

*Corporate Social Responsibility of Multinational Corporations in Developing Countries: Perspectives on Anti-Corruption* BY ADEFOLAKE O. ADEYEYE [Cambridge and New York: Cambridge University Press, 2012. xxi + 223 pp. Hardcover: £75.00]

Corruption is a scourge that has been afflicting several countries, particularly in the developing world. It has impeded economic progress and adversely affected the basic human rights of citizens. Although the spotlight is usually focused on government officials in those countries who represent the “demand” side of corruption, their blameworthiness is equally shared by some multinational corporations (“MNCs”) who represent the “supply” side of corruption by offering favours to public officials in order to successfully secure business transactions through the use of such influence. While a multitude of approaches is being adopted both internationally and by national governments to tackle corruption, the concept of corporate social responsibility (“CSR”) is rapidly gaining ascendancy as an anti-corruption tool. CSR attempts to strike at the root of the problem by addressing the supply side, which in the developing-country context is represented by MNCs that are operating there.

In recent years, there has been burgeoning academic literature focusing on the intersection between CSR and anti-corruption (see *e.g.*, Indira Carr & Opi Outhwaite, “Controlling Corruption through Corporate Social Responsibility and Corporate Governance: Theory and Practice” (2011) 11(2) J.C.L.S 299; David Hess, “Enhancing the Effectiveness of the Foreign Corrupt Practices Act through Corporate Social Responsibility” (2012) 73 Ohio St. L.J. 1121). *Corporate Social Responsibility of Multinational Corporations in Developing Countries* is not only well ensconced in this genre of literature, but it also represents the most comprehensive account on the theme. The book sets out to achieve the moderate but well-defined goal of examining the role that CSR plays in addressing the issue of corruption by analysing various tools employed for the purpose, which include both mandatory approaches based on rules and sanctions as well as voluntary measures intended to encourage ethical corporate behaviour. The book explores through the lens of CSR the various regulatory approaches that have been employed to battle corruption that takes place across borders, and discusses the relative merits and demerits, successes and failures of each method. It represents a comparative analysis of approaches adopted by nations. On the one hand, it focuses on the United States (“US”) and the United Kingdom (“UK”) that are abodes for MNCs that operate around the world and hence fall within the regulatory realm of those countries. On the other, it draws upon the domestic legal system in Nigeria, being a developing nation, which is a recipient of foreign investment from MNCs and whose citizens are often the victims of corruption.

Apart from its comprehensiveness, the strength of the book lies in its clinical analysis of various regulatory approaches towards corruption, and its dispassionate commentary of those approaches at a qualitative level. The discussion of these approaches is peppered with cases and illustrations from the countries covered, which instil life into otherwise dry and dreary legal and jurisprudential issues which impact in any event ultimately translates to the quality of human life. At one level, the absence of a nuanced theoretical framework (within which the regulatory approaches can be located) may appear somewhat perplexing in a work of this kind. However, it can indeed be considered a strength that the book has sought to steer clear of

embarking upon a grand abstract theorising venture and has instead focused on concrete issues and problems that warrant real-world solutions.

The book is divided into two parts. Part I: “Corporate Social Responsibility and Anti-Corruption”, consisting of two chapters, introduces the topics of CSR and anti-corruption and seeks to establish the interaction between the two. It begins by defining the scope of CSR, and attempts to establish responsibilities on the part of corporations that are beyond simply those owed to the shareholders as owners. The book takes issue with Milton Friedman’s traditional approach, which asserts that the only responsibility of corporations is to maximise profits to its shareholders, and shows how there has been a paradigm shift that now recognises other interests as well beyond shareholders. While CSR has traditionally been believed to consist of voluntary efforts by corporations to minimise adverse impact on society, the book also seeks to include mandatory rules such as anti-corruption within the sphere of CSR. All of these are then used to demonstrate that certain “universal standards of CSR are emerging” (at p. 39).

At this stage, a fundamental question may arise in the reader’s mind: what is the effectiveness of using a tool such as CSR to address a problem when the concept of CSR itself is not devoid of controversy? This arises not just with reference to the book, but rather the entire line of scholarship in this direction. Despite its evolution several decades ago, CSR can be metaphorically described as an “unruly horse” as its scope and meaning have been stretched in different directions without the requisite precision, often altering its shape according to time and geography. While it is sometimes equated with corporate philanthropy, it is also extended to regulatory control over corporate behaviour and even simply as a matter of corporate public relations. Unless the concept of CSR can be cabined and controlled, its use as a tool or mechanism to curb a problem such as corruption could suffer from imprecision and resultant ineffectiveness.

