Examining the Practice to Understand the Meaning

An Analysis of competing CSR-Discourses and their Reflection in UN-Initiatives

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1.1 Introduction

The rather recent recognition of the significance of Transnational Corporations (TNCs) for questions of global governance can most likely be ascribed to their enormous multiplication in only the last few decades. The growth of the transborder exchange of commodities and services as well as foreign direct investment have virtually developed at an explosive rate and led to a remarkable increase of power of TNCs, whereas the possibilities of states for regulation are diminishing.[1]

In order to attract foreign direct investment and to enjoy the benefits of their establishment such as tax revenue and employment, states are forced to accommodate the interests of TNCs (which brings about an element of competition between states). Inversely the TNC's influence on government policy is quite significant, as states with the intention of launching disagreeable policies are constantly facing the threat of their market withdrawal and thus financial penalties. Or, as the OECD puts it: "Investment incentives have effects beyond the jurisdiction that offers them, which need to be carefully considered. Some forms of competition among states for FDI may lead to sub-optimal results for all states, including waste of economic resources and social costs."[2]

Contemporaneously with the recognition of their power, the awareness also rose for problematic effects of the conduct of TNCs, in fields such as human rights, labour rights, the environment and anti-corruption. Their great number of affiliates and long, unclear supply chains cause significant difficulties with regard to controlling the activities of TNCs and result in a low level of transparency.

Moreover, the legal situation is often blurry when the corporate headquarters are located in one country, while the products are being manufactured in several other countries - if not continents - and sold worldwide. If human rights, labour rights or environmental standards are being violated in this kind of setting, it is nearly impossible to identify who can be held accountable for the violations and where.[3]

Several NGOs and social movements have rallied around the issue of corporate social responsibility (CSR) lately, and initiatives and standards relevant to it have

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[1] Pauly, Louis W.: "Democracy and Globalization in Theory and Practice". In: Greven, Michael Th./ Pauly, Louis W.(Ed.): *Democracy Beyond the State? The European Dilemma and the Emerging Global Order.* Rowman and Littlefield Publishers Inc., 2000. p.4

[2] OECD: "Checklist for Foreign Direct Investment Incentive Policies". OECD Publications, Paris, 2003. p.8

[3] OECD Watch: "The OECD Guidelines for Multinational Enterprises and Supply Chain Responsibility". (discussion paper) December 2004. p. 2

increased rapidly over the last 15 years,[4] accompanied by a great majority of TNCs announcing voluntary codes of conduct. Yet the adoption of such codes of conduct has been viewed critically by NGOs and social movements as they prefer companies to commit to internationally agreed standards rather than inventing their own sets of rules. As of today, none of the existing initiatives and frameworks is of legally binding character.

The concept of CSR can be traced back to the 1920s and 30s and while "contemporary ideas of CSR tend to be premised on a firmly shareholder-oriented model of the corporation as a *private* enterprise in which directors owe enforceable duties only to shareholders"[5], the early concept perceived the corporation as a public institution with obligations towards employees, consumers, shareholders and society as a whole.[6]

Taking into consideration that the discourse on the relation of business and society is thus not young at all, it is quite noteworthy that there is great discordance about CSR as a theoretical concept to this date. A great majority of the current CSR-literature places emphasis on this very fact. It is a weak point that critics jump at – Heugens and Van Oosterhout state that "(…) more than 50 years of CSR research and theory building has not resulted in a systematic relationship between the notion's intention or theoretical conceptualizations, on the one hand, and its extension or empirical operationalizations, on the other. In the absence of such a systematic relationship one can take neither CSR theory building, nor empirical research on CSR, very seriously."[7] Moreover, there is little consensus about the content of CSR. In their examination of the historical origins of CSR Paddy Ireland and Renginee Pillay assess the early ideas of CSR as markedly more radical than the contemporary conception of CSR, as they were striving for social changes based on a perception of corporations as social institutions, whereas contemporary CSR is leaving the shareholder-oriented model of the corporation unchallenged.[8] This observation seems

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[4] "Report of the United Nations High Commissioner on Human Rights on the Responsibilities of Transnational Corporations and Related Business Enterprises with regard to Human Rights". 2005, p. 4

[5] Ireland, Paddy/ Pillay, Renginee: "Corporate Social Responsibility and the New Constitutionalism". In: Utting, Peter (Ed.): *Corporate Social Responsibility and Regulatory Governance: Towards Inclusive Development?* UNRISD/Palgrave-Macmillan, 2009. p. 4

[6] Ibid. & Carroll, Archie B.: "Corporate Social Responsibility: Evolution of a Definitional Construct" In: *Business & Society*, Vol. 38, No. 3, 268-295, 1999. p.270 ff.

[7] Van Oosterhout, J. Hans/ Heugens, Pursey P.M.A.R.: „Much Ado About Nothing: A Conceptual Critique of Corporate Social Responsibility" In: Andrew Crane (Ed.): *The Oxford Handbook of Corporate Social Responsibility*, Oxford University Press 2009. p.216

[8] Ireland, Paddy/ Pillay, Renginee p. 12

to be reflected in (recent) statements of the EU as well as the UN, which emphasize that CSR can only function as a voluntary initiative. [9]

Following the question of voluntariness versus obligation I want to try to locate the emergence of the two rival approaches by means of a historical derivation, examine their prevalence in the current discourse and investigate how the views became as conflictive as they are today;

The tension between democracy and globalization and the problematic shift from the national to the global level has been described by many authors. Among others, Michael Th. Greven and Louis W. Pauly et al. have pointed out how our understanding of democracy is tied to the idea of national societies to a great extent and how the process of economic globalization leaves a political gap. The argument being that the present economic order "seems to necessarily erode the political boundaries separating the citizens of different democratic states. (…) the borders around the nation, defining a discrete set of citizens who happen to also be the dominant consumers and producers in a discrete economy, begin to blur. As this happens, the democratic roots mooring a discrete state in that nation begin to come loose. (…) The effort of actual governments to continue governing opens up 'democratic deficits', which may be masked for a time by economic prosperity. In less forgiving times, however, citizens seek those responsible for their problems, and find no one accountable to them and no one obligated to serve them."[10] And it seems questionable, whether international institutions can solve this dilemma sufficiently.[11]

Some suggest that in this setting, CSR "represents contested political terrain as well as a strategic tool deployed in political struggles over global governance"[12], which makes two perspectives on CSR possible: as "a more socially embedded and democratic form of global governance that emanates from civil society, or alternatively, as a privatized system of corporate governance that lacks public accountability."[13]

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[9] European Commission: Communication concerning Corporate Social Responsibility: A business contribution to Sustainable Development. July 2002.

[10] Pauly, Louis W.: "Democracy and Globalization in Theory and Practice". In: Greven, Michael Th./ Pauly, Louis W.(Ed.): *Democracy Beyond the State? The European Dilemma and the Emerging Global Order.* Rowman and Littlefield Publishers Inc., 2000. p.2

[11] Held, David: "Apocalypse Soon or Reform!" In: Held, David/ McGrew, Anthony (Ed.): *Globalization Theory. Approaches and Controversies*. Polity Press, 2007. p.245ff

[12] Kaplan, Rami/ Levy, David L.: "Corporate Social Responsibility and Theories of Global Governance. Strategic Contestation in Global Issue Areas." In: Crane, Andrew (Ed.): *The Oxford Handbook of Corporate Social Responsibility*. Oxford University Press, 2009. p. 442

[13] Ibid. p. 439

Thus, the global political practice with regards to CSR deserves a closer look. The UN has been concerned with the activities of TNCs for decades. The UN-Global Compact, the latest (voluntary) initiative, "represents what is, to date, the most ambitious attempt to institutionalize CSR as a dimension of global governance."[14] Therefore, the CSR-policies of the UN in the shape of the Global Compact and the UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regards to Human Rights (a mandatory initiative that has not come into effect) will be reviewed.

It follows from the above that essentially this paper will be focused on the origins of competing CSR perceptions and their current prevalence in a global setting as well as their institutionalization at the global level.

1.2   Methodological Considerations

The examination of competing CSR discourses, their current prevalence in a global setting and their reflection in UN-CSR-policies will be organized as follows:

After an introductory chapter containing an outline of the problem as well as the present reflections on the method, the second chapter presents the theoretical framework for the analysis in a dualistic manner: The first part of the theory chapter depicts the evolution of CSR as a concept over time, in order to both illustrate how the discourses in question came into being, and to provide an understanding of the widespread connotations of CSR today.

The historical 'starting point' might seem arbitrary only at first sight; some researchers go further back to charity/philanthropic, singular activities where no societal expectation can be proven (i.e. the "prelegalization period" of corporate contributions from the 1870s onwards[15]).

The more common method of beginning historical examinations of CSR in the 1950s on the other hand inadvertently neglects the "transformative phase" of CSR[16], though by some it is considered the origin of what nowadays is operating under the label accountability movement.

The voluntariness/ obligation - distinction possibly carries with it the danger of a simplification (as it might not account for *all* sub-groups of the prolific CSR-concept

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[14]Knight, Graham/ Smith, Jackie: "The Global Compact and its Critics: Activism, Power Relations, and Corporate Social Responsibility". In: Leatherman, Jamie: *Discipline and Punishment in Global Politics – Illusions of Control.* Palgrave Macmillan, 2008. p. 192

[15] Sophia Muirhead (1999) in Carroll, Archie B. p. 23

[16] Ireland/ Renginee

in detail), but is a valid classification reflected in the literature as the business and the ethico-political case (among others)[17] and does lie at the heart of the contemporary CSR-debate.

The second part of the theory chapter outlines the central assumptions of DA/DT as developed by Ernesto Laclau and Chantal Mouffe, loosely structured around its key concepts of discourse, hegemony and antagonism and somewhat limited to the relevant aspects for this analysis, as it seems neither necessary nor feasible to render DT in its entire complexity and with all preceding influences.

Laclau's and Mouffe's Discourse Theory lends itself to this examination, as with its 'firm belief' in the political it allows for a perspective that goes beyond concerns of the loss of democracy, the end of history and the like. It seems appropriate for the examination of global issues. Its focus on "understanding and explaining the emergence and logic of discourses, and the socially constructed identities they confer upon social agents"[18] corresponds with a distinct aim of this paper. Moreover, discursive practices are of particular importance in this context, as one critical aspect of the CSR-discourse is the accusation that voluntary mechanisms are being used for PR-purposes by corporations [19].

The analysis in chapter three consists of an application of the theoretical assumptions on the discourses in question as a first step, followed by an examination of how they are reflected in the chosen UN-documents.

The guiding aspects are the emergence and development of the two competing discourses, when and how they became hegemonic, to what extent the context embedding them has changed, as well as when and in what ways they have or have not been institutionalized.

The UN-CSR-policies have been chosen as the unit of analysis in an attempt to accommodate the concerns of a power loss of national governments in favour of TNCs by examining the *global political* practice. Nonetheless this is not meant to depict the UN as a "world-government" of any sort. The Global Compact is, besides the OECD-Guidelines for Multinational Enterprises, the only industry-

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[17] Hanlon, Gerard: "Rethinking Corporate Social Responsibility and the Role of the Firm – On the Denial of Politics" In: Andrew Crane (Ed.): *The Oxford Handbook of Corporate Social Responsibility*, Oxford University Press 2009. p. 158

[18] Howarth, David/ Stavrakakis, Yannis/ Norval, Aletta J.: Discourse Theory and Political Analysis. Manchester University Press, 2000. p. 10

[19] O'Rourke, Dara: "Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring." In: *The Policy Studies Journal*; Volume 31, No.1 2003. p. 5

comprehensive CSR-instrument with global reach that has been politically established by a global institution. Contrasting it with the failure of the UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regards to Human Rights is meant to exemplify the dichotomy in practice.

This paper can not and is not meant to come up with a 'recipe' on how to deal with the conduct of TNCs in today's global setting. Rather than providing an absolute answer as for whether CSR-instruments should be mandatory or voluntary, it highlights and identifies the ideas and mechanisms that led to the situation as it presents itself today.

Clearly, terminology poses a challenge in this context, as key terms are being used synonymically, but at times with oppositional intentions.

The paper will be based on secondary sources among them Carroll's and Ireland/ Pillay's historical reviews of CSR-literature, and discourse theory according to Laclau and Mouffe in the interpretation of Jacob Torfing and David Howarth, as well as NGO- documentations and UN-documents as empirical data.

1.3   Literature Review

Even though the scholarly literature on CSR dates to the early 20th century, it has only risen to prominence as an area of academic research in the 1990s and 2000s. Until now "there is no strong consensus on a definition for CSR" and the literature reflects its nature of an "essentially contested concept".[20] Contributions to the field tend to begin with criticizing this lack of definition as well as the scarce formalization and little empirical substance. It is a highly interdisciplinary research area, but usually CSR is being discussed from two conflicting perspectives: the business case and the ethico-political case.[21] Notably, the contributions of the latter are replete with expressions such as "mainstream CSR", "contemporary CSR" and "conventional CSR", evoking the impression there was an other, "alternative" or "original" CSR.

