



JUST  
BUSINESS

MULTINATIONAL CORPORATIONS  
AND HUMAN RIGHTS

JOHN GERARD RUGGIE

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**JUST BUSINESS**

# AMNESTY INTERNATIONAL GLOBAL ETHICS SERIES

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In December 1948, the UN General Assembly adopted the United Nations Declaration of Human Rights and thereby created the fundamental framework within which the human rights movement operates. That declaration—and the various human rights treaties, declarations, and conventions that have followed—are given life by those citizens of all nations who struggle to make reality match those noble ideals.

The work of defending our human rights is carried on not only by formal national and international courts and commissions but also by the vibrant transnational community of human rights organizations, among which Amnesty International has a leading place. Fifty years on, Amnesty has more than two million members, supporters, and subscribers in 150 countries, committed to campaigning for the betterment of peoples across the globe.

Effective advocacy requires us to use our minds as well as our hearts; and both our minds and our hearts require a global discussion. We need thoughtful, cosmopolitan conversation about the many challenges facing our species, from climate control to corporate social responsibility. It is that conversation that the Amnesty International Global Ethics Series aims to advance. Written by distinguished scholars and writers, these

short books distill some of the most vexing issues of our time down to their clearest and most compelling essences. Our hope is that this series will broaden the set of issues taken up by the human rights community while offering readers fresh new ways of thinking and problem-solving, leading ultimately to creative new forms of advocacy.

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*Dedicated to  
Kofi A. Annan—  
son of Ghana, citizen of the world,  
and my favorite boss*

## P R E F A C E

**T**his book is a reflection on an unusual global policy process. In 2005 what was then the United Nations Commission on Human Rights (now Human Rights Council) created a mandate for an individual expert to look anew into the subject of business and human rights, following years of failing to find common ground between opposing sides. The United Kingdom initiated the idea and secured its adoption. To give the position greater visibility, the Council asked the UN Secretary General to appoint the mandate-holder as his Special Representative. Kofi Annan, who was Secretary-General at the time, asked me to take on the assignment. The task I was initially given was largely descriptive: identifying what international human rights standards currently regulate corporate conduct, as opposed to the conduct of states and individuals; and clarifying the respective roles of states and businesses in safeguarding these rights.



In principle, the mandate included all types of businesses, large and small, although in practice it was intended to shed particular light on multinational corporations. Multinationals operate as globally integrated entities but are not subject to any single global regulator, thus creating governance challenges not posed by large national firms let alone corner grocers.

The mandate kept expanding until, six years later, the Human Rights Council unanimously endorsed a set of Guiding Principles on Business and Human Rights that I had developed, with the support of business associations and individual firms as well as civil society and workers organizations. Other international and national standard-setting bodies have incorporated the Guiding Principles, companies have begun to align their practices with them, and advocacy groups use them in their campaigning work. The Guiding Principles have even featured in a crucial case before the United States Supreme Court concerning whether and under what circumstances the 1789 Alien Tort Statute, originally intended to combat piracy among other things, applies to the overseas conduct of corporations irrespective of where their home base may be. My aim in this book is to explain how the mandate got from there to here, what it means for the protection of human rights against corporate-related harm, and what lessons it might hold for responding to ever-mounting global governance challenges.

Once I managed to raise sufficient funds from interested governments, I was able to recruit a superb team of professionals without whom it would have been impossible to construct the building blocks for the Guiding Principles: conducting intensive research and extensive consultations; organizing global networks of volunteers in law firms, universities, NGOs, and businesses; initiating pilot projects; and producing several thousand pages of documentary materials. The eight who crossed

the finish line with me are Christine Bader, Rachel Davis, Gerald Pachoud, Caroline Rees, Andrea Shemberg, John Sherman, Lene Wendland, and Vanessa Zimmerman. Although we were physically scattered across time zones we worked together seamlessly as one team, with good humor making us forget insane workloads and travel itineraries. No mere words of thanks can do justice to their immense contributions. The Guiding Principles are as much their achievement as mine. Amy Lehr, Michael Wright, and David Vermijs were with us for parts of the journey and Jonathan Kaufman helped get me started.

