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Lawyers, Corporations and International Human
Rights Law

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Introduction: corporations and human rights

“Human rights are one window through which one particular culture envisages a just human order for individuals. But those who live in that culture do not see the window. For this they need the help of *another* culture which sees through *another* window.”¹

The cultures referred to in this quote from a Hindu scholar are those various socio-political ones we find across the globe. However, the point applies equally well for cultures defined by the narrower criterion of professional inclination; that is, specifically, corporate enterprise on the one hand, and human rights advocacy on the other. The people and institutions associated with each of these cultural camps have very different windows through which they view the world and consequently often have very different notions about what is just and fair. Having a look—even a quick one—through each other’s window not only provides each group with a better understanding of each other’s viewpoint, it causes them to reflect on the reasons for their own particular stance. Disagreement between the two camps there may continue to be, but at least the environment in which the two interact will stand a chance of being more informed and provide a basis for greater human rights protection.

In fact, the recent history of the relationship between the corporate and human rights worlds shows some significant alternative window-gazing, with varied results, ranging from reinforcement of opposition to each other, through a mixture of mutual enlightenment and mild bewilderment, to substantial co-operation. In any event, it is certainly the case that today more than ever, the patent leather shoes brigade and the open-toed sandal-wearers are getting to know a good deal more about one another. What I am interested in pursuing in this article is the place of lawyers within this relationship.

The role of lawyers

Lawyers, as an institutional phenomenon, sit somewhere between, and to a degree, aside from, the two categories. Indeed, in simple functional terms, they will be found acting for the two sides where there is litigation. This will usually mean plaintiff lawyers acting for human rights activists, and

defendant counsel for corporations though there are of course some notable exceptions.² One set of lawyers, in other words, working against the corporation, and the other for or with the corporation.

In this article I am concerned with the role that is, and can be, played by the latter set—those lawyers who work for or with corporations. This is not just in respect of the counsel they provide covering ongoing litigation or threats of litigation (warding off the unwelcome prospect of the client corporation becoming what one commentator has referred to as “the Enron of human rights abuses”),³ but also in respect of more business strategy oriented and pro-active legal counsel.

It must be said that lawyers and law firms have not been conspicuous contributors to the debate on whether, what and how human rights obligations ought to be placed on corporations. Expertise—or at least advertised expertise—in respect of the legal dimensions of corporate social responsibility (CSR) (especially in respect of the impact on corporations of international and extraterritorial human rights laws) is apparently thin on the ground. If there is one category of lawyers that do possess such skills, it is that of corporate general-counsel, as it is the in-house lawyers that most regularly have to deal with CSR issues as they arise within the operating contexts of the corporation that employs them. And yet the opportunity to forge a competitive advantage through the development of CSR expertise is certainly there for the taking. Maybe, indeed, it is to the base instincts of competition that we should be looking for the catalyst for greater engagement by lawyers. In this event, European lawyers appear to stand to gain, as it is a common refrain among American lawyers that they believe European lawyers to be better situated in this regard than their more litigious American brothers and sisters.

There are, however, signs of change among the legal profession generally. Heightened awareness in the institutions and ranks of legal practitioners is now evidenced by such initiatives as the International Bar Association (IBA) conference session in which this article was originally aired and the work of the IBA’s Corporate Social Responsibility Panel; recent publications on CSR and lawyers by the Council

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¹ R. Panniker, “Is the Notion of Human Rights a Western Concept” (1982) 120 *Diogenes* 75, quoted in H. Steiner and P. Alston, *International Human Rights Law in Context* (2nd ed., Oxford University Press, Oxford, 2000), p.384.

² See the Nestlé action against the Ethiopian Government in C. Denny, “Nestlé claims \$3.7m from famine-hit Ethiopia”, *The Guardian*, December 19, 2002; the joint pharmaceutical corporations’ action against the South African Government, available at www.caa.org.au/pr/2001/drugs.html (last visited January 12, 2003); and the McLibel saga, in which the corporations were the plaintiffs, available at www.mcspotlight.org/case/ (last visited January 12, 2003).

³ E. Schrage, “Emerging Threat: Human Rights Claims” (August 2003) 81/8 *Harvard Business Review*, Forethought Memorandum.

of European Bars (CCBE)⁴ and a recent cover feature of *European Lawyer*⁵ dedicated to the issue, as well as signs of CSR practice areas being carved out in some law firms in Europe and the United States (see below).

