from poor behaviour in other areas.[1]

TERMINOLOGY

The term "corporate social responsibility" denotes the responsibilities and governance practices of companies in meeting the social, environmental, economic and governance expectations of society. These responsibilities and practices are referred to differently in different contexts depending on the lens through which they are viewed.

For example, business schools often teach this subject as "business ethics"; investors, viewing CSR from a risk management perspective, refer to environmental, social and governance performance (referred to as "ESG"); development and environmental practitioners highlight the centrality of sustainability with references to "corporate sustainability"; meanwhile, those who have suffered the negative impacts of corporate activities draw on human rights language to underline the connection between CSR failures and injustice with terms like "corporate accountability" or "business and human rights". Sometimes, these various terms are also used interchangeably.

In this course, CSR is used to denote responsible business practices in line with social expectations. Sustainability is used to refer to the quality of these corporate practices, and the term ESG is used to refer to the different aspects of a company to which these practices relate.

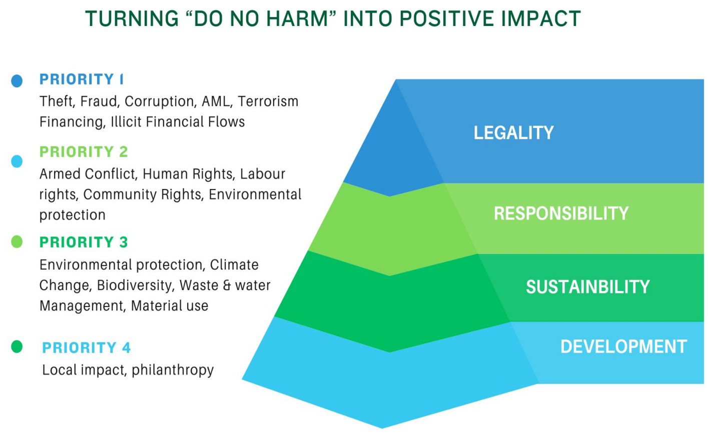
[1] See: G. Bentele, H. Nothhaft, "Chapter 11: Trust and Credibility as the Basis of Corporate Social Responsibility", in *The Handbook of Communication and Corporate Social Responsibility*, John Wiley & Sons, Inc. (2011).

Today, high-profile corporate governance failures and rising global sustainability concerns are expanding thinking on what constitutes corporate value. This has made CSR increasingly mainstream.[2] In becoming more aligned with corporate accountability and risk management, CSR is increasingly embedded into business decisions and operations. CSR now reflects a broad range of societal expectations emanating from a diverse array of corporate stakeholders: workers, communities, shareholders, investors, financial institutions, consumers, ratings agencies, CSOs/NGOs, policy makers, governments and others. Whilst the exact content of these expectations can vary from company to company, several core international documents guide general understanding of these expectations.

Key documents outlining core societal expectations of companies:

- Principes directeurs de l'OCDE à l'intention des entreprises multinationales ;
- Déclaration de principes de l'OIT sur les entreprises multinationales et la politique sociale;
- Principes directeurs des Nations Unies relatifs aux entreprises et aux droits de l'homme ; et
- Le Pacte mondial des Nations Unies et l'Agenda 2030 pour la durabilité .

CSR has shifted from being a stakeholder preference to being an expectation. Companies are now *expected* to manage both their positive and negative impacts on those touched by their activities. Specifically, CSR is now defined by the societal expectation that companies (1) avoid causing or contributing to harm through their operations or business relationships; and (2) positively contribute to sustainable development and the fight against climate change. [...]



2.2 Why do companies engage in corporate social responsibility?

[2] An estimated 90 percent of companies on the S&P 500 index published a CSR report in 2019, compared to just 20 percent in 2011. T. Sobierski, "15 Eye-Opening Corporate Social Responsibility Statistics", Harvard Business School Insights, 21 June 2021: https://online.hbs.edu/blog/post/corporate-social-responsibility-statistics#:~:text=As%20is%20often%20the%20case,just%2020%20percent%20in%202011.

Crucially, demands for CSR from governments and policy makers have also become more stringent. This is beginning to drive CSR from being a purely voluntary endeavor towards becoming a mandatory requirement. As countries and institutions across the globe become increasingly alarmed about the political implications of burgeoning sustainability crises, they are increasingly translating moral responsibilities into legal duties by legislating the need for companies to manage their ESG risks and impacts. CSR and sustainability advocates are also increasingly turning to the courts and the media to make their cases heard.

In short, the risks now associated with failing implement socially and environmentally responsible and sustainable practices are increasingly outweighing the benefits. Many companies adopting CSR today are thus doing so both to make their organisations more resilient to the social, political and environmental upheavals the world is currently facing, and in anticipation of further demands in the near future.

Before going into further depth on what exactly is required of companies in implementing CSR into their governance, social and environmental performance, this module will outline the key concepts and frameworks in which corporate social responsibility practices have evolved.

[...]

2 The nature and purpose of companies

QUESTION: [...]

1.1 What is a company?

Companies can include self-employed street vendors and taxi drivers, individual entrepreneurs, family-owned businesses, cooperatives, publicly owned parastatals, stock exchange-listed companies, and joint ventures between two or more companies.

Most companies share certain defining features. Firstly, they exist as legally autonomous economic units. These units represent a collective of human, financial and physical resources that have been mobilised to produce certain goods or services. Other organisations, like academic institutions or civil society organisations, can also be defined by these characteristics. However, a distinguishing feature of companies is that they are business-like and, as such, usually intended to generate a profit for their investors.

[...]

