

University of Akureyri

School of Humanities and Social Sciences

Faculty of Law

Master in Polar Law (LLM)

MULTINATIONAL CORPORATIONS versus CORPORATE SOCIAL RESPONSIBILITY
THE CASE OF RUSSIAN OIL MULTINATIONAL CORPORATIONS

SEPTEMBER 2013

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Is hereby approved as part of the Master Program in Polar Law

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Akureyri, 2013

ABSTRACT

This research aims to assess the degree of application of Corporate Social Responsibility by Russian Oil MNCs by assessing the record of two major Russian Oil MNCs: Rosneft and Lukoil. The research outlines the existing opportunities associated with its practice and exposes the challenges and gaps in the efforts of the State and selected oil MNCs to implement it.

DEDICATION

To my parents, Lydia and Clement. Thank God for you!!

ACKNOWLEDGEMENT

My special gratitude goes to all who have supported me in the course of this research to you all; I say “takk fyrir.”

In particular, Research Prof. Timo Koivurova for accepting to be my advisor. I am eternally grateful for your valuable inputs and stimulating ideas.

Moreover, I am sincerely thankful to Vladimir Chuprov and his colleagues in Russia for facilitating my work with didactic information and materials in English (despite the enormous challenges I encountered), your intervention remains “priceless”. My gratitude to the staff of Fridtjof Nansen Institute - Norway.

To my family, thanks for the continuous support.

Many thanks April Frigge, Colleen, Cynthia and Jennifer Lail for the proof readings.

Above all, to those who continue to make my Icelandic pilgrimage unforgettable. Thinking of you, my friends and teachers most especially: Gunna, Madusu, the Carmelite Nuns, Giorgio and Rachael, Tim Murphy, Kristin and Hallgrimur, Arlene Reyes, Sebastian and Zosia, Wilma, Runar Gunnarson, Agust þor, Gudmundur Alfredsson, my erasmus friends and fellow parishioners of St.Peturkirkja.

Introduction

Problem Statement

The aim of this research is to;

- i. Consider, in a global context, the application of Corporate Social Responsibility, (CSR) to MNCs. Does CSR constitute a new voluntary mechanism for regulating MNCs?
- ii. Identify the ‘power’ of oil MNCs and the degree of human rights violations inherent therein.
- iii. Assess and ascertain the degree of compliance of the doctrine of Corporate Social Responsibility from a historic standpoint to the case of Russia in current times.
- iv. Evaluate the role of state actors in regulating the activities of oil MNCs and the challenges encountered. How engaged is the law to remedy such challenges?
- v. Propose a gateway towards a better attainment of CSR despite identifiable weaknesses.

Literature Review

The correlation between Corporate Social Responsibility (CSR), Multinational Corporations (MNCs) and its place in the law has been largely debated by legal researchers specifically the legal implication and voluntary aspect of this relationship.

To date, the place of MNCs remains indisputable amongst scholars from its traditional position (as a non-legal person) to that of a legal person. Friedman states: “The modern corporation, being a complicated creature, possesses at least two attributes that testify to its independent identity within the community by substantially distinguishing it from its owners, managers and employees: an ‘identifiable persona’ and ‘a capacity to express moral judgments in the discourse of the public square’.” (Lawrence Friedman, *In Defense of Corporate Criminal Liability*’ (2000) 23 Harvard Journal of Law & Public Policy 833, 844). Therefore, MNCs as corporate entities possess corporate ethos and power to act exponentially rather than summationally towards social, economic and environmental transactions regardless of State effort to regulate it (Pamela H. Bucy, 1992).

According to Mary Robinson, former UN Human Rights Commissioner, every business needs human rights while human rights also needs business to remain sustainable (Robinson, Mary 1998). Peter Muchlinski posits that 'hard' and 'soft' law options should be enacted to insure CSR. Soft law suggests the development of codes of corporate conduct while hard law implies the establishment of national and international mechanisms to safeguard human rights (Muchlinski, Peter International Affairs 77, 2001 p.46, Clathamhouse). Therefore, business (MNCs) and human rights acts as a two-way traffic to CSR. The journey to CSR (norms, codes of conducts) as suggested by Seferian "ultimately establishes the fact that not only is CSR embedded in Law (Law plays an important role in creating, regulating, monitoring and controlling CSR) but wider ethical standards as well as social and market forces are actually also necessary for the effectiveness of the legal regulation of CSR." (Seferian Nazareth, July 2013 in her book review of *The New Corporate Accountability: Corporate Social Responsibility and the Law*; Edited by Doreen McBarnet, Aurora Voiculescu and Tom Campbel, 2009)

Stephens Beths posits that soft laws, (norms or standard codes of conduct) are prima facie obligatory as opposed to voluntary regulations. They "incorporate human rights norms that are, in fact, obligatory duties, not voluntary undertakings" (Beth Stephens, *"The Amoral of Profit: Transnational Corporations and Human Rights"* p.56, 2002). Therefore, it is the "...force of law that compels obligations, not the voluntary codes..." that are often politically motivated. He submits that international law has the capacity to regulate better MNCs' behavior than domestic or national law (Beth Stephens, 2002).

For the purpose of better understanding, Eilbert and Parket suggest CSR should be seen as "good neighborliness." This implies "...not doing things that spoil the neighborhood and the voluntary assumption of the obligation to help solve neighborhood problems." In sum, businesses/ MNCs should be more committed and engaged in actively solving social problems like pollution, transportation or urban decay (Henry Eilbert and Robert Parket, *The current status of CSR*, Business Horizons, 16 1973 p.7). Carroll affirmed this stance of voluntary collaboration to resolve societal problems within business through the adoption of codes of conducts (CSR) (AB. Carroll, Business and Society, September, 1999).

According to Sean, the transformation of codes of conduct into binding law and the direct regulation of MNC activities will remain problematic because most developed states are wary in adopting codes that will cause a competitive disadvantage. Hence, voluntary codes of conduct were adopted as a result of political obstacles and legal constraints emanating due to the regulation of non-state entities operating across borders, and the need to ensure some degree of flexibility in their regulation as well as promote true "internalization" of values by MNCs (Sean D. Murphy, *Taking Multinational Codes of Conduct to the Next Level*, Columbia Journal of Transnational Law, 2005 p.44).

Sean further advocates a mid-way approach between States and MNCs by means of mere reliance on the voluntary codes of conduct and, alternatively pursuing its transformation into binding law. He notes: “the middle way would seek to bring governments more actively back into the process of promoting good corporate conduct, but would do so by both reinforcing the value and benefits of the voluntary codes to MNCs and holding MNCs to the codes to which they have subscribed. In other words, while these codes may reflect an aspect of the decline of the nation-state, a fertile area for buttressing the codes-for ensuring their survival and effectiveness—may well lie in more creative use of the power of nation-states”(P.44ff).

Kinley advocates the adoption of a more “pragmatic international approach” by the international community as means to regulate any MNC, “that recognizes the reality of economic interdependence rather than relying on legal independence” in order to impose “regulations that force accountability for human rights abuses.” Thus, at the domestic level, adequate enforcement mechanisms must be established to ensure compliance with existing international law (David Kinley, *Human Rights and Corporations*, 2009.p.66).

According to Kuznetsov and Kuznetsova, Russian oil MNCs and the State should consider CSR as a ‘social contract’ rather than a voluntary norm (A. Kuznetsov and O.Kuznetsova, *Business Legitimacy and CSR, the Russian context*, 2008). Unfortunately, Russia is plagued with transitional social ills from Soviet times to date (e.g. corruption, bureaucracy, politics, arbitrary law enforcement and inefficiency) that greatly impair the attainment of such standards.

Justifiably, Bowen referred to by Carroll as the “*father of Corporate Social Responsibility*” (A.B, Carroll September 1999, p.270) queried like inhabitants in the Russian North currently deprived of their rights and privileges, that “what responsibilities to society may businessmen reasonably be expected to assume?” (I paraphrase this statement “businessmen” to include MNCs and the Russian government /stakeholders). In response, Bowen admits that businessmen (MNCs) have the obligation to pursue policies, make decisions and implement those lines of action which are desirable in terms of the objectives and values of society (Howard Bowen, Fortune Magazine’s survey 1946 P.6. published in 1953 with title *Social Responsibilities of Businessmen*, New York: Harper and Row). Bowen reiterates, social responsibility is no panacea but contains some degree of truth that must guide MNCs in the future.

In a similar sphere, Davis set forth the ‘*Iron Law of Responsibility*’ that “social responsibilities of businessmen need to be commensurate with their social power” (Davis Keith, 1973, *The Case For and Against Business Assumption of Social Responsibilities* p.71).Therefore, an avoidance of social responsibility might lead to a gradual erosion of social power on the part of businesses (p.73). Hence, Davis posits social responsibility begins where the law ends. He notes that mere compliance to the minimum requirements of the law does not qualify such MNC as “being socially

responsible” because it’s the expected duty of every good citizen (P.313). Some critics assert Davis’ definition of CSR was more rigorous since he seemingly excluded legal obedience as a part of corporate citizenship from social responsibility.

All in all, as admitted by Friedman the underlined goal of every business is profit such as the case of Russia; whose main priority is to remain a giant and dominant oil state in the world market. While considering the *raison d’être* of MNCs as profit-making, as Carroll noted such “CSR firms” while striving to make profits, should obey the laws, be ethical and remain true corporate citizens (Carroll 1991, p.43). As emphasized in the body of this research this process is a gradual process owing to Russia’s Soviet heritage. However, cognizant of its importance and current application in Russia today, besides the OECD Guidelines recommendations advanced. I strongly recommend that oil MNCs stakeholders (Russian Federal, Lukoil, Rosneft, Gazprom etc.) should put societal interest (environment, health etc.) ahead of personal interests (profit, competitive oil market, power etc.) in the enactment and observation of laws and regulations as well as the socio-economic development and exploration practices of its oil sector. The grave implications of such irresponsibility would see legal history holding all parties involved accountable for violations of the rights of the Russian people, especially its vulnerable indigenous peoples.

Research Methodology

This research is based on academic writings of legal scholars in the areas of CSR, human rights and MNCs. In addition, I used the internet to examine (websites and newsfeeds for) opinions, interviews and published works of prominent human rights, environmental activists and whistleblowers in Russia.

Research Delimitation

Though my case study is Russia as a whole, my research will focus on two main MNCs in Russia: **Rosneft (state-owned)** and **Lukoil (private-owned)**. They were selected because amongst oil MNCs in Russia, they meet and satisfy the requirements, intention and purpose of this research topic.

Thesis Structure

This research is structured in five parts (chapters).

Chapter One provides a general overview of MNCs, what they constitute and their potential as legal persons as well as examines their role in business transaction as a non-state actor.

Chapter Two illustrates the foundation, history and birth of the CSR movement. It explains the motives of its propagators in addition to its role and relationship to MNCs and the law.

Chapter Three contextualizes and assesses the place and status of CSR in Russia with specific focus on two major Russian oil MNCs: Rosneft and Lukoil. It x-ray the risks and responsibilities involved in oil exploration and the related challenges of implementing identified CSR practices by the various stakeholders.

Chapter Four outlines some existing legal and regulatory frameworks in Russia as well as investigates its degree of compliance and implementation through court proceedings and other corrective measures.

Chapter Five provides findings and recommendations.

Table of cases

Doe v.Unocal, 963 F. Supp 880 (CD Cal 1997)

Fadeyeva v. Russia; ECHR, Strasbourg. Application No. 55723/00 , 9 June 2005-Final 30/11/2005

Kiobel v. Royal Dutch Shell Petroleum Co., No. 10-1491 (U.S. 2012).

La Republique Francaise v. Total 1 N/H 10-82.938 FP-P+B+R+I N/3439 CI 25 Septembre 2012 ,Cour de Cassation

LUKOIL-Komi v. Komi Republic- Russia (Untreated water-waste case)

Nanni v. Pace and the Sovereign Order of Malta, 8 Annual Digest of Reports of Public International Law Cases,1935-37, at 2,reprinted in D.J. Harris, Cases and Materials on International Law 142 (5th ed.1998).

Nike v. Kasky, 123 S.Ct.2554 (2003); Kasky v.Nike, 79 Cal.App.4th 165(1st Dist.2000; Kasky v.Nike, 27 Cal.4th 939(2002).

Oao Neftyanay Kopaniya Yukos v Russia (Application no. 14902/04, Strasbourg Court, ECHR

Oao Neftyanay Kopaniya Yukos v. Russia

Quasar de Valores SICAV S.A., et al. v. The Russian Federation

South African Apartheid Litigation, 346 F Supp 2d 538(SDNY 2004), 544-5 and Bowoto v. Chevron, 312 F Supp 2d 1229 (ND Cal 2004).

U.S. v. ExxonMobil Pipeline Co., case no. 4:13-cv-00355, in the U.S. District Court for the Eastern District of Arkansas -

Velasquez Rodriguez v. Honduras, the Inter-American Court of Human Rights (ser.C) no.128 above, paras 172-5(1988)

Vyskrebetsev v. Sakhalinmorneftgas (SMNG)

Abbreviations

OECD: Organisation for Economic Cooperation and Development

UDHR: Universal Declaration of Human Rights, 1948.

BIT: Bilateral Investment Treaty

CSR: Corporate Social Responsibility

HSE: Safety and Environment Management System

NAO: Nenets Autonomous Okrug

ATS: Alien Tort Statute

ILO: International Labour Organisation

ICESCR: The International Covenant on Economic, Social and Cultural Rights

UNGC: United Nations Global Compact

EIA: Environmental Impact Assessment

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CHAPTER ONE

TOWARDS A BETTER UNDERSTANDING OF MULTINATIONAL CORPORATIONS

1.1 HISTORICAL OVERVIEW OF MULTINATIONAL CORPORATIONS

The origin of Multinational Corporations¹ can be traced back to the start of the 16th century when major colonizing and imperialistic ventures from Western European powers, notably England and Holland², began to arise.³ Investors set up firms to promote and protect these trading activities especially the transatlantic slave trade and the territorial acquisitions of their home countries⁴. Cases in point include the British⁵ and Dutch East India Trading Companies, the Muscovy Company, the Hudson's Bay Company and the Royal African Company.

According to Carlos and Nicholas⁶, the aforementioned companies meet the criteria of modern-day multinational corporations because they possessed well-established chains of command and managers on their payrolls who made decisions on matters of production, distribution and pricing. Levitt further posits that the structure of the corporations in the mercantile era justifies their parallel with present day MNCs.⁷ Gilpin affirms that “the giant American corporations which comprise most of the world's multinationals are the

¹ Multinational Corporations hereinafter abbreviated as MNCs.

² Why “Holland” and not “Netherlands”: From a historical standpoint, the province of Holland (today North and South Holland) was the main center of economic and foreign trade amongst Dutch provinces several centuries ago. That was also how most foreign traders referred to it. See: The Netherlands Embassy's webpage, Stockholm –Sweden - <http://sweden.nlembassy.org/you-and-netherlands> accessed 15.5.2013.

³ Jed Greer and Kavaljit Singh, A Brief History of Transnational Corporations (Corpwatch, 2000) <http://www.globalpolicy.org/component/content/article/221/47068.html> accessed 23 October 2012.

⁴ Ibid.

⁵ British East India Company got exclusive rights from Queen Elisabeth I to trade with all countries in the Cape of Good Hope see Om Prakash, *European Commercial Enterprise in Pre-Colonial India* (Cambridge University Press, Cambridge 1998)

⁶ A.M. Carlos and S.Nicholas, “Giants of Earlier Capitalism: The Chartered Trading Companies as Multinational Corporations” (1988) 62 Business History Review 398.

⁷ K. Levitt, *Silent Surrender: The American Economic Empire in Canada*(New York: Liveright Press, 1970)

descendants of the East India Company and the other mercantile enterprises that dominated the world economy in the seventeenth and eighteenth centuries”.⁸

As a matter of fact, this mercantilist and colonialist era had remarkable consequences in the development of MNCs. First, the slave trade triggered new avenues of economic and social power through which wealthier companies expanded and re-invested their wealth in other sectors of the economy.⁹ Examples include: Aetna (Insurance), Lloyd’s of London (Insurance), New York Life (Insurance), Norfolk Southern (Railroad), WestPoint Stevens (Textiles) and FleetBoston (Bank).¹⁰ Second, corporations served public interest such as English Kings, chartered the appointment of governors and production modes, dictated taxes and controlled the markets.¹¹ Moreover, State control over MNCs was greater than in contemporary MNCs;¹² for instance, their control over the direction of growth and the granting of limited charters: East India Company’s original charter was granted for 15 years on condition that “if not found to be advantageous to the country, it might be annulled at any time under a notice of two years; if advantageous, it might, if desired by the company, be renewed for 15 years”.¹³ Above all, as maybe the case today:

“European companies became the principal agents for economic exploitation of the colonial territory. That support gave enterprises and individuals access to the wealth of the colonies on extraordinarily favourable terms. Local communities received few economic benefits for their work and had no basis to complain. The colonial legacy included swaths of African farmland owned by whites, African mineral wealth controlled by Europeans, and significant petroleum sources in the Middle East granted Western oil companies”¹⁴ as noted by Ratner in his assessment of the role of companies in the colonial enterprise.

To continue, the post Second World War / Nuremberg trials period also outlines the origin of corporate complicity¹⁵ and the ever-growing power of MNCs to date.¹⁶ Beth¹⁷ asserts

⁸ R. Gilpin, “The Political Economy of the Multinational Corporation: Three Contrasting Perspectives” (1976) 70(1) American Political Science Review, 184.

⁹ Olufemi Amao, Corporate Social Responsibility, Human Rights and the Law (Routledge Research in Corporate Law, 2011)

¹²

¹⁰ J. Cox, “Corporations Challenged by Reparations Activists” USA Today, 21 February 2002.

¹¹ R.L. Grossman and F.T Adams, Taking Care of Business: Citizenship and the Charter of Incorporation (Cambridge, MA: Charter Ink, 1993), 5.

¹² Ibid

¹³ Grossman and Adams note 10

¹⁴ S.R. Ratner, “Corporations and Human Rights: A Theory of Legal Responsibility” (2001) 111 Yale Law Journal 443,453

¹⁵ Anita Ramasastry, Corporate Complicity: From Nuremberg to Rangoon, An Examination of Forced Labor Cases and their Impact on the Liability of Multinational Corporations (Berkley Journal of International Law 20:91) accessed <http://heinonline.org> 30.10.2012.

¹⁶ Amao note 8

that some domestic German corporations in collaboration with MNCs¹⁸ such as IBM, Ford, Siemens, Volkswagen, Daimler-Benz and BMW benefited from abundant cheap slave labour which accounts for their vast wealth and enormous power today.¹⁹ Black²⁰ condemns IBM and its management for peddling revolutionary database information to the Nazis. That information was a key tool that facilitated their brutal extermination program. In reaction to Black's stance, Bernstein²¹ noted²² that it was a mere demonstration of "utter amorality of the profit motive and its indifference to consequence."²³

By and large, the aforementioned era strengthened fundamental legal practices. First, the Holocaust served as a trigger for the reassessment of corporate actions in the light of morality and legal accountability.²⁴ Moreover, it set off the transformation and reawakening of international human rights law alongside current development.²⁵ A case in point is the development of the Control Council Law No.10²⁶ which found; United States v. Krauch (The Farben case),²⁷ Zyklon B²⁸, United States v. Alfred Krupp²⁹ and United States v. Flick guilty of one human rights violations or another (slavery and above all, corporate complicity).³⁰

¹⁷ Beth Stephens, "The Amorality of Profit: Transnational Corporations and Human Rights" (2002) 20 Berkley Journal of International Law 45; See also S. Chesterman, "Oil and Water: Regulating the Behaviour of Multinational Corporations through Law" (2004) 36 International Law and Politics, 307, 323-325.

¹⁸ See E. Black, *IBM and the Holocaust* (London: Time Warner, 2002); M. Wallace, *The American Axis: Henry Ford, Charles Lindbergh and the Rise of the third Reich* (New York: St. Martin's Press 2003); United Nations Conference on Trade and Development, 2003, *FDI Policies for Development: National and International Perspectives*, World Investment Report 2003 (Geneva: UNCTAD, 2003).

¹⁹ B. Stephen note 16.

²⁰ Edwin Black, *IBM and the Holocaust: The Strategic Alliance between Nazi Germany and America's Most Powerful Corporation*, 2001.

²¹ Richard Bernstein, *I.B.M.'s Sales to the Nazis: Assessing the Culpability*, N.Y. TIMES March 7, 2001, at E8.

²² Bernstein questions whether the Nazis in fact required IBM technology: "Is Mr. Black really correct in his assumption that without IBM's technology, which consisted mainly of punch cards and the machines to tabulate them, the Germans wouldn't have figured out a way to do what they did anyway? Would the country that devised the Messerschmitt and the V-2 missile have been unable to devise the necessary means to slaughter millions of victims without IBM at its disposal?" See note 20.

²³ *ibid* note 21.

²⁴ *ibid* note 16.

²⁵ *ibid* note 16

²⁶ See Anita note 14 pg.105 / Entered into force on 29 December 1945: Genocide and Crimes against humanity - Special Law promulgated by the Allied powers which established the uniform basis for the prosecution of war criminals and other similar offences except those dealt with by the International Military Tribunal.

²⁷ *Trials of War Criminals before the Nuremberg Tribunals Vol 6-9 (1950-1953)* see also "Business and International Crimes: Assessing the Liability of Business Entities for Grave Violations of International Law" (A Joint Project of the International Peace Academy and Fafo, Report 467, 2004).

The court recognised corporate responsibility as follows: "With reference to the charges in the present indictment concerning Farben's activities in Poland, Norway, Alsace-Lorraine, and France, we find that proofs establish beyond reasonable doubt that offences against property as defined in Control Council Law no.10 were committed by Farben...The actions of Farben and its representatives, under these circumstances, cannot be differentiated from acts of plunder or pillage committed by officers, soldiers or public officials of German Reich."

²⁸ 1 Law Reports of War Criminals 93 (1997) (Brit Mil. 1946).

²⁹ *Trials of War Criminals before the Nuremberg Tribunals Vol 6-9 (1950-1953)*

³⁰ *Ibid*

Today, US multinationals are more at the center of international discourse than their European and Asian counterparts. By the 1970s, US multinationals were identified with the interest of their home state or state of origin³¹ and specifically as economic agents. Hence, as a foreign investor (MNC), nationality was paramount for any host state concerned about undue influence over its national policies and possible perpetrators of inequality between states.³² Another significant development was the power relationship established between MNCs and host states especially countries of the South. The 1970's marked the era when the South advocated for the creation of a new international economic order, which would include, ensuring state control over foreign direct investment as well as the activities of MNCs within their territories.³³ Murray notes that what the South sought, were binding rules that would ensure non-interference by MNCs with the polity of the host community and did not serve the plight of foreign countries while doing business in host states.³⁴

These and similar developments, prodded legal regimes into monitoring and fine-tuning the role and responsibilities of MNCs. Examples include, *The Impact of Multinational Corporations on Development and International Relations*,³⁵ *The Organisation for Economic Co-operation and Development (OECD) Guideline*³⁶ and *International Labour Organisation, (ILO's) Tripartite Declaration*.³⁷ Hence, the years between 1970 and 1980, marked a turning point in the history of multinationals. The relationship between home and host states increased through their adherence to binding norms, and a more corporate culture was ushered in as the rise of corporate social responsibility movements was fostered in Europe, Australia and America.

³¹ R. Barnett and R. Muller, *Global Reach: The Power of the Multinational Corporations* (New York: Simon and Schuster, 1974), p.75.

³² Jennifer A. Zerk, *Multinationals and Corporate Social Responsibility, Limitations and Opportunities in International Law* (Cambridge Studies in International and Comparative Law, 2006)

³³ See: <http://michael-hudson.com/books/global-fracture-the-new-international-economic-order/> accessed 25.5.2013. South refers to the developing countries that pushed for New International Economic Order. See: Jagdish N. Bhagwati (editor) (1977) *The New International Economic Order: The North-South Debate*. ISBN 0-262-52042-7

³⁴ See. Amao. P. 34. also J. Murray, "New Phase in the Regulation of Multinational Enterprise: The Role of the OECD" (2001) 30(3) *Industrial Law Journal* 255.

³⁵ See Economic and Social Council Resolution 1721(LIII), quoted in UN, New York – UN 1974 P.19

³⁶ Annexed to the 1976 OECD Declaration on International Investment and Multinational Enterprises, Paris 21 June 1976(1976) 15 *ILM* 967,969.

³⁷ ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1978) 17 *ILM* 422 which sets regulations between home state, host states and ILO expectations.

1.2 WHAT IS A MULTINATIONAL CORPORATION

Seeking an apt answer to this question is a somewhat difficult task, as noted by Muchlinski³⁸ and Surya.³⁹ This is evidenced by the fact that, amongst other things, two international regulatory regimes designed to regulate the activities of MNCs do not consider it fitting to have a precise definition of an MNC.⁴⁰ However, for the purpose of this research, a working answer will be attempted.

In practice, the term Multinational Corporations herein abbreviated as MNCs, is interchangeably used and referred to as Multinationals,⁴¹ Multinational Enterprises (or MNEs)⁴² or Transnational Corporations(or TNCs).⁴³ Initially, the term referred to a company that owned, directly or through its subsidiaries, assets located in the territory of more than one state.⁴⁴ Designation was based on the presence of ownership links between a parent company and its subsidiaries with an integrated basis of management. Often, MNCs are likened to any form of cross-border commercial arrangement. According to Dunning, the requisite factor that sets an MNC and other “portfolio” investors apart is the presence of a Foreign Direct Investment (FDI).⁴⁵ This is because FDI is not limited to a transfer of capital via a foreign subsidiary, but is rather a transfer of resources, where “control over the use of resources remains with the investor.”⁴⁶

In addition, Muchlinski points out that MNCs operate and control the use of assets across national borders: - their organizational structures permit managerial control across national borders despite their distinctive national identities; and that there is a competitive advantage

³⁸ See David C. Korten, *When Corporations Rule the World* 125(1995); Peter Muchlinski, *Multinational Enterprises and the Law* 12-15(1995); Cynthia D. Wallace, *Legal Control of the Multinational Enterprise* 10-12(1982).

³⁹ Surya Deva, *Human Rights Violations by Multinational Corporations and International Law: Where from here?* (19 Connecticut International Law Journal 1-57,2003)

⁴⁰ Muchlinski note 34

⁴¹ Ibid note 30

⁴² Ibid note 32 and 33

⁴³ United Nations Centre for Transnational Corporations, UNCTC. See also D. Fieldhouse, *The Multinational: A Critique of a Concept* in A. Teichova, M. Levy- Leboyer and H. Nussbaum (eds.), *The Multinational in Historical Perspective* (Cambridge, Cambridge University Press, 1986).

⁴⁴ Ibid note 36

⁴⁵ Foreign Direct Investment hereinafter referred to as FDI. FDI consists of a package of assets and intermediate products such as capital, technology, management skills, access to markets and entrepreneurship. see note 36.

⁴⁶ Ibid note 36.

to trade across borders, in terms of both finished products and factor inputs such as technical know-how and managerial skills, between affiliates and third parties.⁴⁷

Surya posits that the task of defining an MNC will be much simpler if two factors are considered: the types of corporations needing to be covered and the policy objectives to be achieved by including them in the definition. This implies that the first consideration should be to target those corporations that operate trans-nationally through ownership, management and control of other corporations or via agreement with other contractors in more than one state. Meanwhile, the second consideration should be to bring those economic entities under the direct international regulatory mechanism thus preventing them from exploiting the weaknesses of municipal regime.⁴⁸

Other legal commentators have attempted answers. Wallace defines a “multinational enterprise” as “an aggregate of corporate entities, each having its own juridical identity and national origin, but each in some way interconnected by a system of centralized management and control, normally, exercised from the seat of primary ownership.”⁴⁹ Yet, according to Dine, “multinational and transnational companies do not exist as an entity defined or recognized by law. They are made up of complex structures of individual companies with an enormous variety of interrelationships”.⁵⁰

In order to effectively collect data on the activities of multinational companies, some international organisations have attempted to ascribe a ‘legal’ definition within their structures. In this regard, the Organisation for Economic Cooperation and Development hereinafter referred to as OECD,⁵¹ notes that constructing a legal definition which considers elements of flexibility and certainty provokes regulatory problems thus, for purposes of the Guidelines;⁵² there is no need for a ‘precise’ definition of multinational enterprises. However, OECD defines MNCs as enterprises that “usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant

⁴⁷ Muchlinski note 34,8. In pg.62-80, He emphasizes control as the main criterion though recognises six main MNE legal forms: contractual, equity-based corporate groups, joint ventures, informal alliances between MNEs, besides public MNEs specifically supranational businesses

⁴⁸ Surya note 35.

⁴⁹ C.D. Wallace, *The Multinational Enterprise and Legal Control: Host State Sovereignty in an Era of Economic Globalization* (The Hague: Martinus Nijhoff Publishers, 2002), 9.

⁵⁰ J. Dine, *Companies, International Trade and Human Rights* (Cambridge: Cambridge University Press, 2005), 48.

⁵¹ OECD : Organisation for Economic Cooperation and Development see :- <http://www.oecd.org>

⁵² OECD Guidelines (2001) 40 ILM 237, Part 1 (Concepts and Principles).

degree of autonomy within; the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, state or mixed”⁵³

The United Nation’s Norms on the Responsibility of Transnational Corporations and other Business Enterprises with regard to Human Rights⁵⁴ defines a transnational corporation as “an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries – whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively”.

Meanwhile, the United Nations Conference on Trade and Development hereinafter abbreviated as UNCTAD defines transnational corporations as “incorporated or unincorporated enterprises comprising parent enterprises and their foreign affiliates. A *parent enterprise* is defined as an enterprise that controls entities in countries other than in its home country, usually by owning a certain equity capital stake. An equity capital stake of 10 per cent or more of the ordinary shares or voting power, or its equivalent for an unincorporated enterprise, is normally considered as a threshold for the control of asset. A *foreign affiliate* is an incorporated or unincorporated enterprise in which an investor, who is resident in another country, owns a stake that permits a lasting interest in the management of that enterprise (an equity stake of 10 per cent for an incorporated enterprise or its equivalent for an unincorporated enterprise).⁵⁵ This definition justifies the historical assertion that multinationals’ activities were more equity-based than contract-based.⁵⁶ Hence, Zerk adopts a stylized notion of multinationals that comprises “a parent company, located in a home state and linked to its foreign affiliates through relationships of control (i.e. ‘cross-border relationships’). The use of the term ‘subsidiary’ in place of ‘affiliate’ implies the presence of ‘equity-based’ rather than other (usually contract-based) control links.”⁵⁷

In sum, it is admissible that a unique ‘legal’ definition will be complex. However, for want of justice and proper regulation, the court must consider the strain that exists between the need for flexibility versus the need for certainty owing to the multi-jurisdictional nature of MNC activities. Moreover, there is the fact that in the conventional sense, they are not ‘legal persons’ per se, but rather constitute more than one legal entity operating within often

⁵³ Ibid note 48 para.3

⁵⁴ See Para.1: Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003). Approved 13 August 2003, by UN Sub-Commission on the promotion and protection of Human Rights Resolution 2003/16, UN Doc. E/CN.4/Sub.2/2003/L.11 at 52(2003).

⁵⁵ UNCTAD, World Investment Report 2000, p.267

⁵⁶ Zerk note 30 p.51

⁵⁷ Ibid note 30

complex organizational structures. Hence, they can be legally defined by reference to ‘control’⁵⁸relationships; which take into account aspects of enforcement (that is allocation of liabilities), monitoring (supervision and administration) and legal certainty. Therefore, for purposes of this research, thoughts on this complex concept, will be reflected in the spirit and law of Zerk’s notion which states that an MNC is: “a parent company, located in a home state and linked to its foreign affiliates through relationships of control (i.e. ‘cross-border relationships’). The use of the term ‘subsidiary’ in place of ‘affiliate’ implies the presence of ‘equity-based’ rather than other (usually contract-based) control links.”⁵⁹

1.3: THE RELATIONSHIP BETWEEN MULTINATIONAL CORPORATIONS, STATE (HOME/HOST-STATE) AND INTERNATIONAL LAW

Expounding on the intersectional relationship between an MNC, the state and international law, provokes and challenges international law. In particular, the concept of international legal personality of non-state actors⁶⁰ is largely debatable⁶¹ amongst several legal commentators and experts. International law is made by states and is binding on states.⁶² Since World War II, the international legal order has undergone fundamental changes vis-à-vis the traditional rule that MNCs are not subjects of International law.⁶³ This shift was marked by major developments such as the landmark opinion of the International Court of Justice (ICJ) in the *Reparation for Injuries in the Service of the UN* which reversed the dominant rule of no alternative full international legal personality owned by states.⁶⁴ Above all, MNCs derive legal

⁵⁸ “Control” strongly upheld by Muchlinski, Peter: *Multinational Enterprises and the Law* 62-80(1995)

⁵⁹ Ibid note 30(Emphasis- as a Guiding definition).

⁶⁰ For instance MNCs.

⁶¹ See Muzaffer Eroglu, *Multinational Enterprises and Tort Liabilities: An Inter-disciplinary and Comparative Examination*, Corporations, Globalisation and the Law, Edward Elgar Publishing Ltd, 2008: MNCs’ direct participation in the process of creating applicable legal norms and their access to international law mechanism could be at the expense of certain values and essential principles of international law. Thus granting such legal personality status is like equipping them with the most powerful weapons of war (simply because of their huge economic and political influence in nation state).

⁶² Olufemi Amao notes: MNCs are neither participants nor subjects of international law; it has proven difficult to ensure adequate compliance with international law. Some states (especially the powerful states) either choose or violate international laws that bind them p.24

⁶³ Note the early traditional position of the ICJ in *Barcelona Traction*, ICJ Rep 3 and *Anglo-Iranian Oil*, ICJ Rep 96, where the court outrightly rejected same as subjects of international law. See note 56 p.54

⁶⁴ See further : ICJ Rep 174 at 179 held that the United Nations as a subject of international law.

personality by virtue of the Universal Declaration of Human Rights 1948 which endows them with overriding rights and duties.⁶⁵

1.3.1: Towards an identification of the Legal Personality of an MNC

One primary role of international law in relation to MNCs has been to define the rights and obligations of states regarding international investments. Moreover, international law regulates the jurisdiction of states over MNCs, their rights of diplomatic protection and via treaties, has stabilized and harmonized the conditions of investment for MNCs.⁶⁶ Zerk posits that international law by its very force, has the clout to respond to challenges posed by MNCs.⁶⁷ First, soft law instruments can be a means of galvanizing support for a specific policy or programme.⁶⁸ In addition, in the event that treaties are impracticable, soft law initiatives serve as a medium for testing attitudes (sharing and shaping of values). Likewise, it may represent a possible groundwork for a future ‘hard-law’ treaty regime. Also, either as evidence of ‘state practice’ or as a marker of current expectations and future aspirations, they can become a catalyst for the development of future customary norms.⁶⁹ To underscore her position, Zerk makes reference to some treaty-based regimes⁷⁰ whose development was facilitated mainly by home states of MNCs to control their activities.⁷¹ Despite this potential, limitations still exist hence justifying why some legal commentators hold that such potential is more complementary to host and home states which have robust enforcement mechanisms.⁷² Besides, as Murray noted countries in the South advocated for the creation of a new

⁶⁵ Dupuy talks about ‘la revolution de droits de l’homme’ Dupuy, supra Ch.2 n.3, at 114. See also A. Cassesse, *International Law in a Divided World*, (1989) Oxford, Oxford University Press at 99.

