

Voluntary or Mandatory: That is (Not) the Question*

Linking Corporate Citizenship to Human Rights Obligations for Business

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Human rights have traditionally been considered a domain of governments. The ongoing economic globalization, however, has rendered this state-centered view increasingly inadequate. In this contribution we will argue that also the powerful transnational corporations must bear more and more direct responsibility for the impact of their actions on human rights. Florian Wettstein and Sandra Waddock will first clarify the conceptual connection between existing approaches to corporate citizenship (CC) and corporate social responsibility (CSR) and the newly emerging “business and human rights” debate. Partly in contradiction to the “traditional” view on CSR/CC as a voluntary affair for business, we will then plea for mandatory human rights standards for corporations. However, human rights obligations are not always clear-cut and evident; especially so-called positive rights often create contingent and often highly ambiguous duties for many different actors. Therefore, we will argue CSR/CC can make a valuable contribution especially regarding the clarification of such imperfect obligations. Accordingly, the relation between voluntary and mandatory approaches must not be seen as a mutually exclusive one, but rather as inherently complementary.

Keywords: human rights, voluntary standards, mandatory standards, transnational corporations, corporate citizenship, corporate social responsibility

1. Business and human rights: the traditional view

Ever since corporations began operating as autonomous institutions, they have been under critical scrutiny regarding their impact on people and the society at large. At the turn of the 20th century massive abuse of corporate power culminated in equally powerful counter-movements distinctly aimed at enforcing and strengthening worker's rights. In the second half of the 20th century, the first systematic theoretical approaches to corporate social responsibility (CSR), corporate citizenship (CC), and

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related approaches with similar intent emerged. While initially well embedded in the Keynesian beliefs and certainties, such approaches became an important counterweight as neoclassical economic theories re-gained momentum along with the rise of the neoliberal ideology after 1973. Both approaches – CSR and CC – however, have at best implicitly referred to human rights but seldom placed a primary and systematic focus on them. Accordingly, there are only just a handful of early attempts to shed light on the relation of business to human rights; most commonly these early approaches adopted a rather narrow and exclusive focus on the most evident rights-issue in regard to business: labor rights (e.g. Werhane 1985).

There is an evident explanation as to why human rights have not played a major role in determining the role of business in society; for almost 50 years after the UN Declaration of Human Rights took effect in 1948 there was a widespread consensus that states are the exclusive and only bearers of obligations deriving from the Declaration. As the absolute center of societal organization and power the state was not only regarded as the primary institution to guarantee the realization of human rights as well as to prevent other institutions from violating them; at the same time it was itself considered the primary threat with respect to their violation. Precisely because of its superior capacity and the accumulation of power in state institutions, the last aspect seemed of superior moral importance; the primary focus of human rights protection was traditionally laid on the prevention of direct human rights violations through state institutions (Pogge 1998: 381). As a result, there was a bias toward regarding human rights as an issue of only minor concerns to business; corporations were simply not regarded as a primary threat to human rights. Where potential problems occurred, it was the state's responsibility to make sure these problems were taken care of. The ongoing integration of national economies into global markets, however, has changed the picture. Especially since Ken Saro Wiwa and eight others were executed in Nigeria, with apparent complicity from Royal Dutch Shell Corporation, the link between business and human rights has become subject to a very public debate (Avery 2000: 7).

2. Globalization and business involvement with human rights

The rapid economic globalization in the last quarter of the 20th century has led to an institutional mismatch between transnational markets and the ability of nation-states to control them. Under these circumstances, protecting a nation's citizens from economic uncertainties has become more difficult, if not in many cases impossible for the state; the forces and problems unfolding at the global level systematically transcend national borders and overstrain the options and the reach of national policies. Additionally, globalization gave rise to the emergence of powerful transnational actors that challenge the traditional image of the state as the epicenter of power in modern society. Consequently, the state has lost some of its status both as the primary threat to human rights as well as the primary agent to ensure them, with that loss made up not least by the transnational corporation.

Beside the state, transnational corporations as well as other institutions, such as the so-called Bretton Woods organizations, that is, the World Trade Organization, World Bank, and International Monetary Fund, have become equally significant factors for

the protection and realization of human rights – or their disregard. Transnational corporations, in particular, can have a tremendous impact on the global human rights situation, because their activities transcend national boundaries and they operate at least partially beyond the control of any one nation state. Therefore, if improvement in the global human rights situation is to be achieved, or less enthusiastically formulated, if a worsening of the situation is to be prevented, these global institutions must systematically be held accountable for the impacts they have on human rights.

