

# The Use of International Soft Law for Corporate Social Responsibility Reporting in the Retail Industry: A Study of Four Major Retailers in the Asia-Pacific

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There are significant investments in and aspirations placed upon international soft law, including particularly, the regulation of multinational enterprises. Retailers, although at the apex of the world's manufacturing, are understudied in this regard. Asia, as the most populous continent, is a major producer and consumer of goods and services. Taking an international legal sociological perspective, this study examines the reported use of six major international soft law instruments: SDGs, UN's Global Compact, ISO 26000, SA 8000, ISO 14000/14001, and GRI in four multi-national retail enterprises in Asia. Using a case study method, the current study contributes to understanding of these instruments and their aims in the Asia-Pacific region. This study is important because of the increasing importance of soft-law, as pressure on businesses to develop and implement corporate social responsibility in Asia. Retailers in particular are expected to behave responsibly, provide sustainable products and services to their consumers and persuade or pressure their suppliers to operate sustainably. They are, therefore, in a unique position to disseminate sustainability. Further, because of their significant social and environmental footprints in addition to their size, their participation in international soft law regimes is critical to the regimes' success.

## I Introduction

International business law as applicable to private actors, unlike international public law of the nation-states, is largely soft law. International soft law, as discussed in detail below, can be conceived of as a set of norms agreed upon by non-state entities. They are often the product of private organisations seeking to achieve particular ends that a) are not or cannot be legislated for various reasons including problems of jurisdictional extra-territoriality and b) will not be produced by operation of markets or other institutions. Among the various soft law initiatives is an array of soft law instruments attempting to leverage business power for broader social goals under the umbrella term, corporate social responsibility (CSR).<sup>1</sup> As Branson stated over two decades ago "at the level of large publicly held and multinational corporations, a principal determinant of corporate behaviour has become "soft law" rather than law itself. Soft law may find its genesis in statements of what the law should be but more often finds its source in items that are not law-related at all or only tangentially so, such as statements or codes of good or recommended governance practices..."<sup>2</sup> While advances in certain areas like human rights through the due diligence process have occurred,<sup>3</sup> for the most part, this state of affairs prevails in countries and businesses around the globe.

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<sup>1</sup> Benedict Sheehy, 'Defining CSR: Problems and Solutions' (2015) 131(3) *Journal of Business Ethics* 625.

<sup>2</sup> Douglas M. Branson, 'Teaching comparative corporate governance: the significance of "soft law" and international institutions' (Pt Georgia Law Review Association Inc) (2000) 34(2) *Georgia law review* 669, 670.

<sup>3</sup> Anita Ramasastry, 'Corporate social responsibility versus business and human rights: Bridging the gap between responsibility and accountability' (2015) 14(2) *Journal of Human Rights* 237.

Many of these instruments do not sit comfortably on one side or the other of the public-private dichotomy.<sup>4</sup> Rather, multi-stakeholder initiatives abound around the globe and among a wide range of industries.<sup>5</sup> These multi-stakeholder initiatives have considerable variance in their success.<sup>6</sup> Indeed, a study of their effectiveness in terms of implementation is a broad matter of concern.<sup>7</sup> Although there is a variety of reasons for their effectiveness or lack thereof,<sup>8</sup> there is reason to believe that they have had a positive impact on improving sustainability.<sup>9</sup> They range from industry led initiatives such as the Forestry Stewardship Council and Responsible Care, to initiatives sponsored by public bodies all the way to the global level such as the United Nations Global Compact.

A basic issue is whether the major international CSR instruments are having an impact—a matter which has recently received renewed calls for further research.<sup>10</sup> These instruments not only represent aspirations, but in most cases, represent the only realistic and hence best available option to regulate in the permanently problematic juridical challenge which results from the doctrines of extra-territoriality which multi-national corporations (MNC) exploit through regulatory arbitrage.<sup>11</sup> Further, the instruments represent a major investment by international, regional and national policy makers, as well as investment by businesses, regulators and other stakeholders. Hence, they are critical sites for investigation.

Efforts to regulate MNC or more accurately, transnational enterprises, have been an on-going effort since the 1970's.<sup>12</sup> The efforts have been collaborative and contested among international bodies, governments, businesses and civil society groups. The United Nations Commission on Transnational Corporations (UNCTC),<sup>13</sup> initiated in 1974 was unsuccessful and finally closed in 1993.<sup>14</sup> Its demise left the field open to a wide range of different soft law approaches<sup>15</sup> with differing levels of success. In the public sphere, the G20/OECD Guidelines for Multinational Enterprises, the UN's Guiding Principles on Business and Human Rights and the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy have gained traction and seen success.<sup>16</sup> The limitations and implications of these

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<sup>4</sup> Karin Bäckstrand, 'Multi-stakeholder partnerships for sustainable development: rethinking legitimacy, accountability and effectiveness' (2006) 16(5) *European environment* 290.

<sup>5</sup> Sébastien Mena and Guido Palazzo, 'Input and output legitimacy of multi-stakeholder initiatives' (2012) *Business Ethics Quarterly* 527.

<sup>6</sup> Peter Utting, 'Regulating business via multistakeholder initiatives: A preliminary assessment' (2002) 61130 *Voluntary approaches to corporate responsibility: Readings and a resource guide*.

<sup>7</sup> Bäckstrand (n 4).

<sup>8</sup> Andreas Rasche, 'Global policies and local practice: Loose and tight couplings in multi-stakeholder initiatives' (2012) *Business Ethics Quarterly* 679.

<sup>9</sup> Frank GA de Bakker, Andreas Rasche and Stefano Ponte, 'Multi-stakeholder initiatives on sustainability: A cross-disciplinary review and research agenda for business ethics' (2019) 29(3) *Business Ethics Quarterly* 343.

<sup>10</sup> *Ibid.*

<sup>11</sup> Branson (n 2) 678.

<sup>12</sup> Edward S. Rubin, 'Transnational Corporations and International Codes of Conduct: A Study of the Relationship between International Legal Cooperation and Economic Development' (1995) 10(4) *American University International Law Review* 1275.

<sup>13</sup> The Commission was established pursuant to ECOSOC Res. 1913, U.N. ESCOR, 57th Sess., Supp. No. IA, at 31, U.N. Doc. E/5570/Add. 1 (1974)

<sup>14</sup> Georg Kell, '12 Years later: Reflections on the growth of the UN Global Compact' (2013) 52(1) *Business & Society* 31.

<sup>15</sup> David Coleman, 'The United Nations and transnational corporations: From an inter-nation to a "beyond-state" model of engagement' (2003) 17(4) *Global Society* 339.

<sup>16</sup> Norbert Horn, 'International Rules for Multinational Enterprises: The ICC, OECD, and ILO Initiatives' (1980) 30 *American University Law Review* 923.

standards, however, has left considerable room for other actors and related soft law innovations to arise.

In order to gain an understanding of the utility and power of soft-law standards at a global level, the article focuses on global retailers and their CSR. The retail industry is an apex industry in that it draws from operations and supply chains spanning the globe and is the ultimate focus of a large proportion of production—namely, the consumer.<sup>17</sup> Further, as it is hypothesised that consumers are a main pressure point for business behaviour, retailers should more readily demonstrate an interest in CSR as they are the consumer face of industry. Finally, these soft-law instruments are increasingly being included in non-financial reporting<sup>18</sup>. Accordingly, these reports provide an appropriate place for investigating the use of these instruments.

Our focus is further narrowed to MNC retailers active in the Asia-Pacific region. Retailers generally draw supplies disproportionately from the Asia-Pacific while they simultaneously serve large consumer markets in the region. Asia is the most populous continent with the East and South East Asia having a combined population in excess of 2.5 billion. It is a diverse region in terms of economic development, environmental conditions and regulatory advances. It has become the world's factory for many industries because of the combination of large, inexpensive work force, diverse resources, and lower level of regulatory development in terms of positive law and enforcement.

