



Teaching Business and Human Rights Workshop

Discussion Summary

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Overview

Individuals teaching business and human rights face a number of challenges. It can be difficult to find the right place in the traditional university curriculum for a relatively new, multi-disciplinary subject. A dynamic and evolving field makes identifying materials and structuring the course an ongoing task. Instructors experiment with the best ways to teach specific topics.

As demand for business and human rights education grows worldwide, the network of individuals teaching the subject is expanding. The inaugural Workshop, held in May 2011, convened twenty instructors from twelve institutions in the United States and the United Kingdom, and led to the creation of an online Forum to connect professors worldwide. The Teaching Business and Human Rights Forum has since grown to include more than eighty individuals teaching business and human rights at some fifty institutions around the world.

The second annual Columbia University **Teaching Business and Human Rights Workshop** brought together thirty individuals teaching the subject at twenty-one universities in nine countries.

The Workshop agenda reflected common interests and challenges faced by those teaching business and human rights at the university level, including:

- **Comparative Approaches**
- **Teaching Strategies**
- **Management Education**
- **Course Development**

This Discussion Summary captures the key points and themes from this year's Workshop.

Acknowledgements

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We are grateful to all Workshop participants, the Columbia University Institute for the Study of Human Rights and the Columbia Law School Human Rights Institute, for supporting the Workshop. Connecting with other teachers has strengthened our own courses. We hope that the Workshop discussion will spark further contributions as the field of business and human rights continues to evolve.

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I. Comparative Approaches

As the field grows worldwide, teachers are seeking to share comparative approaches to teaching business and human rights. This session addressed how the subject is being taught around the world. Four Workshop participants teaching on different continents - Africa, Asia, Australia and South America – made brief presentations on their courses and how *where* they are teaching influences their subject matter, methods and curricula. Key themes that emerged are: (i) addressing geographical and cultural differences among students; and (ii) teaching in context by highlighting connections between international and domestic issues, and (iii) contrasting developing and developed world perspectives on business and human rights.

A. Hong Kong

Farzana Aslam, “Business and Human Rights,” The University of Hong Kong

Background: The one semester seminar is an elective offered as part of the LL.M. (Human Rights) degree program. It is also offered as an elective to PhD students and other LL.M. students.

Methodology: Half of each three-hour session covers core content, required readings, questions and discussion. The other half consists of a case study or activity. In the first class, the professor outlines expectations and emphasises the importance of class participation. Case study examples include Shell, Unocal and Google. Activities include class presentations, such as board presentations and non-governmental organization campaigns; problem-solving questions where students are divided into small groups to brainstorm answers; and the compilation of a journal of newspaper articles followed by class discussion of reaction points raised by students in relation to such articles.

Challenges: Cultural differences. The class is a truly international mix of students, with some from Europe, some from the Americas and some from Asia, and at least one quarter of the class hailing from mainland China. The students from mainland China are not used to open discussions about human rights issues in a public forum. Further, those students are reluctant to challenge professors’ viewpoints as a mark of respect.

B. South Africa

Bonita Meyersfeld, “Human Rights in the Marketplace (Masters Course),” University of Witwatersrand School of Law, South Africa

Background: Business and human rights is taught at the graduate level and as a freestanding course during Winter School and a Graduate Workshop seminar. The one-semester course is aimed at law students; it does not have a multidisciplinary focus.

Methodology: Themes of global wealth, poverty, and inequality form the theoretical foundation of the course. There is a development focus and students are taught to challenge widely held assumptions of globalisation and poverty in Africa. The course also examines the roles of different actors, including multinational corporations. South Africa is paradigmatic as both a recipient of a great deal of investment and host to multinational corporations. The course addresses human rights violations abroad and at home.

Topics include:

- Introduction to globalisation
- Domestic human rights law and the marketplace
- The historical role of corporations in human rights violations
- Problems of international personality and jurisdiction
- Global governance gaps
- Global trade practices
- International law and human rights (including the UN Framework)
- Law and voluntarism
- Corporate accountability under international criminal law and civil, international law
- Corporate accountability and the gender dimension of human rights

The teaching style is primarily the Socratic method. Student assessment includes class participation, assigned readings and student presentations. For example, students are required to address a course-related issue and present the solution to the class.

Challenges: Language, nationality and cultural diversity within the African region. Students have different levels of education and expertise. It is also difficult to teach an area of law that is in its infancy.

