

## 2 *Making sense of the United Nations Global Compact human rights principles*

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### Introduction

The ten years in which the United Nations Global Compact has been in existence have been watershed years with respect to business and human rights. Never before has as much attention been paid to the many ways that businesses impact human rights conditions, and it is safe to say that the Global Compact is one of the main reasons why this is so. Specifically, more companies have pledged their support for human rights than ever before, and the Compact is perhaps the single greatest catalyst for these commitments. In addition, the Compact has reminded businesses and stakeholders that human rights principles are indeed universal, and not merely the product of Western or wealthy nations. Finally, the Compact has provided a unique and essential platform for dialogue, enabling business, government, civil society and trade unions to discuss, debate and create progress.

At the same time, the link between business and human rights remains unclear for many. At the policy level, there are questions about the relationship between public and private responsibilities, as well as whether and how well national accountability systems fit with globalized business activities. And at a practical level, many business people continue to grapple with the precise meaning of human rights as they relate to daily commercial activities. This chapter traces the development of human rights as a business matter; the impact of the Global Compact, the Special Representative's mandate; practical applications of human rights by business; and, finally, a look ahead at what the future may hold.

## The establishment of the universality of human rights

### *The start of a long journey*

In late 1945, world leaders met in San Francisco to establish the United Nations. Vividly aware of the atrocities committed in the Second World War they included in the preamble to the Charter of the United Nations a reference to human rights: ‘We the peoples of the United Nations [are] determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small’ (United Nations 2009a).

In April 1946, a group of experts started to work on a first draft of an international bill of human rights and on 10 December 1948 the UN General Assembly solemnly proclaimed the Universal Declaration of Human Rights (UDHR) ‘as a common standard of achievement for all peoples and all nations’ (United Nations 2009b): all human beings are born free and equal in dignity and rights and are entitled to all the rights and freedoms set forth in the UDHR ‘without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status’ (United Nations 2009b).

The UDHR identifies a comprehensive range of rights: *civil and political* are primarily designed to protect the individual against illegitimate state interference (e.g. right to life, freedom from discrimination, provision on fair trials right to freedom of thought, conscience and religion and political rights, including the right to vote and be elected). *Economic, social and cultural rights* prohibit authorities to deny access to available food, work, education, health services, etc. and entitle individuals to get protection from the state from third parties who interfere with access to these rights (Kaelin, Mueller and Wyttenbach 2004: 23). These rights also oblige states to take concrete measures to progressively improve socio-economic conditions in order to reach a level which allows everyone to fully enjoy these rights. Specifically, they are understood as *economic* (e.g. right to work, right to form and join trade unions, equal pay for equal work), *social* (e.g. right to an adequate standard of living, including the right to adequate food, clothing and housing and right to medical care) and *cultural* (e.g. right to education, right to participate in the cultural life of the community).

The UDHR is today the most widely accepted and influential statement of norms for civilized societies: many countries have ratified the two covenants that establish binding duties for states on the rights listed in the UDHR, and have adopted national human rights laws. And yet, studying the annual reports of Amnesty International or Human Rights Watch, human rights continue to be gravely violated around the world – the fight against human rights abuses remains an urgent and ongoing task for the world community.

*The application of the UDHR to non-state actors: ‘every individual and every organ of society. . .’*

The drafters of the Universal Declaration sought to apply its provisions in the first instance to nation-states. Indeed, only the state is entitled to enforce the law, through the police and the courts, and it is widely understood that the Universal Declaration above all calls upon national governments to fulfil their duty to safeguard the fundamental human rights and liberties and fulfil the obligations set out in human rights conventions. The two implementing covenants are international treaties to be signed and ratified by governments.

It is equally clear, however, that the provisions of the Universal Declaration are intended to apply more widely. This notion is most clearly and explicitly stated in the preamble of the UDHR: The ‘common standard of achievement for all peoples and all nations’ requests ‘*that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction*’ (United Nations 2009b, emphasis added). This language, established at the dawn of the human rights era, makes clear that private enterprises and private citizens have responsibilities with respect to human rights. It is only fairly recently, however, that the application of these principles to business has been widely and seriously debated.