The political process of moving the mandate's work through the Human Rights Council, a quasi-legislative body, was managed by five countries: Argentina, India, Nigeria, Norway, and Russia. Each played key roles within their respective regional groups. Norway had the overall lead. Ambassador Bente Angell-Hansen, together with her colleagues in Geneva and Oslo including Foreign Minister Jonas Gahr Støre, made gaining Council endorsement of the Guiding Principles a personal and national priority. On the business side, the mandate benefited greatly from cooperative relationships with the International Chamber of Commerce, the International Organisation of Employers, and the Business and Industry Advisory Committee to the Organisation for Economic Cooperation and Development. Civil society organizations participated in all forty-seven mandate consultations, and several, including Global Witness and Oxfam, worked particularly closely with us. It isn't possible to list all of the other institutions and individuals that became part of our extended team—for example, the more than two dozen law firms around the world that conducted pro bono research for us, on which I draw in subsequent chapters. But I do want to single out three legal analysts who followed the mandate closely and provided real-time big-picture assessments when

I was struggling through the weeds: Larry Catá Backer, Andrew Clapham, and Mark Taylor. I am also grateful to Mary Robinson, former President of Ireland and UN High Commissioner for Human Rights, for sharing her wisdom on human rights and speaking up for me when some questioned mine.

I dedicate this book to Kofi Annan, for whom I had the honor to work in several capacities for more than a decade. He is an inspirational leader, eager to try out-of-the-box approaches to seemingly insoluble problems, and a profoundly humane person, caring deeply about the individuals around him as well as about our common fate on this planet. He has been a great boss, wonderful mentor, and dear friend.

My deepest debt is to my wife, Mary Ruggie, whose human rights these past seven years have not benefited from my endeavors to advance them for others. My next project is to try and make that up to her.

## Introduction

# WHY BUSINESS AND HUMAN RIGHTS?

**H**istorians may look back at the 1990s as a “golden age” for the most recent wave of corporate globalization. Multinational firms emerged robustly, in larger numbers and greater scale than ever before. They weaved together integrated spheres of transnational economic activity, subject to a single global strategic vision, operating in real time, connected to and yet also transcending merely “national” economies and their “inter-national” transactions. Soon half of world trade comprised “internal” transactions within networks of related corporate entities, not the traditional arms-length “external” exchange among countries. Multinationals did well, and so, too, did people and countries that were able to take advantage of the opportunities created by this transformative process.

But others were less fortunate. Evidence mounted of sweat-shop conditions and even bonded labor in factories supplying prestigious global brands; indigenous peoples’ communities displaced without adequate consultation or compensation to make way for oil and gas company installations; foods and beverages firms found with seven-year-old children toiling on their plantations; security forces guarding mining-company operations

accused of shooting and sometimes raping or killing trespassers and demonstrators; and Internet service providers as well as information technology companies turning over user information to government agencies tracking political dissidents in order to imprison them, and otherwise helping those governments to practice censorship.

How, in a world of profit-maximizing firms and states jealously guarding their sovereign prerogatives, can multinational corporate conduct be regulated to prevent or mitigate such human costs? How can companies that continue imposing them be held to account? Globally operating firms are not regulated globally. Instead, each of their individual component entities is subject to the jurisdiction in which it operates. Yet even where national laws exist proscribing abusive conduct, which cannot always be taken for granted, states in many cases fail to implement them—because they lack the capacity, fear the competitive consequences of doing so, or because their leaders subordinate the public good for private gain.

As if by some dialectical force, individuals and communities adversely affected by corporate globalization began to invoke the language of human rights to express their grievances, resistance, and aspirations. Human rights discourse—affirming the intrinsic worth and dignity of every person, everywhere—became a common ground from which they began to challenge and seek redress for the human costs of corporate globalization. Of course, such efforts lack the material power of multinationals or states. What has emerged, as a result, is a complex and dynamic interplay between “the power of norms versus the norms of power.”<sup>1</sup> But this raises two further questions: How can human rights norms most effectively be embedded in state and corporate practice to change business conduct? More challenging still, how can this be fostered and achieved in the global sphere where multinational

corporations operate but which lacks a central regulator? On these questions human rights proponents and global businesses have been locked in a stalemate. The main global public arena in which this clash has occurred has been the United Nations, which first attempted, unsuccessfully, to negotiate a code of conduct for multinational corporations as far back as the 1970s.<sup>2</sup>

In the late 1990s, the UN Sub-Commission on the Promotion and Protection of Human Rights began drafting a treaty-like document called “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” (“Norms”). In 2003 it presented the text for approval to the Commission on Human Rights, its intergovernmental parent body (which later became the Human Rights Council). The Norms would have imposed on companies, within their “sphere of influence,” the same human rights duties that states have accepted for themselves under treaties they have ratified: “to promote, secure the fulfillment of, respect, ensure respect of and protect human rights.”<sup>3</sup> The Norms triggered a deeply divisive debate between human rights advocacy organizations and the business community. Advocates were fervently in favor because the Norms proposed making these obligations binding on companies directly under international law. Business vehemently opposed what it described as “the privatization of human rights,” transferring to companies obligations that they believed belonged to states. The proposal found no champions on the Commission, which declined to act on it.

