

Ius Commune Conference 2017

Workshop: Legal Aspects of International Corporate Social Responsibility

Friday, 24 November (09.00 - 12.00)

Building: Aristo Utrecht

Room:

Participants

Introduction Sneakers, fuel, coffee, smartphones. Many of (the commodities for) our daily products are being produced abroad. Sometimes these production activities take place under conditions that in the Netherlands we would consider unacceptable. This raises ethical, political and legal questions. What is the scope of the social responsibility of the Western society-based internationally operating business enterprises that have these products manufactured in less developed countries, often at low cost, and put them on the market here? Are they under an obligation to prevent their activities from causing damage to people and the planet in the host states involved? How far down into the supply chain does this obligation reach and what legal means do they have at their disposal to make sure that their local subsidiaries or supply chain partners live up to their responsibilities, as well? And if damage does arise, under what circumstances can these business enterprises be held liable for this before courts in their Western society home states?

Over the past two decades, there has been increasing socio-political debate in many Western societies over the potentially detrimental impacts of the activities of internationally operating business enterprises on people and the planet abroad. These debates have been fuelled by incidents such as the April 2013 Rana Plaza-disaster, in which the collapse of a Bangladeshi factory building caused by sub-standard construction resulted in the deaths of over a thousand factory workers, many of whom were manufacturing garments for European retailers. Companies are facing growing scrutiny by policymakers, NGOs and the media over the impacts of their operations overseas, as well as increasing socio-political pressure to ensure that similar (minimum) standards are adopted throughout their groups and supply chains. There is also rising pressure on Western society policymakers to come up with regulatory measures aimed at promoting international corporate social responsibility, sustainable development and business respect for human rights. In several European countries, binding rules have been introduced relating to the human rights and environmental impacts of the activities of internationally operating business enterprises abroad. At the same time, the number of legal proceedings being initiated before courts in Europe relating to corporate accountability for harm caused to people and planet in developing host countries, is rising rapidly.

These developments raise a wide variety of legal issues among policymakers, legal practitioners and legal scholars, as well as among the main stakeholders involved: Western society-based internationally operating business enterprises and those who are detrimentally affected by their operations. Proposals for new regulatory measures – like a ban in the Netherlands on items produced by child labour or the Swiss Responsible Business Initiative – require an assessment of their legal merits and

consequences, their interaction with existing legal and non-legal mechanisms, their expected impact on the behaviour of the (corporate) actors they seek to regulate, and their potential side-effects. Existing measures – like the EU Conflict Minerals Regulation or the French law on *devoir de vigilance* – require an assessment of their impact and effectiveness, and of the need for supporting or alternative regulatory interventions. Judicial decisions in relevant cases – like the Dutch Shell Nigeria case and the French COMILOG case – require an assessment of their legal merits and consequences, and their impact on future case law both at home and abroad. Measures adopted by corporate actors themselves – like the introduction of human rights due diligence procedures, of contractual clauses relating to the CSR-performance of supply chain partners or of company-level grievance mechanisms – require an assessment of their legal basis and consequences, their ideal set-up and ambit, their effectiveness, and possible unwanted side-effects.

- Chair:** **Liesbeth Enneking** (Erasmus University Rotterdam)
- 09.00 – 09.10 Welcome
- 09.10 – 09.30 **Mark Kawakami** (Maastricht University)
The Buddhist take on CSR
- 09.30 – 09.50 **Eva van der Zee** (Wageningen University)
Overcoming false choices and distorted decisions – Benefits of sustainability agreements under art. 101 TFEU
- 09.50 – 10.10 **Martijn Scheltema** (Erasmus University Rotterdam)
The Dutch CSR covenants as (legal) policy instrument: effects and pitfalls
- 10.10 – 10.30 Discussion
- 10.30 – 10.40 **Coffee break**
- 10.40 – 11.00 **Yulia Levashova** (Nyenrode Business University)
Promoting CSR obligations through international investment law
- 11.00 – 11.20 **Jeroen Veldman** (Cass Business School)
The diffusion of norms and corporate responsibility
- 11.20 – 11.40 **Kati Cseres** (University of Amsterdam)
Consumer social responsibility and the normative concept of the active and responsible consumer in EU law
- 11.40 – 12.00 Discussion