INTERVIEW

The Legal Aspects of Corporate Social Responsibility: Interview with Ursula Wynhoven

Benjamin Thompson* and Erica Teeuwen* and Ilina Georgieva*

* Utrecht University, the Netherlands
  ben@small-voices.net, e.m.h.teeuwen@gmail.com, ilina_georgieva@hotmail.com

The Global Compact (UNGC) represents the world's largest corporate citizenship initiative today. Created under the auspices of the United Nations (UN) to encourage companies around the world to adopt sustainable and socially responsible policies, the UNGC brings together businesses, UN agencies and labour groups in search of compromises.

In a phone interview with the Journal's team, Ursula Wynhoven, General Counsel and Head of the UN Global Compact, shared her views on current issues and challenges of the field.

Before joining the UN, she was engaged with the Organisation for Economic Co-operation and Development (OECD) on the development of the OECD Guidelines for Multinational Enterprises (MNEs). Ursula Wynhoven has also worked as a lawyer in governmental human rights agencies and private practices in the United Kingdom, the United States and Australia, and is an adjunct professor at the University of Reykjavik's School of Law in human rights and business.

1. Could you please introduce yourself and elaborate on your work at UN Global Compact?

My name is Ursula Wynhoven. I am the General Counsel of the UN Global Compact, and I'm also the Chief of Governance and Social Sustainability. With my team, I look after our legal affairs, as well as the governance of the initiative (including our integrity measures) regarding participation by companies and others in the initiative. My team and I are also responsible for our work on the social dimension of corporate sustainability – we have a number of work streams in this area. This covers human rights, labour, women's empowerment, children's rights, trafficking issues and indigenous peoples rights. We work with the quadruple bottom line concept of corporate sustainability that encompasses the economic, social, environmental and governance dimensions.

2. Many authors believe that the inability or unwillingness of developing countries to hold multinational corporations accountable for human rights violations is an essential problem of Corporate Social Responsibility (CSR). Different solutions have been suggested including: improving the position of developing countries to deal with these problems themselves, international treaties and the right of victims of human rights violations to sue in home states. What do you think are the main problems with holding MNEs accountable for human rights violations committed in developing countries and where do you think the solutions lie?

To start more generally and get more specific, the UN Global Compact's approach to Human Rights has two key dimensions in terms of the call we make to companies: respect for human rights and support for human rights. This question is about respect for human rights: to do no harm. This looks at the question of accountability and what companies should do to ensure that they don't cause human rights abuse, that they don't contribute to it and that they are mindful of how they may be linked to human rights abuse through business relationships or their operations, products and services. The accountability dimension is still a challenge. Among other things, the available remedies are widely acknowledged not to be adequate. Hence, the Guiding Principles on business and human rights have a lot to say about remedies, as well as what should be done to prevent human rights abuse.

One of the biggest challenges relates to the lack of political will. Some governments around the world are not fulfilling their duty to protect, as well as their duties to respect and fulfill human rights. This has implications for the environment in which companies operate, and also means that governments may not be holding companies accountable. Whether you're talking within a country's own borders or extraterritorially, you need to have political will to put the laws in place and to also have them effectively enforced.

What would you say the solutions to the lack of political will are?

That's a difficult question as it relates to so many different areas; it's a challenge to which no one has found a magic answer. By coincidence, I heard this really interesting radio programme on public radio[1] yesterday which was about the most effective strategies to change people's behaviour and it was talking about the power of social norms. It featured the work of Dr. Robert Cialdini, a psychology and marketing professor, on social norms and how to influence people. It discussed the results of an experiment, potentially quite relevant to the field of sustainability, in which households were encouraged to decrease their energy consumption. The researchers tried four different signs with four different arguments. Paraphrasing, the arguments for reducing the household's energy consumption were something like: (i) "it's bad for the environment", (ii) "you'll save money", (iii) "think of future generations", and (iv) "most of your neighbours are undertaking efforts to reduce their energy consumption, please follow their example". Most effective by far, in fact the only one that apparently affected a substantial impact on the energy usage was the last one. Interestingly, the researchers also found that when they presented these four arguments to the people in the experiment, they rated this reason as least likely to influence their behaviour, but it had the most impact.

This power of norms in influencing behavior has been validated through various research initiatives and I'm very interested in applications of that for corporate sustainability. I would like to spend some more time reflecting on how social norms might be useful to the work that we do on the drivers for corporate sustainability. At its most fundamental level, the UN Global Compact is an advocacy initiative that makes the case for corporate sustainability, for companies to do the right thing and engage even more deeply to be part of the solution, and it promotes concrete approaches on how to do it. A part of this also concerns the role of governments in meeting their obligations and creating the enabling environment in which business operates. Thus, finding the most effective way to communicate messages and influence corporate (and government) behaviour is of the utmost importance. This research also interests me because it is often productive when different disciplines come together with their unique perspectives. It can yield new insights. Corporate sustainability is a fairly interdisciplinary endeavour, but it has the potential to be even more so.