The large transnational corporation is one of the most powerful of those global institutions yet one of the most powerful institutions of our time; some global firms are larger than small and medium sized countries. As a consequence of their size and the resources they control, these companies' impacts on human rights extend far beyond the rights of their employees and stretch to potentially every aspect of societal life. They affect or even determine our nutrition and our health, our work life and our spare time, often even our security and education. While it is usually the negative impacts of business activity on human rights related issues that cause public outrage, it is important to emphasize that the powerful position of the multinational corporation entails an equally positive potential to make a meaningful contribution to the realization of such human rights.

Over the past few years we have observed increasing, primarily practice-driven efforts and attempts from international institutions, NGOs as well as from corporations themselves to address businesses impact on human rights in a more systematic way. We have witnessed the development of human rights related standards for business such as the UN Global Compact, the OECD guidelines for transnational corporations or the ILO Tripartite Declaration. Committed NGO's such as Oxfam and most notably Amnesty International, have increased their efforts and pressure to hold businesses responsible for their impact on human rights; and some corporations have launched exemplary and promising initiatives such as the "Business Leaders Initiative for Human Rights".

Only recently has academia picked up on these attempts to further systematize the emerging discussion from a more theoretical angle. From an academic perspective, the business and human rights intersection is being approached from two directions. On the one side there are the scholars and institutions typically engaged in assessing businesses social responsibilities who are now increasingly concerned with human rights questions. On the other side are academic centers and institutes, as well as scholars and students at the edge of traditional human rights studies, typically located in the broader fields of law and political science, who are increasingly expanding their focus to include also business issues. This focus has considerably enlarged the academic community traditionally engaged in the assessment of business-society relationships and sparked what we could call a lively "business and human rights debate."

Because of this broadening of the academic community interested in business and human rights issues, the academic and the practical debate have not stayed within the traditional discussions about CSR and CC but run at least partly parallel to them. We will now very briefly clarify the conceptual connection between the CSR/CC and business and human rights debates, leading to a conclusion that the focus on human rights can serve as an important element for bringing the CSR/CC debate forward

both in theory and in practice. This strong conceptual connection, however, has also caused confusion regarding how human rights concerns should ideally be addressed by business, a concern about which there are no easy answers. The allegedly voluntary nature of CSR/CC has led many scholars and practitioners to conclude that the protection of human rights must remain a voluntary affair for business. We will shortly introduce this discussion about voluntary vs. mandatory human rights standards before – based on a radical rights-perspective – broadly arguing for a mandatory approach. The remaining and decisive question concerns the obligations that derive for corporations in regard to human rights. This question will be addressed in the last section of the article.

3. Corporate citizenship and human rights

The extensive body of literature on CSR/CC provides countless suggestions of different definitions of these terms and their content.¹ There is thus no single definition which is generally agreed upon and which could therefore be regarded as “the right one”. All definitions usually circle around the necessity for business to address societal expectations and demands in a more direct way, and commonly the need to integrate them into corporations’ normal business strategies. It is precisely due to the changing nature of such expectations and demands – within and between different nations and cultures – that agreed upon definitions regarding the content of CSR/CC concepts must necessarily remain very broad (Lunau/Wettstein 2004: 22f.).

This short discussion of the definition of CSR/CC already frames a major challenge and problem with which both practitioners and academics in the field are confronted: By what criteria can corporations assess the validity and legitimacy of such societal demands and expectations? How do we, as a business, know with which demands we should comply and which expectations to dismiss as unreasonable or illegitimate? Considering the sheer number of claims with which a corporation is confronted every day, this task is difficult enough on a national basis. Increasingly, corporations are operating at the global level, where such claims multiply and must be interpreted in many different cultural, religious and moral contexts. Situations in which certain cultural values and traditions, rituals or even laws conflict with the cultural and moral background of the corporation’s country of origin pose particular dilemmas. The question then is to what extent should the corporation adapt to the local values and correspond to according demands – do in Rome as the Romans do, as it is often phrased – and where is the threshold where corporations are morally obligated to act counter the local demands, traditions or even laws in order to defend supposedly universal moral values?

Countless NGOs, international organizations, pressure groups, business associations and so on have issued an equally overwhelming number of different standards, code of conducts, reporting initiatives and principles in order to provide guidance in coping with this challenge. While this is certainly a very welcome development, it also threatens to contribute to the confusion as long as there is no common set of foundational

¹ For a systematic overview regarding the key terms used see Waddock (2004a).

principles shared among them (Waddock 2004b: 315). Here is where the intersection of CSR/CC and human rights becomes evident. As argued elsewhere, such foundation principles would provide a universally valid baseline, whose violation must be considered morally wrong irrespective of the geographic, cultural or religious context the violation occurs (Waddock 2004b).

Donaldson and Dunfee (1999) hope to find such “ties that bind” across nations, cultures, religions and traditions in what they call “hypernorms”. Hypernorms, they argue,

“constitute principles so fundamental that, by definition, they serve as ‘second-order’ norms by which lower-order norms are to be judged. Defined in this way and reflecting the deepest sources of human ethical experience, hypernorms are discoverable, we have reason to hope, in a convergence of religious, political, and philosophical thought” (Donaldson/Dunfee 1999: 50).

It is important to note that the convergence of religious, cultural, and philosophical beliefs, the consensus between different moral traditions around such core principles is only to be understood as a “clue to the identification of hypernorms” (59), but not as an ethical foundation of their existence in itself. Hypernorms exist a priori; the practical consensus around them is but a tool for their identification.

There is no doubt that such a practical consensus is most likely to be found within the Universal Declaration of Human Rights and its related UN documents. It is not a coincidence that Donaldson and Dunfee (1999) come to the conclusion that foundational principles must ultimately respect human dignity, basic rights and good citizenship (Donaldson 1996: 7f.) – hence, precisely the core concepts underlying the idea of human rights. Apart from the fact that the Declaration itself is based on the explicit agreement – a consensus in that sense – to those rights from all but a few countries in the world, there is justified evidence that all major cultures, religions and moral traditions contain norms that are supportive of the idea of human rights (Frankental/House 2000: 22f.). Additionally, all empirical attempts to find commonly agreed principles for example in the area of labor standards (e.g. Hartman et al. 2003) have come down to these core underlying concepts.²

It would be somewhat overhasty to conclude that the principles and norms laid down in the Declaration already denote the end of the story; in contrary, they are themselves subject to many different and sometimes opposing interpretations. Human rights – while considered universally valid as hypernorms – are historically contingent and particular. They are neither timeless, unchanging, or absolute (Donnelly 2003: 1). There are many open and controversially discussed questions regarding their foundation, their nature and content, their reach, and what is directly relevant to our topic, regarding what corresponding duties they impose and on whom. Regarding these and many more issues we are still far from having reached a global consensus (Gosepath/Lohmann 1998: 9). Concluding from this insight, foundational principles would not only have to include the human rights themselves but also a shared interpretation of their underlying principles of human dignity, human freedom and justice;

² See Waddock (2004b) for a more in-depth elaboration of such attempts.

in short: an ethics that leads to a common and consistent interpretation of human rights. This conclusion suggests we have to lay a stronger emphasis on the philosophical foundation of human rights or foundational principles in general; to entirely rely on the practical consensus as suggested by Donaldson and Dunfee would thus likely lead to insufficient outcomes.

Obviously, the path to shared foundational principles is still long and rocky. The unprecedented agreement in global treaties regarding basic human rights undoubtedly offers the most promising basis from which to work towards them. Additionally, the shared understanding that human rights documents have reached already in practice seems an exceptionally promising source for bridging the gap that still exists between the “parallel universes” (Waddock 2004a) of theoretical CSR/CC concepts and their translation into practice. The close connection between the claim for hypernorms and universal human rights is thus very evident. Hypernorms will most likely be found on the basis of human rights; uncovering the key for moving the CSR/CC debate forward in hypernorms thus means laying a much stronger emphasis on human rights in those concepts. And this required emphasis on human rights will inevitably increase along with the further global integration of markets and of business.

A prominent practical approach that very much reflects this need for foundational principles rooted in human rights are the “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” (UN Norms) brought forward by the UN Sub-Commission on Human Rights in the year 2003. These norms aim at establishing mandatory (but not legally enforceable) human rights standards for business. They are based on the UN human rights documents as well as the major existing codes for business such as the UN Global Compact, the OECD Guidelines and the ILO Tripartite Declaration. As such they reflect an attempt to move into the direction of finding a practical consensus between existing norms and guidelines as conceptually outlined by Donaldson and Dunfee. The UN Norms are by far the most elaborated and detailed approach to hold businesses accountable for their impact on human rights. The norms, however, have triggered a controversial debate about the adequacy of holding corporations accountable on a mandatory basis as opposed to the traditional voluntary approaches.