### *The business and human rights debate takes hold*

As such, the specific application of human rights to business is a relatively new development. It was only in the 1990s, during the rise of the global economy era, that human rights became a significant part of the mainstream discussion of corporate responsibility. Several factors led to this development, including the flowering of civil society; the rise of information and communication technologies, especially the Internet; consumer outrage about high-profile allegations of corporate wrongdoing; advocacy by national governments and international leaders, and the rise to positions of influence of business leaders who came of age during the 1960s. Within the UN system, leaders, notably including Secretary-General Kofi Annan and High Commissioner for Human Rights Mary Robinson, made business and human rights a priority. Yet, while businesses, civil society organizations and governments began acknowledging the relevance of human rights as a matter for business, the precise nature of this link remained unclear.

It was in this context that the United Nations Global Compact arrived. The Compact's inclusion of two human rights principles legitimized and accelerated the adoption of human rights policies and practices by companies across the globe. The two human rights principles of the Global Compact call on signatory companies to:

- *Principle 1*: Business should support and respect the protection of international human rights within their sphere of influence; and
- *Principle 2*: make sure that they are not complicit in human rights abuses.

The establishment of these principles had both a direct and indirect impact on the acceptance of human rights as a business issue. The direct impact has been the fact that Global Compact signatories, which grew from an original 50 to 6,500 today, are now obligated to apply these two principles and report on their progress towards implementation. It is highly unlikely that as many companies would have adopted corporate human rights policies without this step. The large number of businesses, including several global leaders, committing themselves to the Global Compact and its two human rights principles has also had the indirect impact of legitimizing human rights as a business issue. Through the international platform of the United Nations, adoption of human rights principles has globalized,

which makes it less likely that businesses outside the OECD would assert that human rights are solely a ‘Western’ or developed world concept.

### *Human rights and business: a conceptual challenge*

As referenced above, the practical definition and application of human rights principles to business has proven elusive even with the significant increase in attention to the subject in the past fifteen years. This is for a variety of reasons:

- First, as noted earlier, human rights principles were established with a view to the role of nation-states, rather than private actors. This has resulted in a lack of clarity about which principles apply to business, how they apply to business and how to understand situations in which private and public responsibilities intersect – as they often do.
- Second, human rights principles are often violated even where national laws, regulations and customs are followed. Even where striving to go beyond compliance is part of corporate culture, misalignment of human rights and local laws can present companies with seemingly unsolvable dilemmas.
- Third, jurisdictional questions cloud the application of human rights principles relevant to business. Lack of clarity about whether and how cross-border liability is justified has further complicated the situation.
- Fourth, responsibilities as they relate to business are sometimes clouded by the presence of complex value chains in which numerous actors are seen to have an impact on human rights.
- Fifth, today’s spectrum of the discussion on human rights and business is extremely broad, covering questions of free trade and investment (UN-ECOSOC 2003) as well as bioethical issues concerning the human genome (UNESCO 2009a, 2009b), research priorities of the pharmaceutical industry (Swithern 2003) and emerging issues including what constitutes the fair use of natural resources such as water.<sup>1</sup> Some authors even discuss the question whether access to credit should be a human right (Hudon 2009).

<sup>1</sup> See, for example, the story at [www.pbs.org/newshour/bb/asia/july-dec08/waterwars\\_11-17.html](http://www.pbs.org/newshour/bb/asia/july-dec08/waterwars_11-17.html).

- Finally, and significantly, many business managers running their ‘normal daily business affairs’ with integrity consider an association with the whole human rights and business debate not to be of direct relevance for them and their institutions. Human rights remains, in the minds of many, an abstract, political concept. This cognitive dissonance bears high risks for companies: on the one hand, companies must stay far away from anything that could be associated with such violations, on the other hand, there is lack of sensitivity.

### *Filling the conceptual gap*

Within the UN system, efforts have been made to define further what companies’ human rights responsibilities are, and how they can best fulfil them.

The first such effort ended in deadlock. The UN Commission on Human Rights, through its sub-commission on the promotion and protection of human rights, developed a draft set of *Norms on the Responsibility of Transnational Corporations and other Businesses on Human Rights*,<sup>2</sup> which were intended by its authors and supporters to establish ground rules for companies, as well as initial mechanisms for enforcement. The Norms were not endorsed by the full UN Commission. While all the major industrial countries rejected the ‘Draft Norms’ in 2005, most developing countries and human rights organizations, as well as many UN bodies, supported them. Amongst other reasons, the rejection was based on the perception that the Norms would impose obligations on companies akin to the state duty to protect. Further, the idea behind the Norms that only a sub-set of human rights would be relevant to business proved misguided. For example, the human rights issues around privacy and free expression faced today by Internet companies were not among the rights included in the Norms as business-relevant.