Additionally, as Asia-Pacific, despite the on-going rise of China remains farthest from the main centres of global political power in the EU and USA where most international standard development occurs on the one hand and on the other, the most effected by negative industrial impacts<sup>19</sup> as global manufacturers seek sites with minimal environmental regulation<sup>20</sup>, it provides an interesting and important location to investigate whether and how these standards are being used for reporting. These global retailers with supply chains and operations in Asia-Pacific are at the pinnacle of global dialogue about CSR and wield great economic and related political power, and as a result, they could reasonably expected to both engage in the development and application of the instruments in their operations. Accordingly, they are exemplary sites for such investigation.

Located in Asia, these MNC's, encounter a distinct CSR dialogue. CSR in Asia is a distinct social phenomenon from CSR elsewhere in the world.<sup>21</sup> It links differently with local traditions

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<sup>17</sup> Amir Rahdari et al, 'Exploring global retailers' corporate social responsibility performance' (2020) 6(8) *Helyion* 1.

<sup>18</sup> See discussions in *Corporate responsibility reporting has become de facto law for business* KPMG International Corporate Responsibility Reporting Survey 2011, (KPMG International Cooperative, ('*Corporate responsibility reporting has become de facto law for business*')); *Carrrots and Sticks for Starters: Current Trends and Approaches in Voluntary and Mandatory Standards for Sustainability Reporting South Africa* (UNEP, ('*Carrrots and Sticks for Starters: Current Trends and Approaches in Voluntary and Mandatory Standards for Sustainability Reporting*')).

<sup>19</sup> Nayyar Deepak, *Resurgent Asia* (Oxford University Press, 2019).

<sup>20</sup> David A. Sonnenfeld and Arthur P. J. Mol, 'Environmental Reform in Asia: Comparisons, Challenges, Next Steps' (2006) 15(2) *The Journal of Environment & Development* 112.

<sup>21</sup> Wendy Chapple and Jeremy Moon, 'Corporate Social Responsibility (CSR) in Asia: A Seven-Country Study of CSR Web Site Reporting' (2005) 44 (4) *Business Society* 415; Richard Welford, 'Corporate Social Responsibility in Europe and Asia: Critical Elements and Best Practice' (2004) 13 (Corporate Social Responsibility in Asia) *The Journal of Corporate Citizenship* 31.

both historical and contemporary.<sup>22</sup> It presents differently in different jurisdictions.<sup>23</sup> The study of CSR in Asia remains an important and understudied topic.

The environmental crisis currently facing the planet is a matter of concern to all parties. It is intimately related to industrial production and consumption patterns around the globe. The environmental law of common legal systems contains elements of conflict—the conservation and exploitation agendas of governments<sup>24</sup>. In terms of environmental matters CSR, by way of contrast, focuses exclusively on the conservation element as the business organisation already has license to exploit the environment. Accordingly, as a private regulatory system, CSR has the potential to contribute significantly to an environmental conservation agenda<sup>25</sup>. Finally, with the significant rise in sustainability reporting, or non-financial reporting, we have we have focused our analysis on non-financial reporting. We hypothesise that if international instruments have impact, at the very least, we might expect them to be referred to, and evaluated against, CSR reports. Accordingly, this article aims to provide a snapshot of the use of these instruments in Asia by examining reference to them in the reports of four large retail MNCs. The article is divided into the following sections. The next section is a brief discussion of method, after which the article turns to a discussion of CSR as regulation, a topic that requires consideration of both hard and soft law. This section is followed by Section 4 which introduces the soft law instrument and Section Five which is the analysis of the use of the soft law CSR instruments in the four case studies.

We note that our contribution is at the intersection of three discrete but intimately related areas of research and practice, namely, international soft-law, CSR and Asia. Each of these areas is a major topic of investigation in its own right; however, the siloing that occurs undermines the efficacy of much work done at this intersection. This article aims to contribute to the connection of these discrete but related areas by demonstrating in a limited fashion that connection.

## II. Theory and Method

At a theoretical level, we take an international legal sociological perspective—a perspective proposed by Karen Alter who analogises it as a type of law and society in international law. This type of work, she states, is “interesting, important, and politically consequential”.<sup>26</sup> She argues that an international legal sociological perspective that operates as a “sociological paradigm, [in that it] considers societies uniting people around shared beliefs to be the key unit of analysis.”<sup>27</sup> The shared beliefs include a belief about the responsibilities of business to social welfare and reduced environmental harm—CSR. This approach is particularly important as it “embraces the notion that there probably is no definable society uniting the various levels in which international law must operate, and thus no shared sense of what

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<sup>22</sup> *Contextualising CSR in Asia: Corporate social responsibility in Asian economies and the drivers that influence its practice Singapore* (Lien Centre for Social Innovation, Singapore Management University, ('Contextualising CSR in Asia: Corporate social responsibility in Asian economies and the drivers that influence its practice').

<sup>23</sup> Chapple and Moon (n 21); Welford (n 21); Li-Wen Lin, 'Mandatory Corporate Social Responsibility Legislation around the World: Emergent Varieties and National Experiences' (2020) 23 *University of Pennsylvania Journal Business Law* 429.

<sup>24</sup> Benedict Sheehy, 'CSR and Environmental Law: Concepts, Intersections, and Limitations' in Abigail McWilliams et al (eds), *The Oxford Handbook of Corporate Social Responsibility* (Oxford University Press, 2nd ed, 2019) 261.

<sup>25</sup> Benedict Sheehy, 'Private And Public Corporate Regulatory Systems: Does CSR Provide A Systemic Alternative To Public Law?' (2017) 17 *University of California, Davis Business Law Journal* 1.

<sup>26</sup> Karen J. Alter, 'Visions of international law: An interdisciplinary retrospective' (2020) 33(4) *Leiden Journal of International Law* 837.

<sup>27</sup> *Ibid.*

international law is or a shared commitment to the importance of adhering to international law.”<sup>28</sup> Accordingly, investigation must occur in a variety of places and levels, focusing on those uniting values.

As the international legal landscape continues to change, new powers emerge, private actors follow different agendas.<sup>29</sup> Alter’s international legal sociological perspective embraces these differences. In particular, as she and others note, is the increased importance of multinational enterprises as actors and the global economic system.<sup>30</sup> As she puts it, taking her approach allows “looking across time to better understand global capitalism as a structural force shaping state, society, and international law.” Such being the case, investigating the dissemination and implementation of global retailers’ CSR practices in the Asia Pacific as expressions of participation in the international soft law landscape’s values is an important exercise. As discussed below, however, we do not limit ourselves to positivist views of law following Austinian precepts.

We have chosen to take a case study approach investigating references to the international instruments in the sustainability reports of four major Asia-Pacific retailers.<sup>31</sup> This method has been selected as it provides preliminary insights into the phenomenon under examination – a high level investigation of the implementation of international private soft law norms by an industry deeply engaged in both the production of these laws and goods as well as a major consumer market in its own right. This method allows insights from which directions for subsequent research can follow. The four retailers have been selected on the basis of their global reach, annual turnover and ubiquitous presence in the Asia-Pacific region. As such, we believe they provide an insight into highly visible global businesses operating in a region with challenging standards in terms of practice. We analyse but one recent report from each rather than provide a longitudinal analysis as our aim is referencing rather than examining developments or determining trends.

