
BUSINESS & HUMAN RIGHTS: CORPORATE RECOGNITION AND RESPONSIBILITY

By Christine Bader

Christine Bader discusses the meaning of corporate social responsibility and how John Ruggie, the UN Special Representative of the Secretary-General (SRSG) for business and human rights, is promoting engagement by companies in the international human rights framework. She submitted this article in her personal capacity.

“Corporate Social Responsibility” now rolls off executive tongues from Beijing to Bentonville.¹ Thousands of companies around the world are issuing glossy, upbeat publications about their corporate social responsibility (CSR) or sustainability programs, showing how they are improving the lives of their employees, neighbors, customers, and anyone else who may cross their path. Nike’s report discusses how working conditions are improving for the 800,000 people in its supply chain; Chevron’s details its reduction in greenhouse gas emissions and its US\$90 million “investment” in communities around the world.

Even the *Economist* magazine, which in the past denigrated CSR as at best irrelevant and at worst deceptive, just published a special report entitled, “Just Good Business,” proclaiming that CSR done well “is what good managers ought to do anyway.”²

So the concept of companies being attuned to the demands of society is well embedded. Why, then, amidst this ocean of awareness, do only 152 companies have a human rights policy or statement?³ Isn’t embracing human rights as simple as embracing CSR?

Apparently not. Human rights organizations like Human Rights in China, Amnesty International, and

Human Rights Watch, which have long brought horrific human rights abuses to the world’s attention, are increasingly investigating abuses that businesses have allegedly committed or facilitated. See, for example, recent reports asserting technology companies’ complicity in government surveillance and companies in the diamond industry exacerbating conflict in Africa.⁴

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In contrast, CSR reports highlight whatever topics portray companies in the best light—anything from energy efficiency to charitable giving. Such reports may mention human rights, but only in passing, as in corporate “support” (whatever that means) of the Universal Declaration of Human Rights (UDHR), or membership of an initiative that uses the phrase like the UN Global Compact.⁵

In other words, “human rights” is associated with abuses, and “CSR” is, well, whatever the user wants it to mean.

This is a shame. An International Bill of Rights was negotiated and agreed on (if not fully realized) by most of the world’s nations. It includes the UDHR (adopted in 1948) and the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights (both adopted in 1966).

Despite the near-universal acceptance of that human

rights framework, its application to companies is not straightforward. The UDHR was created in the aftermath of World War II by governments to hold each other to account. The preamble states that “every organ of society” should promote the UDHR, but there is little indication that the drafters had corporations in mind. The two covenants only place obligations on states. The International Labor Organisation (ILO) has developed explicit guidelines for companies as employers, but beyond labor issues there is no clarity about the human rights responsibilities of business.

This vacuum of guidance has become problematic in recent decades as corporations have extended their global reach and grown to the degree that many people consider them more powerful than states. This perception should be disputed—governments still have the power to regulate and evict, as in Sarbanes-Oxley⁶ in the U.S. and oil in Venezuela—but it exists nonetheless.

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Business executives increasingly work in countries far from home, geographically and culturally. Through ignorance, misunderstanding, deliberate efforts to take advantage of seemingly law-free zones, corrupt host governments, or a combination of the above, some of these executives find themselves mired in situations where they might be committing or facilitating human rights abuses. These include abuses outlined in the aforementioned reports along with numerous well-documented violations associated with oil, gas, and mining operations and manufacturing facilities.⁷

On the positive side, there is recognition that business often increases employment and productivity, which can bring about greater realization of rights.

In response to the evolution of both the perception and the reality of corporate impact on human rights, some suggest that all of the obligations of governments can simply be transposed onto companies. This notion is wrong. Businesses don’t have the same responsibilities, mandate, or expertise that governments do.

Multinational companies can find themselves in a quasi-governmental role where government is weak—building roads and schools, even training civil servants—but this is neither ideal nor sustainable. Nor should it absolve government of its responsibilities.

Moreover, corporate executives who aren’t accountable to citizens shouldn’t decide the delivery of health care (although in the U.S. that’s increasingly the case, sadly), or education, or justice. The private sector delivers some public services, but generally under a particularly watchful government eye—with the exception of notable failures such as water privatization in South America.

Into this difficult debate enters John Ruggie, a Harvard professor who Kofi Annan appointed UN Special Representative of the Secretary-General (SRSG) for business and human rights in July 2005.

First, Ruggie sought to clarify the current state of the field: What human rights violations have corporations been implicated in? Where do they occur, around what industries, and what rights have been at stake? What authoritative statements have there been about the roles and responsibilities of corporations and states in this area, for example, by the UN treaty bodies charged with interpreting human rights conventions? What rights do corporations recognize and how?

