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CORPORATE SOCIAL RESPONSIBILITY: SOME ASPECTS

E. L. Sidorenko (a)*, V. R. Volkov (b)
*Corresponding author

(a) Moscow State Institute of International Relations (University) of the Ministry of Foreign Affairs, Vernadsky Ave., 76, Moscow, Russia, 12011979@list.ru
(b) Moscow State Institute of International Relations (University) of the Ministry of Foreign Affairs, Vernadsky Ave., 76, Moscow, Russia, slava18-08@yandex.ru

Abstract

Topical issues of corporate law are associated with activities of corporations, their subsequent responsibility in case of non-compliance with social, legal norms, and values of society, which violated not only the accepted rules of behavior, but also caused harm to the public good, on the one hand, with the ways of regulating their activities, on the other hand, with their assessment. When analyzing English-language articles, the authors did not see the definition of corporate social responsibility. We attribute this to the use of the method of induction by legal experts, a fairly large number of questions raised on a global scale, and existing legal regimes. The authors conclude that corporate social responsibility includes norms of domestic legislation on legal responsibility (mainly criminal) of corporations, compliance (its content is being developed), self-regulation, and laws having extraterritorial effect. Norms of law that have an extraterritorial property relate to corporate criminal responsibility, which is thought of as an integral part of corporate social responsibility, since the collective concept is a social norm. The application of corporate criminal responsibility, in particular, is considered on the example of two companies: Telia and Lundin Petroleum. While corporate criminal responsibility is part of corporate social responsibility, compliance is both an element of corporate criminal responsibility and an element of self-regulation that is subordinate to corporate social responsibility. The content of compliance differentiates not only the criminal liability itself, the various forms of its presentation, but also the form of how it will be evaluated in each case.

Keywords: Corporate crimes, corporate and private interests corporate social responsibility, , culture, differentiation of criminal responsibility

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1. Introduction

The search for solutions to the problem of self-awareness of science led to the emergence of its types of reflection (in the spheres of nature, thinking, society), to filling them with content, which, in turn, influenced and influence the formulation of new problems, the processes of convergence and divergence in various fields of knowledge based on the content of these types of reflections.

The area of knowledge about corporate social responsibility is no exception. Modern significant contributions to the development of corporate social responsibility in whole or partly are made by foreign lawyers: Hanrahan (2017), Jönsson (2019), Almond and van Erp (2020), Schoultz and Flyghed (2020), Oliveira (2019), Haines and Macdonald (2019), Deffains and Fluet (2020), Ramirez and Palos-Sanchez (2018), Ruiz and Torres (2019), Campbell (2018) and Russian legal experts: Krasnova and Nikonov (2020), Kremyanskaya (2013), Klepitskij (2020).

Topical issues of corporate law are associated with the activities of corporations, their subsequent responsibility in case of non-compliance with social, legal norms, and values of society, which violated not only the accepted rules of behavior, but also caused harm to the public good, on the one hand, with the ways of regulating their activities, on the other hand, with their assessment.

Corporations' activities are aimed at profit recovery – a process that involves and entails violation of the law and social norms. Human society and the mass media try to draw attention to the illegal actions of organizations and their disregard of the society values. Values are understood as objects, phenomena, as well as their properties, taken not by themselves, but in their connection with human needs; in other words it is the significance, usefulness of objects of the surrounding world for an individual, a group of people, classes, society. Any socio-political phenomena can have value, which means that both the state and the law can be this value (Pyanov, 2015).

Violations and their subsequent assessment are represented by many positions and interpreted in different ways. The consequences of placing their results publicly are determined by any participants of corporate relations; their reaction depends on the influence of social, economic, political, spiritual spheres on them, indirectly on their perception of social relations, which are regulated by social norms. Legal norms are their type; they are systematized into a law that regulates, tries to regulate or affects public relations, taking into account the objective and subjective limits of legal regulation, types of legal regulation.

