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FROM OUR DESK

PIECES BY LAWHOUSE.DK

Recognizing the Vienna Declaration and increased business opportunities through the establishment of a level playing field possibly through hard law. This is part of the approach to CSR, Business and Human Rights advocated in four works by Lawhouse.dk.

The principled approach to CSR based on Human Rights is the trademark of Lawhouse.dk. There is a demarcation line going through the current CSR debate; does CSR embrace solely "voluntary initiatives and initiatives that go beyond the law" or should corporate responsibilities also include legal responsibilities hereunder existing and coming manifestations of international human rights? The position in Lawhouse.dk is that obligatory global measures should be established. This position leads to the distinction between Corporate Social *Responsibility*, which include legally binding obligations, and Corporate Social *Opportunities*, which are voluntary measures and initiatives: "Corporate Social Opportunities may be seen as a part of CSR, but the picture will not be complete before CSR includes a set of non-negotiable standards relating to how business treats its stakeholders and the environment; standards that all companies have the obligation to observe."

This quote illustrates the take in all four works cited bridging the gap between parts of the corporate world and in particular the ICC promoting straight-up voluntarism on the one hand and some NGOs' extensive legalism on the other.

UPCOMING LAWHOUSE CONFERENCE IN ALGERIA

For the first time in history, the Algerian government plans, in collaboration with the international business community and Lawhouse.dk, to arrange a conference on CSR in Algiers, Algeria, to take place in fall 07. The joint initiative makes the conference a unique opportunity for business to discuss CSR, Business & Human Rights in an Algerian context and to establish network opportunities with other businesses present in Algeria. Additionally, it provides for an exceptional opportunity to make contacts within the Algerian government and our other collaborators including the Algerian Chamber of Commerce and Industry and the Bar Association of Algeria.

The conference sets out to discuss the notion of Corporate Social Responsibility in an Algerian context, focusing on international as well as regional human rights instruments. By highlighting instruments such as the New Partnership for Africa's Development (NEPAD), the African Human and Peoples Rights Charter, ILO Conventions and the International Bill of Human Rights, the relevance and implications for business responsibilities of regional instruments in relation to international instruments will be explored. The conference will be of particular interest to managing directors from both private business and governmental organizations as key note speakers include the human rights advisor to the Algerian President and former president of the African Court on Human and Peoples Rights, Mr Mohamed-Kamel Rezag Bara.

Publications

Contemporary Directions for Business on Human Rights – Issues for exploration in relation to binding human rights obligations for business, Australian Journal of Professional and Applied Ethics, Volume 8, number 1, June 2006

ILO and CSR – minimum human rights standards for corporations
Not published yet.

Business & Human Rights – from protest to partner, Essays in honour of Morten Kjærum, 2007. The Danish Institute for Human Rights

Corporate Contributions to Sustainable Development Oil, Gas & Law Intelligence Vol. 5. Issue 2, April 2007
http://www.lawhouse.dk/upload_files/1177664288.pdf

For more information on attending or becoming sponsor to the event please contact Lawhouse.dk, Attorney at Law Ibrahim Taouti: ib@lawhouse.dk

BLIHR COPENHAGEN MEETING 14. -16. May 2007

Sune Skadegaard Thorsen from Lawhouse.dk has provided pro bono advice to Business Leaders Initiative on Human Rights (www.blihr.org) as expert advisor since its inception in May 2003. On the invitation of the member Novo Nordisk the now extended group of corporations including the most recent member, Coca Cola, met in Copenhagen on the 14 - 16 May 2007. The focus was to discuss and further develop the BLIHR matrix and to continue the work streams aiming at exploring how human rights can be applied in specific business contexts, hereunder illustrating the need for a common framework on business and human rights to support sector and business-specific work.

In addition to the internal work the 14 corporations invited expert visits and presentations from various stakeholders during the two day meetings. In Copenhagen the Danish Ministry of Foreign Affairs, the Danish Institute for Human Rights, International Alert, International Business Leaders Forum and Shell provided for interesting insights into various aspects of business and human rights. Also the group now enjoys the permanent attendance from Ms. Christine Bader who participates on behalf of 'team Ruggie', the working group around the UN Special Representative on Business and Human Rights, Prof. John Ruggie.