⁶⁶ Ibid also Boston University International Law Journal (Vol.22:309) corroborates that MNCs are channeled in two ways through international legal instruments either through binding treaties in which states are the direct addressees of rights and obligations and whose domestic operations have a direct impact or soft laws directly addressed to MNCs such as I.L.O., OECD Guidelines, UNHR and others

⁶⁷ Ibid note 30

⁶⁸ Though not immediately binding on states, it could be advantageous as explained by Birnie and Boyle: “Treaties maybe more a useful medium for codifying the law, or for concerted law-making, but many either do not enter into force, or more frequently, do so for only a limited number of parties which do not necessarily include the states whose involvement is most vital to the achievement of their purposes. This is especially true of environmental issues, whose regulation may require modification of economic policies and can be perceived as inhibiting development and growth. Treaties thus present problems as vehicles for changing or developing law” See: Birnie and Boyle, *International Law and the Environment*, p.25

⁶⁹ Ibid. see Zerk p.71. In the same light Chinkin notes: “...the instruments of soft law cannot be ignored. They provide for shaping and sharing of values and so creates expectations as to the restraints States will accept upon their behaviour...” see: Chinkin, ‘The challenge of Soft Law’, 865-6.

⁷⁰ See chapter on Corporate Social Responsibility and its related treaty-based regimes.

⁷¹ See book review by Olufemi Amao in A.J. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (2007) 10(1) *Journal of International Economic Law* 161.

⁷² Olufemi Amao p.24

international economic order aimed at enabling states to have more control over foreign direct investment and the monitoring of the activities of MNCs within their territories.⁷³

In a bid to justify the place of international law with regard to MNCs, Zerk notes: “In particular, how can something that seems to defy legal definition be said to be an ‘international legal person’?... there is nothing in principle that prevents the international community from conferring some degree of international legal personality on multinationals.”⁷⁴ International law is made, accepted and recognized by the international community of states as a norm.⁷⁵ The term ‘legal personality’ constitutes the extent to which an entity is recognized by a legal system as having rights and responsibilities.⁷⁶ Whether in domestic or international law, such legal persons have rights and obligations and can thus enter into legal relationships, though they may have varied rights and obligations in the home or global spheres. This stance is upheld by ICJ in its advisory opinion in the *Reparations for Injuries Case*, stating that “the subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends on the needs of the community.”⁷⁷

Within the international legal system, this dramatic shift of MNCs from the traditional dichotomy of “subject-object” to “participants”⁷⁸ marks a major transition in international law specifically under human rights and international economic law. Higgins submits that:

“It is much more helpful, and closer to perceived reality, to return to the view of international law as a particular decision-making process. Within that process (which is dynamic and not static one) there are a variety of particular claims across state lines, with the object of maximizing various values. Determinations will be made on those claims by various authoritative decision-makers-Foreign office Legal Advisers, arbitral tribunals, courts...Now, in the model, there are no ‘subjects’ and ‘objects’, but

⁷³ Ibid. see Amapo.p.34 and Murray note.34

⁷⁴ Ibid. see Zerk p.60.

⁷⁵ A norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. See Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, in force 27 January 1980, 1155 UNTS 331 ;(1969) 8ILM 679; UKTS (1980) 58,Article 53.

⁷⁶ See Zerk p.72

⁷⁷ 1st: A Subject in international law means an entity which possess rights and duties and has a right to make a claim.2nd: *Reparations for Injuries Suffered in the Service of the United Nations* (1949) ICJ Reps 174,178.The advisory opinion arose out of the establishment of the state of Israel. The resulting unrest forced the UN to nominate a mediator. The mediator and his associate were killed in Jerusalem in 1948.The UN G.A sought an advisory opinion from the ICJ. The question was raised as to whether the UN, as an organisation, could claim reparation for these injuries from the state.

⁷⁸ Ibid, Note: Traditionally, only states could be ‘subjects’ of international law. Unlike domestic law recognises individuals and other entities e.g. companies as objects of international law. Today, there is a major shift that recognises the role of non-state actors under the style “participants”. Participants comprises of individuals, companies, international organisations and NGOs.

only *participants*. Individuals are participants along with states, international organisations (such as the United Nations, or the International Monetary Fund (IMF)), multinational corporations and indeed private non-governmental groups.”⁷⁹

To corroborate the flexibility of international law with reference to its attribution of legal personality to MNCs, the Italian Court of Cassation in the 1930’s stated as follows:

“It is enough to point out that the modern theory of the subjects of international law recognises a number of collective units whose composition is independent of the nationality of their constituent members and whose scope transcends by virtue of their universal character the territorial confines of any State. It must be admitted that only States can contribute to the formation of international law as an objective body of rules....But it is impossible to deny to other international collective units a limited capacity of acting internationally within the ambit and the actual exercise of their own functions with the resulting international juridical personality and capacity which is its necessary and natural corollary.”⁸⁰

Amongst other things, Fatouros asserts that domestic law was the focal point as far as questions of recognition and nationality of MNCs were at issue.⁸¹ No doubt, Kokkini-Iatridou and Waart re-affirmed the position that MNCs had no separate legal status aside from that enjoyed by their constituent entities by virtue of domestic law.⁸²

Above all, Zerk pinpoints that the international legal personality of an MNC is functional, provided it is necessitated by its area of regulation (and the role of the specific participant in it), the powers bestowed on the ‘person’ alongside the aims and needs of the international community.⁸³ Hence, under international law, MNCs⁸⁴ possess *rights*⁸⁵ which are directly

⁷⁹ Higgins, Problems and Process, p.50. Also Alvarez, J.E (2010) ‘Are Corporations ‘Subjects’ of International Law? NYU School of Law, Public Law Research Paper No.10-77 sourced at SSRN.

⁸⁰ Nanni v. Pace and the Sovereign Order of Malta, 8 Annual Digest of Reports of Public International Law Cases, 1935-37, at 2, reprinted in D.J. Harris, Cases and Materials on International Law 142 (5th ed. 1998). Note: The court might be referring to corporations in this instance the Sovereign Order of the Knight of Malta, established as a nursing brotherhood and military organisation directed against Muslims during crusades. The Other “international collective units” to which it referred included, notably, the Holy See. Accessed from:

www.law.nyu.edu/ecm_dlv3/groups/public/@nyu_law_law_website_journals_journal_of_international_law_and_politics October 2012.

⁸¹ A. Fatouros, ‘National Legal Persons in International Law’ in R. Bernhardt (ed.), Encyclopedia of Public International Law, 5 vols. (Amsterdam: North Holland, 1997), vol. III, P.495.

⁸² D. Kokkini-Iatridou and P. de Waart, ‘Foreign Investments in Developing Countries: Legal Personality of Multinationals in International Law’ (1983) 14 NYIL 87, 101-4 see also introduction to Seidl-Hohenveldern, Corporations.

⁸³ Ibid: See Zerk p.75.

⁸⁴ MNCs representing companies and groups of companies.

⁸⁵ See Sornorajah, Foreign Investment: Rights such as rights under international investment law e.g rights to compensation in the event of expropriation and rights not to be discriminated against vis-a-vis national firms. See M. Addo, The Corporation as a victim of Human Rights Violations.

enforceable (by virtue of treaty-based dispute resolution mechanisms), which thus permits the enjoyment of some degree of international legal personality basically as non-state actors.⁸⁶ Otherwise, it is fully enjoyed by States who possess exclusive rights of international legal personality like the right to participate in the development of international law through custom, the capacity to enter into international treaties, the prospect of direct legal responsibility for breaches of obligations and the ability to bring claims.⁸⁷

1.3.2: Multinational Corporations and International Human Rights

States have a ‘human right’ duty under international law to regulate the activities of MNCs either directly or indirectly to avoid any breaches as enshrined in international human right treaties and conventions.⁸⁸

Direct Regulation

MNCs owe a universal duty by virtue of the preamble of the Universal Declaration of Human Rights, 1948⁸⁹ which notes that ‘every individual and every organ of society’ must strive to uphold human rights teachings⁹⁰ within their power and jurisdiction for instance by striking a balance between rights and responsibilities.

According to Kinley and Tadaki, the duty of MNCs to protect human rights is comprised of three ingredients: prevention of human rights violations, provision of means to comply with human rights, and the promotion of human rights standards.⁹¹

A question that often arises amongst legal commentators and advocates is that of assessing the degree of liability of an MNC for human rights violations by a host state such as the provision of security services at a project site⁹² or co-sponsors (accomplice) or failure to report human

⁸⁶ Note by Kinley and Tadaki, ‘From Talk to Walk’, 946: Acknowledgement of the role of non-state actors in international life and, correspondingly, a growing conviction e.g. Subjects to some basic direct obligations under international law as “possessors of rights”.

⁸⁷ See Article 34(1) Statute of the International Court of Justice, only states have rights to bring matters before the ICJ.

⁸⁸ UN Charter, ECHR, ICCPR and the ICESCR etc.

⁸⁹ Universal Declaration of Human Rights, UDHR 1948.

⁹⁰ Core fundamental human rights such as right to life, liberty and physical integrity should receive higher priority than mere profits to MNCs, see Kinley p.199. Human right protection often has a great toll of financial effects on companies especially on the lengths of compliance to human rights obligations as per trade-offs between its obligations to shareholders vis-a-vis that of its individuals and society. *ibid.* p.79

⁹¹ See Joseph, ‘Taming the Leviathans’, (respect, protect and ensure), 175, See also : M. Caven, *The International Covenant on Economic, Social and Cultural Rights* (Oxford :Clarendon Press;1995) wherein it was described as ‘Tripartite’ set of obligations to ‘respect, protect and fulfill’ human rights standards.

⁹² See *Doe v. Unocal*, 963 F. Supp 880 (CD Cal 1997)

right abuses.⁹³ Growing efforts through civil society organisations have been made to redress such abuses as enshrined in international human rights instruments. The International Covenant on Economic, Social and Cultural Rights (ICESCR)⁹⁴ reaffirms, amongst other things, the right to enjoy a just and favorable working life in particular, safe and healthy working conditions,⁹⁵ and the International Covenant on Civil and Political Rights (ICCPR) stipulates expected standards of safety and health in any working environment.⁹⁶ Besides, the 1998 Declaration on Fundamental Principles and Rights at Work of the International Labour Organisation⁹⁷ advocates that all member states of the ILO uphold workers' fundamental rights even those that have not ratified the various Conventions.⁹⁸

Based upon the above premise, the UN Norm Project of the UN Sub-Commission is the first legal project of its type to back the direct implementation of fundamental human rights as an obligatory ingredient in regard to MNCs' proper functioning. The project takes into consideration environmental impact assessment, information sharing, consultation and consensus with stakeholders, best practice in environmental management and respect for precautionary principle in the corporate decision-making as inevitable factors.⁹⁹

By and large, though legal instruments of human rights exist, MNCs often contextualize human rights principles as moral rather than legal obligations because of the absence of any specific legal instrument that imposes such direct obligation upon them. However, with the test of time, legal reforms are gradually gaining force in this direction though with constraints from giant MNCs.¹⁰⁰ In *Kiobel v. Royal Dutch Shell Petroleum Co.*¹⁰¹, *Kiobel Esther et al* filed a suit under the Alien Tort Statute (ATS)¹⁰² against Royal Dutch for human rights violations on the Ogoni people. The Supreme Court recently upheld the decision of the lower court by ruling that ATS applies only to conduct within the US and its high seas. It noted that the US had no jurisdiction over the act since it was neither committed on US soil or by a US company /its employee(s) abroad. This is what Justice Breyer said:

⁹³ See *South African Apartheid Litigation*, 346 F Supp 2d 538(SDNY 2004), 544-5 and *Bowoto v. Chevron*, 312 F Supp 2d 1229 (ND Cal 2004).

⁹⁴ International Covenant on Economic, Social and Cultural Rights adopted by UNGA Resolution 2200A (XXI), 16 December 1966 in force 23 March 1976, 999 UNTS.

⁹⁵ See ICESCR, n.107 above, Article 11

⁹⁶ International Covenant on Civil and Political Rights adopted by UNGA Resolution 2200A(XXI), 16 December 1966 in force 23 March 1976, 999 UNTS

⁹⁷ ILO adopted at the 86th session of the International Labour Conference, Geneva, 18 June 1998.

⁹⁸ See Zerk.p.81.

⁹⁹ UN Norms n.47

¹⁰⁰ In the case of weaker States (eg. Law Enforcement).

¹⁰¹ *Kiobel v. Royal Dutch Shell Petroleum Co.*, No. 10-1491 (U.S. 2012).

¹⁰² The Alien Tort Statute ("ATS"), is a 1789 law that grants foreign citizens the right to bring suits in U.S. federal courts for certain violations of the law of nations. See: <http://www.law.cornell.edu/supct/cert/10-1491> accessed 19.5.2013.

“I agree with the Court’s conclusion but not with its reasoning. The Court sets forth four key propositions of law: First, the “presumption against extraterritoriality applies to claims under” the Alien Tort Statute. Second, “nothing in the statute rebuts that presumption.” Third, there “is no clear indication of extraterritorial[application] here,” where “all the relevant conduct took place outside the United States” and “where the claims” do not “touch and concern the territory of the United States . . . with sufficient force to displace the presumption.” Fourth, that is in part because “corporations are often present in many countries, and it would reach too far to say that mere corporate presence suffices.”¹⁰³

The above statement raises some of the challenges encountered by MNCs due to the absence of human rights instruments applying directly or expressly to companies. However, according to Samp, the above decision might necessitate or set the groundwork for the suing of MNCs by activists in the foreseeable future.¹⁰⁴

Indirect Regulation

On the other hand, the indirect regulation illustrates those obligations which states have to control private actors and to ensure that human rights norms are not violated.¹⁰⁵ In *Velasquez Rodriguez v. Honduras*, the Inter-American Court of Human Rights held that:

“An illegal act which violates human rights and which is initially not directly attributable to a State(for example, because it is the act of a private person...)can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it...This duty to prevent [human rights violations] includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts.”¹⁰⁶

That notwithstanding, in the doctrine of due diligence, a state is not responsible for any human rights violations abroad per se; rather, state responsibility emerges wherein such a state omits to prevent same. In the European Court of Human Rights case of *Mastromatteo v.*

¹⁰³ See: <http://cja.org/downloads/Kiobel-Opinion.pdf> accessed 19.5.2013. Cite as: 569 U. S. ____ (2013) 1 BREYER, J., concurring in judgment Supreme Court of The United States No. 10–1491 *Esther Kiobel et al., Petitioners v. Royal Dutch Petroleum Co. et al.* on Writ of Certiorari to the United States Court of Appeals For the Second Circuit [April 17, 2013].

¹⁰⁴ See: Rich Samp, Supreme Court Observations: *Kiobel v. Royal Dutch Petroleum & the Future of Alien Tort Litigation* published on 18 April 2013; <http://www.forbes.com/sites/wlf/2013/04/18/supreme-court-observations-kiobel-v-royal-dutch-petroleum-the-future-of-alien-tort-litigation/> accessed 19.5.2013.

¹⁰⁵ *ibid.* Joseph, ‘Taming the Leviathians’; ICHRP, ‘Beyond Voluntarism’.

¹⁰⁶ *Velasquez Rodriguez v. Honduras*, the Inter-American Court of Human Rights(ser.C) no.128 above, paras 172-5(1988)

Italy, the applicant sued the state for inadequate measures to safeguard his son's life by virtue of Article 2 of the Convention.¹⁰⁷ The court ruled that:

“...not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materializing. A positive obligation will arise, the court has held, where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid the risk.”¹⁰⁸

ICESCR regards the aforementioned obligations as integral to the ‘international regulatory responsibilities’ of States.¹⁰⁹ Though all states have the capacity to regulate companies, some like host states for instance, face weak bargaining positions due to high dependence on foreign investment or lack of the financial or technical resources to monitor and enforce quality standards.¹¹⁰ Unlike, home states,¹¹¹ Sarah posits this degree of disparity is less, if the more-developed home states shoulder more of MNCs responsibility for human rights regulation as :

“The developed home state is more likely to possess the requisite technical expertise to impose adequate safety standards, and to have a legal system able to cope with the proper attribution of responsibility within the complex corporate arrangements... Indeed it is common for developed nations to demand higher standards of behaviour from MNEs within their jurisdictions than do developing nations.”¹¹²

Despite the above, the bone of contention amongst scholars usually hovers over whether there are any bases for holding a home state responsible for failure to protect against extraterritorial human rights violations by an MNC. Some argue they have limited rights to regulate MNCs abroad while others affirm they have not only the rights but the obligation to regulate MNCs extraterritorially. As corroboration, human rights lawyers examining the relationship between States and Multinationals during a conference at the Maastricht University noted:

¹⁰⁷ “Right to life”

¹⁰⁸ European Court of Human Rights, ECHR (2002) Application No.37703/97, section 2, note 68.

¹⁰⁹ See ICESCR, n.107 above, Article 2(1), see Decision Regarding Communication 155/96, n.128 above, para.53.

¹¹⁰ Ibid Zerk p.85

¹¹¹ Refers to the state of incorporation, the place of origin or as Dicken contends that all TNCs have an identifiable home base which ensures that every TNC is essentially embedded within its domestic| home state| environment’, see Dicken P, *Global Shift: Transforming the World Economy*, 3rd edition (London : Paul Chapman Publishing, 1998)

¹¹² Sarah Joseph, ‘Taming the Leviathans’: Multinational Enterprises and Human Rights, 177-8

“The obligation to protect includes the State’s responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-State actors.”¹¹³

Another question that arises is the extent of jurisdiction that a home state would have over extraterritorial boundaries. According to Sornorajah¹¹⁴ the control relationships that form the basis of diplomatic rights under the Bilateral Investment Treaty (BIT)¹¹⁵ could be a justification for the imposition of extraterritorial regulatory responsibilities on home states especially of norms of jus cogens violated by MNCs.¹¹⁶ That notwithstanding, international human rights instruments have divergent approaches regarding the territorial scope of human rights obligations. For instance, with the ICCPR each state party undertakes to ‘respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant’¹¹⁷ and the European Social Charter states the Charter ‘shall apply to the metropolitan territory of each Contracting State’.¹¹⁸ On the contrary, the European Convention of Human Rights requires state parties to ‘secure to everyone within their jurisdiction the rights and freedoms set out in the Convention.’¹¹⁹ In relation to the right to health, the General Comments of the UN Committee on Economic, Social and Cultural Rights states inter alia:

“To comply with their international obligations in relation to article 12, State parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries, if they are able to influence

¹¹³ Maastricht Guidelines on Violations on Economic, Social and Cultural Rights, para.18 (reproduced at (1998) 20HRQ 691) (emphasis added).

¹¹⁴ M.Sornorajah, ‘Linking State Responsibility for Certain Harms Caused by Corporate National Abroad to Civil Recourse in the Legal Systems of Home States’ in C.Scott (ed.). *Torture as Tort: Comparative Perspectives on the Development of Transnational Human Rights Litigation* (Oxford: Hart Publishing, 2001).

¹¹⁵ BIT means Bilateral Investment Treaty.

¹¹⁶ Sornorajah, pp.494-5.

¹¹⁷ ICCPR, n.108 above Article 2(emphasis added)

¹¹⁸ Article 34, European Social Charter adopted 1961 and revised in 1996 in force in 1999.

¹¹⁹ Exceptionally at this instance, the European Court of Human Rights and the British House of Lords opine that a contracting state has effective control over a territory or individuals in other states or through diplomatic staff may give rise to extraterritorial obligations ,see. Article 1, European Convention on Human Rights and Fundamental Freedoms, Rome 4 November 1950, in force 3 September 1953, ETS,No.5

these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law.”¹²⁰

It further states: “a State which is unwilling to use the maximum of its available resources for the realization of the right to health is in violation of its obligations under article 12,”¹²¹ while admitting that “violations of the right to health can occur through the direct action of States or other entities insufficiently regulated by States.”¹²² Above all, commenting on the stronger obligation to protect the right to health, the Committee emphasizes ‘the need of states to safeguard the human rights of persons within their jurisdiction.’¹²³ In this regard, Zerk posits that seemingly “the extraterritorial human rights obligation of home states would be limited to softer duties to respect and promote human rights in the formulation and implementation of home state policies on CSR.”¹²⁴ Similarly, P.Alston and G.Quinn suggest that the extraterritorial role of states upheld in the General Comments is more or less an aid provider rather than a potential regulator.¹²⁵

At this juncture, what remains controversial and unclear amongst legal scholars are the questions of extraterritoriality such as the principle of state sovereignty (which holds that a state cannot exercise jurisdiction over another territory unless otherwise permitted by international rules) and the principle of non-intervention both of which are enshrined in the UN Charter.¹²⁶ Under international law, extraterritoriality¹²⁷ can only occur either by adjudicative (for instance municipal criminal procedures amount to convictions for extraterritorial unlawful acts) or prescriptive (the adoption of legislation with the intention of giving it an extraterritorial effect) theories.¹²⁸ Exceptionally, extraterritoriality can be justified

¹²⁰ Committee on Economic, Social and Cultural Rights, ‘General Comment No.14, on the Right to the Highest Attainable Standard of Health,’ UN Doc. E/C.12/2000/4 at para.39.(emphasis added).

¹²¹ Ibid, para.47

¹²² Ibid, para.48 (emphasis added).See also ‘General Comment No.12 on the Right to Adequate Food’, UN Doc. E/C.12/1999/5, para.19.

¹²³ General Comment No.14 n.145 above, para.51.

¹²⁴ See Zerk p.89.

¹²⁵ P.Alston and G.Quinn, The Nature and Scope of State Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights’ (1987) 9 HRQ 156, 186-92.

¹²⁶ See UN Charter Articles 2.1 and 2.7, both well-established principles of traditional international law and both confirm the basis of jurisdiction is either domestic or limited to territorial boundaries. See Lotus case (Turkey and France).Today subject to reinterpretation due to human rights.

¹²⁷ Extraterritorial jurisdiction may arise due to the need to combat international crimes, transnational crimes, exert pressure on host states(e.g. the case of the US government towards the Cuban government),improvement of ethical values due to globalization as enshrined in OECD and as a result of unintended consequences like the US Alien Tort Claim Act see:<http://198.170.85.29/Olivier-de-Schutter-report-for-SRSG-re-extraterritorial-jurisdiction-Dec-2006.pdf> accessed on 10.2.2013.

¹²⁸ De Schutter, Olivier, Extraterritorial Jurisdiction as a tool for improving the Human Rights Accountability of Transnational Corporations, Chapter III.

by reference to either the customary principles of nationality¹²⁹ (also known as personality principle) or universality and more controversially the ‘effects’ doctrine.¹³⁰ In the personality principle, the state exercises its jurisdiction beyond its domestic and traditional scope unlike the principle of universality which recognises certain acts as unlawful, and it is thus in the best interest of the international community to protect and prevent them. For instance, each state has criminal jurisdiction with respect of some offences (like war crimes) and jus cogens crimes no matter the perpetrator, or where, when and against whom it is committed.¹³¹ Examples of such crimes presently covered under universal jurisdiction include piracy, war crimes, torture, crimes against humanity, terrorism, genocide and slavery.¹³²

From the above, there is every reason to assert like Cassese that international human rights law is now competing with these principles and they can be somewhat difficult to coordinate with each other.¹³³ Human rights issues that were predominantly of domestic jurisdiction and non-intervention exist despite some traditional law limitations of extraterritorial jurisdiction priority.¹³⁴ The following are the thoughts of a Special Rapporteur of the UN Commission on Human Rights who expressed with particular clarity that:

“The violations committed by the transnational corporations in their mainly transboundary activities do not come within the competence of a single State and, to prevent contradictions and inadequacies in the remedies and sanctions decided by States individually or as a group, these violations should form the subject of special attention. The State and the international community should combine their efforts so as to contain such activities by the establishment of legal standards capable of achieving that objective.”¹³⁵

Moreover, the fact that International law has the potential of responding to challenges posed by MNCs, as Zerk noted, means soft law initiatives has the potential of developing into hard law. This is because States are capable of developing regulatory frameworks based on past

¹²⁹ www.jus.uio.no/research accessed in November 2012: University of Oslo, Faculty of Law published in 2010 notes: Personality principle takes either an active or passive form. Active personality principle, a state can legislate laws which applies to its citizens and their conduct within and without its jurisdiction. Unlike, a passive personality principle grants a state jurisdiction over acts committed against its citizen especially abroad. The Active personality principle is common and more applicable e.g. Human rights abuses abroad.

¹³⁰ Also known as Territorial Principle. It is to the effect that a state could claim jurisdiction over another if the act originally commenced from that jurisdiction e.g. Competition law. See US Third Restatement, 402.

¹³¹ Higgins, Problems and Process, p.58.

¹³² See. Zerk p.111.

¹³³ Cassese, Antonio, International law Second edition, Oxford University Press, 2005.

¹³⁴ Ibid.Note: Article 2(7) of the UN Charter subject to reinterpretation due to the evolution of human rights law.

¹³⁵ The Realization of Economic, Social and Cultural Rights, Final report on the question of the impunity of the perpetrators of human rights violations(economic, social and cultural rights) prepared by Mr. El Hadji Guisse, UN Special Rapporteur pursuant to Sub-Commission resolution 1996/24, UN Doc. E/CN.4/Sub.2/1997, para.131.

soft law experiences. Additionally, existing soft law instruments have the potential to create new international obligations such as universal initiative of ‘corporate social responsibility’ to promote MNC activities.¹³⁶

CHAPTER TWO

UNDERSTANDING THE DOCTRINE OF CORPORATE SOCIAL RESPONSIBILITY

2.1 EVOLUTION OF THE CONCEPT ‘CORPORATE SOCIAL RESPONSIBILITY’

The history of social and environmental awareness about business dates back to thousands of years ago. Around 1700BC, in Ancient Mesopotamia, King Hammurabi passed a law to exterminate anyone, like builders, innkeepers or farmers, whose negligence resulted in the death of others or provoked inconveniences within the local communities¹³⁷. Senators in Ancient Rome were unhappy about the empire’s inability to bankroll military campaigns due to inadequate taxes resulting from plummeting businesses. In 1622, disgruntled shareholders of the Dutch East Indian Company began condemning vices such as management secrecy and ‘self-enrichment’¹³⁸.

By the 18th century, early social responsibility was marked by paternalistic philanthropic ventures often championed by businessmen. The aftermath of the industrial revolution remarkably influenced the development of social amenities and trade unionism. These in turn raised awareness of the need for better working conditions with advocacy in areas such as pollution, health and safety, product liability and antitrust laws.

Between 1900 and 1959, pro-activity on social and environmental issues grew further. For instance, in 1911, the US Supreme Court ordered the dissolution of Standard Oil Company because it flouted anti-trust law following a publication by Ida Tarbell.¹³⁹ Meanwhile, Upton

¹³⁶ See O.Amao’s review of Zerk’s book (2007 published in the Journal of International Economic Law 161. Also O.Amao.p.24 note 3.

¹³⁷ Van De Mierop, Marc (2005). King Hammurabi of Babylon: A Biography. Blackwell Publishing.

¹³⁸ "The Dutch East India Company (VOC)". Canon van Nederland..

¹³⁹ See: <http://learning.blogs.nytimes.com/2012/05/15/may-15-1911-supreme-court-orders-standard-oil-to-be-broken-up/> accessed on the 14 th of February 2013. Note: In 1890, Congress passed the Sherman Antitrust Act in an attempt to restrain the power of trusts, banning “every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce.”

Sinclair's book, 'The Jungle' necessitated the passing of acts such as the Pure Food and Drug Act and the Meat Inspection Act.¹⁴⁰

By the 1960's, Milton Friedman in "Capitalism and Freedom" notes: "<there> is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud."¹⁴¹ That was an alert about unjust enrichment common amongst MNCs in the developing world even today.

The early 1970s saw the birth of civil society organizations like Greenpeace and Friends of the Earth which promoted environmental awareness and fought against corporate pollution and waste.¹⁴² Furthermore, the General Assembly of the UN convened the Stockholm Conference in 1972 hereinafter called the Stockholm Declaration under the principal objective "to serve as a practical means to encourage, and to provide guidelines ... to protect and improve the human environment and to remedy and prevent its impairment."¹⁴³

In the 1980's, advocacy was enhanced via radio and television. Thus social responsibility amongst corporate stakeholders and the society at large was fortified even more. This era marked a turning point in the history of transnational corporations, because for the first time in history, a people like the employees of Nestlé had forced management to the negotiating table.¹⁴⁴

After the World Commission on Environment and Development¹⁴⁵ report in 1987, the Rio Earth Summit in 1992,¹⁴⁶ and the Johannesburg Summit of 2002, efforts to salvage environmental and social concerns were reinforced under the banner of sustainable development (that is corporate social responsibility). International organizations like the United Nations, (UN)¹⁴⁷, the Organisation for Economic Cooperation and Development,

¹⁴⁰ Cheeseman, H. (n.d.) Business Law Timeline. Accessed from http://myphiliputil.pearsoncmg.com/student/bp_cheeseman_blaw_5/timeline.html 14.2.2013.

¹⁴¹ Milton Friedman, The Social Responsibility of Business is to Increase Profits, The New York Times Magazine, September 13, 1970. Copyright @ 1970 by The New York Times Company retrieved on 5.3.2013 see: <http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html>

¹⁴² Cheeseman, H. (n.d.) Business Law Timeline. Retrieved 5/3/ 2013 from http://myphiliputil.pearsoncmg.com/student/bp_cheeseman_blaw_5/timeline.html accessed 5.3.13.

¹⁴³ See: General Assembly resolution 2581 (XXVI) - <http://untreaty.un.org/cod/avl/ha/dunche/dunche.html> accessed 20/5/2013.

¹⁴⁴ Ibid note 123.

¹⁴⁵ Hereinafter abbreviated as WCED, report; 'Our Common Future' 1987.

¹⁴⁶ See Guide to the Global Compact at www.globalcompact.org/content/publicdocument/gcguide.pdf : "The idea behind the 27 Rio principles is that long-term economic progress must be linked to environmental protection, requiring a new and equitable global partnership involving governments, people and key sectors of society, including corporations".

¹⁴⁷ The Draft UN Code of Conduct on Transnational Corporations, UNCTC Doc. E/1990/94, 12 June 1990 and the UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights adopted

(OECD)¹⁴⁸ and the International Labour Organisation, (ILO)¹⁴⁹ have set up codes of conduct aimed at imposing corporate social responsibilities on stakeholders, especially corporations, regarding aspects of sustainability.

No doubt, conscious of the pristine nature of the Arctic and mindful of the decisions of the 1992 UN Conference on Environment and Development¹⁵⁰ in Rio de Janeiro and the World Summit on Sustainable Development in 2002 in Johannesburg¹⁵¹, the Arctic Council¹⁵² formed a Working Group on Sustainable Development (SDWG) in Barrow, Alaska.¹⁵³

To better appreciate the evolution of the concept of Corporate Social Responsibility¹⁵⁴ within the context of MNCs, it is imperative to examine the initiatives (soft laws hereinafter referred to as ‘sources’ of CSR) of some public international organisations, states and NGOs whose efforts have enabled the recognition of the concept in the international sphere as a voluntary and self-regulatory mechanism for MNCs in the light of Ilias Bantekas.¹⁵⁵ These initiatives make up the sources of CSR like Public International Instruments, NGO Guidelines, Individual Business Codes of Conduct and Domestic Legislation relating to CSR.¹⁵⁶

2.2 SOURCES OF CORPORATE SOCIAL RESPONSIBILITY

2.2.1 PUBLIC INTERNATIONAL INSTRUMENTS

by UN Sub-Commission on 13 August 2003:E/CN.4/Sub.2/2003/12/Rev.2 and the UN Global Compact, UN Press Release SG/SM/6881, 1 February 1999.

¹⁴⁸ OECD Guidelines annexed to the 1976 OECD Declaration on International Investment and Multinational Enterprises, 21 June 1976;(1976)15 ILM 967.(The Guidelines are reproduced at (1976)15 ILM 967).

¹⁴⁹ The 1977 ILO Tripartite Declaration Concerning Multinational Enterprises and Social Policy(1978) 17 ILM 422.

¹⁵⁰ Agenda 21: ‘Programme of the Action for Sustainable Development’ adopted by the UNGA at its 46th session, UN Doc.A/CONF.151/26.

¹⁵¹ See: http://www.johannesburgsummit.org/html/basic_info/basicinfo.html accessed 20.5.2013.

¹⁵² The Arctic Council besides the Sustainable Development Working Group, SDWG, formed other working groups such as AMAP,CAFF and PAME with same motto of promoting, preserving and sustaining the environment in the Arctic region, see www.arcticcouncil.org.

¹⁵³ Aslaug Mikkelsen and Oluf Langhelle Ed., Arctic Oil and Gas Sustainability at Risk? Routledge, Taylor and Francis Group, 2008.P.29-30.

¹⁵⁴ Corporate Social Responsibility hereinafter abbreviated as CSR.

¹⁵⁵ Ilias Bantekas, Corporate Social Responsibility in International Law

see: <http://128.197.26.35/law/central/jd/.../journals/international/.../309-348.pdf> retrieved 7.3.2013.

¹⁵⁶ Ibid. note139.

These are comprised of the following: the United Nation Draft, OECD¹⁵⁷ Guidelines for Multinational Enterprises, Global Compact, International Labour Organisation¹⁵⁸ Declaration, Agenda 21 and the UN Norms. These instruments were primarily developed as a measuring rod of the activities of MNCs in the less developed world in particular and in the developed world in general.

To begin with, OECD Guidelines were first published in 1976 and later revised in June 2000. They are comprised of recommendations addressed to OECD member States and MNCs operating within the respective states; plus other non-adhering states (subject to revision in June 2000). This 2000 revision expounded on the essence of promoting employment and labour relations between MNCs,¹⁵⁹ and on the respect for human rights, especially the rights those afflicted.¹⁶⁰

From the environmental protection standpoint, the Guidelines state that:

“enterprises should within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of the relevant international agreements, principles, objectives and standards, take due account of the need to protect the environment, public health and safety and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.”¹⁶¹

Amongst other things, the Guidelines lay stress on the importance of information sharing with employees, local communities and the public on potential environmental hazards; the need for MNCs to conform to ‘precautionary principles’¹⁶² and the principle of ‘continuous improvement’;¹⁶³ and the provision of education and training to employees on environmental health and safety matters.¹⁶⁴

In the light of consumer protection, the Guidelines caution MNCs that ‘when dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take reasonable steps to ensure the safety and quality of the goods and

¹⁵⁷ Organisation for Economic Cooperation and Development see www.oecd.org/OECD Guidelines for Multinational Enterprises 1976, Revision 2000.

¹⁵⁸ International Labour Organisation: I.L.O See: www.ilo.org

¹⁵⁹ For instance a call to take adequate steps to ensure occupational health and safety in their operations. see.Ibid.para.4(b).

¹⁶⁰ It must be consistent with the host government’s international obligations and commitments. see OECD Guidelines, Revision 2000,n.33 Part II(General Policies)para.2.

¹⁶¹ Ibid. Part V (Environment).

¹⁶² Ibid. para.4.see further pp.271-2 below.

¹⁶³ Ibid.,para.6.