Our focus is on the main international soft law instruments regulating CSR, namely, the principles as found in the UN’s Sustainable Development Goals (SDGs), and the UN’s Global Compact, standards such as the ISO 14000/14001 and Social Accountability’s SA8000, and the internationally recognized reporting framework, the Global Reporting Initiative (GRI). These instruments were selected for analysis on the basis of their success as measured by ubiquity, measure of their wider acceptance and accessibility.<sup>32</sup> We are not claiming that these instruments are equivalent. Indeed, there are considerable differences among them in terms of purpose, scope and approach. Some of these initiatives are mere reporting frameworks, others identify broad aspirational commitments to be refined by additional more precise indicators. Further, some are certifiable while others are non-certifiable standards for corporate use, including in supply chain relations.

For this work, we have researched the individual sustainability websites of the retailers, and in addition, examined the GRI Sustainability Disclosure Database website for their current and historical reports.<sup>33</sup> We believe that evidence of implementation and compliance with international soft-law norms is most likely to be found in non-financial reports and websites.

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<sup>28</sup> Ibid.

<sup>29</sup> Halliday and Schafer, *Transnational Legal Orders* (Cambridge University Press, 2015).

<sup>30</sup> Ibid. and references cited in Alter (n 26) 61.

<sup>31</sup> A similar approach has been adopted by Iris Chiu, 'Disclosure Regulation and Sustainability: Legalisation and Governance Implications' in Beate Sjaafjell and Christopher M Bruner (eds), *Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Cambridge University Press, 2020).

<sup>32</sup> See discussion in Stephen Brammer, Gregory Jackson and Dirk Matten, 'Corporate Social Responsibility and institutional theory: new perspectives on private governance' (2012) 10(1) *Socio-Economic Review* 3.

<sup>33</sup> See <https://database.globalreporting.org/>

As soft-law, a term discussed in detail below, is unlikely to be litigated or less likely to be applied to individual organisations in other contexts, we have decided to rely on these reports. As noted, we hypothesise that reporting including reference to international instruments would be evidence of an impact at the very least at the level of CSR reports. We believe this to be the case because any serious organisational reporting requires benchmarks, and where a number of similar organisations, in this case business organisations are reporting, a common benchmark, an international soft law instrument, would be appropriate. Each of the reports were read by at least two of the authors and agreement reached on whether or not the six areas had been reported: labour, workplace safety, customers (ethical business), supply chain fairness, community support and environmental concern.

### III CSR and Law

Although there has been an extensive debate over many decades about the nature of CSR, the debate was inconclusive. Definitional efforts were restricted by disciplinary lenses, political motivations and descriptive rather than analytical.<sup>34</sup> As a result, there was no agreement.

The term corporate social responsibility may be considered problematic in application to soft law initiatives and specifically to some of the instruments considered because of a visible trend towards mandatory human rights due diligence and responsible business conduct.<sup>35</sup> The sharp focus of human rights due diligence allows greater pressure on that particular aspect of CSR; however, these rights are only part of CSR, for how can any company be considered 'responsible' where it pillages the natural environment even where it respects human rights?<sup>36</sup>

Taking an analytic approach from the philosophy of science, Sheehy has argued that CSR can now be defined as a type of international private soft-law or regulation<sup>37</sup>--a definition adopted by John Ruggie among others.<sup>38</sup> CSR, as a set of global norms, aims to regulate the behaviour of business enterprises reducing social harms and increasing public good emanating from these organisations.<sup>39</sup> While CSR has been enacted in hard law in some major Asian jurisdictions,<sup>40</sup> as soft law, its obligations are found in the major international CSR instruments whether they be principles, standards or frameworks.<sup>41</sup> CSR may be considered a type of alternative or supplement to public regulation of companies.<sup>42</sup>

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<sup>34</sup> Sheehy, 'Defining CSR: Problems and Solutions' (n 1).

<sup>35</sup> Ramasastry (n 3).

<sup>36</sup> Benedict Sheehy, 'Understanding CSR: an empirical study of private self-regulation' (2012) 38(2) *Monash University Law Review* 103.

<sup>37</sup> Sheehy, 'Defining CSR: Problems and Solutions' (n 1).

<sup>38</sup> John Gerard Ruggie, 'Multinationals as global institution: Power, authority and relative autonomy' (2017) 12(3) *Regulation & Governance* 317.

<sup>39</sup> Sheehy, 'Defining CSR: Problems and Solutions' (n 1).

<sup>40</sup> China, India and Indonesia have enacted CSR legislation. For early analysis, see Afra Afsharipour and Shruti Rana, 'The emergence of new corporate social responsibility regimes in China and India' (2013) 14 *UC Davis Business Law Journal* 175. For Indonesia, see Benedict Sheehy and Cacik Damayanti, 'Issues and Initiatives: Sustainability and CSR in Indonesia' in Beate Sjafjell and Christopher M Bruner (eds), *Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Cambridge University Press, 2019) 475.

<sup>41</sup> Sheehy, 'Defining CSR: Problems and Solutions' (n 1). See also Bebhuk, Lucian A. and Roberto Tallarita, 'The Illusory Promise of Stakeholder Governance' (2020) *Cornell Law Review*: 6.

<sup>42</sup> Sheehy, 'Private And Public Corporate Regulatory Systems: Does CSR Provide A Systemic Alternative To Public Law?' (n 25).

### A. Understanding Soft-Law

Law is much more than the pronouncements of the courts and acts of the legislatures. It is a social institution, a norm system that need not rely on a society's formal legal authorities<sup>43</sup>. To understand the subspecies of soft law from a jurisprudential perspective, as opposed to economic or political perspectives, it is useful to analyse its differentiating characteristics, particularly in the international sphere, using the elements of legalization as developed by Abbott et al. They argue that law can be analysed using three dimensions: 1) obligation, 2) precision and 3) delegation:<sup>44</sup> Examining these terms further, *Obligation* denotes that states or other actors are bound by rules or commitments. It refers to behaviour that is subject to scrutiny under general rules and procedures of international law and often of domestic law as well. *Precision* refers to rules that define the conduct required, or proscribed; *Delegation* means that law grants third parties rights to implement the rules, resolve disputes, and make further rules.<sup>45</sup> Abbott and Snidal refer to hard law as:

legally binding obligations that are precise and that delegate authority for interpreting and implementing the law<sup>46</sup>

Although they did not set out to distinguish hard and soft law, their framework makes it evident that law has many varieties and its choices are not binary. In the case of soft law, they declare: '[it] begins once legal arrangements are weakened along one or more of the dimensions'.<sup>47</sup>

In other words, once one is dealing with instruments which have greater levels of ambiguity in terms of obligations, precision or delegation, they fall into the category of law referred to as soft law. This category, usually beyond the scope of legislatures and other public authorities, often found in multi-stakeholder initiatives and analysed in terms of multi-level, polycentric governance. Abbott et al further argue that hard law can also be distinguished by its coercive force, the powerful threat of sanctions. Following Austin, it is generally assumed that hard law has a greater impact because engages fear<sup>48</sup>. By way of contrast, soft-law arises in a variety of contexts and includes voluntary regulation and can be any organisation of norms, published and disseminated for purposes of guiding behaviour. They can be in the form of principles, guidelines, standards or frameworks of other types. In the international arena, international public law is basically soft-law. That is, international public law as a legal system lacks hard obligations, precision (as its interpretation is a domestic court issue) is lacking and it relies on delegation. Similarly, in terms of international private soft-law law, i.e. law created by private actors and applicable to private actors—it is soft-law.

### B. CSR's Substantive Obligations

In considering CSR as a type of international private soft law focused on business behaviour, it is necessary to identify its substantive aspects. CSR creates substantive obligations addressing all aspects of business activity. It requires compliance with international labour standards, addressing workplace safety, honesty with customers, fairness with suppliers,

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<sup>43</sup> Sally Falk Moore, 'Law and social change: the semi-autonomous social field as an appropriate subject of study' (1973) 7(4) *Law & Society Review* 719.

