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UN Guiding Principles on Business and Human Rights



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Synonyms

Guiding principles; Guiding principles for business and human rights; UN human rights guiding principles

Definition/Description

The endorsement by the Human Rights Council of the General Assembly of the United Nations of the United Nations' Guiding Principles on Business and Human Rights (UNGP) signaled a shift in how human rights are viewed under international law. This entry briefly discusses the international legal system and how the UNGP fits into that legal system. Furthermore, the entry also examines the theory behind the UNGP, the Protect, Respect, and Remedy (PRR) Regime. Particularly, the entry takes a look at the obligation of a state to protect human rights and provide adequate remedies for victims of human rights abuses, particularly those committed by private business enterprises. The entry also tackles the duty of

private business enterprises to respect human rights standards. In examining the UNGP and its foundational framework, the entry looks at the strengths and weaknesses of the UNGP framework, particularly the fact that the UNGP uses a system of obligations derived from international law that are imposed on states and a duty to respect human rights that is imposed on private business enterprises. Lastly, it identifies possible areas for future research.

Introduction

The recently concluded World Cup held in Qatar was a source of headlines not only for the sport of soccer but also for other issues, particularly those involving human rights. The New York Times reported that “Garment workers in Myanmar earn less than \$3 a day to produce soccer apparel for Adidas. Some say they were fired after asking factory owners for a raise” (Paton 2022). The entry further states that:

The Myanmar factory underscores the continuing struggle for many of South Asia's 40 million garment workers, who have long grappled with poor working conditions and wages, and whose troubles have been exacerbated by the pandemic. Now, with the biggest sporting event in the world underway, efforts by some laborers to improve their working conditions have been met with harsh resistance and punishment. (Paton 2022)

This highlights the growing tension between legitimate corporate or business interests and the need to uphold human rights in the international community. This is especially true in this age of transnational businesses. “The question has always remained one of how to strike the fair and workable balance between profit and human welfare” (Addo 2014).

The Legal Framework

International Law

To better understand the relationship between human rights and business, a dichotomy and distinction have to be made. Businesses and the entities that operate in this area such as corporations and transnational corporations are usually actors in a domestic legal system. They are governed by domestic or state law. As such, corporations, e.g., transnational or multinational corporations, such as Apple, Amazon, or Google, are beholden to the laws of the state where they are domiciled or incorporated. They are subjects of domestic or state law and rarely are directly subject to international law.

Human rights law, on the other hand, properly belongs to the sphere of international law. Traditionally, international law deals with the conduct of states and international organizations with each other. It does not usually govern the actions or relations of individuals or corporate entities. “Clearly, international law deals with the relations of states, international organizations, and in certain cases, individual persons, whether juridical or natural” (Goqingco 2020). “While international law, in its most basic and essential form, is a system of rules and principles governing the conduct of states, the way that international law operates is very different from how most people view law” (Goqingco 2020). Domestic law is very different in the way it operates. In domestic law systems, “[t]he law is not created by the members of the system but is rather imposed on them by a higher authority” (Goqingco 2020). This is not the case for international law. International law is made, obeyed, or disobeyed by the states who made it (Goqingco 2020).

Taking this dichotomy into account, the fact remains that human rights law is clearly an international law topic and subject. Deveraturda notes that “[t]he recognition of and mechanisms for protecting human rights are most often found in conventions or treaties, as well as declarations” (2021). As such, the treaties and conventions relating to human rights law such as the 1948 Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, and the International Convention on Economic, Social and Cultural Rights are designed to regulate the actions of states. These treaties impose standards and, more importantly, obligations on states and not on individual persons. As has been noted, “[t]he state-based system of global governance has struggled for more than a generation to adjust to the expanding reach and growing influence of transnational corporations” (Ruggie 2007).

The United Nations’ Guiding Principles on Business and Human Rights

On 16 June 2011, the Human Rights Council of the General Assembly of the United Nations endorsed the Guiding Principles on Business and Human Rights. The UNGP presents a framework designed to enhance the respect and observance of human rights standards by businesses, particularly corporations and transnational corporations. The UNGP is founded on three principles or pillars, namely, protect, respect, and remedy, also referred to as the PRR regime. It should also be noted that the UNGP also formally recognizes “[t]he role of business enterprises as specialized organs of society performing specialized functions, required to comply with applicable laws and to respect human rights” (General Principles, 2011).

The first foundational pillar is that of protecting human rights. “States must protect human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudications” (UNGP, Principle 1, 2011). Clearly, the primary responsibility to protect

human rights lies with a state. It is the state's primary obligation not only as provided for in the UNGP but also as provided for in the various human rights instruments.

A state must enact measures that will allow the effective grant and implementation of human rights and human right standards within its countries. Furthermore, The UNGP further provides that this protection should extend to human right abuses perpetrated by third parties, including business or corporate entities. (UNGP, Principle 1, 2011). This is a departure from traditional thinking that human rights abuses are only committed by states or governmental actors. By providing that human rights protection is the primary responsibility of the state, the UNGP remains consistent with international law as human rights treaties and conventions are binding on states and not on nonstate actors.