¹⁶⁴ Ibid.para.7.

services they provide' that is 'ensuring that the goods and services they provide meet agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.'¹⁶⁵ Additionally, MNCs ought to provide accurate information to consumers as to the content, safe use, maintenance, storage and disposal of products.¹⁶⁶ Above all, the presence of a control mechanism known as the National Contact Points (NCPs) was formed to promote and assist adhering states, enterprises and their stakeholders to implement the Guidelines and resolve related issues.¹⁶⁷ That notwithstanding, its effectiveness is highly criticized as being unresponsive and unaccountable.¹⁶⁸

Furthermore, the International Labour Organisation's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (Tripartite Declaration)¹⁶⁹ was formed and passed in 1977 for several of reasons. By the 1960s within the international community, cases of human rights violations by MNCs were reported that required restructuring of their conduct and relationship with the host states and the states perceived a growing gap between the established nations of the North and the nascent states of the South that provoked hostilities towards MNCs.¹⁷⁰ Above all, according to the ILO, "since labour related and social policy issues were among the specific concerns to which MNE activities gave rise, the ILO was inevitably drawn into international guidelines in its sphere of competence."¹⁷¹ After revision in 2000 and 2006, the declaration is comprised of five sections. The first section calls on MNCs to respect the national legislations of host states, while host governments should treat MNCs and local companies fairly and encourage consultative meetings with stakeholders. The second section implores MNCs to generate employment, respect employment rules and use state-of-the-art technology. The third section looks at the training, retraining and promotion of workers. The fourth section addresses wage rates, benefits and conditions of work like occupational safety and health. This section amongst others, requests MNCs to uphold health and safety standards wherever, even in states where such standards are low or non-existent. It notes: "Multinational enterprises should maintain the highest standards of safety and health, in conformity with national requirements,

¹⁶⁵ Ibid, Part VII (Consumer Interests), para. 1.

¹⁶⁶ Ibid, para. 2.

¹⁶⁷ National Contact Point, NCP functional within the OECD States, its activities are conducted in confidentiality and unreported. see: <http://www.oecd.org/daf/inv/mne/ncps.htm> accessed 21.5.2013.

¹⁶⁸ In its 2001 Report, the Trade Union Advisory Committee criticized it for under-performing. see S. Macleod and D. Lewis, "Transnational Corporations: Power, Influence and Responsibility" (2004) 4(1) Global Social Policy 77.

¹⁶⁹ The International Labour Organisation's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (Tripartite Declaration) 1977, 17ILM 422, para. 6. (1978).

¹⁷⁰ Ibid. Amao, p. 29.

¹⁷¹ International Labour Organisation, 'Multinational Enterprises and Social Policy' online available: www.ilo.org/public/english/employment/multi/tripartite/history.Htm (accessed 9.3.2013).

bearing in mind their relevant experience within the enterprise as a whole, including any knowledge of special hazards....”¹⁷² The last section concerns freedom of association¹⁷³ and the rights to organise, collective bargaining, consultation, examination of grievances and the settlement of disputes.

As per paragraph 4, there are no geographical limitations to the declaration; the principles are commended to the governments, employers’ and workers’ organisations of home and host states and the MNCs.¹⁷⁴ Just like the OECD Guidelines, the tripartite declaration is also a voluntary and non-binding set of standards. Nonetheless, in some cited cases of dispute settlement or legal interpretation, the outcomes have been discouraging. For instance, a request by the International Federation of Chemical, Energy, Mine and General Workers’ Union (ICEM)¹⁷⁵ in 1993 which sought to establish whether a subsidiary of Exxon in Malaysia had to withhold certain safety and health information from an employee and debar him from participating at an ILO meeting was inconclusive. The matter at stake was the fact that the Union had requested Exxon to grant the complainant, (secretary-general of the Union) a paid leave. On the contrary, Exxon Malaysia granted him leave without pay to attend the meeting. Above all, it refused to provide him with relevant company information on safety and health and statistics on the premise that these were proprietary and strictly company use. In reaction, the complainant requested the interpretation of paragraphs 37¹⁷⁶, 38¹⁷⁷ and 39.¹⁷⁸ The committee proceeded to issue two alternative interpretations and failed to confirm either

¹⁷² Ibid.para.38 (emphasis added).

¹⁷³ Part of the 1998 Declaration on fundamental principles and Rights of work: (a) freedom of association (b)the elimination of all forms of forced or compulsory Labour,(c) the effective abolition of child Labour and (d) the elimination of discrimination in respect of employment and occupation.

¹⁷⁴ Ibid.para.40.

¹⁷⁵ IUF Case (1993-1995) (GB.264/13, Appendix).

¹⁷⁶ Para 37: “Governments should ensure that both multinational and national enterprises provide adequate safety and health standards for their employees. Those governments which have not yet ratified the ILO Conventions on Guarding of Machinery (No. 119), Ionising Radiation (No. 115), Benzene (No. 136) and Occupational Cancer (No. 139) are urged nevertheless to apply to the greatest extent possible the principles embodied in these Conventions and in their related Recommendations (Nos. 118, 114, 144 and 147). The list of occupational diseases and the codes of practice and guides in the current list of ILO publications on occupational safety and health should also be taken into account.” See:

<http://hrrca.org/system/files/tripartite%20declarations%20MNE.pdf> accessed 22.5.2013.

¹⁷⁷ Para.38. “Multinational enterprises should maintain the highest standards of safety and health, in conformity with national requirements, bearing in mind their relevant experience within the enterprise as a whole, including any knowledge of special hazards. They should also make available to the representatives of the workers in the enterprise, and upon request, to the competent authorities and the workers’ and employers’ organizations in all countries in which they operate, information on the safety and health standards relevant to their local operations, which they observe in other countries. In particular, they should make known to those

concerned any special hazards and related protective measures associated with new products and processes. They, like comparable domestic enterprises, should be expected to play a leading role in the examination of causes of industrial safety and health hazards and in the application of resulting improvements within the enterprise as a whole.”

¹⁷⁸ Para. 39. “Multinational enterprises should cooperate in the work of international organizations concerned with the preparation and adoption of international safety and health standards.”

of them thus leaving the case unsettled.¹⁷⁹ This case and others justify Amao and Zerk's view that the tripartite declaration is of little practical significance due to its lack of enforceability.

At the level of the United Nations, Kofi Annan as Secretary General initiated the Global Compact¹⁸⁰ programme as a voluntary tool to coordinate matters between the UN and the business world on human rights, labour, the environment and corruption. It focuses on twelve principles derived from the Universal Declaration of Human Rights, the 1992 Rio Declaration, the 1995 World Summit Report on Social Development and the UN Convention against Corruption. Examples of these principles include: ...The protection of international human rights within their sphere of influence (principle 1), ... the elimination of all forms of forced and compulsory labour (principle 3),...the effective abolition of child labour (principle 4),...a precautionary approach to environmental challenges(principle 7) and ...initiatives to promote greater environmental responsibility (principle 8).¹⁸¹

Unfortunately, the UNGC has no binding force, thus; corporations are not bound to sign up. When they do, such corporations are referred to as 'participants', because they are required to contribute to annual evaluation reports on CSR issues as per the spirit of the principles. Therefore, any participant who disregards the principles and annual report will be unlisted.

In sum, though it is admissible that the UNGC lacks legal standards due to its uncertainty, fluidity and non-binding force, it has however, reinforced the notion that there is a moral purpose to every business.¹⁸²

Another remarkable Public International Instrument of CSR was the adoption of the UN Norms¹⁸³ by the Sub-Commission on the Protection and Promotion of Human Rights on 13 August 2003. The Norms consolidate a wide range of human rights principles traditionally addressed to states. Backer suggests these Norms are a gateway to establishing an international framework for mandatory CSR standards¹⁸⁴. According to Weissbrodt and Kruger, "the Norms is an extension of human rights standards to the field of corporate social

¹⁷⁹ Ibid.Amao.p.31

¹⁸⁰ United Nations' Global Compact, UNGC formed at New York on the 26th of July 2000 following the failure of the United Nation Centre on Transnational Corporations, UNCTC to formulate an appropriate code to control MNCs activities.

¹⁸¹ See www.unglobalcompact.org and Zerk p.259-260.

¹⁸² Ibid.see Amao p.40

¹⁸³ UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regards to Human Rights, UN Doc.E/CN.4/Sub.2/2003/12/Rev.2(2003).It refers to at least 56 instruments including 18 treaties,11 multilateral instruments, three industry/commodity initiatives, six union/trade initiatives,13 company codes and five NGO model guidelines see. U.Baxi,'Market Fundamentalisms: Business Ethics at the Altar of Human Rights'(2005) 5 Human Rights Law Review I.

¹⁸⁴ L.C.Backer, 'Multinational Corporations, Transnational Law;the United Nations Norms on the Responsibilities of Transnational Corporations as a Harbinger of Corporate Social Responsibility' (2005-2006) 37 Columbia Human Rights Law Review 287.

responsibility”, they “represent(s) a landmark in holding businesses accountable for human rights abuses and constitute a succinct, comprehensive, restatement of international legal principles applicable to business.”¹⁸⁵

What is more, Weissbrodt considers the Norms as the first of its type to be accepted internationally as a non-voluntary initiative.¹⁸⁶ It recognized both the role of States to protect and promote human rights as well as imposing direct obligation on companies to ensure its implementation.¹⁸⁷ However, some commentators argue that though it may contain provisions that are more than merely hortatory, its binding force may stem from its restatement of already existing international human rights laws.¹⁸⁸ The obligations placed on MNCs include: obligations to treat workers equally and to provide equal opportunities,¹⁸⁹ obligations not to engage in or benefit from violations of human rights or humanitarian laws;¹⁹⁰ specific obligations to workers in compulsory labour, prohibition of child labour, provision of safe and healthy environment, provision of fair and progressive remuneration standards and right to collective bargaining,¹⁹¹ respect for international and domestic laws of host states including human rights obligations,¹⁹² transparent obligations,¹⁹³ consumer protection,¹⁹⁴ and environmental protection.¹⁹⁵

Backer further underlines that the Norms impose direct obligations on corporations to work in the spirit of international standards by attempting to shift corporate governance from a stakeholder maximization model to a public law model.¹⁹⁶

That notwithstanding, the Norms have been largely criticised. First, the International Organisation of Employers, (IOE)¹⁹⁷ and International Chamber of Commerce, (ICC)¹⁹⁸ challenge its legality as follows: It placed human rights obligations on private actors contrary to international law, shifted state responsibility unto private business, misrepresented

¹⁸⁵ Weissbrodt and M.Kruger, “Norms on the Responsibilities of Transnational Corporations and other Businesses Enterprises with Regard to Human Rights” (2003)97 American Journal of International Law 901.

¹⁸⁶ Ibid.see also: Carolin Hillemanns, European & International Law UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, 10 GERMAN L. J. (2003).

¹⁸⁷ See Amao.p.41

¹⁸⁸ Geoffrey Chandler, Commentary on the United States Council for International Business “Talking Points” on the United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, at <http://209.238.219.111/Chandler-commentary-on-USCIB-Talking-Points.htm> accessed 23.5.2013.

¹⁸⁹ Para.2.UN Draft Norms

¹⁹⁰ Ibid.para.3.

¹⁹¹ Ibid.para.5-9.

¹⁹² Ibid.para.10.

¹⁹³ Ibid.para.11.

¹⁹⁴ Ibid.para.13.

¹⁹⁵ Ibid.para.14.

¹⁹⁶ Backer (note 161),352.

¹⁹⁷ International Organisation of Employers

¹⁹⁸ International Chamber of Commerce

international law by placing obligations which may undermine human rights and above all, its adoption process was not transparent.¹⁹⁹ In the same vein, Mendelson under the services of the Confederation of British Industry criticised thus:

“It has little or no basis in existing international law; it plays ‘fast and loose’ with the established means of creating international law, and seeks to mix law, “soft law” guidelines, non-law and would-be-law, not to mention associated categories of rules, in a most unsatisfactory normative stew, it runs counter to the general structure of international law which, for good reason, places the responsibility for ensuring good governance and respect for human right on states and their instrumentalities, it begs numerous questions, both practice and principle.”²⁰⁰

To mend the existing controversies, a special representative of the Secretary General was appointed on issues of human rights and transnational corporations and other business enterprises. His 2008 report indicates that, the root cause of business and human rights violations today lies on the existing governance gap created by globalisation. Hence, this justifies the wrongful acts of MNCs without any proper sanctions or reparations. Bridging these wrongful acts on grounds of human rights remains a fundamental challenge.²⁰¹ In reaction, Ruggie advanced three-pronged proposals for a more efficient international framework for corporate accountability for human rights: ‘Protect, Respect and Remedy’.²⁰² In view of the ‘Protect’ principle, Ruggie emphasizes the need for States to protect human rights values by imbuing a corporate culture that translates rights as an integral part of doing business. Under ‘Respect’, Ruggie calls for ‘social expectations’ from MNCs and States which implies; there are no half-measures with respect to human rights, since they constitute a universal call and duty for all and by all. Therefore, corporate social responsibility is neither a primary nor secondary duty; rather it is a responsibility of everyone which cannot be reconciled, compensated or substituted for/with the philanthropic works propagated by some businesses.²⁰³ Rather, it must be premised on the concept of ‘due diligence’²⁰⁴ with each

¹⁹⁹ Joint views of the IOE and ICC on the draft ‘UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regards to Human Rights’ see : www.reportsandmaterials.org/IOE-ICC-view-UN-norms-March-2004.doc.

²⁰⁰ Opinion of Professor Emeritus Maurice Mendelson Q.C. see www.reports-and-materials.org/CBI-Annex-A-Mendelson-opinion.doc accessed 23.5.2013.

²⁰¹ J. Ruggie, “Promotion and Protection of Human Rights: Interim Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Businesses” (Commission on Human Rights, E/CN.4/2006/97).

²⁰² Ibid note 176.

²⁰³ Muchlinski notes it’s more of a responsibility than a duty because there is no clear legal requirement under international human rights law that compels MNCs to observe human rights. see: P.Muchlinski, “*The SRSR Reports on Further Steps*

MNC adopting its human rights policies, conducting human rights impact assessments, integrating such human rights policies in its operation, tracking performance based on monitoring and auditing and above all, consented initiatives between MNCs and multi-stakeholders.²⁰⁵ Lastly, in the ‘Remedy’ framework, Ruggie enjoins home states to strengthen their judiciary mechanism (company-led mechanism, state-based <judicial and non-judicial> mechanisms and multi-stakeholder initiatives) to hear complaints and enforce measures against human rights violators accordingly. Above all, from Ruggie’s report, there is every reason to infer that ‘corporate social responsibility’, due diligence and corporate culture are possible roadmaps towards sustaining MNC activities.

In a nutshell, this and more justifies why, during a meeting chaired by the Sustainable Development Working Group of the Arctic Council in 2012 in Reykjavik-Iceland, CSR was proposed as a working instrument in the Arctic region. Mikael Anzen posits: “We are at a crossroads. The Arctic Council and the businesses operating in the Arctic must be able to discuss and address common challenges. CSR could potentially be the tool we are looking for.”²⁰⁶ Therefore, the Arctic Council and Arctic businesses will have to integrate influential guidelines and frameworks like the UN Global Compact and OECD Guidelines, the Global Reporting Initiative and GRI Reporting Framework.²⁰⁷ Moreover, the fact that Canada is taking over the chairmanship of the Arctic Council might speed up this move, owing to her outstanding records of promoting and sustaining CSR principles under the Department of Foreign Affairs and International Trade (DFAIT) and its sub-offices in Canada and abroad, Natural Resources Canada (NRCan) and Industry Canada.²⁰⁸

2.2.2 NON-GOVERNMENTAL ORGANISATIONS GUIDELINES FOR CSR:

There are often three categories of non-governmental organisations;²⁰⁹ those that provide a set of CSR guidelines (reporting standards), those that act as CSR indicator self-assessment mechanisms (self-performance standards) and those that do both. They often have broader or

Taken Towards Operationalizing the ‘Protect, Respect and Remedy’ Framework (Institute for Human Rights and Business, 12/5/10).

²⁰⁴ A concept that describes the steps a company may take to become aware of, prevent and address adverse human rights impacts. Ibid. See Amao.p.47.

²⁰⁵ Ibid. Ruggie’s report.

²⁰⁶ Mikael Anzen, Current Chair of the SDWG see: <https://www.globalreporting.org/information/news-and-press-center/Pages/Preserving-a-fragile-region-The-role-of-CSR-in-the-sustainable-development-of-the-Arctic.aspx> accessed on the 11/3/2013.

²⁰⁷ Anzen, Ibid note 200.

²⁰⁸ See <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/report2011-rapport2011.aspx?view=d.accessed> on the 14.3.2013.

²⁰⁹ Hereinafter abbreviated as NGOs.

specific focuses such as labour, social and environmental concerns. Bantekas²¹⁰ suggests it is imperative to justify the place of NGO Guidelines as sources of law for CSR because voluntary action is an integral part of public international law instruments. Hence, voluntary reporting constitutes:

“a) the only verifiable measure of MNE activity beyond the boundaries required under law, b) an ethical code of conduct to which MNEs adhere and want to become a part of, which c) has not been created within the public domain of anyone country or inter-governmental organisation, it is logical to advocate the existence of a particular legal regime outside normal structures, which is a direct effect of deregulation.”²¹¹

The Global Sullivan Principle²¹² operates as a reporting standard whereby MNCs pledge to integrate the principles into their daily operations and give feedback in the form of annual reports to the Rev. Sullivan restating their commitment and progress. On the other hand, Global Reporting Initiative (GRI) is the most widely known self-performance standard recognized by the Arctic Council as a working instrument that examines the economic, environmental and social aspects of corporate activity, products and services.²¹³ Moreover, it is a ‘collaborating centre’ of United Nation Environment Program (UNEP) and above all, with the UN Global Compact wherein both have agreed to adopt GRI’s relevant sustainability reports for Compact reporting.²¹⁴

Remarkably, Sweden, an Arctic State; in collaboration with Swedish International Development Cooperation Agency (SIDA) has developed guidelines on CSR in the spirit of Ruggie’s report to foster a healthier business environment for MNCs within and outside of Sweden.²¹⁵

2.2.3 CORPORATE CODES OF CONDUCT

²¹⁰ Bantekas, Ilias, note 152.

²¹¹ Ibid. See John T. Scholtz, *Enforcement Policy and Corporate Misconduct: The Changing Perspectives of Deterrence Theory*, 60 *Law & Contemp. Probs.* 253 (1997); Samuel Peltzman, *Towards a More General Theory of Regulation*, 19 *J.L. & Econ.* 211 (1976).

²¹² The new global Sullivan principles were jointly unveiled in 1999 by Rev. Sullivan and United Nations Secretary General Kofi Annan. The new and expanded corporate code of conduct, as opposed to the originals' specific focus on South African apartheid, were designed to increase the active participation of corporations in the advancement of human rights and social justice at the international level. See http://thesullivanfoundation.org/about/global_sullivan_principles.

²¹³ See <http://www.globalreporting.org> (accessed 11.3.2013).

²¹⁴ Ibid, Guide to the Global Compact, note 186.p.14.

²¹⁵ www.sida.se, See Guidelines for SIDA’s support to Corporate Social Responsibility published in February 2012.

Corporate Codes of Conduct, hereinafter abbreviated as CCC, are policy statements that outline the ethical standards of conduct adhered to by corporations. CCC may either take the form of general policy statements or be incorporated in its contracts with suppliers, buying agents or contractors with an underlining agreement to respect the company's ethical standards.²¹⁶ The content of the CCC varies depending on the MNC, company or industry. However, most focus on environment, labour relations, consumer protection, economic and anti-corruption drives. As a case in point, the OECD Guidelines; demonstrate efforts made to address ethical problems imported from their communities of operation,²¹⁷ as well as accounting for the formulation and management of business conducts due to community pressures.²¹⁸ CCCs have limited legal enforceability. Extraterritorial bribery, for example, prohibited under the 1977 US Foreign Corrupt Practice Act (FCPA) is legally enforceable only because its ethical standards are circumscribed by US law.²¹⁹

The thorny issue with most CCCs is human rights.²²⁰ CCCs cannot be termed 'safe' unless hydrocarbon extractors respect and consider the rights of the local (indigenous) population in its area of operation as paramount. Bantekas remarked that in a sample survey only Shell was found to have enacted strong human rights commitments owing to the 1995 upheaval in Nigeria.²²¹ Shell's pledge is stated in Principle 2(e) of its 1997 - revised Business Principles "to express support for fundamental human rights in line with the legitimate role of business," while Principle 5(a) notes that Shell companies "have the right to make their position known on matters affecting the community, where they have a contribution to make."²²²

2.2.4 REGULATION OF CSR THROUGH DOMESTIC LEGISLATIONS

Some States have passed legislation to regulate certain aspects of CSR. Examples include the 2002 Sarbanes-Oxley Act of the USA,²²³ the 2003 Corporate Responsibility Bill of UK²²⁴ and France's newly amended Nouvelle Regulations Economiques (NRE).²²⁵ The main

²¹⁶ Ibid. See Bantekas Ilias note 152.

²¹⁷ *Private Initiatives for Corporate Responsibility: An Analysis*, in *Corporate Responsibility: Private Initiatives and Public Goals*, at 16 (OECD Working Paper No.2001/1, Feb.2001).

²¹⁸ Id. at 18

²¹⁹ 15 USC &78 (2000).

²²⁰ Examples include: Community displacement, molestation, violence of local population under the guise of protecting MNC facilities by forces of law and order of host states, imprisonment and killing of activists.

²²¹ Ibid. Bantekas. See Willem J.M. von Genugten, *The Status of Transnational Corporations in International Public Law*, in *Human Rights and the Oil Industry*, at 84-89.

²²² Royal Dutch Shell, *Statement of Business Principles*.

²²³ Sarbanes-Oxley Act 7241-7266.

²²⁴ Corporate Responsibility Bill, 2003 see www.publications.parliament.uk/pa/cm200203/129/2003129.pdf.

²²⁵ Adopted in May 2001 by the French Parliament. see:

goal of these legislations is a call to public disclosure. They impose obligations on listed domestic MNCs, to constantly report and publish matters about the social, environmental and economic operation of business, and above all, to uphold fundamental ethical standards of doing business.

In a similar way, on 16 December 2008, the Danish parliament adopted a law on CSR mandating Danish companies, investors and state-owned companies (1100 identified as of 2008) to include information on CSR in their end-of-year financial reports. The reporting requirements which took effect on 1st January 2009 demanded the following:²²⁶

- information on the companies' policies for CSR or socially responsible investments (SRI)
- information on how such policies are implemented in practice, and
- information on what results have been obtained so far and management's expectations for the future with regard to CSR/SRI.

Though CSR/SRI is a voluntary practice in Denmark, any company without a clear CSR policy, must state its positioning on CSR in its end-of-year financial report.²²⁷ Worthy of note, Denmark was the first European Union and Arctic State to enforce social or environmental reporting as a formal legal requirement back in 1995 with the introduction of its "Green Accounting Law."²²⁸

By and large, the aforementioned legal development and soft law initiatives indicate CSR is a suitable guideline for corporate practice. Specific reference is made to certain emerging/underlined principles like minimum international health, safety and environmental standards, supply chain responsibility, sustainable development, obligations to warn of dangers; obligations to consult, precautionary principle, environment impact assessment and external monitoring as essential features within any MNC or State's policy statement on CSR. Though considered voluntary principles, they have the potential to be legally binding on MNCs. As a matter of customary international law, states' commitment (especially home states) to pass domestic legislation on CSR principles may impose new responsibilities due to state practice under international law. Thus ushering in a new spirit of compliance and good

<http://www.eurofound.europa.eu/eiro/2001/05/feature/fr0105156f.htm>

²²⁶ Danish Law for Corporate Social Responsibility adopted by parliament on the 16 December 2008. Information Requirement gain force in 1st of January 2009. See Danish Centre for CSR's official website CSRgov.dk.

²²⁷ Ibid.

²²⁸ Report annually on social and environmental impacts plus mitigating efforts. see L. Dhooze, 'Beyond Voluntarism: Social Disclosures and France's Nouvelles Regulations Economiques' (2004) 21 *Ariz JICL* 441, 446.

faith (So far, only the OECD Guidelines have such a mandate on OECD states and some non-member states, the other initiatives such as the UN Global Compact are fully voluntary though very welcome by some businesses). Cognisant of the very fact that these principles are not abstract initiatives per se but, are legal ingredients of existing international laws. Their proponents admit an international law in the direction of CSR would be very timely. The bone of contention now revolves around on what is CSR and its relationship with law?

2.3 A BRIEF DEFINITION OF CORPORATE SOCIAL RESPONSIBILITY AND ITS RELATIONSHIP WITH LAW

2.3.1 WHAT IS CORPORATE SOCIAL RESPONSIBILITY:

The term CSR is also known as corporate conscience, corporate philanthropy,²²⁹ corporate citizenship, corporate governance, social performance or sustainable responsible business and/or triple bottom line (TBL). Scholars have noted that the concept is difficult to accurately define and is more easily described; philanthropists for example, emphasize its charity components whereas human rights advocates consider issues of labour and human rights of paramount importance. For the purpose of this research, CSR concerns proceeding from human rights will be of primary interest. CSR policy operates as a built-in, self-regulatory mechanism wherein MNCs monitor and ensure active compliance within the spirit of the law, ethical standards and international norms.²³⁰

The World Business Council for Sustainable Development defined CSR in 1998 as “the continuing commitment of business to behave ethically and contribute to the economic development while improving the quality of life of the workforce and their families, the local community and the society at large.”²³¹ In the year 2002 it was redefined to include the concept of sustainable development as “the commitment of business to contribute to

²²⁹ Prominent Harvard Professor of Economist, Michael Porter prefers this narrower term see Porter, R and Kramer, M. (2002) ‘The Competitive Advantage of Corporate Philanthropy’, Harvard Business Review 80(12): 57-68.

²³⁰ D Wood, ‘Corporate Social Performance Revisited’ (1991) 16(4) The Academy of Management Review.

²³¹ See: M. Blowfield and J.G. Frynas, “Setting New Agendas: Critical Perspectives on Corporate Social Responsibility in the Developing World” (2005) 81 International Affairs 499.

sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life.”²³²

The association, Business for Social Responsibility (BSR) defines CSR as “... operating a business in a manner that meets or exceeds the ethical, legal, commercial and public expectations that society has of business. CSR is seen by leadership companies as more than a collection of discrete practices or occasional gestures, or initiatives motivated by marketing, public relations or other business benefits. Rather, it is viewed as a comprehensive set of policies, practices and programs that are integrated throughout business operations, and decision-making processes that are supported and rewarded by top management.”²³³

According to the European Union, “CSR is a concept whereby companies integrate social and environmental concerns in their business operations and stakeholder relations on a voluntary basis; it is about managing companies in a socially responsible manner.”²³⁴ The European Commission suggests “being socially responsible means not only fulfilling legal expectations but also going beyond compliance and investing “more” into human capital, the environment and relations with stakeholders.”²³⁵

The World Bank defines CSR as the ‘commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life, in ways that are both good for business and good for development.’²³⁶ CSR elevates the role of managers as business leaders to one of moral and social leaders.²³⁷

From a standpoint of business, CSR means doing well or good which implies the business is ‘profitable’. De Schutter argues that for any business to be profitable, its internal framework must act in a socially responsible way (contribute towards the improvement of its workforce in terms of loyalty, commitment and productivity), an environmentally responsible manner (which guarantees the efficient use of resources), and above all, through voluntary dialogue with stakeholders which builds trust, that automatically increases such a company’s license to

²³² Ibid. Note: It demonstrates the fluidity and amenability of the concept to satisfy diverse points of view.

²³³ See: www.bsr.org

²³⁴ Holland, J. “Maximising Value from CSR”, *Marketing* November: 15, Singapore: Lighthouse Independent Media.

²³⁵ See European Commission, ‘Communication from the Commission concerning Corporate Social Responsibility: a Business Contribution to Sustainable Development’ COM (2002) 347, Final, Brussels, 2 July 2002, P.5.

²³⁶ Ward, H.(2004) ‘Public Sector Role in Strengthening Corporate Social Responsibility : Taking Stock, the World Bank, International Finance Corporation, The World Bank Group.

²³⁷ *ibid.*

operate plus its overall community support.²³⁸ Therefore, it cannot be gainsaid that consumers would be more interested in buying products from, and investors and public authorities more likely to invest in or reward public contracts to such socially responsible companies.

Amidst the various appellations of CSR, for purpose of this research, the term ‘Corporate Social Responsibility’ will be used to refer to the MNC’s responsibility “to operate ethically and in accordance with its legal obligations and to strive to minimize any adverse effects of its operations and activities on the environment, society and human health.”²³⁹ All in all, there is every reason to admit that CSR has a fundamental role as far as social expectation is concerned; it is not a window-dressing per se, but is rather, a fountain for business reputation. What then is the role of law in this cause?

2.3.2 CORPORATE SOCIAL RESPONSIBILITY AND THE LAW

The CSR debate as described by Ward, is seen as being “ between people who argue that CSR should be limited to consideration of ‘voluntary’ business activities ‘beyond compliance’ with legal baselines, and those who argue for a broader starting point, based on an understanding of the total impact of business in society.”²⁴⁰

One school of thought disfavours the introduction of legislations or regulations on issues raised by CSR.²⁴¹ Meanwhile, Ward suggests CSR outside of legal framework, will be weak in the domain of business strategy and public policy. However, this current CSR debate has necessitated legislative developments in areas of mandatory social and environmental reporting or social labeling.²⁴² Besides, certain CSR tools have the propensity to take on the colour of law for example in cases where codes of conduct are incorporated into contracts with suppliers / employees²⁴³ or where, like in the USA, corporations are liable on grounds of false advertisement or representation.²⁴⁴ Compliance with the minimum legal standards for

²³⁸ See Amai p.70. Though De Schutter also criticises the ambiguities it creates like dependency of CSR on economic returns which might result to unforeseen effects and also an inaccurate impression that CSR will evolve naturally.

²³⁹ See Zerk.p.32.

²⁴⁰ H. Ward, “Legal Issues in Corporate Citizenship” (Swedish Partnership for Global Responsibility, 2003). 8.

²⁴¹ See. Amai.O.p.74-80.

²⁴² Ibid., 1-2. see also H. Ward, “Corporate Social Responsibility in Law and Policy” in N. Boeger, R. Murray and C. Villiers, eds. *Perspectives on Corporate Social Responsibility* (Cheltenham: Edward Elgar, 2008), 18.

²⁴³ See C. Glinksy, “Corporate Code of Conduct: Moral or Legal Obligation” in D. McBarnet, A. Voiculescu and Campbell, eds., *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge: Cambridge University Press, 2007).

²⁴⁴ See the case of *Nike v. Kasky*, 123 S.Ct.2554 (2003); *Kasky v. Nike*, 79 Cal.App.4th 165(1st Dist.2000); *Kasky v. Nike*, 27 Cal.4th 939(2002).

environment, labour, fair competition and corporate governance specifically in the developing world is considered as part of CSR agenda.²⁴⁵ Lastly, Ward further suggests that:

“The rigorous legal approach to analysis that is demanded by CSR-related litigation is helpful in unpacking some of the most difficult ‘boundary’ issues about the respective roles and responsibilities of business, civil society and government”²⁴⁶

Furthermore, the legal dimension considers CSR as a means towards achieving its objectives. Lynch notes, CSR is a step towards standards that will eventually be regulated.²⁴⁷ CSR is regarded as a complement to law through the promotion of social norms.

Two approaches have been identified that permit the application or interplay of law with CSR: meta-regulation²⁴⁸ and the reflexive law theory approach²⁴⁹. The former is premised on government’s (state regulation) monitoring of corporations while the latter is based on procedural regulations between social institutions.

Dickenson admits this remarkable development in the debate in the following statement:

“The practical reality today is that some multinational corporations’ actual behaviour is more respectful of non-shareholder rights than the classic corporate social responsibility norms require. As a matter of conduct, multinationals recognise the rights of persons other than shareholders and a growing appreciation of the power of groups influence this evolving behaviour.”²⁵⁰

This implies there has been a growing acceptance of self-imposed and self-defined responsibility through the adoption of codes by MNCs in their operations which is akin to morality in the case of natural persons.²⁵¹

Significantly, the inter-play between CSR and law is visible from the very fact that legal standards are the root sources of the non-binding rules that are shaping corporate “conscience”.²⁵² CSR is largely an embodiment of international human rights, environment

²⁴⁵ Ibid.

²⁴⁶ Ward (note 228).

²⁴⁷ Also to protect other constituents like corporate law, human rights laws and civil liability law. See: I. Lynch Fannon, “The Corporate Social Responsibility Movement and Law’s Empire: Is there a conflict?” (2007) 58(1) Northern Ireland Legal Quarterly 15, 19.

²⁴⁸ C. Parker, *The Open Corporation: Effective Self-regulation and Democracy* (Cambridge: Cambridge University Press, 2002).

²⁴⁹ J.L Cohen, *Regulating Intimacy* (New Jersey: Princeton University Press, 2002), 17.

²⁵⁰ Ibid. Amap.81.

²⁵¹ Ibid. Muchlinski.p.37-38.

²⁵² Ibid. Parker (note 237), 228.

and labour law components and other related legislation though it is assumed to be a voluntary initiative.²⁵³ This legal character justifies the evolution of domestic legislation on CSR with emphasis on CSR reporting and information sharing.²⁵⁴

CSR, like moral norms cannot be without the law. Morality in law has a crucial role to weave hard law with soft law initiatives. CSR practices are suitably determined by corporations. As Parker suggests, every law should constitute corporate conscience, thus any initiative (for higher standards) developed by a company automatically imposes a moral obligation (to respect) rather than merely comply with legal requirements often not backed by morality (corporate conscience).²⁵⁵ Mitchell and Gabaldon note:

“The issue of corporate social responsibility poses the important question of whether the corporate man can itself be expected to behave humanly, that is being morally responsible, or whether its moral compass can only come from those who motivate it – its directors, officers, and employees. This directly poses the question of whether the corporation can have a heart of its own, its own moral and psychological construct, or whether its morality can never be more than that of individuals who comprise it.”²⁵⁶

To conclude, the fact that an initiative is backed by law does not imply it is well executed and regulated. There should be an invisible moral drive like CSR, whose role is closely interwoven with ‘visible’ law. No doubt, some anti-CSR commentators seem to be shrouded by its lack of legal enforceability rather than asserting if such regulatory initiative has the potential of bringing about its objective. Therefore, considering the law as it is rather than as it ought to be (like the place of CSR today) is the premise of such a debate. CSR as proposed by the Arctic Council is a timely intervention capable of filling the existing gap between the laws seemingly not backed by ‘legal-moral obligations.’ As the English adage goes, ‘a stitch in time saves nine’, and the evolution of CSR practice within the Arctic Council agenda might be a welcome relief to the Arctic region and its people. The degree and gravity of this assertion is worth examining.

²⁵³ K. Buhmann, “Corporate Social Responsibility: What Role for Law? Some Aspects of Law and CSR” (2006) 6 Corporate Governance 188.

²⁵⁴ Examples include: United Kingdom, Denmark, Sweden, Canada, Germany, Belgium etc see Buhmann (note 243).

²⁵⁵ Ibid. Parker. note 248.

²⁵⁶ L.E. Mitchell and T.A. Gabaldon, “If I Only Had a Heart: Or, How Can We Identify a Corporate Morality” (2001-2002) 76 Tulane Law Review 1645.

