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Human Rights and a Corporation's Duty to Combat Corruption

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Abstract.

Increasingly, there is awareness that corruption and human rights are intimately connected. However, the debates and reform proposals on improving corporations' social performance in these two areas are often treated as separate concerns. This article argues that companies must see combating corruption and promoting human rights as connected and complementary moral duties in the countries where they operate. MNCs know (or should know) that corruption greatly impacts their ability to respect human rights. Thus, awareness of how corruption impacts human rights throughout the MNC's supply chain should be essential for conducting "human rights due diligence." To accomplish this goal, MNCs should not only ensure that their employees and agents do not pay bribes, but that corruption is not standing in the way of their suppliers' ability to meet human rights obligations. In addition, this may also include an obligation to work towards reducing the enabling environment that allows corruption to thrive in that location. This duty goes beyond legal compliance with the FCPA or other national anti-bribery laws and must be central to the discussion of corporations' human rights obligations.

Human Rights and a Corporation's Duty to Combat Corruption

In the last decade, the debate over corporations' human rights obligations has become a central topic in the fields of corporate social responsibility ("CSR") and international law. Developments such as the United Nation's *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* in 2003, and lawsuits filed against corporations in the United States under the Alien Tort Statute ("ATS") (sometimes called the Alien Tort Claims Act) for alleged human rights abuses abroad, led to the United Nations appointing John Ruggie as a Special Representative for Business and Human Rights (U.N. Commission on Human Rights Subcommittee, 2003). In 2011, the U.N. Human Rights Council endorsed his recommendations, which were promulgated as the *Guiding Principles on Business and Human Rights* (U.N. Special Representative of the Secretary-General, 2011). These principles have been well-received and established corporations' obligation to "respect" human rights.

During this same time, combating corruption in international business was also gaining prominence. The major developments included the OECD Convention on *Combating Bribery of Foreign Public Officials in International Business Transactions* coming into force in 1999, and then the United Nations *Convention against Corruption* in 2005. Of more direct importance to the business community is the U.S. Department of Justice's increased enforcement of the Foreign Corrupt Practices Act in the last several years through well-publicized settlements and guilty pleas of major corporations, such as Siemens, Daimler AG, and Pfizer. Other potential enforcement activity, such as the U.K.

Anti-Bribery Act going into effect in 2011, has made controlling the supply side of corruption through the criminal law an important, and highly controversial, topic (Barta & Chapman, 2012).

Increasingly, there is awareness that these two topics—corruption and human rights—are intimately connected: high levels of corruption in a country prevent the realization of human rights and fuel human rights abuses. However, the debates and reform proposals on improving corporations' social performance in these two areas are often treated as separate concerns. To combat corruption, corporations focus on ensuring that their employees or agents do not pay bribes by adopting compliance programs that are likely to be effective in ensuring that anti-bribery laws are not violated (or, at least, adopting the appearance of compliance programs that satisfy external demands). With increased enforcement of anti-bribery laws in the U.S., and elsewhere, combating corruption is increasingly becoming seen by corporations as primarily, or solely, a legal compliance issue. Likewise, business and human rights efforts recognize the harms of corruption, but treat it as a separate issue. In many ways, corruption seems to be viewed as something present in the local business environment that is a separate legal issue from the CSR issues surrounding human rights and therefore is not a direct concern of initiatives to improve human rights outcomes.

This article argues that corporations will have a more positive impact on human rights if these issues—business and corruption, and business and human rights—are considered together. CSR initiatives aimed at improving corporations' human rights performance must directly consider the impact of corruption and how combating corruption can improve human rights outcomes. In other words, combating corruption

should not just be considered as an end in itself, but also as a means for preventing human rights abuses.

In Part I we begin by discussing the background of the relationship between corruption, CSR and human rights. We provide an explanation of the goals of fighting corruption and protecting human rights before presenting the existing international and domestic frameworks that have begun to address these issues for both business and society. Next, in Part II we discuss the Ruggie “Protect, Respect and Remedy” framework in greater detail, as well as the notion of corporate complicity in human rights violations, and then present several theoretical perspectives from the debate over a corporation’s positive duty to act. In Part III, we argue for a dynamic conceptualization of addressing these goals that goes beyond mere compliance with legal frameworks to combat corruption and promote human rights, all alongside a corporate social responsibility view of corporate action. To move in this direction we advocate a multi-prong approach within a framework of developing and implementing effective policies, procedures, publication, and stakeholder participation. We ultimately sum up our arguments and the model of corporate action in a brief conclusion.