<sup>44</sup> Kenneth W Abbott et al, 'The concept of legalization' (2000) 54(3) *International organization* 401.

<sup>45</sup> *Ibid.*, 401

<sup>46</sup> Kenneth W Abbott and Duncan Snidal, 'Hard and soft law in international governance' (2000) 54(3) *International organization* 420..

<sup>47</sup> *Ibid.*, 420.

<sup>48</sup> Donald Feaver and Benedict Sheehy, 'A Positive Theory of Effective Regulation' (2015) 35(3) *UNSW Law Journal* 961.

engagement and transparency with local communities and care for the environment.<sup>49</sup> These substantive obligations are clearly set out in the UN's Global Compact and the principles upon which it is founded. They are similarly reflected in other international soft-law CSR instruments like the ISO26000 and the GRI. While obviously, there is unevenness in how the various instruments, industries and organisations deal with it, as for example, the weak labour provisions,<sup>50</sup> properly conceptualised, it includes all of these business and society issues.

### **c CSR as Solution to Extra-Territoriality**

As a legal solution, CSR is the preferred regulation for MNCs as it solves specific problem with business regulation which arises from the spread of the MNC—a part of contemporary globalization<sup>51</sup>. Economic globalisation, which has created great opportunities for investors and the businesses in which they invest. It adds, however, an additional layer of complexity to the problem of regulating the corporation, particularly where parties aiming to regulate them prefer using hard law.

The problem with a hard law approach is that from a jurisdictional perspective, nation states do not have extraterritorial jurisdictional power. So, where the corporation of one state is operating in the jurisdiction of another, the corporation is not no longer subject to many of the laws of the home state. Corporations are able to choose the jurisdiction where they can operate with less regulation, less tax and less scrutiny and locate their subsidiaries where they please, a phenomenon known as regulatory arbitrage<sup>52</sup>.

These complexities create a well-known governance gap in relation to the MNC.<sup>53</sup> Trying to force an MNC to comply with hard law is likely to motivate companies simply to move jurisdictions to avoid falling into non-compliance rather than comply where there is no intention to do so. As a result, activists, concerned businesses and other interested parties have had to look elsewhere.

Parties have looked to implement CSR by regulation of supply chains through contracting<sup>54</sup>, industry codes<sup>55</sup>, human rights due diligence<sup>56</sup> and various soft law initiatives. As a result, self-regulation has largely been the approach to regulating MNCs.<sup>57</sup>

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<sup>49</sup> Sheehy, 'Defining CSR: Problems and Solutions' (n 1)

<sup>50</sup> Phillip Paiement and Sophie Melchers, 'Finding International Law in Private Governance: How Codes of Conduct in the Apparel Industry Refer to International Instruments' (2020) 27(2) *Indiana Journal of Global Legal Studies* 303.

<sup>51</sup> Ismail Adelopo, Kemi Yekini and Lukman Raimi, 'Bridging the governance gap with political CSR' (2017).

<sup>52</sup> Victor Fleischer, 'Regulatory arbitrage' (2010) 89 *Texas Law Review* 227.

<sup>53</sup> David Antony Detomasi, 'The multinational corporation and global governance: Modelling global public policy networks' (2007) 71(3) *Journal of business ethics* 321. Burkard Eberlein, 'Who Fills the Global Governance Gap? Rethinking the Roles of Business and Government in Global Governance' (2019) 40(8) *Organization Studies* 1125.

<sup>54</sup> Michael P. Vandenberg, 'The New Wal-Mart Effect: The Role Of Private Contracting In Global Governance' (2007) 54 *UCLA Law Review* 913.

<sup>55</sup> Virginia Haufler, *Public Role for the Private Sector: Industry Self-Regulation in a Global Economy* (Carnegie Endowment for International Peace, 2001); Virginia Haufler, 'The Kimberley Process Certification Scheme: An Innovation in Global Governance and Conflict Prevention' (2009) 89(0) *Journal of Business Ethics* 403; Virginia Haufler, 'Disclosure as Governance: The Extractive Industries Transparency Initiative and Resource Management in the Developing World' (2010) 10(3) *Global Environmental Politics*.

<sup>56</sup> Ramasastry (n 3).

<sup>57</sup> Sheehy, 'Understanding CSR: an empirical study of private self-regulation' (n 36).



## D CSR in Asia

CSR in Asia is a complex topic and a study within its own right.<sup>58</sup> Not only is Asia extremely diverse in terms of culture, political governance, and economic systems, it is equally diverse in terms of development. Unsurprisingly, its CSR is markedly different from CSR as commonly conceptualised in the Western world.<sup>59</sup> Whereas in the West, CSR is typically conceived of in terms of voluntariness and worker protections and environmental compliance, in Asia, it is more often connected to supporting social and economic development, often in the absence of adequate public resources.<sup>60</sup> Accordingly, to speak of CSR in Asia as a homogenous phenomenon is a misnomer. As a result, it is more helpful to connect that CSR dialogue with internationally accepted definitions, which are in the international soft law instruments in which most Asian countries have participated and have accepted, as for example in the development of the SDG's and ISO 26000. Further, for purposes of our study, rather than a country focus, a region wide industry focus is more likely to produce useful insights.

We turn next to consider how CSR norms have been reified in soft law.

## E Enforcement versus Isomorphism

In the case of soft law, perennial questions remain about its effectiveness. These questions persist because of Austinian views of law in which law is presumed to be ineffective in the absence of hard punitive enforcement mechanisms. These views remain common in the political, professional and public discourse. While many types of law include such enforcement, a much better view of law includes a wide range of enforcement mechanisms, both positive and negative, to achieve law's regulatory ends.<sup>61</sup> These newer forms of regulation<sup>62</sup> have been popularized by the useful epithet "carrots, sticks and sermons".<sup>63</sup> Socio-psychological explanations of how law can work in the absence of hard punitive enforcement are well known and have been explored by Tyler, Hathaway and Shapiro and others.<sup>64</sup> At the broader level, DiMaggio and Powell have explained organisations' shift by the concept of isomorphism with its subcategories of normative, mimetic and law's coercive isomorphism.<sup>65</sup> Their theory posits that organisations are not economically rational actors.<sup>66</sup> Rather, organisations follow their own logics and pursue industry wide accepted and practiced norms.<sup>67</sup>

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<sup>58</sup> Chapple and Moon (n 21); D. Kirk Davidson et al, 'Corporate Social Responsibility across Asia: A Review of Four Countries', *Corporate Social Responsibility* 73; Kyoko Fukukawa, *Corporate social responsibility in Asia* (Routledge, 2009); Welford (n 21).

<sup>59</sup> Ibid.

<sup>60</sup> See as examples Dima Jamali and Charlotte Karam, 'Corporate Social Responsibility in Developing Countries as an Emerging Field of Study' (2018) 20(1) *International Journal of Management Reviews* 32. Davidson et al (n 58); Welford (n 21).

<sup>61</sup> Feaver and Sheehy (n 48).

<sup>62</sup> Ibid.; Benedict Sheehy and Donald Feaver, 'A Normative Theory of Effective Regulation' (2015) 35(1) *UNSW Law Journal* 392.

<sup>63</sup> Marie-Louise Bemelmans-Videc, Ray C. Rist and Evert Vedung (eds), *Carrots, Sticks, and Sermons: Policy Instruments and Their Evaluation* (Transaction, 1998).

<sup>64</sup> Tom R Tyler, *Why people obey the law* (Princeton University Press, 2006). Oona Hathaway and Scott J Shapiro, 'Outcasting: enforcement in domestic and international law' (2011) 121 *Yale Law Journal* 252.

<sup>65</sup> Paul J DiMaggio and Walter W Powell, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields' (1983) 48(2) *American Sociological Review* 147.