2.4: THE ARCTIC COUNCIL AND CORPORATE SOCIAL RESPONSIBILITY

The Arctic Council is made up of Canada, United States of America (Alaska), Sweden, Russia, Iceland, Finland and Denmark (Faroe Islands and Greenland), with a category of permanent participants. It was formed as a:

“...high level intergovernmental forum to provide a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic Indigenous communities and other Arctic inhabitants on common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic.”²⁵⁷

Its evolution came as a result of the climatic changes which threaten the Arctic region in addition to other stressors. The Arctic Council formed a Working Group on Sustainable Development (SDWG) in Barrow, Alaska, with a mandate to:

“...propose and adopt steps to be taken by the Arctic States to advance sustainable development in the Arctic, including opportunities, protect and enhance the environment and the economies, culture and health of Indigenous Peoples and Arctic communities, as well as; to improve the environmental, economic and social conditions of Arctic communities as a whole.”²⁵⁸

Owing to the success stories of CSR in its regulation of MNCs in other parts of the globe, it was the promotion of ‘Corporate Social Responsibility’ (by the SDWG) amongst Sweden’s Arctic Council Strategic Plan Proposal in its current chairmanship which won the total support of the Senior Arctic Officials (SAO) at its meeting in Greenland. SAO recommended that Ministers, “take note of the incoming Swedish Chairmanship’s intention to propose...to initiate a dialogue with the private sector on how business can contribute to sustainable development in the Arctic.”²⁵⁹ Moreover, it closely examines existing frameworks and

²⁵⁷ Ottawa Declaration of 1996. See: <http://www.arctic-council.org/index.php/en/about> retrieved on the 21.3.2013.

²⁵⁸ See: <http://www.arctic-council.org/index.php/en/sdwgeng> retrieved on 21.3.2013.

²⁵⁹ See Arctic Council Final Draft Agenda at the Meeting of Senior Arctic Officials held in Haparanda-Sweden, Nov.2012 p.7

guidelines on CSR such as OECD and the UN Global Compact and the reporting standards of Global Reporting Initiatives.²⁶⁰

Recently, at a workshop in Stockholm, the Arctic Council via its Swedish Chairmanship enjoined stakeholders to further determine whether the OECD Guidelines on CSR are adequate for the Arctic region. In reaction to the workshop's objective, Mikael Anzen testifies that the current developments in the Arctic necessitate the utilization of CSR. He notes 'The development we are now experiencing must proceed in a way that is environmentally and socially sustainable.'²⁶¹ Remarkably, it is not just the presence of Arctic States but even companies from other States, and particularly oil MNCs which are calling for this very thing. Hence there is an urgent need to protect this sensitive environment from unforeseen consequences, and preserve the indigenous and inherent rights of the Arctic peoples. In a follow-up meeting in September 2012 in Reykjavik-Iceland, the SDWG resolved to develop a working tool for CSR in the Arctic region in the spirit of the OECD Guidelines. Anzen affirms: "We are at a crossroads. The Arctic Council and the businesses operating in the Arctic must be able to discuss and address common challenges. CSR could potentially be the tool we are looking for."²⁶² Mindful of the fact that Sweden's chairmanship expires mid-2013, Canada under the chairmanship of Leona Aglukkaq is more than ready to propel this initiative for adoption and implementation within the Arctic Council.²⁶³ Besides, Canada is an active proponent of CSR principles in business.

In sum, the Arctic Council through its SDWG has resolved to adopt a CSR on the strength of the OECD guidelines. Significantly, most Arctic States have existing domestic legislation on CSR as do some oil MNCs. Therefore, an Arctic Council policy and regulation on CSR will be a welcome relief for the region's sustainability at risk due to the influx of giant oil MNCs (with double standards or interests) and the absence of an effective machinery to deter such actions as enshrined in the OECD guidelines and other related CSR initiatives. In line with the spirit and letter of the OECD guidelines most especially²⁶⁴ and the other CSR initiatives, an examination of the activities of some oil MNCs in the Arctic State of Russia is worthy of assessment.

²⁶⁰ Ibid.SDWG proposed to develop an information kit on CSR on its webpage.

²⁶¹ Arctic Council meeting held in January 2012 in Stockholm-Sweden under the chairmanship of Sweden. See: <http://www.arctic-council.org/index.php/en/about/general-news-archive/142-wg-news/343-arctic-environment-requires-responsible-corporate-practices> accessed on 21.3.2013.

²⁶² Ibid (note 206).

²⁶³ See: <http://www.cigionline.org/articles/2012/08/canada-and-arctic-council-what-will-change-2013-2015> retrieved 21.3.2013.

²⁶⁴ Its guidelines stand as a proposed working tool within the Arctic Council as indicated in note 181.

CHAPTER THREE

RUSSIA AND CORPORATE SOCIAL RESPONSIBILITY

3.1 RUSSIA, THE RUSSIAN NORTH, THE RUSSIAN ARCTIC - AN OIL GIANT AND POWERFUL STAKEHOLDER

The Russia Federation specifically its northern region contains large deposits of crude oil making it, one of the main sources of State revenue.²⁶⁵ Globally, Russia is one of the largest petroleum producers and exporters.²⁶⁶ By 2011, its daily production increased to 10.54 million barrels per day (mmbbl/d).²⁶⁷ In this regard, Russia's President Vladimir Putin considers its oil and gas sector as a matter at stake. As figurehead responsible for Russia's economic power and oil leadership²⁶⁸, Putin believes that Russia's energy policy priority should aim at maintaining and enhancing production at 10 million barrels a day.²⁶⁹ According to Lazko and Nesterenko, Russia requires an investment of about US\$280 billion to keep this target until 2020.²⁷⁰ Russia has oil fields in the Ural and Volga Federal districts, the Timan-Pechora basin, the Komi Republic, Chukotka Autonomous Okrug, Murmansk oblast, the Western and Eastern Siberias, the Northern Caucasus, the Caspian sea shell, Yamal and Nenets Autonomous Okrug (NAO) and its Arctic sea shelf. In addition, Russia and some oil companies have embarked on the use of foreign expertise like Schlumberger Ltd (SLB), Weatherford International Ltd (WFT) and C.A.T.Oil AG to squeeze billions of dollars of extra oil from Soviet-era fields by adopting fracking and horizontal drilling of wells.²⁷¹

President Putin, the Russian Federation and its oil MNCs are all stakeholders with an interest in maintaining Russia's position as a leading energy giant-oil producer and maintaining production targets by all means possible. Drilling oil onshore and offshore each poses a potential threat to the pristine Arctic environment and, areas marked by harsh climatic conditions.

²⁶⁵ This region will interchangeably be referred to as the Russian North or The Russian Arctic.

²⁶⁶ In 2009, Russia surpassed Saudi Arabia as the largest producer of crude oil. See: Deloitte-Russia, 2012 Report [http://deloitte.com/assets/Dcom-Russia/LocalAssets/Documents/EnergyandResources/overviewoftheoilandgassectinthe RF-2012pdf](http://deloitte.com/assets/Dcom-Russia/LocalAssets/Documents/EnergyandResources/overviewoftheoilandgassectintheRF-2012pdf) accessed on the 16.4.2013.

²⁶⁷ *ibid.*

²⁶⁸ *Ibid.* note 266.

²⁶⁹ See Stephen Bierman, Moscow: <http://www.bloomberg.com/news/2013-03-18/russia-adopts-texas-drilling-to-revive-soviet-oil-fields-energy.html> accessed on the 16.4.2013.

²⁷⁰ See Elena Lazko and Alexey Nesterenko, Deloitte Russia, Energy Specialists Report 2012.p.1-2.

²⁷¹ *ibid.* note 269.

The Russian Arctic is inhabited by about 46 indigenous peoples like the Sami, Khants, Chukchis, Aleuts and the Eskimos just to name a few.²⁷² These indigenous peoples have a traditional subsistence way of life and their source of income includes fishing, farming and hunting. The activities of oil MNCs has caused untold misery on these indigenous peoples' ways of life and adaptation which has resulted in deaths (infants) and rural migration due to environmental and social impacts like oil pollution. In summary, the Arctic Human Development Report notes that Arctic societies like Russia today face an "unprecedented combination of rapid and stressful changes involving environmental processes (e.g. the impacts of climate change), cultural developments (e.g. the erosion of indigenous languages), economic changes (e.g. the emergence of narrowly based mixed economies), industrial developments (e.g. the growing role of multinational corporations engaged in the extraction of natural resources), and the political changes (e.g. the devolution of political authority)".²⁷³ A pressing and difficult issue is to assess what oil giants in Russia such as Rosneft, Lukoil, Gazprom neft and Bashneft have done or are doing to address such growing challenges, which relate directly to sustainable development and corporate social responsibility.

3.2 THE STATUS OF CORPORATE SOCIAL RESPONSIBILITY IN RUSSIA

The emergence and evolution of Corporate Social Responsibility in Russia is complex owing to some factors like the social security net of the Soviet era, the abrupt drop in standard of living in the post-Soviet era, and the purely profit-oriented negative business climate that does not prioritize the wellbeing of employees.²⁷⁴ In 2003, at a conference of the Russian Union of Industrialists and Entrepreneurs, President Vladimir Putin advocated business leaders to be "socially responsible".²⁷⁵ This call led to the implementation and adoption of CSR by some enthusiastic companies that saw it as a safeguard to sustainability, public relations and business image. Unfortunately, as Kostin Alexey notes CSR remains a challenge amongst Russian State-owned businesses hindered by the absence of effective transparency plus little public opinion pressure on companies to follow ethical standards.²⁷⁶

²⁷² See Decree of the Government of the Russia number 255 dated 24 March 2000 "on the consolidated list of indigenous small numbered peoples of Russia" with changes of Decree of 13 October 2008 number 760.

²⁷³ See Bjorn-Tore Blindheim in *Arctic Oil and Gas Sustainability at Risk* chapter 4 Edited by Aslaug M and Oluf L, excerpts from Arctic Human Development Report 2004:10.

²⁷⁴ Igor Yurgens: Corporate Social Responsibility of Russian Companies, Aix-en-Provence Economic Forum June 2008. See: http://www.insor-russia.ru/en/_news/analytics/1175 accessed on 16.4.2013

²⁷⁵ Tatiana Klimova, Social Responsibility in Russia: Yesterday, Today...and Tomorrow? Published January 2013. see: <http://business-ethics.com/2013/01/09/10522-social-responsibility-in-russia-yesterday-today-and-tomorrow/> accessed 1.6.2013.

²⁷⁶ Alexey Kostin, Executive Director of NGO, Corporate Social Responsibility-Russian Centre. see : http://www.enebuilder.net/globalcompact/e_article000775164.cfm accessed 30.5.2013

Nevertheless, the Corporate Social Responsibility climate in Russia has so far been relatively progressive. Oil giants and other business leaders ought to recognize the introduction of CSR as an institutional and political framework to make business responsible and accountable rather than as a new or alternative business model. The term ‘CSR’ denotes a call for public responsibility: voluntary norms and initiatives that oblige companies to act in accordance with the spirit and letter of the law.²⁷⁷ Therefore, such norms should be considered as society’s moral views, thus CSR should be thought of as a standard of social responsibility.²⁷⁸ Larisa Nikitina posits that the best and reliable way towards self-evaluation and community information about the socially responsible behaviour of any business is to respect the requirements and recommendations of applicable codes and standards.²⁷⁹

Though there is no existing legislation on CSR in Russia per se, the government of Russia in part or in whole has ratified and signed most of the core human rights treaties that inter-relate with business. First and foremost, its 1993 Constitution protects human rights and other universally recognized norms. International treaties such as International Covenant on Economic, Social and Cultural Rights are part of Russia’s legal system. In 2004, a Social Charter was endorsed and signed by about 230 companies at the congress of the Russian Union of Industrialists and Entrepreneurs, RUIE. This Charter underscores the social mission of Russian businesses:

“...as sustainable development of independent and responsible companies, which meet the long term economic interest of business and that guarantee the social stability, safety and prosperity of citizens, environmental protection and the observance of human rights.”²⁸⁰

It further states that any company that adheres to it; automatically “assumes responsibility for the quality of its services, compliance with labour rights and business ethics values, respecting the tax discipline, and minimizing the adverse environmental impacts.”²⁸¹

In 2006, the Memorandum on Principles of Corporate Social Responsibility was approved by the Russian Managers Association Corporate Responsibility Committee.²⁸² Significantly, the Committee adopted a contemporary Russian definition of CSR for businesses as

²⁷⁷ Preston and Post, 1975 *ibid* note 8.p.73.

²⁷⁸ Crane and Matten, 2004 note.8.p.73

²⁷⁹ Larisa Nikitina, Development of Institutional Control of Corporate Social Responsibility In The Regions of Russia at I International Symposium Engineering Management And Competitiveness 2011 (EMC2011) June 24-25, 2011, Zrenjanin, Serbia.

²⁸⁰ <http://www.oecd.org/russia/conferencecorporatesocialresponsibilityandlocaldevelopmenttrentoitaly.htm> accessed 16.4.2013.

²⁸¹ *ibid*. See OECD Guidelines.

“a philosophy of conduct and a concept of doing business applied by the business community, companies and individual businessmen for sustainable development and preservation of resources for future generations, based on the following principles:

- Providing quality products and services to consumers;
- Creating decent jobs, investing in development of production and human resources;
- Strict compliance with laws, whether tax, labour, environmental or otherwise;
- Integrity and reciprocity in relationships with all stakeholders;
- Doing business efficiently to create economic value added and improve national competitiveness for the benefit of shareholders and the society;
- Integrating public expectations and generally accepted ethics into business practice;
- Contributing to the evolution of civil society through partnership and social developmental projects.”²⁸³

Though this CSR philosophy has been adopted by some Russian businesses, which maybe seeking to project a particular domestic and international self-image or economic benefit; its acceptance and implementation remains questionable amongst oil MNCs. This is despite its acknowledgement as an effective mechanism for the minimizing the non-financial risks of potential direct and indirect investors. These emerging CSR principles are rooted in the principles of authoritative international organizations such as the OECD Guidelines for Multinational Enterprises, the UN Human Rights Norms for Business, the UN Global Compact, the ILO Conventions and the Global Sullivan Principles.²⁸⁴ Currently, some Russian companies apply standards like the ecological management and audit scheme (EMAS), the eco-standards ISO 9000 and 14001, the SA 8000 standard for the assessment of the social aspects of management systems and the Russian Organization for Quality developed Standard “Social responsibility of the organization. Requirements - CSR/KSO-2008” which provides organizational requirements such as the right to work and occupational safety, social guarantees for the staff, the production of goods (works, services) of appropriate quality, environmental protection, resource, participation in social activities and support for community initiatives.²⁸⁵

Meanwhile international social reporting is conducted through a variety of mechanisms. The GRI standard is based upon indicators for reporting on social, environmental and economic activities of an enterprise. The Standards of AA1000 Series, developed by the Institute of

²⁸² http://www.csr-weltweit.de/uploads/tx_jpdfdownloads/csr_russi_memorandum.pdf accessed on the 17.4.2013

²⁸³ *ibid.* See also note 278.p.4

²⁸⁴ *ibid.* note 278

²⁸⁵ *ibid.* note 278

Social and Ethical Accountability is a verification standard covering the whole range of reporting information in the domain of sustainable development.²⁸⁶ There is also domestic standard for “social reporting by enterprises and organizations registered in the Russian Federation based on methodological recommendations, proposed by Russian Chamber of Commerce. In 2007, more than 40 Russian companies were involved in social reporting. Fifteen reports featured as a separate section in their annual reports, 18 produced social reports, 8 reported on sustainable development and the remaining 4 issued environmental reports. Only 13 companies, including OJSC Norilsk Nickel and OJSC Lukoil fulfilled the methodology and indicators of international standards GRI and AA1000S.²⁸⁷

From the fore-going, it might be hasty to assert that corporate practice in the Russian oil sector, under the guise of social responsibility is to “make as much money as possible while conforming to the basic rules of society, both those embodied in the law and those embodied in ethical custom”.²⁸⁸ An ideal oil company ought to obey the rule of law and in the absence of such rules, ought to act ethically (heeding the so-called “triple bottom line”). A remarkable number of Russian oil MNCs such as the State - owned companies: Gazprom нефт, Rosneft and the private company Lukoil, have embraced CSR in the absence of an existing CSR legislation in Russia. However, it should be noted that the development and application of “CSR” policies by the aforementioned MNCs, despite State intervention continues to generate mixed feelings amongst stakeholders that CSR is a window dressing. This paper explores whether the two MNCs under study (Rosneft and Lukoil) met CSR requirements. The burden of proof lies more in assessing whether their efforts are motivated by common good, not just for public image, reputation and economic benefit. The opportunities (positive) and challenges (negative) of each Oil MNC will be examined further below.

²⁸⁶ ibid note 275

²⁸⁷ ibid. note 278.

²⁸⁸ Milton Friedman, The Social Responsibility of Business is to Increase its Profits, *The New York Times Magazine*, September 13, 1970. Copyright © 1970 by The New York Times Company.

3.3 ASSESSING THE DEGREE OF COMPLIANCE BY MAJOR RUSSIAN MNCs TOWARDS THE ATTAINMENT OF CORPORATE SOCIAL RESPONSIBILITY PRACTICE IN RUSSIA

A.THE PROMOTION OF CSR BY MAJOR OIL MULTINATIONAL CORPORATIONS IN THE RUSSIAN FEDERATION: POSITIVE RESULTS

1. ROSNEFT

Rosneft also known as OJSC Rosneft, is an integrated oil company with about 69.50% shares owned by the Russian Federation. It operates in Western Siberia, Southern and Central Russia, Timan-Pechora and Eastern Siberia.²⁸⁹ As the largest Russian company, Rosneft strives towards sustainable development and has conducted annual sustainability reports since 2006 using recommendations from GRI.²⁹⁰ In addition to adherence to the provisions of the Social Charter of Russian Business, it also has a Code of Business Ethics²⁹¹ the preamble of which states that “the reputation and success of a company depends on compliance with both legal requirements and highest ethical standards.”²⁹² According to its sustainable development agenda, Rosneft believes that:

- “long-term economic and social achievements can be made possible only through maintaining a balance of interests of shareholders, the Russian Government, Company employees, suppliers, contractors, public institutions and other concerned parties;
- the utmost factor of Russia’s economic and social well-being is shared responsibility by the Government, business and citizens based on the observance of civil rights and liberties, equal opportunities, respect for human dignity and the supremacy of law;
- well-balanced and effective social policies reduce business risks, strengthen competitiveness, enhance personnel performance and customer loyalty, and improve reputation of the business community at large.”²⁹³

Based on its sustainability reports corporate website information and other supplementary sources, I have assessed a positive degree of CSR within Rosneft. It is worth noting that

²⁸⁹ See: www.rosneft.com/about/ accessed 18.4.2013.

²⁹⁰ Ibid. Note.288.

²⁹¹ The Code was enacted in 2008 and took effect in 2009. Notably, it did not only set out ethical standards but also regulated relationships between customers and business partners, government authorities, the public and competitors. See: www.rosneft.com/Development/Culture/ accessed on 19.4.2013.

²⁹² Ibid. Approved by Rosneft Board of Directors on 31 December 2008 accessed on 19.4.2013.

²⁹³ Ibid. See Rosneft homepage - Sustainable Development. <http://www.rosneft.com/Development/> accessed 19.4.2013.

Rosneft's Sustainability Report 2011 passed the evaluation of the Non-Financial Reporting Council of the Russian Union of Industrialists and Entrepreneurs²⁹⁴ which notes inter alia:

“Overall, the information presented in the Report reflects the company's continuous efforts on the incorporation of sustainability and social responsibility principles in its business practice. The Report demonstrates the Company's progress towards the enhancement of its transparency...This demonstrates the seriousness of the Company's altitude towards its commitments with regard to stakeholder communication and quality of the information disclosed.”²⁹⁵

Rosneft's efforts to promote CSR will be analyzed under the 'triple-bottom' line rubrics herein referred to as “lessons / opportunities”:

SOCIAL RESPONSIBILITY

Rosneft aims at promoting a socially responsible policy towards its employees, their families, the people in its area of operation and to society at large. Therefore, it applies a comprehensive set of social welfare and charitable activities to foster safe and comfortable labor conditions, housing assistance, enhancing employees' quality of life and professional career, supporting the veterans and retirees, and fostering regional socioeconomic development.²⁹⁶ Interestingly, its social policy is in line with the Russian Government's national project on housing, education and healthcare. In 2009, the Company invested RUB 16.5 billion in its social programs.²⁹⁷

Enhancing Employees Working Conditions

In a bid to enhance employees working conditions, one of Rosneft's top priorities is the improvement of its shift camps that host employees. It has adopted the Social and Production Standards for Shift Workers, and Target Programs that ensures the proper implementation and strict observation of these regulatory requirements. Between the years 2009–2017, the Rosneft plans to invest about RUB 14.8 billion in the shift camp upgrade program. In 2010, it spent almost RUB 1 billion on modernization projects at over 160 facilities.²⁹⁸

²⁹⁴ See Rosneft website. Also known as the Council. Established pursuant to the decision of the Bureau of the RUIE Board, Resolution dated 28 June 2007. see Rosneft Sustainability Report 2011: Council on the Findings of the Review of Rosneft's Sustainability Report 2011 for the Verification of Public Verification. p.90.

²⁹⁵ Review by Council between 15 September and 5 October 2012 see. Rosneft 2011 Sustainability Report. p.88 ff.

²⁹⁶ ibid. see www.rosneft.com/development/social accessed on 19.4.2013.

²⁹⁷ ibid. Significantly, in terms of their scope are on a par with those of the world's largest corporations.

²⁹⁸ See www.rosneft.com/development/social/optimal_work accessed on 19.4.2013.

Healthcare Programs

One of Rosneft's major goals in its Healthcare Program was geared to attain a 30% reduction in the overall illness rate by 2013 against 2006. Between 2009 – 2013, Rosneft planned on spending about RUB 7 billion to promote its healthcare agenda which was based on the following priority measures: 'conduct annual medical examination and vaccination; illness rate analysis and implementation of preventive measures; recreation and health improvement; encouraging healthy lifestyle; maintaining comfortable and safe workplace conditions.'²⁹⁹ In the Volga Federal District, its subsidiary company - Samaraneftgaz donated 18 Peugeot vans to Samara municipal healthcare services to ease emergency transportation of sick locals.³⁰⁰ Rosneft also developed a system of collective Voluntary Medical Insurance (VMI) as a means towards quality healthcare. In 2010, more than 100 thousand employees benefitted from its VMI program which provided access to a full scope of ambulatory services, general and specialized dentistry, scheduled and emergency hospitalization, as well as a range of convalescent services.³⁰¹ In 2011, within the Volga Federal District, Samaraneftgaz spent over RUB 24 million on subsidizing VMI programs for its employees.³⁰²

Sporting Activities for Employees

Rosneft promotes Sports as part of a healthy lifestyle for its employees and is engaged in ongoing projects to construct large sports facilities in the Far East, Siberia and the Russian South is commendable. It has also invested in the training of individual - employee athletes. Currently, it takes credit for seven of its employees ranked as International Masters of Sports and 32 Masters of Sports, including champions of Russia, Europe and the World, as well as award-winners of the respective championship. In 2011, Rosneft organized its first Spartan Olympics wherein over 300 employees from 18 Rosneft's subsidiaries took part in varied disciplines.³⁰³

Housing Assistance

The provision of housing assistance to its employees is part of its social responsibility. In line with the national priority project, Affordable and Comfortable Housing, Rosneft is actively engaged in the construction of housing in localities where residential stock is inadequate or

²⁹⁹ The Corporate Health Care Program was described and features in detail in Rosneft's Sustainable Development Reports of 2007, 2008, 2009 and 2010.

See also: <http://www.rosneft.com/Development/social/healthcare/> accessed 19.4.2013.

³⁰⁰ *ibid.* p.70

³⁰¹ *ibid.* p.70

³⁰² *ibid.* p.69.

³⁰³ *ibid.* note 298.

prices are too high, like Grozny, Neftekumsk, Izberbash, Gubkinsky, Usinsk, etc.³⁰⁴ Another measure is the availability of mortgage schemes with an interest-free loan to finance 25–35% of apartment price and a long-term loan for up to 17 years which bears a soft interest of 8–10% a year in rubles.³⁰⁵ Above all, between 2009 – 2013, Rosneft has allocated more than RUB 12 billion to meet its housing assistance target.³⁰⁶

Pension Schemes

Private pension coverage of employees is part of its social responsibility and policy framework. A case in point, in 2010, about 120 thousand employees participated in the corporate pension system and more than 31 thousand persons received corporate pensions from Neftegarant amounting to RUB 634 million as non-state pensions same year.³⁰⁷

Social Dialogue

Rosneft considers stakeholder engagement/social dialogue as a fundamental social responsibility cornerstone. Significantly in the Vankor Federal District, Vankorneft engaged constantly in public hearings before executing any projects in the region.³⁰⁸ By the same token, since 2007, Rosneft has been organising regular roundtable meetings with stakeholders in all the regions of its subsidiary companies to dialogue on matters relating health, safety and environment, employee relations, social benefits, continuous education system and regional socio-economic development. The outcome has enabled Rosneft to understand better its strengths and weaknesses as a promoter of social responsibility.³⁰⁹

ENVIRONMENTAL RESPONSIBILITY

As an international company, Rosneft sets its environmental performance to comply with domestic and international laws on health, safety, security and environment. In this regard, it uses modern technology and quality methods of production to ensure safe and healthy working conditions, as well as to minimize unforeseen circumstances like risks from industrial accidents and other emergencies. Its key objectives include:

“...reducing industrial injuries and adverse environmental impacts; improving industrial and environmental safety to meet the most stringent standards of international oil and gas majors; establishing and maintaining an efficient management

³⁰⁴ *ibid.*Rosneft.

³⁰⁵ *ibid.* Details of Rosneft’s Corporate Mortgage Scheme are available in Sustainability Reports for 2006, 2007, 2008, 2009.

³⁰⁶ *ibid.*note 298.

³⁰⁷ *ibid.*note 298.

³⁰⁸ *ibid.*subsidiary of Rosneft.p.78.

³⁰⁹ *ibid.*p.16-17.

system for health, safety, security, and environmental protection; reducing industrial risks from newly commissioned facilities.”³¹⁰

Against this background, an Integrated Management System was adopted to ensure industrial and occupational safety and environmental protection. For instance, it is certified to ISO 14001:2004 and OHSAS 18001:1999.³¹¹ Moreover, it regularly organizes refresher trainings on health, security, safety and environmental risks for its employees aimed at adopting best practices. Due to these preventive measures, the occupational injury rate dropped by 7.8% in 2011 compared to 2010.³¹² Furthermore, it is implementing a set of target programs, including the major Environmental, Gas, and Pipeline Reliability and Safety programs. In 2010, Rosneft devoted about RUB 1362 million on its Environmental Program; two times more than in 2009. In the same year, it embarked on remediating environmental damages accrued prior to the consolidation of assets.³¹³ Between 2011 -2014, remediation will be centered on oil-contaminated lands accrued from previous operations of the Rosneft’s upstream subsidiaries.³¹⁴ As of 2011, over 249 spills clean-up, accident and firefighting response drills were carried out by almost 17 thousand employees within its subsidiaries, further evidence of the company’s commitment to mediating environmental risk and employee safety.³¹⁵ In its Southern Federal District, LLC RN-Krasnodarneftegaz eliminated about 30.6 thousand tons of contaminated oil waste that had existed from as far as 1991 in sludge pits and oilfield water settling ponds.³¹⁶

ECONOMIC RESPONSIBILITY

As noted by Milton Friedman, the economic responsibility of every business unit is to be profitable as long as it stays within the ambit of the game.³¹⁷ Rosneft’s Code of Ethics Principle 1 states inter alia: “The Company considers the profitability of its activities as its moral duty to the shareholders and all interested (related) parties and uses all lawful means possible to accomplish that goal”³¹⁸

Level of Production

To maintain its production level and increase its profit, Rosneft has expanded its portfolio through the purchase of foreign companies like BP/TNK ltd and through the modernization of

³¹⁰ See: <http://www.rosneft.com/Development/HealthSafetyandEnvironment/> accessed 20.4.2013.

³¹¹ *ibid.* Compliance with International Management System Standards see 2011 Sustainability Report.p.26.

³¹² *ibid.* note 310.

³¹³ See: <http://www.rosneft.com/Development/HealthSafetyandEnvironment/programs/> accessed 20.4.2013.

³¹⁴ *ibid.* Rosneft note 313.

³¹⁵ *ibid.* Rosneft note 313.

³¹⁶ *ibid.* Rosneft.p.62.

³¹⁷ *ibid.* Rosneft.note 288.

³¹⁸ *ibid.* Rosneft.see:Principle 1.Section II.Rosneft Philosophy.p.6

existing oil refineries to reduce environmental and financial risks. In 2011, it spent over RUB 47.9 billion to modernize its LLC Rosneft-Tuapse refinery in the Southern Federal District. Likewise, it has constructed bank protection structures to prevent petroleum products from polluting river Tuapse.³¹⁹

Personnel development

One of Rosneft's top economic responsibility and priorities has been to engage in personnel development as a means to increase output (oil production and indirectly yield profit) as well as a preventive measure for unforeseen circumstances (risk) that might result in heavy fines or additional cost for remediation.

2. LUKOIL

Lukoil stylized as LUKoil is an open joint stock company, Russia's second largest oil company and oil producer and Russia's No.1 producer of aviation fuels and motor fuels.³²⁰ Lukoil is classified as an exemplary Russian oil company leader for openness and transparency. It is the first Russian company to receive full listing on the London Stock Exchange. It is one of the highest tax payers whose share capital is dominated by minority stakeholders.³²¹ In 2002, a Social Code of OAO Lukoil was adopted by the company's board of directors in Moscow-Russia. The Code is fully binding on Lukoil Group (i.e. the company, its subsidiaries and the non-commercial organizations under its control) even in the event of an economic crisis.³²² A majority of its oil exploration takes place in the Western Siberia, Timan-Pechora province (Komi Republic) and the Ural region.³²³ In a similar way, Lukoil's degree of promoting CSR will be assessed from its social, environmental and economic responsibility dimensions.

SOCIAL RESPONSIBILITY

Lukoil promotes concepts of CSR via social programs that involve constructive cooperation with stakeholders, government authorities, business community and the public. Its strategic charity and social investment programs are implemented in such an interwoven manner to attain its social and corporate goals within local communities. Its two main strategic areas of activities are social investment (including the support for orphanages and educational establishments for children, educational and scholarship programs, support for medical

³¹⁹ *ibid.* Rosneft, p.62.

³²⁰ http://www.lukoil.com/materials/doc/annual_report_2005/LUKOIL_AR2005_ENG.pdf accessed on 20.4.2013.

³²¹ <http://www.lukoil.com/> accessed 21.4.2013.

³²² *ibid.* Lukoil, note 320.

³²³ http://www.lukoil.com/static_6_5id_252_.html accessed 21.4.2013.

institutions and social project contest or sponsorship) and conventional charity programs (including the preservation of historical and cultural heritage, support for veterans of war and labour, the disabled and socially deprived people, the revival of indigenous Peoples' trades and the support for the Far North Nations).³²⁴

Social investment efforts

Lukoil has engaged in human development of children/youth specifically orphans who are potential leaders of tomorrow at different walks of life. For more than 20 years, it has sponsored and supported about 60 orphanages in Western Siberia, the Komi Republic, Volgograd, Astrakhan, Leningrad, Kirov, Vologda, Saratov, Kaliningrad Oblasts, Perm Krai and other regions. Currently, it sponsors about 80 students at varied State universities such as Kirov Branch of the Moscow State Law Academy, Kirov Agricultural Academy, Mari, Astrakhan, Vyatka and Surgut State Universities etc.³²⁵ It has developed talent pools and other festivals with the goal of making them independent and sustainable.

Programs to revive local trades of indigenous peoples

Lukoil has engaged in programs for the revival of trades of the indigenous people who constitute a vital element of the Russian Arctic. In the Kama region, OOO Lukoil- Perm³²⁶ has been carrying out programs to support trades of small communities. An interregional fair of folk crafts and applied arts is organized annually at Perm Krai.³²⁷ In the year 2010, more than 20 territories of Perm Krai took part in its 9th Interregional Festival of Historical Settlements of the Kama Region held in Kudymkar where indigenous peoples demonstrated and restored its rich culture, history and aesthetic works of arts.³²⁸ In the Ashap settlement Orda District, children from all nooks and crannies of Krai converge for a Lukoil-sponsored "Selenitic Box" festival to demonstrate arts and craft as well as to learn how to work with selenite, a unique regional stone.³²⁹ Above all, a 2011 grant from OOO Lukoil-Perm enabled Krasnovishersk District to host the "Govorlivskoye Gulbishche" Inter-Municipal Festival. This event sparked a new impetus to the development of handicrafts, works of arts and the revival of ethnic culture.³³⁰

³²⁴ *ibid.* note 323.

³²⁵ *ibid.* see Lukoil. note 323.

³²⁶ A subsidiary of Lukoil in Perm, Kama region (hereinafter abbreviated as OOO Lukoil-Perm).

³²⁷ http://www.lukoil.com/static_6_5id_2205_.html accessed 21.4.2013.

³²⁸ *ibid.* Lukoil.

³²⁹ *ibid.* One of the 2 places in the world where selenite is produced and its local school is famous for stone cutting and the region is noted for preserving its tradition till date. Other similar events include: Krai Honey Festival, the "Selenitic Box" Open Children's Folk Crafts Festival of Perm Krai, the Interregional Festival "Yelovskaya Rybka", and the "Savior of the Bread Feast Day".

³³⁰ *ibid.* Lukoil. note 327.

Cognizant of the fact that one of its activities may greatly affect the traditional lifestyle of the indigenous peoples of the Far North Nations, OAO LUKOIL has engaged in a gradual transition from charity to predominantly economic partnership mechanisms.³³¹ It has developed special programs aimed at enhancing cooperation with owners of communal family land. For instance, OOO Lukoil-West Siberia in agreement with the Khanty-Mansi Autonomous Okrug has developed socio-economic programs aimed at supporting the traditional lifestyle of the Khantys, Mansis, Nenets and Sekulps.³³²

Social dialogue between stakeholders

Social dialogue occurs between the company management, representatives of the Assembly of the indigenous people of the North, heads of municipalities and directly with the indigenous people. Lukoil has set up active partnerships with the “Save Yugra” and “Yamal for Descendants” public organizations. Moreover, Lukoil-West Siberia works in 34 territories of traditional nature management in Yugra region, where 164 families live and often receive financial, material and renovation support for their residences.³³³

The revitalization of traditional lifestyle

Lukoil considers the revitalization of traditional lifestyle fundamental for all irrespective of age for indigenous peoples. Therefore as part of its “nobody is left-behind agenda” within the Russinskaya village, it has commenced the construction of a “Kar-Tokhi”, a children’s ethnic camp. This building will serve as a learning ground of traditional lifestyle values and activities of indigenous peoples such as hunting, reindeer herding and fishing as well as acquainting participants with traditional handicraft. In a nod to traditional hunting techniques, some lessons on snowmobile drive are offered.³³⁴

Preservation of cultural identity and language

In a bid to preserve the culture, language and identity (Cultural heritage) of the indigenous peoples, as per Part 2 of its Social Code,³³⁵ Lukoil-West Siberia has engaged in the support of

³³¹ *ibid.*Lukoil.