I. Background on the corruption, CSR, and human rights relationship

In this Part we first lay out the issues of corruption and human rights, then discuss how they are connected to each other and MNCs’ activities in emerging economies. In addition, we discuss the rise and evolution of key business accountability efforts, such as the U.N. Global Compact and the Global Reporting Initiative, and show how corruption, once a neglected CSR issue, is now a part of those frameworks. We also explain that the

CSR and especially the legal literature related to corruption often view corruption as *something done to the corporation* in terms of demands from corrupt officials, rather than *something the corporation is doing* to the citizens of the developing country. Throughout we examine how corruption and human rights are interrelated issues, how corruption compares to other human rights concerns, and why it has not been a central part of the business and human rights discussion. We also show that only recently has corruption been seen as an important issue of corporate social responsibility.

A. *International frameworks and other instruments related to corruption and human rights*

As noted by many scholars, corruption is an ancient problem that has been condemned widely throughout history, including by all major world religions (Nichols, 2004; 2009). With an increasingly globalized economy, the harms of corruption to economic development are now more fully appreciated. Moreover, as the United Nations Global Compact has concluded:

It is now clear that corruption has played a major part in undermining the world's social, economic and environmental development. Resources have been diverted to improper use and the quality of services and materials used for development seriously compromised. The impact on poorer communities struggling to improve their lives has been devastating, in many cases undermining the very fabric of society. It has led to environmental mismanagement, *undermining labor standards and has restricted access to basic human rights* (U.N. Global Compact, 2013).

This recognition of the harms of corruption¹ by leaders in all sectors of society has moved corruption from being an issue that was not openly discussed to a major topic of international policy.

Early evidence of an appreciation for the supply side of corruption is TI's Bribe Payers Index ("BPI"), which was first published in 1999. Unlike the CPI, which ranks countries based on perceptions of the level of corruption, the BPI "ranks the world's wealthiest countries by the propensity of their firms to bribe abroad and looks at which industrial sectors are the worst offenders" (Transparency International, 2013a). In part, the BPI challenged beliefs that corruption existed in developing countries and MNCs had no choice but to comply if they wanted to do business there, and encouraged interested parties to examine how MNCs from clean countries on the CPI "exported corruption" (Hess & Dunfee, 2000, p. 598).

In fact, labeling the payment of bribes by the private sector as the "supply side" may be misleading and not reflect the exportation of corruption. A recent example illustrates this. Wal-Mart de Mexico managers used bribes to gain building permits for stores in numerous locations in Mexico. Some of the alleged bribes were used to speed up approval processes or to move ahead of other companies in priority lines for government services. This appears to be in line with the company supplying the bribe demanded by a corrupt government official. However, some of the alleged bribes paid by Wal-Mart to Mexican officials allowed construction on sites—including within a previously-

¹ In this chapter, we use the broadly-accepted definition of corruption proffered by the prominent anti-corruption non-governmental organization Transparency International ("TI"): corruption is "abuse of entrusted power for private gain" (Transparency International, 2013c). Through tools like its Corruption Perceptions Index ("CPI"), TI applies this definition to both the private and public sectors, thus taking the definition beyond the traditional realm of criminalized bribery where one of the participants must be a public official (Transparency International, 2013b). TI's definition is relatively expansive and others have begun to look at private-to-private corruption and otherwise begun to see corruption as a major issue for the multi-national business community (Argandoña, 2003).

designated sensitive archeological zone around the Mayan pyramids of Teotihuacán—that had previously been denied (Barstow & Bertrab, 2012). In another instance, “thanks to eight bribe payments totaling \$341,000, for example, Wal-Mart built a Sam’s Club in one of Mexico City’s most densely populated neighborhoods, near the Basílica de Guadalupe, without a construction license, or an environmental permit, or an urban impact assessment, or even a traffic permit.” As a result of even larger bribes “totaling \$765,000 . . . Wal-Mart built a vast refrigerated distribution center in an environmentally fragile flood basin north of Mexico City, in an area where electricity was so scarce that many smaller developers were turned away” (Barstow & Bertrab, 2012). Such actions were apparently condoned by senior Wal-Mart managers, at least implicitly by not taking corrective action once learning of the payments, and appear to show an example of a MNC bribing to get what it wants and not simply giving in to bribe demands (Barstow, 2012). Overall, the investigative journalists at the New York Times concluded:

Wal-Mart de Mexico was not the reluctant victim of a corrupt culture that insisted on bribes as the cost of doing business. Nor did it pay bribes merely to speed up routine approvals. Rather, Wal-Mart de Mexico was an aggressive and creative corrupter, offering large payoffs to get what the law otherwise prohibited. It used bribes to subvert democratic governance — public votes, open debates, transparent procedures. It used bribes to circumvent regulatory safeguards that protect Mexican citizens from unsafe construction. It used bribes to outflank rivals (Barstow & Bertrab, 2012).

For a significant amount of time, only the U.S., through the adoption of the Foreign Corrupt Practices Act (“FCPA”) in 1977, used the criminal law to attempt to control the supply side of bribery in international business. However, it was rarely enforced for the first 25 years of its existence. Although there were non-binding anti-corruption guidelines for MNCs in Europe, it was the 1997 OECD anti-bribery

convention that brought nations toward an international consensus on regulating the supply side of corruption through government enforcement (OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 2011). Another important step in pushing countries to regulate the supply side of corruption, and also for acknowledging the importance of corruption as an economic development issue, was the United Nations Convention against Corruption, which entered into force in 2005 as the “first globally-agreed anti-bribery instrument” (U.N. Global Compact, 2013).