4. Human rights and business – voluntary or mandatory standards?

CSR/CC is usually associated with corporations voluntarily adopting measures to live up to their responsibilities that exceed the mere compliance with positive law. This bias towards voluntariness is becoming increasingly problematic with the growing emphasis on human rights. Scholars entering the human rights field from the CSR/CC perspective as well as business itself often cling on to the voluntary approach, while others see human rights as an opportunity to take corporate responsibility a step further and push for non-voluntary and even legally binding rules for business. Since the release of the UN Norms in 2003 the debate has intensified, often in terms of the UN Norms vs. UN Global Compact, which represents a voluntary approach to holding corporations accountable with respect to human rights.

Opponents of the UN Norms (who often argue in favor of the UN Global Compact) argue that international human rights law applies only to states, but not to non-state

actors such as companies. In their view, it is up to the states to incorporate human rights law into national laws, which the corporations are then obliged to obey. The UN Norms, they claim, is “an extreme case of the privatization of human rights” (IOE/ICC 2004: 2). According to them, everything beyond national law is to be considered in the range of voluntary responsibilities of corporations and as such is matter of good corporate citizenship. According to this view, corporations at best bear an indirect responsibility for human rights. The primary obligation lies with the state, which is responsible for protecting its citizens from destructive corporate action. This indirect approach to holding corporations accountable is stipulated as follows in the “Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights”:

“The obligation to protect includes the State’s responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-state actors” (United Nations 2000: para. 18, p. 21).

Based on this perception, companies often argue that as non-state actors, they do not have any international legal obligation towards the protection of human rights (Masci/Tripathi 2005: 24). It is thus up to the corporation if it wants to adopt responsibilities additional to the ones stipulated in law on a voluntary basis. We have claimed above that in the power relations of an increasingly globalized world, such a state-centered view is more and more inadequate, in part because of the rootless and non-localized nature of the transnational corporation, which makes it unaccountable in a real sense to any nation (e.g., Korten 1995). In a globalized world, the roots of many human rights violations as well as the key to dealing with them often lie beyond national borders (Jochnick 1999: 57). As such, the indirect approach of holding multinational corporations responsible on a voluntary basis has increasingly led to insufficient results. Globalization has decreased the impact of national laws and regulations on multinational corporations and accordingly enhanced the need for holding them directly accountable, at least until globalized institutions with the enforcement powers of, say, the World Trade Organization, evolve and are accepted both by corporations and nations. Additionally, the indirect approach predominantly, if not solely focuses on human rights violations through corporations, but not on their potential to promote and realize human rights – we will come back to this differentiation shortly.

What the opponents of the UN Norms call a “legal error” (IOE/ICC 2004: 3) – holding corporations directly accountable for human rights – is in fact a rather logical consequence of a world in profound change. Law has always been written and rewritten, interpreted and reinterpreted in the flow of change throughout the history. It is the very nature of law that its interpretation and eventually its letter change with (but in reality lags behind) the development of society, new moral challenges and ethical insights. Against the background of the current state of seemingly stagnating progress regarding global human rights situation and accordingly serious threats to the achievement of the UN Millennium Goals, it seems evident that we can less and less afford to keep disburdening large corporations from taking responsibility for the tremendous influence they have on society in general, and for human rights in particular. As pow-

erful actors in the global economy, which in many respects transcends the regulatory reach of the nation-state, they must be held directly accountable for their actions, both in positive and negative ways. Indeed, a voluntary responsibility assurance system (Waddock: in press) that encompasses elements of transparency through external reporting using mechanisms like the Global Reporting Initiative (GRI), and certification, monitoring, and verification processes like those of SA 8000 or AA 1000³, has accompanied the evolution of codes and principles that set out basic norms and values.

Despite these developments, some corporate critics (e.g. Bakan 2004) have characterized the corporation as a pathological and amoral institution, at least partly disconnected from the individuals acting in and through it. Corporations, in this view, which can be similar to that of neoclassical economics, are only concerned with striving for profits and power. For such an entity the compliance with voluntary human rights norms would naturally be nothing but a matter of the bottom line. As long as direct pressure from consumers and investors is lacking, human rights are thus not likely to play a major role in the corporation's decisions (Smith et al. 1999: 212). Nevertheless, there is empirical evidence that a stronger emphasis on corporate responsibility can also be good business (e.g. Margolis/Walsh 2001; Frankental/House 2000: 24ff.; Wood/Jones 1995; Pava/Krausz 1996; Waddock/Graves 1997), or at least not harm profitability. Even positive cost-benefit-calculations, however, cannot replace the normative reasons as a foundation for corporate responsibilities but only count as a welcome side effect (Ulrich 2004: 7; 2001: 420).