<sup>66</sup> See also Benedict Sheehy and D Feaver, 'Anglo-American Directors' Legal Duties and CSR: Prohibited, Permitted or Prescribed?' (2014) 37(1) *Dalhousie Law Journal* 349.

<sup>67</sup> See also Committee for Economic Development (June 1, 1971). 'Social Responsibilities of Business Corporations' 27. "The corporation is dependent on the goodwill of society, which can sustain or impair its existence through public pressures on government."

DiMaggio and Powell go on to argue that organisations mimic the behaviours of leading organisation in their respective areas of endeavour. Such being the case, the simplistic punishment model of Austinian thought alone is inadequate to explain compliance or deviance nor is it adequate to generate maximum compliance. By better understanding motives in organisational behaviour, it was theorized that alternative methods of regulating corporate behaviour can be successful and perhaps even more successful than the Austinian threat based regulatory strategy. Indeed, this more nuanced, social science informed view sits behind much of the thinking and activism in dealing with businesses and in trying to change their behaviour.

In the case of these soft law instruments, the SDGs, UN's Global Compact, ISO 26000, SA8000, ISO 14000/14001, and GRI,<sup>68</sup> the aim has been to create new industry norms, and motivated by industry leaders, along with market incentives—the 'business case' for CSR<sup>69</sup>—ultimately affect the behaviours of a range of actors from nation states and corporate bodies to the behaviour of individual citizens.

The most recent of these instruments, the SDGs despite their wide ambit, was drafted with the recognition of the importance of including business entities, into the social, environmental and political aims of sustainability<sup>70</sup>. Despite efforts to follow up,<sup>71</sup> however, a significant lack of information persists making it difficult to determine the value of SDGs for achieving sustainability. Indeed, Rasche observes: "we know very little about how exactly the business community engages with the SDGs",<sup>72</sup> a view echoed in the international business scholarship.<sup>73</sup> This lack of information<sup>74</sup> is part of a larger problem identifying which guidelines, standards<sup>75</sup> and frameworks<sup>76</sup> businesses are using in their management of their sustainability commitments, sustainability practices and related reporting. Accordingly, we turn next to see how the norms are developed, located and categorized in the form of international instruments.

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<sup>68</sup> See also Guzman, Andrew T. and Timothy L. Meyer, 'International Soft Law.' (2010) 2(1) *Journal of Legal Analysis* 201, 203.

<sup>69</sup> There is a very considerable literature on the business case for CSR. Forest L Reinhardt and Robert N Stavins, 'Corporate social responsibility, business strategy, and the environment' (2010) 26(2) *Oxford Review of Economic Policy* 164-181; Archie B. Carroll and Kareem M. Shabana, 'The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice' (2010) 12(1) *International Journal of Management Reviews* 85-105. Following from the EU experience, there is significant reason to doubt the efficacy of the business case. Olivier De Schutter, 'Corporate social responsibility European style' (2008) 14(2) *European Law Journal* 203.

<sup>70</sup> A. Rasche, 'The United Nations Global Compact and the Sustainable Development Goals' in O. Laasch et al (eds), *The Research Handbook of Responsible Management* (Edward Elgar, 2020).

<sup>71</sup> Åsa Persson, Nina Weitz and Måns Nilsson, 'Follow-up and review of the Sustainable Development Goals: Alignment vs. internalization' (2016) 25(1) *Review of European, Comparative & International Environmental Law* 59.

<sup>72</sup> Rasche (n

<sup>73</sup> Ans Kolk, Arno Kourula and Niccolò Pisani, 'Multinational enterprises and the Sustainable Development Goals: what do we know and how to proceed?' (2017) 24(3) *Transnational Corporations* 9.

<sup>74</sup> For a discussion of how lack of information poses a challenge on the ability to analyse, see Cass Sunstein, 'Nudging: A Very Short Guide' (2014) 37 *Journal of Consumer Policy* 584.

<sup>75</sup> Frank Montabon et al, 'ISO 14000: Assessing Its Perceived Impact on Corporate Performance' (2000) 36(1) *Journal of Supply Chain Management* 4; Charles J. Corbett and David A. Kirsch, 'International diffusion of ISO 14000 certification' (2001) 10(3) *Production and Operations Management* 327.

<sup>76</sup> F Marimon, M. del Mar Alonso-Almeida, M. del Pilar Rodríguez and K. A. C. Alejandro, 'The worldwide diffusion of the global reporting initiative: what is the point?' (2012) 33 *Journal of cleaner production* 32.



#### IV The Instruments

Turning to the problems at hand, the critical state of environmental degradation and the broader negative social impacts of increased industrial production, we note that both have been on the global policy agenda for decades.<sup>77</sup> Further, the role of business in both the creation and resolution of these issues has been at a concern for nearly as long. Agenda 21, the Brundtland report and the SDGs as well as the other instruments referred to earlier, take a broad society level approach to these global problems rather than a firm centric approach.

The norms bearing instruments are of three types: principles, standards and frameworks. The three main, principles-based soft law instruments are: the SDGs, the United Nations Global Compact and the ISO 26000.<sup>78</sup> The SDGs were declared by the United Nations General Assembly<sup>79</sup> in 2015.<sup>80</sup> The SDGs follow on a series of environmental and sustainability policy pronouncements emanating from the UN since “Our Common Future” (more commonly known as the “Brundtland Report”) of 1987.<sup>81</sup> A second, business focused institution, the UN Global Compact, was announced by Secretary General Kofi Annan in 1999. It brought business and the UN together around a comprehensive, if not wholly integrated,<sup>82</sup> set of principles underpinned by a range of international treaties. The third principles-based instrument is the ISO 26000. The instrument, the product of the International Standards Organisation,<sup>83</sup> was a long-term project that, unlike many well-known ISO standards, provided only guidance but not certification.<sup>84</sup>

In terms of global standards, the Social Accountability SA 8000 standard has achieved significant traction. Produced by the non-governmental organisation (NGO), Social Accountability International, in 1997, it is the most widely accepted workplace standard.<sup>85</sup> An additional globally significant standard is the ISO 14000/14001. This standard is a widely accepted global instrument<sup>86</sup>. It addresses, however, only the environmental dimension. It provides a system for management of environmental impacts.

Finally, among global soft law instruments dealing with MNC regulation, the GRI is certainly the leading framework. Initiated during the 1990s the GRI was established in 1997 in

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<sup>77</sup> World Commission on Environment and Development, 'Our common future ' (1987) (*also known as the Brundtland Report*).

<sup>78</sup> These instruments were selected as 1) they address the broader issues of CSR and not just human rights as the UN Guiding Principles on Business and Human Rights or simply the corporate governance guidelines of the OECD Guidelines for MNEs and 2) they are more commonly referred to in non-financial reporting.

<sup>79</sup> Resolution 70/1, 2015

<sup>80</sup> Rakhyun E Kim, 'The nexus between international law and the sustainable development goals' (2016) 25(1) *Review of European, Comparative & International Environmental Law* 15.

<sup>81</sup> World Commission on Environment and Development (n 77).

<sup>82</sup> Kim (n 80).

<sup>83</sup> The International Standards Organisation is an independent, non-governmental international organisation founded by 25 states in 1946. It has since grown to include 165. <https://www.iso.org/about-us.html>

<sup>84</sup> *ISO 26000 and global governance for sustainable development*. London (International Institute for Environment and Development, ('*ISO 26000 and global governance for sustainable development*. '); *The ISO 26000 Social Responsibility Guidance Standard – Progress So Far* Les cahiers de la Chaire - collection recherche, Montreal (UQAM, vol 09-2005, ('*The ISO 26000 Social Responsibility Guidance Standard – Progress So Far*')).

<sup>85</sup> Priyabrata Panda and Sovan Mishra, 'SA 8000: An Analysis of its Implementation in Pharmaceutical Sector' (2013) 9(2) *Parikalpana: KIIT Journal of Management* 12.