C. Argentina

Marcelo Saguier, “Transnational Corporations in World Politics,” Latin American School of Social Sciences

Background: This course is taught from the perspective of global economics and international relations, rather than law. Students are from the schools of international relations, political science and sociology. There is a PhD seminar focused on power, international relations and development; an MA course in Transnational Corporations and World Politics; and an MA course in the Politics of Globalisation.

Methodology: The course explores the substantive links between business and human rights in the context of globalization, linking policies and theoretical debates to specific cases. A key question is how rules are being created, implemented and contested.

Topics include:

- Market - state relations
- Transnationalization of production and finance
- Governing globalization
- Power relations/political influence of trans-national corporations
- Limitations of state-based approaches
- Democratic accountability of transnational corporations
- Segregation and spheres of authority
- Rules-based regimes
- Conflicts between transnational companies and states
- Human rights violations
- Transnational corporations as political actors
- Regulation of corporations in Latin America, with a focus on extractive industries
- Transnational advocacy

- Global initiatives such as the UN Global Compact and UN Framework
- Standard-setting agencies (ISO, OECD)

The one-term seminar includes class discussion, class participation, student presentations, a take-home exam, paper and essay.

Challenges: Students generally have a state-centred view of human rights, i.e. students view states as the exclusive subjects of international law. The notion of private actors as direct subjects of international law prompts scepticism. The state-centred conceptual perspective blocks discussion and thinking around possibilities for holding corporations accountable for human rights violations. Another challenge is that human rights in Latin America are largely associated with state violations, given historical abuses in the region and complicity with authoritarian regimes. There is little public discussion around other issues (e.g. social, economic and cultural rights) that challenge traditional human rights notions.

D. Australia

Alex Newton, “Transnational Business and Human Rights,” Australian National University College of Law

Background: In Australia, business and human rights courses are now being taught at multiple universities. In addition to the Australian National University College of Law, the University of New South Wales, Sydney University, Flinders University, Monash University and the University of Queensland all offer courses on the subject.

Context: Multi-stakeholder initiatives have gained traction in Australia. For example, since the introduction of the UN Global Compact Network Australia (2009), there has been a fifty percent increase in participating Australian companies. Further, the establishment of the UN Principles of Social Investment (2011) on ethical financial and non-financial investments has influenced greater collaboration between academics, corporations, government and civil society. Other initiatives include the EITI (2011) and Reconciliation Action Plans (RAPS) that which aim to create a respectful relationship between indigenous and non-indigenous peoples.

There are three significant Australian government business and human rights developments: (i) two federal government inquiries into business and human rights issues (2006) did not recommend substantial changes to Australian law; (ii) the government is streamlining federal anti-discrimination acts under the Australian Human Rights framework (2010) into one framework in order to reduce regulatory burden and make compliance easier; and (iii) since 2011, all Australian statutory instruments must contain a statement of compliance with international human rights law.

While there is no specific Australian law on business and human rights, there are two avenues through which corporations can be held accountable: (i) Corporations Act (2001) – corporate governance obligations relating to human rights e.g. directors duties, disclosure; and (ii) Anti-discrimination legislation – applies to corporations. The Australian Stock Exchange imposes reporting obligations on listed companies. Australia has no federal level human rights Act, Charter or Bill of Rights.

Challenge: Given the pace of development of Australian law and policy in this area, the course must be adapted substantially every year.

E. Discussion

Participants discussed a range of issues related to teaching in different geographic contexts.

Labor rights, regulation and development. A participant raised the issue of how students grapple with labor rights issues in developing countries such as China, Argentina and South Africa. The participant is of the view that there are two main business and human rights challenges posed by students of international affairs in South Africa: (i) voluntary standards versus regulation; and (ii) whether enforcing labor rights will harm the economy and living standards, highlighting a conflict between economic development and human rights.

A participant suggested that while, historically, African states tended to compete for investment by lowering regulation and enforcement, increasingly, students understand that long-term economic viability depends on better regulation of corporations. There is a paradigm shift of what is acceptable and the actors that students believe are blameworthy.

A participant highlighted existing domestic laws that require appropriate labor standards. The issue lies in poor labor law enforcement. The same participant made another observation regarding the acceptability of voluntary regulation efforts and the controversy around compulsory regulation. Another participant highlighted that many companies do not enter the African market due to the absence of regulation or enforcement. This participant emphasized that students should be alerted to the issues and given the skills and ability to analyse such issues themselves.

