Corporate Social Responsibility and Contribution Civil Society Makes to the Present Development of International Public Law

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Abstract

Modern understanding of civil society in the spirit of globalization considers institutions of both local and global character that generally mediate between an individual and a state on the basis of volunteer principles as well as of a specific voluntarism. Historically, the civil society concept emerged as a reaction to methods of solving social character and market economy conflicts. There are numerous and various approaches, but we are going to present only few of them as essential ones, in order to get dominant features of the phenomenon emphasized. Some authors emphasize that it is actually a public reaction to social inequality. Numerous are supporters of these approaches, pleading that it is, in other words, a debating field where, among the other things, various interrelations of individuals, society as a whole and states are developed. There are authors defining it as a sphere of ideas, values, institutions and organizations of active networks of individuals within families, states and markets, acting beyond frontiers of national states and their policies and economies. Obviously, a civil society concept is the ambiguous one that could be discussed starting from the basis of numerous different aspects.

Key words: civil society, individual, state, society, mediation, institution, value, idea, family, policy, economy, globalization.

Introduction

Strengthening of globalization process actualizes the necessity of getting oriented towards the global civil society. IT revolution causes strengthening of a civil society that, in globalist sense, exceeds national states. On the other hand, a role both the institution of international community and transnational companies play grows independently of their vulnerability that is conditioned by their transparency and an imperative to respect, preserve and advance human environment, as well as to protect human rights. Corporative social responsibility is huge, having in mind harmful consequences of globalization which are impossible to eliminate without the international public law and a very important role it plays. [1]

Global Multinational and Transnational Corporations

Global corporations control many economy resources, so they supposedly could dedicate at least a part of their available wealth to global society, especially having in mind their inevitable moral responsibility in domain of solving these urgent problems[2]. The role multinational corporations have in the modern World is of the extreme, almost the decisive importance. Their activities are of transnational character, regarding all areas of both economy itself and economic life.[3] They have a decisive role in creation of a new technological organization, new management techniques and in creation of very powerful planetary communication networks. These corporations directly negotiate with the highest political representatives of many states. That way they certainly create, within an environment of de-formalization of diplomacy, a new kind of modern diplomacy.

[1] For more see: Donaldson T., (2007).*Integrated corporate responsibility,Journal of Menagment Education,*19.p.211-214.
[2] See:Damrosch,F.L.,Henkin, L.,Pugh,C.R.,Schachter,O.,&Smit,H. (2001).*International law,cases and materials.* Sent Paul Minn.,:American casebook series and West group ,p. 1163-1164.
[3] See in detail: Krivokapić Boris, *Aktuelni problemi međunarodnog javnog prava*(,*Actual problems of international public law,)*Belegrade:Official Journal. p. 132-137.

Their engagement, regardless of terminology applied: transnational, international, multinational – used to prompt, with its enormous strength, reactions of states that feared sometimes unlimited power they had.[4] That was the reason why the UN Economic and Social Council (EKO-SOC) engaged, in 1972, a group of eminent experts to suggest models of their international responsibility.[5] Among the other things, in its report the group pointed at bribery practice used by these companies in order to gain their enormous influence in some countries. The problem, being too complex, was not completely elaborated and it has been under consideration in various forms. We could say that bribery devastates economy of the World. It has been presented in various forms, such as bribes, funding of entertainment events, extortion, black mail, granting various range of support or benefit packages, gifts, free services, paid travel, and the like.

Dangers emerging out of bribery are global by their character. Therefore, some efforts have been made, in the international law domain, aimed at coming to a consensus on making the universal anti-corruption agreements. That was necessary at the first place because of poor results achieved at national levels, since the problem is obviously and continuously escalating. Having the character of actions of multinational corporations in mind, we could say that they have enormous potential to solve these problems successfully. Their responsibility is, according to that, additionally increased. It could be developed in two forms: the active one, concerning their obligation to refrain from giving bribes or any other forms of giving, making favors or the like, and the other one referring to their active involvement in struggle against it. It would be normal for them to make all sorts of information they have available to public, especially concerning activities of governments of states they do business with. In addition to multinational companies, there are some more organizations that could be considered important sources of the data on bribery. These are the Transparency International, the World Bank and the OUN.