³³² *ibid.*note 327.

³³³ *ibid.*note 327.

³³⁴ *ibid.*Lukoil..note 327.

³³⁵ Article 2.4 of Part 2: Preservation of Distinctive National Cultures states:

‘The Company highly appreciates the additional opportunities given to the Company by the rich national and cultural diversity of its employees and of the population in the regions where LUKOIL Group organizations operate. The Company bases its work with personnel and the local population on the following principles: maintaining and upholding the traditions of ethnic tolerance and goodwill characteristic of the multinational oil industry; creating conditions to preserve national and cultural traditions, values, skills, and crafts in the regions where LUKOIL Group organizations operate; respecting the religious beliefs of employees and the local population and assisting in revival of

educational and infrastructural projects with a focus on places of religious worship and national day celebrations. It has implemented social and charitable projects in the Nenets Autonomous Okrug (NAO)³³⁶ to improve the lives of Komi and Nenets. Lukoil-Komi signed an agreement with three reindeer breeders' cooperative which led to the construction of dwellings, purchase of food, snowmobiles and fuel for breeders.³³⁷

Healthcare services

Since 2008, Lukoil-Komi has enhanced healthcare services such as health screenings and dental care examination of the indigenous people in NAO. Through the so-called "Red Rawhide" project, the local people have acquired free First Aid Training and Kits.³³⁸

ENVIRONMENTAL RESPONSIBILITY

Lukoil's top environmental responsibility priority is to create a safe and conducive working environment for its employees, health and environmental protection for its Lukoil Group personnel and local communities. Through a Health, Safety and Environment Management System (HSE)³³⁹, it complies with Russian law and global practices that are certified with ISO 14001 and OHSAS 18001 standards to attain its goals. Some of its company policy goals include:

"... apply the zero-discharge principle while developing offshore fields; increase the output of environmentally friendly fuels compliant with the European standards; comply with greenhouse gas reduction provisions of the Kyoto Protocol; by introducing new cutting-edge techniques, equipment and materials and increased process control automation bring under control and gradually reduce both the amount and toxicity of emissions, discharges of pollutants and waste; ensure continuous improvement of HSE performance, ... firefighting and emergency response measures, as well as enhance preparedness and provide more advanced equipment to fire-fighting and rescue units; ensure more efficient development and implementation of OAO LUKOIL programs aimed at identifying and achieving the most critical health, safety and environment, occupational safety and emergency response objective reduce anthropogenic environmental load resulting from operation of newly commissioned facilities by ensuring better quality of front end and design documents; exercise more

national religious shrines; assisting native peoples in obtaining access to vocational training, skilled jobs, higher education, and also to better recreation and health conditions'.

³³⁶ Nenets Autonomous Okrug hereinafter abbreviated as NAO.

³³⁷ See: www.lukoil.com/materials/doc/reports/social/sots_luk_eng_2010.pdf N.B: LUKOIL 2010 Report accessed 21.4.2013.

³³⁸ *ibid.* note 337.

³³⁹ Health, Safety and Environment Management System hereinafter abbreviated as HSE.

efficient production control, corporate supervision and internal auditing to ensure compliance with the Health, Safety and Environment regulations at LUKOIL Group sites based on cutting-edge information technologies, technical diagnostics and remote monitoring techniques in line with ISO 14001, ISO 17020 and OHSAS 18001 international standards.”³⁴⁰

Environmental care

In 2011, Lukoil designed an environmental protection program with the following strategic guidelines as part of the 2012-2021 Lukoil Group Development Strategy:

“...attain a 95% level of utilization of associated petroleum gas (APG); discontinue discharges of contaminated waste waters into water bodies; reduce emissions of greenhouse gases and raise income through implementation of the mechanisms specified in Art. 6. of the Kyoto Protocol; complete elimination of “previous environmental damages”; do not exceed the ratio of 1 for generated waste to utilized waste; do not exceed the 15-percent limit for emissions above the allowable level in the payment structure for negative environmental impact and lower the number of pipeline failures and reclaim lands contaminated due to these failures.”³⁴¹

According to 2010 Sustainability Report, OAO LUKOIL is guided by the highest HSE standards in its business.³⁴² Since 2011, the Group has undertaken regular industrial and environmental safety, emergency prevention and response measures. For instance, more than USD 700 million was budgeted for environmental safety measures such as compliance with the Russian Federal State requirements to reach a 95% level of utilization of associated gas from 2012. Measures taken to improve the efficiency of the treatment facilities show a 2-fold reduction in the discharge of contaminated-waste water in results reported in 2011. Meanwhile, the implementation of administrative and technical measures accounts for a 6% reduction in water consumption.³⁴³

In addition, in 2011, LUKOIL Group organizations engaged in different environmental safety measures such as trouble-shooting and capital repair of pipeline transport system, modernization and construction of facilities to enhance the petroleum gas utilization level, purchase of possible emergency oil and petroleum product spill response equipment,

³⁴⁰ See Company Policy: www.lukoil.com/static_5id_267_.html accessed 8.6.2013.

³⁴¹ See Caring for the Environment: http://www.lukoil.com/static_6_5id_268_.html accessed 21.4.2013.

³⁴² In 2002, it was the first Russian oil and gas company to adopt an HSE Policy. See: LUKOIL Sustainability Report 2010.

³⁴³ *ibid.* NB: Specifically aimed at ensuring efficient water consumption in the organizations of the Power Engineering business sector (the Group's largest water consumer). Likewise the Kyoto Protocol serves a driving force to invest in measures to reduce atmospheric emissions at its project sites.

reclamation/remediation of impaired and oil contaminated lands, establishment of chlorination units for the disinfection of industrial and river water, set up of modern technologies for deterring oil pollutants and the establishment of a center to treat oil-contaminated waste.³⁴⁴ Lukoil is recorded to have championed the use of satellite monitoring system as of 2003.³⁴⁵

Restoration projects

Lukoil-Komi has been carrying out restoration projects to support biological resources in the Northern rivers (Pechora, the Kolva and Synya) for about 5yrs. As this writing, an estimated 650 thousand fishes grayling and pollan fishes were released into water bodies. In reaction, Ivanov notes: “artificial fish seeding helps maintain the appropriate natural balance and preserve traditional industry of the local people in future.”³⁴⁶

Training of Employees on environmental safety skills

In the year 2011, Lukoil organized thirty command-staff exercises and trainings, 83 integrated trainings, 6 special tactical training exercises, as well as more than 90 maneuvers and training sessions aimed at emergency response to oil and petroleum-product spills.³⁴⁷ Due to environmental monitoring conducted in the offshore field of Kravtsovskoye (D-6), risk resulting from accidents has been greatly minimized.³⁴⁸ A fund worth RUB 3.37 billion has been allocated to cater for rehabilitation facilities of employees during this process.³⁴⁹

ECONOMIC RESPONSIBILITY

In addition to its economic responsibility to maintain a steady growth in its business, Lukoil also has as mission, to “...support long-term economic growth, social stability, prosperity and progress in the regions where we operate, as well as caring for the environment and ensuring sustainable use of natural resources...achieve consistent and long-term growth of our business, transforming Lukoil into a leading global energy company... reliable supplier of hydrocarbons on the international energy market.”³⁵⁰

One of OAO Lukoil’s economic responsibilities is to remain accountable to its shareholders and investors every financial year on finances, innovation and development. This has

³⁴⁴ ibid.note 341.

³⁴⁵ Lukoil 2010 Report See: http://www.lukoil.com/materials/doc/reports/social/sots_luk_eng_2010.pdf accessed 22.4.2013.

³⁴⁶ V.Ivanov, Head of OOO Lukoil-Komi Environmental Protection team. ibid.p.119- It is a great restoration measure of the river ecosystem.

³⁴⁷ Lukoil homepage: http://www.lukoil.com/static_6_5id_2256_.html accessed 22.4.2013.

³⁴⁸ See: http://www.lukoil.com/static_6_5id_2114_.html accessed 22.4.2013. see also p.68 of 2010 Report.

³⁴⁹ ibid.note 348.

³⁵⁰ See: http://www.lukoil.com/static_6_5id_297_.html accessed 22.4.2013.

necessitated annual visits to production sites in West Siberia, Lower Volga and Perm to enable a field assessment of its activities and ascertain if it meets international standards, and meets its goal of being risk-free.

Diversification of its programs

Lukoil has engaged in the diversification of its programs to achieve economic growth as well as sustainable development in compliance with international standards. The organization maintains a career pool and retraining programs for its employees to avoid quality personnel shortage risks. It redevelops oil refineries and seeks new fields to curb competition risks or low-profitability projects.³⁵¹ In 2010, its first training center was opened in Astrakhan to train workers on offshore oil and gas facilities such as the offshore production facilities in the Caspian Sea.³⁵²

Insurance coverage system

LUKOIL has an insurance coverage system “hands-on risk management implementation plan” wherein economic losses incurred at any stage as a result of accident is compensated by the company whether to its employees or any third party victim concerned.³⁵³

As mentioned above, the analysis in this sub-chapter is based on the website information and sustainability reports of Lukoil Group and Rosneft. Information provided by these oil MNCs is evaluated against guidelines such as AA 1000 (1999) Standard and the Sustainability Reporting Guidelines within the framework of the Global Reporting Initiative (GRI), version 3.0, the Global Compact and the Social Charter of Russian Business, passed RUIE, Non-Financial Reporting Council³⁵⁴ and above all, is duly verified by ZAO Bureau Veritas Certification Rus, an independent auditor which gives it the credibility it deserves as a reliable source of information and a positive framework of CSR manifested by LUKOIL Group in Russia.³⁵⁵

In sum, despite the above positive results (identifiable CSR principles) attained by these major Russian MNCs; overriding setbacks and challenges co-exists in some ‘hotspots’ that has largely undermined these CSR efforts. In this regard, some legal critics, commentators, whistleblowers, some NGOs (like Greenpeace Russia and Russian Association of Indigenous

³⁵¹ See: www.lukoil.com/materials/doc/reports/social/sots_luk_eng_2010.pdf: LUKOIL 2010 Report accessed 22.4.2013.

³⁵² *ibid.* p.69.

³⁵³ *ibid.* note 351.

³⁵⁴ *ibid.* The Council after evaluation from 14-29 July 2011 notes that it ‘...contains substantial information, covers the key areas of business practices in accordance with the principles of Social Charter of the Russian Business. The Report discloses the information of the Company’s activities in these areas with a sufficient degree of completeness.’ p.164.

³⁵⁵ *ibid.* NB: In 2008, LUKOIL was rated among the world’s 100 major companies according to the International Corporate Accountability Rating, also held the 3rd position among Russia’s companies.

Peoples of the North, Siberia and the Far East, RAIPON) in Russia and abroad (like Bellona International) have continued to question the degree of commitment to CSR by these and other oil giants. Moreover, the unceasing quest for oil acquisition in the Arctic creates a serious environmental threat typified by the current state of affairs in Russia where the goals of oil companies may be detrimental to indigenous peoples, their way of life and the ecosystem.³⁵⁶ Against this background, the UN Global Compact Network in Russia has urged NGOs to be more proactive in reporting and addressing breaches to CSR initiatives to the public and the State.³⁵⁷

B. CHALLENGES FACED BY RUSSIAN OIL MNCs TOWARDS THE ATTAINMENT OF TRUE AND COMPREHENSIVE CORPORATE SOCIAL RESPONSIBILITY PRACTICE IN RUSSIA

In the preceding paragraphs, the associated challenges/risks involved in the process of oil exploration and attainment of CSR shall be examined under the following headings: social, environmental and economic risks.

Environmental Risks

Despite efforts by some Oil MNCs in Russia, environmental risks such as: oil spills, landscape degradation, atmospheric pollution, effects of biodiversity and operational risks exist. Writing about oil spill risks, Sakhalin Environment Watch (SEW) indicates, “Russia is the only country in the world today where regular, significant oil losses during extraction and transport are perceived as the norm. The generally accepted global oil industry standard is ‘zero losses’, i.e. losses in the region of 0.1% and below.”³⁵⁸ This may explain why oil spills are often underestimated, unnoticed or unannounced by the oil operators coupled with the fact that; there is no effective legal mechanism to redress same. Other factors may include corruption, administrative bureaucracies and other oversight lapses. Greenpeace Russia estimates an average of at least 15 million tons of oil is release annually in Russia due to accidents like pipeline ruptures, freight handling (loading /unloading/ bunkering), and emergency situations (collision, grounding, hull damage, fires and explosions, unknown causes).³⁵⁹ Major Pre - CSR accidents in Russia Arctic include the Usink incident (Komi

³⁵⁶ See: Strategic Program of Actions to Protect the Environment in the Arctic Zone of the Russian Federation, 2009 and Greenpeace Russia’s 2012 Report gives an estimate of about 500 000 tons of oil from spills in Siberia annually flows into the Arctic sea.

³⁵⁷ See UNGC Network Russia Corporate Social Responsibility Practices Brochure Published by UNDP Russia, UNGC and RUE. [http://www.undp.ru/download.phtml?\\$1404](http://www.undp.ru/download.phtml?$1404) accessed 24.4.2013.

³⁵⁸ Sakhalin Environment Watch: www.sakhalin.environment.ru/oilrazliv/pub/2006 accessed 24.4.2013.

³⁵⁹ See: <http://www.tribuna.ru/material/060804/ftp/04.pdf> accessed 24.4.2013 and www.bellona.org/reports/report/1196860968.48 accessed 24.4.2013. Note that in a related Report Gazprom sets pipeline

Republic)³⁶⁰ and the Kumzhinsk gas field.³⁶¹ In the Yamal- Nenets Autonomous Region, drilled oil cluster wells contained contaminated oil from oil pipeline ruptures, collision of vehicles with pipelines, technological and construction defects and violation of pipeline maintenance. It has adversely affected the capacity of commercial fishing in the Nadym river and some other rivers are on the verge of losing their spawning capacity such as the Pur, Sob' Yevo -Yakha and others.³⁶² Some post - CSR cases include, 2003 Oil tanker incident in Onega bay of the White Sea which resulted in more than 54 tons of oil leakage and contamination of about 74km of the coastline.³⁶³ Recently, the 7th May 2011 oil spill in Kandalaksha bay of the White Sea in Russia's far Northern Kola Peninsula presented emerging and immediate threats to a nearby nature reserve, Kandalaksha National Park, a habitat for several protected wild life species. The immediate cause of this spill traces back to the Belomorskaya (White Sea) petrol bulk plant.³⁶⁴ The cause was linked to the Soviet culture of outright disregard for ecological safety (back in the Soviet era, oil spills from loading racks usually got absorbed into the ground). In this instance, the spill resulted when "...water emulsion with oil products mixed in leaked out of the ground, from ground waters onto the surface, as a result of a [recent] flood," Khmelyov told Bellona.³⁶⁵ Notably, before clean up measures were deployed some 400,000 square meters of the coast and the 200,000 square meters of the bay's basin were been polluted. Lastly, Gazprom Neft Shelf LLC's launch of the Prirazlomnoye off-shore oilfield development project in March 2012 heightens oil spill risks owing to the fact that it has no approved oil spill response plans and as of August 2011, the construction of its drilling platform remains incomplete. Above all, verbal confirmation indicates Gazprom lacks the needed financial resources to mitigate/insure a spill.³⁶⁶ In this regards, Lloyd believes cleaning a spill in the Arctic presents "... multiple obstacles which constitute a unique and hard-to-manage risk."³⁶⁷ Besides, the cost involved makes such a project economically unfeasible and

leaks estimated to occur once every 1000 years (gross exaggeration).see chapter of same report page 16.Notably, The Russia oil spill is seven times that of that of the Gulf of Mexico but remains/remained unnoticed by the international community due to lack of political will supposedly by the custodian and executor of the Law, Russian Federation.

³⁶⁰ Pavel P.Krotov, *Extractive Industries in Transition: Comparative Analysis of Timber and Oil in Komi*, University of Wisconsin-Madison, 2000. Incident occurred in 1994 with varied sources estimating leakage at 100-350 thousand tons of oil containing fluids which badly affected the Kolva, Usa and 8 settlements, mostly indigenous villages and heavily damaged the near Arctic ecosystem: fish stock and migratory birds. The operating company was Komi-TEK now bought over by Lukoil who is undertaking clean-up with accrued spills. Its impact remains largely felt till date.

³⁶¹ Charles Emmerson, lead author, *Arctic Opening: Opportunity and Risk in the High North*, Chatham house, 2012, Incident occurred in November 1980, remained uncontrolled for 6yrs causing severe damage on whitefish feeding.

³⁶² See: www.greenpeace.org/russia/report/arctic-oil/arcticsave_english_26_apr.pdf. P.6. accessed on 24.4.2013.

³⁶³ *ibid.* note 362.see also Alexei Bambulyak and Bjørn Frantzen, *Oil Transport from the Russian part of the Barents Region*, Copyright © 2005 by Svanhovd Environmental Centre. Note that this incident remained unannounced until after 4 days of pollution.p.69.

³⁶⁴ Thomas Nilsen, *Oil spill threatens National Park*, Barents Observer 2011/05/18. An enterprise based in the town of Kandalaksha, on the shore of the White Sea's Kandalaksha Bay in Russia's Far Northern Murmansk Region. see: http://www.bellona.org/articles/articles_2011/kandalashka_spill accessed 24.4.2013.

³⁶⁵ *ibid.* see Bellona.ru interview in 2011.

³⁶⁶ Gazprom Neft meeting with NGOs in December 8th 2011 thus; they are looking for international partners to re-insure same. *ibid.* note 359.p.8.

³⁶⁷ Lloyds' of London, Chatham House, 2012 see: <http://priceofoil.org/2012/04/16/lloyds-warns-of-arctic-drilling-risk/> accessed 9.6.13.

risky in the Russian Arctic environment. Above all, it challenges the Russian Federation Resolution #240 of 15 April 2002 that states inter alia: “Organisations having dangerous industrial facilities have to have an approved plan for the prevention and cleanup of oil spills and oil petrochemical products spills.”³⁶⁸

Land degradation

Furthermore, oil development in Russia leads to landscape degradation. According to experts’ assessment, every 100km of trunk pipeline construction results in 500ha (hectares) of damaged lands.³⁶⁹ Despite mitigating measures, land deformation in the Usinsk, Vozey and Khariaginsk oilfields remains largely unresolved.

Moreover, the land degradation and associated atmospheric pollutants have impacted biodiversity, resulting in the decline in some mammals (brown bear, lynx and fox) and birds in the Pechora river, Yamal Peninsula, the Taimyr Peninsula and in the Chukotka Peninsula. Contamination often causes chronic toxicoses, immunity suppression and other related Arctic mammal diseases.³⁷⁰ In a related development, the ‘Prirazlomnaya’ oil platform, Russia’s premier ice-resistant stationary oil drilling platform within the Russian Arctic offshore, will share borders with Nenets Nature Park and other Federal nature reserves. This creates an eventual future environmental risk due to oil spills into the basins.³⁷¹

Operational Risks

In Russia there is an untenable gross exaggeration of the quality and quantity of oil reserves that has led to more safety and technical risks than expected.³⁷² In December 2011, 2 people died due to fire on the nuclear icebreaker in Vaigach. Two days later, 53 out of 67 employees in the Kolskaya oil rig of the Sea of Okhotsk died. Reportedly as a result of inadequate preparedness for towing operations in severe winter storm and the absence of obligatory State Expertise and State Environment Expertise. The fact that Gazprom нефт omitted the above-mentioned Kolskaya incident in its 2010-2011 Sustainability Report justifies the absence of transparency (concealment of information) amongst giant oil MNCs in Russia. It also

³⁶⁸ Russian Federal Government Resolution #240 of 15 April 2002.

³⁶⁹ *ibid.* note 362.p.9. See Federal Hydrometeorology and Environmental Monitoring Service 2006. 4th National report submitted in accordance with Article 4 and Article 12 of the UN Framework Convention on Climate Change. Moscow. For instance Greenpeace calculates deformed land as of about 0.1 million hectares per the 10 million tons of oil annually. E.g. If Russia supplied Germany with about 120 million tons of oil, Greenpeace estimates degradation of land at 1.2 million hectares.

³⁷⁰ *ibid.*

³⁷¹ Veronika Afanasyeva, *Logistics and Transport BE 303 Supply chain of the Shtokman field development project*, Spring 2009. See also *ibid.* p.11 (Greenpeace Report).

³⁷² See Contradictory Estimates by the US and Russian Geological Survey units - The Conflicting oil estimates over the Barents basin by US Geological Survey at 9.5 billion barrels unlike Russia’s Geological survey estimate same at 3 billion barrels. P.21. This and others provoke a mad rush for oil regardless of its vulnerability.

confirms the assertions of some commentators that CSR practice is merely a window dressing amongst oil MNCs.³⁷³

Social Risks

Most Institutions (public and private) in Russia suffer gravely from endemic corruption risks that undermine the rights of indigenous peoples and employees. The rights of indigenous peoples remain largely trampled upon. In the Yamal-Nenets Autonomous Region, about 169 indigenous families abandoned their traditional lands and sources of subsistence due to developmental activities by Gazprom with little or no reimbursement from oil operators.³⁷⁴

Despite the presence of oil giants in the Russian region of NAO, the degree of socio-economic development is not commensurate to the revenue generated therein by the oil MNCs. A meeting between Vladimir Putin and the governor Dmitry Kobylnkin revealed that more than 50% of the dwellings are in slums.³⁷⁵ NAO's sources of drinking water are heavily contaminated with oil making it susceptible to varied infectious diseases. From 1992-1996; the mortality rate was high in Usink, Kolva and Ust-Usa settlements.³⁷⁶ In a similar report published by CBC News in September 2012, Vladimir Chuprov, a native of Komi gives first-hand information lamenting the deteriorating living conditions of the indigenous peoples caused by contaminated oil in Pechora area that runs into the Arctic sea.³⁷⁷

All in all, the social and environmental risks clearly violate and challenge Russia's constitutional provisions and human rights obligation. Article 11(1) provides:

“Each citizen is entitled to a favourable environment, its protection against negative effects caused by economic and other activities, natural and man-made emergencies, to a reliable information on the condition of the environment and to reimbursement of a harm inflicted to the environment. According to the Constitution of the Russian Federation everybody is entitled to a favourable environment, reliable information on the condition thereof and to reimbursement for a harm inflicted to one's health or property by an ecological offence.”³⁷⁸

³⁷³ *ibid.*p.22.

³⁷⁴ *ibid.*p.12. Sytnik O. 2009.Round table: unity of views and aspirations. Krasny Sever.23rd September 2009.

³⁷⁵ www.premier.gov.ru/visits/ru/12528/events/12540/ accessed 25.4.2013.

³⁷⁶ Gazprom 2010–2011 Report. See: www.gazprom.com/f/posts/51/402390/sustainability-report-2011-en.pdf accessed 25.4.2013.

³⁷⁷ Daniel Schwartz, Russia, world's worst oil polluter, now drilling in Arctic, CBC-24 September 2012 See:<http://www.cbc.ca/news/world/story/2012/09/21/f-russia-arctic.html> accessed 25.4.2013.

³⁷⁸ Federal Law on Environmental Protection No. 7-FZ of January 10, 2002 ; Chapter III. The Rights and Duties of Citizens, Public and Other Non-Commercial Associations in the Field of Environmental Protection see: <http://www.asser.nl/upload/eel->

Despite the above entitlements for redress, associated legal flaws and other bottle-necks (political and administrative, corruption) undermine same for selfish motives or mere oversights within the Russian system.

Economic Risks

The cost of oil production in the Russian Arctic offshore is irresponsibly high. This conclusion has been largely affirmed by some Russian Arctic oil and gas promoters who assert the development of hydrocarbons on the Arctic Ocean shelf will be “more difficult than to explore outer space.”³⁷⁹ Moreover, its quality is quite low which makes it unprofitable because it is heavy.³⁸⁰ Hence improvement of its quality would require more capital and environmental costs like building a refinery in the Kola Peninsula.³⁸¹

The recent efforts by Russian energy companies to import foreign expertise to reinforce its developmental plans in the Arctic offshore exhibits some degree of lack of due diligence. Personally, Russia’s signing of partnership agreements with Shell, ExxonMobil, Total and Statoil leaves unanswered questions for want of reputational risks and above all economic risks. On the one hand, such a move is highly recommended based on their high technological know-how in offshore drilling. On the other hand, partnering with oil giants that have an unreliable record and reputation of oil spill disasters like ExxonMobil (e.g. Arkansas Oil Spill, USA³⁸²), Shell (e.g. Texas Oil Spill, USA³⁸³) and Total (e.g. 1999 Erika Oil Spill³⁸⁴) poses enormous threats to the pristine Arctic ecosystem and associated economic risks involved in case of an emergency clean-up. As noted by Lars-Otto Reiersen, “There isn’t any effective equipment deployed in the Arctic that can handle an oil in ice spill.”³⁸⁵ Besides, the climatic conditions characterized by darkness for half a year, cold, strong winds and fog, pose

webroot/www/documents/Federal%20Law%20on%20Environmental%20Protection%20Russia_ENG.pdf
accessed 25.4.2013.

³⁷⁹ Kontorovich A. 2011. More difficult than to explore space Vzglyad.

7th September 2011. <http://www.vz.ru/economy/2011/9/7/520333.html> accessed 25.4.2013.

³⁸⁰ State Council of Russian Federation. 2011. Report on measures for provision of environmental safety during implementation of large-scale infrastructure projects, and elimination of accumulated ecological damage (draft) accessed 25.4.2013.

³⁸¹ North – West association. 2011. The Strategy of the North-Western Federal Region’s Socio-Economic Development for the Period through 2020. St.-Petersburg. November 2011.
http://n-west.ru/wp-content/uploads/2011/12/Strategiya-SZFO-2020_utverzhdannaya.doc accessed 25.4.2013.

³⁸² U.S. v. ExxonMobil Pipeline Co., case no. 4:13-cv-00355, in the U.S. District Court for the Eastern District of Arkansas - US Justice Department and the state of Arkansas seek civil penalties against Exxon over pipeline spill in March. See: <http://www.law360.com/articles/449985/us-ark-sue-exxon-over-major-oil-spill-from-pipeline> and <http://rt.com/usa/arkansas-exxon-oil-spill-701/> accessed 26.4.2013.

³⁸³ <http://rt.com/usa/shell-pipeline-oil-texas-409/> accessed 26.4.2013.

³⁸⁴ La Republique Francaise v. Total I N/H 10-82.938 FP-P+B+R+I N/3439 CI 25 Septembre 2012 ,Cour de Cassation see: <http://digitaljournal.com/article/333666> accessed 26.4.2013. Full judgment: http://www.courdecassation.fr/IMG///Crim_arret3439_20120925.pdf accessed 23.6.2013.

³⁸⁵ Lars-Otto Reiersen, executive secretary of the Arctic Monitoring and Assessment Program (AMAP), which is affiliated to the multi-nation Arctic Council. See: <http://www.unep.org/cpi/briefs/2013May16.docx> accessed 23.6.2013.

huge challenges for dealing with a spill. Moreso, the current available equipment suits operations in clean and open sea. Unlike ice clean-up will require the booms and skimmers.³⁸⁶

As a corroboration, this partnership agreement involves three oil MNCs who have acknowledged the environmental and economic risk of offshore drilling in the Arctic. Cases in point include: Total, whose CEO in September 2012 stated categorically clear to NBC News that drilling in the Arctic offshore is an environmentally risky venture.³⁸⁷ Meanwhile, Statoil and Royal Dutch Shell PLC early 2013; backed off drilling plans off the coast of Alaska on grounds of economic risks.³⁸⁸

By and large, there is no gainsay why many indigenous peoples, commentators and other civil society actors in the Arctic State of Russia view oil exploration vis-à-vis CSR practice in Russia; as a ‘paradox of plenty’ due to its overriding positive and negative results. The next chapter shall examine the existing institutional frameworks endorsed by the Russian government to necessitate a smooth implementation of CSR practice in Russian oil industry. It shall also analyze the measures and actions taken by the State to redress such challenges and gaps. Lastly, it shall also examine attempts to regulate violators (oil MNCs) in the court of law.

³⁸⁶ *ibid.*

³⁸⁷ Total SA Chief Executive Officer Christophe de Margerie on Financial Times 2012 .See also: <http://worldnews.nbcnews.com/news/2012/09/26/14107150-environmental-risk-of-drilling-in-arctic-too-high-ceo-of-oil-giant-total-says?lite> accessed 26.4.2013.

³⁸⁸ Charles Digges, Statoil backs off drilling projects off Alaskan coast in line with Shell, Bellona International published 7.3.2013.See: http://www.bellona.org/articles/articles_2013/Statoil_backs_off_alaska accessed 26.4.2013.

CHAPTER FOUR

LEGAL AND REGULATORY FRAMEWORKS FOR OIL MNCs IN RUSSIA

4.1 INTRODUCTION

No effective and efficient means to implement an emerging practice like Corporate Social Responsibility can exist without a domestic institutional or regulatory framework within the legal system. An effective harmonization and coordination of existing legal regimes permits and creates an effective platform for implementation and practice of CSR. This chapter will first analyze the existing legal, political and institutional frameworks in Russia which set the groundwork for proper regulation of oil MNCs. Second, it will present some of the gaps that sow down the efforts to attain a consistent CSR practice in the Federal State of Russia. Stakeholders and other legal commentators should not construe the doctrine of CSR as a panacea to the existing gaps in Home State Regulation. CSR practice blends and binds corporate behaviour to ensure an effective implementation of existing legal regimes and institutional frameworks.

The ‘Philosophy and Oil Policy’ of Russia

In the post-soviet regime, Russia has become a powerful stakeholder in oil development and regulation strategy. The philosophy referred to as the ‘Russian Oil Model’ by Rossiaud and Locatelli aims at restructuring institutional and regulatory frameworks with the intention of nationalizing the oil sector. Moreover, it indirectly increases the involvement of national oil companies in the upstream activities to the disadvantage of the private sector.³⁸⁹

Furthermore, this model has necessitated the abolition of two key principles: The Principle of Joint Jurisdiction (Article 76 of the Russian Federal Constitution, which due to inconsistencies, was replaced by the Underground Resources Law of 1992) and the 1992 Underground Resources Law which states that:

“...the subsurface resources are state property and are granted to companies – land users for a period of time for the survey, exploration and development of mineral deposits; entitlement for the use of subsurface resources should be carried out on a payment basis; subsurface resources are jointly owned by the federation and

³⁸⁹ Sylvain Rossiaud and Catherine Locatelli “The obstacles in the way of stabilizing the Russian oil model” *Post-Communist Economies* 21, 4 (2009) 425-438. See E.N.Andreyeva and V.A. Kryukov p.247.NB: An Upstream activity refers to the exploration and production (E & P) sector i.e. The searching, exploring, drilling and recovering of crude oil and gas. See: <http://www.trencome.com/petroleumindustry.htm> accessed 24.4.2013.

constituent entities of the federation, apart from the fields located on the shelf and in the closed seas that are under the federal jurisdiction.”³⁹⁰

Both key principles considered the interest of the State and the regions where leases and land users are located. Unlike the recent 2008 amendments on Subsoil law, the Russian Federation has centralized the management of the subsoil while abolishing and restricting the right of co-existing interests to grant licenses to the Federal level.

In addition, it has further restricted the purposes of both the Production Sharing Agreement³⁹¹ and the foreign investment laws³⁹² which were originally adopted to boost oil production after the Soviet collapse via the incorporation of foreign investors. Today, the current regime has manifested a total disregard for foreign investment to satisfy personal and selfish gains. This is demonstrated in one of the landmark cases examined later, ‘Former Yukos’.

It is clear that this model has affected the current legal environment which now excuses recurring oil spills due to pipeline leakages and accidents. These leaks and accidents often occur because of the absence of sufficient foreign expertise, manpower and modern infrastructural technology. On a similar note, according to the National Trade Data Bank of Russia, these problems stem from the “conflicting, overlapping, and rapidly changing laws, decrees and regulations which tend to support an ad hoc and unpredictable approach to doing business, and which often apply on a retroactive basis with no grand fathering provisions.”³⁹³ It seems that the Russian Federation could ultimately be held responsible for the degree of legal uncertainty that hinders efforts to attain CSR.

The Constitution of Russia

The 1993 Constitution of Russia³⁹⁴ stipulates its universal recognition of norms of international law and international treaties as a direct part of the Russian legal system.³⁹⁵ As custodian of human rights, it has signed or ratified some international minority instruments such as the United Nation International Convention on the Elimination of All Forms of Racial

³⁹⁰ *ibid.* p.252, 1992 Federal law relating to Underground Resources subsequently amended in January 2000. [Law of the Russian Federation on Subsoil], adopted February 21, 1992, reprinted in 3 Acreage, Laws & Tax (Petroconsultants) VIR-2, at 1 [hereinafter Law on Subsoil].

³⁹¹ Law of the Russian Federation “On Production Sharing Agreements”, approved by the Federation Council on December 19, 1995, *Ross. Gazeta*, January 11, 1996, at 3 hereinafter Law on Production Sharing Agreements See: http://www.polinares.eu/docs/d3-1/polinares_wp3_case1.pdf p.6 of 35 accessed 27.4.2013.

³⁹² See Federal’niy Zakon ob Inostrannix Investitsiyax v Rossiyskoi Federatsii [Federal Law No. 160-FZ on Foreign Investment in the Russian Federation], *Sobr. Zakonod. RF*, 1999, No. 19-FZ [hereinafter 1999 Law on Foreign Investment], translation available at LEXIS, Int Law Library, RFLAW File, Garant 12016250

³⁹³ See National Trade Data Bank, Russia-Country Marketing Plan FY’93, Market Rep., Jan. 15, 1993. See Mark A. Stoleman, Investment at an Impasse: Russia’s Production Sharing Agreement Law and the Continuing Barriers to Petroleum Investment in Russia, *Duke Journal of Comparative and International Law*, 1997.

³⁹⁴ The Constitution of Russia was adopted on the 12th of December 1993 and went into force on the 25th of December 1993 (date of its publication). See: <http://www.constitution.ru/en/10003000-01.htm> accessed 13.6.2013.

³⁹⁵ As per Article 69 of the 1993 Federal Constitution of Russia

Discrimination (ICERD), the European Charter of All Forms of Minority Languages, and the Framework Convention for the Protection of National Minorities of the Council of Europe (Framework Convention).³⁹⁶

Despite Russia's non-ratification of the ILO Convention No.169 of Indigenous Peoples, as of 1999 it adopted three federal laws relating to the rights of indigenous peoples namely: 'On guarantee of rights of indigenous numerically small peoples of the Russian Federation'³⁹⁷, 'On general principles of organization of communities of indigenous numerically small peoples of the North, Siberia and the Far East of the Russian Federation'³⁹⁸ and 'on territories of traditional nature use of indigenous numerically small peoples of the North, Siberia and the Far East of the Russian Federation'.³⁹⁹ These laws are aimed at protecting their traditional way of life, habitat, traditional cultural activities, tax exemption for economic activities, gratuitous use of land and effective participation in nature conservation.⁴⁰⁰ However, information from the Russian Association of Indigenous Peoples of the North (RAIPON) indicates these so-called 'protection clauses,' such as the tax exemption of indigenous peoples in economic activities has been violated with exorbitant taxes which has caused liquidation. Despite Russia's adoption of a 2009 strategy on indigenous peoples' development until 2025, a federal law was passed same year that hindered the enjoyment of traditional land-use rights.⁴⁰¹ This may explain the recurrent displacement and land acquisition of the indigenous peoples without any resettlement arrangements by some oil giants. A couple of United Nations treaty bodies have expressed disapproval of the granting of licenses for lands traditionally owned by indigenous people to private enterprises for developmental projects like the construction of pipelines.⁴⁰² The UN Committee for Economic, Social and Cultural Rights appealed to the Russian government to "seek the free informed consent of indigenous communities and give primary consideration to their special needs prior to granting licenses to private companies for economic activities on territories traditionally occupied or used by those communities and ensure that licensing agreements with private entities provide for adequate compensation of the affected communities."⁴⁰³ In addition, the worsening ecological environment of the indigenous peoples and its resultant effect on their wellbeing due to food

³⁹⁶ Alexandra Xanthaki, *Indigenous Rights in the Russian Federation: The Case of Numerically Small Peoples of the Russian North, Siberia, and Far East*. Human Rights Quarterly; Feb 2004,26,1 ProQuest Central p.77.

