

Freshfield's Role play as a way to teach Pillar 2 of the UNGPs

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This document provides instructions on how to carry out the Freshfield's role play, including key learnings, instructions provided to students, and the fact pattern itself (these instructions could be adapted to other fact patterns, if need be).

Context

Group: I think this role play can be used in law schools, business schools, and public policy master's programs (which is my case). Usually 50% of my students are international law concentrators; the others are getting their IR degree in development, energy/environment, or a geographic region.

Class size:

I have done this with 24 students, though 18 is ideal as the students are divided into three groups: Board, Legal Department, and Sustainability Department. I have done this with as few as 10. Should you have a small class (as I did last summer), you may consider inviting some past students to help (especially at the board level – they love the role play).

In person vs virtual:

While doing the simulation in person is lots more fun (I typically have the students to my home to provide a more convivial atmosphere and to provide more space for caucusing), I have done this virtually with 22 students. It works pretty well and makes recording the role play much easier (the role play itself, not the breakout prep time). The only downside is that it does constrain the interaction between the groups (legal and sustainability team) should they wish to collaborate (which is something I do not explicitly advocate, but would be advisable).:

Preparatory readings:

I assign the UNGP handbook (with a focus on Pillar 2), and a few other readings on company responsibility, as a link to the UK Modern Day Slavery Act (as the company in the role play is a UK listed company). I would also include anything brewing regarding supply chain reporting or required due diligence coming out of Europe (once there is an EU mandatory human rights due diligence directive I would definitely add that).

I use a shortened version of the Freshfield's fact pattern (the original had an email and a TV news item), as I need to remain within 2 hours of class time and is not too overwhelming..

Placement in the semester:

For the past years I have introduced this role play in the fourth class of a 13-class course on Corporate Sustainability, Business & Human Rights. I use this role play as a way to teach Pillar 2 of the UNGPs. By this class, students have covered the international 'soft law' standards, governance gap and Pillar 1. This role play could also be used at the close of the semester (fun last class) when students have more background on the fast developing legal issues, and investor and legal pressures.

Key learnings.

This forces students to focus on how companies and company boards are having to apply the UNGPs. This helps introduce the concept of HRIAs, salience, compliance and voluntary policies, company risk, interaction of legal and sustainability departments, the role of boards, and the importance of having a human rights policy (and how to implement). By introducing the role play early in the semester, it helps me return to challenges that came up in the role play during the rest of the course.

Use of facilitators:

Especially when groups are large, I strongly encourage profs to enlist two colleagues or BHR lawyers to act as facilitators. This provides eyes and ears to understand which students have understood the material and are applying the concepts properly, as well as act as a resource if students have questions. In the first years I did this on my own and moved around the room to each breakout group, so it can be done solo, but having a colleague with each group is optimal. I usually ask the colleagues to say a few words in the debrief at the end regarding how they think the students did in dealing with the challenges internally.

Prep time and assignments:

I usually provide the fact pattern 48 hours before the class to give students time to coordinate among themselves (and to have done the reading on Pillar 2 etc. first). I also circulate the assigned departments, and leadership role – like head of legal department, and sustainability department - so they can start preparing a bit (I then give them 30 extra minutes to prepare in class). Over the years I have found it more interesting to assign board members roles as well (ie. other boards they belong to, with some more forward thinking, like Unilever or Nestle, and others more backward ones, like Exxon, and assign someone to take on the role of the CFO – usually one of the harder to convince). That way students understand that company boards are not monolithic and that department heads need to seek out board members who may be sympathetic to their cause. They also learn to make the business case – appealing to the more conservative board members and the CFO.

Role play itself

I assign one hour for the role play which includes, 40 min for the role play itself, 5 min break for the Board to assess the information and reconvene for a decision on next steps (5 min) and 10 min for facilitator readout (this could be expanded a bit). I provide a framework for the students to know what each group is expected to focus on. See attached guidance.