Transparency International gathers and presents data on bribery, gained from various sources. According to these sources, the least incidence of bribery has been recorded in small Western European countries, in Scandinavia, Australia and in Singapore. On the other hand, the highest rate of bribery occurs in Azerbaijan, Tadzhikistan and Georgia. A rich-and-poor relationship stereotype plays its role in the picture of the kind, in the form of the rich and less corrupted North and the poor and more corrupted South. Of course, a division of the kind is not absolutely correct. Therefore, it could be said that there are regions with excessive bribery practices within unregulated states.

The World Bank in its reports observes bribery status in numerous countries. The information gathered that way concern the year 2012 and about 140 countries, with more then 140 000 companies in these countries. Bribery reaches almost 37 per cent in these countries. On the other hand, in the OECD member states the percentage is relatively small – 13 %. According to forecasts made by that institution in 2004, $30 trillion was engaged in the bribery driven business area. The third source servicing actions, and therefore providing data on bribery, is the OUN. There is an international anti-corruption consensus within that universal international organization, in addition to the same consensus made by regional agreements.

United Nations have made the Global Agreement on Corruption, referring to Bretton-Wood institutions, the World Bank and the International Monetary Fund. In all these institutions the most urgent issue is how to reach zero tolerance for all kinds of bribery. This is especially important having in mind the fact that terrorism, as one of the worst evils of the present, has been funded by money provided by bribery. Incentives aimed at solving these problems are followed by numerous papers. Some of them comprise efforts to get participation of local authorities boosted.

Activities in the frame of OECD

The anti-bribery convention was made in the frame of OECD. Unfortunately, it acquired very small number of ratifications, and it was followed by numerous misunderstandings on some essential issues, which is probably the reason why the number of ratifications has been insufficient. Misunderstandings in domain of paying of small sums, or giving inappropriate gifts, are especially evident. Businessman from most OECD member states believe that business activities in specific countries would be more successful if these forms of payments were abolished. This is why they often urge their governments to solve these problems.

[4] See in detail: Bhala R., (2001*) International trade law :theory and practice*..New York ; Lexsis,Nexis,p,1165-1167.
[5] See in detail: Lung-Chu Chen, (2000) *An Introduction to Contemporary International Law,* New Haven and London:Yale University Press. p. 70-75.

The example of Article 9 of the Anti-Bribery Convention is very indicative to that, since it reads that small payments (gifts) do not break regulations stated by the Article 1 of the same Convention, because it is an act that is not of criminal character at all.

The OECD was engaged in solving bribery practice problem, suggesting a collective engagement aimed at solving the enormous problem the modern World suffers. A special emphasis was put on actions of the highest state officials. In 1997 the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was adopted.[6]

A revision of the Manual for Multinational Companies was made within this organization. The Manual clearly reads that corporations of the kind shall neither directly or indirectly give or request anything, nor bribe or make promises concerning extensive benefits in order to get a contract.

Any rights formed under auspices of multinational companies are not formed as a source of international public law, but they nevertheless make an enormous influence, being enormously important to emergence of numerous state regulations and practices which themselves, in time length, use to get a legal status..

Soft Law

The term *soft law* in the context of international public law is found in in the frame of discussions on resolutions and declarations of the OUN General Assembly (for instance, let us quote the Universal Declaration of Human Rights), reports, principles, frameworks of some contracts, action plans and the like. This kind of rights was exclusively tied to international public law before. Later on it was extended to the other areas as well. For instance, the EU regulation uses the term in its circulations, various codices and guidelines through legal procedures. In addition to that, it is used for the purpose of indicating legal procedures in the frame of competences of the Commission.