³⁹⁷ Federal Law No.82 of 30 April 1999 revised 22 August 2004.

³⁹⁸ Federal Law No.104 of 20 June 2000 revised 22 August 2004.

³⁹⁹ Russian Federal Law No.49 of 7 May 2001 adopted by State Duma.

⁴⁰⁰ Julian Agyeman and Yelena Ogneva-Himmelberger (Editors) *Environmental Justice and Sustainability in the Former Soviet Union*, 2009.

⁴⁰¹ Ministry of Regional Development of the Russian Federation See: www.minregion.ru/upload/.../2012/.../doklad-postoyannyi-forum-ang.d, accessed 13.6.2013.

⁴⁰² See for example E/C.12/RUS/CO/5; CCPR/C/RUS/CO/6; CERD/C/RUS/CO/19.

⁴⁰³ Submission to the United Nations Human Rights Council, Universal Periodic Review Session 16: Russian Federation October 2012 p.5

chain contamination; exposes gaps in Russian legislation and its Constitution as a mere ‘window-shade’ protector or guarantor of the Russian economy, society and its environment.

Relevant Russian Institutions and its Judiciary System

The implementation and enforcement of existing legal regimes is the responsibility of institutional bodies. The Russian Federation consists of 89 regions including 21 republics, 49 areas, 6 territories, and 11 autonomous regions. Above all, constituencies are divided into the federal districts with administrative authority but no legislative power. Legislative enactment and other relevant legal provisions are the sole duty of federal government.⁴⁰⁴ Effective implementation of law and policy are hindered by the duplication of functions and the absence of clarity as per the scope of responsibilities (freedom of interpretation).

The main institution responsible for oil development oversight is the Ministry of Natural Resources and Ecology (MNR).⁴⁰⁵ It is responsible for environmental protection and natural resources and has the right to issue environmental permits and to forward draft environmental laws and regulations to the State Duma. The July 2004 Federal Resolution gave the MNR the following powers:

“...state policy formulation and normative and legal regulation in the sphere of the study, renewal, and conservation of natural resources, including management of the State subsoil stock and forestry...; operation and safety of multipurpose reservoirs and water-resources systems, protecting and other hydraulic structures (except navigation hydraulic facilities); the use of wildlife resources and their habitat (except wildlife resources assigned to hunting resources); specially protected natural areas, as well as in the sphere of environmental conservation (except the sphere of ecological supervision).”⁴⁰⁶

Two related federal agencies that make up the MNR and are responsible for inspecting and regulating pollution, oil spills and waste management (by Rostekhnadzor) whereas nature protection and impacts on species and water bodies (by Rosprirodnadzor).⁴⁰⁷

⁴⁰⁴ Article 71 of the Russian Constitution: the establishment of federal policy principles and federal programmes on the environmental development of the Russian Federation, defence and safety, as well as issues surrounding the generation of hazardous substances are under the exclusive jurisdiction of the Russian Federation.

⁴⁰⁵ Ministry of Natural Resources, RF See: <http://www.mnr.gov.ru/part/?pid=398> accessed 27.4.2013.

⁴⁰⁶ The Regulations on the Ministry of Natural Resources of the Russian Federation approved by Resolution of the Government of the Russian Federation # 370, dated July 22, 2004. see: <http://voda.mnr.gov.ru/part/?pid=398> accessed 27.7.2013. or Daria N. Ratsiborinskaya, Russian Environmental Law – An Overview For Businesses, Researcher at the Asser Institute.

⁴⁰⁷ <http://www.eisourcebook.org/cms/Responsible%20Contracting%20in%20the%20Russian%20Oil%20&%20Gas%20Industry.pdf> p.8 accessed 27.4.2013.

Nevertheless, amendments to the 2004 law ‘On subsurface resources’ has gravely weakened the position and voice of regional authorities to take part in decision making on matters relating to exploration and production of mineral resources within their territories. All the same, it does not undermine the discretionary use of voluntary approaches by some regional authorities to negotiate for regional socio-economic development. For instance, in the Nenets Autonomous Okrug, it negotiates job creation and workforce training).⁴⁰⁸

Other relevant federal institutions responsible for environmental regulations include the Ministry of Public Health and Social Development (responsible for the protection of labour and hygienic concerns and makes relevant proposals for health protection laws)⁴⁰⁹ and the Federal Service on Ecological, Technological and Atomic Surveillance (accountable to MNR).⁴¹⁰ Lastly, NGOs and the public under Articles 10 and 12 can advocate for common environmental interests.

At the international level, Russia as an Arctic State constitutes a vital member of the Arctic Council. The Arctic Council maintains working groups that propose recommendations to State parties. In the days ahead, the Arctic Council’s SDWG will propose a non-binding CSR agreement, which State parties like Russia might further enforce through its recommendations to oil MNCs.⁴¹¹

From the judicial perspective, the Supreme Court is the highest judicial body. The Supreme Court and the higher court of arbitration participate in the environmental regulatory process by issuing instructions and information letters that interpret legislations and serve as decrees. The Decree on the Practice of Judicial Enforcement of the Legislation on Environmental Liabilities⁴¹² stipulates the effective, correct and uniform application of environmental liabilities; evaluates the threats emanating from environmental offences while requesting the court to assess the moral damage such offences caused.⁴¹³ The procurators are responsible for combating and uncovering environmental offences. Unlike the higher Court of Arbitration is charged with delegating regional courts of arbitration on environmental damage settlement claims.⁴¹⁴

⁴⁰⁸ *ibid.* note 405.

⁴⁰⁹ Ministry of Public Health and Social Development Russia - See: <http://www.minzdravsoc.ru> accessed 27.4.2013.

⁴¹⁰ Федеральная служба по экологическому, технологическому и атомному надзору See: <http://www.gosnadzor.ru> accessed 27.4.2013.

⁴¹¹ *ibid.* note 206.

⁴¹² О практике применения судами законодательства об ответственности за экологические правонарушения dated 5 November 1998.

⁴¹³ *ibid.*

⁴¹⁴ Art. 127 of the Russian Constitution reads: ‘The Higher Arbitration Court of the Russian Federation shall be the supreme judicial body for settling economic disputes and other cases examined by courts of arbitration, shall carry out judicial

Above all, the Federal State gives the right to appeal to businesses in case their interests are affected by a Federal decision. For instance, Article 18 Para.8 of the Law on Ecological Expertise makes provision for a possibility to challenge the report /results of an expert report. A similar rule applies for individuals who suffer harm e.g. human rights violations. In the case of *Fadeyeva v. Russia*⁴¹⁵, the European Court of Human Rights, ECHR ruled in favour of the Fadeyeva and ordered the Russian government to pay compensation of €6000 for failure to relocate Ms. Fadeyeva despite complain of worsening health condition caused by pollution emanating from industrial installations. This was a landmark case, the first of its type whereof the ECHR held a state responsible for damage caused by a private company.⁴¹⁶

Relevant Environmental laws

In general, Russian environmental law protects features such as the soil, water, air, protected areas, and biodiversity as well as protects the environment against certain impacts like chemicals, waste, and radiation. Businesses such as oil companies operating in Russia need to assess what kind of environmental impacts their operations may cause and ensure compliance to prevent these types of impacts and damages.

As noted above, the Russian Constitution sets the legal basis for federal environmental regulation.⁴¹⁷ Article 42 states “every citizen has the right to a favorable environment, true information on the state of the environment and reimbursement for damage to health or property caused by a breach to environmental legislation”⁴¹⁸ By the same token; Article 58 further states “every citizen is obliged to protect nature and the environment.”⁴¹⁹ These legal provisions also apply to companies. Article 15 para.4 emphasizes the vital role played by international agreements in the shaping of national environmental policy and legislation.⁴²⁰

supervision over their activities according to federal law-envisaged procedural forms and provide explanations on the issues of court proceedings.’

⁴¹⁵ Application No. 55723/00, *Fadeyeva v. Russia*; ECHR, Strasbourg. 9 June 2005-Final 30/11/2005 - Based on the Article 8 of the European Convention for Human Rights, the ECHR ruled that governments are legally responsible for preventing serious damage to their citizens’ health caused by pollution from industrial installations, even when they are privately owned and run. See:

[http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{\"fulltext\":\[\"fadeyevav.russia\"\].\"documentcollectionid2\":\[\"GRANDCHAMBER\", \"CHAMBER\"\].\"itemid\":\[\"001-69315\"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{\) accessed 14.6.2013.

⁴¹⁶ *ibid.* note 405.

⁴¹⁷ *ibid.* 1993 Federal Constitution of Russia. see: <http://www.constitution.ru/en/10003000-01.htm> accessed 15.6.2013.

⁴¹⁸ *ibid.* see: Section I, Chapter 2. Rights and Freedoms of Man and Citizen of the Constitution.

⁴¹⁹ *ibid.* note 417.

⁴²⁰ *ibid.* see: Section I, Chapter 1. The Fundamentals of the Constitutional System of the Constitution.

Over 30 environmental laws have been drafted by the State Duma. Relevant laws are outlined below:

a) Integrated Federal Legislation:⁴²¹

- The Law ‘On Environmental Protection’ (2002)
- The Law ‘On Ecological Expertise’ (1995)
- The Law ‘On Sanitary and Epidemiological Well-Being of the Population’ (2001)
- The Law ‘On Specially Protected Areas’ (1995)
- The Law ‘On the Protection of Lake Baikal’ (1998)
- The Law ‘On Air Protection’ (1999)
- The Law ‘On Waste of Production and Consumption’(1998)

b) Federal Legislation relating to Natural Resources:

- Land Code(2001)
- Water Code(2006)
- The Law ‘On Subsoil’(1992)

c) Federal Legislation relating to Environmental Safety:⁴²²

- The Law ‘On Protection of Population and Areas from Natural and Industrial Emergencies (1994)
- The Law ‘On Industrial Safety of Dangerous Production Facilities’(1997)
- The Law ‘On Technical Regulation’ (2002).

All in all, some fundamental principles of the Russian environmental law feature in the Environmental Protection law such as the ‘polluter pays principle, the principle of potential environmental danger, full compensation for damage caused to the environment, and the principle of environmental impact assessment,’ all of which forms a solid foundation for environmental regulation in Russia.

Furthermore, the ‘End-of-Pipe’⁴²³ is considered as the main strategic approach in Russia for environmental protection. It characterizes the assessment, evaluation, monitoring and control of industrial pollution. It requires every industrial plant to obtain a special permit that covers air emissions, water discharges and waste disposal. This special permit sets the ‘Emission

⁴²¹ ‘Integrated legislation’ means legal norms of general application. Most often an integrated law is of federal importance and it establishes the general legal regime of the regulated object.

<http://www.repub.eur.nl/res/pub/31019/RussEnvironLaw.pdf> accessed 28.4.2013.

⁴²² *ibid.* Refers to conditions of life protected from industrial and natural hazards.

⁴²³ Sapozhnikova, Dr. Victoria, Environmental Protection in Russia: *The evolution from strict enforcement measures and environmental Compliance Control to New Combined approaches based upon preventive strategies*.p.183-188.

Limits Values' (ELV) to meet ambient standards.⁴²⁴ In a similar dimension, 'the polluter pays principle' also constitutes the 'End-of-Pipe' approach which demands that any polluting party pay for the environmental pollution caused (e.g. in the form of ecological fees, fines and compensation for damages). It also sets forth environmental compliance mechanisms for working facilities as well as administrative fees and penalties for non-compliance. Unfortunately, this approach does not provide any measure for pollution prevention or promote environmental protection and best practices in technology.

In addition, an environmental impact assessment is a fundamental requirement before and after any oil development program. In Russia, all installation projects are subject to permitting regardless of size and nature or environmental impact. There are two regulatory frameworks in Russia: The concept of the State Environmental Expertise (SEE) and the concept of Assessment of the Environmental Impacts (OVOS).

- State Environmental Expertise, SEE: The Supreme Soviet in 1989 passed a law making any project initiated without a SEE null and void. It was regulated by the Ministry of Ecology's SEE Regulations (now MNR). Every applicant forwards its application to the federal or provincial SEE Departments (SEEDs). SEED conducts checks to assess if it meets the requirements. Often, it hires an expert to conduct a SEE who intend provides a 'SEE Resolution' ⁴²⁵ or a SEER. ⁴²⁶
- Assessment of the Environmental Impacts, OVOS: This concept is a western ideology of balancing a proposed project's environmental impacts alongside its social and economic impacts through public consultation. It came into force via a Ministerial Order ⁴²⁷ with the aim of complying with the 1991 UNECE Convention on Environmental Impact Assessment in a Transboundary Context (the 'Espoo Convention'). ⁴²⁸ Presently, the OVOS regulations form part of the Regulation on the Assessment of Environmental Impacts. ⁴²⁹ Significantly, the OVOS applies to projects listed within the OVOS Regulations which require the applicant/developer to prepare

⁴²⁴ *ibid.* that is the maximum allowable concentration.

⁴²⁵ *ibid.* note 405. The SEE Resolution could be either negative or positive. In case, it is negative; the applicant needs to amend his plan and re-forward a new application.

⁴²⁶ State Ecological Expertise Review. *ibid* note 405. Svetlana Solodyankina and Johann Koeppel, The environmental impact assessment process for oil and gas extraction projects in the Russian Federation: possibilities for improvement. see: <http://www.tandfonline.com/doi/pdf/10.3152/146155109X430344> accessed 14.6.2013.

⁴²⁷ Order of the Minister of Environment No.222 of the 18 July 1994 introduced the 'OVOS Regulations'.

⁴²⁸ <http://www.unece.org/env/eia/welcome.html> see also the 2003 Kiev Protocol on Strategic Environmental Assessment. Russia signed the Espoo Convention on 6 June 1991 but has not yet ratified this convention, see: <http://www.unece.org/env/eia/convratif.html> accessed 28.4.2013.

⁴²⁹ Dated 16 May 2000, No. 372 (Об утверждении Положения об оценке воздействия намечаемой хозяйственной и иной деятельности на окружающую среду в Российской Федерации)

an environmental impact assessment statement, EIS and the engagement of competent authorities in the public consultation process.⁴³⁰

Although the EIA is welcome within Russian legal system, its application remains challenging due to existing loopholes. For instance, SEE's screening requirements are poor making it ineffective as an environmental protection tool. Moreover, it does not cover complex and uncertain impact assessments and has limited consultation provisions.⁴³¹ Unlike OVOS, it lacks the necessary requirements for application such as research, training and development, and it is not well incorporated into the project development cycle.⁴³² A possible solution could be a harmonization of SEE and OVOS to ensure a solid base for EIA in Russia.

Though, the above-mentioned regulations look "beautiful", their implementation phase remains a dilemma. A survey conducted by Peterson in 1997, clearly indicated that foreign firms operating in Russia use or adhere to the best environmental friendly models unlike its Russian counterparts despite its legal environment. A case in point is the high standard used by foreign operators in the Caspian Sea region which aims at minimal environmental risks.⁴³³ The procedure to obtain environmental permits in Russia includes:

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1. The relevant company must provide (and pay for) an inventory of its emission and discharge sources, draft emission limit values, draft discharge limit values and draft waste disposal limits.
2. The draft limits are then submitted to the MNR Regional Direction for approval, which often takes a month.
3. If approved, provided there is no change in such a company's production process, its draft emission and waste disposal limits will be valid for 5 years, whereas its draft discharge limits are valid for 3 years. Temporary limits are valid for one year.
4. The aforementioned 'Permits' are solely developed and approved by the Federal Nature Management Supervision Service of MNR, also responsible for ecological expertise and the permitting.

⁴³⁰ Federal Law No. 7-FZ on Environmental Protection, Environmental Impact Assessment Section 5 (Articles 19ff) of 10 January 2002 adopted by State Duma in 20 December 2001 and approved by Federal Council in 26 December 2001.

⁴³¹ *ibid.* see also note 405.

⁴³² *ibid.* note 405. Sergei M. Govorushko, *Environmental Impact Assessment in Russia*. 1997. P.195-201.

⁴³³ D.J. Peterson, *Environmental Activism in the New Russia: Prospects for the Coming Decade*, Report to the National Council for Eurasian and East European Research (Washington DC, National Council for Eurasian and East European Research 1997).

⁴³⁴ *ibid.* note 430. See also Federal law no. 174-FZ on Ecological Expertise, dated 23 November 1995.

5. These 'Permits' are issued for a duration of 1 year extendable subject to a 'technical report' on extension of limits.

6. The Federal Nature Management Supervision Service has the right to make reservations: (i) to carry out an inspection in order to reach its decision on approval of the limits, (ii) to organize an inspection of the installation, or (iii) to request information about inspections performed by the State Control Division of the territorial body.⁴³⁵

In both the EIA and permitting stages, investors and operators are strongly recommended to use specific consultancies to perform a series of studies and calculations. Although, there is no fee attached to the issuance of a permit, its process involves time and varied cost.⁴³⁶

As mentioned above, general Russian legislation permits appeal to any administrative decision (e.g. the denial of a license maybe challenged in an open court within three months of the relevant decision). The same rule applies to the terms of an environmental permit. On the other hand, administrative, civil and criminal liabilities may arise in case of a breach of the terms of issuance.

Lastly, the incorporation of Environmental Insurance is very vital in the operations of any oil company as stated in Article 18 of the Federal Law on Environmental Protection and its Civil Code. It serves as a hedge against environmental risks owing to the increasingly deteriorating conditions of the environment in Russia caused by drilling and exploration. Unfortunately, though an obligatory practice, statistics and relevant information as to its applicability is not made public.⁴³⁷

In sum, the administrative tools for environmental enforcement and compliance in Russia include: Environmental pollution permitting, including the evaluation of Environmental Quality Standards and Emissions; Limit/Levels based of existing "Maximum Allowable Concentrations" with respect to harmful components; Environmental impact assessment (ecological expertise) and Ecological compliance control while the economic instruments include the ecological fees and administrative fees. What is significant is the low fines levied, which allows oil giants to re-invest their capital in pollution control. However, some commentators think that some of these fines spur corruption practices between oil MNCs and the competent environmental or administrative staff in question or its hierarchy.

⁴³⁵ *ibid.* note 405. see also: Федеральная служба по надзору в сфере природопользования <http://www.rpn.gov.ru/> accessed 14.6.2013.

⁴³⁶ *ibid.*

⁴³⁷ *ibid.* note 405.p.16.

Other relevant international, domestic legislations and Codes applicable in Russia:

In addition to the above mentioned Russian environmental laws, Russia is also a party to some major international conventions and treaties in the sphere of environmental protection. Examples include: Convention on Biological Diversity (1983), Vienna Convention for the Protection of the Ozone Layer (1985), Montreal Protocol on Substances Depleting the Ozone Layer (1987), Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989), and the Convention on the Transboundary Effects of Industrial Accidents (1991).⁴³⁸ It should be borne in mind that in case of any conflict or gap in the national environmental law, international regulations will prevail as per provisions of the Russian Constitution.⁴³⁹

Criminal liability in Russia⁴⁴⁰

The Russian Criminal Code Section IX Chapter 26 stipulates the various ecological violations that constitute a criminal offence and its associated fines under Russian law.⁴⁴¹ Though not directed to MNCs (legal persons) per se, individual act could make a legal entity liable (or an individual). Articles 246 to 262 stipulate violations relating to pollution of water and subsoil, waste disposal, atmospheric pollution. For instance, Article 250 states:

“ 1. Pollution, clogging, and exhaustion of surface and subterranean waters or sources of drinking water supply, or any other change of their natural properties, if these acts have involved the infliction of substantial harm on the animal or vegetable kingdom, fish reserves, forestry, or agriculture, shall be punishable by a fine in the amount of 100 to 200 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of one to two months, or by disqualification to hold specified offices or engage in specified activities for a term of up to five years, or by corrective labour for a term of up to one year, or by arrest for a term of up to three months.

2. The same acts, which have involved the infliction of injury on human health or mass-scale injury to of animals, and likewise acts committed on the territory of ...a zone of ecological distress, or in a zone of ecological emergency, shall be punishable by a fine in the amount of 200 to 500 minimum wages, or in the amount of the wage or

⁴³⁸ <http://www.kslaw.com/imageserver/KSPublic/library/publication/RussianEnvironmental.pdf> accessed 29.4.2013.

⁴³⁹ *ibid* note 405.

⁴⁴⁰ Federal law on Environmental Protection; Article 75. The Types of Liability for a Breach of the Environmental Protection Legislation (see note 428).

⁴⁴¹ The Criminal Code of the Russian Federation, adopted by the State Duma on May 24, 1996, approved by the Federation Council on June 5, 1996, see also Federal Law No. 64-FZ of June 13, 1996 on the Enforcement of the Criminal Code of the Russian Federation.

salary, or any other income of the convicted person for a period of two to five months, or by corrective labour for a term of one to two years, or by deprivation of liberty for a period of up to three years.

3. Acts provided for by the first or second part of this Article, and entailing by negligence the death of a person, shall be punishable by deprivation of liberty for a term of two to five years.”⁴⁴²

In a similar note Article 252 indicates the penalties for polluting the marine environment with toxic products that are harmful to human health and the ecosystem with a fine:

“... of 200 to 500 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of two to five months, or by disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or by corrective labour for a term of up to two years, or by arrest for a term of up to four months. ... The same acts, which have caused substantial harm to human health, flora, legally fauna, fish reserves, the environment, zones of recreation or to other law-protected interests, shall be punishable by deprivation of liberty for a term of up to three years, with a fine in the amount of 50 to 150 minimum wages, in the amount of the wage or salary, or any other income of the convicted person for a period of up to one month.”⁴⁴³

The above-mentioned go along to expose the negligence and inefficiency of the State to implement the law. Recurrent oil pollutions in Russia *prima facie* denote Russia as a toothless bull dog that can only bark and not bite due to its selective implementation of laws to suit its whims and caprices. Despite provisions of Article 11(1) of the Federal law on Environmental Protection which states that:

“Each citizen is entitled to a favourable environment, its protection against negative effects caused by economic and other activities, natural and man-made emergencies, to a reliable information on the condition of the environment and to reimbursement of a harm inflicted to the environment.”⁴⁴⁴

Furthermore, “...everybody is entitled to a favourable environment, reliable information on the condition thereof and to reimbursement for a harm inflicted to one’s health or property by

⁴⁴² *ibid.* Article 250 of the Russian Criminal Code.

⁴⁴³ *ibid.* Article 252 of the Russian Criminal Code

⁴⁴⁴ *ibid.* note 430 (2002 Environmental Protection Law)

an ecological offence.”⁴⁴⁵ Article 237 makes provision for punishment with “... a fine in the amount of 500 to 700 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of five to seven months, or by deprivation of liberty for a term of up to two years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or without such disqualification...”⁴⁴⁶ for any person who conceals information that may endanger health. If such concealment is committed by any:

“ person holding a post in the government of the Russian Federation or a post in the government of a subject of the Russian Federation, and likewise by the head of a local self-government body, or if such acts have inflicted harm to man's health or have resulted other grave consequences, shall be punishable with a fine in the amount of 700 to 1,000 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of seven to twelve months, or by deprivation of liberty for a term of up to five years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or without such disqualification.”⁴⁴⁷

The application of relevant Criminal liabilities will only be effective if the State upholds its role as protector of human rights and has no secondary pecuniary interests in such transactions. This is because though there are no specific regulations governing transnational activities of businesses, though there are relevant legislations; corruption and bad faith make its application unfeasible. Corruption has eaten deep into the fabrics of some officials who take excessive bribes regardless of its equivalent penalty, citizens still violate the law. Others raise defenses as to the lack of sufficient proof or the inability to establish a causation / causal link between the mens rea and the actus reus which leaves clear blueprints of a weak legal system with assorted window-shades in the name of regulatory mechanisms.

Civil liability in Russia

Civil liabilities are regulated via the Civil Code.⁴⁴⁸ It stipulates the civil rights of natural persons and legal entities as well as provides associated liabilities /compensations for any damages or wrong caused, such as those to the environment. Section II, Chapter 17 regulates

⁴⁴⁵ ibid. Article 42 of the 1993 Constitution.

⁴⁴⁶ Article 237 of the Russian Criminal Code.

⁴⁴⁷ See Article 237, Chapter 25. Crimes Against Human Health and Public Morality of the Russian Criminal Code.

⁴⁴⁸ The Civil Code of the Russian Federation (with the Additions and Amendments of February 20, August 12, 1996, October 24, 1997, July 8, December 17, 1999, April 16, May 15, November 26, 2001, March 21, November 14, 26, 2002, January 10, March 26, November 11, December 23, 2003 to 2009).

rights of ownership and other rights to land, the use of natural resources and related civil liabilities in case of a breach.

Moreover the Civil Code provides for a ‘discovery rule’ whereby the statute of limitations does not start until the day when the plaintiff learned, or should have learned about the violation of their right. Any potential litigant must bring a civil claim within three years or can only recover the equivalent of three years’ worth of damages.⁴⁴⁹

Administrative liability in Russia

This is regulated by the Code on Administrative Violations.⁴⁵⁰ Breach in administrative function in an operation may result in a fine or a suspension of such operation for up to 90 days. Otherwise, a closure may be imposed through a competent administrative proceeding.⁴⁵¹

Cleaner Production

Cleaner Production was adopted in Sophia 1995 during a meeting of European Ministers as a “... continuous implementation of integrated environmental strategies for production and processes, directed to decrease harmful effects on humans and the environment.”⁴⁵²

In effect, the essence of ‘cleaner production’ methodology in Russia to shift from the ‘end-of-pipe’ regulation to another preventive measure aimed at strengthening environmental compliance and enforcement.⁴⁵³

The concept has developed through the establishment of the Russian-Norwegian Cleaner Production Center which provides: (1) the cleaner production training programme (including cleaner production theory); (2) financial engineering and investment projects for cleaner production; and (3) preparing enterprises to develop EMS and ISO 14000 certification.⁴⁵⁴

Its principal activities include: Education ‘from engineer to engineer’ and identifying the primary sources of environmental problems of an enterprise.⁴⁵⁵ Over the past 10 years, it has

⁴⁴⁹ Elisabeth Barret Ristroph and Ilya Fedyaev: *Obstacles to Environmental Litigation in Russia and the Potential For Private Actions*, *Environ* Vol.29:2 p.228.

⁴⁵⁰ Code Of Administrative Offences of the Russian Federation No. 195-FZ of 30 of December 2001 (with the Amendments and Additions of April 25, December 31, 2002, June 30, July 4, November 11, December 8, 2003, April 25, 2002) Adopted by the State Duma on December 20, 2001 Endorsed by the Council of Federation on December 26, 2001.

⁴⁵¹ *ibid.* See Sections III and IV of the Administrative Code.

⁴⁵² *ibid.* note 405 and see also Declaration by the Ministers of Environment of the Region of the United Nations Economic Commission for Europe (UNECE), 25 October 1995. See: <http://www.unece.org/env/wgso/prekiev.declar/Sofia.E.pdf> http://www.unep.fr/shared/publications/other/WEBx0072xPA/manual_cdrom/Guidance%20Manual/PDF%20versions/Part2.pdf accessed 29.4.2013.

⁴⁵³ See <http://www.ruscp.ru/tsyngeng.htm> and <http://www.ruscp.ru/> accessed 29.4.2013.

⁴⁵⁴ *ibid.* note 405. See Chapter 16 (Dayman), for a discussion of EMS in Russia.

⁴⁵⁵ A. Tsygankov, L. Yanchik, On the development of the Cleaner Production Program in Russia (2004) p. 4.

trained over 1600 engineers from 600 enterprises, with special focus on the industrial plants in the Northwest region of Russia. The success of cleaner production programme in North West Russia has led to its adoption at the national level as a preventive measure for pollution.⁴⁵⁶

Anti-Corruption Regulations:

Corruption is a centuries old problem in Russia, well ingrained in its culture and language from Soviet times to Post-Soviet era.⁴⁵⁷ The Russian government has been regulating the phenomenon with legal efforts such as, the passage of the 2006 Criminal Law Convention on Corruption. In 2008, it enacted the Federal Law on Anti-Corruption Practices in 2008 (“Anti-Corruption Law”). Currently, a number of amendments have been made as of the 3rd of December 2012 by President Vladimir Putin which became enforceable on January 1, 2013.⁴⁵⁸ Before, anti-corruption compliance was at the discretion of any company. As of the 1st of January 2013, the new Article 13(3) requires and obligates all companies (“organizations”) operating in Russia to take anti-corruption measures strictly. The following compliance measures were proposed by the State:

“Definition of the divisions or officials responsible for prevention of corruption and other violations; Cooperation of organizations with law enforcement authorities; Development and introduction of standards and procedures aimed at ensuring compliance; Adoption of a code of ethics and business conduct applicable to the employees of the organization; Prevention and settlement of conflicts of interest; and Prevention of unofficial reporting and the use of forged documents.”⁴⁵⁹

The above- mentioned listed measures are neither mandatory nor exclusive. The new Article 13(3) does not obligate companies to take any specific measure. Rather, it requires all companies to take measures to prevent corruption. Adherence to the above does not shield liability for anti-corruption violations. Some commentators interpret the juxtaposition of Article 13(3) with the ‘all possible measures’ provision, as an extension of Anti-Corruption law requirements beyond the requirements of the FCPA or the UKBA.⁴⁶⁰

⁴⁵⁶ *ibid.*

⁴⁵⁷ See: www.guardian.co.uk/world/2013/mar/07/russian-officials-phrases-linked-corruption accessed 29.4.2013 N.B Nikolai Gogol, a 19th century writer made fun of the problem with dark humour in his write-ups.

⁴⁵⁸ The last modification is the adoption of the Federal Anti-Corruption Act on the 25th December 2012 entitled the ‘requirement of organizations to take measures to prevent corruption. see: <http://www.lexology.com/library/detail.aspx?g=c3c2ef56-b3cb-477e-9ec3-f24a655286b6> accessed 30.4.2013.

⁴⁵⁹ *ibid.*(Amended Anti-Corruption Law,2012

⁴⁶⁰ Debeviore and Plimpton LLP: Anti-Corruption Compliance Programs Under Russian Law: Article 13(3) and the FCPA/UKBA experience. See also Lexology, Russia, April 29, 2013.

It should be borne in mind that these so called ‘anti-corruption compliance measures’ have neither been defined nor been considered in any Russian court proceeding to date. Therefore, it will be no surprise to find any company accused of such violations will definitely lack any anti-corruption compliance measures that were sufficiently developed to constitute “all possible measures” in court.⁴⁶¹

From an administrative standpoint, the court could challenge such a defence. For instance, as a result of a breach by an employee, a company was accused of violating cash register rules. The court established sufficient evidence to prove its compliance with the rules. The company had adopted the necessary internal documents on its cash register rules which automatically obligate its employees to comply with its requirements.⁴⁶² Therefore the adoption of anti-corruption policies also serves as a defense for any company in case of an employee’s liability. In other words, any company that wants to avail itself with the ‘all possible measures’ defense; needs to audit its compliance measures in the letter and spirit of Article 13(3).⁴⁶³ Besides amending the current law, the State Duma in 2008 passed a bill to limit the number of inspections and amount of red tape that companies are liable to face as well as restricted authorized tax inspections and the confiscation of corporate documents without photocopies.⁴⁶⁴ Corruption and failure to successfully implement other CSR requirements stand as a barrier to Russia’s accession to the OECD as member state demands. The road map to meet these international standards remains challenging due to its Soviet past and its inability to reconcile past practice with the current evolving times.

Promoting Human Rights

As a protector of human rights, Russia has signed a number of applicable laws aimed at preserving the rights of man from abuses by legal persons such as oil MNCs (as seen above under the Russian Constitution). Besides, upholding the provisions of the Universal Declaration of Human Rights, Russia has ratified other international human rights instruments like the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights (fully) and the European Convention of Human Rights (with reservations). In addition, Russia co-sponsored Resolution 17/4 of June 2011, the

⁴⁶¹ *ibid.* note 460.

⁴⁶² *ibid.* note 460.

⁴⁶³ *ibid.* note 458.

⁴⁶⁴ See: www.business-anti-corruption.com/country-profiles/europe-central-asia/russia/?pageid=277 accessed 30.4.2013.

Russia has adopted federal laws aimed at protecting the most vulnerable class, the indigenous peoples, from abuses by oil MNCs. Examples include: Federal Law No.82-FZ on the guarantees of the rights of numerically small indigenous peoples of the Russian Federation (adopted in April 1999), Federal Law No.104-FZ on the general principles of organising communities of numerically small indigenous peoples of the North (adopted in July 2000), and Federal Law No.49-FZ on the territories of traditional natural resource use of numerically small indigenous peoples of the North, Siberia and Far East of the Russian Federation (adopted in May 2001). As noted the application of these ‘beautiful’ laws remain largely in paper, as indigenous peoples continue to suffer abuses caused by oil MNCs’ operations. In response, in August 2012, President Putin recommended the setting up of regional human rights ombudsman as a liaison between citizens to bring forward human right complaints involving private actors like businesses.⁴⁶⁶

Labour Regulations

The Russian Labour Code⁴⁶⁷ regulates the relationship between an employer and its employee as well as the accruing rights and interests therein. It authorizes any company operating in Russia to form a trade union to uphold and safeguard the rights of employees. The most significant items include Part 3, Section III, Chapter 10 that makes provision for labour contracts and what should constitute such a contract. Other items that ought to be respected and considered either by employers or employees includes the right to a vacation; the maximum duration of work a day / a week and the maximum hours for over-time. Lastly, it stipulates the conditions for termination of contracts by employers /employees.

Information Disclosure

One of the roadmaps for Russia’s accession to OECD is the requirement to foster information disclosure. Unfortunately, the right to access of information remains a dilemma in Russia owing to its historic (Soviet era) and social character. Article 29 of the Federal Constitution grants every citizen the right to ‘seek, get, transfer, produce and disseminate’ information by any lawful means.’ Companies are bound to report information resulting from spills and

⁴⁶⁵ The UN Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011. See: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf accessed 15.6.2013.

⁴⁶⁶ Institute for Human Rights and Business, Submission to the United Nations Human Rights Council Universal Periodic Review Session 16: Russian Federation October 2012.p.3. See also: http://www.gazeta.ru/politics/news/2012/08/16/n_2487993.shtml accessed 15.6.2013.