The examination of CSR related questions with the help of theories of discourse is a field even younger; a noteworthy amount of contributions has only been generated since the mid-2000s.

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[20] Andrew Crane (Ed.): *The Oxford Handbook of Corporate Social Responsibility*, Oxford University Press 2009. p. 5

[21] Hanlon, Gerard: "Rethinking Corporate Social Responsibility and the Role of the Firm – On the Denial of Politics." In: Andrew Crane (Ed.): *The Oxford Handbook of Corporate Social Responsibility*, Oxford University Press 2009. p. 159

2.   Theory

The first part of the theory chapter depicts the evolution of CSR over time, followed by a second part outlining the central assumptions of Discourse Theory according to Ernesto Laclau and Chantal Mouffe.

2.1   Corporate Social Responsibility

Although it can be traced back to the first half of the 20th century, the concept of Corporate Social Responsibility has remained highly disputed and ambiguous to this date.

In part the critique is aimed at a lack of systematic theoretical conceptualization supported by empirical operationalizations[22]; a great deal of contemporary academic writing on CSR starts out emphasizing that "the field (…) presents not only a landscape of theories but also a proliferation of approaches, which are controversial, complex and unclear."[23] Moreover, there is great discordance about the content of CSR, which has been put into words famously by Dow Votaw:

"Corporate Social Responsibility means something, but not always the same thing to everybody. To some it conveys the idea of legal responsibility or liability; to others, it means socially responsible behaviour in the ethical sense; to still others, the meaning transmitted is that of 'responsible for' in a causal mode; many simply equate it with a charitable contribution; some take it to mean socially conscious; many of those who embrace it most fervently see it as a mere synonym for legitimacy in the context of belonging or being valid or proper."[24]

This section seeks to depict the development of the concept over time and to thereby provide an approximation to understanding the current (conflictive) discourse about CSR.

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[22] Van Oosterhout, J. Hans/ Heugens, Pursey P.M.A.R p. 216
[23] Garriga, Elisabet/ Melé, Domènec: "Corporate Social Responsibility Theories: Mapping the Territory" In: *Journal of Business Ethics,* Volume 53, No.1-2, August 2004. p. 51
[24] Dow Votaw 1972 quoted in Garriga, Elisabet/ Melé, Domènec p. 51f

2.1.1 The History of CSR

Interwar period

The emergence of CSR can be retraced to the interwar-period of the 20th century, when with the rise of the modern corporation the understanding of property and ownership began to change. Shareholders tended to become absent, anonymous associates rather than responsible managing partners, and managers, habitually acting in the best interest of the company, found themselves in the need to act in the best interest of shareholders, despite a growing notion of separateness of shareholders from companies with regards to involvement in production and decision-making processes. This caused an increasing problem of managerial accountability, as managers were effectively in control of a growing number of corporations, which were owned by dispersed groups of rather passive shareholders.[25] It became legitimate in this period, to subordinate the shareholder interests to those of other groups or society as a whole.[26]

Another aspect in the development of the modern corporation is noteworthy here: Jem Bendell points out that over the course of the twentieth century in most countries creating a corporation began to mean establishing a legal identity. This creation of the corporations as a "legal person" - as opposed to a natural person – brought about several changes for corporations, such as limited liability for corporate actions on the side of those who ran them as well as certain civil and legal rights that allowed them to go to court and claim the right to free speech. As a consequence their potential to influence political processes increased and corporations were enabled to create subsidiaries with a separate legal personality, whose actions they can not easily be held responsible for as the parent corporation functions as a shareholder in the subsidiaries only.[27]

Both coeval and subsequent observers detect a change of the public opinion about corporations and their managers in the 1930s. Corporations were not longer seen as purely private enterprises, but as entities with wider social obligations (E. Merrick Dodd)[28] and corporate managers had to balance the interests of the shareholders as well as claims from customers, employees and the community, which resulted in a

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[25] Ireland, Paddy/ Pillay, Renginee p. 4f
[26] Ibid. p. 7f
[27] Bendell, Jem: "Barricades and Boardrooms: A Contemporary History of the Corporate Accountability Movement". In: *UNRISD Programme on Technology, Business and Society*, Paper No. 13, June 2004. p. 7
[28] Ireland, Paddy/ Pillay, Renginee p. 5

view of managers as 'trustees' for those various groups rather than agents of the corporation only. Robert Hay and Gray (1974) explain this shift with the mounting diffusion of stock ownership and an increasingly pluralistic society[29], and presumably the 'Great Depression' contributed as well, as it brought the interconnectedness of world stock markets and national economies sharply into awareness. The economies of most of the industrialized western countries had come to be dominated by relatively few large joint stock corporations and the belief in the beneficence of free market competition was declining in favour of the belief in various sorts of planning (by both the state and private industry).[30]

The 1940s

A poll carried out by *Fortune* Magazine among business executives in 1946 illustrates their attitude towards a responsibility for the consequences of their actions exceeding the pure business itself; when asked "do you think that businessmen should recognize such responsibilities and do their best to fulfil them?" 93.5% of the respondents replied "yes".[31]

This declared acknowledgement did not lead to significant changes of business practices for the time being, as the coming decade of the 1950s was one of talk rather than action with regards to CSR according to Carroll.

The 1950s

Up until and throughout the 1950s the term in use was 'social responsibility' (SR). Howard R. Bowen's *Social Responsibilities of the Businessman* (1953) is regarded the beginning of the modern period of CSR-literature; Bowen was one of the first to articulate an SR-definition: "It refers to the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society."[32]

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[29]Carroll, Archie B.: "A History of Corporate Social Responsibility – Concepts and Practices". In: Crane, Andrew (ed.): *The Oxford Handbook of Corporate Social Responsibility*. Oxford University Press, 2009. p. 23
[30] Ireland, Paddy/ Pillay, Renginee p. 3
[31]*Fortune* 1946 in Carroll, Archie B. (2009) p. 24
[32] Carroll, Archie B. (2009) p. 25

Three core ideas were dominant in the 1950s: managers were seen as trustees, competing claims to corporate resources had to be balanced and philanthropy was accepted as a manifestation of business support of good causes.[33]

The 1960s

The 1960s saw growing efforts to formalize the concept of CSR. The idea that socially responsible business decisions could result in economic gain in the long run was set forth by Keith Davis in 1960, other key-definitions of the period came from William C. Frederick, who was of the opinion that "social responsibility in the final analysis implies a public posture toward society's economic and human resources and a willingness to see that those resources are utilized for broad social ends and not simply for the narrowly circumscribed interests of private persons and firms"[34], and Clarence C. Walton. In *Corporate Social Responsibilities* (1967*)* the latter made a strong point for voluntarism (as opposed to coercion) as the essential aspect of the corporation's social responsibilities and defined them as follows: "In short, the new concept of social responsibility recognizes the intimacy of the relationships between the corporation and society and realizes that such relationships must be kept in mind by top managers as the corporation and the related groups pursue their respective goals."[35]

The prevailing topics were employee improvements (working conditions, industrial relations, and personnel policies), customer relations and stockholder relations and philanthropy prevailed as the most noticeable CSR-manifestation.

The 1970s

In his retrospective overview of CSR-definitions, *The Social Responsibilities of Business: Company and Community, 1900-1960* (1970), Morrell Head demonstrates how the managerial literature so far had been concerned with corporate philanthropy and community relations mainly. In the 1970s the scope became broader. Harald Johnson firstly mentions this and defines: "A socially responsible firm is one whose managerial staff balances a multiplicity of interests. Instead of striving only for larger

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[33] Ibid. p. 26
[34] Frederick, William C. in Carroll, Archie B. (2009) p. 27
[35] Walton, Clarence C. in Carroll, Archie B. (2009) p. 27

profits for its stockholders, a responsible enterprise also takes into account employees, suppliers, dealers, local communities, and the nation".[36]

Very much opposed to this was Milton Friedman's 1970s *New York Times Magazine* article which attracted a lot of attention at the time and in which he claimed that "the doctrine of 'social responsibility' involves the acceptance of the socialist view that political mechanisms, not market mechanisms, are the appropriate way to determine the allocation of scarce resources to alternative uses"[37]. He called it a "fundamentally subversive doctrine in a free society" and concluded "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".[38]

The Committee for Economic Development, composed of business executives and educators, observed in 1971: "Business is being asked to assume broader responsibilities to society than ever before and to serve a wider range of human values. [...] Inasmuch as business exists to serve society, its future will depend on the quality of management's response to the changing expectations of the public." And added: "Business functions by public consent and its basic purpose is to serve constructively the needs of society – to the satisfaction of society."[39]

Keith Davis, who was of the opinion that "social responsibility begins, where the law ends", pointed out in 1973 that business had many good reasons to accept those responsibilities, among them the avoidance of government regulation, as it is "costly to business and restricts its flexibility of decision making", as well as the protection of business' viability in the long run.[40]

Lee Preston and James Post suggested dropping the term 'social responsibility' in favour of 'public responsibility'. In their book *Private Management and Public Policy: The Principle of Public Responsibility* (1975) they explain this would "stress the importance of the public policy process, rather than individual conscience, as the source of goals and appraisal criteria".[41]

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[36] Johnson, Harald in Carroll, Archie B. (2009) p. 28
[37] Friedman, Milton "The Social Responsibility of Business is to Increase its Profits". *The New York Times Magazine*, September 13th 1970.
[38] Ibid.
[39] Carroll, Archie B. (2009) p. 29
[40] Davis, Keith: „The Case for and Against Business Assumption of Social Responsibilities". In: *Academy of Management Journal,* Volume 16, No. 2, 1973. p. 313f
[41] Preston, Lee/ Post, James in: Carroll, Archie B. (2009) p. 32

Carroll mentions that the call for government regulation emerged around this time.[42] This was not least due to the increasing activities of social movements which were acting upon a newly emerging North-South debate that had been sparked off by the overthrow of the democratically elected government of Salvador Allende in Chile in the early 1970s and the suspected involvement of "ITT Corporation"[43] and the challenging of the course development was taking with regards to socioeconomic equality and environmental degradation[44], also among governments of developing countries.[45]

The first early studies were published in this period, all of them without clear definitions of CSR.[46]

Archie B. Carroll suggested a definition of business's social responsibilities in 1979 which "encompasses the economic, legal, ethical and discretionary expectations that society has of organizations at a given point in time" and emphasized that the economic component was crucial, as economic viability does not only originates from the self-interest of corporations but is a contribution made to society from them as it maintains the business system.[47]

The predominant topics of the period were pollution control, charities, community affairs and minority recruitment. While the academic debate was up and running, corporate action was still rather hesitant, but the 1970s saw the first efforts of legislative initiatives to make corporations develop organizational mechanisms to ensure compliance with laws regarding environmental, product and worker safety.[48]

The 1980s

This decade brought about a variety of alternative and complementary concepts like corporate social responsiveness, corporate social performance, public policy, business ethics and stakeholder theory amongst others.[49]

Thomas M. Jones was the first to describe CSR as a process rather than a set of outcomes. He came up with the following definition:

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[42] Carroll, Archie B. (2009) p. 29

[43] Kline, John M.: "Political activities by transnational corporations: bright lines versus grey boundaries." In: *UNCTAD*: *Transnational Corporations*. Vol.12, No. 1, April 2003. p. 3

[44] Bendell, Jem p. 3f

[45] Jenkins, Rhys: Corporate Codes of Conduct. Self-Regulation in a Global Economy. In: *UNRISD Programme on Technology, Business and Society*, Paper No.2, April 2001. p. 2

[46] Carroll, Archie B. (2009) p. 32

[47] Ibid. p. 33f

[48] Ibid.