After introducing the concept of CSR, the book details various laws and regulations that presently aid anti-corruption efforts, particularly those of the cross-border variety involving MNCs. Notable among those are the *Foreign Corruption Practices Act of 1977*, 15 U.S.C. s. 12101 [*FCPA*] in the US and the recently enacted *Bribery Act 2010*, c. 23 [*Bribery Act*] in the UK. While these two pieces of legislation are perhaps the most robust national efforts to tackle corruption, their success is far from clear. The effect of international efforts generates even less optimism due to their voluntary or non-binding nature. The UK *Bribery Act* that came into effect in 2011 is, however, said to be a game changer in national anti-corruption efforts given its stringency and its extraterritorial effect, all of which give it more teeth than the US *FCPA*. Given that the *Bribery Act* came into effect as the author was applying finishing touches to the book, it does not contain a detailed discussion of that legislation. However, due to the promise the legislation holds in tackling corruption, an elaborate discussion of its provisions together with evidence of its enforcement in the initial years would certainly set the tone for a possible second edition of this book.

Part II: “Special Focus on Mechanisms for Curbing International Corruption From a CSR Perspective” contains a detailed analysis of the manner in which CSR is being employed as a means to tackle corruption. Specifically, it discusses four mechanisms, *viz.* (i) global governance; (ii) international law; (iii) civil remedies; and (iv) corporate governance. While some of these mechanisms operate within the

sphere of domestic legal systems, others operate at an international or transnational level. This part begins with an analysis of principles of global governance and global administrative law, which involve a combination of states, multilateral institutions as well as non-state actors. Examples of institutions that are relevant are the World Bank, the International Monetary Fund (“IMF”), and the World Trade Organisation (“WTO”), of which only the World Bank has thus far made tangible progress towards eliminating corruption. The problem with using ‘global governance’, as the author herself acknowledges, is the lack of consensus on its meaning and scope, thereby suffering from the same deficiencies discussed earlier about the concept of CSR. Hence, the book calls for a cautious application of these principles, particularly in the context of developing countries, which are yet to be attuned towards a global governance regime.

The mechanism of international law has been making serious inroads in grappling with the issue of corruption. There have been numerous regional and multiregional efforts to criminalise the act of bribery. However, these efforts suffer from a serious inadequacy, which is that international law continues to place emphasis on state responsibility, and there are yet no established principles that impose transnational liability on corporations. As the author notes, corporations are objects of international law, rather than subjects that carry full legal personality, which in turn foists responsibility. Another mechanism used is civil remedies that could potentially act as a deterrent against corrupt behaviour. This relates to the enforcement of commercial contracts, primarily through arbitration, that are tainted with illegality due to the presence of bribes. Usually, courts enforcing arbitral awards encounter the tension between the need to acknowledge the sanctity of arbitral awards and to ensure their enforcement, and the need not to lose sight of public policy concerns that may arise due to corrupt influences that may have resulted in the grant of the contract that is being enforced. The book highlights the role that arbitrators and courts can play through the use of civil remedies in encouraging universal denouncement of corruption.

The final mechanism considered is corporate governance, which strikes at the heart of CSR. This includes measures adopted by a new variety of investors embracing environmental, social and governance (“ESG”) principles, and also the use of shareholder derivative suits to moderate corporate behaviour. The book is somewhat pessimistic about the use of corporate governance as a CSR tool to tackle corruption and almost dismisses its utility, primarily on the ground that governance is a matter internal to the company and meant essentially to deal with the problems of separation of ownership and control, and that corruption is an external problem. This approach, however, requires reconsideration. Matters of CSR, including anti-corruption efforts, deserve an “inside-out” approach, which involve moderation of organisational behaviour through introspection. The discourse must extend to the use of internal mechanisms of corporations such as the board of directors and their incentives (which must go beyond sole focus on shareholder value), compliance and risk management systems, and whistle-blowing. This is consistent with the broad directional change that has occurred in CSR scholarship where the “level of analysis has moved from the macro-societal level to the organizational level” (Min-Dong P. Lee, “A Review of the Theories of Corporate Social Responsibility: Its Evolutionary Path and the Road Ahead” (2008) 10(1) *International Journal of Management*

Reviews 53 at 69). Encouraging corporations to indulge in soul-searching and in setting their house in proper order from an ethical standpoint will likely yield more promising results. Not only does it call for greater optimism on this count than the book suggests, but it might even have to become the focus of CSR and anti-corruption efforts.

The book concludes with an analysis of the implications of the selected anti-corruption mechanisms in the context of developing countries. Since most of the existing mechanisms have limitations in their effectiveness, the book recommends the adoption of a multipronged approach because corruption is a problem that does not mandate a “one-size-fits-all” approach. The inclusion of a normative discussion carrying specific suggestions for tackling corruption would have added to the tremendous effort undertaken in the book, but the lack of it is perhaps understandable given that it is not one of the express goals of this work. The qualitative assessment of the interaction between CSR and anti-corruption and the various mechanisms themselves constitute an immense contribution to the field.

The book is written in simple but elegant terms, and is evidently the result of in-depth and painstaking research undertaken by the author across various jurisdictions. The conclusions at the end of each chapter clearly and unequivocally state the author’s position on the subject matter discussed therein, and considerably enhance the reader-friendly nature of the book. Overall, the work addresses a crucial problem at an opportune time, and will be a remarkable resource for the entire fraternity working towards eradicating corruption, including multilateral organisations, national governments, non-governmental organisations, the academic community and, not the least, MNCs.

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