A participant was of the view that the emphasis of certain development models, such as in those adopted in Latin America, is on generating and maintaining jobs. Most economies have been doing well with this model. The issue is to achieve employment, social security and labor protections at the same time. To maintain domestic demand, you need safe and viable consumption.

Common law versus civil law perspectives. A participant noted that the case study method taught in common law country law schools tends to encourage a sense of moral relativity. Lawyers in civil law jurisdictions approach soft law norms differently from their common law counterparts, asking for example, “Where is the rule written?” Rather than invoking a particular jurisdictional statute to bring human rights claims against companies, for example, lawyers in civil law jurisdictions point to specific human rights protections contained in national law. One example is Article 19 of Chilean Constitution, which codifies every right contained in the Universal Declaration of Human Rights and allows individuals to bring suit.

Development perspectives. Viewing business and human rights exclusively through a development perspective can be a “trap.” A participant highlighted that business and human rights issues, including the tension between labour and economic growth, are on the agenda of developed as well as developing countries. Business and human rights tensions are present everywhere and cases should be viewed with that in mind. Another participant observed that while issues such as child labor are as relevant to China as they are to the United States, there are certain issues such as freedom of association and collective bargaining which prompt differing levels of attention from U.S. and European students.

Human rights institutions. A participant raised the issue of the role of national human right institutions in monitoring business activity. Another participant believes that statutory bodies will play a greater role going forward, but acknowledges that as such bodies have limited resources, there will be significant operating challenges. The National Human Rights Commission in South Africa is very active in holding the private sector to account, unveiling complicity of government with

extractive corporations. The new South African Companies Act features civil and criminal liability for Directors, and allows human rights to be part of business considerations.

Domestic human rights issues. A participant observed that while human rights violations are often perceived as an extraterritorial issue, human rights are relevant both internationally and domestically, and students need a globally integrated perspective on business and human rights. Instructors should address such nexus points. Another participant suggested that the international may be brought to bear on the domestic by using real examples of domestic human rights issues. One participant demonstrates to her students that the factory design of the infamous Bhopal Union Carbide facilities was based on a similar plant in West Virginia.

Making the academic case. A participant voiced frustration trying to persuade certain traditional international law academics of the significance of business and human rights. The UN Framework does not fit into the framework of traditional international law and therefore does not attract support from established legal academic disciplines. One participant observed that the UN Framework is not catching on within the Danish legal community.

Making the business case. A participant argued that students should focus on the business case for self-regulation as we are unable to create enough laws or regulations to sufficiently cover this sphere, existing law has many loopholes, and the development of new laws is too slow. Students should arm themselves with arguments that appeal to the mind-set of business.

II. Teaching Strategies

Participants discussed how they teach specific topics, highlighting specific strategies for teaching: (i) advocacy issues, (ii) the UN Framework and Guiding Principles, and (iii) case studies from the Information and Communications Technology (“ICT”) sector.

A. Advocacy Issues

Chris Jochnick, “Business and Human Rights: Clinical Seminar,” Harvard Law School

Background: The clinic devotes sessions to tactical and practical ways of working with companies, engaging with companies, and advocating against companies. International law is a pre-requisite.

Methodology: Classes include role-plays (representing companies, human rights advocates, community members); media interviews (radio program or TV show); brainstorming group work and presentations. The class develops short hypothetical “Oxfam” case studies to demonstrate how retailers and consumers can place pressure on business to improve human rights standards, with an emphasis on audience-driven advocacy.

Challenges

- **Making human rights relevant for companies.** Students are encouraged to address how human rights issues can be translated for a corporate audience. Guest speakers from the private sector and video presentations (e.g. Corporations, Corporations on Trial, Crude) are used to highlight how a persuasive case may be made to and within a corporation.
- **Engaging diverse students.** Law and political science students dominate the course. There are few students from the business sector.

- **Keeping up to date.** Ensuring that the course remains relevant and topical is a challenge given the growing amount of available material.
- **Course scope.** Considerations include whether to incorporate political economy, trade and development models and how soft law instruments should be addressed.

