

CORPORATE HUMAN RIGHTS RESPONSIBILITY AND MULTINATIONALITY IN EMERGING MARKETS – FROM DEVELOPING NOTION TO THE LEGAL DIMENSION

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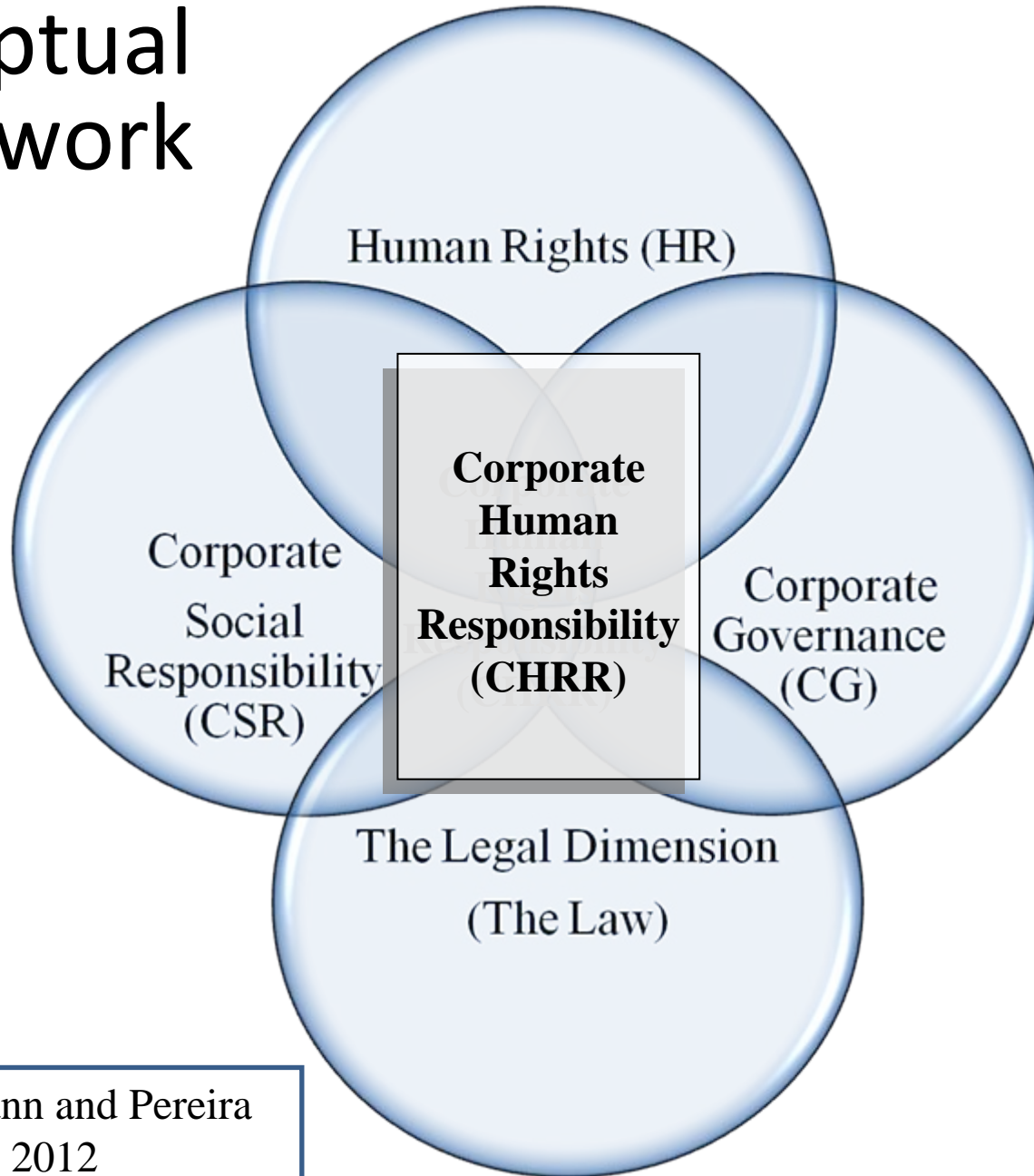
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Research Aim and Objective

- The principal aim of this article is to highlight the evolving concepts and ideas of Corporate Human Rights Responsibility (CHRR) under international law and how it relates to other concepts of corporate responsibility.
- The main research objective of this paper is to examine the concept of ‘Corporate Human Rights Responsibility’ in the context of Multinationality in emerging markets such as China and India and thereby to assess this notion through the prism of the legal dimension.