To come back to the specific question of political will – maybe it's a lot more about countries not wanting to be the odd one out. Maybe there's more that can be done in that context with peer pressure perhaps within regional blocks particularly, and promoting the idea of what it is to be a world class destination for companies to invest. We'd love to see governments racing to the top rather than racing to the bottom. I think we collectively need new approaches to address the political will challenge.

Do you think that this peer-pressure approach would also apply to the corporations themselves?

Definitely. I think it can apply to all kinds of actors. For example, when we're talking to companies we should emphasize a lot more that the kinds of policies and practices that we are advocating for are increasingly what other companies are doing because another dimension of this research is the corollary. If there are signs that suggest that a lot of people are not doing the right thing, it is actually permissive and legitimates the undesirable behaviour. There is the example of a national park, which had lots of petrified wood and crystals lying around. They had a sign saying something like: "Because so many people are taking these it is crucial that no one take any more". What they found is that these signs had the opposite of the desired effect – they led to an increase in the amount of petrified wood and crystals taken. Although people don't like to admit it, and they even actively try to refute it, the power of norms may be key in determining what you will actually do.

3. Many authors believe that the development of soft law and voluntary initiatives may one day lead to hard law on CSR. How exactly do you see this occur in practice? Is hard law necessary for CSR to triumph?

We did some research with the law firm Latham and Watkins a few years ago which looked at the contribution of a voluntary initiative like the UN Global Compact, in the context of trying to increase both corporate accountability and corporate engagement in the solutions to the global challenges that we face. The resulting paper is published on our website.[2] The crux of it is that we believe that one must use a diverse array of approaches to achieve greater corporate responsibility. So, whatever the topic, there is typically a complementary role for regulation and for voluntary initiatives. When you look at any particular issue, the mix may differ. In some areas, particularly where there may not be a business case for corporate social responsibility, maybe there is a greater role for hard law because doing the right thing may have a direct and lasting impact

---

[1] http://freakonomics.com/2012/06/21/riding-the-herd-mentality-a-new-freakonomics-radio-podcast/
[2] http://www.unglobalcompact.org/docs/about_the_gc/Voluntarism_Importance.pdf.

on a company's profits. For example, one sees this with efforts to promote greater responsibility in marketing and advertising practices. In such instances, it may be fruitful to combine voluntary corporate sustainability efforts with encouraging governments to strengthen their own regulatory regimes and enforcement.

Another key dimension we laid out that is relevant to how hard law is created, is whether you're talking about conventions, customary law or domestic regulation, building consensus is a prerequisite. Achieving some level of agreement is usually necessary before you can achieve any of those forms of hard law. One of the ways to achieve consensus is through voluntary initiatives. Once you get that broad agreement about what the right approach is, it can be easier for the hard law to evolve.

Do you think international lawyers have been too keen to push for a hard law approach in the absence of consensus? Do you see this as a problem?

Several years ago there was a much more dichotomous approach, as some people focused entirely on mandatory approaches and others entirely on voluntary approaches. Over the last several years it is now much more accepted that we need a range of approaches, that no one approach can be a silver bullet. With regard to lawyers, I think that is just the way we are trained and think to look first for legal solutions where sometimes there are other solutions that could be useful to pursue instead of, or in tandem. Serious work is continuing in terms of the viability of developing mandatory rules. However more fundamentally, it is not so much an issue of lack of law, but the lack of political will and the need to further build consensus and knowledge. While there remain important gaps to close, we also need to continue on all fronts to use a wider range of approaches, including psychology and social marketing, to influence corporate behaviour and mobilize corporate action to bring corporate sustainability truly into the mainstream. Corporate responsibility has legal components, but it is not only a legal issue.

4. In describing CSR, the "Triple Bottom Line" (profit, people, planet) has become one of the most popular terms of the last decade. However, the concept is often regarded as inadequate to adapt to practical situations. In your view, how should the Triple Bottom Line be applied in practice?

The UN Global Compact embraces a quadruple bottom line approach. The way we define corporate sustainability is long-term value creation in economic, social, environmental and governance terms. These are the core elements. In a nutshell, what is absolutely crucial is an integrated approach that considers all these dimensions and their interaction. For example, if you were to look at an environmental or climate issue without considering the social impacts, or if you tried to find adequate solutions without integrating all relevant dimensions of the problem, your efforts will not be as effective as they otherwise could be. In fact, it could even widen gaps and cause further harm. Therefore, the integration of the core elements of CSR is a key to success. That is why the UN Global Compact always uses an integrated approach.