"multinational enterprise" (MNE). The country in which the parent company of an MNE is headquartered is called a "home State". A country in which an MNE has established a subsidiary company is called a "host State". Home states and host states have their own laws regulating how the companies established in their jurisdictions should work.

Figure 4: Example of a multinational enterprise

- Company owners (including shareholders) often benefit from a legal protection called "limited liability". Limited liability prevents these owners from being held personally responsible for their company's debts or financial losses by limiting these to the amount of capital invested or held in the company. This rule is designed to limit the risk that investors are exposed to when making investments. This helps companies to attract investment for ambitious but high-risk projects.

- The owners of a company (e.g. shareholders) are often different from those who control the company (e.g. managers). Companies require professional managers who are experts in their field and can make rational and dispassionate business decisions free from conflict of interest. The owners of a company often cannot play this role. Large and complex companies (e.g. publicly listed companies) are thus usually controlled by managers on behalf of owners. In addition, whilst parent companies often exercise a certain degree of control over their subsidiaries, control over day-to-day operations and strategic decisions sensitive to the local context is often held by local managers. As such, it is not always clear how much control a parent has over the actions of its subsidiary.

1.2 What is the purpose of a company?

Corporate enterprise has always been based on the idea that creating a legal entity to pool human, financial and physical resources facilitates economic prosperity through value creation. Put simply, when people pool their ideas, expertise, energy, effort, financial and physical resources in pursuit of a common goal, more value can be generated than when a single entity does so. Companies therefore exist to create value. But what kind of value?

The historical role of companies in society

Whilst trade and commerce have existed since antiquity, the use of commercial vehicles resembling modern companies properly began in around the 16th and 17th centuries. The early days of colonialism were characterised by entrepreneurial partners pooling [...]

- profits generated for a company's many and diverse investors in the form of both dividend income and any increase in the value of their shares when they come to recover their investment by selling them.
- the infrastructure and commercial opportunities that companies bring to communities in the vicinity of or relevant to their operations.
- the taxes payable on both the company's profits and employee and investor income.

These many social benefits of the company have long been referenced by economists and corporate advocates in explaining the existence and operations of companies. They have even led some to suggest that companies are used as vehicles for the redistribution of economic wealth in society.

Defining "value" in determining a company's purpose

Companies clearly serve many socio-economic functions. However, the issue of the purpose of a company – that is, what "value" it is created to generate – has become a subject of intense debate. This is because in practice a company's purpose goes to the heart of corporate governance and thus decision making. Corporate managers must make difficult decisions that navigate complex and competing interests. In doing so they are guided by the values that the company was founded to realise.

Shareholder value

Since the 1950s, mainstream economists and business practitioners have taken a highly restrictive view on what the purpose of a company is in practice. This view considers all the social benefits that companies have to offer as being contingent on the company's primary purpose of profit maximisation. Under this logic, companies exist to make a profit for their owners. If they do not make a profit, they cannot continue to exist. For the purposes of corporate decision making, therefore, the creation of value for shareholders (i.e. profit), must be treated as the company's primary purpose. This requires managers to prioritise raising the value of company shares and the dividend income they generate, over and above any other objective.

This perspective, advocated by neo-liberal economists like Milton Friedman and the Chicago School of Economics, is referred to as the "shareholder value" theory. It has dominated the free-market capitalism characterising the last decades of globalisation and is reinforced by corporate law in many countries through rules surrounding the duties of company directors.

The "Shareholder value" perspective has come under considerable criticism. These criticisms have become increasingly intense over the last decade as global sustainability challenges mount. This is because in asserting the primacy of profit, shareholder value effectively relegates all other environmental, social and governance values to being of secondary importance. In numerous cases, this has seen companies treat serious social or environmental harms caused by their actions as external issues that are relevant to them only in so far as they are reflected in the company's balance sheets. Put simply, if the financial profit of engaging in harmful, risky or even illegal activity is greater than the financial cost, doing so remains not only a viable option but may even be seen as the correct choice. In many cases, as companies have grown in wealth and power, the scale of the social, environmental, and economic harms they can cause has risen whilst the financial repercussions have diminished – at least in the short term.

Another consequence of the shareholder value perspective is that it gives priority to shareholders as those to whom companies are responsible/ accountable to. This places shareholder interests above those of any other stakeholder in corporate decision making. That approach is again reflected in the legal frameworks of most countries: corporate law in most countries gives shareholder interests priority in defining what the duties of company directors are.[12] In addition, corporate accountability is often restricted largely to providing accurate and transparent annual financial reports to a company's investors on issues that are significant to them: the company's finances. Rarely is accountability to any other stakeholder required, beyond annual tax returns to the State.

Shareholder value and CSR

Shareholder value continues to be reflected in some influential definitions of corporate social responsibility today. For example, the famous CSR model taught by Archie B. Carrol since 1979 and expanded on in his now well-recognised 'Pyramid of CSR' places company profitability at the foundation of all other corporate responsibilities. Carroll's theory posits that the responsibility to be profitable is central to the company's ability to survive and thus its ability to offer society any other benefit for which it might be responsible. Having satisfied this responsibility, directors are then also under a duty to ensure legal compliance, ethical compliance and to make philanthropic contributions to society.

Figure 5: Carroll's CSR Pyramid (1991)

Carroll's CSR model is significant because it was the first to emphasise how important it is for companies to take social responsibility beyond maximising profits. Some still consider it relevant today, especially for smaller low-risk companies operating on tight margins who are thus acutely aware of the need to prioritise the economic viability of their operations. However, in a context in which CSR is viewed as a voluntary

[12] This is a situation that, as we will see later, is rapidly changing in a number of countries.

endeavour and companies can amass more power than nation states,[13] Carroll's model has been heavily criticised for failing to adequately account for a company's responsibilities to employees, communities, and the environment. To the extent that it subordinates all corporate responsibilities to the pursuit of profit, it is thus increasingly considered outmoded.