1) *Discussion*

Naming the course. A participant noted that persuading students from different backgrounds to register for his law course presents a challenge. Other participants acknowledged that the name of their courses plays a key role in attracting students and offered suggestions including “Regulation of Business,” “Corporate Social Responsibility: A Human Rights Approach,” “Business and Human Rights,” and “Corporate Compliance and the Social Mandate”.

Engaging students. A participant recommends using an online discussion tool, such as Google groups, to allow students to share their views by posting articles and comments.

B. UN Framework and Guiding Principles

Anthony Ewing, “Transnational Business and Human Rights,” Columbia Law School

Background: The materials generated during the six-year Ruggie mandate have been a boon for teachers and students alike. This law seminar, which typically includes both J.D. and international LL.M. candidates, is structured in four sections: 1) defining “business and human rights” within the broader field of “corporate responsibility;” 2) international human rights standards; 3) tools for corporate human rights accountability; and 4) business human rights practice. Over the past decade, the last section of the seminar has expanded with the inclusion of more publicly available company best practices and examples.

Methodology: The instructor separates the UN Framework and the Guiding Principles in his syllabus. The Framework is covered first, under international human rights standards. Two documents – Mapping International Standards¹ and the UN Framework² – are assigned. The Mapping report contains useful categories for describing relevant international law. Key questions for discussion: What are the sources of international human rights standards? Do corporations have human rights responsibilities under international law? How would you explain human rights standards to a CEO with no legal background?

The UN Guiding Principles³ are assigned in the last section of the course where they frame the discussion of corporate human rights practices, including due diligence, transparency, human rights impact assessments and risk management. Key questions for discussion: How would you explain the UN Framework to in-house legal counsel? What are the elements of an effective corporate human rights program, consistent with the Guiding Principles?

¹ John Ruggie, “Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts (Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises),” UN doc. A/HRC/4/035 (9 Feb. 2007).

² John Ruggie, “Protect, Respect and Remedy: A Framework for Business and Human Rights,” Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises,” UN doc. A/HRC/8/5 (7 April 2008).

³ John Ruggie, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises,” UN doc. A/HRC/17/31 (21 March 2011).

There are also a number of optional readings.⁴

Challenges: Place the UN Framework and Principles in historical context, including how much class time to devote to the Draft Norms. Another consideration is how to familiarize students with pertinent critiques of the Ruggie process and UN Framework.

1) *Discussion*

One participant suggested that greater emphasis should be placed on the six-year consultation process that resulted in the UN Framework and Guiding Principles. A participant referenced the forthcoming publication of John Ruggie's account of his term as Special Representative on Business and Human Rights.⁵

C. Information and Communications Technology Sector (ICT) Cases

Meg Roggensack, "Human Rights at the Intersection of Trade and Corporate Responsibility," Georgetown University Law Center

Background: The class is a geographically diverse mix of students from a leadership program, the LL.M. program, and older students from government and non-governmental organizations. There are no pre-requisites.

Methodology: The course begins with a survey of international law, then outlines the path to the Ruggie Principles (e.g. OECD Guidelines, UN Framework, ILO standards, tools/tactics used in this space, corporate complicity, specific norms such as right to health). At the midpoint of the course, the instructors convene a student panel discussion on a single topic. Students are asked to identify relevant rights, and the laws and regulations that already apply to the relevant conduct. The instructor encourages students to look at a problem from different perspectives (e.g. corporation, non-governmental organization, government official).

ICT sector cases are covered toward the end of the course. Case studies have included internet companies in China (Yahoo! and Google) and telecommunication providers in Egypt (Vodafone). Reading materials include speeches on internet freedom by Swedish Foreign Minister Carl Bildt⁶ and US Secretary of State Clinton,⁷ and the work of the UN Special Rapporteur on the Right to Freedom of Opinion and Expression.⁸ Guest speakers are also invited to present to the class.

Challenge: It is important to keep the ICT cases grounded in the business and human rights sphere. One challenge is to provide students sufficient structure around issues of national security, consumer

⁴ For example: Castan Centre for Human Rights Law, IBLF, and UNHCHR, *Human Rights Translated: A Business Reference Guide* (2008), available at http://www.unglobalcompact.org/docs/news_events/8.1/human_rights_translated.pdf; Larry Catá Backer, "On the Evolution of the United Nations' 'Protect-Respect-Remedy' Project: The State, the Corporation and Human Rights in a Global Governance Context," *Santa Clara Journal of International Law*, Vol. 9, No.1, 2010 (June 3, 2010), available at <http://ssrn.com/abstract=1619939>; "Meeting the Responsibility to Respect in Situations of Conflicting Legal Requirements," A Good Practice Note endorsed by the UN Global Compact Human Rights Working Group (13 June 2011); Institute for Human Rights and Business, *The "State of Play" of Human Rights Due Diligence: Anticipating the Next Five Years* (June 2010), available at http://www.institutehrb.org/pdf/The_State_of_Play_of_Human_Rights_Due_Diligence.pdf.