[49] Carroll, Archie B. (2009) p. 34

"Corporate Social Responsibility is the notion that corporations have an obligation to constituent groups in society other than stockholders and beyond that prescribed by law and union contract. Two facets of this definition are critical. First, the obligation must be voluntarily adopted; behaviour influenced by the coercive forces of law or union contract is not voluntary. Second, the obligation is a broad one, extending beyond the traditional duty to shareholders to other societal groups (…)."[50]

Another contribution worth mentioning was made by Frank Tuzzolino and Barry Armandi who proposed a need-hierarchy CSR-framework in the style of Maslow's need hierarchy of human needs, assuming that likewise organizations have certain criteria that need to be fulfilled for them to function.[51]

The 1980s saw several major scandals with TNC-involvement such as the infant-formula controversy, the Union Carbide Bhopal explosion in India (1984) as well as the controversy about business in South Africa and thus the support of the apartheid-regime.[52]

The main topics of this decade were environmental pollution, employment discrimination, consumer abuses, workers safety, the deterioration of urban life and questionable/abusive practices of TNCs.[53]

The 1990s

Carroll accounts for this decade as a period with few unique contributions to CSR. Instead, the aforementioned complementary concepts and themes were being developed further, among them corporate citizenship and sustainability gained particular popularity and the latter, originally defined in environmental terms, was now seen to be encompassing the wider social and stakeholder environment.[54]

Ever more globally operating companies appeared on the arena and positions related to corporate giving, CSR and community affairs became commonplace in managerial organization and Carroll concludes that the advances to CSR in this period were made in the realm of business practice.[55] US companies began introducing voluntary codes of conducts in the early 1990s and the practice spread to Europe in the mid-

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[50]Jones, Thomas M. in: Carroll, Archie B. p. 34
[51] Carroll, Archie B. (2009) p. 35
[52] Ibid. p. 36
[53] Ibid.
[54] Ibid. p. 37
[55] Carroll, Archie B. (2009) p. 38

1990s.[56] The Case of Shell is widely regarded a key moment for this development. In 1995 the company stood accused of complicity in the execution of Ken Saro Wiwa and eight other activists in Nigeria, as well as being attacked by Greenpeace with regards to the decision to sink the Brent Spar oil platform. Shell temporarily lost the confidence of investors and the public and was the first TNC to adopt a code of conduct in the aftermath.[57]

The engagement of activists and civil group with corporations increased rapidly in this decade: one quarter of the 13.000 international NGOs in existence in 2000 were created after 1990.[58] While their activities in part consisted of 'forcing change' tactics such as boycotts, demonstrations and the threatening of corporate reputation, the end of the decade saw a new collaboration of some civil society groups with corporations: they were forming partnerships and offered their advice and expertise in developing and maintaining best practices. As a result the number of codes of conduct and certification schemes increased significantly, the Forest Stewardship Council and the Global Reporting Initiative serve as early examples for those multi-stakeholder initiatives.[59] Governments began to join such partnerships, and by the turn of the century, a whole new CSR-industry had emerged.[60]

The 21st Century

At the beginning of the 21st century, the emphasis on theoretical contributions was replaced by attempts of empirical research on the topic. Carroll stresses furthermore, that now more than in the 20 years before, CSR has become a global phenomenon.[61] He shows that the studies undertaken in the managerial field in the current period are focussed on the effects of CSR on stakeholders, employees and the reputation of companies.[62]

He mentions Habisch et al.'s *Corporate Social Responsibility across Europe* (2005) in which the authors argue CSR had been unknown about a decade before but is now "one of the most important topics for discussion for business people, politicians,

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[56] Jenkins, Rhys: Corporate Codes of Conduct. Self-Regulation in a Global Economy. In: UNRISD Programme on Technology, Business and Society, Paper No.2, April 2001. p. iii
[57] Corporate Watch Report: *What's wrong with Corporate Social Responsibility?* Oxford, 2006. p. 9
[58] Bendell, Jem (2004) p. 13
[59] Ibid. p. 14
[60] Ibid.
[61] Carroll, Archie B. (2009) p. 41
[62] Ibid. p. 40

trade unionists, consumers, NGOs, and researchers" in an intense debate about sustainability and globalization.[63]

As for the future of CSR Carroll concludes:

"It is clear from CSR trends and practices that social responsibility has both an ethical or moral component as well as a business component. In today's world of intense global competition, it is clear that CSR can be sustainable only so long as it continues to add value to corporate success. It must be observed, however, that it is society, or the public, that plays and increasing role in what constitutes business success, not just business executives alone, and for that reason, CSR has an upbeat future in the global business arena. The pressures of global competition will continue to intensify, however, and this will dictate that the 'business case' for CSR will always be at the centre of attention."[64]

Up until the 21st century the call for mandatory CSR had emerged from the realm of activism and in the 1970s briefly also from governments, while the ethico-political case for CSR had not been explored academically to a noteworthy extent[65]. This changed in the first decade of the 21st century:

Paddy Ireland and Renginee Pillay (Professor/ Lecturer of Law) have questioned the potential of CSR as an instrument for economic and social development.[66] In *Corporate Social Responsibility and the New Constitutionalism* (2009) they argue that while the ideas about the social responsibilities of corporations were radical in the 1920s and 30s and contained transformative aspirations, contemporary CSR (by which they refer to voluntary CSR) is not more than an adjunct to the revived shareholder-conception of the corporation:

"For corporations ever more obviously prioritising the shareholder interest in a world in which income and wealth inequalities are growing, CSR is a potential source of legitimacy. For those concerned about corporate 'externalities', CSR is a way of trying to temper the effects of the increasingly ruthless corporate pursuit of 'shareholder value' without challenging the seemingly inviolable and common-sense principle of shareholder primacy and the political consensus of which it is part."[67]

They point out how a 'New Constitutionalism' is further constraining the potential of contemporary CSR to balance those inequalities. 'New Constitutionalism' refers to

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[63] Ibid. p. 42
[64] Ibid.
[65] There has of course been a globalization discourse across all disciplines, but the interest in its impact on global governance and the examination of the potential of CSR in this context are very recent.
[66] Ireland, Paddy/ Pillay, Renginee: "Corporate Social Responsibility and the New Constitutionalism". In: Utting, Peter (Ed.): *Corporate Social Responsibility and Regulatory Governance: Towards Inclusive Development?* UNRISD/Palgrave-Macmillan, 2009.
[67] Ibid. p. 2

the observation that a new regulatory framework of legal and quasi-legal agreements has been established internationally since the 1990s, which is promoting and protecting the rights of (foreign) investors. Financial organizations such as the OECD and the World Bank are described as driving forces here and in effect states have conferred powers on them that are crucial to their sovereignty. Binding constraints are being imposed on the conduct of fiscal, monetary, trade and investments policies and as a consequence "in the struggle between the shareholder interest and the wider social interest, the balance of power has shifted"[68]. While the shareholder interest is protected by 'hard' law, the 'soft' law of contemporary CSR, with its reliance on self-regulation, which is meant to protect the wider social interest, has not much to contrast it with.

The authors make a strong point for a 're-radicalization' of CSR and thus a reform of contemporary corporate culture and the challenging of the prevailing neoliberal consensus about the role of the state.[69] Against this backdrop they account for a division of those concerned with corporate social responsibility and those concerned with corporate *accountability* emerging around 2003/4 and express their hope the newly emerging accountability movement might overcome some of the deficiencies of contemporary CSR.[70]

Jem Bendell (a consultant for UN agencies, international charities, universities and business on globalization and sustainable development as well as an activist) has provided the only historical overview of the development of the discourse of mandatory CSR. In *Barricades and Boardrooms. A Contemporary History of the Corporate Accountability Movement* (2004) he defines corporate accountability "as the ability of people affected by a corporation to regulate the activities of that corporation"[71] and shows how it emerged from counter-globalization activism concerned with corporate power via the cooperation on voluntary CSR by governments, civil society groups and business and its associations peaking at the UN summit in Johannesburg in 2002[72], after which a key divide could be observed between "those who regarded corporate power as a problem and those who either accepted it or considered it as an opportunity, if engaged appropriately. The latter

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[68] Ibid. p. 16
[69] Ibid. p. 18
[70] Ireland, Paddy/ Pillay, Renginee p. 17
[71] Bendell, Jem (2004) p. v
[72] Ibid. p. 17

were said to be involved in 'corporate responsibility', and the former involved in 'corporate accountability'".[73]

Bendell agrees with the definition put forward by Friends of the Earth: "accountability requires going beyond voluntary approaches and establishing mechanisms which provide adequate legal and financial incentives for compliance. It must also empower stakeholders to challenge corporations"[74] .

He points out however, that the terms "corporate social responsibility", "corporate accountability" and sometimes even "corporate citizenship" are still being used interchangeably at the present time.

Florian Wettstein (an Assistant Professor of Ethics and Business Law) argues that even though the dominant perception of CSR as a concept has become more sophisticated (as in exceeded the philanthropy dimension), "the insistence on the voluntariness of CSR, which still dominates the debate is an inadequate and anachronistic relict in the context of today's state of the debate".[75] He links the voluntariness assumption to early and incomplete "charitable understandings" of CSR, pointing out that not seeing corporate donations as a voluntary matter is problematic, but reducing CSR to philanthropy is, as it means "shifting the entire concept of CSR into the realm of moral discretion".[76] According to Wettstein it is crucial to ask how corporations generate their profits, as it "means to extend the scope of ethical reflection from mere supererogation to the domain of expectation, requirement, and moral obligation"[77]. The actual debate is doing the reverse. Ethical reflection is seen as something desirable, but not something that can be justifiably claimed from corporations, and advocates of the business case for CSR eliminate any conflict between ethics and profits and declare complete harmony between those two domains.[78]

The author makes a strong point for human rights as the "most fundamental category of moral obligation"[79] and shows that the "political (neo-) realist dogma" which holds on to a legalistic interpretation of human rights and only makes states subject

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[73] Ibid.
[74] Ibid.
[75]Wettstein, Florian: "Beyond Voluntariness, Beyond CSR: Making a Case for Human Rights and Justice". In: *Business and Society Review,* Vol. 114, No.1, 2009. p. 132
[76] Ibid. p. 131
[77] Ibid. p. 132
[78] Ibid. p. 133
[79] Ibid. p. 137

to human rights claims, resonates perfectly with the conventional CSR perception, freeing corporations from the responsibility to respect human rights as states are supposed to protect their citizens against corporations that violate those rights.[80] Freeing corporations from their moral responsibilities in this way equals questioning the legitimacy and ethical standing of human rights in general in his opinion, and thus the scope of conventional CSR has to be broadened to the realms of justice.[81] In other words, the existence of human rights brings about "an ethical imperative for corporations to become agents of justice in a globalized world"[82]. Corporations have to furthermore be seen as political actors rather than purely economic entities, due to the decisive influence they are exercising on the "basic (political and economic) structure of society and its just constitution in the global age"[83].

2.1.2   Main CSR - Theories

Domènec Melé has made on of the most recent and quite convincing attempts to summarize the main contemporary CSR theories. He identified four of them: Corporate Social Performance, Shareholder Value Theory, Stakeholder Theory and Corporate Citizenship.

Corporate Social Performance

The theory of Corporate Social Performance (CSP) is "a synthesis of relevant developments on CSR up to the 1980s"[84] and emanates from the assumption that, beyond its legal and economic obligations, business has responsibilities for "social problems created by business or other causes"[85]. These responsibilities can be identified through the expectations of society towards business' performance. CSP-theory is essentially based on two arguments, the first being that the power business undoubtedly has, brings about responsibilities, the second one being that society is *allowing* business to operate and thus it has to serve society comprehensively, not only through wealth-creation, but also by satisfying social expectations.[86] In the words of D.J. Wood "improving corporate social performance means altering

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[80] Ibid. p. 137f
[81] Ibid.
[82] Ibid. p. 141
[83] Ibid.
[84]Melé, Domènec: "Corporate Social Responsibility Theories". In: Crane, Andrew (ed.): *The Oxford Handbook of Corporate Social Responsibility*. Oxford University Press, 2008. p. 54
[85] Melé, Domènec p. 49
[86] Ibid.

corporate behaviour to produce less harm and more beneficial outcomes for society and their people".[87]

The legitimacy-aspect of this theory corresponds with the *Iron Law of Responsibility* set forth by Keith Davis in the late 1960s. It generally postulates that "those who do not take responsibility for their power ultimately shall lose it"[88] and, with regards to the business-society relation, this 'power-responsibility equation' leads to the conclusion that "society grants legitimacy and power to business. In the long run, those who do not use power in a manner which society considers responsible will tend to lose it."[89] CSP-theory emphasizes this very fact, the vulnerability of companies whose conduct is contrary to the expectations of their social environment from which they are deriving their legitimacy.[90]

Melé points out some weaknesses of CSP-theory which do not only lie in the general "vagueness of the concept of CSR"[91], as CSP also suffers from a "lack of integration between ethical normative aspects and business activity".[92] He draws attention to the fact that while the proponents of this model were making a strong point for human rights and humane conditions in the workplace, they were reluctant to openly refer to ethics in their writings despite the ethical content of those goals, which he explains with the "dominant ethical relativism of those days [the 1980s]" and an attempt to "avoid discussing what is morally right or wrong".[93] Consequently, the language used avoided terms such as 'ethical duties' and equivalent expressions in favour of 'values of our society', 'social expectation', 'performance expectation' and the like.[94]

Shareholder Value Theory

Shareholder Value Theory (SVT), also known as Fiduciary Capitalism, has its roots in neoclassical economic theory as well as agency theory, which perceives owners as principals and managers as agents.[95] SVT proclaims that profit-maximization is the only responsibility of business, the main goal being the increase of a company's economic value for its shareholders. Social contributions from business are only considered acceptable if either they are prescribed by law or directly contribute to the