But enough governments from various regions of the world believed that the subject of business and human rights required further attention even if this particular instrument was unacceptable to them. Facing escalating advocacy campaigns and lawsuits, business itself felt a need for greater clarity regarding their human rights responsibilities from some reasonably

objective and authoritative source. The governments also realized, however, that an intergovernmental process was unlikely to achieve much progress on so new, complex, and politically charged an issue without first finding some common terrain on which to move forward. Hence the Commission established a special mandate for an individual expert, which was intended to signal its concern but remain modest in scope: mainly to “identify and clarify” existing standards for, and best practices by, businesses, and for the role of states in regulating businesses in relation to human rights; and to research and clarify the meaning of the most hotly contested concepts in the debate, such as “corporate complicity” in the commission of human rights abuses and “corporate spheres of influence” within which companies might be expected to have special responsibilities. To add a degree of visibility to the mandate on the international stage, the Commission requested that the UN Secretary-General appoint the mandate-holder as his “Special Representative on the issue of human rights and transnational corporations and other business enterprises.”

And so it came to be that in July 2005 I received a call from then-Secretary-General Kofi Annan, asking me to serve in this post. I had been Annan’s Assistant Secretary-General for Strategic Planning during his highly successful first term, from 1997 to 2001. My main role was to help develop initiatives and messaging that advanced his vision of the United Nations in the new century—pushing the UN’s concerns beyond the precincts of governments toward *We the Peoples*, the title of his celebrated report to the 2000 Millennium Summit. This included more effective engagement with civil society and the business community; devising the Millennium Development Goals, a global set of poverty reduction benchmarks; a more intense focus on universal rights, including promoting the idea that sovereignty should no longer be

permitted to serve as a shield behind which governments feel free to butcher their own people; and several rounds of institutional reforms. In 2001, Annan was awarded the Nobel Peace Prize for, among other achievements, “bringing new life to the organization.” I then returned to my previous life as an academic.

The new assignment, Annan explained in his call, required someone with knowledge of business and human rights issues but, in light of their political sensitivity, did not represent any of the major stakeholder groups involved—governments, businesses, and civil society—while being able to work with them all. It would be a two-year, part-time project that I could conduct without leaving Harvard. I would submit a report each year summarizing my work, conduct one or two consultations around the reports, and then recommend next steps. It seemed both interesting and doable, so I accepted. Little did I know then how challenging, how consuming, and how consequential this assignment would become.

I soon found myself at the center of a storm, as *The Economist* magazine later described it.<sup>4</sup> The prior polarized debate continued, barely stopping for a breather, because the main international human rights organizations did not accept that the “Norms” initiative had come to an end, having invested heavily in it. Amnesty International USA, for example, hailed the Norms as “representing a major step toward a global legal framework for corporate accountability.”<sup>5</sup> The Amnesty International Secretariat had published a “glossy” (booklet) and lined up its national chapters for a global campaign in support of the Norms’ ultimate adoption. The International Federation for Human Rights, comprised of more than 150 organizations in over 100 countries, sent me a letter stating that they “insist on the central role in the current debate of the Norms. . . . The question now is how to build on [them] and how to further



implement these Norms; it is not whether to repeat this exercise all over.”<sup>6</sup> But on the other side, business insisted on precisely the opposite. In a joint letter the Secretaries-General of the International Chamber of Commerce and the International Organisation of Employers, the largest global business associations, stated that I should “explicitly recognize that there is no need for a new international framework.”<sup>7</sup> Instead, they urged me to focus on identifying and promoting good practices and providing companies with tools to enable them to deal voluntarily with the complex cluster of business and human rights challenges. When I asked representatives of governments in an informal Geneva meeting shortly after my appointment what advice they had for me, I got only one direct answer: “Avoid a train wreck.” It was an inauspicious beginning.

Now fast-forward to June 2011—after six years, nearly fifty international consultations on five continents, numerous site visits and pilot projects, and several thousand pages of research reports. The UN Human Rights Council unanimously endorsed a set of “Guiding Principles” on business and human rights that I developed, with the support of all stakeholder groups—even though the Council had not requested any such thing. This also marked the first time that either the Council or its predecessor, the Commission, had “endorsed” any normative text that governments did not negotiate themselves. The Guiding Principles lay out in some detail the steps required for states and businesses to implement the “Protect, Respect and Remedy Framework” I had proposed to the Council in 2008 and which it had welcomed. It rests on three pillars:

1. the state duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication;