

Berne Declaration interview with John Ruggie

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Berne Declarations questions:

What was the greatest challenge you faced when you started your mandate in 2005?

Elliott Schrage, who is now a Vice President at Facebook, summed up well the state of play when I entered the scene. At the annual conference of Business for Social Responsibility in 2005, he said: “On the one hand, you have NGOs with ambitious agendas for a ‘treaty’ on corporate responsibility and human rights. On the other hand, you have companies saying ‘no, anything but that!’ Cooler heads are not prevailing and in fact are hard to find at all.”

A comprehensive treaty on business and human rights wasn’t even a remote possibility, and launching any such negotiations would have set the agenda back by years. At the same time, pure voluntarism wasn’t going to suffice. So I began a search for a more heterodox approach.

What do you consider the biggest achievement of your mandate?

Within three years of that inauspicious start in 2005, the Human Rights Council was unanimous in “welcoming” the Protect, Respect and Remedy Framework I proposed. And three years after that, this past June, it “endorsed” the Guiding Principles—the first normative text on business and human rights ever endorsed by the UN body, and the first time it ever used the verb “endorse” in connection with any normative text, on any subject, that governments did not negotiate themselves. The GPs now constitute an authoritative baseline standard of conduct for governments and businesses.

Equally important, the second pillar of the Framework and GPs—the corporate responsibility to respect human rights—has already migrated to other international standard setting bodies. The OECD drew on it explicitly (and in some cases verbatim) in its updated Guidelines for Multinational Enterprises, which for the first time now include a human rights chapter. ISO26000, the new social responsibility standard adopted by the International Organization for Standardization, did the same. And the new IFC sustainability policy explicitly recognizes businesses’ responsibility to respect human rights, which the UN GPs make clear can only be achieved through adequate human rights due diligence. So we’ve also achieved considerable convergence at the international level.

All of this is based on the outstanding engagement by and contributions of all stakeholder groups to the extensive research the mandate conducted or was able to draw on; the 47 international consultations we convened plus online consultations on the actual GPs draft; the pilot projects that road tested some of the recommendations in the GPs; and the financial support of governments that made it all possible.

In civil society many feel that there is a missing link between pillar one and two: If due diligence procedures are needed for corporations to meet their responsibility to respect, shouldn’t states take steps to oblige companies to establish due diligence procedures? How do you personally (without taking political constraints into account) see the relationship between pillar one and two?

The Framework and GPs reflect what international relations scholars call “polycentric governance.” This refers to an emerging regulatory dynamic under which public and private governance systems each add distinct value, compensate for one another’s weaknesses, and play mutually reinforcing roles—out of which a more comprehensive and effective global regime might emerge.

What existed before were small, largely unconnected fragments. In the GPs, the state duty to protect draws on international law and public authority. The corporate responsibility to respect reflects evolving international law but beyond that is also based on well embedded social expectations and the economic rationale for risk management on the part of firms. The GPs provide a common platform of minimum standards, with the several parts linked together dynamically and feeding into the others, as a close reading will indicate. We have moved well beyond the static dichotomy between 'mandatory' and 'voluntary' measures which impeded creative thinking for far too long, into a dynamic process in which they are inextricably entwined.

You said the endorsement of the Guiding Principles marks “the end of the beginning”. To advance the Business and Human Rights agenda, which key areas have to be addressed in the future?

The GPs provide high-level guidance. They are not a tool kit that can be taken off the shelf and plugged in. They will require further operationalization in different industry sectors, for different operating contexts, for SMEs, and so on. That's a very important next step. Another is to help build capacity where it does not exist—at both the country and firm level. Even with the best of intentions, nobody is able to do what they lack the capacity to do. Finally, as more results come in, undoubtedly adjustments will be made, the GPs will continue to evolve, as will national and international law in this space.

What can a civil society organization such as Berne Declaration do, to support this process?

Different civil society organizations have different areas of expertise that they can bring to the table to advance this agenda. Pure advocacy is one thing—and will always play an important role. But to make a real difference in further operationalizing, implementing and building on as well as beyond the common platform we now have will require real expertise in one or more of the many different areas in play.

You continue to engage in many activities concerning the business and human rights discussion – among them the chair of the World Economic Forum Global Agenda Council on business and human rights. Many civil society organizations, especially in Switzerland, see the WEF as a “talking shop” that helps companies to polish their image, without having to pursue real change. Where do you see the value of the Agenda Council?

I have selected a portfolio of activities for myself, in addition to my Harvard teaching responsibilities, each of which is meant to contribute in a different way. The WEF is an important voice of global business. The Global Agenda Council on business and human rights is intended to inform and advise the WEF membership on what the GPs are all about and what business can and should do advance the business and human rights agenda. So agreeing to chair the Council was a no-brainer—why would I want someone else to play this critical role when I have been given the opportunity to do it?