We do not mean to deride existing voluntary attempts of corporations to improve their "footprint" with respect to human rights. Without a doubt and despite Bakan's (2004) argument, there are corporations that have undertaken genuine efforts to promote human rights not because it pays but because it is the right thing to do. Such attempts are of great value and deserve our support. Still, it is questionable whether voluntary approaches alone are sufficient. Some scholars have argued that as long as adequate enforcement mechanisms are lacking for mandatory standards, voluntary approaches might be more effective in promoting human rights than national or international codes forced on corporations against their will (e.g. Wawryk 2003: 58f.). In their critique of the mandatory UN Norms, the International Organisation of Employers, and the International Chamber of Commerce even rejected efforts towards the establishment of mandatory norms because in their opinion they undermine not only the progress made with voluntary approaches but human rights per se (IOE/ICC 2004: 1). The Global Compact initiative in particular has been somewhat of a success story because of the simplicity and clarity of its approach. At the same time, the examples that the Global Compact has brought forward can be somewhat deceptive and drown its still relatively modest reach. While many proponents refer to the over 2000

³ SA 8000 and AA 1000 are certification standards and guidelines for the verification and monitoring of companies' correspondence to labor rights, their engagement in stakeholder relations and adoption of social responsibility in general. They are provided by the two independent non-profit organizations Social Accountability International and AccountAbility respectively.

member companies, this number is still modest compared to the nearly 70'000 transnational companies estimated by the UN to be in existence, and the millions of large, medium and small national companies.

5. A level playing field?

The relatively small number of corporations that have committed themselves to the Global Compact or similar standards shows that the adoption of extensive human rights responsibilities through corporations is only likely if they are not perceived to cause a competitive disadvantage in the market or are possibly thought to achieve some reputational advantage. What is needed is thus a so-called “level playing field” where all corporations comply with certain principles and as a result no one suffers from a disadvantage in the market because of it. Voluntary initiatives are unlikely to level the field, because there will always be ethically less concerned competitors trying to get an edge over their peers by applying socially irresponsible business practices that can seemingly produce results less responsibly but more quickly. It is virtually impossible to reach a “tipping point” for the consistent corporate responsibility needed to protect and promote human right through business, if social responsibility is perceived to create a competitive disadvantage for the corporation (Waddock in press). From this perspective, one would think that the support of mandatory standards should be in the self-interest of any socially responsible corporation (Ulrich 2002: 154). Support for mandatory standards could, as a result be taken as a measure of proof of the corporation’s genuine and serious commitment to its social responsibility. Rather than giving up its own responsible practices in order not to suffer a competitive disadvantages it is fostering a mandate for the same standards for its lesser responsible peers, just as Johnson & Johnson fostered standard packaging regulations for the entire industry after its early 1980s crisis with Tylenol. There seems no reason for a good corporate citizen not to support mandatory standards; for a corporation already committed to voluntary standards, there is nothing to fear from making those standards mandatory and potentially a good deal to be gained from a level playing field perspective.

6. A moral rights argument for mandatory human rights standards

Not all of the conversation about human rights can or should take place in terms of competitive advantage. Human rights are moral rights rooted in human dignity. This very essence of human rights suggests that human rights norms are not a matter of voluntary compliance for business. As moral rights, human rights are not “artificially” constituted by positive law, but exist a priori – just as it is the case for foundational norms or hypernorms in general. Rights that exist a priori are the rights human beings enjoy simply because of the fact that they are human beings. Human rights are not separable from human dignity and as such they are undeniable, inalienable and universal. Human dignity, as Avishai Margalit (1996) showed on the basis of the paradox of humiliation, cannot be denied without inevitably running into a contradiction. Tying up to Hegel’s account of the master-slave dialectic, Margalit concludes:

“My central claim is that humiliation typically presupposes the humanity of the humiliated. Humiliating behavior rejects the other as nonhuman, but the act of rejection presupposes that it is a person that is being rejected” (Margalit 1996: 109).