The voluntary United Nations Global Compact initiative created a further advancement in recognizing the role of MNCs in contributing to corruption that imperils human rights. Started in 2000, the Global Compact initially focused on corporations’ responsibilities for human rights, labor, and environmental issues (U.N. Global Compact, 2011). In 2004, an additional tenth principle was added that required corporations to “work against corruption in all its forms” (U.N. Global Compact, 2013). Thus, although corruption was initially not viewed as a part of a corporation’s social responsibilities, it was added later, at least in part, due to a recognition that meaningful progress on the other issues, such as human rights, could not be made if corruption was not controlled.

In addition to the Global Compact, other major initiatives have also started to connect combating corruption with MNCs’ social responsibilities. One such major initiative is the Global Reporting Initiative (GRI). For the last decade, the non-profit organization GRI has produced the leading standards on sustainability reporting (Global Reporting Initiative, 2013b). Like the U.N. Global Compact initiative, the GRI’s standards did not initially designate corruption as a key area of concern, but subsequent

standards have made it an important topic. Another major initiative, which is specific to resource extraction MNCs—a broad industry of natural resource-related MNCs known for a high incidence of corruption—is the Extractive Industry Transparency Initiative (“EITI”) (Extractive Industries Transparency Initiative, 2013). In short, the EITI involves a centralized reporting structure that allows the interested parties to track contracts and payments between MNCs and the countries where the resources are located. By increasing transparency on the transfer of payments concerning the resources extraction activities it is hoped that these proceeds end up benefiting citizens in the developing nation and not in the foreign bank accounts of corrupt officials.

Overall, the policy developments and multi-stakeholder initiatives described are significant developments in recognizing the importance of controlling the supply side of corruption as a part of a corporation’s social responsibilities. Although these developments were able to move forward due, at least in part, to a recognition of the impact of corruption on human rights and sustainability more generally, they do not do much to move past the view that a corporation’s only obligation is to prohibit its employees from paying a bribe. As stated earlier, the attention given the U.K. Bribery Act and increased enforcement of the FCPA also encourage that limited view. Underlying this view seems to be an assumption that corruption abroad is something that MNCs have done to them. That is, MNCs do not bring a corrupting influence to the country (“exporting corruption”), but they are unwillingly forced into situations where they need to decide whether or not to give into a demand for bribes.

This is a different perspective from that of MNCs in the areas of human rights. Concerning labor conditions, for example, a motivating force behind policy

developments and multi-stakeholder initiatives is the view of MNCs as exploiters of developing countries' low wage workers and weak labor laws. Likewise, with respect to the environment, MNCs are viewed as *causing* the environmental damage. This difference in underlying views potentially changes how MNCs' view their obligations. That is, MNCs are more likely to take a broader view of their responsibilities and expand from "avoid the harmful activity" to "work for positive change in the local environment to prevent the harmful activity from occurring." One example may be the *Accord on Fire and Building Safety in Bangladesh*. Another could be the work of IKEA to combat child labor in India and other countries, by not only prohibiting its use, but also seeking to mitigate the root causes of child labor in those countries, such as through providing opportunities for meaningful education for the children.

In this chapter, our primary focus is on making combatting corruption a central part of MNCs' obligation to respect human rights. Certain social responsibilities of MNCs may be independent—such as avoiding child labor and protecting the environment—but combatting corruption is different. The social responsibility to combat corruption is not an end in itself, but in developing countries with high levels of corruption, it should be an integral part of an MNC's efforts to meet any of its responsibilities.

There is some movement in this direction. For example, in the US, the Dodd-Frank Act is essentially an attempt to mandate the requirements of the voluntary EITI (Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010). This is movement beyond the FCPA's prohibition on bribery, and is an attempt to establish a system—based in part on an MNC's disclosure obligation—that reduces the likelihood of

corruption in a country that harms that country's citizens. Thus, this is an example of combatting corruption through the law beyond simply requiring a corporation to ensure it does not pay bribes. In the realm of voluntary CSR initiatives, the World Bank Institute, Transparency International, and others, have engaged in efforts to encourage MNCs to work through collective action efforts to reduce corruption in particular business environments (World Bank Institute, 2008). This chapter seeks to build upon these efforts and ensure that combatting corruption is a central part of the business and human rights movement. As some further background on this is needed, the next section provides an illustration of how many of the human rights challenges that companies face throughout their supply chain cannot be fully addressed without first adequately addressing the issue of corruption.

