

STOCKHOLM PRE-MOOT CONFERENCE

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COMMERCE**

UN Global Compact principles: significance for the promotion of international trade

Keynote Address

by

Hans Corell

**Former Under-Secretary-General for Legal Affairs
and the Legal Counsel of the United Nations**

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Dear participants in the Pre-Moot Conference,

I have been asked to address the topic “UN Global Compact principles: significance for the promotion of international trade”. Before I focus on the topic, allow me to share with you some very personal reflections on human rights, based on my experiences from my 33 years in the Judiciary, the Ministry of Justice, and the Ministry for Foreign Affairs of my country before I was appointed Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations in 1994.¹

Is the Business of Human Rights also the Business of Business?

During these years I regarded the protection of human rights mainly as a constitutional matter: a responsibility of the government. A very important learning experience was when, in 1983, I was entrusted with the task of being the agent of the Swedish Government before the European Court of Human Rights, a task that I fulfilled for 11 years. The interaction with this Court taught me and also the government many lessons.

By way of example: in a case where the Court found that a judgement or decision at the national level violated the European Convention on Human Rights the question immediately arose: why did the government lose the case? Since an applicant must exhaust all national remedies before he or she can turn to the European Court of Human Rights, the judgement or the decision at the national level had always been taken by the highest national authority competent to deal with the subject matter. The presumption must then be that this authority had applied the national law correctly. Therefore, the main question that arose was whether it was necessary to amend the national legislation in order to avoid further rulings against the country by the Court on the same subject matter. We had to make such amendments in a few cases.

It was this thinking and experience that I brought with me when I joined the United Nations in March 1994. However, after some time my focus on human rights broadened. A turning point came in 1998, when I was invited to address a Workshop in Sweden under the theme “Human Rights and the Free Market – Is the Business of Human Rights also the Business of Business?”²

My task was to make the introduction at the Workshop by explaining the meaning and the role of the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948.³ In 1998, we therefore celebrated the 50th anniversary of the Declaration. I had been asked to focus on the purpose of the Declaration and present challenges to governments and to the business community. I should be “open” and could also be controversial.

¹ I had served as a court clerk and later as judge in courts of first instance and courts of appeal from 1962-1972. I was then Legal Adviser in the Ministry of Justice from 1972-1984, the three last years as the Chief Legal Adviser, and then the Chief Legal Adviser in the Ministry for Foreign Affairs from 1984-1994.

² Address by the Legal Counsel to the 1998 Tällberg Workshop: Human Rights and the Free Market - Is the Business of Human Rights also the Business of Business? (“The meaning and role of the Universal Declaration of Human Rights”), available at

http://legal.un.org/ola/media/info_from_lc/address_06_26_98.pdf.

³ Available at <http://www.un.org/en/universal-declaration-human-rights/>.

Let me share with you a brief quote from my address on this occasion relating to the question whether the UDHR is binding on business:

My challenge to business is the following. Today, fifty years later, business is reaching into hitherto unimagined fields. Many enterprises are transnational with thousands of employees and economies that outsize the economies of many States. In some countries, these giants are even seen as a threat to national sovereignty and a factor that risks making government irrelevant. In what sense is this power different from the power against which the UDHR is meant to protect the individual? And is it not true that, wherever power is exercised, it should be subject to scrutiny. Are we heading in a direction where real power is being gradually transferred to wood-panelled board rooms, to powerful entities who are subject to the scrutiny only of an annual meeting of shareholders whose main interest may be that the Board and the Chief Executive Officer make certain that shareholders' profits are as high as possible?

My conclusion at the Workshop was that business has a responsibility to seek guidance in the Declaration and in the other instruments for the protection of human rights and that business has an enormous potential to protect human rights.

Against this background, I presented business at the Workshop with three challenges:

- Add another element to the annual report: explain how the company observes human rights.
- Engage in elaborating a business code, based on the UDHR.
- Form a new international non-governmental organization: Chief Executive Officers for Human Rights.

In closing, I asked the participants not to forget one very important common denominator between the UDHR and business. The Declaration is universal! So is also, in a sense, business!

The Global Compact

A few months later, on 31 January 1999, UN Secretary-General Kofi Annan announced the Global Compact in an address to the World Economic Forum in Davos.⁴ On this occasion, the Secretary-General challenged business leaders to join in this international initiative, which would bring together companies with UN agencies, labour and civil society. The purpose was to support principles in the areas of human rights, labour and environment.

In July the same year the Secretary-General announced nine principles for the Global Compact taken from the Universal Declaration of Human Rights,⁵ the International Labour Organization's Declaration on Fundamental Principles and Rights at Work⁶ and the Rio Declaration on Environment and Development.⁷

⁴ The address is available at <http://www.un.org/News/Press/docs/1999/19990201.sgsm6881.html>.

⁵ See supra note 3.

⁶ Available at <http://www.ilo.org/declaration/lang--en/index.htm>.

⁷ Available at <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

On 31 October 2003, the UN General Assembly adopted the United Nations Convention against Corruption.⁸ I had the privilege of representing the Secretary-General at the ceremony for the signing of the Convention in Merida, Mexico, on 9 December 2003.⁹ After the signing of the Convention, a tenth principle was added to the Global Compact in June 2004: a principle against corruption.

The Ten Principles of the Global Compact

The following are the ten principles of the Global Compact:¹⁰

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

Labour Standards

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

For those interested I can refer to an article about the Global Compact that I have contributed to a book entitled *Corporate Social Responsibility: The Corporate Governance of the 21st*

⁸ See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18&clang=en.

⁹ Message from the Secretary-General at the opening of the High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption, held in Merida, Mexico, 9 December 2003, available at http://legal.un.org/ola/media/info_from_lc/corruption_message.pdf. An Appeal to Judges Worldwide by the Legal Counsel made at the High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption, held in Merida, Mexico, 9 December 2003, available at http://legal.un.org/ola/media/info_from_lc/corruption_appeal.pdf.

¹⁰ Reference is made to: <https://www.unglobalcompact.org/what-is-gc/mission/principles>.

Century.¹¹ However, this book was published before a very important development took place in the field of corporate social responsibility, namely the endorsement by the United Nations Human Rights Council in its resolution 17/4 of 16 June 2011 of the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework".

The UN Guiding Principles on Business and Human Rights

These principles had been developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The Special Representative annexed the Guiding Principles to his final report to the Human Rights Council (A/HRC/17/31), which also includes an introduction to the Guiding Principles and an overview of the process that led to their development.¹²

The Office of the High Commissioner for Human Rights has also published an interpretive guide on the corporate responsibility to respect human rights as set out in the Guiding Principles.¹³

Interestingly, the Special Representative of the Secretary-General in this case was Professor John Ruggie of Harvard University. It was John Ruggie who assisted Secretary-General Kofi Annan with the elaboration of the Global Compact.

The Guiding Principles – often referred to as the “Ruggie Principles” – apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. I recommend that you study these principles carefully. They refer to the state duty to *protect* human rights, the corporate responsibility to *respect* human rights, and access to *remedy*.

Many ask about the relationship between the UN Guiding principles and the Global Compact. A very important document in this context is therefore “The UN Guiding Principles on Business and Human Rights: Relationship to UN Global Compact Commitments”.¹⁴

In this document it is said that the principles relating to the responsibility of business enterprises to respect human rights are of direct relevance to the commitment undertaken by Global Compact participants. Reference is made to Principle 1 of the Global Compact, which calls upon companies to respect and support the protection of internationally proclaimed human rights, and to Principle 2, which calls upon them to ensure that they are not complicit in human rights abuses. It is also said that the UN Guiding Principles provide further conceptual and operational clarity for the two human rights principles championed by the Global Compact.

¹¹ The Global Compact. In: Corporate Social Responsibility – The Corporate Governance of the 21st Century. Second Edition. Ed. Ramon Mullerat. Kluwer Law International (2011) (p. 265-274), available at <http://www.havc.se/res/SelectedMaterial/20040621globalcompact.pdf>.

¹² Reference is made to http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

¹³ Available at <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>.

¹⁴ Available at https://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf.

The document also contains references to a number of documents that serve as guidance in implementing the Global Compact, including documents elaborating on what business respect and support for human rights mean in the context of empowerment of women, protection of children, and indigenous peoples' rights.

The Significance of the Global Compact Principles for the Promotion of International Trade

Let us now focus on the UN Global Compact principles and their significance for the promotion of international trade.