In terms of what this means for companies, we are keen to break down silos that may exist that can give rise to inconsistencies between policies and practice. We want to encourage greater linkages and dialogue between the different dimensions and areas. This also applies to the role of expertise. When it comes to the environment, for example, one sees many scientists and engineers, and in the human rights arena one sees many lawyers. These disciplines may use different languages. Therefore, it is key that we find a way to talk with each other. Like I mentioned earlier, there is a lot of potential for finding creative solutions when different disciplines come together. Building on this, it is encouraging to see that a number of companies are establishing cross function committees as a key part of their corporate sustainability strategy and implementation.

Ultimately, the nature of the global and local challenges that we collectively face and their systemic dimensions are so huge, that we need new ways of thinking and connecting if we want to achieve sustainable development. In September 2013, the UN Secretary-General launched a new architecture for business engagement on the Post-2015 Development Agenda.[3] We are enthusiastic that its multifaceted approach can help take corporate sustainability to a new level of positive impact.

Can you think of an example where one might be pushing one of the dimensions forward and forgetting about another?

One example is the emphasis on 'green jobs'. In many countries, there remains a gender divide, where women and men tend to be concentrated more in certain industries and types of jobs than others. In such a situation, investment in green jobs without taking the gender divide into account may risk widening the gap and hinder improvement.

---

[3] http://www.unglobalcompact.org/docs/about_the_gc/Architecture.pdf.

Another example of when one makes these connections and the effort turns out to be much more fruitful, concerns an energy company that sought to install solar panels into a broad array of environments. In collaboration with Barefoot College, the energy company adopted a 'bottom of the pyramid' approach by training older women of the community to become solar engineers. This had both an economic empowerment impact as well as economic success for the energy company, even though the initial incentive was not to target a gender issue. They initially thought of ways to most effectively train people to support the business. But the project also had a great gender impact, by empowering the women in this community, which led to impacts in other dimensions as well.

Unfortunately, there are still too few innovative examples that flow from collaboration between business and other societal actors benefitting both business and society. I think one of the biggest challenges is lack of recognition of the need for an integrated approach. If you look at scientific fixes but fail to take into account other dimensions such as the social and human rights dimension – not only may those efforts fail to achieve their goal, they may also worsen social consequences. It is crucial that we take an integrated approach to fully understand the scope of the particular challenge, as well as to test the effectiveness of the strategies to address those challenges.

5. It is often argued that in regions of on-going conflict, it is particularly difficult to hold corporations accountable for human rights violations. How, if at all, does the meaning of CSR change in times of conflict?

The key aspect here is the risk of adverse impacts, but also on the upside, the opportunity of businesses to have positive influence. I remember years ago, the Chief Prosecutor of the International Criminal Court at the time spoke at a conference, not long after it came to the international community's attention how multinational extractive companies may be contributing to the conflict in the Democratic Republic of the Congo. Many people expected the Prosecutor to focus on the companies' role in the conflict, but he also placed particular emphasis on the need for companies to create decent work opportunities for youth so they would have viable alternatives to engaging in conflict. Such an approach is very much in line with our own thinking. Companies working in conflict ridden areas must ensure through heightened due diligence that they are not fuelling these conflicts. They can also look for opportunities to help the local community to recover from conflict and to build sustainable peace, not just through philanthropy, but also through their core business.

Could you elaborate on the idea of a heightened due diligence?

It comes back to the issue of risks and impacts, to be able to, as the Guiding Principles on business and human rights call for, to "know and show" that you are not causing or contributing to harm. It entails what the UN Global Compact has advocated since it started in 2000, having the right policies and practices in place, which of course should be proportional to the risk of impact the company might have. The next crucial step is to effectively implement those policies. Once again, it depends largely on the nature of the risks that the companies pose to human rights in the conflict area, as well as to other corporate sustainability dimensions such as the environment and good governance. Also important here is communication of progress. Not only is this essential for transparency, but also for further implementation of universal principles by companies. If they are indeed transparent, and have the data to show the impact of their policies and practices, stakeholders and other parties can make their own assessment about the company's performance. Stakeholder engagement is key not only to build trust, but also to reality check the company's perceptions of its impacts and often to find the most suitable solutions to challenges. Together with the Principles for Responsible Investment, the UN Global Compact has produced guidance on how to be a responsible business in conflict affected areas, which goes into much more depth on what companies should do and can do in such contexts, to be found on our website.[4]

6. Where does the social responsibility of corporations end?

The framework used by the Global Compact in this regard is to think in terms of what is required, that is the minimum, and what is desirable. Clearly the minimum is to refrain from causing or contributing to harm. However, this is intended to be a floor rather than a ceiling. While some may view the minimum requirement as the ceiling of corporate responsibility, it should be clear and reinforced that what companies do beyond the avoidance of harm cannot be a trade off for harm caused in other areas. The UN alongside many other entities encourage companies to be part of the solution for issues that they did not cause or

---

[4] http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf.

contribute to, and which are not directly linked to their operations, products or services, but where they nevertheless can have great positive impact.