B. Corruption as a business and human rights problem

At the time of this writing, the labor safety issues in the garment industry in Bangladesh are a primary ongoing example of a business and human rights problem. Since 2007, over 700 workers have died in fires at garment factories in various developing countries such as China and Bangladesh (Most, 2013). In April of 2013, an eight story building that housed several garment factories collapsed, causing the deaths of over a thousand workers (Manik & Yardley, 2013; Accord on Fire and Building Safety in Bangladesh, 2013). These deaths likely could have been prevented if corruption did not allow workplace safety violations and building code violations to go unchecked (Manik & Yardley, 2013).

Corruption allows factories to remain in operation even if inspectors find numerous safety violations (Keeping & Zaman, 2012). Likewise, as is the case in other countries like with failing bridges in China (Hess & Dunfee, 2000), corruption is likely the culprit that allowed the building in the Bangladesh collapse to be constructed in violation of building codes (Yardley, 2013).² This lack of building code enforcement has been connected to the devastating situation where countries that suffer a relatively high level of perceived corruption also have a high percentage of earthquake-related deaths from collapsed structures. This correlation may be attributable to the existence of poorly constructed and often illegal buildings that are made possible because of corrupt officials shirking their oversight duties. This has included the extensive loss of life from collapsed buildings during the 2010 Haitian earthquake (Ambraseys & Bilham, 2011).

The point is that anti-corruption efforts cannot focus only on multi-national corporations refusing to pay bribes. Collapsing buildings and avoidable factory fires where MNC's suppliers operate are due to corrupt transactions that may not have directly involved the MNC apparel company, but that company is impacted by it and has (or should have) responsibility for the problem. Similarly, where a MNC uses bribery to gain construction approval that leads to environmental and cultural degradation, that company should not be without some level of responsibility for the impact stemming from the corruption. Overall, MNCs know, or should know, that corruption greatly erodes their ability to respect human rights. Awareness of how corruption impacts human rights throughout the MNC's supply chain is essential for conducting "human rights due

² In an article discussing the reasons behind illegal construction in one developing area in India, the author states that "politicians preferred to keep colonies vulnerable so that residents remained more beholden to them for even incremental improvements." One business owner located in an illegally constructed area told the reporters that, "petty officials routinely demanded bribes to allow new construction projects. Others said that the police routinely required payoffs, too." (Yardley, 2013).

diligence” (U.N. Special Representative of the Secretary-General, 2008).³ Thus, preventing corruption from creating human rights concerns for workers in their supply chain should be a top priority of MNCs.

To accomplish this goal, MNCs should not only ensure that their employees and agents do not pay bribes, but that corruption is not standing in the way of their suppliers to meet human rights obligations. In addition, this may also include an obligation to work towards reducing the enabling environment that allows corruption to thrive in that location. This duty goes beyond legal compliance with the FCPA or other national anti-bribery laws and must be central to the discussion of corporations’ human rights obligations. With this in mind, it is useful to revisit existing thought on a MNC’s obligation to respect human rights, as well as the debate over whether MNCs have a positive obligation to protect human rights.

II. Corruption and Human Rights Perspectives and Justifications

The longstanding debate over the role of the corporation in society, particularly multinational corporations operating abroad, continues today and is generally framed as a debate over corporate social responsibility. In this section we focus on three nuanced approaches to explaining and justifying corporate action—of varying degrees—in the context of an MNC’s impact on human rights. We first discuss the Protect, Respect and Remedy framework promoted by former UN Special Representative John Ruggie. In

³ Ruggie frames the need for corporate due diligence related to human rights by asking, “Yet how do companies know they respect human rights? Do they have systems in place enabling them to support the claim with any degree of confidence?” He concludes that “[m]ost do not” have such systems and argues that, “What is required is due diligence—a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it,” adding that [t]he scope of human rights related due diligence is determined by the context in which a company is operating, its activities, and the relationships associated with those activities” (p. 194).

that section we focus on the framework's concept of due diligence. In the second section we discuss the idea of corporate complicity in allowing or even facilitating human rights abuses. In the third section we turn to a review of the prominent theoretical arguments for a MNC's duty to act beyond merely following any applicable legal rules and regulations and to proactively improve human rights conditions. Throughout this section, we raise the issue of more directly including the issue of corruption in these business and human rights approaches.

A. Due diligence under the protect, respect, and remedy framework

The Guiding Principles endeavor to set up a workable framework that simultaneously requires states to act under an obligation to protect human rights and that creates a mechanism that will encourage private actors (i.e., businesses) to participate in human rights protection by first respecting them. For business, the seemingly passive duty to "respect" is actually presented in terms of a corporate responsibility. The first action, therefore, for businesses is derivative of that duty to respect: mobilizing to avoid human rights infringement and addressing the "adverse human rights impacts with which they are involved" (U.N. Guiding Principles, p. 13).