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[87] Wood, D.J. in Melé, Domènec p. 49
[88] Davis, Keith in Melé, Domènec p. 52
[89] Ibid.
[90] Melé, Domènec p. 49
[91] Ibid. p. 54
[92] Ibid.
[93] Ibid.
[94] Ibid.
[95] Ibid. p. 56

maximization of shareholder value. The most noted representative of this model is Milton Friedman.[96] Melé points out the characteristic use of language in Friedman's work who accuses proponents of corporate social responsibilities as "preaching pure and unadulterated socialism", CSR as a "doctrine that harms the foundation of a free society" and says about the question of coercion versus voluntary cooperation that "in an ideal free market resting on private property, no individual can coerce any other, all cooperation is voluntary".[97] According to Melé it illustrates the underlying philosophical assumptions of Shareholder Value Theory which originated in the seventeenth century in the work of John Locke and where society is being perceived as a sum of individuals with desires and preferences and private property as an absolute right, only limited by a few legal restrictions, which can best secure everyone's individual rights.[98]

In line with Friedman's writings and based on the assumed risk that managers might work for their own advantage instead of the shareholders', some began to argue that the market should have control over the allocation of resources, as they consider the market superior to any kind of organization; the return on corporate stock is seen as the measure of a company's performance in this model and the remuneration of managers in relation to those returns is supposed to guarantee the shareholder-value orientation.[99] A complete separation of the public and the private is implicit in the SVT model and justifies the rejection of any responsibility for the consequences of business activities, as the possible negative social and impacts could be avoided through appropriate laws and thus the responsibility lies with governments.[100]

CSR is traditionally regarded as a threat to the aim of profit-maximization in SVT, though the general attitude has changed from the denial of any social responsibilities (Milton Friedman among others), and the suggestion, social problems should be converted into business opportunities (Peter Drucker), to the view that satisfying social interests can under certain conditions contribute to the maximization of the shareholder value. Yet cost-benefit-calculations on CSR have proven to be difficult.[101]

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[96] Melé, Domènec p. 55
[97] Friedman, Milton in Melé, Domènec p. 58
[98] Ibid.
[99] Melé, Domènec p. 56
[100] Ibid. p. 60
[101] Ibid. p. 57

Criticism of this model is often aimed at the narrow view of human beings and the public good which it contains, as economic performance is only one aspect of the latter. By favouring short-term profits it is at odds with sustainability concerns and thus endangering other aspects of the public good when natural resources are being irreversibly exhausted or the environment is being severely damaged.[102] In addition to that, the central importance of property rights as nearly absolute rights in SVT has been accused of being anachronistic, as the old language of property and ownership no longer describes what modern corporations really are.[103]

Stakeholder Theory

While Shareholder Value Theory is focused on the creation of economic value for a company's shareholders exclusively, Stakeholder Theory proclaims the creation of economic, social and ecological value for all the groups and individuals who have a stake in a company, i.e. "who benefit from or are harmed by corporate actions".[104] Some proponents are of the opinion a broad definition of stakeholders as suppliers, community, employees, customers and financiers would make the question of social responsibility obsolete, because as legitimate partners in the dialogue about a corporation's future they would influence and shape business practice.[105]

Stakeholder Theory draws from classical theories of distributive justice and several authors have accepted its basic framework and used different ethical theories to elaborate a variety of approaches, such as Feminist Ethics, the Common Good Theory, the Integrative Social Contract Theory and the Principle of Fairness, among others.[106]

Melé is highlighting as one of the strengths of the stakeholder theory that it is "not a mere ethical theory disconnected from business management, but a managerial theory related to business success. The normative approach (…) is closely connected with managerial decision-making. Stakeholder management is [therefore] well accepted in many companies."[107] It does, however, seem to be quite controversial with its pluralistic perception of groups and individuals with a claim on corporate decisions and its focus on their rights having to be ensured.

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[102] Melé, Domènec p. 61
[103] Ibid.
[104] Ibid. p. 62
[105] Ibid.
[106] Ibid. p. 65
[107] Ibid. p. 66

Critics of the model regard Stakeholder Theory as a comprehensive moral doctrine or socialism, a great deal of the criticism is also aimed at the fact that it is not feasible to always take the interests of *all* stakeholders into account, and at the problem of the model possibly promoting self-serving behaviour among managers, as they could appeal to the interests of the benefitting groups of stakeholders, which led E. Sternberg to the conclusion that the stakeholder theory "effectively destroys business accountability (…) because a business that is accountable to all, is actually accountable to none.".[108]

Melé acknowledges that Stakeholder Theory allows for a variety of interpretations and thus can lead to the definition of different sets of stakeholders and unspecific values, rights and interests. He furthermore agrees with A. Etzioni's objection that while the model is able to justify stakeholders taking part in corporate governance, it can hardly be implemented without affecting the common good, which in this context refers to "the well-being of the economy".[109]

Corporate Citizenship

While the term 'good corporate citizenship' used to refer to philanthropic activities of companies targeted at the communities they were operating in when it first appeared in the 1980s, it was often used synonymic for CSR during the 1990s, but in the past years the notion of Corporate Citizenship has been developed as a concept of its own, against the backdrop of the increasingly transnational activities of corporations.[110] J.M. Logsdon and D.J. Wood have stressed that the linguistic change from CSR to CC contains a profound normative change in understanding business as a part of society with responsibilities, as opposed to seeing social responsibilities as an external affair.[111] While a comprehensive theory of Corporate Citizenship is not yet available, they have set forth a model called 'Global Business Citizenship' in which they point out that "business citizenship can not be deemed equivalent to individual citizenship – instead it derives from and is secondary to individual citizenship"[112]. They consider a universal rights (not minimalist or communitarian) perspective of citizenship, which is based on the moral assumption of rights as necessary for the recognition of human dignity and for the achievement of human

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108 Sternberg, E. in Melé, Domènec p. 67
109 Melé, Domènec p. 68
110 Melé, Domènec p. 68ff
111 Ibid. p. 69
112 Logsdon and Wood (2002) in Melé, Domènec p. 71

agency, the only one suitable for business operating globally. Guided by a set of universal ethical standards called 'hypernorms' in their model, "a global business citizen is a multinational enterprise that responsibly implements duties to individuals and societies within and across national and cultural borders".[113]

Another important (descriptive) model has been introduced by D. Matten and A. Crane, namely an 'extended theoretical conceptualization of Corporate Citizenship' and claim that due to globalization processes corporations are taking over the roles of governments in administering citizenship rights. In their view, corporations are assuming a triple role here: they are becoming the provider of social rights, the enabler of civil rights and the channel for political rights.[114] The authors question whether this circumstance is acceptable, as "governments are accountable to their citizens and, in principle, could be approved or discharged of their responsibilities through an electoral process. Similar mechanisms, however, do not exist with regards to corporations".[115]

A major weakness of the Corporate Citizenship model that Melé draws attention to is the lack of clarity on who is responsible for creating the universal standards it requires. While the UN Universal Declaration of Human Rights seems to be providing a framework, he expresses doubts whether an approach based only on the respect of people's rights (and not solidarity with stakeholders) can be sufficient.[116] Moreover the model of Corporate Citizenship has been criticized for being too dependent on managerial-discretion and a philanthropic ideology and that it neglects the question of corporate *rights* that should come along with corporate responsibilities.[117]

Melé points to the regional differences in the social behaviour of companies: while the shareholder-value-model is rather typical in the US, European and Japanese companies tend to be closer to the stakeholder-model in their business practice. He predicts the corporate citizenship model is likely to gain popularity, especially among transnational corporations.[118] With regards to a comprehensive normative theory of the business and society relation none of them is fully convincing on its

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[113] Logsdon and Wood (2002) in Melé, Domènec p. 72
[114] Melé, Domènec p. 72f
[115] Matten and Crane (2005) in Melé, Domènec p. 73
[116] Melé, Domènec p. 75
[117] Ibid. p. 74f
[118] Ibid. p. 76

own, also, as he points out, because each of them is rooted in a different field of knowledge: Corporate Social Performance comes from sociology, Shareholder Value Theory is related to economic theory, while Stakeholder theory has its roots in several ethical theories and Corporate Citizenship goes back to the political concept of citizen.[119]

In collaboration with Elisabet Garriga he has developed a classification of CSR-theories that illustrates those origins (and has been adjusted insofar as only authors and approaches which have been mentioned previously are included here):

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[119] Ibid.

Table 1: CSR Theories and related approaches[120]

Type of Theory	Approach	Summary	Key Authors
Instrumental Theories focus on achieving economic objectives through social activities	Maximization of Shareholder Value	value maximization , obligations only towards shareholders	Friedman (1970), Jensen (2000)
Political Theories focus on a responsible use of business power in the political arena	Corporate Constitutionalism Corporate Citizenship	social responsibilities of business arise from the amount of social power they have the company is understood as a citizen with resulting obligations towards society	Davis (1960,1973) Wood and Lodgson (2002), Matten and Crane (2005)
Integrative Theories focus on the integration of social demands	Public Responsibility Corporate Social Performance	law and the existing public policy process serve as a reference for social performance searches for social legitimacy and processes to give appropriate responses to social issues	Preston and Post (1975, 1981) Carroll (1979), Wood (1991) (among others)
Ethical Theories focus on universal norms	Stakeholder Theory Universal Rights The Common Good	obligations towards stakeholders frameworks based on human rights, labour rights and concerns for the environment oriented towards the common good of society	Freeman (1984), Phillips et al. (2003) (among others) Wettstein (2009) Melé (2002)

[120]Garriga, Elisabet/ Melé, Domènec p.63f

2.1.3 Findings

The previous overview of the concept's history and important theoretical contributions shows that the first wave of debate about the responsibilities of business in the 1920s and 30s was set off by the rise of the corporate economy, accompanied by changes in the perception of ownership. The legitimacy of the principle of shareholder primacy was being questioned due to the changes in corporate culture and led to the general notion that not only *should* corporations be run in the wider social interest, but that they *were* in fact increasingly being run in this manner.[121] The idea of the socially responsible corporation was shared by both academic commentators and business executives and consisted of the recognition of a multiplicity of justified interests in the activities of companies and an increase in their philanthropic activities, targeted at the surrounding communities.

At large, the discussion remained at an academic level. But while social scientists in the 1950s and 60s began to argue that the decline of shareholder-power and the changes in corporate culture had brought about important changes in the nature of capitalism, to the extent that some regarded it "manifestly inaccurate to call contemporary Britain a capitalist society"[122] and others began to refer to the American business system as one of "Collectivism" and "People's Capitalism"[123], it was business's academe who was undertaking attempts to define and formalize the concept of CSR, with a clear focus on how to make good business sense of it. While the definitions of the responsibilities remained vague, the condition that – if they existed - they had to be taken on voluntarily was established in the business-discourse in the late 1960s, a time "of Keynesianism and social democracy, of trade unions strong enough to mount a serious challenge to the power of capital, and of states thought capable of achieving economic and social policy goals"[124], and with the declared aim of avoiding regulation by governments. This has to be viewed against the backdrop of state-controlled economies being a reality at the time and suggests that the discourse was heavily influenced by the ideological conflict of to what extent markets should be regulated by states. The increasingly global activities of corporations and a newly emerging critical development-discourse in the 1970s brought about the realization that the interests of TNCs and those of host countries in

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[121] Ireland, Paddy/ Pillay, Renginee p. 6
[122] Ibid. p. 7
[123] Ibid.
[124] Ibid.

the global South did not always coincide. Consequentially, much of the initiation for a renewed focus on CSR came from the environmental movement[125] as well as activists and scholars concerned with sustainable development[126] and the governments of post-colonial states[127]. International institutions started attempts of framing the problem in this period and the voluntariness-assumption that had been established in the CSR-discourse was being contested for the first time.

In the 1980s a general shift toward market-based policies and away from state intervention occurred in both developed and developing countries.[128] In contrast to the previous decade Southern governments had now come to be interested in attracting, rather than regulating, TNCs and foreign investment.[129]

The end of communism in the former Soviet Union and Eastern Europe influenced the development in several ways: not only was it widely perceived as an ideological victory of the free market economy over planned economies, it also technically broadened the scope for the activities of TNCs remarkably - the proportion of the world's population taking part in the global economy is estimated to have risen from a quarter to four-fifths since.[130] Subsequently globalization took on speed and neoliberalism with its supposition of free, unregulated markets and the forces of supply and demand being the best way to ensure the efficient allocation of resources and the maximization of wealth and welfare[131], gained considerable influence on public policy. In the course of this trend for market-liberalization and deregulation, the growth of free trade and investment movements, the shareholder primacy and thus the shareholder-oriented model of the corporation were vigorously reasserted in the 1990s, as Paddy Ireland and Renginee Pillay point out.[132]

In view of major corporate scandals and the realization that the victims of those were often found in the South, activism directed at corporations increased. The formerly prevailing mentality of Western charity was replaced by one of global solidarity.[133] This can probably in part be explained with the advances in technology globalization has brought about, as geographically distant events and places have seemingly

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[125]Bendell, Jem: "In Whose Name? The AccountAbility of Corporate Social Responsibility." *Development in Practice*, Vol. 15, No. 3/4, June 2005. p. 368
[126] Bendell, Jem (2004) p. 3f
[127] Jenkins, Rhys p. 2
[128] Ibid. p. 3
[129] Ibid. p. 3
[130] Jenkins, Rhys p. 6f
[131] Ireland, Paddy/ Pillay, Renginee p. 8
[132] Ibid.
[133] Bendell, Jem (2004) p. 5

moved closer. At the same time as TNCs have benefitted from this development in terms of logistics and organization, it has also increased the possibilities of obtaining and sharing information on their activities and the effects of those. But as the awareness for the increase of corporate power is rising incrementally, this solidarity very likely also stems from the recognition that the activities of TNCs have economic and political impacts in the so-called First World.

