

Stéphanie Bijlmakers, *Corporate Social Responsibility, Human Rights and the Law* (Abingdon, UK: Routledge, 2018), ISBN 9780815399230, 201 pp.

One way of looking at law is as a tool for tackling society's problems – a tool that exists alongside other, non-legal tools such as market economics, or social and cultural mechanisms. Or rather, we can look at it as a toolbox consisting of various specific tools that could be broadly defined as 'law'. International treaties and national legislation would be amongst those specific tools, as would the wide variety of soft law instruments that can contain norms and rules. The question for those seeking to use law as a way of solving a particular problem would then be, what in this case is the right tool – or *are* the right *tools* – for the job?

This question is also at the heart of the business and human rights debate. If we define the negative impact of businesses on human rights and the environment as a social problem, what are the appropriate tools to tackle that problem? That the debate explicitly connects business conduct with human rights – a fundamentally legal concept – tells us that the legal toolbox has been opened. The UNGPs advocate a 'smart mix' of legal and non-legal, binding and non-binding measures to address business conduct and improve human rights compliance. But what that should consist of, and how these tools interact, is still hotly debated.

Stéphanie Bijlmakers' book *'Corporate Social Responsibility, Human Rights and the Law'* examines soft law as one of those tools to address the corporate impact on human rights, and the gradual 'legalization' of soft law norms through the adoption of 'hard' law. The objective, as she puts it, is to examine to what extent the codification of the UNGPs is effectively implementing corporate social responsibility (CSR) at the national, supra-national and international level, and what its implications are for human rights. Chapter 1 addresses the mostly historical evolution of CSR and business and human rights, and the general tendency of legalization that characterizes this evolution. The chapter recounts how different historical eras had a different perspective on the impact of multinational companies (MNCs), and how those perspectives generated different regulatory responses. It ranges from the initial concerns over the problems associated with MNC growth in the 1970s, via the corporations-as-benefactors-attitude that characterized 1980s neoliberalism, to the contemporary view of MNCs as governance actors. Chapter 2 then examines the UNGPs as the dominant framework governing business and human rights issues and its relationship with CSR. It examines how the UNGPs try to reconcile different approaches to CSR within its framework of polycentric governance, as guided by Special Representative of the Secretary General (SRSG) John Ruggie's approach of 'principled pragmatism'.

Chapter 3 zooms in on the corporate responsibility to respect human rights, and how that responsibility may be changing into a hard obligation pursuant to legislative changes both nationally and internationally. The chapter reflects on the SRSG's choice for soft law over hard law, and the corresponding expectations of compliance of MNCs with the UNGPs and their norms over expected compliance with a hard law instrument like

a treaty. It also discusses how MNC compliance with the responsibility to respect is bolstered by the related state duty to protect, examining three instruments: a 2011 Statement by the Committee on Economic, Social and Cultural Rights (CtECR), General Comment 14 of the Committee on the Rights of the Child (CtRC) and the 2016 Recommendation by the Committee of Ministers of the Council of Europe. Chapter 4 then tackles a particular aspect of the responsibility to respect: human rights due diligence as a standard of conduct and form of compliance. It examines the different facets of human rights due diligence, compared with due diligence in other areas such as corporate law, as well as to the human rights due diligence obligations of states.

Chapters 5 and 6 finally focus on the contribution of the European Union to the implementation of CSR. Chapter 5 rather critically reviews the European Commission's CSR strategy – or absence thereof – and its actions to promote its own responses to the UNGPs, those of its Member States and those of EU-based companies. Chapter 6 examines one instrument where the EU did take action, namely the non-financial reporting directive. The chapter discusses how mandatory reporting of MNCs human rights policies and due diligence processes can contribute to both compliance and accountability of MNCs, as both internal (shareholders) and external (NGOs, victims) can hold the corporation to its own published policies and practices.

Given the central place of soft law in general, and corporate due diligence in particular, to both recent academic discussion and policy proposals in the business and human rights area, the book is very topical. Although it is rather descriptive in its approach and does not make an explicit argument for or against soft law, from Chapters 3 and 4 it seems that the author is optimistic about the polycentric soft law approach of the UNGPs, and its potential for ensuring human rights compliance by MNCs. This is where the book is at its best. Where in other chapters the author sometimes restricts herself a bit too much to enumerating different instruments or summarizing existing literature, at these points more of her own ideas come to the forefront. The writing also flows more freely, making for a more enjoyable read.

More generally, the book makes an illuminating point on the potential for combined approaches of hard and soft law for enhancing both the normative power and expected compliance of the responsibility to respect. Indeed, that is Ruggie's 'smart mix' in practice. This is a step forward compared with treatises that discuss either industry standards, company policies or hard law instruments like the transparency directive in isolation. Both explicitly and implicitly, the author also points out how the regulatory power of states can be enhanced by taking full account of existing soft law instruments, and other actors – such as NGOs, victims' representatives, but also shareholders – that can contribute to the compliance with such instruments – if they take their own role as legislator seriously. This again is important with an eye to the many NAPs that have thus far been published and which seem somewhat on the fence on this issue, with many states apparently doubting whether legislative contributions are needed to bolster corporate due diligence.

There are, however, points of criticism. As already alluded to, the book can sometimes be quite descriptive, on points where there is already extensive literature. The structure of some chapters is also not entirely intuitive, with particular developments being discussed in a later chapter than expected, also leading to some repetition, especially in the beginning of Chapter 3 on the background of the UNGPs. Moreover, while the book

sometimes goes into great detail – such as when discussing the history of the EU’s CSR agenda – it oddly leaves out other, quite significant developments. For example, whereas it does discuss the 2011 CIESCR Statement, it does not mention General Comment 24 of 2017 where the Committee goes in much more detail on this same issue. There is also little discussion of developments in domestic law; the book only mentions the 2016 French *devoir de vigilance* act, but not similar developments in other EU Member States.

The book could also have benefited from some more reflection on some of the developments it describes. Earlier chapters do lay the groundwork for such reflection, especially when describing critiques of historical CSR initiatives; later chapters, however, do not come back to this critique, nor is for example the evolution of the EU’s strategy placed in the context of those historical developments. One particular point that could have been explored more is Bijlmakers’ reference to the ‘privatization of human rights’ as a critique on the 2004 UN Norms: considering the developments she describes later, discussing whether that critique applies *mutatis mutandis* to the contemporary iteration of the responsibility to respect might have provided added depth to the book. Lastly, given that the book focuses on business compliance with CSR instruments, there is little reference to empirical research on compliance in practice, or evaluations of existing transparency and disclosure rules.

Ultimately, in an era where policy makers still tend to ‘pass the buck’ to voluntary approaches and corporate-led initiatives, a good argument for ‘hardening’ these softer approaches is sorely needed. Stéphanie Bijlmakers’ book provides several building blocks for constructing that argument, and ensuring that Ruggie’s ‘smart mix’ of soft and hard law approaches lives up to its normative and practical potential. That is an important achievement.

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