To that end, Ruggie undertook an extensive program of research and consultations (all of which is documented at the Business & Human Rights Resource Centre).⁸ To answer the question of what rights companies recognize, Ruggie sent a questionnaire to all of the Fortune Global 500 firms and analyzed the results. He then commissioned a “business recognition” study of policies in the public domain of over 300 additional companies from all regions of the world.⁹

Both studies found that labor rights were far and away the most recognized of rights in corporate policies. All of the Fortune Global 500 respondents cited non-discrimination as a core corporate responsibility; the highest rate of recognition in the business recognition report was of non-discrimination and workplace health and safety. Approximately two-thirds of all of the com-

panies studied recognized freedom of association, the right to collective bargaining, and the prohibition against child and forced labor.

Not surprisingly, there were variations among sectors: Companies in the oil, gas, and mining sectors were most likely to recognize communities as important stakeholders, for example, with policies on community consultation and engagement. Retail and consumer products firms were most likely to have policies related to workers' rights, such as the right to a minimum wage.

These two studies have proven extremely useful, but few companies outside of North America and Europe responded to the survey, and the study of company policies included only businesses whose sources of information were available in English, French, or Spanish.

So Ruggie commissioned a follow-up study of the human rights policies of 25 Chinese companies that

operate internationally that included sources written in Mandarin. The study selected 25 Chinese companies: 14 in the Fortune Global 500 and 14 that have signed onto the UN Global Compact. Three of the 25 companies fell into both categories. The sample included companies from all major industries and private as well as state-owned entities.¹⁰

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Like the previous study, this report examined whether a company had a policy in the public domain, for example on its website or in its financial or social responsibility report, that recognizes one of the rights included

UN High Commissioner for Refugees Antonio Guterres (L) talks to UN High Commissioner for Human Rights Louise Arbour prior to the Global Compact Leaders Summit at the United Nations European headquarters in Geneva, on July 5, 2007. Photo credits: REUTERS/Denis Balibouse (SWITZERLAND).





Secretary General Kofi Annan (L) arrives at the Security Council at the UN in New York on December 16 with special advisor John Ruggie for closed-door consultations. Photo credits: REUTERS/Peter Morgan.

in the International Bill of Rights, ILO Core Conventions, or the UN Declaration on the Right to Development. To be counted, such a policy did not have to use the exact language of the aforementioned instruments, but had to clearly address a specific right. The study did not attempt to assess how these policies were implemented or to research whether there were additional policies that were not published.

Overall, the Chinese companies recognized rights at a lower rate than the companies in the global sample—with the notable exception of the right to development, which was recognized more often by the Chinese companies than by the others. As noted earlier, the companies in the business recognition report most often recognized labor rights with other rights trailing far behind, while the Chinese companies exhibited approximately the same rates of recognition of labor and non-labor rights.

Of labor rights, the right to a safe work environment was recognized by six of the Chinese companies—the most-recognized right in the sample, although that recognition rate of 24 percent is far below that of the global sample of 75 percent. Non-discrimination in employment was recognized by four companies—16 percent, compared to 90 percent in the business recognition report.

Among non-labor rights, the Chinese companies gave more recognition to social and economic rights (e.g., the right to development, the right to education, and the duty to protect the environment) than civil and political rights, whereas the reverse was true in the business recognition report. This is not surprising given that China has not ratified the International Covenant on Civil and Political Rights (ICCPR).¹¹

One marked contrast between the two studies was the lack of referencing among the Chinese companies of any international human rights sources, either the instruments mentioned above or initiatives such as the UN Global Compact—only one of the 14 Global Compact members acknowledged its participation [and none of the companies mentioned any other human rights instrument or initiative]. In contrast, 67 percent of the companies in the business recognition report stated that they participate in the Global Compact; 35 percent reference the UDHR; and 28 percent cite ILO conventions.

While acknowledging that the sample size of Chinese companies was too small to draw definitive conclusions, the survey suggests that both home government support and global competition may be correlated to corporate recognition of human rights: State-owned enterprises exhibited a higher recognition of rights than private enterprises, and being in the Fortune Global 500 was a better indicator of whether a company recognized rights than being a member of the Global Compact.

This perhaps counterintuitive view suggests some room for optimism as Chinese companies continue to grow, often with state support. Indeed, there have been some recent indications of government interest in better business practice, with state introduction of the Equator Principles¹² to establish social and environmental

standards for project financing, CSR guidelines for state-owned enterprises, and new labor laws intended to provide greater protection for workers.¹³

That research, along with thousands of pages of studies and correspondence and broad outreach, is enabling Ruggie to develop an overarching framework for business and human rights that he will present to the UN Human Rights Council in Geneva in June.

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The framework will comprise three principles:

- 1) The state duty to protect against human rights abuses, including those by business;
- 2) The corporate responsibility to respect human rights; and
- 3) The need for remedy when corporate-related abuses have occurred.