QUESTION: [...]

Alternative accounts of corporate value

The failure of "shareholder value" to offer adequate protections to workers, communities and the environment has raised serious sustainability questions for both companies and governments. In response to these questions, alternative accounts of corporate value have developed to reorient corporate responsibility to encompass environmental and social issues, as well as economic ones, in practice.

Stakeholder value

Stakeholder value stresses the interconnected relationships between a business and its customers, suppliers, employees, investors, communities and others who have a stake in the organization. [14] It recognises these other players as instrumental to the company's ability to create value and attaches worth to their non-pecuniary contributions (of time, effort, sacrifice etc) in doing so.[15] On this basis, it argues that a company should create value for all stakeholders and not just shareholders.

Stakeholder theory has risen to prominence since the 1980s to become a key topic of business ethics and a central component of CSR. It is today viewed by most major companies as the foundation for their CSR efforts. For example, in 2019, the Business roundtable, a US business group representing the CEOs of major corporations like Apple, JP Morgan, General Motors and more, officially renounced shareholder value as the foundation for the "purpose of a corporation" in its Principles of Corporate Governance.[16] That

"The 21st Century is one of "Managing for Stakeholders." The task of executives is to create as much value as possible for stakeholders without resorting to trade-offs. Great companies endure because they manage to get stakeholder interests aligned in the same direction."
R. Edward Freeman, philosopher

[13]Foreign Policy, 'La carte des sites les plus populaires par pays, ou l'impérialisme de Google', Slate (FR), 6 octobre 2013: https://www.slate.fr/monde/78590/imperialisme-google-carte-sites-plus-populaires-par-pays.
[14] See J. Godefroy, 'Théorie des parties prenantes : comment la mettre en œuvre ?', Réussir Son Management: https://reussir-son-management.com/theorie-des-parties-prenantes/ ; ou, Mercier, S. (2006). 9. La théorie des parties prenantes : une synthèse de la littérature. Dans : Maria Bonnafous-Boucher éd., Décider avec les parties prenantes (pp. 157-172). Paris: La Découverte. https://doi.org/10.3917/dec.bonna.2006.01.0157.
[15] According to the theory's main proponent, philosopher Edward Freeman, a "responsible company must be transparent vis-à-vis its stakeholders and involve them in their creation of value since they are responsible for its prosperity".
[16] 'Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy That Serves All Americans'', Business Roundtable, 19 August 2019: https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans.

purpose, they declared, is no longer to maximize profits for shareholders, but to benefit other "stakeholders" also, including employees, customers, and citizens. 181 CEOs signed the statement, committing themselves to leading their companies for the benefit of all stakeholders – customers, employees, suppliers, communities and shareholders.

This shift away from shareholder towards stakeholder value is now starting to be reflected in recent legal developments in Europe and other parts of the world. Some jurisdictions are imposing enhanced corporate reporting requirements that extend this obligation beyond financial issues to cover social and environmental issues of interest to a broader range of stakeholders.[17] In addition, in several countries, directors' duties are being reframed to take into account interests beyond only those of shareholders.[18]

For most major companies, stakeholder identification, analysis and engagement has now become a key corporate governance practice that is being used to steer the direction of their CSR and sustainability efforts. This is clearly observable in modern CSR/sustainability reporting, which is usually founded on a stakeholder mapping and analysis.

Creating shared value (CSV)

Since the 2000s, business strategists have tried to align economic, social and environmental interests with alternative approaches to CSR. One approach that has gained prominence is "creating shared value" (CSV). This approach can vary in application: some advocate for businesses to reconceptualise social problems as business opportunities that they then help to solve;[19] others emphasise the need for companies to develop policies and practices "that enhance the competitiveness of a company while simultaneously advancing social and economic conditions in the communities in which it operates".[20]

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[17] For example, the UK's Modern Slavery Act 2015 and Australia's Commonwealth Modern Slavery Act of 2018 require large companies to report annually on the risks of modern slavery; laws in Germany, Norway and France now require due diligence and sustainability reporting for large companies; Statutory Instrument 134 of 2019 [CAP. 13:22] of Zimbabwe's Stock Exchange Listings Requirements now impose mandatory sustainability reporting on companies, whilst South Africa and Ghana expect to roll out mandatory Environmental, Social and Governance reporting requirements for companies listed on their own exchanges; the Organization for the Harmonization of Business Law in Africa (OHADA), which the DRC joined in 2012, is also currently considering the integration of sustainability rules into its current texts.

[18] See for example, development si the EU: G. Heyns, 'Understanding Directors' Duties with the new Corporate Sustainability Due Diligence Directiv' ARDEA International, June 2023: https://www.ardeainternational.com/thinking/understanding-directors-duties-with-the-new-corporate-sustainability-due-diligence-directive/#:~:text=It%20requires%20directors%20to%20integrate,sustainable%20change%20within%20their%20organizations J. Twentyman, 'A Bridge to Better Business: The positive case for updating directors' duties', Slaughter & May, September 2022: https://my.slaughterandmay.com/insights/briefings/a-bridge-to-better-business-the-positive-case-for-updating-directors-duties; M. Solinas, 'The NZ Companies (Directors Duties) Amendment Bill: Much Ado about Nothing?' Oxford Business Law Blog, March 2023: https://blogs.law.ox.ac.uk/oblb/blog-post/2023/03/nz-companies-directors-duties-amendment-bill-much-ado-about-nothing.