One powerful way to turn what could be seen as a negative duty of respect (that is, refraining from infringing rights) is for the principles to put the respect element into a proactive business duty of due diligence. This creates a powerful rhetorical tool for the framework's advocates by putting the duty in terms that businesses understand. In other words, the concept of due diligence places the respect duty into an accountability and business process context that companies can recognize and even treat as a source of risk

that must be addressed. In Chapter II (“The Corporate Responsibility to Respect Human Rights”) the principles explicitly make this link between CSR and due diligence investigation into the corporation’s impact on human rights.⁴ The due diligence process businesses should implement is set out in the guiding principles, particularly with principles 16-21. As spelled out in the commentary to Principle 15—commitment to human rights, identification of “actual and potential human rights impact,” remediation of violations as needed, and in some cases, communicating the effectiveness of these efforts to external stakeholders. This is the so-called “know and show” duty related to human rights impact.

Specifically, Principle 17 “defines the parameters for human rights due diligence, while Principles 18 through 21 elaborate its essential components.” The commentary to Principle 17 is enlightening. Due diligence is needed not only to protect the company from being involved in a human rights violation, but is also needed to build a process designed to prevent a violation against those individuals holding the right:

Human rights risks are understood to be the business enterprise’s potential adverse human rights impacts. Potential impacts should be addressed through prevention or mitigation, while actual impacts – those that have already occurred – should be a subject for remediation (Principle 22) . . . Human rights due diligence can be included within broader enterprise risk-management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders. (U.N. Special Representative of the Secretary-General, 2011, pp. 17-18).

Overall, the due diligence framework seeks to take the business profit maximization strategy of reducing sources of costly risk and use it for promoting the

⁴ Principle 11 states that, “Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”

social good of protecting human rights. The examples of the factory fire and building collapse in the Bangladeshi garment industry are useful in understanding how business risk, corruption, and human rights converge. In retrospect the risk and subsequent business cost in terms of adverse publicity from the high-profile disasters are obvious, but market incentives failed to spur the necessary safety changes beforehand. The proactive approach of executing due diligence obligations could have helped avert such tragedies on business grounds once the risk was formalized. Greater due diligence and reporting by western companies with regard to the garment supply chain could have identified the human rights risks and created an opportunity for positive action to protect the violations, including those resulting from the corruptly-facilitated disasters. The guiding principles can help make these connections clear for business decision makers and in a way that goes beyond simply making moral claims by explicitly framing human rights as a business issue.

As discussed further below, corporations conducting due diligence should not simply look for violations of labor rights or safety regulations at a supplier, for example, but understand how corruption is potentially impacting compliance with such rights and regulations. This will require that any auditors used to conduct an inspection of the supplier are trained in these matters and can help identify when corruption is impacting operations. It will also require that a supplier in a high-risk environment is trained on anti-corruption laws and their behavior is monitored appropriately. Without the inclusion of these corruption issue, the due diligence process will be incomplete.

B. Corporate complicity in human rights violations

Principle 2 of the UN Global Compact states that, “[b]usinesses should make sure they are not complicit in human rights abuses” (U.N. Global Compact, 2013). Likewise, the ISO 26000 guidance on social responsibility states that an “organization should avoid being complicit in the activities of another organization that are not consistent with international norms of behavior,” including human rights (Int’l Org. for Standardization, 2010). In addition to the legal meaning, which is to knowingly provide some form of assistance to the commission of a wrongful act, a corporation “may also be considered complicit where it stays silent about or benefits from such wrongful acts” (U.N. Guiding Principles, 2011; Int’l Org. for Standardization, 2010, p. 26).

The Global Compact and ISO 26000 further divide complicity into direct, beneficial, and silent. Direct involves knowing assistance to the violation of a human right. Beneficial complicity “involves an organization or subsidiaries benefiting directly from human rights abuses committed by someone else,” with one example being “an organization benefiting economically from suppliers’ abuse of fundamental rights at work.” Silent complicity “can involve the failure by an organization to raise with the appropriate authorities the question of systematic or continuous human rights violations, such as not speaking out against systematic discrimination in employment law against particular groups” (Int’l Org. for Standardization, 2010, p. 26).

Under this perspective, there are many situations where corporations know (or should know) that they are benefiting from corruption that either facilitates or directly supports the violation of human rights. Consider again the apparel industry in Bangladesh. Corporations in the apparel industry know (or should know) that corruption

allows the violation of building safety codes that imperil human rights at its suppliers' factories. Thus, corporations are arguably beneficially or silently complicit in those actions. This is not to say that those corporations should have legal liability, but they have a moral responsibility to take some action to reduce corruption that is directly impacting the rights of the workers in the suppliers' factories. Under current practices, it seems that corporations will rely on safety audits and local government inspections and—knowing that corruption is endemic to many developing countries such as Bangladesh—simply hope for the best; or worse, turn a blind eye to the problem.