The legal dimensions of CSR

There are two basic dimensions to CSR lawyering. One centres upon litigation—running it and avoiding it; the other around policy and advice work. In terms of the type of law associated with both of these, it is also possible to make a fairly crude distinction along the same lines. Thus litigation issues concern more *hard law*—statutes and case law, whereas policy and advice work concerns more *soft law*—codes of conduct, national and international law and policy initiatives and draft legislation.

In combination, the matrix of human rights related laws that these factors create stretches across a range of legal and quasi-legal forms, as is illustrated in the following list:

- domestic laws, labour, health and safety, environmental and anti-discrimination laws, and crimes codes and criminal laws (including the prospect of extending the reach of corporate crimes);
- a marked increase in the use of extraterritorial laws, such as the revived Alien Tort Claims Act⁶ in the United States and the recently curtailed universal human rights law in Belgium⁷;
- changes to the common law jurisdiction-determining device of the doctrine of *forum non conveniens* that have restricted its use by corporations as a shield against suit in their home states⁸;
- proposals to codify corporate practice in codes of conduct statutes such as those introduced in the United States⁹ and Australia¹⁰ in 2000, and the recent Bill in the UK Parliament¹¹ (all of which have lapsed);
- numerous industry and corporate codes of conduct/practice¹²;
- various international initiatives, such as the investment industry's Equator Principles,¹³ the OECD Guidelines on

Multinational Corporations,¹⁴ the UN's Global Compact¹⁵ and more significantly, what amounts to a UN draft treaty on Human Rights Norms for Corporations,¹⁶ not forgetting the fact that although the International Criminal Court (ICC) does not have jurisdiction over corporations, it does over CEOs for crimes against humanity¹⁷; and, finally, the growth in social auditing and reporting mechanisms, both international, such as SA8000¹⁸ and the Global Reporting Initiative,¹⁹ and domestic,²⁰ such as recent amendments to the French Code de Commerce, requiring quoted companies to submit social and environmental reports on their activities,²¹ and the mandatory reporting requirements of the Johannesburg Stock Exchange in South Africa.²²

Each of these examples could command a substantial discussion on its own, especially as there is now a sizeable body of literature devoted to them all.²³ In the current piece, however, I shall restrict such discussion to only those initiatives that have especial resonance for lawyers.

Evolving issues for lawyers

The law, lawyers and law firms are therefore already an integral part of the whole CSR phenomenon. An evolving challenge that faces lawyers is the need to more securely integrate the litigation and policy dimensions of CSR lawyering—for lawyers to merge their reactive and proactive inclinations. This may of course cause structural as well as cultural clashes within the traditional model of large law firms—as one UK-based litigator has put it to me: “commercial litigators by their nature tend to be reactive rather than proactive; the research required to advise clients fully is time-consuming, costly and unpaid unless their client has commissioned it,” and, in any case, above all, “ironically it is

⁴ CCBE, “Corporate Social Responsibility and the Role of the Legal Profession: A Guide for European Lawyers Advising on Corporate Social Responsibility Issues”, September 2003, available at www.ccbe.org/doc/En/guidelines_csr_en.pdf (last visited January 9, 2004).

⁵ July/August 2003.

⁶ See Beth Stephens, “Accountability: International Human Rights Violations against Corporations in US Courts”, in *Liability of Multinational Corporations under International Law* (Memno Kamminga and Saman Zia-Zarifi ed., Kluwer, 2000) and also S. Joseph, *Transnational Human Rights Litigation against Corporations* (forthcoming Hart Publications, Oxford, 2004). The legislation's new life has survived its latest attack in *Sosa v Alvarez-Machain* and *US v Alvarez-Machain*, 124 S.Ct. 2739; 2004 U.S. LEXIS 4763.

⁷ The Belgian Government announced in June 2003 that it would be substantially altering the law so that it would apply only if victims or the accused were resident in Belgium; see “Universal Incompetence”, *The Economist*, June 28, 2003, p.54.

⁸ See Halina Ward, “Governing Multinationals: The Role of Foreign Direct Liability”, *Briefing Paper New Series No. 18* (Royal Institute of International Affairs, London, February 2001) and see also by Halina Ward, below at n.22.

⁹ H.R. 45967 at June 7, 2000 and H.R. 2782 at August 2, 2001.

¹⁰ Corporate Code of Conduct Bill 2000.

¹¹ Corporate Responsibility Bill 2003.

¹² D. Leipziger, *The Corporate Responsibility Code Book* (Greenleaf Publishing, Sheffield, 2003).

¹³ Available at www.equator-principles.com (last visited August 31, 2004).

¹⁴ Organization for Economic Co-operation and Development (OECD), OECD Guidelines for Multinational Enterprises, available at www.oecd.org/document/28/0,2340,en_2649_34889_2397532_1_1_1_1,00.html (last visited August 31, 2004).

¹⁵ Available at www.unglobalcompact.org (last visited August 31, 2004).

¹⁶ The UN's Norms on the Responsibilities of Transnational Corporations and Other Enterprises with Regard to Human Rights, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003) (“Norms”) available at www1.umn.edu/humanrts/links/norms-Aug2003.html (last visited August 31, 2004).

¹⁷ See Arts 25(3) and 28(2) of the ICC Statute which deal with individual responsibility and responsibility within non-military superior/subordinate relationships, respectively.

¹⁸ Available at www.cepa.org/SA8000/SA8000.htm (last visited January 9, 2004).

¹⁹ Available at www.cepa.org/SA8000/SA8000.htm (last visited January 9, 2004).

²⁰ Claims in Council of European Bars paper that the Sarbanes-Oxley Act in the United States may cover social aspects of good corporate governance are based on a stretching of the core financial probity requirements in the statute.

²¹ Law No.2001-420 regarding new economic regulations (May 15, 2003), Art.116.

²² Johannesburg Stock Exchange's adoption (in 2002) of a Code of Corporate Practices and Conduct which is based on the Global Reporting Initiative's Sustainability Reporting Guidelines; see further Halina Ward, “Legal Issues in Corporate Citizenship”, paper prepared for the Swedish Partnership for Global Responsibility, February 2003, www.iied.org/docs/cred/legalissues_corporate.pdf (last visited August 31, 2004), p.4.

²³ There are simply too many to mention here; however, for an excellent, recent broad-based publication in the field, see R Sullivan ed., *Business and Human Rights* (Greenleaf Publishing, Sheffield, 2003). Alternatively, the following website is a comprehensive and tremendously useful resource for a wide range of information and leads in the area: www.business-humanrights.org/Home (last visited August 31, 2004).

in the lawyers' financial interests for their clients to become embroiled in costly litigation".²⁴

Such inherent limits to the advance of lawyers' policy and advice work in the area are undeniable. There are, in addition, superimposed limitations such as the capacity of lawyers and their client corporations (no matter how big and well-resourced either is) to take on policy functions that are perceived to step across the boundaries of private enterprise into public governance. In this regard, one might reflect on the rather rueful comment of a Shell chief executive in Nigeria made during the height of Shell's remedial CSR activities following the Ken Saro-Wiwa imbroglio that "things are back to front here; the government's in the oil business and we are in local government".²⁵

Yet there are clear signals both of the need for movement in the direction of more policy-oriented advice and also of steps being taken by some lawyers along that path. Proposals at a national level that seek to transform soft law codes into hard law statute are likely to continue to be promoted—for example, continuing debates in Australia and the United States following the failure of earlier Bills; the recent demise of the UK Bill²⁶; and the prospect of further initiatives coming out of the EU.²⁷ Each of these would require the development of more proactive legal practice in CSR, whether "willingly" or under the threat of litigation or further regulation.

Ground-breaking trade practices litigation in the United States concerning false advertising also has a direct impact on the use of codes of conduct by all corporations. Last year, the US Supreme Court allowed the case of *Kasky v Nike*²⁸ to proceed to trial on the basis that Nike statements about its labour practices (whether free-standing or in more formalised codes of conduct) are in fact commercial speech (and therefore subject to limitations), not ordinary speech, which by way of the more permissive First Amendment is less restrictive. In fact, the case was settled out of court in September 2003,²⁹ but the important point remains that such litigation reveals the potential liability of a corporation not just for what it does, but also for what it says it does. It is in the merging of advice on litigation-avoidance strategies with that on broader policy considerations that lawyers would be able to best serve their big corporate clients in dealing with the potential outcomes of litigation such as this. The point needs to be made, further, that the impact of this jurisprudence will not be restricted to the United States, as all industrialised nations have similar trade practices legislation that con-

strains false advertising and misleading conduct. In fact, it might well be that the impact will be *greatest* in other jurisdictions as few of them have to contend with a free speech hurdle quite as high and unpredictable as that of the United States' First Amendment.