Furthermore, "States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations" (UNGP, Principle 2, 2011). Clearly, this sets the tone that a state is required to oversee and regulate business enterprises and their compliance with human rights standards within their jurisdiction. Moreover, this obligation of the state is not limited to the activities of businesses within their territory but to business activities that may extend beyond the territorial jurisdiction of the state.

The second foundational pillar provides that "[b]usiness enterprises should respect human rights. This means that they should avoid infringing on the human rights to others and should address adverse human rights impacts with which they are involved" (UNGP, Principle 11, 2011). As opposed to a state's fundamental duty and obligation to protect human rights, a business enterprise is obligated to respect human rights. It creates a very different obligation that takes into account that business enterprises are not the proper subjects of international law.

The UNGP does not impose any obligation on private entities, particularly corporations and transnational corporations, beyond that respecting the fundamental human rights of people. This reflects the basic principle that "human rights

apply to everyone simply by virtue of their being human. Simply put, it is that human rights are to be claimed and enjoyed by all, arising out of their inherent entitlements by virtue of being human beings" (Deveraturda 2021). As such, private entities are enjoined to respect human rights.

Moreover, the UNGP provides that "[t]he responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, or operational context, ownership and structure" (Principle 14, 2011). This "responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work" (UNGP, Principle 12, 2011). It should be noted, however, that the UNGP does allow for some flexibility in this responsibility to respect human rights. The UNGP provides that "the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts" (Principle 14, 2011).

The third foundational pillar provides that:

As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy. (UNGP, Principle 25, 2011)

The UNGP imposes on a state the obligation to provide adequate remedies and measures to allow for redress for human rights violations, particularly those committed by corporations and multinational corporations. These remedies can either be through judicial (court action), administrative, legislative, or other means. The obligation of the state to provide for adequate remedies goes hand in hand with its obligation to protect human rights. For, if there are no suitable remedies available to victims of human rights abuses, the duty of the state to protect is rendered meaningless.

It is worth noting that the UNGP also provides that there is a need “to ensure the effectiveness of domestic judicial mechanisms” (Principle 26, 2011). This includes “ways to reduce legal, practical and other relevant barriers that could lead to denial of access to remedy” (Principle 26, 2011). It is not enough for a state to provide remedies for redress of human rights violations. More importantly, the state should make sure that victims of human rights abuses are able to access the remedies.

Judicial mechanisms and the ability to access them are the core of guaranteeing effective redress of human rights abuses. More importantly, these remedies should not only be seen to be but should actually be impartial and have integrity.

Aside from providing judicial mechanism to allow for redress, the state is likewise obligated to provide alternative means for redress or remedy. Particularly, the state “should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse” (UNGP, Principle 27). This would allow for a complimentary system to that of redress by court litigation. Furthermore, private or nonstate grievance mechanisms should also be facilitated (UNGP, Principle 28, 2011). These nonstate mechanisms would allow for early redress and may actually lead to prevention of human rights abuses as would be victims would be given a forum where their concerns may be addressed at early stages.

Strengths and Weaknesses

The issue of human rights and business is not a new one. As one author highlighted:

Fueled by the escalating reports of corporate human rights abuses, especially in the extractive and the footwear and apparel industries, the UN Sub-Commission on the Promotion and Protection (Sub-Commission), a subsidiary body of the then Commission on Human Rights composed of twenty-six more or less independent experts established a working group on business and human rights in 1998. (Ruggie 2007)

The situation has not changed. In fact, Reif provides that:

It is generally accepted that business conduct can directly result in human rights violations or render the business complicit in human rights violations committed by state or non-state actors. While domestic businesses impact negatively on human rights, the conduct of multinational corporations (MNCs) is also problematic given their operations in many nations, the Global South, and conflict-affected areas. (2017)

Moreover, another author notes that:

Some of the most severe and widespread forms of corporate human rights abuse include the dislocation of indigenous communities without compensation or consultation, the impairment of people’s health and safety due to unfit working conditions and destruction of the environment, the leaving of individuals’ data to government agents, the denial of freedom of expression and of association, discrimination and sexual harassment at the workplace, and sweatshops, bonded labor, and child labor in the transnational supply chains of global brands. (Wolfsteller and Li 2022)

While the UNGP provides a framework for interplay between human rights protection and business interests, “a broad responsibility for the protection of human rights within the corporation’s sphere of influence is still far from being universally accepted” (Wolfsteller and Li 2022). This shows that the current regime provided for by the UNGP does offer a mixed bag. There are both strengths and weaknesses.

What immediately stands out is that the UNGP are merely guiding principles. In the field of international law, the UNGP can be considered a declaration. Deveraturda provides that “a declaration is a document that in itself is not legally binding. It is often a means of stating general principles of international law, in this case the general standards of recognizing, promoting, and protecting human rights” (2021). Thus, the UNGP is not a binding instrument in the same sense that a treaty or convention is. “While not on the same plane of enforceability, a declaration express the ‘will, intention, or opinion when acting in the field of international relations,’ often leading to treaties or customary international law” (Deveraturda 2021).