Numerous international public law theorists do not accept *soft law* as itself.[7]

On the other hand, there are theorists insisting on reality of its existence regardless of the present confusion about it. The important number of supporters of these opinions is among officials of foreign office agencies and institutions. They resort to *soft law* in circumstances when refusal of specific regulatory standpoints would lead into serious opposition, first of all in their own countries.

It is obvious that there is not a consensus on its definition among law authors, no matter that the topic has existed for many decades now. There is not any agreement as well neither on whether it is some kind of coherent analytics nor why it is applied by states.

According to some opinions, states apply it in order to solve a problem on which agreement had been already made, but it was impossible to solve it pursuant to the current regulation. Referring to solutions of the kind is usually more cost effective and prevents any possible deleterious effects. Even in cases of hesitation, opinions were that it is not beneficial to stick to the standpoint of expectation of the future events or, especially, expectation of changed circumstances.

From the functionality standpoint some sort of explanation could be made, especially having in mind the fact that negotiation on change of the current regulation would last too long. Therefore, any subsequent negotiation could not be expected to be for sure successful.

Common international law

Common international law as a category deviates from normative logic characteristic of international public law development. This approach is obvious in unofficial interpretation of some decisions made by international institutions, defined by some authors as the *soft law* ones. That category could, for instance, comprise decisions made by international courts and ad hoc criminal tribunals. They are, according to absurd logic of legislation, inserted into mandatory context.

[6] For more see: P. J. Henning: (2001) *Public Coruption: A Comparative Analysis of International Corruption,*International and Comparative Law Quarterly .793.

[7] See in detail: Weis P. (1983)*Towards Relative Normativity in International Law,*American Journal of International Law, 77. p. 414-423.

In these cases, states give their consents on possibility to comply with their decisions.

In connection to that it is necessary to ask a question on distinction between quasi-legal and non-legal status on one hand, and the legal one on the other.

Common international law is not a product of the state as an international community entity, but of non-state entities such as international courts and international organizations. It is a new concept that needs consent of the state in order to become a part of international law regulation.

Decisions made by criminal courts and ad hoc tribunals are considered the *soft law* ones because they are mandatory to contending parties only. Foreign states could be bound to them only if they give their explicit consents to that. That does not exclude huge influence these decisions made by international tribunals make, even on international legislative activities.

In multilateral context, we are here to emphasize that an international organization, formed usually on the basis of a high unanimity, is not able to solve all controversies of *soft law* of the kind.

Let us assume that states have agreed to make some kind of consensus over a specific issue rather than to insist on making general agreements on non-functional, non-specific, too general or unclear regulation.

Notorious are opinions presented by numerous authors insisting on a kind of ambiguity being present within the *soft law* corpus. It is apparent in attempts to make a border-line between *soft* and *hard* laws as well. It has been insisted on the fact that *soft law* comprises non-mandatory regulation and instruments, i.e. interpretation of mandatory regulation, in addition to understanding of the regulation and possible expectations about ways they should be applied in future. These standpoints comprise a dynamic component of regulation generating process. It is obvious that in the process of the importance is not only the impact mandatory regulation makes, since activation of legal consequences of un-mandatory regulation (i.e. regulation not being mandatory in procedural sense) action should not be disregarded.[8]

This is the reason a question on reasons why *soft law* is accepted by almost all international community entities is so frequently asked.

Nevertheless, no matter that numerous authors do not consider *soft law* mandatory it is not possible to deny a specific importance it has in international community, especially having in mind that international law itself is, by many features, non-specific as well as non-complete. We are witnessing a relatively rapid change of ethical standards that are so essential and indispensable element of the overall development in the field of ecology, culture and even the entire humankind. It goes particularly to the fields of economy, law and culture as a whole.

For example, let us mention the emergence of the term *market ethic* that was largely a product of liberal market practice.