GUIDANCE FOR STUDENTS

Framework:

- **BOARD:** Chairman (Lord Deben) and the Board is troubled by the Rightscope findings, which is why Lord Deben has called for a meeting of the Board to discuss the results of Rightscope's due diligence and hear suggestions from the Legal and Sustainability teams as to next steps. It would be fair to say that the Chairman of the Board -- and some board members -- may not all be convinced as to the relevance of the UNGPs to frame the discussions (or even what the UNGPs are). They may want to have more information regarding the risks and benefits of conducting human rights due diligence. The board also may not be clear what stakeholder engagement means for BOSS (presumably the Legal and Sustainability depts can brief them). The Board in general (with some exceptions) may be more conservative than the Sustainability and Legal depts. and seem to be particularly concerned by bottom line financial issues. They should be ready to challenge team recommendations, request for more info, if needed, and will make a final decision on the direction the company takes after they reconvene.
- **SUSTAINABILITY DEPT.:** The Sustainability team needs to provide a road map to Board regarding next steps...they must be ready to answer questions re: the quality of due diligence conducted by RightScope and develop a set of recommendations to strengthen human rights due diligence (HRDD). Be ready to explain why HRDD with meaningful stakeholder engagement is critical (including mapping Boss' stakeholders). Be ready to identify salient HR issues and which impacts must be addressed asap by the company according to the UNGPs (and what adverse impacts must be remedied (using the cause/contribution/linkage test). Create a list of potential ways to address each impact. Any questions you may wish to ask the Board? Legal?
- **LEGAL DEPT.:** The Legal team needs to deal with potential UK (and formerly EU) compliance and reporting issues of concern raised by RightScope's due diligence from Eastern and Southern Republic. The team also needs to assess the legal responsibility of BOSS on the Azira acquisition and how might the team mitigate the identified risks? The team may also consider advocating for or against having a company human rights policy. And, if in favor, what would the key elements be?

FRESHFEILD CASE STUDY

British Overseas Standard Supplies (**BOSS**) PLC (ticker, LON: BS), a UK and FTSE 100 listed company, is a vertically integrated processed food manufacturer and contract caterer, with its origins as a supplier of bully beef for the British Army.

Six months ago, at the instigation of BOSS's Sustainability Officer, the Board of BOSS set in train its first human rights due diligence and impact assessment process to review, assess, and guide action on the human rights impacts of BOSS. Due diligence on BOSS's operations have been conducted by **RightScope**, an external human rights and sustainability consultancy.

As a processed food manufacturer, BOSS produces a range of white label ready meals and own brand canned and packaged goods, with its key ingredients sourced from its own farms mainly located in the **US Midwest**. However, BOSS has seen great potential in sourcing many of its supplies from Africa. It has recently invested in extensive cattle ranching and beef processing facilities in the **Southern Republic**, and sources fruit and vegetables – particularly strawberries, french beans and aubergines – from wholly owned farms across East Africa, in particular the **Eastern Republic**.

Due diligence has indicated that:

- worldwide, jobs at BOSS's farms and plants are sought after;
- worldwide, BOSS pays its employees significantly more than relevant national minimum wages, plus generous benefits;
- BOSS's plants and farms outside the UK are not unionised;
- as the official school leaving age in both the Eastern and Southern Republic is 12, and places in secondary school limited to those who can pay fees (amounting to approximately US\$50/year), BOSS's farms employ many teenagers; and
- BOSS sources animal feed for its ranches in the Southern Republic from a large number of small suppliers across the Southern Republic. There have been reports that some of these animal feed suppliers use forced labour, and the use of the land for the production of animal feed has led to significant disruption of traditional pastoral communities indigenous to the Southern Republic. Rightscope have not been able, in the time available, to identify, let alone visit, all the suppliers. The truth or otherwise of these allegations has therefore not been substantiated.

BOSS has decided to take advantage of an existing large pool of talented chefs in the Middle East, trained to produce the spiced food now in demand from European consumers. The Board has just taken a positive final investment decision on a new plant in the **Republic of Azira**, capable of producing half of all the ready meals BOSS sells, and employing 2000 chefs from the local area. (All will be men, because of Azira's laws on gender respect which prohibit women from working in the same room as men, and because it will double the cost of the plant to run two separate production lines).

The Board, accompanied by its legal and other advisors, has convened to discuss the results of the initial due diligence and what, if anything, further should be done by BOSS. BOSS does not yet have a human rights policy, which is one of the items for discussion at the Board meeting. While the Board as a whole has an open mind on human rights, it is fair to say that the existing Executive Chair, Lord Deben, needs convincing of the merits of the exercise.