<sup>86</sup> Frederic Marimon Viadiu, Martí Casadesús Fa and Iñaki Heras Saizarbitoria, 'ISO 9000 and ISO 14000 standards: an international diffusion model' (2006) 26(2) *International Journal of Operations & Production Management* 141.

Amsterdam by the Coalition of Environmentally Responsible Economies (CERES) in collaboration with the UN Environment Programme (UNEP). It was a stakeholder initiative involving an alliance of MNCs, NGOs, labour organisations and academics but not governments.<sup>87</sup>

We turn next to our case studies to examine whether and how these instruments fare in the context of global retailers active in the Asia-Pacific region.

## V. Case Studies

The case studies consist of a snapshot, a simple analysis and evaluation of the major international soft law instruments as reported by MNCs reporting on their CSR—a distinct matter from implementation.<sup>88</sup> The cases were selected on the basis of being the largest global retailers operating in the Asia-Pacific region. Reviewing the most recent report available, and using the instruments described Section 1 we review the following four businesses: (i) AEON; (ii) Lotte Shopping; (iii) Tesco PLC; and (iv) Wesfarmers Limited. The following case studies are based on these MNC retailers' reports published by their respective head offices. The reports we have relied on reported on the overall performance of the group throughout the Asia-Pacific rather than only the head offices. Each of our case studies follows the same structure: (1) a description of the business followed by (2) a review of the CSR report, whether as a more general annual report or a focused sustainability report, followed by an analysis and evaluation. Specifically, we analysed the reports for mention of labour, workplace safety, customers (ethical business), supply chain fairness, community support and environmental concern—the substantive norms of CSR.

### A Case 1: AEON

#### Description

AEON is a Japanese MNC which has a significant presence in Australia, Cambodia, China, India, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, South Korea, Thailand, and Vietnam, with a total of 21,742 stores as of February 2018.<sup>89</sup> It has total revenue of USD79,039 million (USD1 = JPY106.150) and employed approximately 550,000 people.<sup>90</sup>

#### Analysis

An overview of AEON's Annual Report 2018 is as follows:

**Table One: AEON's Annual Report 2018**

Instruments	Y/N	Areas of Responsibility	Y/N
Principles		Labour union	Y
SDG	Y	Workplace safety	Y
Global Compact	Y	Customer	Y
ISO 26000	Y	Supply chain fairness	Y

<sup>87</sup> María Alonso-Almeida, Josep Llach and Frederic Marimon, 'A Closer Look at the 'Global Reporting Initiative' Sustainability Reporting as a Tool to Implement Environmental and Social Policies: A Worldwide Sector Analysis' (2014) 21(6) *Corporate Social Responsibility & Environmental Management* 318.

<sup>88</sup> Stepan Wood, 'Green Revolution or Greenwash? Voluntary Environmental Standards, Public Law and Private Authority in Canada' in Law Commission of Canada (ed), *New Perspectives on the Public-Private Divide* (UBC Press, 2004); William S. Laufer, 'Social Accountability and Corporate Greenwashing' (2003) 43(3) *Journal of Business Ethics* 253.

<sup>89</sup> AEON, Annual Report 2018, 197.

<sup>90</sup> *Ibid.*, 49.

Standards		Local community	Y
SA 8000	Y	Environment	Y
ISO 14000/14001	Y		
Reporting			
GRI	Y		

AEON claims to have initiated a CSR framework as early as the 1989.<sup>91</sup> In 2004, AEON was certified with the SA 8000; it also became the first signatory among Japan's retailers to the UN Global Compact.<sup>92</sup> It reports using the GRI.<sup>93</sup> In the Annual Report 2018, AEON refers to all the main CSR international soft law instruments, as set out in Table One above, as the benchmark for its CSR compliance. AEON emphasizes its commitment to CSR by asserting that it does not merely operate for the sake of profit, but also considers stakeholders interests in its business operations; there should be a balance between profit and CSR. The Annual Report 2018 states as follows:

If they [AEON] want to continue growing, companies need to adopt viewpoints that take into account environmental, social, and governance (ESG) factors; prepare management strategies that incorporate global initiatives for environmental and social issues; and implement these strategies over the long term.<sup>94</sup>

AEON's core principles are centred in its customers and the local communities.<sup>95</sup> These principles also become its Chief Executive Office's agenda for AEON's "Continuing Reform to become the Leading Contributor to Customers and Local Communities."<sup>96</sup> The local community is one of the stakeholders that is most affected by the operations of a company and is a major source of legitimacy of (or risk to) its social license.<sup>97</sup> In this case, AEON strives to earn the trust of local communities as stated below:

We [AEON] will work tirelessly to ensure our stores continue to earn the trust of local communities.<sup>98</sup>

Such commitment is exemplified through AEON's engagement with the local community through, for example, its collaboration with the Fukushima Prefectural Federation of Fisheries Cooperative Associations to bring fresh fish directly from the port to the retail store.<sup>99</sup> In other examples whereby the customers are part of the local communities, AEON facilitated its store in the Aichi Prefecture with the customers' needs of a more family-friendly store, such as an enlarged sales area for toys and a food court with reserved seat system.<sup>100</sup>

## Evaluation

The Annual Report 2018 suggests AEON's strong commitment to CSR. It also explains that it implements CSR by taking into account the interests of all stakeholders and highlights that such efforts lead to increased corporate value in the long run. It is difficult to assess the success of AEON's CSR programs against the international CSR frameworks it relied upon, nor is it

<sup>91</sup> Ibid., 44; AEON, Annual Report 2017, 70.

<sup>92</sup> AEON, Annual Report 2018, 45.

<sup>93</sup> AEON reports are available at <https://database.globalreporting.org/organisations/1566/>

<sup>94</sup> Ibid., 33.

<sup>95</sup> Ibid., 1.

<sup>96</sup> Ibid., 14.

<sup>97</sup> N. Neil Gunningham, Robert A Kagan and Dorothy Thornton, 'Social license and environmental protection: why businesses go beyond compliance' (2004) 29(2) *Law & Social Inquiry* 307.

<sup>98</sup> AEON, Annual Report 2018, 20.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

clear how it has approached solving the inevitable conflict between the interest of stakeholders. There may be a variety of explanations for this situation including the basic perspective of the organisation's report writers: they may not be aiming to assess the organisation's achievement or deviation from these norms. It is evident from a review of the report's contents, however, that international soft-law and significant achievement of measurable CSR objectives as measured by soft-law instruments was not a focus.

## B Case 2: Lotte Shopping

### Description

Lotte Shopping is a subsidiary company of Lotte Corporation, a Korean multinational conglomerate that operates businesses in many industries from retail to construction and fast food. Lotte Shopping operates in China, Indonesia, Russia, and Vietnam.<sup>101</sup> It has a total of 27,880 employees<sup>102</sup> and operates nine department stores, 151 marts, 17 supermarkets, and 27 cinemas.<sup>103</sup> In 2014, Lotte Shopping has a total sales of approximately USD13.552 billion (USD1 = KRW1,188.85),<sup>104</sup> with a total of market capitalization of approximately USD49.715 million.<sup>105</sup>

### Analysis

Lotte Shopping has been reporting on sustainability since 2004 and established its first sustainability committee in 2010.<sup>106</sup> Lotte Reporting uses the GRI<sup>107</sup>. An overview of the Lotte Shopping's 2015 Sustainability Report, the latest report available is as follows:

**Table Two: Lotte Shopping's 2015 Sustainability Report**

Instruments	Y/N	Areas of Responsibility	Y/N
Principles		Labour union	Y
SDG	N	Workplace safety	Y
Global Compact	Y	Customer	Y
ISO 26000	N	Supply chain fairness	N
Standards		Local community	Y
SA 8000	N	Environment	Y
ISO 14000/14001	Y		
Reporting			
GRI	Y		

The 2015 Sustainability Report relied upon three international soft law instruments, namely the UN Global Compact, ISO 14001, and the GRI. Lotte Shopping affirmed that, "the 2015 Lotte Shopping Sustainability Report was prepared in pursuant to Sustainability Reporting Guidelines by Global Reporting Initiative (GRI G4.0)."<sup>108</sup> It further noted that it not only complied with its requirements but that "the report amplifies on GRI G4.0 profile disclosures and management approach for each indicator category and GRI G4.0 key performance

<sup>101</sup> Lotte Shopping, 2015 Sustainability Report, 8.