The law cannot fully control or regulate every action of a participant in a legal relationship, this is not necessary. Legal norms constitute "living law" from the point of view of the sociological theory of law. This position stands out along with the theory of natural law, legal positivism, normativism, psychological theory, Marxist-Leninist theory, and others (Pyanov, 2015).

Each legal phenomenon is based on social relations and is interconnected with other legal phenomena. It is an integral part of the legal reality. Their participants are individuals and legal entities.

Legal entities, together with individuals, can be and are subjects to responsibility, corporate social responsibility, and are punished for committing corporate crimes, offenses, and anti-social behavior. Their illegal behavior is sometimes invisible to human society, legal experts, and countries, because many corporations are quiet about these facts, and the lack of information about them allows them to observe transparency and integrity in their activities. On the other hand, in certain contexts, corporations have become closer to governments and show them that their accusations against them are wrong.

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2. Problem Statement

It seems that crimes, misconduct, unethical behavior, and corporate social irresponsibility are becoming more common, which requires reflection on the relevance of solving these problems in the academic sphere and in management practice (Oliveira, 2019). We agree with this statement, because many cases are being considered now, and not any harm caused by a corporation is criminalized and entails legal responsibility. These actions or inactions are not covered by the law. Accordingly, these situations cannot be assessed from the point of view of law. We assume that this violates the balance between society and business, private interests and business interests, respect for human rights and profit-making.

The development of corporate social responsibility is considered by some foreign legal experts through the concept of "culture"; connections are established between individuals who work in corporations in positions and organizations that are a form of joint activity for them to make a profit.

For example, legal expert Hanrahan notes that in the decade after the financial crisis, the tone of white-collar crime literature has changed. Previously, it was mostly associated with a rogue employee or agent who abused their position to gain personal benefit. Now the focus is on the corporation itself, the criminal or almost criminal behavior of its employees in the pursuit of corporate success. This behavior is often laid down by the corporation itself. Regulators tend to describe it as a "culture" problem (Hanrahan, 2017).

The approach suggested by the lawyer expert shifts the focus from the individual, his responsibility to the legal entity itself, its responsibility. The choice of a particular point of view determines the scope, limits, grounds, and other criteria related to corporate social responsibility (CSR). On the other hand, many foreign authors study CSR from one or more sides without relying on the content of the term "culture".

As an example, the Watergate scandal broke out in 1972 during the election campaign of Richard Nixon, who was running for President of the United States of America. The scandal involving the installation of eavesdropping devices in the campaign headquarters of competitors led to a large-scale investigation of the activities of government and companies, and, in particular, pointed to the presence of multimillion-dollar funds used to bribe foreign officials and others in order to conclude extremely profitable deals (Kremyanskaya, 2013).

Among the participants in the scandal were the names of such companies as Exxon, Mobil, Phillips Petroleum, Lockheed Corporation. As the main defense argument, the companies involved in the scandal pointed out that if they did not pay bribes, it would significantly reduce their competitiveness on foreign markets. The result was that in 1977, US President Jimmy Carter signed the Foreign Corrupt Practices Act (Kremyanskaya, 2013).

It can be assumed that this situation contributed to moral ambiguity, allowed social damage (Almond & van Erp, 2020), although the actions of the corporation at that time were not recognized as criminal, on the contrary, they were considered a publicly recognized practice.

At the same time, the tools of the economic approach to combating corruption allow to clearly define the economic essence of corruption relations, the economic reasons for its determination, and the extent of its impact on the economy of individual countries at the macroeconomic, microeconomic, theoretical and empirical levels (Krasnova & Nikonov, 2020). Therefore, the problem of corporate actions or inactions has

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not only social, psychological, and corporate roots (depending on the values of society), but also historical roots. Therefore, it cannot be considered in isolation from these aspects.

On the other hand, the term "culture" is not considered as the central, main term. The emphasis is shifting to other terms and aspects, such as compliance and self-regulation. Accordingly, the appeal to the points of view of legal experts and their subsequent analysis is a necessary moment for the systematic development of corporate social responsibility, which, in our opinion, should be based on a common position of the legislator, legal professional and legal science.