This lack of binding force on the part of the UNGP is its major weakness, particularly with

reference to the second foundational pillar of business entities to respect human rights. Absent a formal legal system that forces business entities to comply with human rights obligations, there will always be a wide latitude for human rights violations. In fact, it is clear that “there is a persistent unwillingness among governments to introduce more stringent regulations for the corporate sector” (Wolfsteller and Li 2022).

Furthermore, some authors note that:

“[I]n the absence of a centralized and effective international regulatory body or system, corporate human rights accountability is regulated by a patchwork of national and international rules, laws, and standards with differing degrees of bindingness and enforceability, often dealing only with specific rights norms and/or types of companies with a particular state or region.” (Wolfsteller and Li 2022)

The very nature of the international legal system in its current form is the other major weakness of the UNGP. As has been discussed earlier, international law, including international human rights law, has for its subjects states and international organizations. International law very rarely covers the actions of nonstate actors. “[T]he international human rights regime is primarily designed to protect human rights from interference by state actors. The UN treaty regime imposes direct legal obligations only on states and applies to private businesses rather indirectly and in a very limited way” (Wolfsteller and Li 2022).

On the other hand, the fact that the UNGP is not an international treaty or convention, it neither creates new international law obligations, nor does it limit or undermine any legal obligation a state may already have under international human rights law. This allows some sort of flexibility and leeway for states to enact measures using domestic law to be able to bring business enterprises into the legal framework of which they are not naturally part of. By not creating new normative standards but rather elaborating the implications of existing standards and practices, the UNGP is able to bring into its fold and impose, in a way, certain commitments on business enterprises (Addo 2014).

The UNGP, as one author notes:

[A]re not just another layer of corporate governance but a sophisticated and refined synthesis of existing standards and mechanisms that integrate both voluntary standards and legally compelling standards. This so-called ‘smart mix’ of governance mechanisms is original and unique to the PRR regime and underlies the importance of complementary responsibilities for all stakeholders as an indication of shared commitment to ensure the effective application of the [UN]GPs. (Addo 2014)

Summary

International human rights law has always been the domain of states and international organizations. However, the intersection of private business interests, particularly corporate profit-seeking, has resulted in clear instances wherein human rights have been violated. With states being the traditional subjects of international law, a gap on how to govern private business was a legitimate concern of the international legal system.

In June 2011, the Human Rights Council of the United Nations endorsed the UNGP. This was a radical and bold step to change how human rights are viewed, particularly with regard to private actors. Instead of making corporations, including transnational corporations subject to international law, something that has faced resistance and criticism, the UNGP introduced a framework that combined both international obligations of states with certain responsibilities on private entities.

The introduction of a framework which allows for a better realization of imposing human rights standards on private enterprises was unheard off. The UNGP, it must be remembered, “is not a governance or regulatory regime in and of itself but rather of platform of guidelines by which stakeholders may define mechanisms using either compelling regulatory mechanisms or indeed voluntary initiatives” (Addo 2014). In using the PRR (protect, respect, and remedy) regime, the UNGP has found a way of creating a system wherein states and private business entities are able to work together to be able to ensure the protection of human rights. The key characteristics of “flexibility, the smart of mix of processes and

substantive standards as well as the endorsement and uptake by stakeholders from different sectors” (Addo 2014) are what make the UNGP special and potentially the answer to human rights abuses by private enterprises.

As has been discussed, the UNGP is not the perfect answer. While it does have its strengths, there are shortcomings to be considered as well. Moreover, it must be remembered that in drafting the UNGP, certain considerations had to be made particularly that it had to have the broadest possible consensus among stakeholders, particularly business enterprises, and, at the same time, it had to steer clear of imposing new, direct, and legally binding obligations on corporations (Wolfsteller and Li 2022). In some cases, the UNGP raises more questions than answers. However, it is a start to answer a compelling problem faced by today’s world. It is better than nothing.

However, “[i]t remains an open question whether the responsibilities to respect and protect human rights can (and should) be translated into business principles so as to find broader acceptance” (Wolfsteller and Li 2022). Furthermore, it should also be asked “whether the aim of realizing human rights can in fact, be integrated into business practice in ways that are compatible with corporate profit-seeking in global market capitalism at all” (Wolfsteller and Li 2022). There are still no concrete answers to these questions. In fact, these are areas that future research may undertake. Ultimately, it should also be determined whether human rights standards provided for by international law can be legally enforced on private entities.

Cross-References

- ▶ [Corporate Governance](#)
- ▶ [Discrimination](#)
- ▶ [HR and CSR](#)
- ▶ [Human Rights](#)
- ▶ [UN Sustainable Development Goals 2030](#)
- ▶ [UN Universal Declaration of Human Rights](#)

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