On a separate assignment from BLIHR Mr. Thorsen is heading the work stream that relates to the proposition of a level playing field on human rights for business. The meeting demonstrated well the challenges that arise from bringing businesses operating in basically different cultural and, not least, legal traditions together. The human rights leaders will meet next in San Francisco in September to continue the work of how best to address corporate responsibilities on human rights.

NEWS

Chevron accused of covering up human rights abuses in Nigeria · 14. March 2007

In the US District Court in San Francisco judge Susan Illston established there is sufficient evidence to imply that Chevron may have covered up its complicity in human rights violations in Nigeria committed by Nigerian military. In 1999, Chevron was sued by nine Nigerian plaintiffs at the federal court in San Francisco, with charges of murder and other abuses in two incidents. During these incidents the Nigerian military used helicopters and boats allegedly owned by Chevron. The judge confirmed that there was evidence that Chevron did assist its Nigerian subsidiary, known as "CNL," in these operations and that Chevron later on had tried to cover up the incidents, thereby rejecting the motion for dismissal of the court case. The plaintiffs have filed ten claims against Chevron, covering crimes against humanity to wrongful deaths. One of the claims, under the Federal Racketeer Influenced and Corrupt Organizations Act, was dismissed for technical reasons. The rest will be processed at a later stage.

The plaintiffs' attorney, Judith Brown Chomsky, cooperating

attorney at Center for Constitutional Rights (CCR), views the ruling as a preliminary victory in the case against Chevron. Marco Simons, U.S. Legal Director at Earth Rights International (ERI), emphasizes that it once again is established that corporations can be held responsible for complicity in gross human rights violations under American law and draws parallels to the Unocal case, concerning human rights abuses in Burma. Chevron has argued that the case belongs in African courts.

http://www.earthrights.org/legal/pr/federal_judge_finds_that_chevron_covered_up_role_in_human_rights_abuses_in_nigeria.html

<http://www.iht.com/articles/ap/2007/03/14/business/NA-FIN-US-Chevron-Nigeria.php>

Comment:

For long, the American Alien Tort Claims Act has been an essential motivation for American companies to ensure non-complicity in gross human rights violations around the world. The law, which demands that American citizens respect US international obligations no matter where in the world they are, originates from the 17th

century, but was revived in the late 1990s, where a number of progressive lawyers used it to go after MNEs. So far no actual convictions have been made in the many cases brought to court. However, a number of decisions have, as this, determined the formal requirements to file and carry out lawsuits. Companies can only be held responsible for complicity in violation of norms, characterized as part of international customary law. Consequently, only a limited part of the wide portfolio of international human rights will be included. Corporations that have experienced that courts admitted cases for trials on the substance have typically settled the dispute out of court. It would be surprising if this case does not find its settlement out of court as well. Allowing cases of this nature to be tried at a public hearing will imply a major risk of publicly being forced to present incriminating material as well as a risk of the public painting a problematic image of the company for years.

Nokia sued by Hepatitis B carrier in China · 14. March 2007

A job applicant has sued Nokia in China after being denied employment, allegedly because

he was a Hepatitis B carrier. The trial, which is considered very unusual, is emphasizing a development where Hepatitis B carriers are turning to the law regarding what they call endemic discrimination against up to 120 million Chinese carrying the virus. The rejection of applicants carrying Hepatitis B is not uncommon in China despite the fact that the disease is primarily transmitted by birth, sexual contact or by needles.

In this case, it is alleged that the plan to hire the plaintiff was reversed as a consequence of a medical check, which revealed that the applicant was a carrier. The plaintiff claims Rmb 500.000 (\$ 65.000) in compensation for mental suffering.

Nokia stresses that it is not their global employment policy to reject Hepatitis B carriers, unless the employed would pose a considerable risk to others. Thomas Jönsson, director of communications for Nokia in China, informs that Nokia is aware of the case and will be taking necessary precautions to make sure everything is under control.

At present there is a rise in the number of cases related to discrimination in China. Cases are being tried under an inconclusive legislation, with courts that are inconsistent in its verdicts and with sporadic enforcement. The result of the inconclusive legislation in the area is that most cases concerning Hepatitis B are dismissed. Discrimination against Hepatitis B carriers was prohibited in 2004, but vague wording in law has led to carriers experiencing exclusion in a number of industries, such as the food industry. Hepatitis B has a very small transmission risk as opposed to the less dangerous Hepatitis A. However, it is alleged that pharmaceutical vendors instigate the fear of the disease.