The call for mandatory CSR emerged in times of crisis and against the backdrop of the perceived failure of TNCs. The discourse is constituted by activists, governments and academics from a variety of disciplines. It is more diverse, younger, rooted in sustainable development and global justice discourses and is explicitly addressing corporate power as a problem. As of late, a change of terms can be observed. Increasingly, C*orporate Accountability* is being used instead of Corporate Social Responsibility by those who hold the view that TNC activity needs binding regulation. The underlying notion is that corporations are prioritizing the generating of profits over social and environmental concerns. It is furthermore presumed that, while pursuing their goal of profit-maximization, TNCs *cause* social and environmental problems and use their power to take political influence, in order to increase their power and maintain an economic and political order that in the eyes of the Corporate Accountability movement brings forward inequalities.

As opposed to this, the discourse of voluntary CSR appears relatively homogeneous. It emerged against the backdrop of changes in the corporate economy and corporate culture. The focus has largely been on how CSR can be adding to the success of companies and thus be profitable. The underlying notion is that society benefits from business conduct and free markets, growth is a condition for development, and hence state intervention has to be kept minimal.

2.2   Discourse Theory

This section outlines the central claims of discourse theory of which some will later be applied to the discourses of voluntary and mandatory CSR.

Discourse analysis emanates from the assumption that all social, economical and political phenomena have a meaning and that meaning is generated through articulation and discursive struggles for hegemony.

It is a misconception that discourse theory exclusively refers to a linguistic phenomenon. Laclau and Mouffe have emphasized the interconnectedness of the semantic aspects of language and the pragmatic aspects of actions, movements and objects.[134] Accordingly, Torfing points out that "if linguistic analysis is no longer necessarily attached to a particular phonic or semantic substance and thus becomes an analysis of pure forms, there are no limits to the application of the abstract schemes of linguistic analysis"[135].

Though generally referred to as post-marxist, the discourse theoretical analytics of Laclau and Mouffe reject the Marxist assumption of determinism through class relations and economic processes. Their concept draws from the reworking of Marxist perceptions of politics and ideology by Louis Althusser and Antonio Gramsci[136] and provides an account for social change through discursive struggles and domination.

They envision a radical plural democracy that links social antagonism with the liberal principle of pluralism "individuals should have the possibility to organize their lives as they wish, to choose their own ends and to realize them as they think best"[137] and thus leave behind the idea of a harmonic, perfect consensus.[138] Radical is to be understood in the sense that this plural democracy with its emphasis on political struggles is to be extended to all areas of society on the one hand and its own immanent incompleteness on the other: The concept of radical plural democracy presupposes that a true and pure democratization would lead to the repression of all

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[134] Torfing, Jacob: New Theories of Discourse – Laclau, Mouffe and Žižek. Blackwell Publishers ltd., 1999.
p. 94
[135] Torfing, Jacob: p. 89
[136] Howarth, David/ Norval, Aletta J./ Stavrakakis, Yannis (Ed.): Discourse theory and political analysis. Identities, hegemonies and social change. Manchester University Press, 2000. p. 5
[137] Mouffe 1990 in Torfing, Jacob p. 252
[138] Torfing, Jacob p. 252

tension and forms of repression and hence totalitarian circumstances and is neither eligible nor possible.[139]

The concept has gained interest in the humanities and social sciences and has, with regards to "issues of identity formation, the production of novel ideologies, the logics of social movements and the structuring of society by a plurality of social imaginaries",[140] distinct relevance for political analysis.

2.2.1 Discourse and the Field of Discursivity

In the concept put forward by Laclau and Mouffe a discourse is defined as "a relational totality of signifying sequences that determine the identity of the social elements, but never succeed in totalizing and exhausting the play of meaning"[141]. The determination of their identity occurs through articulation, which is a "practice establishing relations among elements (signifiers) such that their identity is modified as a result of the articulatory practice"[142]. Articulated differential positions in a discourse are categorized as moments (signs), while differences which remain unarticulated due to their 'floating' character in times of social crisis and dislocation are being referred to as elements.[143]

The identities of objects can never be fully constituted and the fixation of meaning is always contingent and temporary. This can also be understood in the sense that any meaning those elements acquire is tied to the context and means something only then and there, in this particular discourse.

The discursive/ the field of discursivity (also 'the social') stands for an irreducible surplus of meaning generated through the partial fixation of meaning. It is, unlike discourses, not an object among other objects, but a 'theoretical horizon for the constitution of being for every object' and indicates that "what is not fixed as a differential identity within a concrete discourse is not extra- or non-discursive, but is discursively constructed within a terrain of unfixity"[144], as Laclau and Mouffe decidedly reject a distinction of the discursive and the non-discursive: *The fact that every object is constituted as an object of discourse has nothing to do with whether there is a world external to thought, or with the realism/idealism opposition. An*

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[139] Torfing, Jacon p. 256ff
[140] Howarth, David et al. p. 2
[141] Torfing, Jacob p. 87
[142] Laclau and Mouffe in Howarth, David et al. p. 11
[143] Howarth, David et al. p. 7
[144] Torfing, Jacob p. 92

earthquake or the falling of a brick is an event that certainly exists, in the sense that it occurs here and now, independently of my will. But whether their specificity as objects is constructed in terms of 'natural phenomena' or 'expressions of the wrath of God' depends upon the structuring of a discursive field. What is denied is not that such objects exist eternal to thought, but the rather different assertion that they could constitute themselves as objects outside any discursive conditions of emergence."[145]

Each particular discourse is limited through "the exclusion of a discursive exteriority that threatens the discourse in question".[146] The discursive exteriority is of course not to be mistaken for something outside the discursive, it rather stands for a competing discourse or discourse formation. It is a threat in the struggle for domination of the discursive field, but does condition the discourse at the same time by determining its boundaries.

It has been pointed out that the fixation of meaning is partial and temporary. In order to account for the formation of identities or transformation of elements into moments, nodal-points serve as "privileged signifiers or reference points (…) in a discourse that bind together a particular system of meaning or 'chain of signification'"[147].

David Howarth illustrates this with the example of "communism" as a nodal-point in the communist discourse. Through reference to this privileged signifier the meaning of pre-existing signifiers like 'democracy', 'state' and 'freedom' is partially fixed. The elements are being transformed into moments of this particular discourse and thereby acquire a new meaning: "democracy becomes a 'real' democracy as opposed to 'bourgeois' democracy, 'freedom' acquires an economic connotation and the role and the function of the state is transformed".[148]

Despite the fact that the structure does not allow for a complete closure of the discursive field, all articulatory practice will aim to do so. Chains of signification which partially fix the meaning of floating signifiers with the help of privileged reference points are being expanded in an attempt to dominate the field of discursivity and thus discourses are constituted.[149] Which is to say every attempt to dominate the discursive field *is* an attempt to close it.

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[145] Laclau and Mouffe in Howarth, David et al. p. 5
[146] Torfing, Jacob p. 43
[147] Howarth, David et al. p. 8
[148] Ibid.
[149] Torfing, Jacob p. 98

Due to the impossibility of the full determination of an object's identity or the total closure of the discursive field some nodal-points function as empty signifiers in discourses. "Empty signifiers – 'the people', 'order', 'unity', 'liberation', 'revolution' etc. – have been employed, on various occasions, to signify the absence of a community of fully achieved identities. Why one signifier rather than another assumes the function of signifying the absent communitarian fullness is determined in and through political struggles for hegemony."[150] This means, what is actually created in order to close a gap, is really making it more visible. Or, as Laclau points out, though the closure of the social field can never be achieved, societies are organized on the basis of impossible ideals of closure and fullness and the production of empty signifiers is necessary for the emergence and functions of those ideas. According to him, *"in a situation of radical disorder, 'order' is present as that which is absent; it becomes an empty signifier, as the signifier of this absence. In this sense, various political forces can compete in their efforts to present their particular objectives as those which carry out the filling function of that lack. To hegemonize something is exactly to carry out this filling function."*[151]

In reverse this means that those political forces which manage to 'claim' certain nodal-points will be successful in dominating the social field, which corresponds with the findings of Jens Peter Frølund Thomsen, who has pointed out that political practice is essentially a struggle about symbols and that those struggles occur when the meaning of social phenomena is to be decided.[152]

2.2.2 Hegemony

Laclau and Mouffe have defined hegemony as an "articulatory practice instituting nodal-points that partially fix the meaning of the social in an organized system of differences. The discursive system articulated by a hegemonic project is delimited by specific political frontiers resulting from the expansion of chains of equivalence".[153] Hegemonic practices of articulation define the limits of particular discourses through their efforts to exclude anything opposed to the discourse in question, which accounts for an interdependency of both: "Hegemony and discourse are mutually

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[150] Torfing, Jacob p. 176
[151] Ernesto Laclau quoted in Torfing, Jacob p. 8f
[152] Frølund Thomsen, Jens Peter: Moderne politikbegreber – introduktion til systemanalyse, marxisme og diskursanalyse. Forlaget Systime A/S, 1997. p. 70
[153] Torfing, Jacob p. 109

conditioned in the sense that hegemonic practice shapes and reshapes discourse, which in turn provides the condition of possibility for hegemonic articulation."[154]

Hegemonic practices involve the articulation of different identities and subjectivities into a common project, while hegemonic projects are the outcomes of those projects' efforts to create new forms of social/discursive order from a variety of dislocated elements.[155]

A hegemonic force will aim at constructing the excluded identity as an obstacle to the full realization of chosen meanings and options and thus hegemonic articulation necessarily contains an element of force and repression, since it "involves the negation of alternative meanings and options and the negation of those people who identify themselves with those meanings and options".[156]

Hegemony is thus an "expansion of a discourse, or set of discourses, into a dominant horizon of social orientation and action by means of articulating unfixed elements into partially fixed moments in a context crisscrossed by antagonistic forces" and has in this definition a "general validity for analysing processes of disarticulation and rearticulation that aim to establish and maintain political as well as moral-intellectual leadership."[157]

Social antagonisms account for the dynamics of discourses and the constitution of hegemonic discourses and discourse formations, the latter understood as sets of discourses or bigger bodies of ideas.

2.2.3   Social Antagonism

The occurrence of social antagonism goes back to the same circumstance that has been described earlier: the impossibility of constituting a totality. This is valid at the level of social agents, who can never *fully* achieve an identity, and also for the social field as a whole: "The limit of the social must be given within the social itself as something subverting it, destroying its ambition to constitute a full presence. Society never manages to be society, because everything in it is penetrated by its limits, which prevent it from constituting itself as an objective reality."[158]

Social antagonism is caused by the negation of individual or collective identity through a hegemonic force, as it seeks to negate alternative meanings and options

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[154] Torfing p. 43
[155] Howarth, David et al. p.14
[156] Torfing, Jacob p. 120
[157] Torfing, Jacob p. 101
[158] Howarth, David et. al. p. 10

and thus those people identifying with these meanings and options.[159] It is making the limits of discourses visible, as it appears where meaning is contested.