We are thus not able to effectively deny a person’s status as a human being, which makes human rights universally valid. All human beings have thus a justified moral claim against their fellow human beings for unconditional respect of their identity, integrity, and dignity (Ulrich 2001: 45); or in the words of Jack Donnelly:

“If human rights are the rights one has simply because one is a human being, as they usually are thought to be, then they are held ‘universally’, by all human beings. They also hold ‘universally’ against all other persons and institutions. As the highest moral rights, they regulate the fundamental structures and practices of political life, and in ordinary circumstances they take priority over other moral, legal and political claims. These dimensions encompass what I call the moral universality of human rights” (Donnelly 2003: 1).

A violation of human rights is thus always an attack on the very constitution of humanity and as such it is to be condemned in all possible shapes and forms – this is the core of and the very purpose and meaning of the idea of inalienable human rights.

So, why should this principle of the inalienability of human rights only have validity for business on a voluntary basis? Why should corporations be granted a special status allowing them to choose whether they want to respect human rights or not? From this moral perspective the mere idea of voluntary human rights norms seems rather odd. It seems that if we accept human rights as inalienable moral rights of human beings, which the nations of the world that charter corporations have done through UN treaties, then corporations must have a moral obligation to unconditionally respect those rights as any other institution (or human being). Especially when considering the tremendous impacts that business has on human rights and human life itself today, the idea of making human rights a voluntary affair for corporations delivers a rather problematic message and threatens to relativize if not undermine the whole concept and idea of human rights.

There are problems with this position, though. What sounds convincing and straightforward from a rights-perspective turns into a rather difficult affair when analyzed from the perspective of specific human rights obligations. Even if it is evident that certain actors have an obligation towards the protection of a specific human right, it is often not all that evident what these obligations entail, how far they reach, and which other actors they include; accordingly, even if we support the idea of mandatory compliance, it is oftentimes unclear what compliance in different situations requires from a certain actor.

7. So which obligations?

As justified moral claims of a person, moral rights naturally create obligations for fellow human beings to respect those rights. The rights of one person inevitably create related duties for the others. The nature of these duties is dependent on the nature of the rights at stake. Even though the distinction is not always clear and evident, we can

broadly differentiate between negative and positive rights. While negative rights impose passive duties to withdraw from certain actions, positive rights usually denote active duties, that is, obligations to take positive actions towards the fulfillment of the according right. Negative rights in this sense such as the rights to protection from bodily harm create universal duties, which usually derive from clear causal chains. No one is entitled to violate those rights. In other words, everyone has the same duty to respect those rights and to withdraw from any action that might be in conflict with them. These duties are individual and perfect duties, which apply in the same way and to the same extent to anyone.

Positive rights, typically associated with social, economic and cultural human rights, on the other hand create collective and as such often imperfect duties. The positive actions required for the realization of positive rights often overstrain the capacity of a single actor and thus target a potentially indefinite number of possible actors with the ability to contribute. As such, they do not apply to everyone in the same way and to the same extent and it is typically not entirely clear which actors are obliged to deliver what in order to realize those rights.

The differentiation between positive and negative rights is a helpful systematization in order to reflect upon human rights conceptually, particularly in the context of corporations. For the purpose of clarity in our argumentation, we will stick to this traditional distinction; keeping in mind the elaborations notably of Shue (1980) and Pogge (2001), which show that the distinction between positive and negative rights both in theory and practice is not always clear-cut and often inadequate. Often, positive rights can be interpreted negatively and the protection of negative rights is sometimes crucially dependent also on positive actions. Hunger for example cannot only be interpreted in a positive sense, that is as a duty to realize the rights affected by it; since hunger is not a freak of nature but created as a result of the economic policies and institutions we have set up, there are also agents to be held accountable for the violation of the according rights (Pogge 2001). From this perspective, most social, economic and cultural rights also have a genuinely negative component. Typically though, also this negative component is characterized by ambiguity, since it is seldom entirely clear which actor contributes in what way to the violation of such rights.

The mainstream economic perception, for example, assumes that economic growth is the key to societal development and welfare. From this perspective, corporations contribute best to the realization of economic and social rights by running profitable businesses. This neoliberal orthodoxy, however, has lost much of its credibility against the background of a dramatically widening gap between rich and poor and the persistence of poverty-related human misery around the world. It becomes more and more evident that with their narrow focus on profit-maximization, corporations did not only not contribute adequately to the realization of human rights, but often also perpetuated the massive and ongoing violation of them; through their uncompromising striving for profit, they are holding up and accelerating the very economic system that is largely responsible for the undermining of a vast array of human rights (e.g. Cavanagh et al. 2002). As little evidence there is that economic growth indeed trickles down to the poorest of our society, as weak seems the empirical evidence that multinational corporations contribute to the improvement of the human rights situation in

developing countries simply by providing foreign direct investment (Smith et al. 1999) as some scholars have assumed (e.g. Meyer 1996).