<http://www.msnbc.msn.com/id/17602185/#storyContinued>

Comment:

Discrimination on the grounds of personal health profiles will be a

huge challenge in the future; not least as our ability to decode DNA is developed. HIV/AIDS discrimination was the first challenge, - now the Hepatitis B example indicates that a number of other diseases make life unnecessarily hard for those affected. With DNA analyses, it will be possible within a short time frame, to further evaluate health profiles of potential and existing employees, improving the chance of employing persons with healthy profiles thus avoiding high rates of absenteeism. With compulsory health checks as part of legislation in a range of countries the area becomes a huge challenge under CSR.

Position of Western industry on Chinese workers rights causes debate · 25. – 26. April 2007

The active attempt by western businesses and chambers of commerce to discourage the strengthening of Chinese workers rights has led to international debate. A bill aimed at guaranteeing Chinese workers e.g. in the areas of contracts, and collective bargaining has been under way since December 2005. In the course, western companies and chambers of commerce, including The EU Chamber of Commerce, have worked to counteract the passing of the law. Two chambers of commerce have threatened with decreasing their investments. A new draft of the law was presented in December 2006 and contained significant reductions in protection levels compared to previous draft. According to an article in the Danish newspaper "Information" on 26th of April 2007, Vestas, a Danish wind turbine producer, appears to support the work of the European Chamber of Commerce to discourage the passing of the act, whereas both Danfoss and Danisco have expressed critical positions towards the lobbying. Local positions that reflect well the international debate on the subject. Global Labor Strategies (GLS) has had a special place in the debate. GLS has published two reports mapping the developments until March 2007,

and are bringing attention to the fact that the lobbying to undermine increased labour protection in China continues.

Comment:

This example illustrates interesting tendencies in relation to the huge marketplace; China. Beyond the discussion on the obvious 'double standards' from MNEs, it demonstrates that the national Chinese labor union, which is the only lawful labor union in China, is starting to move. It is particularly interesting, but not surprising, that it addresses the conduct of foreign multinational companies. It corresponds to the development in relation to national anti-corruption initiatives in economic developing countries, where it is far more politically acceptable that international companies are uncovered as corrupt than national and often state owned companies. This tendency implies that MNEs must make an extra effort to behave properly in emerging markets, where legislation and systems are not yet in place to guarantee basic rights.

http://laborstrategies.blogs.com/global_labor_strategies/2007/04/post.html

http://laborstrategies.blogs.com/global_labor_strategies/2007/03/new_gls_report.html

http://laborstrategies.blogs.com/global_labor_strategies/files/undue_influence_global_labor_strategies.pdf

http://laborstrategies.blogs.com/global_labor_strategies/files/behind_the_great_wall_of_china.pdf

<http://www.washingtonpost.com/wp-dyn/content/article/2007/04/16/AR2007041601439.html>

http://laborstrategies.blogs.com/global_labor_strategies/files/behind_the_great_wall_of_china.pdf

EDITORIAL

INADEQUATE HUMAN RIGHTS MEASURES

States do not meet their responsibilities and corporations are 'regulated' by voluntary initiatives. The recent report from the UN Special Representative on Human Rights & Business shows that this is the state of affairs in the area of human rights and business.

All states have an obligation to protect against corporate human rights abuses. This duty to protect "lies at the very foundation of the international human rights regime" says John Ruggie, UN Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises in his recent report. In spite of this, states are either lacking the will or the ability to live up to this responsibility.

When states fail, soft law mechanisms and voluntary initiatives take over. And while the soft law mechanisms demonstrate "considerable innovation", the voluntary initiatives are challenged on their accountability provisions. These are in brief the core conclusions in Special Representative John Ruggie's report published on March 28, 2007. This brief summary on the report, which is in itself a 'summary', can only attempt to draw some lines out of the rich content in the 20 page report and the reactions that have followed.