[19] P. S. Menghwar, Prem Sagar & A. Daood, "Creating shared value: A systematic review, synthesis and integrative perspective", Octobre 2021, International Journal of Management Reviews. 23 (4): 466–485.

[20] M. Porter & M. Kramer, "Creating Shared Value", Harvard Business Review; Jan/Feb2011, Vol. 89 Issue 1/2, p62-77: https://web.archive.org/web/20120630164213/http://www.fsg.org/tabid/191/ArticleId/241/Default.aspx?srpush=true.

The central premise of CSV is recognising the value to the company of supporting the environmental, social and governance values that benefit external stakeholders. This makes identifying areas where businesses can optimize their positive contributions to social and environmental value (or minimize their negative ones) by incorporating this into how they carry out their core business operations. This has seen companies benefit from (among other things):

- [...]

Shared value is thus an approach to business strategy development that actively seeks out win-win opportunities as part of a broader stakeholder value approach. In doing so, it threads social advancement into a company's core operations and is complimentary to other social and environmental sustainability approaches like the "circular economy". This approach has thus been advocated to mining companies seeking to contribute to sustainable development, and numerous examples are now observable in a wide range of industries.[21] This trend has been supported by a growing movement of investors interested in "impact investing".

IMPACT INVESTING: [...]

For more see: E. Pastoire-Reiss, "Valeur partagée, partage des valeurs", Vraiment durable 2013/2 (n° 4), p75-81: https://www.cairn.info/revue-vraiment-durable-2013-2-page-75.htm.

Watch this video from Sustainability Illustrated (https://www.youtube.com/watch?v=_rEyXucd8Hg) and consider the examples that Alexandre has given of good and bad CSR. How can a company distinguish its shared value approach from that of a company that simply advertises socially beneficial activities that it must engage in anyway as representing CSR?

Refer to the mandatory reading for this component.

3 Companies and development

1.3 Companies and sustainability

[21] See, for example: *Cartographie de l'exploitation minière en fonction des objectifs de développement durable : Un Atlas*, 2016: https://www.undp.org/sites/g/files/zskgke326/files/publications/Mapping_Mining_SDGs_An_Atlas_FR.pdf.

The reorientation of a company's purpose from mere profit maximisation towards a broader set of stakeholder interests has taken place alongside an evolution in thinking about how socio-economic development should be achieved.

From the late 1970s onwards, concerns about the long-term sustainability of economic growth began to emerge. In 1987, the Brundtland Commission – the first international commission to look at the relationship between the environment and economic growth – highlighted the need for governments to ensure that interactions between the economy, the environment and society achieved a sustainable equilibrium. In doing so, they redefined the standard of development that states should seek to achieve as "sustainable development". This requires governments to: "répondre aux besoins du présent sans compromettre la capacité des générations futures à répondre à leurs propres besoins."

Understanding "Sustainability"

The word "sustainability" simply means the ability to make something last. This requires understanding and maintaining the larger systems on which that thing is dependent. If, in our interactions with those systems, we degrade them, then this will ultimately reduce the quality of the inputs received from those systems, and thus degrade the thing itself. For example, if we understand economies as having emerged from people's desire to meet their needs and wants more efficiently by trading goods and services, we recognise that society and the environment operate as systems on which the economy depends. This is because it directly or indirectly relies on social or environmental inputs. To continue (i.e. to be sustainable), an economy must not therefore erode the social or environmental capital on which it is built beyond a certain point.

Figure 6: The three systems of sustainable development

In the social context, sustainability is generally associated with people's ability to satisfy their needs in a way that respects their inherent dignity. This kind of **social sustainability** has been given expression through human and labour rights, as well as poverty alleviation. Severely undermining these social goods can often result in social or political upheaval that threatens the continued functioning of the economy.

When taken together, environmental, and social responsibility form the foundation for the dominant definition of **sustainable development**.

Crucially, sustainability – whether economic or commercial – requires balance. This means regulating how different actors interact with the people and nature around them. From a regulatory perspective, therefore, a sustainable economy can only be developed by creating and maintaining rules-based and transparent markets. Transparency is essential to ensuring the necessary oversight to control interactions

[22] 'Biodiversité: Plus de la moitié du PIB mondial dépend de la nature' Trends Tendances, 17 Decembre 2022: https://trends.levif.be/entreprises/biodiversite-plus-de-la-moitie-du-pib-mondial-depend-de-la-nature/#:~:text=Car%20plus%20de%20la%20moiti%C3%A9,%C3%A0%20la%20d%C3%A9gradation%20des%20%C3%A9cosyst%C3%A8mes.

for the common good (sustainability), while the rules provide the regulatory force required to ensure an appropriate balance between economic, social and environmental interests.

QUESTION: [...]

The end of the cold war in the early 1990s marked the beginning of a new era of global free trade. The opening of new markets, rising deregulation and the removal of trade and investment barriers, saw certain segments of society, especially international business, profit considerably. Throughout this time, governments continued to drive their national development agendas with an almost singular focus on macro-economic growth. Metrics like GDP growth remained the key measure of development success, despite their inability to truly capture the net results of difficult tradeoffs between industry, infrastructure development, quality of life and the natural environment.

Despite the global economic growth of the 1990s, international development efforts were flagging, and awareness was rising of the fact that prosperity was not equally shared within or even between states: in many cases, certain sectors of society – especially in developing countries – bore the full cost of new economic activities whilst receiving little to no benefit.[23]

As such, the year 2000 saw nations across the globe come together to set out 8 Millennium Development Goals (MDGs) with 18 targets around which to orient their international development efforts over the next 15 years. The MDGs achieved some notable sucesses (e.g. more halving the global rate extreme poverty from 47% of the global population to 14%). However, economic advancements continued to take a toll on the environment.