⁴⁶⁷ Federal Law No.197-FZ of 31 December 2001 (Labour Code of the Russian Federation of 31 December 2001).

health related hazards. The passing of a law on State Secrecy⁴⁶⁸ and its associated offences no matter its scope hampers information disclosure. Some citizens or legal persons might fear repercussions or suspension in case of unauthorised public reporting. In the same vein, some oil company operators (e.g. the state owned Gazprom and Rosneft) might conceal emergency disasters, health and social crimes under the guise of state secrecy. Therefore, as a so-called ‘propagator of anti-corruption’, Russia ought to promote transparency to attain its accession to OECD as well as meet CSR standards rather than stifle same under its strategic propaganda of ‘state secrecy’.

Above all, there is a call to ‘Self-Reporting’ and ‘Self-Control’ as an initiative to foster environmental, social and economic compliance. According to the Russian environmental legislation, industrial operators such as Oil giants must comply with the requirements of environmental self-control and reporting. In effect, the new version of the Federal Law “On Environmental Protection” states inter alia:

“Economic and other entities are obliged to provide information on the persons responsible for self-control, on the establishment of enterprise environmental units, as well as the report findings of self-control programmes to a respective executive authority engaged in the state environmental compliance assurance.”⁴⁶⁹

The implementation of self-conduct programmes and the financial cost is the full responsibility of each and every industry or enterprise operating in Russia (oil companies).⁴⁷⁰ Likewise, the provision of expertise, equipment and other facilities for analysis. Moreover, to ensure reliable and accurate monitoring data, the Federal State law on Technical Regulation,⁴⁷¹ obligates the accreditation of all industrial laboratories with the Gosstandart of Russia.⁴⁷² The adoption of the 2002 Federal Law on Technical Regulation has been asserted as a turning point in the history and development of regulatory frameworks in Russia;⁴⁷³ owing to the fact that it has necessitated the review of about 60,000 norms and regulations on matters of the environment, health and safety. Some mandatory norms have become voluntary while

⁴⁶⁸ Law No. 5485-1 of July 21, 1993 on State Secrets (as last amended by the Federal Law No. 309-FZ of November 8, 2011) : Official Secrets Act of the Russian Federation is information protected by the state on its military, foreign policy, economic, intelligence, counter-intelligence, operational and investigative and other associated activities, dissemination of which could harm state security.

⁴⁶⁹ New version of Federal Law on Environmental Protection went operational on the 1st of January 2006. See: <http://www.oecd.org/env/outreach/38118149.pdf> p.39 accessed 1.5.2013.

⁴⁷⁰ *ibid.* OECD p.39: “...Self-control is usually performed by the operators themselves according to the programmes, schedules, regulations, etc., which should be agreed upon with the sub-national bodies of the environmental enforcement authorities. The self-control programmes are a part of the permitting documentation. In principle, they are valid for five years while sampling schedules are updated annually...”

⁴⁷¹ Russian Federal Law No. 184-3, dated 27.12.2002 "On Technical Regulation" adopted 15.12.2002 by State Duma approved 18.12.2002 by Council of Federation.

⁴⁷² *ibid.* See also <http://gost-r-iso.com/pe7.html> accessed 1.5..2013

⁴⁷³ *ibid* note 471.

others will be quashed. Significantly, it has modified the procedure to propose, evaluate and adopt new standards and regulations.⁴⁷⁴ Though its implementation has been relatively discouraging, the OECD opines that the regulatory process will be more predictable, transparent, inclusive and participatory unless it is fully implemented.⁴⁷⁵

That notwithstanding, an Environmental Code is in the process of being enacted. It is assumed that its adoption will create a more coherent, result-oriented and cost-effective framework for environmental management.⁴⁷⁶ However, in the course of drafting this 'new' Code, neither the ex-post nor the ex-ante analysis of regulatory impacts has been taken into consideration.⁴⁷⁷ Thus, the danger is such a codification might "turn into symbolic action rather than changing the regulatory and compliance culture."⁴⁷⁸

After examining the relevant legal regimes in Russia as well as cross-examining its existing challenges characterized by rigidity, incoherence and ineffectiveness, it is fitting to briefly look at a few cases to assess the degree of judicial proceedings as well as the efforts of the Federal State of Russia to redress breaches in conformity with existing legal and regulatory frameworks. This analysis further exposes gaps and challenges in its regulatory frameworks.

4.2 REGULATING MNC ACTIVITIES THROUGH JUDICIAL PROCEEDINGS

The purpose of this sub-topic is to demonstrate the strengths and flaws of the Russian Judiciary system to regulate MNCs. These cases such as the former Yukos expose the degree of legal uncertainty and regulatory risks in Russia most especially foreign investors despite the existence of a foreign investment law.⁴⁷⁹

Oao Neftyanay Kopaniya Yukos v. Russia

Oao Neftyanay Kopaniya Yukos (or Former Yukos) was a Russian petroleum company that was controlled by Mikhail Khodorkovsky and other businessmen. In 2004, it was charged with tax evasion amounting to about US 7 billion. Yukos was accused by the government for

⁴⁷⁴ *ibid.* note 469 (OECD, 2006).

⁴⁷⁵ *ibid.* note 469 (OECD, 2006).

⁴⁷⁶ *ibid.* note 469 (OECD, 2006 page 32)

⁴⁷⁷ Sapozhnikova, Dr. Victoria: Environmental Protection in Russia: The Evolution from Strict Enforcement Measures and Environment Compliance Control to New Approaches Based upon Preventive Strategies). See also: Oleg Deripaska proposes to adopt the Environmental Code ie. http://www.deripaska.com/in_focus/detail.php?ELEMENT_ID=343#.UhiP7D8-hKY accessed 1.5.2013

⁴⁷⁸ *ibid.* Oleg Deripaska at RUIE Meeting 2012. (emphasized).

⁴⁷⁹ Federal Law No. 160-FZ on Foreign Investments in the Russian Federation 1999 see Lexis - International Law Library, RFLaw file. N.B-See: Legal risks include the inability of investors to rely "on a well-developed body of commercial law to ensure enforcement of security interests, and on an independent judiciary and expedient legal process to pursue claims, if necessary." Regulatory risks include regulations pertaining to natural resources management, access to resources, degree of intervention by the governmental authorities, and rules regarding the establishment and operation of subsidiaries. See: Arina Shulga, Foreign Investment in Russia's Oil and Gas: Legal Frameworks and Lessons for the Future, International Economic Law (2001).

misusing tax havens in the 1990s in Russia to reduce its tax burden. Unlike havens were special tax awarded for major oil companies to enable them carry out socio-economic developments. According to Yukos, its action was legal because companies like Lukoil, TNK-BP and Sibneft used the same tax optimization schemes. Unfortunately, only Yukos faced charges and penalties to this effect. As a mitigating circumstance, to avoid paying full taxes, Yukos subsidiaries declared the oil produced as ‘oil containing liquids.’⁴⁸⁰Yukos management made a friendly offer of US\$8 billion over a period of 3years.It is alleged that such singling out of Yukos was a crackdown by Putin on the company’s attempt to pay-off some Duma deputies to block oil tax reform legislation.⁴⁸¹ Yukos was forced to sell its assets as compensation for the alleged taxes evaded. Surprisingly only 2 bidders were involved in the auction which provoked the following statements by the Council of Europe: "Intimidating action by different law-enforcement agencies against Yukos and its business partners and other institutions linked to Mr. Khodorkovsky and his associates and the careful preparation of this action in terms of public relations, taken together, give a picture of a co-ordinated attack by the state."⁴⁸²

This "raises serious issues pertaining to the principle of nullum crimen, nulla poena sine lege laid down in Article 7 of the ECHR and also to the right to the protection of property laid down in Article 1 of the Additional Protocol to the ECHR."⁴⁸³

"The circumstances of the sale by auction of Yuganskneftegaz to “Baikal Finance Group” and the swift takeover of the latter by state-owned Rosneft raises additional issues related to the protection of property (ECHR, Additional Protocol, Article 1). This concerns both the circumstances of the auction itself, resulting in a price far below the fair market-value, and the way Yukos was forced to sell off its principal asset, by way of trumped-up tax reassessments leading to a total tax burden far exceeding that of Yukos’ competitors, and for 2002 even exceeding Yukos’ total revenue for that year."⁴⁸⁴

⁴⁸⁰ See Application No. Oao Neftyanay Kopaniya Yukos v Russia (Application no. 14902/04, Strasbourg Court, ECHR also: <http://www.old.khodorkovsky.info/authority/134825.html> accessed 30.4.2013.

⁴⁸¹ *ibid.*

⁴⁸² "Resolution 1418 (2005): The circumstances surrounding the arrest and prosecution of leading Yukos executives. See: <http://assembly.coe.int/Documents/AdoptedText/TA05/ERES1418.htm> Council of Europe accessed 30.4.2013

⁴⁸³ *ibid* note 481. "Nullum crimen, nulla poena sine lege" means [There exists] no crime [and] no punishment without a pre-existing penal law [appertaining] enshrined in international instruments like the European Convention (Article 7) and the Rome Statute of the International Criminal Court, Articles 7(1), 22 and 23.

⁴⁸⁴ *ibid* note 481. See also: <http://theyukoslibrary.com/en/jurisdictions/european-court-of-human-rights/the-ecthr-judgement/> accessed 30.4.2013. Note: ECHR, Additional Protocol, Article 1.

On a similar note, the board of Yukos accused the government of Russia of: "an unprecedented campaign of illegal, discriminatory, and disproportionate tax claims escalating into raids and confiscations, culminating in intimidation and arrests"⁴⁸⁵

On 23rd of April 2004, the management of Yukos made its submissions to the European Court of Human Rights on the grounds that its rights protected under European Convention on Human Rights have been violated in the Russian court and that the company was also a victim of discrimination. Yukos requested a redress of the following rights:

“Under Article 6 (right to a fair trial) of the Convention, the applicant company complains about various defects in the proceedings concerning its tax liability for the year 2000. Under Article 1 of Protocol No. 1 (protection of property), taken alone and in conjunction with Articles 1 (obligation to respect human rights), 13 (right to an effective remedy), 14 (prohibition of discrimination) and 18 (limitation on use of restrictions on rights) of the Convention, it complains about the lawfulness and proportionality of the 2000-2003 Tax Assessments and their subsequent enforcement, including the forced sale of OAO Yuganskneftegaz. Lastly, the applicant company complains, under Article 7 (no punishment without law) of the Convention, about the lack of proper legal basis, selective and arbitrary prosecution and the imposition of double penalties in the Tax Assessment proceedings for the years 2000-2003.”⁴⁸⁶

On the 29th of January 2009, the court declared the Yukos’ application admissible after 5 years of admissibility assessment.⁴⁸⁷ The formal hearing took place on the 4th of March 2010 with a claim of US\$98 billion.⁴⁸⁸ In September 2011, the court made the following decisions:

Russia violated Yukos’ right to fair legal proceedings against a tax re-assessment for the year 2000. Moreover, it violated Russia’s right to protection of property through enforcement proceedings carried out over tax assessments from 2000-2003.⁴⁸⁹

⁴⁸⁵ ibid note 481. Steven M. Theede, CEO of Yukos

<http://www.foreign.senate.gov/imo/media/doc/TheedeTestimony050217.pdf> accessed 14.6.2013.

⁴⁸⁶ See: Hearing *OAO Neftyanaya kompaniya YUKOS v Russia*, Application no. 14902/04 by European Court of Human Rights: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-106308#{"itemid":\["001-106308"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-106308#{) accessed 14.6.2013. Постановление Европейского суда по правам человека от 20.09.2011 <Дело ОАО "Нефтяная компания ЮКОС" (ОАО "Нефтяная Компания YUKOS") против России> [англ.].

⁴⁸⁷ <http://www.echr.coe.int/echr/echren.htm> accessed 1.5.2013.

⁴⁸⁸ Kramer, Andrew E. (4 March 2010). "European Court Ready to Hear Yukos Case". The New York Times.

N.B: This was the largest claim to be brought in the court’s 60-year history. The claim is an estimate of what the value of Yukos would have been if its assets had not been stripped away and the company had not been liquidated in 2007.

⁴⁸⁹ ibid. <http://www.yukosnewsonline.com/yukosnewsonline/2011/09/european-court-of-human-rights-confirms-that-yukos-oil-company-was-treated-unfairly-by-russian-court.html> accessed 1.5.2013.

However, it noted that though the tax liabilities applied were foreseeable, the crux of the matter was the rapid and inflexible enforcement of those liabilities. Hence, it held two items accountable for Yukos' demise and the violation of Article 1 of Protocol No. 1 thus:

"1. The bailiff's choice of Yukos' principal subsidiary as the first target for auction, without considering the implications for the company's future: this dealt Yukos a 'fatal blow'; 2. The Russian authorities were unyielding and inflexible in response to requests for time to pay and the bailiffs imposed additional fines amounting to €1.15 Billion, which had to be paid before the taxes, but the payment of which was prohibited under the freezing orders."⁴⁹⁰

The court held that the tax assessments were not disproportionate, that there was no discrimination as opposed to Article 14. Lastly, and that there was no misuse of legal procedures to dismantle Yukos. The ruling favoured both sides,⁴⁹¹ no pecuniary cost was awarded rather both parties had three months to settle dispute.⁴⁹²

In my opinion, although the ECHR ruling did not favour Yukos, it should be noted that such a move justifies Russia's nationalistic approach and policy to get a financial grip of the oil market as unveiled in the aforementioned statement by the Council of Europe. Rosneft's acquisition of 100% shares of Baikalinsgrupp; one of the only 2 bidders at the auction (besides Gazprom, another state company) leaves bold marks of bad faith and/or malicious intention. The prosecution of Mikhail K, also may frighten and stifle foreign investment in Russia. In Quasar de Valores SICAV S.A., et al. v. The Russian Federation, filed in March 2007 under the jurisdiction of the Stockholm Chamber of Commerce,⁴⁹³ the tribunal ordered the Russian government to compensate a group of Spanish investors for the losses incurred. They sought compensation based on a bilateral investment agreement between both states. The court ruled that Russia issued illegitimate tax bills as well as brought Yukos' assets under its control via a series of enforcement actions and subsequent bankruptcy.⁴⁹⁴ The tribunal concluded "that Yukos' tax delinquency was indeed a pretext for seizing Yukos assets and transferring them to Rosneft... The finding supports the Claimants' contention that the Russian Federation's real goal was to expropriate Yukos, and not to legitimately collect taxes."⁴⁹⁵ In this hallmark case, one of the lead counsels for the complainant, Meek -

⁴⁹⁰ European Court of Human Rights, ECHR. see: <http://www.monckton.com/newsitem/448/european-court-of-human-rights-finds-for-yukos-oil-company> accessed 1.5.2013.

⁴⁹¹ <http://en.rian.ru/russia/20110920/166976508.html> accessed 1.5.2013.

⁴⁹² European Court of Human Rights, ECHR. <http://www.theyukoslibrary.com/en/news/statements/yukos-comments-on-ruling-of-european-court-of-human-rights-of-8-march-2012> accessed 1.5.2013.

⁴⁹³ Quasar de Valores SICAV S.A., et al. v. The Russian Federation was filed in March 2007 under the jurisdiction of the Stockholm Chamber of Commerce. See: <http://en.rian.ru/business/20120726/174789782.html> accessed 1.4.2013.

⁴⁹⁴ *ibid.* note 492

⁴⁹⁵ *ibid.* note 492

Covington & Burling LLP said: ‘If Russia violates its treaty obligations and harms investors, there will be consequence.’⁴⁹⁶

Vyskrebetsev v. Sakhalinmorneftgas (SMNG)

The plaintiff, Vyskrebetsev, an inhabitant of Katangli brought a suit against SMNG, an oil company. SMNG began drilling 80meters from plaintiff’s home contrary to federal law that limits drilling to 300 meters from any residence.⁴⁹⁷ Plaintiff enforces his right to clean environment by petitioning SMNG for an alternative house in a different area. Plaintiff was fired during court proceedings. However, he had a good claim on grounds of sanitary zone and his residence was inhabitable. A health assessment report was performed as proof of threat to his health. To corroborate his evidence, plaintiff requested for witnesses from SMNG. Unfortunately for fear of termination of work, they refused to testify. However, the medical report indicated a remarkable drop in the health condition of plaintiff and his family after the establishment of SMNG. The court ruled in favour of the applicant ordering SMNG to provide an alternative residence within 6 months and pay compensation for his health and that of his family worth 100,000 RUR. SMNG delayed the courts’ decision until 2002 that it finally complied with the ruling in question.⁴⁹⁸

LUKOIL-Komi v. Komi Republic- Russia (Untreated water-waste case)

On the 7 May 2012, the Usink City Court found Lukoil guilty for releasing untreated sewage into a river in autumn 2011. It ordered the payment of a fine of US\$50,000 plus the organisation of clean up for restoration purposes before 2014.⁴⁹⁹ It should be borne in mind that, this incident was reported by residents in the Yarega oilfield, one of Lukoil’s facilities downstream. Lukoil has the right to release only treated wastewater into the river of a certain standard. Unfortunately, the compensation awarded by the court was far below the estimated health risks caused by Lukoil’s activities. According to sources from the regional environmental prosecutor in Komi and Moscow, it is alleged some corrupt dealings between the Lukoil and the judges spurred the reduction of the compensation.⁵⁰⁰

⁴⁹⁶ Meek-Covington& Burling LLP, *ibid*.note 492.

⁴⁹⁷ 300 meter line constitutes the security zone; see G.V. Raychenok v.Siberian Chemical Plant: “the Court held "under the Statute, an award of moral damage is not subject to proof of material damage.” Eduard Meylakh, *Gibloe Mesto*(2002),

⁴⁹⁸ Elizabeth Barrett Ristroph and Ilya Fedyaev, *Obstacles To Environmental Litigation in Russia and the Potential for Private Actions*, Spring 2006 P.237-239. See also Report of Environmental Watch of Sakhalin NGO on Results of Activities (2002) www.sakhalin.environment.ru/search.html? X 4327.

⁴⁹⁹ Дело № # 2/30/2012 Решение именем Российской Федерации. Усинский Городской Суд Республики Коми - Case # 2/30/2012, Decision in the name of the Russian Federation before the Usinsk City Court of the Komi Republic and Lukoil-Komi done on the 7th of May 2012.

⁵⁰⁰ See: www.ooskanews.com/international-water-weekly/lukoil-fined-over-pollution-russia%E2%80%99-Komi-region-2237 accessed 1.5.2013.

LUKOIL-Komi v. Komi Republic- Russia (Oil spill falsification case)

In 2009, a criminal case was initiated by the Russian Federation Prosecutor's office against LUKOIL-Komi for falsification of data information regarding an oil spill in Kyrtael-Chikshino. The Prosecutor's statement reads:

“In April 2009, the LLC ‘LUKOIL-Komi’ released information to the media that the specialists of the company finished the removal and utilization of the whole volume of oil spilled within the area of the Kyrtael-Chikshino oil pipeline. It was also stated that the ‘dewaxing’ of the ruptured pipeline was performed under the confirmation of controlling authorities, the location of oil pits were sited at a safe distance from water bodies, in frozen ground that excludes oil penetration into ground waters.”⁵⁰¹

In reaction, the State Prosecutor's office dispatched a team of inspectors in Komi Republic to conduct a check based on the claims of the company. Contrary to the above, investigations revealed the content of oil in the water sources was 60-70 times above maximum permissible limits. To date neither an action for remediation has been effected nor has a lawful redress been performed. Instead, the case was dismissed in 2010.⁵⁰² This clearly illustrates the sham and porous judicial system of Russia where laws are selected to suit beneficiaries to the detriment of the minority class.

From the foregoing, it is clear that without some NGOs (or whistleblowers like Greenpeace Russia, Sakhalin Environment Watch, and Bellona International), human rights violations (often caused by insufficient safety and operation measures e.g. the 2011 Kolskaya incident) and environmental violations (caused by dilapidated pipelines, falsifications and inefficient clean-ups as seen in the Kolskaya incident, and the Prirazlomnaya platform) in the Russian North would have continued to go unnoticed or covered-up either out of bad faith by managers of the oil MNCs, mere ignorance by the indigenous peoples or regulatory oversights. To curb these, stakeholders such as oil MNCs must consider societal interest first before self-interest by taking all necessary precautions to ensure safety and wellbeing during and after oil exploration as well as observe applicable laws out of good faith not as a result of external pressures from the judiciary or the State Duma. Despite a fine of about 12.53m RUR levied Gazprom Neft, a state company in 2009 for failure to clean up oil spills

⁵⁰¹ http://video.vefire.ru/Chego_NE_vidit_evropejskij_sputnik_ili_Planovye_razlivy_nefti_v_Respublike_Komi-v302399286.html accessed 18.6.2013. See also Greenpeace Russia 2010 Report.

⁵⁰² www.prockomi.ru/news/detail.php?ID-1757&phrase_id-127 accessed 1.5.2013.

by the state prosecutor of Yamal, minimal preventive measures were undertaken.⁵⁰³ In July 2012, the same prosecutor brought 13 criminal charges against Gazprom and ordered the payment of 30 m RUR⁵⁰⁴. Recently in January 2013, the regional prosecutor of Yamal opened 5 criminal cases against Gazprom and ordered the payment of 11m RUR.⁵⁰⁵ At this instance, the ‘polluter pays principle’ has failed to satisfy its purpose because Gazprom нефт has consistently failed to upgrade its outdated pipelines or carry out cleaning up as ordered by the court since 2009 to date. Thus, it seems oil MNCs most especially, the ‘State - owned Rosneft and Gazprom нефт’ are manipulating the legal system to suit their whims and caprices under the guise of promoting corporate social responsibility.

⁵⁰³ Yamal-Nenets Regional Prosecutors Office 2009 press release, See: www.prokyanao.ru/1552.php (Russian) accessed 1.5.2013.

⁵⁰⁴ Yamal-Nenets Regional Prosecutors Office 2011 press release, See: www.prokyanao.ru/3683.php (Russian) accessed 1.5.2013.

⁵⁰⁵ Yamal-Nenets Regional Prosecutors Office 2013, press release, www.prokyanao.ru/4114.php (Russian) accessed 1.5.2013.

CHAPTER 5

CONCLUSION: MAIN FINDINGS AND RECOMMENDATIONS

As discussed above, it is clearly evident that Russia's Soviet and Post-Soviet era is accountable for the current challenges and its inability to fully engage in international compliance standards like Corporate Social Responsibility.⁵⁰⁶ As a recap, some of these setbacks to international compliancy (herein termed 'findings') include:

- The Soviet and Post-Soviet crisis has plagued Russia with severe corruption and mismanagement of resources by state officials and private entrepreneurs. The inability to bridge the overriding current economic crisis, the quest to be a rich oil empire and the current international climate of CSR practice.
- Conflicts of interest at the level of administration between the federal and regional environmental units hinder the possible identification and redress of environmental, social and economic risks. Apart of Rosprirodnadzor's underestimation of the oil spill in Kolva river by Ruvietpetro - JV of Zarubezhneft and Vietnamese Vietpetro,⁵⁰⁷ Rosprirodnadzor has also declined taking action on grounds that Ruvietpetro - JV of Zarubezhneft is not registered within its jurisdiction.⁵⁰⁸
- The absence of a basic democratic forum to promote consultation with stakeholders in the different regions of oil explorations stifles information sharing and problem solving. This absence is coupled with the lack of autonomy of the local government.
- The multiplicity of federal laws and the reshuffling of state officials severely handicaps regulatory compliance. In the Soviet era, there were limited federal laws. Today, there are about 30 federal laws, over 200 regulations and about 800 documents of technical and standard norms that provoke incoherency and deficiency in its application by both the judiciary and the oil MNC managers because of its cumbersome nature and inconsistencies.⁵⁰⁹ Therefore law enforcement is inadequate to redress the social and environmental problems. The laws are more on paper than in practice.

⁵⁰⁶ http://www.fas.org/irp/nic/environmental_outlook_russia.html accessed 2.5.2013

⁵⁰⁷ <http://procrf.ru/news/127022-pechorskoy-prirodoohrannoy-mejrayonnoy-prokuraturoy-vyiyavlenyi-narusheniya-zakona-pri-likvidatsii-avariynogo.html> accessed 19.6.2013.

⁵⁰⁸ Открытое Письмо в Управление Федеральной Службы по Надзору в Сфере Природопользования (Росприроднадзора) по Республике Коми Прокурору Бажутову С.А. Department of Rosprirodnadzor Komi-Republic 2013.

⁵⁰⁹ Organisation for Economic Co-operation and Development - OECD, *Environmental Policy and Regulation in Russia*, The Implementation Challenges P.51

- Human rights observance and protection remains a challenge. Most laws are enacted to favour the law-makers to the disadvantage of the common Russian or the foreign investors. The rights of citizens (especially the indigenous peoples of the North) such as their rights to a favourable environment (healthy, unpolluted/clean) and to information without any form of compensation are breached. The absence of freedom of expression discourages civil society organisations from fostering CSR practice and sustainability.

As pointed out above, Russia's accession and membership to OECD requires a full redress and compliance/consideration with these main 'findings' and others mentioned in the course of this case –study. Some recommendations proposed by the OECD to fill in the existing gaps to attain stronger regulatory and compliance measures (CSR practice) include:

- Overcome the declarative character and fragmentation of environmental policy making⁵¹⁰ – Russia has to modernize its environmental policies to be result-oriented or outcomes-based, identify particular targets and generate finances to ensure its smooth operation. Moreover, the need to develop direct regulatory instruments aimed at improving environmental quality standards, EIA and permitting/licensing.⁵¹¹
- Ensure a high quality legal framework⁵¹² – The government of Russia should adopt laws in consultation with stakeholders that will be a reflective outcome of the current problems envisaged by these stakeholders. This and more will serve as a stimulus for stakeholders to work towards attaining CSR practice.
- Improve compliance assurance strategies and use compliance assurance tools more effectively⁵¹³ - for a better environmental and social behavioural climate in the oil industry, the state authorities ought to cooperate with NGO partners to generate compliance strategies and assurance tools to address CSR practice. Self-regulatory and self-reporting by Russian enterprises has to be top priority as well as voluntary initiatives of international standards.⁵¹⁴
- Fully implement the key principles of environmental federalism and strengthen the institutional framework for environmental management⁵¹⁵ - Russian authorities have to concentrate on enhancing the existing structures or institutions with strategies aimed at specific performance and results rather than focus on 'paper-work legislations' without any solid institutional frameworks. Moreover, there must be a more even

⁵¹⁰ *ibid.*note 506.p.54

⁵¹¹ *ibid.*note 506.p.54

⁵¹² *ibid.*note 506.p.54

⁵¹³ *ibid.*note 506.p.54

⁵¹⁴ *ibid.*note 506.p.54.

⁵¹⁵ *ibid.*note 506.p.54

coordination and communication between the regional, federal and national levels to ensure results.

From a personal standpoint, Russia should adopt capacity building programs at all levels for its employees (especially state officials like ministers and associated regional directors) to better appreciate the value, objective and need to observe and meet international standards or norms like CSR.

In addition, the government of Russia should set the pace or copy from its Arctic counterparts and adopt a convenient Corporate Social Responsibility legislation. In this way, the Russian government will redress its nationalistic tendencies over oil MNCs often manifested in its total lack of goodwill/good faith in the promotion of CSR practices for selfish motives. CSR practice could go a long way to bridge the Soviet and Post-Soviet gap and, inject a new spirit of ethical standards into every walk of life in Russia especially its legislative (State Duma), executive and judicial arm that are so prone to corrupt practices and administrative bureaucracy. Offences have been reported in courts without any major action taken to prosecute despite its severity like the Komi incidents reported above.

Furthermore, the Russian government should implement the Regulatory Impact Analysis which would enable a critical overview of the benefits, costs and effects of new or existing legislations. Such an impact analysis permits a thorough assessment of its importance and relevance within the legal system.⁵¹⁶ In this way, stakeholders will continually appreciate the importance and value of such outcomes (norms, regulations, federal laws) for the greater good of corporate social responsibility practice and its beneficiaries (especially the Russian indigenous peoples).

In addition, regular structural auditing of established oil infrastructure is necessary. The Russian Federal government should set up robust commissions to conduct impromptu checks to assess the degree of reliability of the existing pipelines as well as re-enforce and oversee the renovation, refurbishment and construction of oil pipelines in Russia to prevent unwarranted oil spills and accidents.

As noted above, Russia's attainment of its CSR objectives, would largely depend whether the Russian government and its oil stakeholders are willing to inculcate a "more receptive" culture of expert knowledge or transfer of technology within its oil sector operations and management with little or no legal limitations. Rather, such innovations should be oriented towards the common good of Russia's people rather than for personal aggrandizement.

⁵¹⁶ www.oecd.org/regreform/regulatory-policy/40984990.pdf accessed 3.5.2013.

Nonetheless, NGOs such as Greenpeace, WWF and RAIPON should continue to advocate and galvanize efforts towards the promotion of CSR despite restrictions encountered as per their well enshrined and constitutional rights to freedom of speech and association. Against all odds, these whistleblowers have distinctly unveiled and challenged some unreported cases of oil spills and other hazards in Russia caused by oil MNCs mentioned herein.

In conclusion, though CSR practice is currently considered a voluntary initiative. Its potential to transform a legal system and its associated institutions into a socially, environmentally and ethically conscious system could be quite promising provided actors have the political will and good faith to accept change for a common good rather than for personal interest. Russia's CSR development is timid but promising. Its biggest challenge boils down to reconciling its Soviet and Post-Soviet era. Its transformation process has to be gradual with capacity building initiatives and programmes focused on sensitizing the Russians on the importance, recognition and role of regulatory frameworks and ethical standards in the Post-Soviet era as a regarding this role as a moral obligation. Each Oil MNC should consider CSR as part and parcel of its public responsibility to comply with the laws and ethical standards thus contributing to nation building by upholding societal values at the same time making profits. The State should consider CSR as a yard stick to assess compliance with international standards rather than create a scenario of score-settlement and punishment as was the case in the Soviet times. In other words, the government of Russia should inform, sensitize and engage oil companies in dialogue and negotiations on voluntary initiatives and, provide incentives and assistance to oil MNCs who manifest the willingness to apply CSR practice as well as re-enforce its monitoring and sanctioning strategies.⁵¹⁷ Above all, the Russian government has to inform oil MNCs of their responsibility to comply with the UN Guiding Principles on Business and Human Rights, especially during operations within indigenous territories. On the other hand, Russia's ratification of International Labour Organisation Convention No.169⁵¹⁸ and enactment of a more specific legislation to effectively regulate key industrial sectors like the extractive companies would ensure better protection of the rights of indigenous peoples.⁵¹⁹

⁵¹⁷ <http://www.siteresources.worldbank.org/extdevcomsusdevt/resources/crsframework.pdf> accessed 3.5.2013.

⁵¹⁸ <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm> accessed 18.6.2013.

⁵¹⁹ *ibid.* note 466 (Institute for Human Rights and Business P.6).

BIBLIOGRAPHY

A. Fatouros, 'National Legal Persons in International Law' in R. Bernhardt (ed.), *Encyclopedia of Public International Law*, 5 vols. (Amsterdam: North Holland, 1997), vol. III, P.495.

A.J. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (2007) 10(1) *Journal of International Economic Law* 161.

A.M. Carlos and S. Nicholas, "Giants of Earlier Capitalism: The Chartered Trading Companies as Multinational Corporations" (1988) 62 *Business History Review* 398.

A. Tsygankov, L. Yanchik, *On the development of the Cleaner Production Program in Russia* (2004) p. 4.

Alexandra Xanthaki, *Indigenous Rights in the Russian Federation: The Case of Numerically Small Peoples of the Russian North, Siberia, and Far East*. *Human Rights Quarterly*; Feb 2004, 26, 1 ProQuest Central p.77.

Alexei Bambulyak and Bjørn Frantzen, *Oil Transport from the Russian part of the Barents Region*, Copyright © 2005 by Svanhovd Environmental Centre.

Alvarez, J.E (2010) 'Are Corporations 'Subjects' of International Law? NYU School of Law, Public Law Research Paper No.10-77 sourced at SSRN.

Andy Crane and Dirk Matten, *Business Ethics*, 2004

Anita Ramasastry, *Corporate Complicity: From Nuremberg to Rangoon, An Examination of Forced Labor Cases and their Impact on the Liability of Multinational Corporations* (*Berkley Journal of International Law* 20:91) accessed <http://heinonline.org> 30.10.2012.

Arina Shulga, *Foreign Investment in Russia's Oil and Gas: Legal Frameworks and Lessons for the Future*, *International Economic Law* (2001).

Aslaug Mikkelsen and Oluf Langhelle Ed., *Arctic Oil and Gas Sustainability at Risk?* Routledge, Taylor and Francis Group, 2008. P.29-30.

Bantekas, Ilias (2004) *Corporate social responsibility in international law*. Boston University *International Law Journal*, 22 (2). pp. 309-347. ISSN 0737-8947.

Beth Stephens, "The Amoralism of Profit: Transnational Corporations and Human Rights" (2002) 20 *Berkley Journal of International Law* 45; See also S. Chesterman, "Oil and Water: Regulating the Behaviour of Multinational Corporations through Law" (2004) 36 *International Law and Politics*, 307, 323-325.

Birnie and Boyle, *International Law and the Environment*, p.25

Bjorn-Tore Blindheim in Arctic Oil and Gas Sustainability at Risk chapter 4 Edited by Aslaug M and Oluf L, excerpts from Arctic Human Development Report 2004:10.

C. Glinks, "Corporate Code of Conduct: Moral or Legal Obligation" in D.McBarnet, A.Voiculescu and Campbell, eds., The New Corporate Accountability: Corporate Social Responsibility and the Law (Cambridge: Cambridge University Press, 2007).

C. Parker, The Open Corporation: Effective Self-regulation and Democracy (Cambridge: Cambridge University Press, 2002).

Carolin Hillemanns, European & International Law UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, 10 GERMAN L. J. (2003)

Cassese, Antonio, International law Second edition, Oxford University Press, 2005.

Cassese, Antonio, International Law in a Divided World, (1989) Oxford, Oxford University Press at 99.

Charles Emmerson, lead author, Arctic Opening: Opportunity and Risk in the High North, Chatham house, 2012, Incident occurred in November 1980, remained uncontrolled for 6yrs causing severe damage on whitefish feeding.

Chinkin, 'The Challenge of Soft Law', 865-6.

D Wood, 'Corporate Social Performance Revisited' (1991) 16(4) The Academy of Management Review.

D. Kokkini -Iatridou and P.de Waart, 'Foreign Investments in Developing Countries: Legal Personality of Multinationals in International Law' (1983) 14 NYIL 87, 101-4

D.J. Peterson, Environmental Activism in the New Russia: Prospects for the Coming Decade, Report to the National Council for Eurasian and East European Research (Washington DC, National Council for Eurasian and East European Research 1997).

Daria N. Ratsiborskaya, Russian Environmental Law – An Overview For Businesses, 2010 Researcher at the Asser Institute.

David C. Korten, When Corporations Rule the World 125(1995); Peter Muchlinski, Multinational Enterprises and the Law 12-15(1995); Cynthia D. Wallace, Legal Control of the Multinational Enterprise 10-12(1982).

Davis Keith, 1973, The Case For and Against Business Assumption of Social Responsibilities p.71

De Schutter, Olivier, Extraterritorial Jurisdiction as a tool for improving the Human Rights Accountability of Transnational Corporations, Chapter III.

Debevoise and Plimpton LLP: Anti-Corruption Compliance Programs Under Russian Law: Article 13(3) and the FCPA/UKBA experience. See also Lexology, Russia, April 29, 2013

Dicken P, Global Shift: Transforming the World Economy, 3rd edition (London : Paul Chapman Publishing, 1998)

Dine,J, Companies, International Trade and Human Rights (Cambridge: Cambridge University Press, 2005), 48.