The report is the result of the two-year mandate of Harvard professor John Ruggie, asking the special representative to "provide a comprehensive mapping of international standards and practices regarding business and human rights". It was presented to the new Human Rights Council in March. Two dozen research papers and three regional multi-stakeholder forums provide the basis for the report. Additionally, the Representative has participated in multistakeholder meetings on five continents; visited production sites in four industry sectors in developing countries; helped arranging four legal expert workshops and two multi-stakeholder consultations on the extractive and financial services industries; and engaged in multiple discussions with representatives of relevant multilateral institutions and government officials.

Five clusters structure the findings of the report.

- State duty to protect
- Corporate responsibility and accountability for international crimes
- Corporate responsibility for other human rights violations under international law
- Soft law mechanisms
- Self-regulation

These clusters seek to uncover the standards and practices governing corporate responsibilities and accountability. Responsibility is defined as the legal, social and moral obligations of a corporation. Accountability is the mechanisms of holding the corporation to these obligations. State duty to protect human rights "exists under the core United Nations human rights treaties as elaborated by the treaty bodies, and is also generally agreed to exist under customary international law". Unfortunately states appear not to live up to their responsibilities according to the report.

Another central point of the report is the current trend in international law towards an extension of the concept of complicity. This extension has consequences for corporations being held directly accountable for international crimes. However, this trend is not to be found in the area of "other human rights violations". According to John Ruggie "it does not seem that the international human rights instruments" discussed in the report "impose direct legal responsibilities on corporations".

The primary development in the area of business and human rights is found in the number of soft law initiatives. John Ruggie finds "considerable innovation" in these initiatives and despite "obvious weaknesses" they could in time crystallize into harder forms of law.

Finally, the report turns to voluntary initiatives. There are a number of voluntary initiatives, but while some show potential the overall picture is fragmentation, lack of consensus and inadequacy.

Based on the findings John Ruggie views the trend in relation to the extension of complicity in international crimes, the developments of soft law mechanisms, the gaps in state commitment to fulfil their duty to protect human rights and the inadequacy of voluntary initiatives as the most fundamental.

The responses to the report have mainly centred on the state duty to protect human rights and the discussion of voluntarism. There is general agreement that state shortcomings are a cause of great concern and that steps should be taken towards closure of the protection gaps left by state omissions.

In the Guardian, March 30, John Hilary comments the report: "Ruggie lays the blame at the door of governments". This finding is being backed by a joint oral intervention by Amnesty International, ESCR-Net, Human Rights Watch, International Commission of Jurists and International Federation for Human Rights, who articulate full support for the view, that states do not live up to their obligations. "National regulation of business conduct in relation to human rights is often inadequate and in general, victims of corporate human rights abuses have little access to meaningful justice". The intervention urges states to do "much more to regulate companies and to provide access to justice for these victims."

The report has already resulted in NGO pressure against state negligence. In a press release on March 28, the anti-poverty charity War on Want, takes the report as point of departure in criticizing the British government for being among the states, which are not meeting the challenge of international human rights conventions.

In relation to the debate on voluntarism perspectives are more diverse. On the one hand, a number of corporations, headed by the ICC, are advocating voluntarism. And according to "Financial Times", March 9 2007 Stefano Bertasi, policy director of the Paris-based International Chamber of Commerce, said the report "confirms the primary role of the state, not companies, in protecting human rights". On the other hand, large fractions of civil society and NGOs are supporting ActionAid's demand for "tougher measures". In an article in "Ethical Corporation", April 4 2007, Sir Geoffrey Chandler calls the debate "mired in controversy between the proponents of voluntary and mandatory measures, though history shows that voluntarism has never worked and that the law on its own is inadequate to control so protean an activity as business".

To John Hilary "One thing is clear". "The international community - and in particular the United Nations - must work towards a proper framework of binding regulations to protect against corporate human rights violations. Voluntary self-regulation is not an option."

Government representatives in the UN Human Rights Council also responded to the report on March 28 2007. Among the official responses, two distinct perspectives appeared. The UK and US both spoke in support of the voluntary approach. The UK representative said that the UN Global Compact was supposed to bridge the gap between different business sectors and different international standards. Warren W. Tichenor stated, "The United States remain committed to promoting voluntary corporate social responsibility initiatives in a variety of sectors throughout the world." In contrast to the UK and the US support for voluntarism, Mustafizur Rahman highlighted in relation to transnational corporations and human rights violations that if they were not tackled, the benefits of globalization would disappear. Bangladesh thus supported the idea of a regular monitoring instrument in this regard.