Problems arise when the operational functionality and management prevail and appear as a competitive advantage often resulting in re-evaluation of ethical standards. That makes the ethic orientation insufficient, and by a kind of inertia the significance of both public international law and the rules and standards based on it are emphasized. At the same time, it should be borne in mind that capitalistic accumulation of capital is a variable factor whose dynamics mostly depends on work, quality of capital and even on actual social movements. Theoretical approaches to corporate social responsibility of so-called rich Northern countries bear a great responsibility in the domain of building a global network of value systems up, especially having in mind that they fully control suppliers from the poor countries of the South.

Non-governmental international organizations

Non-governmental organizations are, by the rule, made up of individuals and groups that organizationally work in more than one country. We have been witnesses of their enormous proliferation and therefore we might folksy make a conclusion that they are innumerable. They are invaluably important to formation of the civil society features as well as to alternative pathways towards formation of greater and more transparent compassion within the human society.[9]

[8] See: Higgins R., (1994) *Problems and Process:International law and How We Use It,* Oxford:Clarendom Press.p. 24-27.
[9]See: Krivokapić B., (2012)p. 126-128.

Opinions pleading that civil society is globally exposed to numerous serious threats are not the isolated ones. Notorious are many cases of various kinds of repression, arresting, disappearances, as well as executions. Restrictions of activities of civil society organizations in many states are not among the minor ones. Unfortunately, this is not something only totalitarian regimes are featured by. Judging by common facts, the hybrid regimes are abundant of numerous obstacles to many civil society activities. They usually refer to restrictions of their resources, freedom of association and political engagement, as well as to organizational problems and barriers to freedom of communication. Speaking of the above problems, let us say that as a basis for solution of them, at the first place, national interests, security and protection from the excessive foreign influence are named. An approach of the kind naturally causes reactions of civil society supporters that have started various actions aimed at removing these obstacles. It has been pleaded to making the appropriate legislation of the universal character for the purpose of making space for arbitrariness smaller, especially within totalitarian regimes. For that purpose the UN Human Rights Committee adopted, in 2010, the Covenant on the right to public assembly and pooling.

There were some endeavors made to get promoted and affirmed legislation frameworks and principles of international activities of civil society, as well as their relationship with governments generally and with the ones where its organizations are seated specifically. They have specially insisted on their right to legal actions without any excessive involvement of state institutions and authorities, on right to freedom of expression, freedom of communication with both national and foreign partners, freedom to possession of resources and freedom to require state protection.

Activities of the World democratic movement

The World democratic movement published its Report in 2007.[10]

The Report states principles of activities of civil society organizations, as well as of individuals in them. In addition to that, it calls both state governments and international organizations to provide for freedom of association, of pooling and of usage of advanced technologies. They also plead for creation of democratic environment by means of imposition of both appropriate legislative framework and working on abolition of all regressive trends. They expect democracy oriented organizations of national, international and universal importance to help. These requirements are obviously the legitimate ones. It is not a point at issue that right to assembly is universal international right. That way foundation of organizations and their activities that have to be legal is made possible. Both purpose and goal of an organization of the kind have to be legal as well. According to that, individuals do assembly in order to extend possibility to realize their goals and interests. In doing so, a great role is played by legitimacy of realization of fundamental rights and freedoms for all active participants. To get realization of these goals functional, it is necessary to establish special bodies, as well as entities, being due to provide for realization of these goals.

System of recognition of legal statuses by issuing declarations, statements or registrations must be transparent, apolitical, acceptable, quick and cheap. In all the above cases objective standards must be applied together with ban on imposition of arbitrary and voluntary decisions made by authorities.