And yet, perhaps above all, in this respect, a few law firms are now developing CSR practices that combine the litigation and policy oriented dimensions, albeit not always in the same proportions.³⁰ CSR briefings for corporate clients; in-house training or information sessions; innovative partnerships with more farsighted corporate clients and/or non-government organisation (NGO) activists and other initiatives are now in evidence. Many of these have developed out of existing practices operating on related issues such as labour and workplace relations, environmental regulation and compliance regimes and even product liability laws. It is true that few of them really embrace human rights in their internationally recognised forms, but certainly that will have to come. It is to this last point that I now turn.

Horizon watching: the emergence of international regulation

It is on the international stage that perhaps the most interesting and potentially significant developments are occurring. Some are relatively far advanced; others are little more than aspirations (albeit with solid foundations). In terms of form, all are situated along the linear plane of the transformation of soft law into hard law.

In respect of the emergence of human rights responsibilities for corporations backed by international law,³¹ there is a basic division between the types of international institutions and the regimes they oversee that are open to and capable of such regulation. One set is primarily economic in focus. The leading institutions and regimes here are the World Trade Organization (WTO), the EU and the World Bank (though others, such as the regional development banks, North American Free Trade Agreement (NAFTA) and even, potentially, the International Monetary Fund (IMF) could all claim membership of this category). The other set is primarily social or human rights focused; namely, the UN and the International Labour Organization (ILO), though there is little to stop the regional human rights regimes in Europe and the Americas, in particular, developing their own initiatives in this respect.

While each of these deserves more detailed attention, it suffices here to note, for example, the succession of resolutions and statements coming out of the EU Commission and Parliament exhorting Member States as well as the organs of the EU itself to incorporate CSR standards in their policy and law-making processes that relate to corporate behaviour³²; the World Bank's growing embracing of social and human rights issues in its thinking and operations in the developing

²⁴ Correspondence on file with author.

²⁵ Brian Hendersen, quoted by N. Hertz, *The Silent Takeover* (Arrow, London, 2001), p.220. Note also the undesirability of having corporate ideologies and processes transplanted into the public domain: D. Litvin, *Empires of Profit: Commerce, Conquest and Corporate Responsibility* (Texere, New York and London, 2003), pp.224–225.

²⁶ For the full text of the Bill see www.parliament.the-stationery-office.co.uk/pa/cm200102/cmbills/145/2002145.pdf (last visited December 21, 2003).

²⁷ Note the EU Parliament's most recent report on this subject which calls for Member States to incorporate CSR principles into their law and policy-making process: *Report on the Communication from the Commission concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development* (COM(2002) 347 – 2002/2261(INI)), April 28, 2003.

²⁸ 27 Cal 4th 939 (S. Ct Cal. 2002).

²⁹ On September 12, 2003; see Fair Labor Association, "Fair Labor Association Receives \$1.5 Million in Settlement of *Kasky v. Nike* First Amendment Case" (Press Release, September 12, 2003) available at www.fairlabor.org/all/news/docs/Nike_Kasky.doc (last visited January 9, 2004).

³⁰ For example Skadegard Thorsen Law Firm in Copenhagen; Foley Hoag in Washington DC—see www.fhe.com/practice.asp?pid=88 (last visited January 9, 2003); and Baker McKenzie in London—see www.bakernet.com/BakerNet/Practice/International+++Commercial/Corporate+Compliance/Description/default.htm (last visited January 9, 2003).

³¹ On which see D. Kinley and J. Tadaki, "From Talk to Walk: the Emergence of Human Rights Responsibilities for Corporations at International Law", forthcoming in (2003–4) 44/4 *Virginia Journal of International Law* 931–1022

³² EU Parliament, n.26 above.

world,³³ including and especially in respect of the activities of corporations through the work of the IFC's partnerships with transnational corporations (TNCs), and also the ILO's recent reinvention of its nearly 30-year-old Declaration on Multinational Enterprises and Social Policy,³⁴ which, although based on binding state obligations under various ILO Conventions, is nonetheless directed at what ought to be the practice of corporate entities. Thus, while itself not binding, the declaration urges the states to make it so under their own domestic laws.³⁵

Beyond these important initiatives, there are some advancements in two existing regimes that are of particular interest as they are the most likely to be significant in legal terms. These are within the WTO and the UN.