How do corporations fulfill their responsibility to respect? Until there is more specific guidance explicating the responsibility to respect that is agreed by business, government, and civil society, there will be a great deal of variety and discretion. But a few basic elements are clear:

- First, business must do no harm to human rights as they go about their business, and those that violate this principle must be held to account.
- Second, companies should have policies that recognize the International Bill of Rights. Policies are insufficient on their own, but are the first step in demonstrating awareness and intent to respect human rights.
- Third, companies must demonstrate that they are

performing whatever due diligence is appropriate for their industry to ensure that they do no harm to human rights and that they are not complicit in the abuses of others. Such steps might include incorporating human rights into their risk and impact assessments and engaging third party experts to assess their policies and practices.

Claiming ignorance, lack of tools and resources, or competitive disadvantage is no way to refute these assertions. See, for example, the work of the Business Leaders Initiative on Human Rights, 13 leading global companies that have come together to find “practical ways of applying the aspirations of the Universal Declaration of Human Rights within a business context and to inspire other businesses to do likewise.”¹⁴

So let's move beyond CSR, which may have worked its way into the mainstream but in doing so has become so diluted as to be meaningless. The discussion about business's role in society should occur within the human rights framework that has been part of international discourse for a long time. Then we can discuss corporate social responsibility—and know what we're talking about.

Notes

1. Editor's Note: Bentonville, Arkansas, is home to Wal-Mart's headquarters.
2. Daniel Franklin, “Just Good Business: A Special Report on Corporate Social Responsibility,” *The Economist*, January 19, 2008.
3. According to the Business & Human Rights Resource Centre as of February 4, 2008. See “Business & Human Rights: Policies,” Business & Human Rights Resource Centre, <http://www.business-humanrights.org/Documents/Policies>.
4. Human Rights Watch, *Race to the Bottom: Corporate Complicity in Chinese Internet Censorship* (New York: Human Rights Watch, 2006), <http://www.hrw.org/reports/2006/china0806/>; Global Witness, “Briefing documents—combating conflict diamonds,” http://www.globalwitness.org/pages/en/briefing_documents.html.
5. The UN Global Compact is a voluntary initiative that encourages companies to implement principles in the areas of human rights, labor, the environment, and anti-corruption. See United Nations Global Compact, <http://www.unglobalcompact.org/>.

6. Editor's Note: Passed in the wake of a number of corporate scandals, the Sarbanes-Oxley Act of 2002 sought to repair public confidence in corporate financial reporting and improve regulation of U.S. securities markets. Sarbanes-Oxley introduced a number of broad regulatory reforms affecting U.S. security exchanges, corporations, auditors, analysts, and securities lawyers. See Morrison & Foerster, "Dramatic Changes to Corporate Governance for Public Companies and New Framework for Oversight of Auditors," Morrison & Foerster—Legal Updates & News, July 2002, <http://www.mofo.com/news/updates/files/update782.html>.
7. See, e.g., "Business & Human Rights," Human Rights Watch, <http://hrw.org/doc/?t=corporations>.
8. "UN Special Representative" and "Getting Started," Business & Human Rights Resource Centre, <http://www.business-humanrights.org>.
9. UN Special Representative of the Secretary General John Ruggie, *Human Rights Policies and Management Practices of Fortune Global 500 Firms: Results of a Survey*, summarized in U.N. Doc. A/HRC/4/035/Add. 3 (Sept. 1, 2006), and UN Special Representative of the Secretary General John Ruggie, *Business Recognition of Human Rights: Global Patterns, Regional and Sectoral Variations*, U.N. Doc. A/HRC/4/035/Add.4 (December 12, 2006). Both are available at the SR-SG portal referenced in endnote 8.
10. UN Special Representative of the Secretary General John Ruggie, *Human Rights Policies of Chinese Companies: Results from a Survey* (September 2007), also available at the SRSB portal.
11. Editor's Note: China signed the ICCPR on October 5, 1998, but has not yet ratified the instrument.
12. Editor's Note: The Equator Principles are a financial industry benchmark for determining, assessing, and managing social and environmental risk in project financing. Developed by a number of banks in collaboration with the World Bank Group's International Finance Corporation, the Principles were launched in 2003 and have been adopted by over 40 financial institutions. See "Frequently Asked Questions," The Equator Principles, <http://www.equator-principles.com/faq.shtml>.
13. Sun Xiaohua, "China to Bring in Green Loan Benchmark," *China Daily*, January 25, 2008, http://www.chinadaily.com.cn/bizchina/2008-01/25/content_6420781.htm; "SOEs' New Social Roles," *China Daily*, January 8, 2008, http://www.chinadaily.com.cn/opinion/2008-01/08/content_6377558.htm; "New Labor Law Introduced in China," Bloomberg News, January 1, 2008, available at <http://www.iht.com/articles/2008/01/01/business/chilabor.php>.
14. "BLIHR Home Page," The Business Leaders Initiative on Human Rights, <http://blihr.org/>.