For example, by the 2010s Chinese and Indian economic reforms had spectacularly lifted well over a billion people out of poverty, improving access to health, education and other social services on the way. However, these gains took a heavy environmental toll. By the 2010s, air pollution, ground water and soil contamination, deforestation, and wildlife conservation were costing these countries sizable

"TRIPLE BOTTOM LINE": Whilst many countries were slow to apply the sustainability lens to their economic policies, the concept was quickly adopted by certain corporate management executives. For example, in 1994, the phrase "triple bottom line" (TBL) was coined as a means of measuring corporate performance to include social and environmental sustainability issues. TBL theory posits that companies should focus as much on social and environmental concerns as they do on profits. It states that instead of one bottom line (profit), there should be three: profit, people, and the planet. A TBL approach seeks to gauge a corporation's level of commitment to CSR and its impact on the environment over time by assessing its performance in these three areas. It is yet another counter movement to shareholder value and featured in Shell oil company's first ever "Sustainability Report" in 1997.

[23] "Un historique des Objectifs du Millénaire pour le développement : Quatre décennies d'efforts des Nations Unies pour le développement", ONU: https://www.un.org/fr/chronicle/article/un-historique-des-objectifs-du-millenaire-pour-le-developpement-quatre-decennies-defforts-des.

portions of their GDP,[24] and reflecting in quality-of-life indicators like health and mortality statistics.[25]

Today, policy makers have realized that for an economy to thrive, it needs to interact with society and the environment in such a way as to generate a net positive without undermining the capital on which it is built. Learning from its development past, for example, China has instituted stringent environmental regulations at home, and become a proponent of environmental sustainability in its domestic and foreign policy.[26]

The Sustainable Development Goals (SDGs)

In 2015, governments reconvened to reflect on the lessons of the MDGs. In doing so, they developed the Sustainable Development Goals (SDGs), which place greater emphasis on the need to protect the natural environment.[27]

The SDGs are the outcome of extensive consultations between UN members states and multiple stakeholders from governments, business, civil society, indigenous groups and communities. They reflect a shared vision and ambition across all countries to:

- End poverty and hunger everywhere.
- Combat inequality within and between countries.
- Build peaceful, just and inclusive societies.
- Protect human rights and promote gender equality.
- Ensure lasting protection of the planet and its natural resources.

The SDGs have notable authority because they reflect a common consensus. In addition, each goal offers specific targets and indicators around which all parties can focus and communicate their contributions. The SDGs thus offer a shared language and focal point for development efforts across countries,[28] as well as being designed to be implemented is a way that reflects the interconnected and interdependent nature of all three spheres of development.

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[24] See for example, 'Environmental damage costs India $80bn a year', Financial Times, 17 Juillet 2013: https://www.ft.com/content/0a89f3a8-eeca-11e2-98dd-00144feabdc0; and 'L'impact des problèmes environnementaux en Inde et les solutions' Yoair Blog, 15 Juillet 2013: https://www.yoair.com/fr/blog/the-impact-of-environmental-issues-in-india-and-the-solutions/.

[25] Le coût de la pollution de l'air: Impacts sanitaires du transport routier, OECD, October 09, 2014: https://www.oecd.org/fr/env/le-cout-de-la-pollution-de-l-air-9789264220522-fr.htm. Likewise air pollution alone has been estimated to cost European economies $1.6 trillion annually: ONU Info, "La pollution de l'air coûte aux économies européennes 1.600 milliards de dollars par an, selon l'OMS", 28 Avril 2015: https://news.un.org/fr/story/2015/04/309962.

[26] M. Kaneti, 'China's Vision for Environmental Leadership', 13 December 2021: https://thediplomat.com/2021/12/chinas-vision-for-environmental-leadership/

[27] "Présentation : origines et principes", 21 Juin 2018, L'Agenda 2030 en France, Commissariat général au développement durable en France: https://www.agenda-2030.fr/agenda-2030/presentation/article/presentation-origines-et-principes

[28] For example, SDG 6 (clean water and sanitation) has 8 targets and 7 indicators to help assess the extent to which targets are being met.

Figure 7: All 17 sustainable development goals (Source: UN)

Refer to the mandatory reading for this component and look up any SDG of your choosing here: https://sdgs.un.org/goals. How is that SDG linked to other SDGs and what progress has been made since 2015?

3.2 Companies and sustainable development

Until 2015, international development was predominantly seen as the business of States. However, a rise in public-private development-focused partnerships and growing appreciation of the private sector's role in development saw the SDGs launched as a global call to action. Governments, businesses and civil society were officially called upon to cooperate and coordinate in advancing their objectives.

Growing awareness of the role of companies in national development

Rising appreciation of the significant role of companies in national development was in part a response to a growth in privatisation since the 1980s. [...]

Companies were recognized as playing a critical role in achieving the SDGs and thus called upon to align their operations with them. In doing so, companies are called upon to understand the inherent interconnections between each goal. This means understanding that acting on one goal can support or hinder the achievement of others. Crucially, from a CSR perspective, the SDGs emphasize that companies cannot offset their negative impacts on some goals simply by making positive contributions to others.

Operationalising the SDGs

The UN explicitly asks companies not to engage in 'SDG washing' – that is, reporting on positive impacts and ignoring negatives – as part of their CSR/sustainability strategies.