The limits of discourses and discourse formations are being established through excluding a "radical otherness that has no common measure with the differential system from which it is excluded, and that therefore poses a constant threat to that very system".[160] But as this 'radical otherness' negates and at the same time constitutes the limits and identities of the discourse formations from which it has been excluded, it is called a 'constitutive outside' in the work of Laclau and Mouffe and equals social antagonism, which then is "the condition of possibility and the condition of impossibility of discursive systems of identity [at the same time]".[161]

Social antagonists are to be perceived as adversaries rather than enemies:

"Once we accept the necessity of the political and the impossibility of a world without antagonism, what needs to be envisaged is how it is possible under those conditions to create or maintain a pluralistic democratic order. (…) It requires that, within the context of the political community, the opponent should be considered not as an enemy to be destroyed, but as an adversary whose existence is legitimate and must be tolerated. We will fight against his ideas but we will not question his right to defend them."[162]

Two main types of social antagonism can be distinguished: Popular antagonisms that cause a simplification of the social space, as they divide the entire social space into two contrarian camps as it is dominated by one major social antagonism, to which all minor antagonisms have to refer. As opposed to such popular antagonisms, democratic antagonisms only divide minor social spaces and thereby make the entire space of the social more complex.[163]

The excluded elements are somewhat united through their negation of the discourse in question, but "there is no simple identity between the equivalential identities since they are only the same in one aspect while being different in others. The relation between difference and equivalence is, in other words, undecidable. The discursive identities are inscribed both in chains that stress their differential value and in signifying chains that emphasize their equivalence."[164]

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[159] Torfing, Jacob p. 120f
[160] Torfing, Jacob p. 124
[161] Ibid.
[162] Mouffe, Chantal in Torfing p. 121
[163] Torfing, Jacob p. 127
[164] Torfing, Jacob p. 97

However, the relation between the logics of equivalence and difference can be fixed in temporary hierarchies and it depends on political struggles over hegemony within the specific field which of them becomes prevalent.[165]

"Whereas a project employing the logic of equivalence seeks to divide the social space by condensing meanings around two antagonistic poles, a project employing a logic of difference attempts to weaken and displace a sharp antagonistic polarity, endeavouring to relegate that division to the margins of society."[166]

Torfing points out that social antagonism plays an important role for the construction of myths and social imaginaries, which he describes as precursors conceptualizing ideologies. They represent an attempt to "construct society and social agency as positive and fully sutured identities" and operate with "tendentially empty and essentially ambiguous signifiers".[167] Consequently, ideology creates an illusion by constructing "the real world in terms of a set of fully constituted essences and tends to deny that these essences are contingent results of political decisions taken in an undecidable terrain".[168] Social agents tend to act according to those "totalizing ideological representations" although they know they do not represent their objective reality.[169]

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[165] Torfing, Jacob p. 125
[166] Howarth, David et al. p. 11
[167] Torfing, Jacob p. 115 and 129
[168] Torfing, Jacob p. 116
[169] Ibid.

3. Analysis

The examination of the history of discourses of business' responsibilities shows that the surrounding events and circumstances have had a crucial influence on their emergence and shaping.

The existence of such responsibilities was quite easily acknowledged due to changes in the global economy as well as in corporate culture at the beginning of the 20th century, with a trend towards more disperse relations of ownership, production and decision-making and a generally increased complexity, which lead to the recognition that society had a legitimate interest in the way companies were being run and that not only shareholders had to be considered in this process. In response to changing expectations of those affected by companies' activities, the general notion was that companies had "wider social obligations" and should act in compliance with the "objectives and values of our society". Despite constant efforts by business' academe to formalize the CSR concept from the 1950s onwards, and more and more definitions emerging in the subsequent decades, they remained vague and what the responsibility of companies effectively consisted of was never clearly spelled-out. A look at what Carroll accounts for as the dominant CSR-topics over the decades suggests that it was mainly understood as giving a part of the generated profits back to society through donations and philanthropic activities, supplemented by topics that emerged in society and companies had to react to, such as working conditions when trade unions had developed and gained power, minority-recruitment as a reaction to the civil rights movement etc. The "expectations of the public", and "public consent" even, remained a reoccurring motive in the CSR discourse and the emergence of new topics on the CSR agenda shows how these expectations were being discursively accommodated.

Though these issues clearly go back to processes of dislocation and oppressed identities, they did not lead to any significant contestation of the discourse of voluntary CSR. It is likely that they were covered by national legislation over time, which did *not* happen at the global level later.

The "objectives and values of our society" have naturally been subject to change and disagreement. It seems odd at first sight, that the supposition social responsibilities of companies towards society could only be voluntary was *preventively* established in the discourse of business around the end of the 1960s. But bearing in mind that the discursive field at the time was affected by the ideological conflict of the Cold War

leads to the assumption this was a reaction to the perceived threat of communism and thus a general rejection of state-control over economies found its reflection in the CSR discourse. This is also illustrated by the often quoted words of Milton Friedman, who against the backdrop of an emerging discourse of mandatory CSR negated the existence of any social responsibilities on the side of business by building chains of signification that reflect this ideological conflict: CSR is pictured as a "subversive" "socialist" "doctrine" endangering the foundations of a "free society". This suggests that only a capitalist society with unregulated markets where all business cooperation is voluntary can be considered free, and those who propose regulation of business activities are socialists and thus enemies of freedom. This vehement reaction to the discursive exteriority shows that this first wave of contestation was of a confrontational nature. Linking the question of CSR to the ideological conflict of the period is an attempt to divide the social into two contrarian camps in the form of a popular antagonism. Here, the challenged discourse was applying a logic of equivalence by constituting the new competing discourse of mandatory CSR as a radical otherness that has no common measure with the differential system from which it is excluded, and that therefore poses a constant threat to that very system, and all minor antagonisms were made to refer to the dominant major antagonism, namely the capitalism vs. communism conflict. There is no further account for the denial of social responsibilities, and it is also the last time that "profit-making" appears articulated at the forefront of the business discourse. While the initiative to put mandatory CSR into practice trailed off without result, the discourse of the business case for CSR was being further expanded. Not only was the condition of voluntariness cemented in all contributions to the CSR concept, the findings of Doménèc Melé also show that business' academe incorporated approaches that emerged around the business-society relation even if the initiation had come from another discipline, but generally the domain was covered by business-scholars. So at a conceptual level, in order to establish voluntary CSR as a hegemonic project, attempts were made to fix floating signifiers as parts of the business case. The concept of Corporate Citizenship serves as an example for those efforts, as it originates from the field of political science and poses questions of rights and obligations of citizens of a defined society, and has been reframed in the

business discourse as a matter of *rights* for corporations as well as financial contributions (as in corporate giving).[170]

3.1.1 Dislocation – the impact of globalization

In this section it will be argued that globalization has had a dislocating effect on the CSR-discourse.

Generally, globalization is yet another contested concept and a phenomenon that has been extensively discussed in the social sciences. This debate will not be picked up here. In the following globalization is understood as a process of ever increasing interdependence at several levels that has been set off by the growing integration of the world markets. The term globalization in this sense was popularized by Theodore Levitt, who accounts for an increased interdependence of the world markets, accompanied by exacerbated global competition and a declining relevance of national markets in his article *"The Globalization of Markets"* from 1983.[171] Not least as a result of technical progress in the areas of communication and transportation this process has taken on speed over time and expanded from the economic realm to other spheres, so that today globalization is also taking place culturally (convergence of ideas, norms and values, English becoming the global lingua franca) and politically (the cooperation between states as well as civil society engagement increasingly exceed nation state borders).[172]

The concerns about an evermore undemocratic world order resulting from this development have been touched upon elsewhere in this paper.[173] Whether or not one adheres to the aforementioned Ireland/Renginee - observation of a New Constitutionalism, where corporate rights are being institutionally secured and strengthened to the disadvantage of the wider social interest, it can definitely be stated that TNCs maintain a crucial role in it as both drivers and beneficiaries of globalization.

Dislocation has been defined as "the traumatic event of 'chaos' and 'crisis' that ensures the incompleteness of the structure";[174] Not only is it "precisely this incompleteness, this lack of objectivity that deprives the structure of its determining

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[170] This meaning of Corporate Citizenship is contested though and it remains to be seen, whether similar attempts will be made with regards to Corporate Accountability.
[171] Levitt, Theodore: "The Globalization of Markets." In: *Harvard Business Review.* May/June 1983
[172] http://globalpolicy.org/globalization/defining-globalization.html
[173] Cf. Introduction p. 3
[174] Torfing, Jacob p. 149

capacity"[175], dislocation also endangers hegemonic discourses due to an increased production of floating signifiers. The old discursive or explanatory systems do not function any longer in a state of disorder.

The previous examination of the history of the CSR concept has shown that it was well in place when the fact that the responsibilities of business should be voluntary was contested due to scandals which typically occur in the areas and industries shown in table 2.

Table 2: Overview of areas and industries

Areas where TNC activities have proven to be potentially problematic:
Labour: child-labour, unions, security, discrimination
Environment: pollution, deforestation, waste-disposal
Corruption
Conflict zones/ **Weak states**:   urge or upkeep of conflicts, business with oppressive regimes
Industries which are particularly prone to the occurrence of corporate malpractice:
Textile
Mining
Automotive
IT & Mobile communication

While TNCs have reaffirmed their socially responsible behaviour through the launching of codes of conduct and CSR-activities over a period of more than two decades, cases of human rights violations, environmental damage etc. occur continuously, contradicting those declarations. What is regarded as the crisis is the fact that cases of corporate malpractice are not only difficult to prosecute due to expanded global supply chains and increasingly complex owner-subcontractor-relations, they are moreover often taking place in legal gaps or a "regulatory

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[175] Ibid.

vacuum". Either because of loose legislation (or unstable political circumstances for that matter) in a host country, or because a breach of international standards is committed by a subcontractor and the main contractor can not be held liable. Voluntary social responsibility that "begins, where the law ends", does not fill this gap, as it is by definition not enforceable. In fact, while lexically the term 'responsibility' contains the meaning 'liability' and 'accountability'[176], it seems that it has been systematically emptied for this meaning in the CSR-discourse through numerous attempts to theorize and formalize the concept without concrete definitions of the responsibilities, a flood of voluntary codes and the fierce insistence on voluntariness. Globalization has thus created a situation where 'social responsibility' has become an empty signifier, being "present as that what is absent".

This assumption is supported by the recent renunciation of 'responsibility' in favour of 'accountability' by advocates of mandatory CSR.

3.1.2   Social Antagonism – the role of NGOs and the business movement

Social Antagonism is making the limits of discourses visible, as it appears where meaning is contested and, as a discursive response to processes of dislocation, social antagonisms account for the dynamics between discourses in their struggle for hegemony. With regards to the discourses of voluntary and mandatory CSR the divide can (roughly) be drawn between the business movement, governments, and an network of NGOs concerned with trade and development, governments, trade unions, and their respective academes.

The proponents of mandatory CSR can be linked to what was called the 'anti-globalization'-movement in the 1990s and early 2000s[177]. Lately there seems to be a tendency towards a shift in terms in favour of less defaming descriptions. 'Anti-globalization' transports connotations of naïve and utopian imaginations of a problem-free world, without any worked-out alternative to the present economic order.[178] It has been called "a form of protest politics" that "combines politics of resistance with a culture of complaint"[179] and suggests its proponents are working for the impossible reversal of economic globalization and its effects. As the recognition is beginning to prevail that those accusations are not fully justified, the description is

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[176] The New Oxford Thesaurus Of English. Oxford University Press, 2000.
[177] Bendell, Jem (2004) p. 5
[178] Author n.a.: *On Marx after Communism*. In: The Economist. Vol. 17, No. 9, 2002.
[179] Pieterse, Jan Nederveen: "Globalization and Collective Action". In: Hamel, Pierre (ed.): *Globalization and Social Movements*. Basingstoke, 2001. p. 29

now '(global) social movements' more often, understood as a subset of numerous actors operating in the realm of civil society who band together to pursue a far reaching transformation of society.[180]

Peter Utting has shown that "big business has proved very capable of organising, networking and mobilising around CSR issues"[181] and should thus be regarded as a movement as well, rather than a few TNCs reacting to accusations. As examples for those ways of organization he points out newly emerging business-interest NGOs, corporate philanthropists and foundations with close ties to TNCs such as the "Bill and Melinda Gates Foundation", "CSR Europe" and "Business for Social Responsibility", as well as traditional business and industry associations like the International Chamber of Commerce (ICC), the International Employers Organization (IEO), the World Economic Forum and several sectoral associations.[182]

3.1.3 Discursive Strategies - The language of CSR and convergence

While the earlier periods of contestation can be characterized as confrontational and NGOs dealing with corporations were engaging in 'forcing change tactics', the strategies changed on both sides towards the millennium.

Civil society engagement with business has not only expanded since then, but also assumed more diverse forms. The main types of activism (which sometimes are being pursued simultaneously by the organizations mentioned below) have been described by Peter Utting as follows:[183]

Watchdog activism: corporate malpractice is identified and publicised through the so-called 'naming and shaming' of specific companies. This approach is pursued by Corpwatch (USA), Corporate Watch (UK), Human Rights Watch and Norwatch among others.

Consumer activism and the fair trade movement: ensures that consumers in the North pay fair prices to small producers in the South and involves efforts to inform the consumers about specific companies and products as well as the organizing of consumer boycotts. Consumers International, Fairtrade Foundation, Transfair and Max Havelaar are examples for this type of activism.

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[180] O'Brien, Robert (ed.): "Contesting Global Governance. Multilateral Economic Institutions and Global Social Movements." Cambridge University Press, 2003. p. 26

[181] Utting, Peter: "Corporate Social Responsibility and the Movement of Business". In: *Development in Practice.* Volume 15, No.3&4, June 2005. p. 378

[182] Ibid.