⁵ John Ruggie, *Just Business: Multinational Corporations and Human Rights* (Forthcoming: March 25, 2013).

⁶ For example: Carl Bildt, "Foreign Minister Carl Bildt's speech at Stockholm Internet Forum 2012," (Stockholm, Apr. 18, 2012), available at <http://www.sweden.gov.se/sb/d/7956/a/190882>.

⁷ U.S. Secretary of State Hillary Rodham Clinton, "Remarks on Internet Freedom," (Washington, DC, Jan. 21, 2010), available at <http://www.state.gov/secretary/rm/2010/01/135519.htm>.

⁸ Frank La Rue, "Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression," UN doc. A/HRC/17/27 (16 May 2011).

protection and civil rights in order to focus their minds on the business and human rights issues. Focus on the role companies play enforcing government demands, and how these cases have played out in different jurisdictions.

1) *Discussion*

What makes the ICT cases unique? Participants offered suggestions including the topical nature of the subject, the role of reputation and marketing in these cases, the broad and growing footprint of the ICT sector, and varied cultural conceptions of privacy in different jurisdictions. One participant uses the ICT cases to illustrate the legal definition of complicity. The ICT sector also presents an opportunity to compare earlier voluntary multi-stakeholder initiatives with the Global Network Initiative. Several participants said that when teaching this topic they include readings from Rebecca MacKinnon's book, [Consent of the Networked: The Worldwide Struggle For Internet Freedom](#) (2012).

D. Other Issues

"Framing" research. A participant suggested the relevance of "framing" research from the field of psychology to teaching business and human rights.⁹

Case studies. Participants identified case studies as a valuable teaching tool, recommending a mixture from different industries and geographies. One participant recommended the Harvard Business School Ikea case¹⁰ on community affairs in the locations where it sources hand-woven rugs.

Scope of human rights responsibilities. One participant uses a slide to illustrate the scope of human rights responsibilities from five different perspectives.

Job Opportunities. A participant raised the issue of employment opportunities for students and how lecturers should structure the courses offered in terms of opportunities it will lead to in the real world. Other participants refer students to job listings, including the service offered on the Business & Human Rights Resource Centre website, carry out monthly conference calls with job seekers; and invite to class guest speakers from firms as well as NGOs to highlight the career opportunities in each field.

III. Management Education

Participants discussed the prospects for business and human rights education in companies and at professional schools.

A. Teaching Business and Human Rights in Business Schools

Diane Orentlicher of American University's Washington College of Law, who taught one of the first business and human rights courses at a United States business school, outlined some of the challenges

⁹ American Psychological Association Task Force on the Interface Between Psychology and Global Climate Change, [Psychology and Global Climate Change: Addressing a Multi-faceted Phenomenon and Set of Challenges](#) (2009), available at <http://www.apa.org/science/about/publications/climate-change.aspx>.

¹⁰ Harvard Business School, "The "IKEA Effect": When Labor Leads to Love" (2011), available at <http://www.hbs.edu/research/pdf/11-091.pdf>.

of teaching the subject to business students. Many business students Orentlicher taught in the 1990s later encountered human rights issues in their professional roles, and reported that having taken Orentlicher's class on business and human rights equipped them to address these issues more effectively.

Engaging skeptics: It is useful to provide business students a rudimentary introduction to international human rights law at the outset of the class. As business managers, they should be aware that human rights is not just a brand of activism, or a good thing to believe in, but instead are protected by internationally-accepted law. Early on, my co-teachers and I also introduced classic debates over the social responsibilities—if any—of business. This approach elevates their awareness of fundamental questions about where corporations are situated in the broader universe of social actors and brings to the surface any skeptical views. It sensitizes students to a complex set of issues. Further, it exposes students to issues in a critical way that provides an opening to engage business students.