To operationalize the SDGs companies are expected identify those goals of greatest relevance to them in their specific context and then prioritize which of these to target in line with their impact and means. This requires looking at their operations, value chains and the communities in which they operate, and assessing which goals they impact on the most and how.

In emphasizing the need to avoid harm, companies are asked to prioritize minimizing any negative impacts on the SDGs before allocating resources to amplifying positive ones. This is because minimizing negative impacts can be as powerful as, and sometimes more important than, amplifying positive ones.

To maximize their positive impacts, companies are expected to map their skills and capabilities to determine their positive impacts and potential further contributions. In doing so, it should focus not just on what is easiest but also on what is most impactful. Identifying shared value with other stakeholders (e.g. water or electricity consumption, waste management, infrastructural or educational needs) that could be amplified and/or met collectively is encouraged.

Companies are then expected to align their strategies, efforts and resources with their chosen SDGs. In doing so, they are also expected to set specific, measurable and time-bound goals and targets within their own operations to help drive their achievement, incentivize action and communicate the company's commitment to the goals. This will often require setting science-based targets (e.g. measuring GHG emissions) as well as context-specific targets.

Whilst the SDGs offer 17 clear goals backed by 169 targets and 248 indicators, these are primarily designed for application to a macro-economic national development context. This makes company implementation challenging to measure due to a lack of technical guidance at company level. Several initiatives have sought to address this. It nevertheless highlights the relative novelty of calculating holistic individual company development contributions within wider development contexts.

For more, see: UNCTAD, *Guidance on Core Indicators for Sustainability and SDG Impact Reporting*, 2022: https://unctad.org/system/files/official-document/diae2022d1_en.pdf.

4 Companies and accountability

Balancing how we exploit social and environmental systems is the role of the State. Government exists to regulate societal interactions for the public good. Governments alone have the authority to pass laws and policies that determine what people can and cannot do. This makes the State the key interlocutor between society, the economy, and the environment. As citizens, we look to government as a means of organizing the forces of production in society to secure an improvement in our living standards – to achieve sustainable development.

Figure 8: The role of different actors in each sphere of development

As outlined above, sustainable development means striking a balance between creating the right socio-economic and regulatory conditions for economic actors, like companies, to thrive, whilst also ensuring the appropriate protection of social and environmental interests to safeguard the country's human and natural capital. Domestic policy, regulatory frameworks and judicial apparatus are the key means used by states to achieve this.

Companies need governments and their legal and policy frameworks to exist and to function:

- The corporate laws that governments pass enable companies to exist and support their main functions.
- The licensing laws and other permissions that governments pass and enforce validate and legitimise a company's presence and activities in certain areas.
- The government's enforcement of national law (e.g. tax, labour, contract, criminal and property law, etc) is important to a company's ability to do business because it creates the environment of certainty on which companies rely in their transactions and planning.

SOCIAL LICENSE TO OPERATE: This term refers to the ongoing acceptance of a company's standard business practices and operating procedures by its employees, stakeholders, and/or the public. It is related to sustainability in that it is highly dependent on how a company manages its social and environmental impacts. Overall, it requires stakeholders to feel that a company brings a net benefit to those on whom it impacts. As such, social license is also closely related to issues of justice and fairness. It underlines the fact that CSR requires more than just legal compliance. Where a company legally behaves in a manner that is harmful to the economy, society and/or the environment in which it is operating, it can "lose its social license to operate" despite retaining its legal license to do so. In many cases, the political implications of this loss of social license can ultimately lead to further consequences, including potentially a loss of legal license. Even before that however financial losses caused by resistance to a project can potentially render it no longer economically viable. Indicators that a company is losing its social license include poor reputation, strikes, protests, disputes, disruptions and litigation.

QUESTION: [...]

its harmful acts. [32] As outlined in section 1.1, these two facts can be extremely difficult to establish.[33]

Moreover, as governments are generally seen to be responsible for their citizens under international and domestic law, dispute can often arise between governments and companies regarding who should take responsibility for harmful impacts, and thus pay for the remediation or compensation required to address them after they occur.

4.3 Development of CSR as a response to the "corporate accountability gap"

Corporate social responsibility today is guided by a number of instruments that have developed in response to managing the problems posed by the corporate accountability gap.

CSR has its roots in early corporate philanthropy, but the term "corporate social responsibility" was first coined by economist Howard Bowden in 1953. Whilst scholarship on it remained largely theoretical until the 1990s, by the mid-1970s state representatives in international forums were already seeking tangible expressions of what it might require in a practical sense. Corporate behavior had become a pressing issue for developing countries, who had become concerned about the exploitative practices of multinational enterprises in a context where world trade rules were pushing the opening of markets to foreign direct investment. This was creating a potential chilling effect on the global investment climate.

ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD): The OECD is an international organization of 38 countries committed to democracy and the market economy. It was established in 1961 as a forum for governments to share experiences and seek solutions to common economic and social problems in developing the international investment climate.

In response, 1976 saw the adoption of the first and still the most comprehensive government-backed international instrument for promoting responsible business conduct – the OECD Guidelines for Multinational Enterprises.[34] These non-binding recommendations from governments to businesses outline a set of voluntary principles and standards designed to stimulate responsible business conduct. The recommendations address business enterprises domiciled or operating in any of the OECD's 50 adhering countries, representing two-thirds of global trade. The guidelines have been revised several times to reflect developing

[32] For more see: *Responsabilité des entreprises pour les violations des droits humains: Un guide pour les victimes et les ONG sur les mécanismes de recours*, FIDH, 'Ch 6: La responsabilité des sociétés mères pour les actes commis à l'étranger : « Percer le voile corporatif »': https://corporateaccountability.fidh.org/fr/.