[183] Utting, Peter: "Corporate social responsibility and the movement of business". In: *Development in Practice.* Volume 15, No.3&4, June 2005. p. 377f

Shareholder activism and ethical investment: individuals or organizations buy shares in companies and raise complaints or propose change in corporate policy and practice at the Annual General Meeting of shareholders. This is for example carried out by Ethical Shareholders, Interfaith Center for CSR, Shareholder Action Network and Social Investment Forum.

Ligitation: activists and victims of use the courts to prosecute corporate malpractice, as for example the Center for Justice and Accountability, EarthRights International and the International Labour Rights Fund.

Critical research, public education, and advocacy: knowledge on corporate malpractice, North-South trade and investment relations is being generated and disseminated and used to influence the public opinion and academic opinion as well as policy makers. This type of activism is being pursued by Amnesty International, Centre for Research on Multinational Corporations, Friends of the Earth, Oxfam International and others.

Collaboration and Service Provision: engagement with corporations and business associations in 'partnership' programmes and projects is focussing on identifying and encouraging 'good practice' and the development of auditing and monitoring. Examples for this type of activism include the Forest Stewardship Council as well as the Global Reporting Initiative.

Eclectic activism: organizations engage in both collaboration and confrontation. This might involve the participation in stakeholder dialogues and simultaneously the promoting of 'naming and shaming' activities or the demanding of legal regulation of TNC behaviour. Organizations pursuing this approach are, among others, Clean Clothes Campaign, International Federation of Human Rights and WWF International.

It has been said before that a whole CSR-industry emerged around the turn to the 21st century, in which NGOs increasingly appear as partners rather than adversaries, providing technical assistance, research, auditing and other services when corporate self-regulation was increasingly replaced by nongovernmental regulatory systems.[184]

Peter Utting observed that this "third way" or convergence has led to the emergence of "an influential discourse […] which suggests that confrontation, single-issue activism and criticism that profiles specific problems rather than solutions is

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[184] O'Rourke, Dara: "Outsourcing Regulation: Analyzing Nongovernmental Systems of Labour Standards and Monitoring." In: *The Policy Studies Journal*, Volume 31, No.1, 2003. p. 5

'ideological' or passé and that NGO collaboration with business and engagement with the market is modern and savvy".[185] While NGOs are said to have increasingly engaged in collaborative activities and co-regulation originally seeing them as a supplement and a step on the way to state regulation,[186] TNCs are under the suspicion of using co-regulative initiatives as a means to diminish the regulatory threat from governments.[187]

Typically, those collaborations involve monitoring, reporting, certification, stakeholder dialogues and 'best practice' learning. Examples for initiatives resulting from the convergence include the Ethical Trading Initiative (ETI), the Forest Stewardship Council, the Global Reporting Initiative, the UN Global Compact and certification schemes such as SA 8000 among others.[188]

A corporate watch report critically summarizes that this trend of convergence has led to a specific CSR-terminology:

"The language used around CSR is highly misleading. 'Dialogue' suggests a free and open exchange of views. 'Partnership' implies equality of power relations. The term 'stakeholder' implies power to make a change. Dialogue meetings are often referred to as 'roundtables' suggesting a lack of hierarchy. As with the use of the term 'responsibility', the positive connotations of the language mask the real power dynamics at work. Dialogue is an attractive strategy since governments are unwilling to regulate corporate behaviour."[189]

Seen through the lens of Discourse Theory it seems as if a logic of difference, that by definition "attempts to weaken and displace a sharp antagonistic polarity, endeavouring to relegate that division to the margins of society,"[190] has been employed successfully in order to establish voluntary CSR as a hegemonic project. A Friedman rhetoric is unthinkable today. Instead, through increased collaboration and the emphasis on 'partnership' and 'dialogue' it is being suggested that there is a common goal rather than irreconcilable differences.

The emergence of the corporate accountability movement has to be viewed as a direct reaction to this development. On a notion that CSR does not "address the root problem of how the balance of cultural, political and economic power has been shifting in a direction that undermines democratic governance", nor "offer a feasible

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[185] Utting, Peter p. 382
[186] O'Rourke, Dara p. 5
[187] Utting, Peter p. 380
[188] Utting, Peter p. 382
[189] Corporate Watch Report: "What's wrong with Corporate Social Responsibility?" Oxford, 2006. p. 21
[190] Howarth, David et al. p. 11

instrument to promote social and economic development that is not compromised by the imperatives of competitiveness and profitability",[191] corporate accountability emphasizes the need to bring structural and macro-policy issues back to the agenda and favours mechanisms of sanction and punishment as means to hold TNCs accountable to their stakeholders. With a strong focus on complaint procedures and redress mechanisms the corporate accountability movement is working towards a rearticulation of voluntary and legal approaches.[192]

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[191] Knight, Graham/ Smith, Jackie p. 194
[192] Utting, Peter p. 385f

3.2 The UN and Transnational Corporations

Based on a "principal historical fear of TNC political activity" that would interfere with the domestic political affairs of sovereign nations[193], which seemed to be confirmed by the events in Chile in the early 1970s, the most notable institutional development with regards to TNCs and FDI took place in 1974 with the establishment of the UN's Centre on Transnational Corporations.[194] It provided training and advice for governments in developing countries for their negotiations with TNCs,[195] but its main mission was the negotiating of a voluntary Draft Code of Conduct on Transnational Corporations that called upon corporations to respect host countries' developmental goals, observe their domestic laws, respect fundamental human rights, adhere to socio-cultural objectives and values, abstain from corrupt practices and observe consumer and environmental protection objectives.[196]

In the section on "Non-interference in internal political affairs" it reads:

"Transnational Corporations should/ shall not interfere [illegally] in the internal [political] affairs of the countries in which they operate [by resorting to]. [They should refrain from any] [subversive and other [illicit]] activities [aimed at] undermining the political and social systems in these countries (…)."

And: "Transnational Corporations should/ shall not engage in activities of a political nature which are not permitted by the laws and established policies an administrative practices of the countries in which they operate."

The brackets show the degree of disagreement between nations on the exact wording, while the use of *should/ shall* reflects the fundamental disagreement on whether the Code should be voluntary or binding.[197]

The efforts to agree on the Draft Code of Conduct on Transnational Corporations failed in the 1980s, and in 1993 the Centre on Transnational Corporations was closed under the pressure of Northern governments[198] and subsequently became part of the United Nations Conference on Trade and Development UNCTAD. By activists this closure of the Centre on TNCs and the failure to agree on the Draft Code has been

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[193] Kline, John M. p. 3
[194] Sagafi-Nejad, Tagi/ Dunning, John H.: UN and Transnational Corporations: From Code of Conduct to Global Compact. Indiana University Press, 2008. p 6
[195] Jenkins, Rhys p. 3
[196] Bendell, Jem (2004) p. 11
[197] Kline, John M. p. 4
[198] Bendell, Jem (2004) p. 12

viewed as the beginning of a process of the UN moving closer towards the interests of TNCs.[199]

3.2.1 A Note on Terminology

The literature provides us with a variety of terms that have been used in order to describe companies that operate across borders. Any given combination of "multinational", "international", "transnational" and "global" with "enterprises", "corporations" and "companies" occurs.

Tagi Sagafi-Nejad and John H. Dunning have examined how "transnational corporations" became the term the UN settled for in the course of its 1973-74 deliberations. They show that the main research institutions in the 1960s used "multinational enterprises", specified through Howard V. Perlmutter's typology of ethnocentric (home-country oriented), polycentric (host-country oriented), and geocentric (globally oriented), but the UN chose "multinational corporations" in the first instance as the official term in its early publications on the topic. They were understood as companies which own or control production facilities outside the country in which they were based and were not necessarily private or incorporated, but could as well be state-owned entities.[200]

The authors point out that scholars such as Perlmutter among others rejected the term "corporation", because it implies a private legal entity incorporated in a given jurisdiction, whereas "enterprise" is more inclusive and accounts for the existence of a variety of relations between companies.[201]

"Multinational" on the other hand refers to the activities of the company involving more than one nation, but according to Sagafi-Nejad and Dunning the UN eventually adopted "transnational", as it "would better convey the notion that such firms operate from their home-bases across national borders".[202] The authors note that different UN-agencies have continued to use other terms over time, and 30 years later in the *UN Norms on the Responsibilities of Transnational Corporations and Other Enterprises with Regards to Human Rights*, the definition has come to embrace all possible meanings: "The term 'transnational corporation' refers to an economic

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[199] Knight, Graham/ Smith, Jackie: "The Global Compact and its Critics: Activism, Power Relations, and Corporate Social Responsibility". In: Leatherman, Jamie: *Discipline and Punishment in Global Politics – Illusions of Control.* Palgrave Macmillan, 2008. p. 193

[200] Sagafi-Nejad, Tagi/ Dunning, John H. p. 2

[201] Ibid.p. 3

[202] Ibid. p. 2

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".[203]

3.2.2 The Global Compact

The Global Compact was initiated at the World Economic Forum in 1999 under the lead of the UN secretary-general Kofi Annan at the time. It was inaugurated the year after as a multilateral scheme and multi-stakeholder initiative open to corporations, business associations, civil society organizations such as NGOs and trade unions, as well as UN agencies.

Set up under the rationale to "establish commitment to, and consensus around, universal principles at a global, as opposed to a national or regional, level"[204], the Global Compact set forth a code which incorporated nine principles in this first version (and was in 2005 enhanced by one more regarding financial probity and anti-corruption) that the 7.7000 business participants from 130 countries[205] commit themselves to.

The areas of concern covered by those principles are human rights, labour rights and environmental protection (and later anticorruption). Serving as the source documents are the Universal Declaration of Human Rights, the International Labour Organization's Fundamental Principles on Rights at Work, and the Rio Earth Summit Agenda 21.[206]

In response to NGO-criticism[207] the main change of the 2005 reform was an obligation for corporations to annually communicate their progress in implementing the ten principles to all other stakeholders, the so-called "COP". If they fail to do so, they will now be listed as "non-communicating" on the compact website, another year without disclosure of progress brings about the loss of the status as global compact – participant, the company in question will be crossed out from the list and lose the right to use the compact logo. For the communication of progress the compact recommends the standards of the Global Reporting Initiative to its participants and mentions the OECD-Guidelines for Multinational Enterprises as

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[203] UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regards to Human Rights. E/CN.4/Sub.2/2003/12/Rev.2, August 2003. p. 7
[204] Knight, Graham/ Smith, Jackie p. 192
[205] http://www.unglobalcompact.org/ParticipantsAndStakeholders/index.html
[206] Knight, Graham/ Smith, Jackie p. 192
[207] Statement by NGO Participants in the Global Compact Summit, UN Headquarters New York, 24th of June 2004: http://www.un-ngls.org/orf/cso/cso3/statement.html

well as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy as a reference framework for their business conduct.[208] However, there is no instrument to verify whether the actual performance of a corporation complies with their reports. And even if violations of the principles could be proven, there are no enforcing measures at hand.

Essentially the Global compact relies on three mechanisms: it establishes learning networks through the reporting of participating corporations on their progress in promoting the principles; it encourages policy discussions among the participants on how to deal with problematic situations, such as business in conflict zones and it is promoting public/private partnership projects in developing countries.

While the first two are aimed at reducing the risk for corporations of being complicit in rights abuses, environmental harm or corruption, this latter mechanism is oriented towards concrete action where rights and security are endangered.[209]

With its reliance on compliance and self-policing on the side of corporations and without any mechanisms to monitor their actual behaviour as well as the absence of sanctions, the Global Compact is best characterized as a promotional endeavour among the existing CSR initiatives.[210] It "typifies the attempt to develop alternative mechanisms of corporate governance to fill the gap created by the rollback of state-centred forms of regulation in the face of neoliberal hegemony, the growth of corporate power and the emergence of new issues and problems resulting from globalization".[211]

In the introductory paragraph of the project's website it is stated that "never before have the objectives of the international community and the business world been so aligned. Common goals, such as building markets, combating corruption, safeguarding the environment and ensuring social inclusion, have resulted in unprecedented partnerships and openness among business, government, civil society, labour and the United Nations."[212] The Global Compact is described as "an initiative that (…) seeks to combine the best properties of the UN, such as moral authority and convening power, with the private sector's solution-finding strengths, and the expertise and capacities of a range of key stakeholders."[213] This corresponds with the

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[208] http://www.unglobalcompact.org/AboutTheGC/IntegrityMeasures/index.html
[209] Knight, Graham/ Smith, Jackie p. 192
[210] Ibid. p. 193
[211] Ibid. p. 193
[212] http://www.unglobalcompact.org/AboutTheGC/index.html
[213] Ibid.

findings from the previous chapter on the use of the language in third way initiatives, emphasizing similarities and common goals rather than differences.