Framing the issue for corporate managers: The course covers two broad sets of issues: (i) what pressure points have already spurred corporations to address human rights concerns; and (ii) how can business leaders manage the dilemmas that arise in a transnational setting, including those relating to respect for local values while trying to respect universal rights?

Staying current: Current cases are invaluable. The course is revised every year to ensure that cases are sufficiently topical. Case studies are representative and diverse in order to demonstrate the myriad ways in which business and human rights issues arise.

Highlighting decision-making consequences: The course highlights the complexities of business and human rights issues and unintended consequences from a problem-solving perspective. Students are encouraged to think broadly about how solving one problem may aggravate a larger and more important problem. In the 1990s case of the Bangladeshi garment sector, for example, a U.S. senator introduced legislation that would have banned imports of products of child labour. In response, the Bangladeshi government cracked down on child labor. As a result, many unemployed children turned to more hazardous occupations.

B. Lawyers Making the Business Case

John Sherman, of the Harvard Kennedy School, and General Counsel of Shift, an independent non-profit chaired by Prof. Ruggie and dedicated to the implementation of the Guiding Principles, has extensive experience working with businesses on human rights. He addressed the challenges of making a business case for human rights with executives. He suggested a role for lawyers and law firms promoting compliance with human rights standards. In his view, corporate governance and risk management concepts, combined with the professional ethical responsibility of lawyers to provide candid and independent advice, can open the door to productive conversations with management about corporate human rights responsibilities. Lawyers can be “enablers” or “blockers” when it comes to corporate respect for human rights.

Corporate governance: General principles mandated by the laws of many countries require a corporation to manage itself so as not to lose value. Business and human rights issues are often characterized in terms of potential reputation losses. For example, analysis shows that the social cost of oil extraction has become more expensive as a result of the cost of delay that may be caused by protests or social unrest, which has increased dramatically in the last ten years. Hard cost figures resulting from unrest should be calculated because they are significant, but not usually aggregated by

companies. In addition, human rights issues typically result lost opportunities through diversion of top management to conflict management. The consequent lost value, which is huge, is frequently overlooked.

Enterprise risk management: Since 1995, enterprise risk management (ERM) has emerged as a corporate component of corporate governance. For example, internal controls have been recognised under the Sarbanes Oxley Act in the United States and by the Turnbull Commission (UK). Risk management can be problematic because it focuses on reputational issue and harm to the company, rather than impacts on stakeholders. The corporate responsibility to respect should not be framed as an issue which impacts the bottom line, but as an issue which impacts people. For example, in the Ford Pinto controversy, in which it was discovered that the company was aware of an engine design flaw that would cause deadly fires upon impact, executives claimed that the cost saving to company of not fixing the design flaw was equivalent to the cost of compensation to individual. This is a false equivalency. Such a high risk tolerance for externalities is not appropriate, because victims have far less tolerance for injury to their rights than companies. and the legal system often does a poor job of allocating externalities caused by corporate conduct that infringes rights. The challenge with starting on principles of basic respect for human dignity, fundamental right and wrong, however, is that those ideas do not readily resonate with managers.

Transparency: Law firms lag behind other institutions in implementing the UN Framework. For example, few law firms have human rights policies, and few are transparent with respect to their policy on retainers (a notable exception being the law firm Freshfields Bruckhaus Deringer LLP).

Professional codes of responsibility: Professional codes can shape how lawyers advise clients on human rights issues. The American Bar Association, for example, has endorsed the UN Guiding Principles and has acknowledged that they apply to the professional responsibility of lawyers to provide independent and candid advice to their clients, which is the *quid pro quo* for the confidentiality of lawyer-client communications.¹¹ In the report supporting the ABA resolution endorsing the UN Guiding Principles, the ABA Human Rights Committee noted that the Guiding Principles provide content for the independent and candid advice that lawyers must provide to corporate clients under ABA Model Rule 2.1; the rule's commentary notes that "moral and ethical factors impinge on most legal questions and may decisively influence how the law will be applied."¹²

C. Tools and Resources

Ursula Wynhoven of the UN Global Compact, who also teaches at Fordham University School of Law, outlined tools and resources relevant for management education developed by the UN Global Compact:

- **Human Rights and Business Dilemmas Forum:**¹³ The Forum provides a series of case studies demonstrating real-world dilemmas faced by companies and other organizations around the world - as well as efforts to manage or resolve these dilemmas in a responsible way.
- **Good Practice Notes:** Summaries on specific topics designed to identify general approaches that have been recognized by companies and stakeholders as good for business and good for human

¹¹ http://www.abajournal.com/news/article/aba_house_considers_human_rights_responsibilities_of_corporations/

¹² http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_2_1_advisor.html

¹³ <http://human-rights.unglobalcompact.org/>

rights. The Notes¹⁴ are produced under the guidance of the UN Global Compact Human Rights Working Group.