A possible explanation to this dividing line might be the relative power of corporate actors. Large corporations in the UK and US are very powerful and believe it to be in their best interest to keep regulation at a minimum. They may find that minimum standards conflict with their interest to keep the production costs in third world countries at a minimum. This also serve to explain the position of The European and American chamber of commerce in China towards tightened Chinese Labour legislation as they claim it will increase costs for companies and lessen their flexibility.

Consensus might be under way. At least the report opens a dialogue, which has been in a deadlock. "With the Angel Gabriel unavailable, Professor John Ruggie was an admirable choice. Ruggie handled his mandate with consummate skill, responding promptly and always courteously to the many messages he received, if on occasion with a tartness that a particular communication might deserve. He needed patience and deftness to steer between the Scylla of corporate hostility and Charybdis of NGO lack of realism." These are the words of Sir Geoffrey Chandler taken from the article mentioned above.

In conclusion, John Ruggie has painted an excellent picture of contemporary CSR in relation to 'Human Rights and Business'; a predominantly dark picture with specks of light. Whereas Rembrandt's use of light over time would bring his works great fame, we can only hope that the international community speeds up the attention and ensures that the specks of light in this picture are brought to life more rapidly enabling the creation of a contemporary masterpiece.

The report is highly commended. With the report Ruggie has laid the foundation needed to point to directions of an untenable situation. However, his mandate remains in the midst of strong political and economic interests and will require his full diplomatic grace. Ruggie has established what may seem to be an ideal starting point. Several states, including Denmark, are showing interest in the area and the corporate world seems to have settled for 'pragmatism' after 'the Norms' were rejected. NGOs keep a healthy scepticism, but are in dialogue too. It would be a shame if the mandate is not prolonged. This will remain unanswered until June at the next council assembly. Due to the pressure on the council on many other matters the extension is expected to pass without great discussion. However, the formation of the new council's general position on special procedures might get in the way of a decision regarding the extension of the mandate. If prolonged the Special Representative will have to provide for recommendations on directions to the international community; the most controversial part of the mandate.

The report can be found at:

<http://www.business-humanrights.org/Documents/SRSG-report-Human-Rights-Council-19-Feb-2007.pdf>

UP-COMING EVENTS

15 June 2007, A model for change: Upward harmonisation of OECD guidelines procedures, Brussels, Belgium
http://www.oecdwatch.org/docs/Draft_Programme_OECD_Watch_Roundtable.pdf

5-6 July 2007, Un Global Compact Leaders Summit, Geneva, Switzerland.
<http://www.globalcompactsummit.org/>

15-17 July 2007, Devonshire Hall, University of Leeds, UK: The CRR Conference 2007

<http://www.crrconference.org/>

20-21 September 2007, Barcelona, Spain: '6th EABIS ANNUAL COLLOQUIUM on "The Emerging Global Governance Paradigm: The Role of Business and Its Implications for Companies, Stakeholders and Society".
<http://www.esade.edu/eabis>

4-6 October 2007, Amsterdam, Netherlands: "The Anti-corruption summit"
<http://www.ethicalcorp.com/anticorruption2007/docs/Anti-corruptionSummit2007-070518.pdf>

9-10 October 2007, London, UK: How to manage responsible business in emerging markets?
<http://www.ethicalcorp.com/emergingmarkets/>

23-26 October 2007, San Francisco, USA: '2007 BSR Annual Conference'.
<http://www.bsr.org/BSRconferences/index>

LITERATURE/LINKS

Baderin, Mashood & McCorquodale, Robert: "Economic, Social and Cultural Rights in Action". 2007 Oxford University Press. <http://www.oup.com/uk/catalogue/?ci=9780199217908>

Galea, Chris: "Teaching Business Sustainability Vol. 2". 2007 Saint Francis Xavier University, Canada. http://www.greenleaf-publishing.com/add_getquantity.kmod?productid=2483

Sroufe, Robert & Sarkis, Joseph: "Strategic Sustainability, The State of the Art in Corporate Environmental Management Systems". 2007 Greenleaf Publishing.
<http://www.greenleaf-publishing.com/productdetail.kmod?productid=2467>

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