E. Black, IBM and the Holocaust (London: Time Warner, 2002); M.Wallace, The American Axis: Henry Ford, Charles Lindbergh and the Rise of the third Reich (New York: St. Martin's Press 2003); United Nations Conference on Trade and Development, 2003, FDI Policies for Development: National and International Perspectives, World Investment Report 2003 (Geneva: UNCTAD, 2003).

Edwin Black, IBM and the Holocaust: The Strategic Alliance between Nazi Germany and America's Most Powerful Corporation, 2001.

Elizabeth Barrett Ristoph and Ilya Fedyaev, Obstacles To Environmental Litigation in Russia and the Potential for Private Actions, Spring 2006 P.237-239. See also Report of Environmental Watch of Sakhalin NGO on Results of Activities (2002) [www.sakhalin.environment.ru/search.html? X 4327](http://www.sakhalin.environment.ru/search.html?X4327).

Fieldhouse. D, The Multinational: A Critique of a Concept in A.Teichova, M.Levy- Leboyer and H. Nussbaum (eds.), The Multinational in Historical Perspective (Cambridge, Cambridge University Press, 1986).

Geoffrey Chandler, Commentary on the United States Council for International Business "Talking Points" on the United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, at <http://209.238.219.111/Chandler-commentary-on-USCIB-Talking-Points.htm> accessed 23.5.2013.

H. Ward, "Corporate Social Responsibility in Law and Policy" in N. Boeger, R. Murray and C. Villiers, eds. Perspectives on Corporate Social Responsibility (Cheltenham: Edward Elgar, 2008), 18.

H.Ward, "Legal Issues in Corporate Citizenship" (Swedish Partnership for Global Responsibility, 2003). 8.

Henry Eilbert and Robert Parket, The current status of CSR, Business Horizons, 16 1973 p.7

Holland, J. "Maximising Value from CSR", Marketing November: 15, Singapore: Lighthouse Independent Media.

I. Lynch Fannon, "The Corporate Social Responsibility Movement and Law's Empire: Is there a conflict?" (2007) 58(1) Northern Ireland Legal Quarterly 15, 19.

J. Cox, "Corporations Challenged by Reparations Activists" USA Today, 21 February 2002.

J. Ruggie, "Promotion and Protection of Human Rights: Interim Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Businesses" (Commission on Human Rights, E/CN.4/2006/97).

J.L Cohen, Regulating Intimacy (New Jersey: Princeton University Press, 2002), 17.

Jagdish N. Bhagwati (editor) (1977) The New International Economic Order: The North-South Debate. ISBN 0-262-52042-7

Jed Greer and Kavaljit Singh, A Brief History of Transnational Corporations (Corpwatch, 2000)

Jennifer A.Zerk, *Multinationals and Corporate Social Responsibility, Limitations and Opportunities in International Law*(Cambridge Studies in International and Comparative Law,2006)

John T.Scholtz, *Enforcement Policy and Corporate Misconduct: The Changing Perspectives of Deterrence Theory*, 60 *Law & Contemp. Probs.*253(1997)

Joseph, 'Taming the Leviathians'; ICHRP, 'Beyond Voluntarism'

Julian Agyeman and Yelena Ogneva-Himmelberger (Editors) *Environmental Justice and Sustainability in the Former Soviet Union*, 2009.

K. Buhmann, "Corporate Social Responsibility: What Role for Law? Some Aspects of Law and CSR" (2006) 6 *Corporate Governance* 188.

K. Levitt, *Silent Surrender: The American Economic Empire in Canada* (New York: Liveright Press, 1970)

Kinley and Tadaki, 'From Talk to Walk',946

Kuznetsov. A, and O.Kuznetsova, *Business Legitimacy and CSR, the Russian context*, 2008

L.C.Backer, 'Multinational Corporations, Transnational Law; the United Nations Norms on the Responsibilities of Transnational Corporations as a Harbinger of Corporate Social Responsibility' (2005-2006) 37 *Columbia Human Rights Law Review* 287.

L.Dhooge, 'Beyond Voluntarism: Social Disclosures and France's Nouvelles Regulations Economiques' (2004) 21 *Ariz JICL* 441, 446.

L.E.Mitchell and T.A.Gabaldon, "If I Only Had a Heart: Or, How Can We Identify a Corporate Morality" (2001-2002) 76 *Tulane Law Review* 1645

Larisa Nikitina, *Development of Institutional Control of Corporate Social Responsibility In The Regions of Russia at I International Symposium Engineering Management And Competitiveness 2011* (EMC2011) June 24-25, 2011, Zrenjanin, Serbia.

Lawrence Friedman, 'In Defense of Corporate Criminal Liability' (2000) 23 *Harvard Journal of Law & Public Policy* 833, 844

M. Blowfield and J.G. Frynas, "Setting New Agendas: Critical Perspectives on Corporate Social Responsibility in the Developing World" (2005) 81 *International Affairs* 499.

M. Caven, *The International Covenant on Economic, Social and Cultural Rights* (Oxford : Clarendon Press;1995)

M.Sornorajah, 'Linking State Responsibility for Certain Harms Caused by Corporate National Abroad to Civil Recourse in the Legal Systems of Home States' in C.Scott (ed.). *Torture as Tort: Comparative Perspectives on the Development of Transnational Human Rights Litigation* (Oxford: Hart Publishing, 2001).

Maastricht Guidelines on Violations on Economic, Social and Cultural Rights, para.18 (reproduced at (1998) 20HRQ 691) (emphasis added).

Mark A.Stoleman, Investment at an Impasse: Russia's Production Sharing Agreement Law and the Continuing Barriers to Petroleum Investment in Russia, Duke Journal of Comparative and International Law,1997.

Milton Friedman, The Social Responsibility of Business is to Increase Profits, The New York Times Magazine, September 13, 1970. Copyright @ 1970 by The New York Times Company retrieved on 5.3.2013 see: <http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html>

Milton Friedman, The Social Responsibility of Business is to Increase its Profits, The New York Times Magazine, September 13, 1970. Copyright @ 1970 by The New York Times Company.

Muchlinski, Peter: Multinational Enterprises and the Law 62-80(1995)

Murray.J, "New Phase in the Regulation of Multinational Enterprise: The Role of the OECD" (2001) 30(3) Industrial Law Journal 255

Muzaffer Eroglu, Multinational Enterprises and Tort Liabilities: An Inter-disciplinary and Comparative Examination, Corporations, Globalisation and the Law, Edward Elgar Publishing Ltd,2008:

Olufemi Amao, Corporate Social Responsibility, Human Rights and the Law (Routledge Research in Corporate Law,2011) 12

Om Prakash, European Commercial Enterprise in Pre-Colonial India (Cambridge University Press, Cambridge 1998)

P.Alston and G.Quinn, The Nature and Scope of State Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights' (1987) 9 HRQ 156, 186-92.

P.Muchlinksi, "The SRSR Reports on Further Steps Taken Towards Operationalizing the 'Protect, Respect and Remedy' Framework"(Institute for Human Rights and Business,12/5/10).

Pavel P.Krotov, Extractive Industries in Transition: Comparative Analysis of Timber and Oil in Komi, University of Wisconsin-Madison, 2000.

Porter, R and Kramer, M. (2002) 'The Competitive Advantage of Corporate Philanthropy', Harvard Business Review 80(12): 57-68.

Preston, L. E. ,& Post, J. E. (1975). Private management and public policy: The principle of public responsibility. Englewood Cliffs, NJ: Prentice Hall. Samuelson

R. Gilpin, "The Political Economy of the Multinational Corporation: Three Contrasting Perspectives" (1976) 70(1) American Political Science Review, 184.

R.Barnet and R.Muller,Global Reach: The Power of the Multinational Corporations(New York: Simon and Schuster, 1974), p.75.

R.L. Grossman and F.T Adams, Taking Care of Business: Citizenship and the Charter of Incorporation (Cambridge, MA: Charter Ink, 1993), 5.

Richard Bernstein, I.B.M's Sales to the Nazis: Assessing the Culpability, N.Y.TIMES March 7, 2001, at E8.

Rosalyn Higgins, Problems & Process, International Law and how we use it (1994)

S.Macleod and D.Lewis, "Transnational Corporations: Power, Influence and Responsibility" (2004) 4(1) Global Social Policy 77.

S.R. Ratner, "Corporations and Human Rights: A Theory of Legal Responsibility" (2001) 111 Yale Law Journal 443,453

Samuel Peltzman, Towards a More General Theory of Regulation, 19 J.L. & Econ.211(1976).

Sapozhnikova, Dr.Victoria: Environmental Protection in Russia: The Evolution from Strict Enforcement Measures and Environment Compliance Control to New Approaches Based upon Preventive Strategies).See also: Oleg Deripaska proposes to adopt the Environmental Code ie. http://www.deripaska.com/in_focus/detail.php?ELEMENT_ID=343#.UhiP7D8-hKY accessed 1.5.2013

Sarah Joseph, 'Taming the Leviathans': Multinational Enterprises and Human Rights, 177-8

Sean D. Murphy, Taking Multinational Codes of Conduct to the Next Level, Columbia Journal of Transnational Law, 2005 p.44.

Seferian Nazareth, July 2013 in her book review of The New Corporate Accountability: Corporate Social Responsibility and the Law; Edited by Doreen McBarnet, Aurora Voiculescu and Tom Campbel, 2009.

Sergei M. Govorushko, Environmental Impact Assessment in Russia. 1997. P.195-201.

Surya Deva, Human Rights Violations by Multinational Corporations and International Law: Where from here? (19 Connecticut International Law Journal 1-57,2003)

Svetlana Solodyankina and Johann Koepfel, The environmental impact assessment process for oil and gas extraction projects in the Russian Federation: possibilities for improvement. see: <http://www.tandfonline.com/doi/pdf/10.3152/146155109X430344> accessed 14.6.2013.

Sylvain Rossiaud and Catherine Locatelli "The obstacles in the way of stabilizing the Russian oil model" Post-Communist Economies 21, 4 (2009) 425-438. See E.N.Andreyeva and V.A. Kryukov p.247.

U.Baxi,'Market Fundamentalisms: Business Ethics at the Altar of Human Rights'(2005) 5 Human Rights Law Review I.

Van De Mierop, Marc (2005). King Hammurabi of Babylon: A Biography, Blackwell Publishing.

Veronika Afanasyeva, Logistics and Transport BE 303 Supply chain of the Shtokman field development project, Spring 2009.

Wallace, C.D, The Multinational Enterprise and Legal Control: Host State Sovereignty in an Era of Economic Globalization (The Hague: Martinus Nijhoff Publishers, 2002), 9.

Ward, H.(2004) 'Public Sector Role in Strengthening Corporate Social Responsibility : Taking Stock, the World Bank, International Finance Corporation, The World Bank Group.

Weissbrodt and M.Kruger, "Norms on the Responsibilities of Transnational Corporations and other Businesses Enterprises with Regard to Human Rights" (2003)97 American Journal of International Law 901.

Willem J.M. von Genugten, The Status of Transnational Corporations in International Public Law, in Human Rights and the Oil Industry, at 84-89.

Websites/Publications:

Alexey Kostin, Executive Director of NGO, Corporate Social Responsibility-Russian Centre. see : http://www.enebuilder.net/globalcompact/e_article000775164.cfm accessed 30.5.2013

Business of a Better World: www.bsr.org

Charles Digges, Statoil backs off drilling projects off Alaskan coast in line with Shell, Bellona International published 7.3.2013. See: http://www.bellona.org/articles/articles_2013/Statoil_backs_off_alaska accessed 26.4.2013.

Corporate Responsibility Bill, 2003 see www.publications.parliament.uk/pa/cm200203/129/2003129.pdf.

Daniel Schwartz, Russia, world's worst oil polluter, now drilling in Arctic, CBC-24 September 2012 See: <http://www.cbc.ca/news/world/story/2012/09/21/f-russia-arctic.html> accessed 25.4.2013.

Declaration by the Ministers of Environment of the Region of the United Nations Economic Commission for Europe (UNECE), 25 October 1995. See: <http://www.unece.org/env/wgso/>

Deloitte-Russia, 2012 Report - [http://deloitte.com/assets/Dcom-Russia/LocalAssets/Documents/EnergyandResources/overviewoftheoilandgassectinthe RF-2012pdf](http://deloitte.com/assets/Dcom-Russia/LocalAssets/Documents/EnergyandResources/overviewoftheoilandgassectintheRF-2012pdf) accessed on the 16.4.2013

European Court of Human Rights, ECHR. <http://www.theyukoslibrary.com/en/news/statements/yukos-comments-on-ruling-of-european-court-of-human-rights-of-8-march-2012> accessed 1.5.2013.

European Court of Human Rights, ECHR. see: <http://www.monckton.com/newsitem/448/european-court-of-human-rights-finds-for-yukos-oil-company> accessed 1.5.2013.

Gazprom 2010–2011 Report. See: www.gazprom.com/f/posts/51/402390/sustainability-report-2011-en.pdf accessed 25.4.2013.

General Assembly resolution 2581 (XXVI) - <http://untreaty.un.org/cod/avl/ha/dunche/dunche.html> accessed 20/5/2013

Hearing OAO Neftyanaya kompaniya YUKOS v Russia, Application no. 14902/04 by European Court of Human Rights: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-106308#{"itemid":\["001-106308"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-106308#{) accessed 14.6.2013. Постановление Европейского суда по

правам человека от 20.09.2011 <Дело ОАО "Нефтяная компания ЮКОС" (ОАО "Neftyanaya Kompaniya YUKOS") против России> [англ.].

Howard Bowen, Fortune Magazine's survey 1946 P.6. Published in 1953 with title Social Responsibilities of Businessmen, New York: Harper and Row

LUKOIL Sustainability Report 2010:

http://www.lukoil.com/materials/doc/reports/social/sots_luk_eng_2010.pdf accessed 22.4.2013.

Greenpeace Report: http://www.greenpeace.org/russia/report/arctic-oil/arcticsave_english_26_apr.pdf. P.6. accessed on 24.4.2013

OECD Reforms: <http://www.oecd.org/regreform/regulatory-policy/40984990.pdf> accessed 3.5.2013.

Ooskanews on Komi Republic: http://www.ooskanews.com/international-water-weekly/lukoil-fined-over-pollution-russia%E2%80%99-Komi-region_2237 accessed 1.5.2013.

SIDA Guidelines: <http://www.sida.se>, Guidelines for SIDA's support to Corporate Social Responsibility published in February 2012.

The UN Global Compact: <http://www.unglobalcompact.org>

Cour de Cassation France : <http://digitaljournal.com/article/333666> accessed 26.4.2013. Full judgment: http://www.courdecassation.fr/IMG///Crim_arret3439_20120925.pdf accessed 23.6.2013.

Tripartite Declarations: <http://hrrca.org/system/files/tripartite%20declarations%20MNE.pdf> accessed 22.5.2013.

European Court of Human Rights:

[http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["fadeyevav.russia"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-69315"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{) accessed 14.6.2013

New International Economic Order: <http://michael-hudson.com/books/global-fracture-the-new-international-economic-order/>

<http://procrf.ru/news/127022-pechorskoy-prirodoohrannoy-mejrayonnoy-prokuraturoy-vyiyavleniyi-narusheniya-zakona-pri-likvidatsii-avariynogo.html> accessed 19.6.2013.

Shell Texas USA incident: <http://rt.com/usa/shell-pipeline-oil-texas-409/> accessed 26.4.2013

European Court of Human Rights: <http://theyukoslibrary.com/en/jurisdictions/european-court-of-human-rights/the-ecthr-judgement/> accessed 30.4.2013. Note: ECHR, Additional Protocol, Article 1.

Business anti-Corruption, Russia: <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/russia/?pageid=277> accessed 30.4.2013.

Arctic Council and Canada: <http://www.cigionline.org/articles/2012/08/canada-and-arctic-council-what-will-change-2013-2015> retrieved 21.3.2013

CSR Russia Memorandum:

http://www.csrweltweit.de/uploads/tx_jpdownloads/csr_russi_memorandum.pdf accessed on the 17.4.2013

Russian Oil and Gas Industry:

<http://www.eisourcebook.org/cms/Responsible%20Contracting%20in%20the%20Russian%20Oil%20&%20Gas%20Industry.pdf> p.8 accessed 27.4.2013.

Environment Outlook Russia: http://www.fas.org/irp/nic/environmental_outlook_russia.html accessed 2.5.2013

Global Policy: <http://www.globalpolicy.org/component/content/article/221/47068.html> accessed 23 October 2012.

Trade Agreement Accords Canada: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/report2011-rapport2011.aspx?view=d>.accessed on the 14.3.2013

Johannesburg Summit: http://www.johannesburgsummit.org/html/basic_info/basicinfo.html accessed 20.5.2013.

KS Law: <http://www.kslaw.com/imageserver/KSPublic/library/publication/RussianEnvironmental.pdf> accessed 29.4.2013.

New York Law Journal:

http://www.law.nyu.edu/ecm_dlv3/groups/public/@nyu_law_law_website_journals_journal_of_international_law_and_politics October 2012

LUKoil Annual Report 2005:

http://www.lukoil.com/materials/doc/annual_report_2005/LUKOIL_AR2005_ENG.pdf accessed on 20.4.2013.

OECD Russia:

<http://www.oecd.org/russia/conferencecorporatesocialresponsibilityandlocaldevelopmenttrentoitaly.htm> accessed 16.4.2013.

Khodorkovsky: <http://www.old.khodorkovsky.info/authority/134825.html> accessed 30.4.2013.

Premier of Russia : <http://www.premier.gov.ru/visits/ru/12528/events/12540/> accessed 25.4.2013.

Komi news: http://www.prockomi.ru/news/detail.php?ID=1757&phrase_id=127 accessed 1.5.2013.

Rosneft Development: <http://www.rosneft.com/development/social> accessed on 19.4.2013.

World Bank CRS Framework:

<http://www.siteresources.worldbank.org/extdevcomsusdevt/resources/crsframework.pdf> accessed 3.5.2013.

Russian Tribuna: <http://www.tribuna.ru/material/060804/ftp/04.pdf> accessed 24.4.2013 and Bellona

International Reports: <http://www.bellona.org/reports/report/1196860968.48> accessed 24.4.2013.

Igor Yurgens: Corporate Social Responsibility of Russian Companies, Aix-en-Provence Economic Forum June 2008. See: http://www.insor-russia.ru/en/_news/analytics/1175 accessed on 16.4.2013

Institute for Human Rights and Business, Submission to the United Nations Human Rights Council Universal Periodic Review Session 16: Russian Federation October 2012.p.3.See also: http://www.gazeta.ru/politics/news/2012/08/16/n_2487993.shtml accessed 15.6.2013.

International Labour Organisation, 'Multinational Enterprises and Social Policy' online available: www.ilo.org/public/english/employment/multi/tripartite/history.Htm (accessed.9.3.2013).

International Labour Organisation: I.L.O See: www.ilo.org

Lloyds' of London, Chatham House, 2012 see: <http://priceofoil.org/2012/04/16/lloyds-warns-of-arctic-drilling-risk/> accessed 9.6.13.

Lukoil-Komi v. Komi Republic- Russia (Oil spill falsification case) see: http://video.vefire.ru/Chego_NE_vidit_evropejskijj_sputnik_ili_Planovye_razlivy_nefti_v_Respublike_Komi-v302399286.html accessed 18.6.2013. See also Greenpeace Russia 2010 Report.

Mikael Anzen, Current Chair of the SDWG see: <https://www.globalreporting.org/information/news-and-press-center/Pages/Preserving-a-fragile-region-The-role-of-CSR-in-the-sustainable-development-of-the-Arctic.aspx> accessed on the 11/3/2013

Ministry of Natural Resources, RF See: <http://www.mnr.gov.ru/part/?pid=398> accessed 27.4.2013.

Ministry of Public Health and Social Development Russia - See: <http://www.minzdravsoc.ru> accessed 27.4.2013.

Ministry of Regional Development of the Russian Federation See: www.minregion.ru/upload/.../2012/.../doklad-postoyannyi-forum-ang.d accessed 13.6.2013.

Opinion of Professor Emeritus Maurice Mendelson Q.C. see www.reports-and-materials.org/CBI-Annex-A-Mendelson-opinion.doc accessed 23.5.2013

Organisation for Economic Co-operation and Development - OECD, Environmental Policy and Regulation in Russia, The Implementation Challenges P.51

Organisation for Economic Cooperation and Development see www.oecd.org, OECD Guidelines for Multinational Enterprises 1976, Revision 2000.

Quasar de Valores SICAV S.A., et al. v. The Russian Federation was filed in March 2007 under the jurisdiction of the Stockholm Chamber of Commerce. See: <http://en.rian.ru/business/20120726/174789782.html> accessed 1.4.2013.

Resolution 1418 (2005): The circumstances surrounding the arrest and prosecution of leading Yukos executives. See: <http://assembly.coe.int/Documents/AdoptedText/TA05/ERES1418.htm> Council of Europe accessed 30.4.2013

Sakhalin Environment Watch: www.sakhalin.environment.ru/oilrazliv/pub/2006 accessed 24.4.2013.

Steven M. Theede, CEO of Yukos <http://www.foreign.senate.gov/imo/media/doc/TheedeTestimony050217.pdf> accessed 14.6.2013.

Tatiana Klimova, Social Responsibility in Russia: Yesterday, Today...and Tomorrow? Published January 2013. see: <http://business-ethics.com/2013/01/09/10522-social-responsibility-in-russia-yesterday-today-and-tomorrow/> accessed 1.6.2013.

The Global Reporting: <http://www.globalreporting.org> (accessed 11.3.2013).

The International Labour Organisation's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (Tripartite Declaration) 1977, 17ILM 422, para.6. (1978).

The last modification is the adoption of the Federal Anti-Corruption Act on the 25th December 2012 entitled the 'requirement of organizations to take measures to prevent corruption. see:
<http://www.lexology.com/library/detail.aspx?g=c3c2ef56-b3cb-477e-9ec3-f24a655286b6> accessed 30.4.2013

The Netherlands Embassy's webpage, Stockholm –Sweden - <http://sweden.nlembassy.org/you-and-netherlands> accessed 15.5.2013.

The Regulations on the Ministry of Natural Resources of the Russian Federation approved by Resolution of the Government of the Russian Federation # 370, dated July 22, 2004.see:
<http://voda.mnr.gov.ru/part/?pid=398> accessed 27.7.2013.

The Sullivan Foundation: http://thesullivanfoundation.org/about/global_sullivan_principles.

The UN Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011. See: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf accessed 15.6.2013.

Thomas Nilsen, Oil spill threatens National Park, Barents Observer 2011/05/18. see:
http://www.bellona.org/articles/articles_2011/kandalashka_spill accessed 24.4.2013.

Total SA Chief Executive Officer Christophe de Margerie on Financial Times 2012 .See also:
http://worldnews.nbcnews.com/_news/2012/09/26/14107150-environmental-risk-of-drilling-in-arctic-too-high-ceo-of-oil-giant-total-says?lite accessed 26.4.2013.

U.S Justice Department and the state of Arkansas seek civil penalties against Exxon over pipeline spill in March. See: <http://www.law360.com/articles/449985/us-ark-sue-exxon-over-major-oil-spill-from-pipeline> and <http://rt.com/usa/arkansas-exxon-oil-spill-701/> accessed 26.4.2013.

UN Global Compact's, UNGC Network Russia Corporate Social Responsibility Practices Brochure Published by UNDP Russia, UNGC and RUIE. [http:// www.undp.ru/download.phtml?\\$1404](http://www.undp.ru/download.phtml?$1404) accessed 24.4.2013.

Yamal-Nenets Regional Prosecutors Office 2009 press release, See:
<http://www.prokyanao.ru/1552.php> (Russian) accessed 1.5.2013.

Yamal-Nenets Regional Prosecutors Office 2011 press release, See:
<http://www.prokyanao.ru/3683.php> (Russian) accessed 1.5.2013.

Yamal-Nenets Regional Prosecutors Office 2013, press release, <http://www.prokyanao.ru/4114.php> (Russian) accessed 1.5.2013.

Дело № # 2/30/2012 Решение именем Российской Федерации. Усинский Городской Суд Республики Коми - Case # 2/30/2012, Decision in the name of the Russian Federation before the Usinsk City Court of the Komi Republic and Lukoil-Komi done on the 7th of May 2012.

Открытое Письмо в Управление Федеральной Службы по Надзору в Сфере Природопользования (Росприроднадзора) по Республике Коми Прокурору Бажутову С.А. Department of Rosprirodnadzor Komi-Republic 2013.

Федеральная служба по экологическому, технологическому и атомному надзору See:
<http://www.gosnadzor.ru> accessed 27.4.2013.

Kramer, Andrew E. (4 March 2010). "European Court Ready to Hear Yukos Case". The New York Times.

<http://www.yukosnewsonline.com/yukosnewsonline/2011/09/european-court-of-human-rights-confirms-that-yukos-oil-company-was-treated-unfairly-by-russian-court.html> accessed 1.5.2013.

http://n-west.ru/wp-content/uploads/2011/12/Strategiya-SZFO-2020_utverzhdennaya.doc accessed 25.4.2013.

Arctic Council meeting held in January 2012 in Stockholm-Sweden under the chairmanship of Sweden. See: <http://www.arctic-council.org/index.php/en/about/general-news-archive/142-wg-news/343-arctic-environment-requires-responsible-corporate-practices> accessed on 21.3.2013.

NewYorkTimes 2012: <http://learning.blogs.nytimes.com/2012/05/15/may-15-1911-supreme-court-orders-standard-oil-to-be-broken-up/> accessed on the 14 th of February 2013

Cheeseman, H. (n.d.) Business Law Timeline. Retrieved 5/3/ 2013 from
http://myphiliputil.pearsoncmg.com/student/bp_cheeseman_blaw_5/timeline.html accessed 5.3.13.

Guardian News 2013: [http:// www.guardian.co.uk/world/2013/mar/07/russian-officials-phrases-linked-corruption](http://www.guardian.co.uk/world/2013/mar/07/russian-officials-phrases-linked-corruption) accessed 29.4.2013 N.B Nikolai Gogol, a 19th century writer made fun of the problem with dark humour in his write-ups.

Stephen Bierman, Moscow: <http://www.bloomberg.com/news/2013-03-18/russia-adopts-texas-drilling-to-revive-soviet-oil-fields-energy.html> accessed on the 16.4.2013

UNECE, <http://www.unece.org/env/eia/convratif.html> accessed 28.4.2013 see also
<http://www.unece.org/env/eia/welcome.html> see also the 2003 Kiev Protocol on Strategic Environmental Assessment. Russia signed the Espoo Convention on 6 June 1991 but has not yet ratified this convention,

International Conventions, Treaties, Declarations, Resolutions, Articles and Publications

Agenda 21: 'Programme of the Action for Sustainable Development' adopted by the UNGA at its 46th session, UN Doc. A/CONF.151/26ara.53.

Annexed to the 1976 OECD Declaration on International Investment and Multinational Enterprises, Paris 21 June 1976(1976) 15 ILM 967,969.

Article 1, European Convention on Human Rights and Fundamental Freedoms, Rome 4 November 1950, in force 3 September 1953, ETS, No.5.

Article 34, European Social Charter adopted 1961 and revised in 1996 in force in 1999.

Committee on Economic, Social and Cultural Rights, 'General Comment No.14, on the Right to the Highest Attainable Standard of Health,' UN Doc. E/C.12/2000/4 at para.39.(emphasis added).

El Hadji Guisse, UN Special Rapporteur pursuant to Sub-Commission resolution 1996/24, UN Doc. E/CN.4/Sub.2/1997, para.131;The Realization of Economic, Social and Cultural Rights, Final report on the question of the impunity of the perpetrators of human rights violations(economic, social and cultural rights)

European Commission, 'Communication from the Commission concerning Corporate Social Responsibility: a Business Contribution to Sustainable Development' COM (2002) 347, Final, Brussels, 2 July 2002, P.5.

European Court of Human Rights, ECHR (2002) Application No.37703/97, section 2.

General Comment No.12 on the Right to Adequate Food', UN Doc. E/C.12/1999/5, para.19.

General Comment No.14 n.145 above, para.51.

ILO adopted at the 86th session of the International Labour Conference, Geneva, 18 June 1998.

ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy(1978) 17 ILM 422 which sets regulations between home state, host states and ILO expectations.

International Covenant on Civil and Political Rights adopted by UNGA Resolution 2200A (XXI), 16 December 1966 in force 23 March 1976, 999 UNTS

International Covenant on Economic, Social and Cultural Rights adopted by UNGA Resolution 2200A (XXI), 16 December 1966 in force 23 March 1976, 999 UNTS.

OECD Guidelines (2001) 40 ILM 237, Part 1 (Concepts and Principles).

OECD Guidelines annexed to the 1976 OECD Declaration on International Investment and Multinational Enterprises, 21 June 1976;(1976)15 ILM 967.(The Guidelines are reproduced at (1976)15 ILM 967).

Ottawa Declaration of 1996.See: <http://www.arctic-council.org/index.php/en/about> retrieved on the 21.3.2013.

Para.1:Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003).Approved 13 August 2003, by UN Sub-Commission on the promotion and protection of Human Rights Resolution 2003/16,UN Doc. E/CN.4/Sub.2/2003/L.11 at 52(2003).

Private Initiatives for Corporate Responsibility: An Analysis, in Corporate Responsibility: Private Initiatives and Public Goals, at 16 (OECD Working Paper No.2001/1, Feb.2001).

Sarbanes-Oxley Act 7241-7266.

See Article 34(1) Statute of the International Court of Justice, only states have rights to bring matters before the ICJ.

See Economic and Social Council Resolution 1721(LIII), quoted in UN, New York –UN 1974 P.19

See ICESCR, n.107 above, Article 2(1), see Decision Regarding Communication 155/96, n.128 above, p The Draft UN Code of Conduct on Transnational Corporations, UNCTC Doc. E/1990/94,12 June

1990 and the UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights adopted by UN Sub-Commission on 13 August 2003:E/CN.4/Sub.2/2003/12/Rev.2 and the UN Global Compact, UN Press Release SG/SM/6881, 1 February 1999.

The 1977 ILO Tripartite Declaration Concerning Multinational Enterprises and Social Policy (1978) 17 ILM 422.

The Alien Tort Statute (“ATS”), 1789

UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regards to Human Rights, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003)

UNCTAD, World Investment Report 2000, p.267

Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, in force 27 January 1980, 1155 UNTS 331 ;(1969) 8ILM 679; UKTS (1980) 58, Article 53.

Federal/Domestic Legislations/Laws and others

1992 Federal law relating to Underground Resources subsequently amended in January 2000. [Law of the Russian Federation on Subsoil], adopted February 21, 1992, reprinted in 3 Acreage, Laws & Tax (Petroconsultants) VIR-2, at 1 [hereinafter Law on Subsoil].

Amended Anti-Corruption Law, 2012

Arctic Council Final Draft Agenda at the Meeting of Senior Arctic Officials held in Haparanda-Sweden, Nov.2012 p.7

Danish Law for Corporate Social Responsibility adopted by parliament on the 16 December 2008.Information Requirement gain force in 1st of January 2009.See Danish Centre for CSR's official website CSRgov.dk.

Dated 16 May 2000, No. 372 (Об утверждении Положения об оценке воздействия намечаемой хозяйственной и иной деятельности на окружающую среду в Российской Федерации)

Federal Hydrometeorology and Environmental Monitoring Service 2006. 4th National report submitted in accordance with Article 4 and Article 12 of the UN Framework Convention on Climate Change. Moscow.

Federal law no. 174-FZ on Ecological Expertise, dated 23 November 1995.

Federal Law No. 7-FZ on Environmental Protection, Environmental Impact Assessment Section 5(Articles 19ff) of 10 January 2002 adopted by State Duma in 20 December 2001 and approved by Federal Council in 26 December 2001.

Federal Law No.104 of 20 June 2000 revised 22 August 2004

Federal Law No.160-FZ on Foreign Investments in the Russian Federation 1999 see Lexis - International Law Library, RFLaw file.

Federal Law No.197-FZ of 31 December 2001 (Labour Code of the Russian Federation of 31 December 2001).

Federal Law No.82 of 30 April 1999 revised 22 August 2004.

Federal Law on Environmental Protection No. 7-FZ of January 10, 2002 ; Chapter III. The Rights and Duties of Citizens, Public and Other Non-Commercial Associations in the Field of Environmental Protection .see:

http://www.asser.nl/upload/eelwebroot/www/documents/Federal%20Law%20on%20Environmental%20Protection%20Russia_ENG.pdf accessed 25.4.2013.

Federal law on Environmental Protection; Article 75. The Types of Liability for a Breach of the Environmental Protection Legislation.

Federal'niy Zakon ob Inostrannix Investitsiyax v Rossiyskoi Federatsii [Federal Law No. 160-FZ on Foreign Investment in the Russian Federation], Sobr. Zakonod. RF, 1999, No. 19-FZ [hereinafter 1999 Law on Foreign Investment

Law No. 5485-1 of July 21, 1993 on State Secrets (as last amended by the Federal Law No. 309-FZ of November 8, 2011) : Official Secrets Act of the Russian Federation is information protected by the state on its military, foreign policy, economic, intelligence, counter-intelligence, operational and investigative and other associated activities, dissemination of which could harm state security.

Law of the Russian Federation “On Production Sharing Agreements”, approved by the Federation Council on December 19, 1995, Ross. Gazeta, January 11, 1996, at 3 hereinafter Law on Production Sharing Agreements See: http://www.polinares.eu/docs/d3-1/polinares_wp3_case1.pdf p.6 of 35 accessed 27.4.2013.

New version of Federal Law on Environmental Protection went operational on the 1st of January 2006. See: <http://www.oecd.org/env/outreach/38118149.pdf> p.39 accessed 1.5.2013.

Order of the Minister of Environment No.222 of the 18 July 1994 introduced the ‘OVOS Regulations’

Russian Federal Government Resolution #240 of 15 April 2002.

Russian Federal Law No. 184-3, dated 27.12.2002 "On Technical Regulating "adopted 15.12.2002 by State Duma approved 18.12.2002 by Council of Federation.

Russian Federal Law No.49 of 7 May 2001 adopted by State Duma.

Sections III and IV of the Administrative Code.

The Civil Code of the Russian Federation(with the Additions and Amendments of February 20, August 12, 1996,October 24, 1997, July 8, December 17, 1999, April 16, May 15,November 26, 2001, March 21, November 14, 26, 2002,January 10, March 26, November 11, December 23, 2003 to 2009. Code Of Administrative Offences of the Russian Federation No. 195-FZ of 30 of December 2001(with the Amendments and Additions of April 25, December 31, 2002, June 30, July 4, November 11, December 8, 2003, April 25, 2002)Adopted by the State Duma on December 20, 2001Endorsed by the Council of Federation on December 26, 2001.

The Criminal Code of the Russian Federation, adopted by the State Duma on May 24, 1996, approved by the Federation Council on June 5, 1996, see also Federal Law No. 64-FZ of June 13, 1996 on the Enforcement of the Criminal Code of the Russian Federation.

О практике применения судами законодательства об ответственности за экологические правонарушения dated 5 November 1998.

Федеральная служба по надзору в сфере природопользования <http://www.rpn.gov.ru/>
accessed 14.6.2013.