<sup>2</sup> See in this context Merieau (2008) and also Laufer Green Issac (2004). The research finds that the problem is twofold. First, many non-profit leaders and business executives harbour serious negative stereotypes about one another that undermine the trust necessary for successful partnership. Second, the cultural dynamics and linguistics of for-profit and nonprofit organizations are so distinctive that executives and non-profit representatives unknowingly reinforce many of the negative perceptions held by their counterparts. These dynamics create a dysfunctional backdrop against which even organizations with common goals have difficulty forming successful partnerships.

To overcome the political deadlock, a position of ‘Special Representative on the Issue of Human Rights and Transnational Corporations’ was created, and John Ruggie of Harvard University was appointed to this post in July 2005. His mandate included the direction to:

- Identify and clarify standards of corporate responsibility and accountability for transnational corporations (TNCs) and other business enterprises with regard to human rights.
- Elaborate on the role of states in effectively regulating and adjudicating the role of TNCs and other business enterprises with regard to human rights.
- Research and clarify the implications for TNCs and other business enterprises of concepts such as ‘complicity’ and ‘sphere of influence’.
- Develop materials and methodologies for undertaking human rights impact assessments of the activities of TNCs and other business enterprises.

Ruggie submitted the result of his and his teams’ first three years of work, a conceptual framework for business and human rights, to the UN Human Rights Council on 3 June 2008 (Ruggie 2008). The Council endorsed his report and, on 18 June, extended Ruggie’s mandate for a period of three more years, *inter alia* ‘to elaborate further on the scope and content of the corporate responsibility to respect all human rights and provide concrete guidance to businesses and other stakeholders . . . in coordination with the efforts of the human rights working group of the UN Global Compact’ (United Nations Human Rights Council 2008a: 3).

### *The Ruggie framework: an emerging benchmark*

Over the course of his mandate, John Ruggie has successfully navigated through a topic that has proven extremely complex in political, legal and operational terms. At this stage in his work, many believe that he has succeeded in providing a conceptual framework that has been widely – if not universally – accepted, and is considered the *de facto* benchmark against which companies and other institutions can define and assess the business commitment to human rights. Importantly, Ruggie has undertaken efforts to clarify and distinguish between the

respective responsibilities of state actors and private actors. In addition, the process through which he has operated, utilizing numerous stakeholder dialogues, broad-based workshops and advice from legal experts and practitioners, has enriched both the quality and credibility of the work undertaken through his mandate.

The core elements of the framework are:

- *The state has a ‘duty to protect human rights’*: The states obligation to protect people against human rights abuses by non-state actors, including business, within their territory or jurisdiction has been a well-recognized core element of international human rights law. The Special Representative has reasserted the pre-eminence of this state obligation: states are expected to take all necessary steps to protect against such abuse, including to prevent, investigate and punish abuse and to provide access to redress. This clear delineation helps to prevent a State from using companies as scapegoats for their own failings in the duty to protect against human rights breaches – it also helps to put into perspective requests by human rights stakeholders which could be interpreted as shifting duties away from (unable or unwilling) States.
- *The corporate sector has the ‘responsibility to respect human rights’*: This responsibility ‘essentially means not to infringe on the rights of others – put simply, to do no harm’ (Ruggie 2008: 9). Very importantly, the ‘responsibility to respect’ exists independently from the quality of a state’s willingness or ability to deliver on its duty to protect human rights. It is true that the most egregious violations of human rights occur in countries with poor governance, weak governance, or endemic conflict – but none of these circumstances relieves a company from its duty to respect human rights. The responsibility to respect covers all human rights. Meeting this responsibility requires proactive management of human rights impacts.
- *Access to remedy* in cases of violations of human rights *must be facilitated*: Both judicial and non-judicial remedies are necessary and need to be made more accessible and effective in cases where human rights are impacted. Depending on the severity and other circumstances, company mechanisms, such as anonymous hotlines, mediation, ombudsmen and alternative dispute resolution can contribute to effective remediation.



The Special Representative has also aimed to provide clarity about the meaning of long-ambiguous terms in the business and human rights debate, such as *'sphere of influence'* and *'complicity'*. Ruggie rightly views these three pillars of his framework not as a new standard but as the manifestation of existing practice, widely accepted standards and expectations for corporate human rights practices. The definition of a corporate responsibility to respect all human rights, for example, is in part based on the fact that most corporate human rights policies include such a commitment, and that the 6,500 signatories of the Global Compact have made a similar commitment via Principles 1 and 2.

### The corporate responsibility to respect

On first glance, it appears unnecessary to have to state the responsibility to respect the human rights of a company's employees, customers, or community neighbour: it appears to state the obvious. It is worth remembering, however, that recognition of the relevance of human rights to business remains a recent phenomenon. The Ruggie (2008) framework did not create new international legal obligations, for governments or business, and defined the corporate responsibility to respect human rights to be basically a 'duty to do no harm'. This is entirely consistent with the general ethical approach most companies consider themselves to take.

In contrast to the attempt by the Draft Norms to select a sub-set of rights relevant to business, Ruggie makes clear that the responsibility to respect, to do no harm, applies to all human rights. While in practice, business will and should prioritize key areas of impact, the universe of rights considered applicable to business under the framework covers all rights listed in the UDHR, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the ILO Core Conventions.

While Ruggie and his team continue to develop clear operational guidance based on the framework, Ruggie's basic recommendations in this context are clear: 'To discharge the responsibility to respect requires due diligence' (Ruggie 2008: 17). This means that companies are expected to take conscious, proactive steps to become aware of, prevent and address adverse human rights impacts.

### ‘Sphere of influence’

The *sphere of influence* concept most often used in the past worked with a set of concentric circles mapping stakeholders in a company’s value chain. Mary Robinson’s remark ‘Clearly, the closer the company’s connection to the victims of rights violations, the greater is its duty to protect. Employees, consumers, and the communities in which the company operates would be within a first line of responsibility’ (Robinson 2002) is still valid. However, according to Ruggie, the concept of proximity used in isolation is inappropriate to assign or define responsibility, as it conflates two very different meanings of influence: one is *impact*, where the company’s activities or relationships are causing human rights harm; the other is the *leverage* a company may have over actors that are causing harm. According to the Special Representative the first (*impact*) falls within the corporate responsibility to respect human rights; the second (*leverage*) may do so only in particular circumstances.

Companies, Ruggie argues, cannot be held responsible for the human rights impacts of every entity over which they may have some influence, because this would include cases in which they were not a causal agent, direct or indirect, of the harm in question. And yet, the ‘court of justice’ applies here different standards than the ‘court of public opinion’. Therefore, the sphere of influence concept remains useful for companies to assess risks and opportunities and develop management systems for the human rights impacts along the value chain.

### ‘Complicity’

The term ‘complicity’ in the present context usually refers to an indirect involvement by companies in human rights abuses, i.e., the actual harm is committed by another party, including governments and non-state actors. It is not possible to specify definitive tests for what constitutes complicity in any given context, but the Ruggie Report offers the following considerations:

- Mere presence in a country, paying taxes, or silence in the face of abuses is unlikely to amount to the practical assistance required for legal liability – but acts or omission in narrow contexts may carry negative implications for companies in the public’s perception.

- Deriving a benefit from a human rights abuse is not likely on its own to bring legal liability, but may also carry negative implications for companies in the public's perception.
- Legal interpretations of 'having knowledge', when applied to companies, might require that there be actual knowledge, or that the company 'should have known' that its actions or omissions would contribute to a human rights abuse. Complicity does not require knowledge of the specific abuse or a desire for it to have occurred, as long as there was knowledge of the contribution. Therefore, it may not matter that the company was merely carrying out normal business activities, if those activities contributed to the abuse and the company was aware or should have been aware of its contribution;
- The fact that a company was following orders, fulfilling contractual obligations, or even complying with national law will not necessarily protect it in the 'court of public opinion'.
- Companies can avoid complicity by using the due diligence processes which apply not only to their own activities but also to the relationships connected with them.

### *Corporate leadership for human rights*

One of the most valuable contributions of the Global Compact has been as a forum for companies to exchange and share best practices. In the area of human rights, the Global Compact published several volumes with best practice examples of corporate leadership for human rights and interesting case studies (Global Compact 2004a) as well as a number of very valuable Business Reference Guides<sup>3</sup> helping companies to learn about and to contextualize human rights and their management in daily business practices. These efforts not only helped countless managers to find their way in hitherto unknown territory but also prevented a 'reinvention of the wheel' in an area that needed fast and coherent development.