Right to freedom to protection from unjustified involvement of authorities

Right to freedom to protection from unjustified involvement of authorities into activities of civil society organizations is based on international public law regulations. Involvement of a state is approved only if national and public safety is jeopardized, or in the case of necessity to protect public health, morality, freedom and the others` rights. Rights and obligations of civil society organizations should be specified the way that enables any ambiguous interpretation. Therefore, they have to be absolutely clear, objectively balanced, transparent and consistent. Cessation of their work, if unwanted or not resulted by their criminal acts, shall not be considered accordant to international law regulation. Therefore, governmental institutions have to implement both very restrictive practice and objective criteria.

[10] For more see:*Report 2012 of Word Movement for democracy 2nd edition of the Defending Civil Society*. Accessed October 24 ,2013 from www.wmd.org/about.

Right to freedom of expression

To right to freedom of expression are entitled both organizations and individuals. Freedom of expression does not comprise only peaceful and indifferent communication of ideas, but their free offensive circulation as well, generally perceived as essential to every democratic society. Right to co-operation and communication considers freedom of contacts with civil society entities all over the World, including business entities, international organizations and foreign governments. In the sense of technic and technology it means sending and receiving information across frontiers by means of media, internet or the other communication technologies.

Right to peaceful pooling

Right to peaceful pooling considers freedom of holding peaceful meetings and manifestations. Collection of approvals for gatherings of the kind should be made quickly and without problems. In the cases of spontaneous gatherings, when it is not possible to go through procedure of getting the necessary official approval timely, the state shall be due to make sure these meetings are safely held. Having in mind unquestionable obligation of a state to promote and respect both human rights and fundamental liberties, it is obvious that the logic refers to civil society - in appropriate measure.

In addition to that, they extensively produce numerous international legal acts that greatly influence development of many fields of public international law. Numerous are the proposals concerning legal solutions these organizations produced in domains of veteran statuses and statuses of civilians in armed conflicts, human rights, animal rights, workers and employers rights, religious rights, children rights, etc. In situations like these, it is unquestionable that civil society organizations, individuals and the other entities are entitled to ask for state protection if necessary. Realization of both fundamental freedoms and human rights makes states due to provide for appropriate legal framework and institutional system for their protection. Logically, it has to be available to all whose rights are restricted, jeopardized or denied.

The World democratic movement, having among its participants many outstanding individuals involved in politics or in many other domains of public life, formed the Group of outstanding individuals, having among its members Brazilian ex-president Mr. Cardoso, the outstanding religious leader Tutu, and V. Havel, in addition to many others. They have started, relying on their influential positions, very active international campaign aimed at promotion of principles of civil society protection.

However, besides all these hard endeavors and very decisive action it is obvious that in numerous countries the space for civil society activities keeps on shrinking.

Some of them play a very important role at the international scene. Therefore, a significant role could not be refused to, for example, the Red Cross, in both development of international humanitarian law and in organization of collecting and giving help to those who need it - either in war times or in any other circumstances when human race experiences accidents and problems. The Greenpeace also has made a very significant number of various proposals concerning legal acts.

Non-governmental organizations in a number of the above areas usually initiate legislative mechanisms by formulating proposals concerning legal acts and often point to the mechanisms necessary for their implementation. Many cases of their very hard work are well known, especially in the field of international agreements on occasions of their worldwide promotion and often in subsequent legislation and ratification of them. An approach of the kind reflects the pervasive tendency of the necessity of democratization of the entire activity of decision makers within the international community, being evident in more and more significant participation of non-governmental factors.

The Article 71 of the UN Charter reads that the Economic and Social Council must have suitable arrangements for consultation with non-governmental organizations within their competency. According to some estimates there are more than thousand non-governmental organizations enjoying consultative statuses within in ECOSOC. In a broader context, it is obvious that a relativized international normative order is at stake, as evidenced by the current terminological division made between the hard and soft law. These terms - soft law/hard law – greatly blur the very essence of normative order within the international community.[11]

[11]See: Kreća M., (2007,) *Međunarodno javno pravo(International public law)*Belgrade: Official Journal. p. 102.