- **Case studies:** Case studies, such as the "Embedding Human Rights in Business Practice" series, detail the steps being taken by specific companies to meet their commitments under the UN Global Compact.¹⁵
- **Additional guidance materials:** Additional materials relevant for management education include presentations, webinars, and tools like the Human Rights Management Framework.¹⁶

D. Discussion

Considering the prospects for management education on business and human rights prompted discussion on a range of related topics.

Business and human rights in business schools: There is great interest among Workshop participants in promoting more courses at business schools. Challenges and opportunities include:

- While business school courses may not use the explicit language of human rights, business and human rights concepts and issues may appear elsewhere in the curriculum, for example, in courses covering management, corporate governance, and supply chains. In addition, business ethics is a standard part of the curriculum, where the topic of human rights can and sometimes does appear. Finding ways to incorporate human rights issues into these courses may be more effective than promoting a standalone course on business and human rights.
- The language of human rights is difficult to use in business school courses, since the term is often considered too general. Participants emphasized the need to couch business and human rights in terms of stakeholders for business students.
- Rights-based discourse can be difficult to incorporate in business school curricula that favor a checklist approach to subject coverage.
- Corporate needs will drive business school curricula. Business schools look to recruiting companies when determining necessary coursework and skills training. As increasingly companies are looking for this expertise, their communicating this need to business schools is an effective way to promote business and human rights courses at business schools.
- The [Principles for Responsible Management Education \(PRME\)](http://www.unglobalcompact.org/issues/human_rights/Human_Rights_Working_Group.html) initiative, stemming from the UN Global Compact, is an avenue to engage business school faculty worldwide on human rights issues.

What is the skill set expected of current and future managers? Participants touched upon the kinds of skills, both conceptual and practical, that are needed to effectively manage business and human rights issues. These include:

- **Knowledge of human rights standards:** There is a lack of knowledge among managers regarding what exactly constitutes a “human right.” Interpreting relevant human rights is crucial. Stumbling blocks, which are typical for all students of human rights, particularly in the United States include: 1) the traditional focus on civil and political rights making economic and social rights seem murky; and 2) the characterization of human rights as “foreign.” A consequence is that companies may not adopt human rights standards as defined

¹⁴ http://www.unglobalcompact.org/issues/human_rights/Human_Rights_Working_Group.html.

¹⁵ http://www.unglobalcompact.org/issues/human_rights/Human_Rights_Working_Group.html.

¹⁶ http://www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html.

under international human rights law. Educating business managers requires communicating effectively what human rights are. This conversation also needs to happen at professional schools, including business schools and law schools.

- **Conducting human rights impact assessments (HRIAs):** How can companies effectively use HRIAs? Is an HRIA a stand-alone exercise or should it be integrated into existing processes?

Locating business and human rights in business discourse: One participant noted that her experience with corporate law faculty is that they resist discussion of social responsibility, accountability or human rights as anything other than a story of brand and reputation management. Another participant countered that this view is not prevalent among the corporate executives and in-house counsel he deals with; it is more likely to emerge in US (shareholder centric) discussions than in the UK (stakeholder centric) discussions. Another participant highlighted different schools of thought (e.g. shareholder, stakeholder, director primacy models) and noted that the issue is how we integrate human rights issues into these various models without making the models irrelevant. Another participant is of the view that the shareholder model is no longer viable. There are signs of change although no effective laws have placed issues other than shareholder primacy on the table. The financial crisis has prompted new ways of thinking about business and ethics. What seems to be emerging, according to one participant, is the lexicon of “sustainability.” Another participant linked transparency approaches to an unstated assumption that consumers and socially responsible investors should judge what is acceptable for society.

Translating principles into practice: Participants debated whether in fact companies want principles, as demonstrated by their interaction with the UN Global Compact, or whether they want standards that can be audited and used to demonstrate that they are in compliance. Citing the South Africa Constitution of 1994, which made corporations subject to human rights law, a participant observed that the business model debate could be avoided by enshrining obligations into hard law.

