

César Rodríguez-Garavito (editor), *Business and Human Rights: Beyond the End of the Beginning* (Cambridge: Cambridge University Press, 2017), 207 pp.

The United Nations Guiding Principles on Business and Human Rights have been applauded and disparaged for equally good reasons. The debate is polarized. This book aims to advance the dialogue by asking: what is next?

The book is the outcome of a two-day workshop co-organized by César Rodríguez-Garavito, a founding member of Dejusticia, the Center for Law, Justice and Society in Bogota, Colombia. The workshop was held at Brown University in March 2014 in collaboration with its Watson Institute for International and Public Affairs. The participants included the author of the Guiding Principles, John Gerard Ruggie, and nine other human rights scholars and practitioners from different backgrounds and perspectives. A background paper by Rodríguez-Garavito provides an overly academic setting but the interchange between the participants is lively. They debate hard versus soft law, global governance versus local action, the duty of business to protect versus respect, and the roles of civil society and stakeholder networks. The book includes their diverging contributions and the editor's introduction and conclusions. The latter provides context rather than synthesis, and the reader is free to conjecture on the likely ways forward and, importantly, how best to influence the multiple processes – global and grass roots – that are shaping the cumulative advance on business and human rights.

The Guiding Principles were a milestone towards the international governance of cross-border business activities. Their adoption by consensus in the Human Rights Council in 2011 is also a vindication of past attempts within the United Nations, notably the prolonged and unsuccessful negotiation of a Code of Conduct on Transnational Corporations (1972–1992) and the more recent attempt at Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (2003). Ruggie disassociates the Guiding Principles from the Code of Conduct but the two exercises were similar. They were both designed to be non-binding, consensus instruments. In both cases, their provisions on the standards for business activity reflected best practice and were accepted without undue negotiation. In both cases, their intended focus was on responsibilities of corporations. The main difference was the political climate. In the 1970s, industrial countries sought to link responsibilities of companies to their rights to operate in host countries (i.e., protection on nationalization, compensation, national treatment, dispute settlement). Disagreement on these rights impeded the Code of Conduct. In the current era, investor rights are widely recognized and codified in investment treaties, and are no longer an obstacle to the recognition of investor responsibilities. The latter were uncontroversial in the proposed 2003 Norms, although that exercise failed mainly due to the provision on implementation, which Ruggie pragmatically avoided. It is therefore unsurprising that the Guiding Principles were adopted by consensus. Nevertheless, the Guiding Principles are a long-awaited win for the United Nations.

The Guiding Principles, of course, are not the final word on business and human rights, and Ruggie refers to them as the ‘end of the beginning’. The debate is about the next step. Wait and see, suggests Ruggie; any next step would thwart promising efforts underway to apply the Guiding Principles, by States to enact the ‘protect’ pillar in national legislation, and by businesses to internalize the ‘respect’ pillar in their management systems. Other authors in this book would like to see concrete means for follow-up on the ‘remedy’ pillar, and a role for civil society in what could have been, says Tara J Melish, a fourth ‘participate’ pillar. There is also the suggestion that the pillars should overlap, as ‘protect’ is a responsibility for countries and business, says Surya Deva. At this point, the reader may want to consult the text of the Guiding Principles, which could have been helpfully annexed in the book.

The authors generally agree on the need for a more active role for the Working Group established by the Human Rights Council to implement the Guiding Principles. They argue that this five-member expert body should not just disseminate and promote the Guiding Principles but also exercise its full mandate of ‘special procedures’, which permit investigation of human rights abuses and engagement with the victims. However, the authors strongly disagree on the value of the Intergovernmental Working Group on a legally binding instrument on transnational corporations and other business enterprises with respect to human rights (which was established by the Human Rights Council in a divided vote).

Ruggie regards the negotiation of a binding treaty as a bad idea, but his objections are unconvincing. He quotes the International Law Commission as saying that international law is too fragmented for any treaty to realistically resolve incompatible provisions in different bodies of law, but the same Commission also observed that obligations in human rights treaties enjoy precedence to transactional bilateral instruments. Ruggie further maintains that the current treaty exercise will detract from the implementation of the Guiding Principles; but all of the States that support a treaty also support the Guiding Principles, and those countries and companies that do not support the treaty are fast tracking their implementation of the Guiding Principles. Thus, the treaty is complementary and even catalytic to the Guiding Principles. Ruggie finally suggests that, if the eventual treaty does not have the support of the major countries, then their companies would disregard it. This is not necessarily so. Companies adhere to the laws of their host countries, and if only a few large markets support the treaty, then companies will tend to standardize their management practice to the higher standards throughout their global operations. Perhaps the advice on the Guiding Principles applies equally to the binding treaty: wait and see.

Whatever the eventual fate of the current efforts for a binding treaty is, it has already produced positive externalities, in terms of engaging civil society, initiating studies (including this book and others), and energizing the expert Working Group on the Guiding Principles. The analytical thinking could lay the groundwork for precise legal instruments to address specific, universally acknowledged governance gaps (e.g., gross human rights abuses, genocide, slavery). Ruggie supports such measures as follow-up to the Guiding Principles.

The United Nations is probably not an ideal forum to advance business and human rights. Countries govern the organization. National interests outweigh collective welfare. Corporate power outplays civil society. These themes underpin the contributions of

Chris Jochnik, Amol Mehra, Louis Bickford, Juana Kweitel and Bonita Meyersfeld. For them, the Guiding Principles need expression and implementation at regional, national and community levels through advocacy and stakeholder engagement. Few would disagree. As sociologist Rodriguez-Garavito puts it, everyday work on human rights and business are positive sum efforts in the polycentric governance of the global ecosystem – what he terms the dynamic dimension of the Guiding Principles.

However, as Mehra argues, and most of the authors agree, it is also important to ‘build up’. Polycentricity needs harmonization, says Larry Catá Backer, favouring an orchestration role for the expert Working Group of the Guiding Principles, which could provide authoritative clarifications in contested disputes. Melish and Deva support the binding treaty effort. Claret Vargas emphasizes the importance of an effective enforcement mechanism.

An obvious possibility is an updated ‘Guiding Principles 2.0’. Ruggie, of course, may oppose any update in fear of a return to the beginning, but it is only pragmatic to continuously adapt in an evolving ecosystem. An update might have a fourth ‘participate’ pillar for civil society, and a deepened ‘remedy’ pillar with specific modalities for multi-stakeholder recourse. It would also be desirable to delete or soften the opening paragraph that states: ‘Nothing in these Guiding Principles should be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights.’ Surely, a more forthright commitment to human rights is called for in the twenty-first century.

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