Analysing the relevant literature and websites and studying the Communication on Progress (COP) which companies are asked to

<sup>3</sup> See, for instance, the following three publications: Business Leaders Initiative on Human Rights *et al.* (2006), International Finance Corporation *et al.* (2007) and Monash University *et al.* (2007).

submit annually to the Global Compact Office, one finds a large variety with regard to what companies are willing to do throughout their ‘hierarchy of corporate responsibilities’ (Leisinger 2007). From sector to sector, corporate leadership for human rights is expressed by various proactive measures to avoid negative human rights impacts, or going beyond the baseline of ‘do no harm’ to help strengthen human rights protections. For instance, companies from the extractive industry engaged in training human rights lawyers, pharmaceutical companies applied differential pricing for essential medicines, while banks and companies producing infrastructural equipment committed themselves to transparency measures. As always with corporate responsibility, there are only restrictions with regard to not ‘going through the floor’ of the acceptable norms corridor – but no limits to stretch the ceiling.

### **Managing corporate human rights responsibilities**

While the Global Compact and the Special Representative have helped bring considerably greater clarity to the debate about business and human rights, neither provides precise definitions that offer a clearly defined roadmap that companies can implement on human rights. As such, companies continue to look for ways to translate Global Compact Principles and other relevant human rights principles into operational terms that enable them to implement within their own operations, convey to business partners, and measure their performance.

As Peter Drucker (1993: 57f., 80, 97–101) observed many years ago, successful companies focus on responsibility rather than power, on long-term success and societal reputation rather than piling short-term results on top of short-term results (see also Avery 2000). This philosophy underlines the importance of getting the human rights dimension of business right, not only as a moral question but also one of good management practice. Good managers realize that it is impossible to be a world-class company with a second-class human rights record, and they act accordingly.

We believe that a human rights management system should include the following four elements:

- Human rights policy,
- Human rights impact assessment,

- Human rights strategy and implementation and
- Measuring and Reporting on Performance.

In addition, at each step, companies should consider two concepts: integration and stakeholder engagement. Every function of the company and every local operation could potentially impact human rights, positively or negatively. Ensuring decentralized ownership and integration of human rights into existing business processes is critical. Stakeholder engagement is an essential ingredient for all corporate responsibility efforts, and is a bedrock principle of the Global Compact. It is arguably most important when it comes to assessing and addressing human rights impacts. The engagement can itself be an exercise in human rights, and hearing from those whose rights could be impacted will lead to better decisions and will help the company better understand what still are very complex issues.

The Ruggie Report outlines similar steps when describing what human rights due diligence could look like under the corporate responsibility to respect. We expect Ruggie's final report to comment further on each of these steps.

### *Adopting a human rights policy*

Adopting a human rights policy allows companies to publicly affirm their commitment to respect human rights and enables proactive management of human rights impacts internally. The policy statement should commit to respect for all human rights as referenced by the UDHR, the two International Covenants and the ILO Core Conventions. Referencing these external human rights standards has two benefits for the company: (1) it demonstrates that the company's commitment is serious and that the company understands the international human rights framework; and (2) it clearly defines the boundaries of what the company means – and does not mean – by 'human rights'. Signatories of the Global Compact should also reference the commitments made by signing on to the Compact and its first two Principles.

The policy should detail governance of human rights and highlight priority areas – the right to health for pharmaceutical companies, for example. The chief executive officer CEO's of the company should sign the policy. By including the CEO signature, the policy becomes a vehicle to express executive support for human rights, which in

turn facilitates local ownership and buy-in from key operational and functional leaders throughout the company.

To develop the policy, the company should form a cross-functional and cross-regional task force. This not only ensures a more holistic, and ultimately effective, corporate policy, but also begins to distribute ownership for human rights to key functions and regional staff throughout the company.

### *Assessing human rights impacts*

In retrospect, it seems clear that many of the companies that initially pledged support to the Global Compact – in good faith – had no clear idea what it meant for them ‘to support and respect the protection of internationally proclaimed human rights within their sphere of influence’ as well as ‘to make sure their own corporations are not complicit in human rights abuses’ (see Global Compact Principles 1 and 2). Most companies make an intuitive assumption that they are operating lawfully and ethically, and therefore there are no human rights violations through their own activities.

