

## SUPPING WITH MAMMON

### BUSINESS MUST NEED BUT MUST NEVER EMBRACE HUMAN RIGHTS

What are we to make of the explosion of interest in human rights among businesses in the past ten years or so?

That it has occurred is clear for all to see. Most of us know about the [Global Compact](#), described on its [web site](#) as the 'world's largest corporate citizenship and sustainability initiative' with some 8,000 participants in 5,300 businesses across 130 countries in the world. Its [first principle](#) is that 'Businesses should support and respect the protection of internationally proclaimed human rights' and its [second](#) that 'Businesses should make sure that they are not complicit in human rights abuses'. The Compact's approach to human rights is explicitly informed by the content of [the Universal Declaration of Human Rights](#).

But the Global Compact is only the start. Since it was agreed on 26 July 2000 we have seen the following:

- [The OECD Guidelines for Multinational Enterprises](#) that have grown into a large-scale system for the guidance of business since they were initiated in Summer 2000, with a large-scale [revision](#) currently underway.
- [Voluntary Principles on Security and Human Rights](#) started in late 2000 as 'a set of voluntary principles to guide Companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms'. These are now used as a benchmark by many companies operating in regions and industries that require a high security component.
- [The Extractive Industries Transparency Initiative](#) (launched by Tony Blair in 2002)

And then there are the older, established approaches that have flourished over the past ten years:

- [The Ethical Trading Initiative](#) which has grown from modest beginnings in pre Compact days to become a 'ground-breaking alliance of companies, trade unions and voluntary organisations' dedicated to improving 'the working lives of people across the world who make or grow consumer goods'.
- [The Global Business Initiative on Human Rights](#) working since the mid 1990s and now on an extensive scale to build 'commitment among business around the world to respect human rights'
- A burgeoning of the long established work of the [International Labour Organisation](#), more particularly its [Principles on Multinational Enterprises and Social Policy](#)

The subject is growing all the time. There is now talk of an [international agreement on the control of private military and security companies](#) and a deepening of [corporate responsibility](#) for the fast-emerging [human right to water](#)

## THE UNITED NATIONS AS WELL....

And all of this can be mentioned without referring to the king of the field, [John Ruggie](#), professor of international affairs at Harvard University but – much more to the present point – since 2005 the UN Secretary-General [Special Representative on Business and Human Rights](#). Ruggie has proposed a framework for engagement which rests on [three pillars](#): the state's duty to protect human rights; the corporate responsibility to respect human rights; and the securing for victims better access to remedies (both judicial and non-judicial) for breaches of their human rights.

Professor Ruggie is currently consulting on [29 Draft Principles](#) which he hopes will frame engagement in this area for the next many years. Have a look at these principles. (The Special Representative's [on-line forum](#) will be open until the end of January – why not register and have your say?)

## BUT HOW CAN HUMAN RIGHTS FIT HERE?

I was once asked to debate with a senior vice-president of a major company the merits of the [the Universal Declaration of Human Rights](#). His company had 'signed up' to the Declaration in the aftermath of allegations of serious abuses of human rights that had been levelled against contractors that had been working for them in a part of their commercial empire. He was proud of his company's commitment and wanted to push it further.

But what does it mean for a company 'to sign up' to the Declaration like this? There is no mechanism for such an event. A corporation is not a state and international human rights law is aimed squarely at states. Glance at the rights set out in any of these documents and you see an assumption about state, not corporate (much less individual) action – not just liberty, expression and so on, but health, social security, education et al as well.

Duties are imposed on states to deliver human rights protection, in the words of Ruggie it is they who have 'to protect' and 'to respect' human rights and to provide remedies where they are breached.

Corporations are either the subjects of human rights law (able to avail of it against the state when things go wrong) or they can be instructed by state law to act in a way which protects and respects the human rights of others.

*But they are not in themselves responsible for the human rights of anybody.*

The UN system is based not only on human rights but on respect for national sovereignty – we saw that in [common track three](#). This is one further manifestation of that conundrum that perpetually dogs international human rights law, its co-equality with states, great and large ....

## ... AND WEAK AND SMALL

Here is a further rub, a [Catch - 22](#).

The weaker the state the greater its citizens need the international human rights that the state (through its weakness) is practicably incapable of delivering. And such weak states are often exactly the places which, being resource-rich, have attracted multinational companies from more stable and prosperous parts of the world.

It is absurd to think of these states as capable of fulfilling their duties under international human rights law. Take another look at the [international agreement on the control of private military and security companies](#). It's the saddest example of this I have come across – built on a fantasy of state power but without the slightest acknowledgement that it is precisely the absence of such power which is the reason the convention is needed in the first place – you want to yell at every page, 'why the state can't do this, that's why there are private military, wake up!'