<sup>102</sup> *Ibid.*, 7.

<sup>103</sup> *Ibid.*, 9.

<sup>104</sup> *Ibid.*, 7.

<sup>105</sup> *Ibid.*, 16.

<sup>106</sup> Lotte Shopping, 2014 Sustainability Report, 25  
[https://minfo.lotteshopping.com/content/cmpl/2014\\_ENG.pdf](https://minfo.lotteshopping.com/content/cmpl/2014_ENG.pdf)

<sup>107</sup> Lotte Shopping reports are available at  
<https://database.globalreporting.org/organisations/526/>

<sup>108</sup> *Ibid.*, 1.

indicators based on the principle of materiality.”<sup>109</sup> The 2015 Sustainability Report covers corporate governance and environmental management.

In terms of corporate governance, especially its anti-corruption as stipulated in the GRI G4.0, Lotte Shopping included information about its management system. The system has been designed to prevent corruption in its business and provides ethics training for employees, while at the same time pushing compliance with the existing laws that govern anti-corruption. The 2015 Sustainability Report reads:

We also helped employees understand right decision-making on the horns of an ethical dilemma and shared growth by making good use of the Anti-Corruption and Civil Rights Commission’s customized education on corporate ethics and inviting professional lecturers. Job education paralleled them to reinforce employees’ job specialties.<sup>110</sup>

Regarding environmental issues, Lotte used ISO 14001’s International Environment Management System. It has an eco-friendly campaign not only targeting the production system, but also promoting it to the society in general.

Lotte Department Stores completed a renewal audit of headquarters and branches in January 2015 based on an international environmental management system (ISO14001).<sup>111</sup>

## Evaluation

Notwithstanding the explanation on the CSR frameworks and components Lotte Shopping relied upon in its 2015 Sustainability Report, the report fails to assess the success of Lotte Shopping’s CSR policy and implementation against its relied-upon CSR frameworks. There may be different explanations, such as the planned audience of the report being investors, or a lack of objectives in that regard; however, it does lead the researchers to suggest that the international soft-law instruments have not garnered significant attention among management.

## C Case 3: Tesco PLC

### Description

Tesco PLC is British multinational retailer company that has stores in, among other countries, Malaysia and Thailand.<sup>112</sup> The Global MNC has a total 448,988 employees<sup>113</sup> and a total revenue of approximately USD73,587 million (USD1 = GBP0.781389).<sup>114</sup>

### Analysis

Tesco has been reporting on its sustainability since 2002.<sup>115</sup> In 2016, Tesco PLC became a signatory to the UN Global Compact<sup>116</sup> and committed to achieving the 2030 target set by the UN SDG, specifically on food waste reduction.<sup>117</sup> This CSR commitment and practice

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<sup>109</sup> Ibid.

<sup>110</sup> Ibid., 33-34.

<sup>111</sup> Ibid., 71.

<sup>112</sup> Tesco PLC, Tesco PLC Annual Report and Financial Statements 2018, 87.

<sup>113</sup> Ibid., 154.

<sup>114</sup> Ibid., 1.

<sup>115</sup> Tesco PLC Corporate Social Responsibility Review 2001/02, [https://www.tescopl.com/media/475743/cr\\_report\\_2002.pdf](https://www.tescopl.com/media/475743/cr_report_2002.pdf)

<sup>116</sup> Tesco PLC, Tesco PLC Annual Report and Financial Statements 2016, 20.

<sup>117</sup> Ibid., 23.



continued on in 2017.<sup>118</sup> The Tesco PLC Annual Report and Financial Statements of 2018, however, only identify the UN SDG as its CSR international framework<sup>119</sup>. The report is silent on whether it remains a signatory to the UN Global Compact. Tesco reports using the GRI.<sup>120</sup> Tesco, despite its significant Asian presence, does not report on a regional or subsidiary basis. Accordingly, the only sustainability document publicly available is the global group non-financial report. An overview of the Tesco PLC Annual Report and Financial Statements 2018 is as follows:

**Table Three: Tesco PLC Annual Report and Financial Statements 2018**

Instruments	Y/N	Areas of Responsibility	Y/N
Principles		Labour union	N
SDG	Y	Workplace safety	Y
Global Compact	Y	Customer	Y
ISO 26000	N	Supply chain fairness	Y
Standards		Local community	Y
SA 8000	N	Environment	Y
ISO 14000/14001	N		
Reporting			
GRI	N		

Tesco PLC retained an external auditor to audit the Tesco PLC Annual Report and Financial Statements 2018 including compliance on environmental standards and promoting responsibility. The Report and Financial Statements cover not only Tesco PLC's business operations, but also assesses its major supplier's CSR commitments and performance. Its concretization of the SDG is evident through its employment of local people to help local communities thrive,<sup>121</sup> cooperation with industries to develop more environmental-friendly packaging materials,<sup>122</sup> and emphasizing on sustainable supply chains through, among others, workplace safety and environment standards across the supply chains.<sup>123</sup>

The Tesco Report shows that Tesco PLC does not focus exclusively on maximizing shareholder value but also takes into consideration the interests of other stakeholders, such as customers, employees and suppliers.<sup>124</sup>

## Evaluation

The Tesco PLC Annual Report and Financial Statements 2018 only mentioned the SDG as Tesco PLC's CSR benchmark. Notwithstanding, Tesco PLC has become a signatory to the UN Global Compact, at least, from 2016 until 2017, although like other MNC's it is unclear whether such commitments have been communicated beyond head office<sup>125</sup>. It also fails to assess the success of Tesco PLC's implementation of international soft-law norms against its relied-upon CSR framework.

<sup>118</sup> Tesco PLC, Tesco PLC Annual Report and Financial Statements 2017, 20, 24.

<sup>119</sup> Tesco PLC, Tesco PLC Annual Report and Financial Statements 2018, 17.

<sup>120</sup> Tesco's reports are available at: <https://database.globalreporting.org/organisations/780/>

<sup>121</sup> *Ibid.*, 17.

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*, 24.

<sup>124</sup> *Ibid.*, 4.

<sup>125</sup> Sheehy, 'Understanding CSR: an empirical study of private self-regulation' (n 36).

## D Case 4: Wesfarmers Limited

### Description

Wesfarmers Limited is an Australian-based retail company the subsidiaries of which operate in Bangladesh, Cambodia, China, Hong Kong, India, and Indonesia.<sup>126</sup> It employs 217,000 people<sup>127</sup> and a total revenue of USD \$7,693,312,000.00 (USD1 = AUD1.37541).<sup>128</sup> Although like Tesco, it has no country or subsidiary specific non-financial reporting making, as regionally based retailer, its report is adequate to address CSR in the region.

### Analysis

Wesfarmers Limited has paid attention to sustainable business practices since its first sustainability report in 2004.<sup>129</sup> However, it was only in 2010 through its annual report that it started to reference a CSR international framework, namely the GRI.<sup>130</sup> By 2017, Wesfarmers Limited took a step further by including the UN SDG and the UN Global Compact, along with other UN frameworks, as its benchmark for CSR compliance.<sup>131</sup> These continued on in the 2018 Sustainability Report.<sup>132</sup> Although Wesfarmers is relatively new to sustainability matters, it provides direct access to data on its website.

