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Securing human rights in business

The guiding principles presented to the UN on Monday should be embedded into South-east Asia's corporate psyche

By MAHDEV MOHAN AND DELPHIA LIM

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ON May 30, John Ruggie of Harvard University made his final presentation to the United Nations Human Rights Council in his capacity as special representative of the UN Secretary-General for business and human rights.

A fair deal: Recognising that workers everywhere deserve protection, the UN Human Rights Council welcomed the 'Protect, Respect and Remedy' Framework in 2008. And this week, Guiding Principles for the Framework were presented, requiring companies to respect human rights law and standards, not allowing them to cherry-pick only those issues they feel comfortable with

Professor Ruggie's mandate was created in 2005 in order to move beyond what had been a divisive debate on the human rights responsibilities of companies. At the time, many thought that businesses should not be concerned with human rights compliance, regardless of the fact that they too commit or contribute to gross violations of international human rights, and labour and environmental laws and standards.

Prof Ruggie's goal was to build shared understanding among stakeholders by convening consultations around the world and by conducting extensive research. Out of that process came the 'Protect, Respect and Remedy' Framework, which was unanimously welcomed by the Human Rights Council in 2008.

The council then asked Prof Ruggie to continue working to operationalise the Framework. After three years of work, he presented his Guiding Principles (GPs) on the prevention of, and remedy for, business-related human rights harm, in Geneva on Monday.

Whereas the Framework addressed, in Prof Ruggie's words, the 'what' question - what do states and businesses need to do to ensure business respect for human rights? - the GPs address the 'how' question: how do we move from concept to practical, positive results?

Prof Ruggie's efforts have been remarkably successful in establishing a baseline responsibility of businesses to respect human rights. Recently, international organisations such as the OECD and the International Organisation of Standards (IOS) endorsed this responsibility in their guidelines and performance standards. Scores of large companies, leading corporate law firms and institutional

investors too have followed suit and taken the unusual step of issuing public statements of support for the GPs and encouraging the Human Rights Council to endorse them.

Uniform implementation

In his speech, Prof Ruggie remarked that multilateralism - that is, finding common ground rules for global action - works. Yet the council (which is debating the next steps) should bear in mind that the GPs' legacy depends on their effective and uniform implementation, especially since a multilateral treaty is unlikely.

For such implementation to take place in South-east Asia, there needs to be a keen appreciation of developments here, and sustained action to embed the GPs and clarify their legal implications.

With the adoption of the Asean Charter in November 2007, the 10-member regional body moved towards becoming a single polity. Efforts are underway in laying the groundwork to facilitate free flow of information based on each country's laws; combating corruption; and cooperation to strengthen the rule of law.

Regardless of their varying stages of development, there appears to be a growing consensus regarding the elements of the rule of law as a principle of good governance in Asean; and acceptance among the countries that the rule of law is compatible with promoting and protecting fundamental human rights.

An important mechanism that has been established to develop 'common approaches and positions on human rights matters of interest to Asean' is the Asean Intergovernmental Commission on Human Rights (AICHR). AICHR recently adopted the terms of reference of its first thematic study, a baseline study relating to business and human rights in Asean.

Significantly, AICHR's Singapore representative, Richard Magnus, has lauded Prof Ruggie's Framework and the GPs as useful references for this upcoming study.

Also key in the region's human rights landscape is the emergence of credible civil society organisations (CSOs), which share knowledge, experience and training.

Research and analysis

Civil society organisations have been increasingly concerted in their efforts to document business-related human rights abuses and influence policymaking.

In short, the time is ripe for regional stakeholders to embed the GPs into Asean's shared norms and values.

There is, however, a dearth of systematic research and analysis on human rights issues, which is necessary to inform and support human rights initiatives by AICHR or CSOs. Further, with some exceptions, there has been little acknowledgment by the region's businesses of the relationship between their operations and human rights. Many still continue to address the social impact of their

practices through corporate social responsibility (CSR) programmes that frame their action in terms of voluntary efforts, not due diligence obligations.

The GPs require companies to respect human rights law and standards; they do not permit companies to cherry-pick and deal with only those issues that they feel comfortable with.

We hope that those who carry forward Prof Ruggie's initiative will engage with regional stock exchange regulators, state-owned enterprises, sovereign wealth funds, banks and financial institutions, multinationals and other leading public and private sector entities so that the GPs can be embedded into South-east Asia's corporate psyche.

To this end, it is vital that academics, auditors and human rights practitioners here conduct sustained research which identifies and assesses the adverse human rights impacts of business activities, and tracks the efficacy of efforts to address them.

They should also engage with businesses in the provision of consulting and due diligence services to ensure corporate compliance with the GPs.

Clarity and certainty

It is crucial for businesses that there be more certainty in relation to applicable legal protection against business-related human rights abuses in conflict-affected, post-conflict and fragile states where human rights enforcement may be weak or non-existent.

South-east Asia's history of conflict and evolving transition towards respect for the rule of law and human rights has many lessons to offer in this regard. We believe that these lessons will contribute to the formulation of regional and international best practices for business conduct in heightened-risk situations.

Absent a binding legal treaty, best practices will lend much needed clarity and certainty to these businesses, and enable them to conduct effective human rights due diligence.

Prof Ruggie ended his speech to the council by reminding them that 'human rights are at stake - and so, too, is the social sustainability of enterprises and markets as we know them'. We hope that the council - and governments and businesses in South-east Asia - will heed this timely refrain and honour the GPs.

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