[33] Though there are indications that courts are starting to look at such cases less sympathetically to companies (e.g. where foreign subsidiaries are kept undercapitalised). See for an example the case of Thor Chemicals, who allegedly tried to shift the assets of a South African subsidiary beyond the reach of 200 claimants in a successful lawsuit against it: https://www.leighday.co.uk/news/cases-and-testimonials/cases/thor-chemicals/.

[34] The first version of the OECD Guidelines for Multinational Enterprises (Guidelines) was largely a response to an ultimately unsuccessful initiative by the so-called "Group of 77" developing countries to negotiate what they hoped would become a legally binding treaty governing the conduct of multinationals. See: OECD, *OECD Guidelines for Multinational Enterprises: a Glass Half Full*, 2018: https://mneguidelines.oecd.org/OECD-Guidelines-for-MNEs-A-Glass-Half-Full.htm.

expectations of business and have become a key internationally recognised standard for corporate conduct.

Content of the OECD Guidelines on Multinational Enterprises

The OECD Guidelines outline a broad range of issues on which companies are expected to engage responsibly, highlighting the primary obligations of all companies to comply with national laws irrespective of their enforcement. They go on to outline the need for companies to:

1. contribute to economic, environmental and social progress whilst respecting internationally recognised human rights and encouraging local capacity building.
2. refrain from seeking or accepting exemptions from regulations relating to human rights, the environment, health, safety, tax or financial incentives.
3. support good governance practices by states whilst applying good governance practices throughout their entire enterprise group.
4. not to discriminate against or penalise workers who highlight that the company's operations are not in line with the law, the company's policies or the OECD Guidelines.
5. engage in risk-based due diligence to avoid social and environmental harms and remedy harm where it occurs.
6. engage with relevant stakeholders to meaningfully take their views into account in relation to planning and decisions that may significantly impact local communities.

They provide detailed coverage of what is expected of companies in core areas covering:

OECD **GUIDELINES** FOR MULTINATIONAL ENTERPRISES

Figure 9: OECD MNE Guidelines logo

- Disclosure
- Human Rights
- Employment and Industrial Relations
- Environment
- Combating Bribery, Bribe Solicitation and Extortion
- Consumer Interests
- Science and Technology
- Competition
- Taxation

For more see : *Principes directeurs de l'OCDE à l'intention des entreprises multinationales sur la conduite responsable des entreprises, OECD Publishing,* Paris, 2023*:* https://doi.org/10.1787/0e8d35b5-fr.

The launch of the OECD Guidelines was closely followed in 1977 by the ILO's Tripartite declaration of principles concerning multinational enterprises and social policy (the MNE Declaration). This document, which has also become an authoritative expression of the societal expectations on corporate behaviour, provides direct guidance to enterprises on social policy and inclusive, responsible and sustainable workplace practices.

New Millenium: A spotlight on corporate harm

The post-cold war period of further globalization and liberalization of markets saw a further rise in public concern about the impacts of business.

Conflict minerals in Sierra Leone, Liberia, Angola and DRC, sweatshops in southeast Asia, operating conditions in manufacturing countries, the destruction of rainforest for cattle ranching, mining and palm in South America and Asia were all becoming tied to household brands. This was causing consumers to reflect on their consumption habits, businesses to reflect on their sourcing and governments to reflect on their governance deficits. As a result, 2000 saw the international community, including business leaders, respond to these concerns with the emergence of several important and pioneering multi-stakeholder voluntary initiatives.

In particular, the potential impact of these factors on international peace and security due to their capacity to undermine trust between people and governments led the UN to appeal to companies across the globe to adhere to 10 basic standards for corporate behavior through the launch of the UN Global compact in 2000.

UN Global Compact

With over 21,000 participants in more than 160 countries, the UN Global Compact is currently the largest and most widely recognized global CSR initiative around. By 2023, it had gathered nearly 19,000 corporate signatories of all sizes.

Figure 10: UN Global Compact logo

The initiative requires participants to embed 10 principles on Human Rights, Labour Standards, Environment and Anti-Corruption into their business strategies and day-to-day operations. In doing so, it offers a forum for learning and sharing experiences in the promotion of the ten principles. For example, it hosts multiple working groups and regional and local networks to promote peer learning and facilitate networking in the early stages of CSR strategy development. It also acts as a repository for various free guides and seminars to help business professionals address specific CSR issues in their operations.

The Global Compact has been designed to apply to any business of any size in any sector. To guarantee its inclusiveness therefore the Compact sets a lower bar and is less specific than other initiatives. Whilst it is therefore much less comprehensive than the OECD guidelines, the UN Global Compact nevertheless acts as an excellent entry-level CSR initiative for companies who are new to the practice and in need of further support and guidance to help tailor CSR to their own operations.

Moreover, whilst the UN Global Compact is not tied to any external third-party auditing or verification process, it does require signatories to issue an annual Communication on Progress (COP). This document acts as a public disclosure to broad range of stakeholders (investors, consumers, civil society, governments, etc.) on the progress that the signatory has made in implementing the ten principles, and supporting the SDGs. These communications have now been brought into line with broader international standards for CSR reporting, enhancing their value significantly.

Ten Principles of the UN Global Compact

Human rights
Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
Principle 2: make sure that they are not complicit in human rights abuses.