Wesfarmers Limited reported on its stakeholder engagement, including local community by initiating a charity program and environmental awareness program. Wesfarmers Limited did not only refer to the GRI, but also explicitly explains in the 2016, 2017, and 2018 Sustainability Reports that the reports were prepared in accordance with the GRI.<sup>133</sup> An overview of the 2018 Sustainability Report is as follows:

**Table Four: Wesfarmers Limited's 2018 Sustainability Report**

Instruments	Y/N	Areas of Responsibility	Y/N
Principles		Labour union	N
SDG	Y	Workplace safety	Y
Global Compact	Y	Customer	Y
ISO 26000	N	Supply chain fairness	Y
Standards		Local community	Y
SA 8000	N	Environment	Y
ISO 14000/14001	N		
Reporting			
GRI	Y		

### Evaluation

Wesfarmers Limited's 2018 Sustainability Report uses a third party verification to provide assurance on its CSR claims. Like the other three annual and sustainability reports, the 2018

<sup>126</sup> Wesfarmers Limited, 2018 Sustainability Report, 54.

<sup>127</sup> Ibid., 20.

<sup>128</sup> Ibid., 26.

<sup>129</sup> Wesfarmers Limited, <https://www.wesfarmers.com.au/investor-centre/company-performance-news/reports>

<sup>130</sup> Wesfarmers Limited, <https://database.globalreporting.org/organisations/2691/>

<sup>131</sup> Wesfarmers Limited, 2017 Sustainability Report, 2, 20.

<sup>132</sup> Wesfarmers Limited, 2018 Sustainability Report, 2, 20.

<sup>133</sup> Ibid.; Wesfarmers Limited, 2017 Sustainability Report, 2; Wesfarmers Limited, 2016 Sustainability Report, 2.

Sustainability Report lacks an elaboration on the implementation of international soft-law instruments in terms of measures, objectives, and duration of CSR programs.

## VII DISCUSSION

All of the four retail MNCs, despite being similar in terms of industry, leadership, and location took different approaches to the problem of developing, implementing, and reporting on their CSR frameworks. In terms of norms, the most commonly appearing are: the Global Compact, followed by the SDGs and the GRI, as set out in Table Five below.

**Table Five: The Use of Varied CSR Soft Law Instruments by the Retail MNCs**

Instruments	AEON	Lotte Shopping	Tesco PLC	Wesfarmers Ltd
Principles				
SDG	Y	N	Y	Y
Global Compact	Y	Y	Y	Y
ISO 26000	Y	N	N	N
Standards				
SA 8000	Y	N	N	N
ISO 14000/14001	Y	Y	N	N
Reporting				
GRI	Y	Y	N	Y

Similarly, although all of the MNCs are operating in the same geographic region, which despite its noted diversity has a number of similar public governance concerns, only two of the four retail MNCs prioritized slightly different CSR matters. As Table Six below demonstrates, all the four MNCs are more generally focused on the local community, workplace safety, and the environment. Consumer rights and labour union rights were not well represented in the reports, notwithstanding their importance in Western CSR. To some extent, these rights, as related to human rights more broadly, take on a different light in Asian contexts<sup>134</sup>. With less emphasis on the individual and greater cultural affinities for hierarchies, it may be expected that these areas were more or less disregarded.

**Table Six: A Range of CSR Concerns for the Retail MNCs**

Areas of Responsibility	AEON	Lotte Shopping	Tesco PLC	Wesfarmers Ltd
Labour union	Y	Y	N	N
Workplace safety	Y	Y	Y	Y
Customer	Y	Y	Y	Y
Supply chain fairness	Y	N	Y	Y
Local community	Y	Y	Y	Y
Environment	Y	Y	Y	Y

None of the companies, however, demonstrated a strong engagement with international soft-law instruments. In the case of Tesco, it is unclear whether regional subsidiaries have any information about international soft-law commitments, a situation familiar in other MNC contexts.<sup>135</sup> While all of the companies, as noted, indicated interest in environmental matters, only one, Tesco, explicitly engaged with the dominant environmental soft-law instrument, the ISO14000.

<sup>134</sup> Benedict Sheehy, 'Singapore, shared values and law: Non east versus west constitutional hermeneutic' (2004) 34 *Hong Kong Law Journal* 67.

<sup>135</sup> Sheehy, 'Understanding CSR: an empirical study of private self-regulation' (n 36).

At the level of legal theory, these empirical results are less clear. Alter noted the importance of empirical investigation but also nature of soft law, not as an Austinian force, but as an expression of human values. The interesting contradiction here is that while the positive international law instruments themselves may not be mentioned much in the sustainability reports, the very fact of a sustainability report is itself indicative of a universal value, namely, an acceptance by MNC's of social responsibilities beyond mere financial performance. It provides insight into global capitalism and transnational legal orders at global, organisational and individual levels.

## VIII CONCLUSION

Our article contributes to understanding of the intersection of international soft-law, CSR and Asia. It has done so by identifying and examining the use of international norms for operations and reporting. It does so in an important industry with wide reach and significant natural and social impacts. Further, it the first article specifically aiming to document use of CSR norms by major retail MNC's operating in the Asia-Pacific region.<sup>136</sup> Despite the distinct character of CSR in Asia in terms of legislation, literature and practice, there appears to be little reflection of that distinction and the related regional specific concerns at least as represented in the reports of these major retailers.

The study provides insight for international policy makers about the norm frameworks in which they are investing. Additionally, while using shared norms improves the comparability across business organisations and facilitates measurement of a long-term progress, and while the GRI provides considerable platform for such, there is not sufficient consistency allowing comparison offered by more widely referenced norms.

Our review of the CSR reports leads to the conclusion that these large business enterprises are not claiming to make significant use of the international soft law instruments. Indeed, it is not too much to say that these major instruments appear to be paid minimal attention in the reports. While to the non-law reader, identifying specific principles, guidelines and frameworks might be seen as trivial, it is critical as it demonstrates either a lack of awareness or lack of interest in aligning business operations with important public policy instruments. One would expect industry leaders, whether in Asia or elsewhere, who contribute to the development of these international soft law instruments through participating in multi-stakeholder forums and similar processes would use those instruments as intended—explicitly in the guidance and reporting on CSR within their organisations. Yet, the absence of reference to those instruments raises questions about their utility as normative guides. Furthermore, it may be inferred that the absence shows limited interest among business leaders in terms of commitment to coordinated global policy solutions to remedying or at least addressing these global issues.

Our article is limited as it provides only four case studies and as such does purport to indicate how widely the norms are being used. Nor, as a study based on reports, does it claim to present what the enterprises are actually doing on the ground in their operations. Matters reported may depart markedly from what occurs in practice—both negatively and positively. We have provided snapshots as our aim was not to provide a comprehensive analysis and evaluation of CSR implementation. Our aim was to demonstrate the connection between the areas of international soft-law, CSR and Asia.

Our findings lead us to conclude that more needs to be done to understand the impact of soft-law CSR on MNC retailers operating in the Asia-Pacific. In the first instance, greater understanding of both depth and breadth of norms use is necessary. This understanding can

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<sup>136</sup> Rahdari et al (n 17).

be used to inform international, regional and national policy makers. Further, there is a clear need for significant investment in education of and communication with senior executives about social, global expectations on business and the international normative frameworks available to them. Finally, the study leads to the suggestion that leaving CSR regulation as a voluntary initiative driven by isomorphism or markets in Asia as elsewhere, is unlikely to be sufficient to address the global environmental and social crises facing society. Governments must take a more significant and direct role using authority to have CSR norms more widely implemented.

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