There is so much more that an enlightened company can do and there may be a strong business case for doing so. Some examples are innovating products and services that help to realise human rights and where business models engage disadvantaged communities in their supply or production chain. We encourage companies to do more than just avoid harm, to look more broadly at their role in society and to seek ways to make a positive impact, aligning their long-term business goals with sustainable development priorities. This relates to the support pillar of the UN Global Compact that I mentioned earlier. 'Support' means additional voluntary actions that go beyond avoidance of harm – it means companies take steps towards making a difference. These steps can be core business approaches, strategic social investments, partnerships and other sorts of collective action or public policy engagements. There are a variety of approaches at the disposal of companies that are interested to go beyond the avoidance of harm, which alone, we feel is an impoverished perspective. Companies, just like individuals, should aspire to do more than just avoid harm, they should aspire to make a positive difference. If one looks at companies' mission statements, most of these are in fact broader than the do-no-harm variety. Pharmaceutical companies for example, want to have a positive impact on health, not just to avoid harming people. Across all Global Compact initiatives we try to capture both the respect and support dimensions. The key thing to recall is that supportive actions are a complement, not a substitute for actions to avoid harm.

7. What are the benefits for corporations of adopting CSR into their business strategy? Could CSR be considered a key component for corporate success?

This relates to our definition of sustainability. We talk about a self-enlightened business interest in the medium to long-term perspective. Sustained financial success will increasingly require companies to address these issues, and to look at what opportunities exist to contribute to the solution. It's interesting when one looks at how, over the last 100 years, large companies have developed in this regard – a lot has changed. Many previously successful businesses did not keep pace with the changes and are no longer with us. There's a key need for companies to adapt, be flexible and be a vital part of that broader, long-term perspective around sustainable development. The companies that ultimately survive and prosper will be those that align their own business goals with sustainable development priorities.

Do you find that an easy sell, when you're advocating to companies?

No, but I think over time it will become easier. Moreover, we are not alone. The Global Compact works with a lot with investors and was a co-creator of a sister initiative called the Principles for Responsible Investment (PRI). This initiative, together with the Principles for Responsible Management Education (PRME), which works with educators to integrate environmental, social and governance (ESG) issues into management schools' curricula, are important complementary efforts to our own, helping to make corporate sustainability the norm. Much needs to be scaled up to take corporate sustainability to the next transformational stage. As one example, we need to be much more effective in helping businesses understand the interconnection of sustainable development goals, societal goals and their own long-term business goals. Corporate sustainability has not yet been fully internalized by the majority of companies or even the majority of the largest companies. There's a lot more work to be done, but the trajectory is there and we are very confident that's the right way to go.

8. What are the greatest challenges CSR faces today?

One of the greatest challenges is that, in terms of responsibility, governments point the finger at companies and vice versa. Instead of finger pointing we need greater collaboration and coherence between and within organizations to help address conflicting interests and to align policies with practices. In government, various departments have different and sometimes conflicting priorities. For instance, there are people working on Human Rights and those working on promoting investment. Similarly within companies, they have people who work on procurement who must meet their targets on financial criteria, while at the same time a CSR or Human Rights department may be promoting the company's Human Right's policies. Once again, we need an integrated and collaborative approach where, for instance, procurement is evaluated not just on how they keep costs low, but also on whether they have acted in a way that doesn't harm human rights in the process.

9. In relation to your work for Global Compact, what is your greatest success story?

I have been working for the Global Compact for about 11 years, which means I was one of the first staff members. I feel one of the things that has been truly great is being able to evolve and develop along with the Global Compact and to have been a key part of the development of the initiative. With regard to the development of the whole respect-support approach we have launched a number of initiatives in the social domain, including the Women's Empowerment Principles developed with UN Women, which now has attracted nearly 700 CEO signers, and the Children's Rights and Business Principles with UNICEF and Save the Children. I hope that these kinds of initiatives are helpful in fleshing out for businesses concretely what respect and support mean from the perspective of stakeholders, and motivating greater action and impact. More recently, we have begun some exciting initiatives directly engaging the legal community on corporate sustainability. I'm excited to see where those take us and what impact we can have. I'm really proud of how the UN Global Compact has evolved.

The United Nations Global Compact is a policy platform and practical framework for companies that are committed to sustainability and responsible business practices. With 8,000 corporate signatories in 145 countries, it is the world's largest voluntary corporate sustainability initiative. To learn more, please visit www.unglobalcompact.org.