There are no contradictions in the points of view of legal experts, because knowledge about corporate social responsibility continues to expand; this is ensured by the violation of the balance between society and business, the process of divergence, the existing relationship between social and legal norms, and the assessments and perceptions of participants in corporate relations about the facts of corporate behavior. These points show the consistency of different positions of lawyers.

This article sets the following tasks:

1. Analyze selected articles of foreign legal experts on aspects of corporate social responsibility.

2. Refer to the experience of England (legislation provides for responsibility for failure to prevent certain crimes), Spain (environmental crimes are criminalized), and the United States of America (the provisions of the law on corruption abroad have extraterritorial effect), since their legislation collectively provides a more integrated scientific understanding of the responsibility of legal entities abroad.

3. Identify problems related to self-regulation of business processes within corporations.

4. Establish a link between corporate social responsibility and corporate criminal responsibility.

5. Establish links between compliance, self-regulation, laws, and corporate criminal responsibility.

3. Research Questions

The rules of law regulate, try to regulate, and influence the activities of corporations. At the same time, it is necessary to pay attention to the type of legal regulation, the property of extraterritoriality of legal norms. This is due to the fact that social institutions are not able to maintain a balance between the interests of society and business. This violation requires the application of laws on legal responsibility. The analyzed articles emphasize that it is often criminal responsibility (considered as part of corporate social responsibility) that restores the balance of interests between society and business to a greater extent. This raised the following questions. What are the limits of social and legal regulation? How do they relate to each other? What causes the guilty person to commit a corporate offense? Can the law cause the illegal corporate behavior? How can the structure of a corporation influence the behavior of an organization? What are the current views on these issues? These topical issues are the basis of this article.

4. Purpose of the Study

The purpose of the study is to analyze the points of view of foreign legal experts on various aspects (moments) of corporate social responsibility, to evaluate them, which will allow not only to see the existing scientific ideas on it, but also to offer its definition. We believe that foreign ideas, experience, and legislation can be useful for Russian reality in whole or partly. Moreover, we defend the position that

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assumes that there are no conflicting, mutually exclusive, incomplete points of view. Firstly, the views of legal experts cannot but be based on the norms of positive law, and secondly, they study various aspects of knowledge of corporate social responsibility.

Moreover, the experience below describes the legal models that exist in foreign countries. Their consideration is important for understanding on how corporate governance mechanisms work abroad.

Without legal norms, outside of the legal environment, outside of criminology, outside of scientific studies on problems existing within organizations, social norms cannot strengthen the effectiveness of monitoring and supervision, self-regulation. This is partly due to the fact that corporate structures have many shortcomings that currently affect the violation of human rights and environmental pollution. Damage is caused not only by their illegal actions, but also by the existing structures of organizations. On the other hand, the law contributes to the violation of its own norms. This is consistent, first of all, with the fact that many rules of law are abstract in nature – they can be interpreted differently. Considering these moments is important for understanding the problems of corporate social responsibility.

5. Research Methods

In this work, general and special methods of scientific knowledge were used: analysis, synthesis, method of description, methods of induction and deduction, logical method, formal legal method. Each of these methods performs a specific function in this article. Methods of induction and deduction were widely used. The formal legal method is reflected in the use of special terms.

The authors studied more than 100 scientific papers to find aspects of corporate social responsibility. Their analysis contributed to the development of the concept of this socio-legal phenomenon. Moreover, foreign authors emphasize its double, indissoluble, stable connection. This is due to the fact that corporations exist in society. Society cannot do without the norms of law.

6. Findings

When analyzing the articles, we did not see the definition of corporate social responsibility. We attribute this to the use of the induction method by foreign legal experts, a fairly large number of questions raised on a global scale, the existing legal regimes and their features. Apparently, not all aspects are currently studied and there is a gradual increment of knowledge to the structure of knowledge of corporate social responsibility. We are confident that the information and results of the III International Scientific On-Line Conference "Global Challenges and Prospects of the Modern Economic Development" will expand our understanding of it.