Against this background, the claim against mandatory human rights standards for business seems especially weak in regard to negative rights implying perfect duties, that is, where a clear causal connection between the corporation's operations and the violation of people's rights can be identified. As universal and individual duties, such rights can be defined comprehensively and without major ambiguity, however, where rights impose imperfect duties, the definition of mandatory standards seems more problematic. They are subject to many open questions and different interpretations; the difficulty thus lies in the identification and definition to what extent corporations can be held responsible for the violation of such rights or in what way they could adequately contribute to the realization of them.

This connection can be illustrated by the example of Article 25 of the Universal Declaration of Human Rights, which constitutes a fundamental right to food adequate for maintaining a decent living standard. This right is stipulated also in article 11 of the International Covenant on Economic, Social and Cultural Rights and got reaffirmed by the leaders of 185 countries at the 1996 World Food Summit. The right to food itself can be subject to very different interpretations; the definition of the right amount, quality and composition of food to maintain a "standard of living adequate for the health and well-being" as it is stipulated in article 25 is not unambiguous and is dependent on many different factors such as climate, culture, personal features etc. Apart from this ambiguity, even in cases where there is no doubt about a violation of the right to food as in the case of widespread starvation in many – predominantly African – developing countries, it is still not evident who must be held accountable to improve the situation. States might have the primary responsibility for respecting, protecting and fulfilling the right to food for its citizens but in reality they do not necessarily have the capacity (and sometimes not the will or the resources) to do so. Large-scale food production and food markets today are firmly in the hands of corporations and with increasing globalization the nation-states' control over them diminishes. In these circumstances, the state loses some of its capacity to protect the right to food from violation through corporations as well as to realize the right through adequate actions. Therefore, in a corporation-controlled food system that produces more than enough food to feed the world population, these driving forces in this system evidently share a direct responsibility for realizing the right to food. This was also the conclusion of the 2003 report of the Special Rapporteur of the Commission on Human Rights on the right to food to the General Assembly, which dedicated a whole chapter to the obligations of transnational corporations:

"This chapter sets out to examine one issue that is becoming increasingly important for the realization of the right to food: the human rights obligations of transnational corporations (TNCs) in light of the fact that corporations are exerting increasing control over the production and provision of both food and water. Given this increasing control over the food system, it is argued that transnational corporations must take responsibility and bear obligations with respect to ensuring human rights, including the right to food" (United Nations 2003: 11).

Of special concern, according to the report, is for example the “increasing concentration in and monopoly control over the global market for agricultural seed” as well as the fact that “current biotechnology research is driven by commercial imperatives and does not focus on the food security needs of the poorest” (11). As the report states further though, food insecurity is not simply a result of a shortage of food supply, but a result of the interplay of many factors and often connected to the violation of other fundamental rights. Gender inequality, low incomes, lack of access to land or credit for example play major roles in the persistence of hunger. As evident as it seems that the corporation bears a fair share of the responsibility to improve the situation, it is also clear that they are only one (important) part of the whole puzzle.

So, what are the obligations a particular corporation must bear within this puzzle? Companies would with some degree of reasonableness argue that they cannot meet their fiduciary obligations to stakeholders, nor their employment obligations to employees, and would incur accusations of lack of fairness from customers if they choose to give away food to all in need. Corporations, as currently constructed, are not set up to meet these complex public good needs. It is one thing to expect the corporation to maintain humane working conditions for its employees; but how do we determine what an adequate contribution of a corporation to the realization of the right to food, or similarly to the right to health (Wettstein 2005) or the right to water (Wettstein 2004) must include? How many resources must a food corporation dedicate to the fight against hunger as a direct responsibility arising simply from their pursuance of business within the food sector? Conceptually, at least, and according to the state of the art of current research, we might argue following Preston & Post (1975) that the responsibilities of the firm fall within the company’s domains of primary (direct) and secondary (ripple effects on secondary stakeholders) impacts of the firm. That is to say, corporate responsibilities for a broad human rights problem like hunger may be limited to its domain of activities and control, which would encompass investors, employees, local communities and governments where the firm operates or with which it hopes to do business. It is still unclear if and to what extent corporations can be assumed to have general responsibilities for human rights; by the nature of moral responsibilities, they do have, at the very least, to take accountability for ensuring human rights within their areas of direct and indirect impacts. There is growing agreement, however, that these areas of impact must be tied more closely to the corporation’s actual capabilities to make a positive contribution, rather than to mere (negative) causality (Wettstein 2005; Kline 2003; Kuper 2005).