The World Trade Organization

The vigorous debates over whether trade liberalisation is a help or a hindrance for the world's poor and whether the benefits of an enlarged global economic pie are outweighed by the problems of the massively unequal distribution of the slices of that pie³⁶ have spawned another concern that especially begs our attention. That is whether and how international trade law does or could embrace human rights principles. In fact, the General Agreement on Tariffs and Trade (GATT)/WTO legal regime already harbours a number of such principles, the development and extension of which are matters that must surely be of interest to corporations (and their legal counsel) as the drivers of international trade. These are:

- (1) the principle of non-discrimination that underpins the whole regime of trade law, as it does human rights law³⁷;
- (2) some of the GATT Article XX exceptions to unfettered trade (especially that related to public health) have already provided grounds for states and corporations (through the surrogacy of states) to argue human rights related principles in cases before the WTO Dispute Settlement Body³⁸; and
- (3) perhaps most tellingly, the conspicuously well-protected intellectual property rights under the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs). For as George Soros has proclaimed: "The WTO opened up a Pandora's box when it became involved in intellectual property rights. If intellectual property rights are a fit subject for the WTO, why not labour rights, or human rights?"³⁹

The format in which intellectual property rights are protected adds to the argument that they demonstrate a degree of comfort with rights protection within the WTO. For not only does the TRIPs Agreement break the mould of WTO treaties dealing only with the rights and obligations of states (it expressly provides for the rights of individuals (and corporations)), the whole intellectual property regime self-consciously operates as a trade barrier, rather than a trade liberaliser. Thereby, the very objection that is often raised against any suggestion that human rights ought to be incorporated into trade law is permitted in respect of intellectual property rights. The push to build upon and expand these human rights dimensions in trade law will certainly increase in the near future.

The United Nations

Though the UN's rather flamboyant Global Compact undoubtedly has some rhetorical impact, it is the output of a working group of the UN's Sub-Commission on the Protection and Promotion of Human Rights that has the greatest potential for legal development. Its singularly important contribution to the question has been the Norms on the Responsibilities of TNCs and other Business Enterprises with Regard to Human Rights.⁴⁰ The Norms cover rights that are reasonably expected to be observed by corporations: non-discrimination; liberty and security of the person; workers' rights; rights of indigenous peoples; consumers' rights; and environmental protection.⁴¹

The Norms have now crucially moved out of their drafting stage into the harsh light of political debate. For although the working group consulted widely in its formulation of the Norms, the Norms had, until very recently, been flying below the radars of most governments; this is despite the fact that they constitute what is in effect the first step towards international law. The Norms were adopted by the Sub-Commission in August 2003 and have since been considered by the UN Commission on Human Rights during its 60th Session in March/April 2004. The Commission, despite being urged by some peak employers and business organisations to disapprove the Norms,^{41a} resolved to reconsider their future at their next session in 2005 after the Office of the High Commissioner for Human Rights has compiled a wide-ranging report comparing and contrasting the Norms with the nature and legal status of all other existing comparable initiatives.^{41b}

³³ See the World Bank, *Development and Human Rights: The Role of the World Bank* (1998), and the World Bank, "Human Rights and Sustainable Development: What Role for the Bank?", May 2, 2002, available at www.worldbank.com (last visited September 22, 2003).

³⁴ ILO Document No. OB Vol. LXXXIII, 2000 Series A, No. 3 (November 2000), amending the November 1977 Declaration.

³⁵ *ibid.* Art 3.

³⁶ To wit, the dramatic collapse of the trade talks at the Fifth WTO Ministerial Conference, Cancun, Mexico, September 1-14, 2003, see www.wto.org/english/thewto_e/minist_e/min03_e/min03_e.htm (last visited January 9, 2004).

³⁷ D. Kinley and A. McBeth, "Human Rights, Trade and Multinational Corporations", in *Business and Human Rights* (R. Sullivan ed., Greenleaf Publishing, Sheffield, 2003), p. 52.

³⁸ *ibid.* pp. 52-68.

³⁹ Quoted by P. Alston, "Resisting the Merger and Acquisition of Human Rights by Trade Law: A Reply to Petersmann" (2002) 13 *European Journal of International Law* 815 at p. 818. It should be noted that intellectual property rights are expressly recognised as human rights in Art. 15(c) of the International Covenant on Economic, Social and Cultural Rights 1966.

⁴⁰ Norms, n. 16 above.

⁴¹ *Ibid.*, for discussion see P. Muchlinski, "The Development of Human Rights Responsibilities for Multinational Enterprises", in Sullivan, n. 35 above, p. 33, and Thomas McCarthy, "Business and Human Rights: What do the new UN Norms mean for the Business Lawyer" at <http://209.238.219.111/McCarthy.pdf> (last visited August 29, 2004).