As recent as in May 2010 a memorandum prepared by the law firm Latham & Watkins LLP was added to the overview which under the title "The Importance of Voluntarism" is praising the benefits of voluntary initiatives, as "the UN Global Compact is committed to voluntarism as a complement to regulation".[214] The "concise but significant" document "discusses how voluntary initiatives can create value not only for corporations, but for society as a whole".[215]

The criticism of the GC can be divided into the three areas of *ideology*, *institutional implications* and *structure and procedures*:[216]

Critics have expressed their concern the GC might represent the UN moving ever closer to the interests of TNCs, thereby putting the organization's political and ideological neutrality at risk. Another allegation is the 'blue-washing' critics accuse the participating corporations of. It refers to TNCs making use of the UN's prestige by 'wrapping themselves in the UN flag' for public relations purposes as it enhances their image as ethically responsible.[217]

With regards to the *institutional implications* the criticism is focused on the fact that the GC is far from counterbalancing the power and importance of for example the Word Trade Organization and its ability to impose legally enforceable constraints on national governments. Not only is a comparable institutional development with regards to the obligations and responsibilities of corporations missing, the critics are also fearing this institutional separation might free the WTO from having to deal with the social, environmental an ethical side-effects of neoliberal economics, as the GC is providing the global platform for those issues, but in the form of communicative, rather than material action.[218]

As for the aims, structure and procedures it is being criticized that the GC lacks any legally binding enforcing mechanism to ensure that TNCs are accountable for their actions and inactions. Moreover, there is no procedure which can guarantee the participants report on their conduct in an objectively measurable, transparent and verifiable way and no mechanism that, in case of malpractice, ensures the problem is

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[214] http://www.unglobalcompact.org/docs/about_the_gc/Voluntarism_Importance.pdf
[215] http://www.unglobalcompact.org/HowToParticipate/Business_Participation/the_importance_of_voluntarism.html
[216] Knight, Graham/ Smith, Jackie p. 193f
[217] Transnational Research & Action Centre: "Tangled Up in Blue – Corporate Partnerships at the United Nations", September 2000. p. 3
[218] Knight, Graham/ Smith, Jackie p. 194

being solved and the corporation has to stand any consequences. Thus, by "putting the accent on promoting corporate responsibility through socialization and communicative action (…) the GC fails to achieve corporate accountability in a legally effective way".[219]

3.2.3 The UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regards to Human Rights

The UN Norms were drafted by a sessional working group formed in 1998 with the aim to address the mounting concern that "against the background of liberalization of trade rules and increased foreign direct investment in developing nations, some TNCs were violating human rights with impunity",[220] and after consultation meetings with TNC-representatives, NGOs and intergovernmental organizations.[221] The draft Norms were adopted by the UN Sub-Commission on the Promotion & Protection of Human Rights[222] in 2003. The year after, they were considered by the UN Commission of Human Rights, but not approved. According to the Commission the draft Norms "contain useful elements and ideas for consideration", but the document "has not been requested by the Commission and, as a draft proposal, has no legal standing".[223]

The rights covered by the 23 paragraphs of the draft are labour rights, equality of opportunity and non-discriminatory treatment, respect for national sovereignty and human rights including the prevention of bribery and corruption, the right to security of persons, consumer protection, economic, social and cultural rights as well as environmental protection.[224] The Norms are moving beyond traditional human rights law insofar as they include rights which are not covered by the Universal Declaration of Human Rights, as for example rights with regards to consumer protection or anti-corruption.[225] They, unlike other human rights instruments,[226] do not have rights holders or sets of human rights as their organizing theme, but centre around

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[219] Ibid.
[220] Chambers, Rachel/ Kinley, David: "The UN Human Rights Norms for Corporations: The Private Implications of Public International Law". In: *Human Rights Law Review* Vol. 6, No.3, 2006. p. 457
[221] Ibid.
[222] The Sub-Commission was dissolved in 2007 and replaced by an Advisory Committee to a new Human Rights Council.
[223] UN Commission on Human Rights 2004/116: Responsibilities of transnational corporations and related business enterprises with regard to human rights:
http://www.business-humanrights.org/Documents/UNNorms (3.)
[224] UN Norms: paragraph 2-14.
[225] Chambers, Rachel/ Kinley, David p. 453
[226] like the ILO-Conventions or Child Labour treaties for example

corporations as duty-bearers, followed by the identification of what rights corporations should respect and protect,[227] in recognition of the fact that

„transnational corporations and other business enterprises have the capacity to foster economic well-being, development, technological improvement and wealth as well as the capacity to cause harmful impacts on the human rights and lives of individuals through their core business practices and operations, including employment practices, environmental policies, relationships with suppliers and consumers, interactions with governments and other activities".[228]

It is explicitly made clear that an obligation lies with TNCs and 'other business enterprises', defined as "any business entity, regardless of the international or domestic nature of its activities, including a transnational corporation, contractor, subcontractor, supplier, licensee or distributor; the corporate, partnership, or other legal form used to establish the business entity; and the nature of the ownership of the entity".[229]

The UN Norms spell out mechanisms for implementation and enforcement: They commit corporations to report periodically on their implementations of the Norms,[230] and their application is to be monitored and verified by existing or new mechanisms in an independent and transparent manner, including complaints on violations of the norms brought forward by stakeholders.[231] In case of non-compliance, sanctions in the form of compensations are to be provided to "those persons, entities and communities that have been adversely affected by failures to comply with these Norms through, inter alia, reparations, restitution, compensation and rehabilitation for any damage done or property taken".[232]

The Norms address non-state entities, namely TNCs and other business enterprises, as "organs of society" and thus duty-bearers, but the primary responsibility remains with states, which have to ensure and enforce compliance by means of national legislation and international cooperation.[233]

In 2005 Professor John G. Ruggie was appointed as a Special Representative of the UN Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises for 3 years (in the mean time extended until 2011), who

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[227] Chambers, Rachel/ Kinley, David p. 452
[228] UN Norms p. 3
[229] UN Norms paragraph 21
[230] UN Norms paragraph 15
[231] UN Norms paragraph 16
[232] UN Norms paragraph 18
[233] UN Norms paragraph 1

resigned his post as Special Advisor on the Global Compact to assume this appointment, his mandate including:

(a) To identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights;

(b) To elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation;

(c) To research and clarify the implications for transnational corporations and other business enterprises of concepts such as "complicity" and "sphere of influence";

(d) To develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises;

(e) To compile a compendium of best practices of States and transnational corporations and other business enterprises;[234]

While the current 2008 to 2011 mandate requires:

(a) To provide views and concrete and practical recommendations on ways to strengthen the fulfilment of the duty of the State to protect all human rights from abuses by or involving transnational corporations and other business enterprises, including through international cooperation;

(b) To elaborate further on the scope and content of the corporate responsibility to respect all human rights and to provide concrete guidance to business and other stakeholders;

(c) To explore options and make recommendations, at the national, regional and international level, for enhancing access to effective remedies available to those whose human rights are impacted by corporate activities;

(d) To integrate a gender perspective throughout his work and to give special attention to persons belonging to vulnerable groups, in particular children;

(e) [To] Identify, exchange and promote best practices and lessons learned on the issue of transnational corporations and other business enterprises, in coordination with the efforts of the human rights working group of the Global Compact;

(f) To work in close coordination with United Nations and other relevant international bodies, offices, departments and specialized agencies, and in particular with other special procedures of the Council;

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[234] http://www.business-humanrights.org/SpecialRepPortal/Home/Mandate

(g) To promote the framework and to continue to consult on the issues covered by the mandate on an ongoing basis with all stakeholders, including States, national human rights institutions, international and regional organizations, transnational corporations and other business enterprises, and civil society, including academics, employers' organizations, workers' organizations, indigenous and other affected communities and non-governmental organizations, including through joint meetings;

(h) To report annually to the Council and the General Assembly.[235]

It is noteworthy that the reference to corporate accountability has vanished from the mandate, as well as the call to develop methods to assess the actual impact of TNC activities on human rights. The latter is in fact an underdeveloped research area. Not only is very little data available, the few studies that have been conducted provide contradictory results.[236]

Instead, the "content and the scope of the corporate social responsibilities to respect all human rights" are to be elaborated on and a shift towards stakeholder dialogue has taken place, most notably the human rights working group of the Global Compact is to be consulted on best practices.

The Norms are regarded a useful move towards regulation by proponents of mandatory CSR and corporate accountability. NGOs, academics and human rights advocates have made efforts in lobbying national governments making direct submissions to the Commission in support of the Norms.[237] While they strongly recommend effective and practical measures towards a coming into effect of the Norms, the work of the Special Representative has been subject to some criticism. In his reports he avoids the issue of binding corporate accountability by emphasizing the primary legal responsibilities of national governments and proposes no new legal obligations for corporations.[238]

The position of the business movement became apparent in a joint opposition statement of the International Organization of Employers (IOE) and the International Chamber of Commerce (ICC), issued during the heated debate before and after the disapproval through the UN Commission of Human Rights in 2004, in which they state that "'norms' and 'standards' are jargon that hide the need for balancing", the

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[235] Ibid.

[236] Meyer, William H.: "Human Rights, the UN Global Compact, and global governance". In: *Cornell International Law Journal.* June 22nd, 2001. p.1

[237] Chambers, Rachel/ Kinley, David p. 458

[238] Ruggie, John: "Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises". UN Human Rights Council (A/HRC/8/5), 2008.

draft "reflects a negative attitude towards business" and "privatizes human rights by divorcing the activities of private businesses from the duties of the state" and will, if put into effect, "undermine human rights, the business sector of society and the right to development". They urged the Commission to "(…) make a clear statement disapproving of the Sub-Commission's draft, and to clear up the confusions. In particular, the Commission should set the record straight by stating, in unambiguous terms, that the duty-bearers of human rights obligations are States, not private persons (including private business persons); that the draft Norms are neither "UN Norms" nor "authoritative"; and that the Norms is a draft with no legal significance without adoption by the law-making organs of the United Nations."[239]

This statement anticipated the decision made by the Commission shortly after.

Seen in the context of other institutional mechanisms regarding TNCs shown in table 3, the fact that the UN Norms did not come into force seems to ultimately prove the hegemonic status of voluntary CSR. The accusation of the two business associations that the Norms were undermining human rights and the right to development hint at the chains of signification bound together by the nodal-point CSR: "growth", "justice" and "development" are put in relation to unregulated business activities and these signifying chains correspond with those of the predominant discourse formation the discourses of voluntary and mandatory CSR are inscribed in, namely a neoliberal political climate.

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[239] IOE and ICC: „Joint Views of the IOE and ICC on the draft 'Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights." March 2004, p. 40

Table 3: overview of CSR-Instruments with global reach (industry un-specific)[240]/[241]

Instrument	Definition	Operating mode	Voluntary	Legal potential
UN Global Compact	worldwide multi-stakeholder platform	participants commit themselves to 10 principles	x	none
UN-Norms on the Responsibilities of Transnational Corporations	norms for the conduct of TNCs and other business enterprises	mandatory reporting, complaint procedure,sanctions & compensation		potentially offer the possibility of legal obligation
ILO-Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy	norms on the subject of labour rights only (employment, training, working conditions and industrial relations)	governments make requests, if they fail to do so, workers associations can	x	legally binding only when states guarantee the enforcement
OECD-Guidelines for Multinational Enterprises	recommendations for the conduct of TNCs	The adhering governments encourage TNCs to comply; complaint procedure for civil society groups	x	none

[240] Worldwatch Institute (Ed.): „Zur Lage der Welt 2006. China, Indien und unsere gemeinsame Zukunft." Westfälisches Dampfboot, Münster, 2006. p. 24f

[241] Chambers, Rachel/ Kinley, David: "The UN Human Rights Norms for Corporations: The Private Implications of Public International Law". In: *Human Rights Law Review* Vol. 6, No.3, 2006.

4. Conclusion

The preceding examination of the origins of competing CSR discourses, their current global prevalence and their institutionalization seems to suggest that CSR essentially is, and has always been, a business concept. The business movement has not acted in defence, but proactively shaped the discourse and thus determined the meaning of CSR. The agents and their respective interests have been pointed out. In this light it is not correct to speak of voluntary and mandatory CSR, because CSR *is* voluntary. Paradoxically, it is its often bemoaned vagueness and ambiguity that has temporarily created the illusion on the behalf of those concerned with unregulated corporate power that CSR could be rearticulated and a new agenda set. This has been shown with the help of Laclau's and Mouffe's concept of dislocation, social antagonism and hegemony and led to a relative pacification of the contestation visible in the "third way" phenomenon, which obviously has helped to reinforce CSR and institutionalize it globally.

Singular contributions like the one from Paddy Ireland and Pillay Renginee, trying to prove the existence of an earlier, original CSR, consequentially appear as belated attempts to claim terrain that can not be won anymore.

The emergence of corporate accountability as a concept and movement illustrates and sustains these claims. The advocates of regulation would be well advised to adopt this terminology in order to avoid further incorporation into the CSR-agenda and put forward their own.

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