In my view, the significance of the principles is even more relevant today than when they were formulated. Today, the Global Compact describes itself as the world's largest corporate sustainability initiative. It calls on companies to align strategies and operations with universal principles on human rights, labour, environment and anti-corruption, and take actions that advance societal goals. It helps companies to meet their commitment to operate responsibly and support society. It also has a multi-year strategy to drive business awareness and action in support of achieving the Sustainable Development Goals by 2030.

According to their website, the membership today consists of 9,678 companies from 161 countries. There are also local networks to advance corporate sustainability at the grassroots level by helping companies understand what responsible business means within a national context.

The governance of the UN Global Compact is comprised of the following main elements:¹⁵

- *The Leaders Summit*, which is a triennial gathering of the most senior executives of UN Global Compact participants and other stakeholders from government, civil society, academia, Local Networks and the UN.
- *The UN Global Compact Board*, which is a high level multi-stakeholder UN Global Compact Board that is chaired by the UN Secretary-General, which meets every 6-9 months..
- *The Annual Local Networks Forum*, at which the 80+ country networks of the Global Compact convene and decide on policy relating to the governance of Local Networks.
- *The Local Networks* which are clusters of participants (business and non-business) who come together to advance the Global Compact principles and UN goals within a particular geographic context.
- *The Global Compact Headquarters*, which is comprised of the UN Global Compact Office and the Foundation for the Global Compact and responsible for day-day coordination of the initiative as a whole.
- *The Global Compact Government Group & Friends of the Global Compact*, which consists of governments that contribute to the Global Compact Trust Fund, which helps to fund the initiative, and convenes biannually to review budgets and progress respectively.

If we now look at the principles, I would suggest that they are of the greatest significance for the promotion of international trade.

¹⁵ See <https://www.unglobalcompact.org/about/governance>.

The Principles on Human Rights

If we look at the principles under the heading Human Rights, business can make a tremendous contribution here. Human rights are a core element in democracy and the rule of law. Respect for democracy and the rule of law are absolutely necessary in order to achieve international peace and security and societies where people can live in dignity with their human rights respected. Rule of law is also an indispensable element for proper business.

I often say that if you look at an armed conflict and ask why there is one, the answer is invariably the same: no democracy and no rule of law. Here many societies fall short, and I regret to say that these elements are even under attack in states that assisted in restoring the world society and creating the United Nations after World War II.

When business works to support and respect the Global Compact principles, it is important to seek guidance in the material that is now available on the web. In particular, I draw attention to the guidance that is provided by the United Nations. Detailed guidance can be sought from their webpage entitled “The Ten Principles of the UN Global Compact” and specifically to the information under the title “In this section”.¹⁶ Here the principles are explained one after the other under the headings: What does it mean? Why should companies care? What can companies do? This is very useful information indeed.

The Principles on Labour Standards

With respect to the principles under the heading Labour Standards, these are also extremely important for creating peaceful societies. The freedom of association is actually a human right, in this context qualified by the specific reference to collective bargaining. The other elements are also closely related to human rights and of great relevance for a well-functioning business community.

A specific area that needs special attention is when business engages in contracting with providers of products or subcontracting their own services or products. I believe that this is an issue that you will address in the moot court arbitration.

The Principles on Environment

With respect to the principles under the heading Environment, I cannot emphasise enough how important they are. Since I retired from public service in 2004, I have had the opportunity of taking a closer look at the environment and the importance of addressing the tremendous challenges that we now see ahead of us. I would therefore like to develop my thoughts in somewhat more detail here.

Addressing this issue, I often start by referring to the fact that when the United Nations was established in 1945, the world population was some 2 billion people. Today we are 7.6 billion, and the projection for 2050 is now 9.8 billion.¹⁷ How much can the globe sustain? In particular if this population will continue to generate additional threats to the environment through its behaviour.

¹⁶ See <https://www.unglobalcompact.org/what-is-gc/mission/principles>.

¹⁷ See the Press Release at

<http://www.un.org/en/development/desa/population/events/other/21/index.shtml>.