C. The debate over a corporate duty to act

In the last few decades, formalized conceptions of a corporate duty to stakeholders and the larger society beyond mere profit-making for shareholders has become a well-established feature of both academic and practitioner oriented research (Freeman, 2002; Freeman, Velamuri & Moriarty, 2006). In that time the definition of whom or what will qualify as a stakeholder, and thus necessitate consideration by corporate decision makers, has also expanded (Fassin, 2009). In a broad sense, these ideas can all be placed under the umbrella of corporate social responsibility (Dahlsrud, 2008).

Since CSR concepts began taking form in the 1970s critics have argued that business has no social responsibility beyond representing the interests of shareholders (Friedman, 1970; Karnani, 2012). Others argue that CSR is not a tension between business and society, but rather an opportunity to provide the greatest benefit to society and the corporation, and that the corporation should integrate CSR into its business

strategies for its own interests (Porter & Kramer, 2006). Critics of this perspective, however, point out these management-driven conceptions of CSR end up as risk management tools that focus only on the corporation, such as protecting its reputation (McCorquodale, 2009). In addition, these conceptions create the view that CSR involves only voluntary responsibilities (McCorquodale, 2009). These concerns frame the debate on a corporation's human rights responsibilities, as human rights obligations should be focused on the risks to the right holder not the corporation (as seen in the commentary to Guiding Principle number 17 quoted above), and are not voluntary (McCorquodale, 2009).

The UN *Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights* ("the Norms") catalysed an intense, public debate about these issues. The Norms were controversial because they imposed direct obligations on corporations to protect human rights (Kinley et al., 2007). Although the debate on the Norms revolved around placing a legal obligation on corporations to protect human rights, there is also significant debate on the extent of a corporation's moral obligations, which has been reignited by the Ruggie framework. While the Ruggie "Protect, Respect, and Remedy Framework" places MNCs in the role of respecting human rights and recognizes the role of governments to respect *and* remedy, others have argued that a corporate duty to act is feasible and is supported under ethical theories (Ruggie, 2008). This recent work by leading scholars in business ethics and law has reenergized the theoretical justifications for why multinational corporations must act in certain circumstances.

When and how MNCs must act, including with regard to protecting human rights, is often evaluated in terms of Rawlsian conceptions of justice and fairness. One leading

scholar in this area, Nien-hê Hsieh, roots this discussion in notions of justice developed by John Rawls, particularly in *The Law of the Peoples*. In one instance Hsieh specifically examines the positive obligations contemplated in the Global Compact. He begins by presenting three principles, the Principle of Assistance, the Principle of Limited Scope, and the Principle of Accountability, which, in turn, describe the conditions where a MNC is obligated to act, the limits of the required assistance, and when MNCs “have an obligation to support mechanisms that enable those affected by [MNC] activities to contest corporate decisions in areas that related to the fulfilling of those obligations.” He concludes that there is a duty for MNCs to assist those in need, including an obligation to alleviate the conditions under which human rights are imperiled (Hsieh, 2004, p. 645). Moreover, there are also arguments that rebut the shareholder primacy account of why MNCs should refrain from assisting stakeholders in need.

In another article, Hsieh focuses on the duty of MNCs to promote just background institutions (Hsieh, 2009). As with the earlier debates on an MNC’s duty to act with regard to human rights, this assertion lends support to the notion that MNCs should go beyond simply respecting human rights and take an active role in supporting just institutions. Thus, it plausibly follows that MNCs can be held to a standard that connotes an obligation to not only refrain from bribery, but also to fight corruption, especially when human rights are at stake.

Other scholars have also recently engaged with the question of if or when MNCs have affirmative duties to stakeholders. For instance in the CSR context, Florian Wettstein argues for CSR efforts to go beyond a mandate that MNC’s refrain from causing harm and for a positive responsibility to society. He sees human rights as a

“blind spot” in CSR, meaning that human rights has “played a peripheral role” in CSR debates (pp. 745-46). In effect, he calls for MNCs to take a capability based minimum approach to remedial obligation to protect human rights. He concludes MNCs have a duty to assist in *realizing human* rights—thus to improve the human rights situation where they operate. He adds that to limit MNCs only to a duty to do no harm, or remediate harms when capable, endangers “the prospect of achieving holistic collaborative solutions for today’s large-scale human rights challenges in serious jeopardy by letting one of the most powerful parties in the mix off the hook” (Wettstein, 2012, p. 759).

In a slightly different framing of his argument Wettstein applies this corporate imperative to human rights violations that are within the purview of corporations and asserts that MNCs have a duty to speak up when those violations occur (Wettstein, 2012). This essentially turns the idea of corporate personhood back on itself with the implication being that if MNCs have political power and rights of their own like individuals or even governments, they will also necessarily have a duty to denounce human rights violations and support the achievement of human rights.

Stephan Wood’s work adds another voice to the debate over if and when MNCs must act regarding human rights issues. In essence, his defense of the leverage-based approach is determined by the power and influence that corporations have in a given situation as a determinant of their level of duty (Wood, 2012). This role of the MNC to act is also related to the relationships it enjoys that contribute to its level of potential positive influence.