These weak states are not equipped and/or inclined to provide for the human rights of their own people.

And they are not transformed for the better like some [spinach-eating Popeye ruler](#) by the arrival on their doorstep of powerful transnational entities hungry for what lies in, under or around their land.

More often it can drive them into corrupt free-fall.

Corporate concern for human rights has grown in this gap between the ideal of universal human rights and the incapacity of states to deliver them. It is a creature of the systemic divide (states v people) that is at the heart of our international polity.

## WHY BOTHER?

Critics on the right and left unite in declaring that it is not the role of companies to fill this gap.

To the right, it is a vast distraction from the task of profit maximisation that is the corporation's only real concern and purpose. Such critics regard the very fact of the state as a concession and income tax as about as far as they are prepared to go by way of concession to 'Big Brother'. The rest is do-goodery, political correctness gone mad. Companies have no business going about the place regulating the labour market, funding schools and building hospitals, or whatever it is.

The left sees in corporate social responsibility the latest capitalist trick to force our eye of the ball of capitalist intention, to distract us from its core task of alienation and oppression in the pursuit of profit. Better to have the thing exposed than dressed up in these shabby ethical clothes which in any event do little that is tangible to improve lives in any long-term, sustained kind of way, lives that are brutally damaged by the capitalist world into which they are born (whatever swaddling clothes the capitalists might give them until they are old enough to be exploited). My former colleague at LSE Ivan Manokha has written a very good book along these lines, [The Political Economy of Human Rights Enforcement](#).

I think neither position works.

The first is too brutal about what capitalism entails, the second too blasé about any kind of alternative we might want credibly to set up in opposition to it.

Capitalism is not a thing-in-itself; it is a creature of humanity. However much it might pretend to be thriving in a state-free state of nature, its existence depends entirely on state action, the police to protect property, the courts to enforce contracts, ultimately an army to keep the people away from the (very few) capitalist winners. Capitalism cannot pick and choose what the state may and may not do.

It is the people through their representatives who can impose what they want.

Yes, democracy made capitalism possible – but nowadays democracy sets the terms of the debate.

## AND THE LEFT?

Yes corporations do use human rights as a slogan, a brand to give an ethical content to their core (profit-making) business. They talk this talk and yes they do not always do what they say. (Walk-the-walk is the cliché desperately trying to escape into the text at this juncture, and it has succeeded – spot the deliberate(?) error in the [Cambridge Online Dictionary!](#)).

I digress. Back to the main point.

I say this to the left-sceptics:

- Remember last week's track on [the value of hypocrisy](#) ? This is another example of where double standards can be used to good effect, forcing practice into line with web-site theory.
- Large corporations are like governments in that they are made up of many disparate elements. Some of which will be as keen on human rights as the most enthusiastic NGO. They need support in their battle with 'the enemy within' in order to establish a true commitment to human rights. The last thing they need (the thing their corporate antagonists want most) is for human rights concessions by corporations to be *written off from the start* by human rights activists.
- Can you imagine a world of capitalist power without any of this ethical self-control? It is easy to see what kind of place that would be, and it would not be attractive from a human rights point of view.
- But can you also equally imagine a non-capitalist world – the one you desire – in which such branding exercises are not necessary because the peoples of the world are well catered for by the simple fact that they now live in a non-capitalist society? Harder? Yes I thought so!

## BACK TO RUGGIE

I am with John Ruggie in what he is trying to do. In fact I am near lost in admiration for his determination to tackle the hard conceptual as well as the soft ethical aspects of this tricky subject.

So what's his answer?

Have a look again at the [29 Draft Principles](#).

In essence:

- Run with the state duty to protect human rights as a foundational principle. But try and get properly functioning countries to expand their human rights remit to cover the behaviour of home corporations when playing away from home, in less secure, more vulnerable places (weak states).
- States should be especially vigilant when corporations from their countries are getting involved in conflict zones and should work with them carefully from the start on this, making sure the temptation to excess is not given in to through a seductive belief in impunity.
- Businesses should agree to respect human rights and drill this respect right down through the company, so that everyone is on board and sees it as part of the corporate mission and not a luxury add-on.
- Where a business finds itself operating in a weak state, so weak it cannot really stand up for the human rights of its citizens, then so far as their impact is concerned, corporations should act as though they were legally bound by international human rights law. *They should pretend to be states – albeit since they cannot do everything they must turn first to the most urgent necessities.*
- There should be a decent range of remedies available (judicial and non-judicial, including corporate) for people who think their human rights may have been violated by corporate engagement.

## LAST THOUGHT

*If we are all (reluctant) capitalists now, this is the kind of capitalist I'd prefer to be – a human rights capitalist – not a contradiction, just a new way of doing social democracy.*