Conceptual Framework



Bachmann and Pereira
2012

Rationale and Contribution

- The point of departure is the observation that there is the need to close an existing impunity gap of Western and emerging market MNCs' complicity in Human Rights violations committed in the developing world.
- Two case studies from India and China highlight the present accountability gap.
- This article understands that the key issue with CHRR is the absence of a binding regime of binding norms, paired with the observation that implementation and enforcement issues seriously hamper any such development.
- Based on related initiatives such as CSR and Good Corporate Practice this article calls for an approach which is borne by a multitude of stakeholders

The cases

- **The Bhopal tragedy, India-** ‘The 1984 gas leak in Bhopal was a terrible tragedy that understandably continues to evoke strong emotions even 27 years later’, this statement from the ‘horse’s mouth’ (Union Carbide Corporation’s (UCC) website, 2012) is an understatement. UCC was one of the first U.S. companies to invest in India.....
- **Melamine-Milk scandal, China-** In 2008, dangerously high levels of the industrial chemical melamine in powdered baby milk and other dairy products in China sparked worldwide safety concerns (BBC website, 2008). On the 10th of September 2008, Chinese officials and the media first reported that 14 babies fell ill in Gansu province over the previous two months. Reports indicated that all drank the same brand of milk powder and were being reported around China. It was not until the 12th of September 2008, that the Sanlu Group admitted that its milk powder was contaminated with the toxic chemical melamine. The New Zealand dairy cooperative Fonterra owned a 43% stake in Sanlu.....

**The Legal Dimension-
Basic Features of US Human
Rights Litigation against
Corporations**

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1. Rationale and Overview

➤ HUMAN RIGHTS LITIGATION refers to:

- A form of **transnational** civil litigation developed in the USA since the **1980ies** as so called which
- **civil litigation** for international law torts arising out of breaches of international (public) law and human rights law
- Greatest impact in connection with mass torts action for human rights abuses -> *Holocaust* lawsuits and terrorism -> *In re Terrorism Attacks on September 11*
- High damages including punitive damages *as deterrence*
- Notion of **indirect corporate liability** for **AIDING** and **ABETTING** Human Rights abuses

2. Applicable Law

The Legal Basis

- 1. Alien Tort Statute (**ATS**) – formerly known as **ATCA**
- 2. Torture Victim Protection Act (**TVPA**)
- 3. The Foreign States Immunities Act (**FSIA**)
- 4. Racketeer Influenced and Corrupt Organizations (**RICO**) Act

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The crest of the University of Lincoln is centered in the background. It features a shield with two open books, flanked by two lions. Above the shield is a crest with a figure holding a staff. The shield is supported by two figures, possibly representing the university's founding or a historical figure.

➤ **Alien Torts Statute (ATS)**

- Enacted in 1789, was hardly applied until 1980 in the *Filartiga v. Pena-Irala* case.

➤ **Torture Victim Protection Act (TVPA)**

- Creates a right for victims including aliens of state sponsored torture and summary execution in other countries to sue in federal court.

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➤ **1996 Congress enacted anti-terrorism amendments to the Foreign Sovereign Immunities Act (FSIA)**

- The 1996 Amendment of the FSIA allows U.S. victims of terrorism to sue designated **State sponsors** of terrorism for their involvement in terrorism for specified terrorist acts -> **Iran as a sponsor of Hezbollah and Hamas as well as for own terrorist actions as defendant -> applicable in corporate lawsuits with a nexus to terrorism**



➤ **2001 Racketeer Influenced and Corrupt Organizations (RICO) Act amended to include acts of terrorism:**

- Allows civil lawsuits against groups that have engaged in a pattern of racketeering activity, including murder, kidnapping, arson, robbery and fraud.
- Amended by the 2001 **PATRIOT Act** to include acts of terrorism.
- First suit brought under RICO against **Al Qaeda** in 2001 for their plan to attack One World Trade Center.

Conclusions and Reflections

- These developments do affect CHRR, despite the recent setbacks in finding a binding normative approach on the issue, as the failed Norms of 2003 and the watered down Ruggie guidelines exemplify.
- With the prospect of seeing a potential reversal of the US litigation approach against the corporate aider and abettor for indirect liability, the overall prospect of seeing a binding normative regime on CHRR developing is rather dim.
- The potential risk and costs stemming from potential CHRR breaches warrants a dogmatic rethink: does CG allow to take such a risk? Or does the corporate world not need a preemptive approach.