This brief summary just gives a sample of the rich debates on a MNC's moral obligation to protect human rights and how well Ruggie's framework provides guidance on meeting that moral obligation. Of course, on the other side, others have argued for limitations on how far MNCs must go in addressing human rights where they operate. For example, MNCs may be constrained by their nature and expertise, and the necessary reservation of certain powers and obligations to governments and not corporations (Bishop, 2012).⁵ The basis for the Protect, Respect and Remedy framework has also been critiqued on several grounds, including the capacity and private orientation of corporations (Cragg, 2012).

Overall, for purposes of this chapter, it is important to note a few issues emerging from this literature. First, the Ruggie framework is not built on a consensus of what an MNC's positive duties should be to protect human rights. There is still significant debate on these matters. Second, with respect to the topic of this chapter—business, corruption and human rights—there is much room for development of these ideas. Hsieh (2009) is the only author that begins to address these issues in any depth when he argues that corporations have a moral obligation to “build local capacity as a way to overcome impediments to well-ordered societies that may arise from the social and economic circumstances of burdened societies” (Hsieh, 2009, p. 262). Those arguments relate directly to central focus of this chapter. That is, when does corruption prevent MNCs from being able to respect human rights, and what are MNCs' obligations to provide assistance to reduce that specific impact of corruption? The next section sets out a basic

⁵ Bishop agrees with Ruggie to an extent, regarding corporate duties to refrain from human rights violations and to avoid complicity in human rights violations, but he concluding that, “[c]orporations have no obligation to ensure human rights. To have such obligations, corporations would need many rights that ought to be reserved only for governments” (Bishop, 2012: 141).

framework for encouraging corporations to fully consider these issues, and as they struggle with these issues, open up new debates on the extent of a MNC's positive duty to combat corruption to be able to meet its obligation to respect human rights.

III. Promoting human rights by combating corruption

Increased enforcement of the FCPA and other anti-bribery legal developments have created a sea change in how much attention corporations pay to combating corruption. The next step is to move corporations away from viewing anti-corruption as solely a compliance issue, and to see these efforts as a matter of corporate social responsibility, especially as it relates to business and human rights. This means that corporations should focus not just on ensuring that their employees and agents do not pay bribes, but that they should also use their resources to assist the efforts to reduce the levels of corruption in those developing countries with significant governance problems. In short, companies must see combating corruption and promoting human rights as connected and complementary moral duties in the countries where they operate.

The necessary evolution in corporate action requires that corporations change their mindsets in at least two different ways, which requires deviating from the usual corporate governance and compliance script. First, corporations must not view anti-corruption as an end in itself (for example, avoiding the payment of bribes that would create FCPA liability), but instead view anti-corruption as an essential part of its efforts to respect human rights. Second, corporations must treat anti-corruption as a matter of corporate social responsibility, and not simply legal compliance. The legal department must be involved in the corporation's anti-bribery efforts, as the current FCPA

enforcement practices create significant legal risks for companies. In addition, as enforced, the FCPA's provisions are complex and require expert legal advice. However, those in the corporation responsible for human rights issues and CSR more generally, must also be involved. Anti-corruption cannot be isolated from those other CSR activities.

To work towards reducing corruption in a country—as it relates to a company's business activities in that country and as it relates to its obligations to respect human rights—corporations generally need to evolve along the lines of the model developed by Simon Zadek (Zadek, 2004). According to Zadek, firms typically first take a very defensive view of a particular social or environmental issue and they deny any responsibility for having to solve the problem. When they do accept responsibility, the focus initially is on risk mitigation with respect to legal liability and harm to their reputation in the market. With respect to corruption, it seems that many corporations are at this stage.

In the next stages, corporations should recognize that the adoption of compliance programs are not sufficient to address the problem of corruption. They should realize that they must take a more comprehensive view of the problem and perhaps make operational changes to correct the problem. The final stage for socially responsible corporations in Zadek's view is the "civil" stage. At this stage, corporations are committed to solving the problem and seek draw in others (e.g., other industry members, civil society organizations, and governments) to work together to raise the standards of the industry. This stage is, thus, crucial to establish a proactive approach to corporate social responsibility and to general sustainable social returns.

The following outlines what is necessary to push corporations to enter the “civil” stage as it relates to combating corruption for the purposes of respecting human rights. These actions can be categorized as policies, procedures, publication, and participation (Hess & Dunfee, 2000). These are actions that corporations should voluntarily implement to meet their obligations with respect to corruption and human rights. In addition, there is also a role for governments, civil society organizations, social investors, and others, to push corporations to meet these requirements.

A. Policies

Policies refer to the corporation’s commitment to combating corruption. Through codes of conduct, corporations instruct their employees on the standards the corporation expects them to follow. In addition, these codes demonstrate the company’s commitment to ethical behavior to its stakeholders. In this way, codes of conduct are part of the stakeholder dialogue on what constitutes corruption and what obligations corporations have to protect against it. Thus, if corporations explicitly link corruption and human rights obligations in their codes of conduct, then this dialogue is pushed further ahead and the foundations of progress are set.