Labor
Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
Principle 4: the elimination of all forms of forced and compulsory labour;
Principle 5: the effective abolition of child labour; and
Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment
Principle 7: Businesses should support a precautionary approach to environmental challenges;
Principle 8: undertake initiatives to promote greater environmental responsibility; and
Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-corruption
Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

The dawn of an accountability shift

Continued instances of corporate harm by MNEs despite the existence of the OECD Guidelines, and the challenges faced by victims in seeking to access justice through the courts, also saw the OECD step up its intervention in the area.

In 2000, the OECD mandated its national contact points to act as non-judicial mechanisms for addressing violations of the OECD Guidelines. Every OECD country is required to establish a national contact point (NCP) within its territory. These offices were now mandated to receive complaints – called "special instances" – about violations of the guidelines by companies for which they are either the home state or host state. These NCPs were now required to act as mediators to help resolve practical issues between companies and affected stakeholders through dialogue and consensus. Where complaints cannot be resolved through mediation, they may then choose to investigate the company's conduct and publish a final statement indicating whether a breach of the Guidelines has taken place.

Figure 11: OECD National Contact Point logo (soure: OECD)

Whilst, OECD NCPs do not have the power to impose binding sanctions on multinationals, complaints under this system now carry notable risks for companies. These include:

[…]

In the wake of numerous failed attempts to hold companies accountable for poor ethical conduct in foreign states, the establishment of the OCED's NCP system marked the beginning of what has progressively become a shift away from voluntary self-regulation towards the imposition of increasingly mandatory CSR standards for corporate behaviour.

2010 watershed: A framework for understanding corporate responsibility

Both the OECD Guidelines and the UN Global Compact have become globally recognised instruments in the implementation of CSR. However, in 2005 the corporate accountability gap was continuing to pose serious challenges.

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[35] See for example: S Brabant, "Human Rights Complaints against Multinationals Increasing", Herbert Smith Freehills, Legal Briefing, October 2015: https://www.herbertsmithfreehills.com/latest-thinking/human-rights-complaints-against-multinationals-increasing.

Companies, and especially extractive companies, were still having adverse impacts on a broad array of social issues, such as resettlement of communities without adequate consultation and compensation; environmental degradation and its effects on health, sources of livelihood and access to clean water; forced labor, rape and even extrajudicial killings by security forces protecting company assets. The language of human rights became the dominant mode of discourse among those adversely impacted by large-scale extractive operations and has now become the lingua franca through which grievances are addressed.

However, as human rights form part of international law, they address only states and cannot address companies unless implemented and enforced through national law. As such, disputes continued to arise over where the responsibility for social protections lay – with government or business.

In 2005, UN Secretary General Kofi Annan appointed Harvard Professor John Ruggie as his Special Representative on Business and Human Rights to identify and clarify standards of responsibility and accountability for States and businesses across the globe.

A 6-year process of consultation saw the launch of the UN Guiding Principles on Business and Human Rights (UNGPs) in 2011. The UNGPs operationalise a framework for understanding the respective responsibilities of governments and companies, known and the Protect, Respect, Remedy Framework. In doing so, they outline several crucial risk management tools that companies are expected to use to prevent corporate harm, including human rights impact assessments and risk-based due diligence.

From a CSR perspective, the UNGPs offered a coherent conceptual framework that has helped to align the various different perspectives on what is expected of companies with regard to people and planet, both in theory and in practice.

The UN Protect, Respect, Remedy Framework

The Protect, Respect, Remedy Framework (the PRR Framework) clarifies the respective roles and responsibilities of governments and businesses in implementing CSR. The Framework and the UN Guiding Principles (which explain how it should be operationalized), enjoy widespread support because they have been developed through the establishment of a global consensus. This consensus took 6 years of consultation to achieve and involved a wide array of stakeholders, including governments, businesses across sectors, trade unions, NGOs, academics, lawyers, international organizations, community and indigenous groups, financial institutions and others.

As a result, the PRR Framework has had a profound impact on the CSR landscape since its launch in 2011. In particular, it has shaped how the international community is now addressing companies at risk of involvement in severe human rights impacts, especially governments of corporate home states.

Whilst the PRR Framework is primarily focused on human rights, it offers a blueprint for how to understand CSR expectations of governments and companies more broadly. As such, broader corporate responsibility initiatives like the OECD Due Diligence Guidance for Responsible Business Conduct and ISO26000 (see below) have aligned their own standards with it.

The PRR Framework rests on three fundamental pillars:

1. Governments have the primary obligation to safeguard human rights.
2. Companies still have a responsibility to respect rights where states are unable or unwilling to protect them.

3. Both States and companies have a responsibility to remedy harms.

The **State's responsibility to protect** requires states to use all tools at their disposal to protect those on their territory from rights infringements by companies. This means law, policy, regulation, investigations and adjudication designed to protect the rights of those on its territory from abuse by companies. The governments of countries that are home to companies with subsidiaries operating abroad, should also play a supportive role in this regard. This means using legislation, policy and adjudication to ensure that companies adopt appropriate policies and practices for avoiding harm in their global operations. Both individually and collectively, States are thus expected to use a "smart mix of measures – national and international, mandatory and voluntary" to ensure that businesses respect human rights.

The **Business responsibility to respect human rights** requires first and foremost that companies comply with the national laws of the countries in which they operate. However, whether or not local laws are in place or are enforced, companies still have a responsibility to prevent human rights infringements, and where actual or potential negative impacts on rights cannot be avoided, to address these even if it is challenging.

The **responsibility to remedy harm** rests with both states and companies, who should both provide access to effective remedies for those who may have suffered from a company's activities via both judicial and non-judicial mechanisms.

For further, see: Principes Directeurs Relatifs aux Entreprises et aux Droits de l'Homme, Nations Unies, 2011, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_fr.pdf.

[...]