At the moment, knowledge about this socio-legal phenomenon is presented as follows. "Corporate social responsibility" (CSR) is often associated with preventing harm to the public good (Jönsson, 2019). At the same time, the public interest is often ignored, and the public benefit from companies' activities is minimal. Public good is a widely used term where social damage is an integral part of foreign legal reality. But sometimes corporations are not responsible for their anti-social behavior. This may be due to the fact that the law not only does not provide for legal responsibility for antisocial behavior, but also does not consider it legally punishable. On the one hand, the law is assessed both as a problem and as a solution to corporate harm (Haines, & Macdonald, 2019), which, on the other hand, violated the values of society.

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In our opinion, it is unthinkable to establish legal responsibility without causing harm by the corporation and violating the values of society, provided that the legal entity is not a potential, but an active subject of such responsibility under the type of legal regulation chosen by the state. This does not mean that social institutions, their power, their influence, and their sanctions are ignored. But they are clearly not enough, not only because a society cannot exist without a right, but also because the subject of legal responsibility is a legal entity (a special form of joint activity of individuals). And social norms cannot regulate, try to regulate, what is created by positive law. But they can affect the activities of corporations. Social norms begin to be considered as part of the law, their nature becomes social and legal.

Moreover, the standard model of law enforcement is being expanded to include social preferences and pre-existing socially effective norms of behavior. Law enforcement involves identifying violations and imposing sanctions, monetary or non-monetary (Deffains & Fluet, 2020). The establishment of sanctions is very important, otherwise human rights and freedoms, environmental protection, the negative impact of corporate activities, the decline in the level of legal culture, and the illegality of their actions will continue to be ignored by organizations.

When the violations of legal norms are determined, the companies should be punished. Direct and indirect forms of responsibility are provided. The first is applied for violation of legal norms, the second - not so much for an action or inaction as for the moment (if it is punishable) preceding the commission of the offense. As an example of the direct form of responsibility of an organization, we can refer to the experience of Spain. The issue of criminal liability of legal entities has been developed in Spain. Now legal entities can be held responsible and punished. The state makes efforts to control environmental damage and influences the activities of companies. In 2015, Spain introduced a Criminal Code to combat organizations that do not comply with environmental policies. Companies were held responsible along with individuals when they caused significant damage to air, soil, or water quality, as well as to animals or plants (Ramirez & Palos-Sanchez, 2018).

The results of the introduction of criminal responsibility of legal entities were positive. Under the pressure of the law, organizations were forced to develop surveillance, monitoring, and structuring systems in order to avoid criminal sanctions. Subsidiary responsibility of companies was related to the responsibility of an individual responsibility for environmental crimes if the individual had the authority of representation and de facto or de jure managed, represented or managed the legal entity (Ramirez & Palos-Sanchez, 2018).

The attitude of companies to the environment and to human rights and freedoms has also changed. The preservation of nature, improvement of company standards and enforcement to help prevent corporate harm. This allows to avoid criminal responsibility. Accordingly, not paid funds in the form of a fine due to the absence of an offense can be allocated for the development of self-regulation within the corporation, to help ensure a balance of interests between society and business by directing part of the funds to various social projects.

Indirect form of responsibility is provided by the legislation of the United Kingdom. The failure of organizations to prevent certain crimes, such as bribery and facilitating tax evasion, is criminalized (Klepitskij, 2020). The failure to prevent crime represents another step-by-step development of corporate criminal responsibility, which is closely linked to deferred prosecution agreements (Campbell, 2018). Corporate criminal responsibility is thought of as an integral part of corporate social responsibility, since a

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rule of law is a type of social norm that appears as a collective and generalized term for other types of norms. The expansion of the content of corporate criminal responsibility, and, consequently, corporate social responsibility, in addition to the development of scientific ideas, occurs in cases where corporations face charges in crimes, while they manage their social and ethical responsibilities (Jönsson, 2019).