From a business and human rights perspective, corporations’ policies should not focus simply on compliance with the FCPA or U.K. Anti-Bribery Act, for example. Instead, the focus should be expanded to understand what policies are needed to ensure that corruption does not prevent the ability of the corporation to respect human rights. Likewise, the company’s human rights policies should be integrated with its anti-corruption policies.

B. Procedures

The concept of procedures refers to the implementation of the company's policies. Surprisingly, despite the attention given to anti-bribery laws, many corporations still have not implemented procedures that allow the corporation to identify corruption risks and then protect against those risks. For example, one survey found that only "40% of respondents believe their controls are effective at identifying high-risk business partners or suspicious disbursements" (PricewaterhouseCoopers, 2008, p. 5). If many corporations are not appropriately protecting against their own direct involvement in corruption, it is quite likely that even fewer are addressing corruption as it relates to human rights issues.

Thus, as with policies, when corporations develop and implement human rights due diligence procedures, those procedures must be sure to include anti-corruption. One way corporations conduct due diligence is through external certification. For example, companies seek SA8000 certification of its suppliers to ensure those suppliers use safe workplaces and meet minimum standards of decent working conditions (Social Accountability International, 2013a). Corporations should work to ensure that those organizations take anti-corruption into account as it relates to those standards. For example, due in part to a 2012 factory fire at a factory in Pakistan that was SA8000 certified, Social Accountability International states that it is in the process of updating its standards to better account for the harms of corruption (Social Accountability International, 2013b).

C. Publication

Publication involves the disclosure of the corporation's managerial efforts to combat corruption (its policies and procedures) and how well it is meeting those standards. As stated above, although early versions of the GRI (the leading standards for sustainability reporting) left out reporting indicators on anti-corruption, those standards now include such matters. More recently, the UN Global Compact and Transparency International have published guidelines for reporting on anti-corruption efforts (U.N. Global Compact & Transparency International, 2009). Consistent with what was stated above, these indicators focus on the corporation not being a participant in wrongful payments.

The next step should include integrating the anti-corruption reporting indicators with the corporation's efforts on other matters of human rights. This will not only encourage corporations to more fully consider these issues, but also facilitates learning. As stated in the UN Global Compact guidance, "[R]eporting on anti-corruption activities based on a consistent reporting guidance enables different stakeholders to share information, raise awareness, learn from each other and improve practices" (U.N. Global Compact, 2009).

D. Participation

For both corruption and human rights, multi-stakeholder initiatives are needed to address the problems. In both areas, multi-stakeholder initiatives have made significant progress in driving forward the agenda and allowing corporations to work together (and with governments and civil society organizations) to begin implementing possible

solutions. The next step is for existing multi-stakeholder initiatives—or the development of new multi-stakeholder initiatives—to focus on the relationship between corruption and human rights. Such initiatives can push corporations to find those ways where they can improve human rights by helping to reduce corruption (as opposed to just not being an active participant in a corrupt transaction) and then share best practices. Through the collective voice of a multi-stakeholder initiative, corporations can influence governments and find ways to help reduce the corrupt environment surrounding the corporation’s activities (either direct activities or in its supply chain) in any particular country.

Such initiatives can become the “institutional entrepreneurs” that bring about the necessary changes needed. As Misangyi and colleagues state:

anticorruption reforms must be championed by institutional entrepreneurs who possess the requisite capabilities for doing the institutional work necessary to successfully establish the new institutional order. Such entrepreneurs must have a critical understanding of the existing institutional order and must be able to construct a new anticorrupt institutional logic—a new collective identity that defines anticorruption roles and practices in a legitimate manner and that legitimates the social resources necessary to have the anticorrupt order prevail. (Misangyi, et al., 2008, p. 766).

In sum, we advocate for a proactive, cohesive approach by MNCs to both act against corruption and to promote human rights, all under the umbrella of corporate social responsibility. To accomplish this effort we find that a policies, procedures, publication, and participation framework is a promising mechanism to organize and promote these actions.

IV. Conclusion

While not without its critics, the push to raise awareness and promote corporate action to fight corruption and protect human rights continues to gain momentum. Although the recognition that corruption negatively impacts human rights has fueled the anti-corruption movement, the movements to encourage corporations to respect human rights and to combat corruption have proceeded in parallel. These two movements must be brought together if we are to achieve meaningful, sustainable improvements in the human rights impact of business. This suggests a more expansive role for corporations to combat corruption, rather than simply taking efforts to ensure that their employees or agents do not pay bribes. To promote these goals, this article set out a multi-prong approach for corporations. This approach proceeds within a framework of developing and implementing effective policies and procedures that is marked by the transparency of a publication regime. The framework also involves participation in multi-stakeholder initiatives to achieve the benefits of collective action.

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