^{41a} See for example the *Joint Views of the International Chamber of Commerce and the International Organization of Employers on the UN Norms* available at www.business-humanrights.org/Home; responses to this document as well as various other opinions and commentary are also accessible from the same website (last visited August 30, 2004).

^{41b} The UN Human Rights Commission's Resolution of 20 April 2004, Resolution 2004/116, (p. 81) [www.unhcr.ch/huridocda/huridocda.nsf/e06a5300f90fa0238025668700518ca4/169143c3c1009015c1256e830058c441/\\$FILE/G0413976.pdf](http://www.unhcr.ch/huridocda/huridocda.nsf/e06a5300f90fa0238025668700518ca4/169143c3c1009015c1256e830058c441/$FILE/G0413976.pdf). Submissions are being sought from all interested parties; for details, see www.ohchr.org/english/issues/globalization/business/reportbusiness.htm (last visited August 30, 2004).

Corporations and human rights

The substantive provisions of the Norms as outlined above are certainly important, though comprising few surprises for those who are familiar with the CSR debate. What is remarkable, however, is the format of the instrument, as its language is directed at the responsibilities of corporations, alongside those of the states. Thus the Norms speak of the states and corporations “within their respective spheres of activity and influence”,⁴² having the obligation to promote, secure, respect and protect human rights in international and domestic law. And this includes the express duty to “use due diligence” to ensure their activities do not infringe or contribute to infringements.⁴³ The Norms also provide three further legal obligations of note: (1) that corporations apply and incorporate the Norms into all their contracts, up and down the supply chain⁴⁴; (2) that corporations be obliged to provide “prompt effective and adequate reparation” to those adversely affected by their failures to abide by the Norms, and that quantum of such reparation could be determined by domestic or international tribunals⁴⁵; and (3) that corporations be “subject to periodic monitoring and verification by the UN or other international and national mechanisms already in existence or yet to be created regarding application of the Norms”.⁴⁶

As with the WTO, the progress of the UN Norms towards full legal enactment ought surely to be an essential “watch this space” item for lawyers whose clients might be potentially affected by their provisions. For not only is being forewarned to be forearmed, but both lawyers and clients might be better able to contribute to the design of these legal initiatives during the design phase, rather than simply react to the consequences after their establishment.

Prospects for lawyers in the area?

In conclusion, I revisit the central question or theme of the article—namely, what role for lawyers in all this: past, present and future? There are, in fact, few clear answers that can be provided here. Much of this has to do with the research and analysis still needed to be done on the actual thinking and actions of lawyers in the field. As such, therefore, and by way as much of admitting our continuing need to do the research as of urging the legal profession to be more engaged in the debate, it seems appropriate to highlight a series of sub-questions that will have to be addressed—and, above all, will have to be addressed by lawyers themselves—as this issue develops. These are:

- To what extent are the CSR issues outlined in this article being picked up by law firms *and* passed on to corporate clients?
- If little or none—why so? Is it that it is not deemed to be significant, or not immediate? Or is it that the advice is not sought by clients and that to provide it unsolicited would not interest the client?
- If things are to change in this respect, where will the decisive drive come from—the arena of public opinion, pressure groups, government law/regulation, or from the clients themselves?

- As some lawyers are obviously very knowledgeable about certain aspects of CSR—not least those involved in CSR litigation—why is that not rubbing off in the form of more proactive legal counsel?
- Are the legal arms growing out of the compliance and regulation oriented accountancy conglomerates (such as PricewaterhouseCoopers or Ernst & Young) or corporate advisory/consultancy firms (such as McKinsey, KPMG or Arthur Andersen) any better placed to take up this challenge, or could they be?

Whatever are the answers to these and other related questions, we can say for certain that they will become more pressing for lawyers whose clients include corporations, especially large multinational corporations, in terms both of their business and professional interests. For, as was asserted in a statement from the UN Global Compact to an earlier IBA Conference in 2001, in respect of another showcase session on CSR and the Rule of Law:

“Business lawyers ... are often at the crossroads of corporate social responsibility policy and its implementation which can directly affect the prosperity and even survival of a firm [corporation].”⁴⁷

As such, it is surely imperative that business lawyers should be on top of the CSR developments in general, and the legal aspects of CSR more specifically.

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⁴² Norms, n.16, above, Art.1.

⁴³ *ibid.*

⁴⁴ *ibid.*, Art.15.

⁴⁵ *ibid.*, Art.18.

⁴⁶ *ibid.*, Art.16.

⁴⁷ Statement dated October 26, 2001.