

Analysis: The Discussion Day on the UNCESCR's Draft General Comment on Business and Human Rights



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While corporations have globalized, international law has not. Countries remain the main duty-bearers under international law, and they often prioritize their economic interests over the human rights of the most vulnerable people in developing and emerging countries. February 21, 2017, was an important day for the advancement of human rights in business. The French Senate **adopted** the first national bill on mandatory due diligence processes for the biggest companies that are active in French territory. Meanwhile, the United Nations Committee on Economic, Social and Cultural Rights (hereafter: UNCESCR) **organized** a day to discuss its authoritative draft, "General Comment on State Obligations in the Context of Business Activities," in Geneva. I attended the latter discussion day. The main aim of UNCESCR was to contribute to the creation of a global level playing field, in which human rights are effectively protected by states and respected by corporations. But, in the end, the cooperation of states remains crucial to create an international level playing field, which rewards those corporations that are willing to invest time and money in improving their human rights performance. An overview of all the keynotes can be found on the website of the UN. I will discuss here the issue to which Oxfam devoted a major part of its keynote.

After complimenting the "proactive" approach of the UNCESCR, Oxfam questioned if corporations had been sufficiently involved in the drafting process. Co-rapporteur and committee member Olivier De Schutter pointed out that efforts had been made to accomplish this; the International Organization of Employers had submitted comments, and the Organization for Economic Cooperation and Development and the International Chamber of Commerce had also been approached. Oxfam went further by presenting a "business case for human rights" as a common thread through the entire keynote. The NGO generalized that the "costs of inaction are strong for businesses." Oxfam attempted to underpin this assumption by explaining that respecting human rights is beneficial to the bottom line of corporations since "consumers' trust in big corporations is at an all-time low". A serious weakness with the latter point, however, is that it is overly simplistic. In this contribution, Oxfam failed to grasp the issues at hand and added to the confusion that the UNCESCR wants to remedy.

It is true that some corporations can in some circumstances take advantage by focusing on voluntary strategies that leverage respect for human rights. Yet, this set of cases is by definition narrow. Respect for human rights does not generally result in a sustainable competitive advantage for firms. The limited space that is available here is sufficient to identify three important caveats.

First, most human rights violations do not capture the public attention. Civil society organizations undertake tremendous efforts to inform people of corporate human rights abuses. However, the data that NGOs collect have a built-in bias for branded consumer products and services of Western multinationals, which attract the attention of the media. The majority of products and services – such as those of Business-to-Business and non-Western companies – are never scrutinized. For instance, have you ever heard of a consumer who has second thoughts about the supply chain behind the ever-changing visual merchandising in shops?



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Second, even if people are informed of corporate human rights abuses, this knowledge does not per se influence their buying intentions. Increasingly people can choose from an endless list of tailor-made products or services. **Choosing** between all the available alternatives can be overwhelming. To simplify consumption decisions, people prioritize. While in theory, a consumer can buy a hand-stitched, child-labour free football in the color and fabric that he/she prefers, in practice, most consumers will simplify their choice process and focus on these attributes that are important to them, be it the color, the fabric or the circumstances in which the product is made. Consumers might have heard the sweatshop story too many times to consider it a priority concern in their buying intentions.

Third, even those informed citizens who try to avoid buying products or services connected to human rights violations are not always able to do so. The route from intentions to actual consumption behavior is **flexible** and not analytical. In everyday life, lots of activities and goals compete for people's limited resources, such as time and cognitive capacity. For instance, the informed and caring citizen might not have the energy to find and go to a store that sells footballs that are child-labour free after a long day of work.

This brief overview shows that Oxfam's generalized "business case for human rights" falls short. The advancement of corporate respect for human rights on the grounds of presumed economic benefits is an extremely narrow approach. Corporations that respect human rights can in many cases easily be undercut by less responsible corporations. The aim of the General Comment is not to facilitate business conduct, since there is no **magic in the marketplace**. Adequate, far-reaching and mandatory institutional underpinnings are needed if a change is to be on the agenda.

Although the UNCESCR cannot dictate that respect for human rights would always be beneficial for corporations, this treaty body can contribute to the development of a global level playing field, in which human rights are protected, respected and fulfilled. The Committee does this in collaboration with other UN treaty bodies and other international organizations that stretch further than national boundaries such as the International Labour Organisation.

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