Due to such processes, as highlighted by a prominent Professor Avramov, the boundary between the legal and non-legal has been erased. The fact that procedures of formulation of legal norms have been more and more diverse contributes to the process, opening a new space for numerous manipulations to be made.[12]

Technological advancement necessarily requires, for the purpose of new technologies a new ethically responsible global corporate strategy and which could be conceived as a value sustainable creative process.[13]

It is viable only in the case of non-changeable matrixes of both ethics and international legal responsibility and sustainability. Any disqualification or circumventing of these values could cause them to get disrespected. It is supported by the fact that in not so distant past these two postulates were observed separately, in addition to some common points of a kind of a tangent type. It caused, by its very nature, some unsustainable ambiguities.[14]
At the same time, it raises the question of responsibility as the most important one.

From the standpoint of institutional theory there is a difference between strategic corporate responsibility and social corporate responsibility. By that, as institutionalists argue, a polarization made on dogmatic grounds would be bypassed, and corporate global responsibility would be affirmed in the circumstances of the global systemic crisis.

Being proven by a practice, this is a place to look for a basic lack of institutional theory, because the consequences of institutionalists' standpoint cannot give a proper answer to the economic aspirations strategy of both corporations and the other actors acting in accordance to their superior routine within their own organizational role-model culture. Within it, the most important role is played by convergence which moves to the background ethics, morality and the law itself.[15]

Acting from the standpoint of the importance of certain norms of the so-called soft law it is hard to accept Prof. Shelton's point of view, as he argues that two normative orders - the hard and the soft ones – differ by their consequences only. Speculation that the first one has the legal consequences only, and the later one the political consequences only, excludes the legitimate process of formation of legal rules, inevitably leading to arbitrariness and affirmation of force.[16]

Fortunately fighters for freedom are born in all times, playing their well-pleasing and honorable role in accordance to paraphrased Njegoš saying "To crush a tyran's neck is among human duties the holiest one".

Summary

Corporative social responsibility, being an insufficiently explicit term, opens a possibility to be perceived in many different ways. So much more as it comprises multidimensional and versatile components.

There are numerous authors pleading that it is a natural event of political character in question, being supported by various political factors and enabling, as such, numerous agents to make compromises and therefore to understand their interests within political programs.

Some authors argue that it is an answer to social disparities arising as generated by globalization.

On the other hand, some authors suggest that there is an inevitable antagonism in question, being by all means generated by globalization, but that, at the same time, it is necessary to come to a planetary agreement between public and private sectors in order to get those problems solved.

Likewise, opinions pointing at multi-relations between economic factors and civil society agents are not without supporters.

In the above sense, it is emphasized that civil society cannot exist without market as a base of its prosperity.
It is obvious that all this leads into a question of a way globalization contributes to the growth of social alienation, ecological problems and inequality.

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[12]See: Avramov S.,(2011) *Međunarodno javno pravo(International public law)*Belgrade :Academy for diplomacy and security. p. 111-114
[13]See:Donaldson T, (2007), p. 211-214
[14] For more see:Sen A.,(1999), *Development as Freedom,*p.Oxford :Oxford University Press.121-132.
[15] See:Balla, (2001)p. 801.
[16]See in detail: Shelton, D.,(2003) *International law and relative noramativity* "Oxford:Oxford University Press. p. 142-149.

At the planetary level, numerous contrapositions and almost omnipresent inequality, threatening to comprise the entire transnational system (of international communities), have been vindicated.

Therefore, insistence for it to be transparent, responsible and participative, with numerous and acknowledged participants, especially among both workers and the other parts of the widest social classes and marginal groups, seems like a faraway postulate rather than a real realizable objective.

The above stated, as combined with negative influences made by various communities, brings about changes to civil society by making a direct pressure on both various corporations and the other decision-makers throughout the international community, in order to make them accept a responsibility that has been, within both international community and international public law, tied to states and their governments.

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