Two companies, Telia and Lundin Petroleum, are examples. Telia is said to have moved from literal denial to confession. It agreed to pay $ 965 million to settle charges related to violations of the Foreign Corrupt Practices Act (FCPA) (Schultz & Flyghed, 2020). Here you should pay attention to the fact that the US FCPA is applied to companies and individuals, its norms have an extraterritorial effect; the responsibility of perpetrators is strictly differentiated, its types and size are listed; it consists of two parts (Kremyanskaya, 2013). Lundin Petroleum takes the position of denouncing the denouncer. Lundin Petroleum has faced allegations of involvement in human rights crimes, and the dispute is still ongoing (Schultz & Flyghed, 2020).

Let us note that the transition from literal denial to confession (Telia), and the position of denouncing the denouncer (Lundin Petroleum), along with avoiding and minimizing blame, denying responsibility, denying harm, denying knowledge, denying deviance, justifying through relativization, appealing to the highest loyalty, denying the victim, expressing the right, moral indifference, partial recognition, belong to the category of denial and neutralization (Schoultz & Flyghed, 2020).

In our opinion, the category of denial and neutralization, as well as corporate crime, is based on knowledge of economics, criminology, law, psychology, sociology, anthropology, business ethics, political science, high reliability, security, information and technological sciences (van Erp, 2018), which is confirmed by the types identified by legal experts.

Of course, each concept has its own content, structure, and connections with other structural and non-structural elements. But can any concept, along with self-regulation, corporate social responsibility (corporate criminal responsibility), simultaneously be in a relationship of intersection or subordination according to Euler's circles?

It seems that the answer should be yes. Such a concept is considered a compliance, which with the above phenomena is in the relationship of intersection; it turns out that it is differentiated. This point of view is expressed by Ruiz & Torres. It is these legal experts who say that compliance is part of the phenomenon of self-regulation, the basis of corporate criminal responsibility; and, based on corporate regulation, the effects that a compliance program can have in the criminal sphere are analyzed, namely (Ruiz & Torres, 2019):

1. As a mitigating circumstance in criminal punishment.
2. As protection from criminal responsibility.
3. As an integral form of compensation of damages.
4. As a basis for criminal sentencing.

It seems that the sphere (program) of compliance cannot be considered separately without supporting models of criminal responsibility. In addition, compliance and criminal responsibility are part of corporate social responsibility. These are two sides, two supporting and interrelated aspects.

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Analysis of foreign literature on corporate social responsibility leads to the conclusion that it includes the norms of domestic legislation on legal responsibility (mainly criminal) of corporations, compliance (its content is being developed), self-regulation, and laws with extraterritorial effect.

The development of scientific ideas about corporate social responsibility will allow us to deepen knowledge about it on a global scale through joint efforts of legal experts, which in the future will contribute not only to ensuring, but also to maintaining a balance of interests of society and business.

7. Conclusion

To sum up, we believe that the field of criminology (corporate social responsibility is considered through it) should expand, since social norms are beginning to be considered and are already considered as an integral part of it. Their nature becomes social and legal. Corporate social responsibility is a multidimensional, multi-faceted, collective concept that includes a list of problems that are related to the activities of legal entities. Its assessment by participants of social relations is graded taking into account the time frames and needs of society.

Foreign experience shows that criminal prosecution of legal entities has a positive impact on existing social relations, often provides a balance between society and business. At the same time, corporations have ways to deal with unsubstantiated charges. Corporate criminal responsibility is part of corporate social responsibility, while compliance is both an element of corporate criminal responsibility and an element of self-regulation that is subordinate to corporate social responsibility. The content of compliance differentiates not only the criminal responsibility itself, the various forms of its representation (differentiation), but also the form of how it will be evaluated in each specific case. The presented experience, in our opinion, can become the subject of scientific discussion.

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