IV. Course Development and Other Issues

Participants discussed whether there is a core business and human rights curriculum, how the academic case is made for business and human rights, and opportunities for creating courses in different faculties.

Corporate law: Faith Stevelman, who teaches at Seattle University School of Law, has developed a law course that raises human rights issues in the context of U.S. corporate law. She argues that the mainstreaming of responsible corporate governance has been made difficult by market dynamics theories. In order to address this, we should reframe the discourse to highlight the incoherent domestic regulatory and accountability framework. In her course, Stevelman gives students an overview of market-based disclosure and accountability, regulatory and criminal enforcement, SEC disclosure standards and the Dodd-Frank Act; and covers the role of lawyers and directors supervising effective internal controls. Students consider the issues that give rise to reporting obligations such as executive compensation, ethics, lobbying and employee labour issues, and review the gap between entity level conduct and individual culpability for criminal offences. The course examines the history, leadership and corporate culture of a single corporation (W.R. Grace and Company) to illustrate all of these issues. The course avoids formal human rights or corporate governance labels in order to give students the flexibility to explore a range of issues.

Corporate social responsibility: A participant noted that stakeholder rights and obligations remain relevant. The language of corporate social responsibility has demonstrated longevity. Another participant argued that regulation is key because corporate social responsibility is voluntary.

Clinical approaches: Sheldon Leader of the University of Essex, School of Law, presented on their graduate-level program on economic relations and human rights, which provides a conceptual basis to develop business and human rights as a discipline. The core course contains two modules: trade, investment and human rights; and business and human rights. Corporate law and ideologies are covered as part of the core course material. Electives are selected from a primary list (Human Rights and Development; Economic, Social and Cultural Rights; Transitional Justice) and a secondary list (Human Rights and Philosophy, International Criminal Law, Refugees) of relevant courses. There is also a dissertation along with research. Students get practical experience by, for instance, preparing a report on Shell in the Niger Delta in conjunction with Amnesty International and Fair Pensions. Funding is available for students to carry out extracurricular fieldwork. The course consists of mainly LL.M. students as well as PhD students.

European case law: American participants expressed a strong interest in identifying non-U.S. case law on corporate human rights accountability. One example is *Chandler v Cape plc*, a United Kingdom case in which the court held that a parent company owes a duty of care to employees of subsidiary companies.

The need for a textbook: One participant would like to develop a business and human rights casebook and requested input from other participants. Another participant suggested that a new textbook is needed on ILO standards. Another participant suggested developing an ABA “desk book” on the UN Guiding Principles as a practical guide to advance the discipline. Other participants mentioned existing textbooks which may provide useful guidance.¹⁷

V. Leveraging the Forum

To close the Workshop, participants discussed ways this growing network can support our teaching and contribute to the field of business and human rights.

Syllabi access: A participant asked whether the “syllabi bank” should be made publicly available. A number of participants voiced concerns, as a syllabus is a work in progress. A participant suggested that the current system of a password protected syllabi bank should be continued, as it fosters the creation of a community around shared resources.

Course directory: A participant suggested compiling a directory of global business and human rights courses. Other participants voiced support for this idea, offered the support of research assistants in order to collate information, and suggested that courses be categorized by subject matter, as well as intended audience (i.e. legal, business, training).

Workshop format: Participants expressed support for convening the Workshop on an annual basis. Suggestions for future Workshops included:

- Narrowing discussions to focus on particular issues in more detail;
- Holding the Workshop over two days: the first for general issues, the second for more specific topics;
- Encouraging participation of more business professors;

¹⁷ For example: Michael Kerr, Richard Janda and Chip Pitts, *Corporate Social Responsibility: A Legal Analysis* (2009).

- Devoting a session to a pedagogical issue such as geographic diversity;
- Conducting periodic webinars to discuss follow-up and topical issues such as the ATCA and FCPA;
- Allocating more time to networking; and
- Inviting guest speakers.

Online Forum: Participants noted the value of the Online Forum to connect with other teachers and suggested more systematic outreach to grow the network and Forum.

Annex: Participant List



Teaching Business and Human Rights Workshop

May 4, 2012

Columbia University, New York, NY

PARTICIPANTS

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