We are still at the beginning of gaining insight regarding such open questions and issues and there is still a lot to do to gain clarity. Additionally, these responsibilities are naturally highly dependent on the specifics of the situation and the particular corporation itself. Hence, in many cases, there might not even be a conclusive general answer. This means that the obligations the corporations must comply with are to be evaluated and re-evaluated continuously on all different levels; they are variable and might never be as clear-cut definable as it is the case with perfect duties.

As Parkinson (1999: 57) rightly noted, law is much less effective at eliciting positive behavior and raising the bar for higher standards, than it is at enforcing minimal standards and restricting certain corporate actions. Although this reality is to be kept in

mind when opting for mandatory standards, it does not mean, that the strife for higher standards is entirely voluntary. It does not make the *general* responsibility of the corporation towards the realization or non-violation of such rights a voluntary one. Also in regard to these rights, the corporation's duty derives directly from the protection of human dignity and as such, it is naturally a mandatory one.

Hence what mandatory rules can do, at least for the time being, is to stipulate a duty for corporations that makes them at the very least accountable for their business activities and their potential impact on these rights as well as for the efforts they take in promoting and facilitating progress in this regard. As a mandatory duty, this forces the corporations to continuously evaluate and assess their role with respect to human rights and to stay in close dialogue with the public. For now, our knowledge regarding the corporation's duty towards such rights only allows for very broad formulations; it is thus not yet so much one of specific, targeted actions, but predominantly one of accountability to the public. Also in the UN Norms, the according article 12 is thus formulated in very broad and open terms:

“Transnational corporations and other business enterprises shall respect economic, social and cultural rights as well as civil and political rights and contribute to their realization, in particular the rights to development, adequate food and drinking water, the highest attainable standard of physical and mental health, adequate housing, privacy, education, freedom of thought, conscience, and religion and freedom of opinion and expression, and shall refrain from actions which obstruct or impede the realization of those rights”.

This article 12 must be interpreted in connection with article 1, which corresponds to the Preston & Post (1975) claim as formulated above:

“Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law [...]”.

The broadness with which the Norms formulate these responsibilities has been subject to critique. Namely the IOE and ICC (2004: 19ff.) called them “an epitome of vagueness” whose “extreme indeterminacy will result in arbitrariness”. They fear that the vague provisions of the UN Norms will lead to arbitrary enforcement action against corporations. If corporations take their responsibility for public accountability seriously and proactively engage in public dialogue, they will not even get into situations where they are caught off-guard by possibly unreasonable accusations or claims. Additionally, it is precisely through the process of dialogue that we have the best chance to end up with norms and rules sufficiently consistent to prevent arbitrary interpretations – here is where CSR/CC and human rights standards meet. It is in this aspect that voluntary initiatives and mandatory standards intersect. While voluntary initiatives help develop mandatory standards, these standards provide the basis on which further voluntary initiatives are likely to flourish.

8. Conclusion: A complementary relationship between voluntary and mandatory human rights standards

Concluding from the above insights, the UN Norms and the Global Compact should not be seen as opposed to each other but rather as complementary. Precisely in the cases where responsibilities are unclear and contingent, the Global Compact – as well as other valuable voluntary initiatives – provides an excellent platform for mutual learning processes and conducting such dialogues. The Global Compact could thus be seen not as an instrument for the voluntary adoption of responsibilities but as a possible voluntary instrument corporations can use to realize their mandatory duty to assess their impact on such rights. Or in more general terms: both voluntary and mandatory standards and norms are necessary to bring the discussion forward. Achieving strive for mandatory standards will most likely not be successful if no platforms for voluntary efforts are in place; similarly, the impact of voluntary initiatives will remain marginal if the new insights and experiences cannot be applied similarly to all corporations in the attempt to leveling the field for fair and socially responsible competition. Further, mandatory standards are unlikely to evolve successfully from single nation states, as the effectiveness of global institutions like the WTO, World Bank, and International Monetary Fund suggest. A global consensus and attendant willingness to devolve power to global institutions charged with the overseeing and enforcement of human rights may at some point become necessary if mandatory standards – and a level playing field – are to be available for all.

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