I have also had the privilege of focusing on the Polar Regions. In 2005, I chaired the annual meeting of the parties to the Antarctic Treaty, and since then I have also followed the development in the Arctic, mainly through the Arctic Governance Project¹⁸ and Arctic Frontiers.¹⁹ Many people are not aware of the size of the Polar Regions. They are geographically opposite, but they are also the opposite in another sense. Antarctica is a continent surrounded by sea, while the Arctic is a sea surrounded by continents. However, the size of the continent in the South and the sea in the North is the same: 14,000,000 km² – one and a half times the size of the United States of America. And on Antarctica some 90% of the freshwater resources of the globe are frozen as glaciers.

I have seen the glaciers in Greenland and Spitzbergen melting. Within hundred years we could have a sea level rise of about one meter, which would have disastrous effects in many countries. In addition, there is a risk of desertification, in particular in Africa. These effects could generate climate refugees in numbers that will make the flows of migrants across the Mediterranean today look like trickles in comparison.

Taking all this into consideration, it is absolutely necessary that businesses support a precautionary approach to environmental challenges, undertake initiatives to promote greater environmental responsibility; and encourage the development and diffusion of environmentally friendly technologies.

The Principle on Anti-corruption

With respect to Anti-corruption I cannot stress enough the importance of supporting Principle 10. As a matter of fact, corruption is one of the worst enemies of the rule of law. It also destroys the level playing field. I know that representatives of the business community always stress the importance of a level playing field when they discuss the manner in which companies should compete when they do business.

Against this background it is important to refer to what Kofi Annan said in his message to the signing Conference in Merida on 9 December 2003, namely that the Global Compact can play an active role in helping to implement the new Convention.²⁰ Let me also quote the following from his message:

I urge all States to ratify the Convention at the earliest possible date. Let us bring it into force as a matter of urgency. If fully enforced, it can help to ensure that the weak and vulnerable are protected from the greed of corrupt officials and unscrupulous profiteers. It can help ensure that, in today's fast-moving world, the poor do not become poorer. And by removing an important obstacle to development, it can help us achieve the Millennium Development Goals, and improve the life of millions around the world. Let me assure you that the United Nations will continue to do its part, working with Governments and civil society in this momentous global struggle.

¹⁸ See <http://www.arcticgovernance.org/>.

¹⁹ See <https://www.arcticfrontiers.com/>.

²⁰ See supra note 9.

As I mentioned a few moments ago, the Global Compact is now focusing on the Sustainable Development Goals. In my view, one of these goals is necessary to attain all the other goals, namely Goal 16:

Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

Among the targets of this goal are “promote the rule of law at the national and international levels”, and “substantially reduce corruption and bribery in all its forms”. These are in my view absolutely crucial elements for creating the legal order that is a prerequisite for achieving all the other goals.

Conclusion

In conclusion I would suggest that all the ten Global Compact principles point in the same direction: the need for the rule of law.

The rule of law is indispensable if we want to create a world where human beings can live in peace with their human rights protected. I therefore cannot resist drawing attention to the importance of involving politicians in the work to establish the rule of law. This applies to politicians at all levels, but there should be a special focus on those in government and in the national legislative assembly.

In this work I am convinced that business can play a very important role. I would therefore like to draw attention to a tool which may be useful in a dialogue between politicians and business, namely a short guide for politicians on the rule of law. This guide, entitled *Rule of Law – A guide for politicians*, is now available free of charge in 24 languages for downloading and printing from the web.²¹ As suggested in the Foreword to the guide, it should also be useful to other decision-makers and policy-makers and to journalists and others who need to orient themselves in the topic. Why not also members of the business community!

Let me close by referring to the “Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels”, adopted by the UN General Assembly on 24 September 2012. Paragraph 7 of this Declaration reads:²²

We are convinced that the rule of law and development are strongly interrelated and mutually reinforcing, that the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law, and for this reason we are convinced that this interrelationship should be considered in the post-2015 international development agenda.

²¹ *Rule of Law – A guide for politicians*. A Guide elaborated under the auspices of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at Lund University, Sweden, and the Hague Institute for the Internationalisation of Law (HiiL), the Netherlands, available at <http://rwi.lu.se/2017/03/rule-law-guide-politicians/>.

²² Available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/1.

Precisely! And business could contribute to reinforcing the rule of law in two ways: by assisting in holding states to account and by paying respect to the Global Compact principles. With respect to the promotion of international trade, the rule of law at the national and international levels is of greatest importance, and the significance of the Global Compact principles for the promotion of international trade cannot be overemphasised.

Thank you for your attention!