Nonetheless, experience shows that it is inadvisable to assume that there are no issues. The wisest course of action is to conduct a thorough human rights impact assessment. Through a process of (1) defining ‘material’ human rights issues, (2) assessing risks and opportunities associated with those issues and (3) obtaining the views of important stakeholders on a company’s risks and opportunities *vis-à-vis* human rights. These steps can enable a company to develop a strategy and operational practices that translate international human rights principles, certainly including the Universal Declaration, into practical guidance.

When conducting the assessment, there are three broad factors to consider:

- *The country context* in which their business activities take place, in order to highlight any specific human rights challenges they may face.
- *Their own human rights impacts*, e.g. in their capacity as producers, service providers, employers, or neighbors.
- *Potential human rights impacts of others* with which they may be associated, such as with business partners, suppliers, state agencies and other non-state actors.

We have begun to see the development of assessment tools that companies can implement for this purpose. Some companies have adapted pre-existing environmental and political assessment tools to include human rights considerations.<sup>4</sup>

One of the authors of this chapter participated in several human rights assessments of the pharmaceutical corporation Novartis using the Human Rights Compliance Assessment tool developed by the Danish Institute for Human Rights. In a nutshell this, was the experience undergone: while no unpleasant surprises requiring immediate corrective action were found, a number of issues that had their roots in local cultures or religious practice (e.g. no equal benefits for ‘non-traditional families’; ‘imported’ grievance mechanisms that were inappropriate in the local cultural context; limitations on cultural dress and religious practices in sensitive areas) were found. Part of the issues found were minor, others were clearly of a temporary and technically explainable nature and could be solved by minor changes. The most important result, however, was that after the HRCA there was a much higher degree of understanding of the ‘human rights and business’ challenges and a much higher sensitivity with regard to differences in judgement due to differing cultural backgrounds.

The very process of conducting human rights assessments plays a significant role in sensitizing managers to non-traditional questions like human rights. It may be that this impact, while intangible, is the single most important change resulting from a human rights impact assessment. It is also valuable for companies to undertake their own assessment, proactively, rather than responding defensively to challenges from outside.

Equally, however, it is essential to integrate external perspectives into company assessments. Human rights is a new topic for business, and few – if any – companies have all the perspectives, skills, or networks needed to assess human rights conditions effectively on their own. This is especially true in light of the fact that human rights dilemmas often arise in highly complicated – and sometimes conflict-ridden – political environments. Interestingly, many companies have also come to appreciate that their judgments are significantly enhanced through dialogues with human rights and other relevant civil society organizations that have in the past been adversaries.

<sup>4</sup> See, for example, [www.humanriughtsbusiness.org](http://www.humanriughtsbusiness.org).

This is in part because of the fact that such organizations can help companies get a grasp of the ‘opinion and judgement market’ on which opinions and judgments about company actions are based. Finally, this kind of partnership can also lead to collaborations that can expand a company’s latitude for effective action, as multi-stakeholder efforts can sometimes unlock solutions that business alone is unable to achieve.

Collaborative dialogue is central not only between companies and civil society actors, but also *within* companies. Within companies, opinions and judgments about human rights often differ. Managers whose workplace is located in countries with poor human rights conditions will have different perspectives than those in other, calmer locations. Purchasing managers will have a view of things that differs from that of communications officers, and so forth. Significantly, the view of the legal department may be quite different, especially in light of the risk of cross-border liability in some jurisdictions, notably the US, by virtue of the way in which US courts currently interpret the Alien Tort Statute of 1789. A serious analysis of potential vulnerabilities and corresponding guidelines for corporate activities in sensitive areas are a credible first ‘good faith effort’. For all these reasons, companies also benefit from adopting a cross-functional approach to mapping human rights issues and identifying systematic company efforts that cut across all relevant functions.

Internal consultation processes are not only valuable to gather the heterogeneity of views available in the company but also necessary to eventually broaden ownership for what has been decided as guidelines and management processes. Experience shows that when something is perceived as being imposed ‘from above’ it will have a smaller effect in daily practice than if something is perceived to be ‘our’ decision. If a policy change is perceived as a threat (to investment plans, marketing policy, customer relations and so on), it may – despite the decision being taken at the level of corporate policy – lead to passive resistance, cover-up practices and refurbishment of some Potemkin façades.

### *Developing and implementing a human rights strategy*

After a thorough human rights impact assessment has identified the company’s human rights risks and opportunities, and assigned a



degree of materiality to each one, the company is ready to develop a strategy and implementation plan. The company should clarify the scope and limits of corporate human rights responsibilities, and identify key priorities – not to disregard lower priority impacts entirely, but to allocate resources strategically.

Effective human rights strategies will differ not just from sector to sector, but from company to company. An oil company may prioritize human rights impacts related to security, while an Internet company is likely to prioritize privacy and free expression. Even within a specific sector (the pharmaceutical industry, for example, and this between research-based and generics companies), different problems will lead to different decisions regarding corporate human rights policy. A look at the different COP submissions to the Global Compact Office can help potential Global Compact participants to learn from other companies' experiences.

To implement the company's human rights strategy, which has identified the most material human rights risks and opportunities, a 'normal' management process has to be implemented – that is, managing the human rights impacts in compliance with the company's human rights policy becomes part and parcel of normal business activities. These processes will vary from company to company. Some key elements of this process are (see also Amnesty International and The Prince of Wales Business Leaders Forum 2000: 30):

- Appoint a senior manager – member of the Executive Committee to have executive oversight for human rights, and serve as an executive sponsor and spokesperson for human rights internally and externally.
- Designate an operational manager with day-to-day responsibility for human rights.
- Raise awareness for human rights throughout the company by launching an interactive communication and learning campaign targeting all employees in all major corporate languages.
- Deliver internal training of key personnel, including corporate functions and operational or 'field' managers, using best practice case studies.
- Conduct ongoing engagement with key human rights stakeholders to provide an 'out-of-the-box view'. Alternatively, integrate human rights into existing stakeholder engagement processes.

### *Measuring and Reporting on Performance*

A comprehensive system to measure and report on performance will ensure that human rights impacts are effectively managed and that stakeholders – both internal and external – remain informed. In addition, reporting regularly on human rights performance can serve as an early warning system for the company. Human rights impacts evolve constantly and quickly – transparency and stakeholder engagement can help the company spot these changes as they happen, allowing for proactive management of emerging challenges.

The company should take the following steps:

- Develop *measurable indicators* – qualitative and quantitative benchmarks that are relevant to the human rights impacts the company has identified and that allow the company to measure progress on implementation. The Global Reporting Initiative's (GRI) G3 Reporting guidelines include a set of human rights indicators that can be used as a guide. The GRI, along with the Global Compact, is currently developing more specific guidance on human rights reporting.
- Set *key performance indicators* (KPIs) to measure progress on implementation and address the most material human rights impacts. Human rights performance is often very difficult to measure – especially on a quantitative basis. Training units delivered, or complaints received, investigated and resolved are examples of possible KPIs for human rights.
- Create *incentive systems* related to human rights performance for staff with operational or executive responsibility.
- *Measure performance* against the established indicators and KPIs. The data collection process for the annual or Corporate Social Responsibility (CSA) report could serve as a good mechanism to collect this data.
- Develop and implement an *auditing system* with external verification.
- *Report on the performance annually*, using the CSR report or a separate reporting mechanism. Human rights reporting should include performance against KPIs and other relevant indicators, and provide context where necessary.

Implementing a comprehensive strategy and management system for human rights will take some time. The company should set milestones

to ensure completion. If this is done, the promise ‘to support and respect the protection of internationally proclaimed human rights within their sphere of influence’ as well as ‘to make sure their own corporations are not complicit in human rights abuses’ (see Global Compact Principles 1 and 2) will become part of normal business activity.

It is important to note that human rights management is not a project that has a clear beginning and end, but is an ongoing process of continuous improvement: As the circumstances change, as the debate on human rights and business progresses, and as new insights and innovative ways of dealing with human rights-related business challenges appear, corporate management must regularly reassess its approach and take corrective action if and when necessary.

### **Conclusions, outlook and recommendations**

A great deal has changed since fifty companies gathered in New York in 2008 and adopted, amongst other things, the human rights principles in the Global Compact. The ‘business and human rights’ discussion will continue along with and beyond the work of the Special Representative. Companies are well advised not to leave the further elaboration ‘on the scope and content of the corporate responsibility to respect all human rights and provide concrete guidance to businesses and other stakeholders’ (United Nations Human Rights Council 2008a: 3) exclusively to John Ruggie and his team but to actively participate in the academic, political and public debate on the issue. Ruggie’s initial framework has been so successful in large part because of the widespread active participation from business, civil society, academia and government. Again, the Global Compact can contribute immensely by organizing more regional and sector-specific learning forums and inviting a mix of leading and ‘beginner’ companies in order to enhance cross-corporate learning.

Companies are likely to face increasing public expectations, more political pressures and more intensive requests to proactively manage human rights impacts. At the same time, those impacts will continue to evolve quickly. One of the key drivers, information and communications technology (ICT), continues to progress, reshaping the associated human rights impacts for business. The 2009 Business for Social Responsibility (BSR) series ‘Human Rights in a Wired World’ sheds

light on the impact of technology on human rights, and the resulting challenges for business.<sup>5</sup> Highlighting many human rights impacts for companies in all sectors that were not part of the business and human rights debate even a few years ago, the series illustrates the need for ongoing reassessment and, most importantly, continued dialogue between business and the stakeholder community.

Enlightened companies will not define their mission too narrowly. Being aware of their responsibilities as corporate citizens, they will measure their success more comprehensively than just in terms of quarterly profits. The Global Compact's Principles of support and respect for human rights, for fair social and environmental standards, as well as for a commitment against corruption is not only the 'right thing to do' – there is a plausible 'business case' as well. It is about more than safeguarding the company's reputation: decent and safe workplaces, treating employees with dignity and respect, fighting discrimination and promoting diversity in all layers of employment and creating constructive and supporting relationships with the neighboring communities – all these elements of human rights-related corporate responsibility are good for sustainable business success. All four elements of the Global Compact will remain pillars of any relevant corporate responsibility concept – but human rights will continue to play a special role as their respect is non-negotiable, not relative and thus expected to be absolute. This is especially true for times of economic crisis.

For sustainable progress in human development, there is an immense need for collective action by all who can make a contribution. Investing capital, improving productivity, creating employment and thus income, developing human resources, transferring technology and skills, as well as empowering people by providing a broad range of products and services: there can be no doubt that the private sector can play an important role in achieving the MDGs.<sup>6</sup>

The 'human factor' within management may well be the single most important aspect: the UN Global Compact does not offer a concrete standard to be met but challenges companies to reflect on its principles and innovate ways to implement them effectively (and be accountable for them). This reflection process can be narrow or enlightened, it

<sup>5</sup> The complete series can be downloaded at [www.bsr.org/research/human-rights-wired-world.cfm](http://www.bsr.org/research/human-rights-wired-world.cfm).

<sup>6</sup> See, for example: Commission on the Private Sector and Development (2004) and Witte and Reinicke (2005).

can involve considerations beyond the limited definition of business and its responsibilities and it can stop at the factory gate. It ultimately depends on the existing corporate culture and value system. Enlightened and imaginative managers are needed to fill the two Global Compact human rights principles with life. Creativity and innovation is a normal part of management success – why not test it for human rights and business purposes? Maybe leaders come up with ‘Islands of Respect for Political and Civil Rights’ or ‘Social Contracts for Economic, Social and Cultural Rights’?

The complexity of human rights and business endeavours can be shown, for example, by its employment dimension. Beyond the obvious essentials such as eliminating forced and child labor, an enlightened approach will include attention to the issues of a living wage, promotion of the right to equality of opportunity, the right to work in healthy and safe working conditions, and improving the employability of working poor – to mention just a few.

Business is a major engine for economic growth and – in combination with good governance – an essential element for social development and the fulfillment of economic and social human rights. Corporate management is therefore most often a force for good in many respects (Birkinshaw and Piramal 2005). The most crucial precondition for this is that corporate successes are not achieved with collateral human rights damages. There are signs that those who ‘care’ are starting to win on the financial markets.<sup>7</sup> Our hope is that civil society and the media will increasingly and publicly differentiate their judgments on multinational corporations (MNCs) and will provide reputation capital to those that have a measurably superior corporate responsibility record.

Last but not least, with human rights as much as with global social and ecological issues, one imperative has to be stressed – namely, the imperative of collective action. Sustained improvements in the global human rights situation can be achieved only if all relevant actors, government, civil society and the private sector are addressing the human rights challenge collaboratively. None of the actors can do the job alone – but together, we may get it done.

<sup>7</sup> See, for example, Global Compact (2004b). Some pension funds, e.g. the Dutch APG group, have explicitly asked companies to publish a human rights policy (see also Umlas 2009).