



Center for Business
and Human Rights

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Dean White, thank you for inviting me. And Alice, thanks for that wonderful introduction. It is great to be back in Miami and at this law school. I first came here in the late 1970s to examine the treatment of Haitian refugees. I had the privilege of working with a small, somewhat zany but very dedicated and effective group of human rights lawyers, including Ira Kurzban who is here this evening and Bruce Winick. Bruce taught here for more than 35 years before his death in 2010. He had a passion for righting wrongs. He brought this passion to the Haitian cases and to mental health law and therapeutic jurisprudence. Ira has been a leading advocate for refugee and immigrant rights for more than 35 years. My work with Ira, Bruce and others taught me, early in my career, that the struggle for human rights begins here at home. I also learned that fighting uphill battles for human rights is hard work, but that it is possible to slay dragons and really make a difference in this world.

I am particularly proud and honored to be giving this Louis Henkin lecture. Lou was my mentor and hero. I had the privilege of working with him when I first came to New York in 1978 to help

start the Lawyers Committee for Human Rights, now Human Rights First. He was a founding member of our board and the great intellectual force. He helped us build a strong foundation – rooted in law and based on principled pragmatism – that still guides Human Rights First’s work today.

Lou was our secret weapon in Washington. Legions of State Department officials, and staff members in Congressional offices on both sides of the aisle, were Lou’s students and they all revered him. When Lou spoke everyone listened. As my colleague and friend Harold Koh, the former Dean of Yale Law School observed, “What made Lou Henkin a genuine hero was not just his brilliance and his scholarly achievement, but his absolute integrity and incorruptibility. If Lou said it, it must be right—not just because there was no one smarter, but because there was no one more honest.” Supreme Court Justice Ruth Bader Ginsberg once called him “a constitutional scholar of Solomonic stature.”

In the mid-1980s Lou and Alice launched an effort to introduce US federal judges to the basics of international human rights and refugee law. It has proven to be an essential element of judicial education. Alice did a masterful job in organizing these annual seminars through her offices at the Aspen Institute. Over three decades, more than 300 federal judges participated, and for many it was their first introduction to human rights. In these sessions Lou opened many skeptical judges to the possibility that international human rights law just might be relevant to their day jobs.

For more than two decades I also had the privilege of teaching with Lou at Columbia Law School. Lou was most at home in the classroom. He probed, he questioned, he was open, he was creative. He asked why. He listened. Each of his classes was fresh and different. They reflected not only of his encyclopedic knowledge of law, diplomacy, philosophy and religion, but also his intense intellectual curiosity, his desire to explore new frontiers and his inclusive approach to teaching. Every time I walk into a classroom, I try to emulate, as best I can, Lou's remarkable teaching model.

Lou came to the human rights field naturally because he cared so much about people. This was not an abstract concept to him but a very practical effort to help vulnerable people everywhere. It started when he was a State Department lawyer just after WWII. Governments reeling from their failure to respond to the Holocaust recognized the universality of human rights. They also accepted collective responsibility to act when other governments fail to protect their own people. At the time these were radical notions.

Lou Henkin helped to shape this new field, and as Professor Sarah Cleveland rightly observed "many of his mantras are now the central themes of the human rights movement." But he also had a profound understanding that the struggle for human rights is constantly evolving. And tonight I want to discuss an important area where the human rights debate is hurtling forward to outcomes we cannot yet know. This is the connection between business and human rights. In the last two decades global corporations have grown exponentially at the very same time that the power and resources of many states has eroded. Today half of the 100 largest economies in the world are not states, but private companies. If you compare gross domestic product and

revenues, Wal-Mart would be the 31st largest economy in the world, its annual revenues roughly equivalent to the gross domestic product of Nigeria, the Philippines or Belgium.

Today many governments lack the will or capacity to protect the basic rights of their own people. Often they lack both. Thus private companies are being forced to adjust to a much larger role – financially, socially, and politically – than they have ever played or are comfortable playing. Understanding the roles and responsibilities of these companies in this new landscape is one of the biggest challenges for global policymakers at the beginning of the 21st century.

What is Business and Human Rights?

Last year my colleague Sarah Labowitz and I established the first human rights center at a business school, at the NYU Stern School of Business. Our mission is to challenge and empower companies and future business leaders to make practical progress on human rights. We examine human rights challenges that companies encounter in their core businesses, and encourage the development of common standards for human rights performance.

Business and human rights is distinct from corporate social responsibility which can mean a lot of things – marketing, corporate philanthropy, stakeholder engagement, or public-private partnerships. These efforts often lead to positive outcomes, such as drug companies providing anti-malarial drugs at free or reduced cost, or athletic companies supporting women's

participation in sports in places where they have been denied such opportunities, or initiatives to bring clean cooking stoves to developing countries.

It's commendable when companies take steps to address poverty, public health, or protect against environmental damage. But tackling business and human rights issues is often even tougher for companies. Not because combating poverty is easy, but because business and human rights requires companies to take a hard look at their own core operations. We start from the premise that business can be a force for good by generating economic growth. A globalized economy has generated millions of jobs over the last quarter century. It has lifted hundreds of millions of people out of extreme poverty. But some business practices also have eroded respect for human rights, especially when businesses operate in states with weak protections for basic rights.

So what is the appropriate role for business in this increasingly globalized world?

Let's begin with the question of what are human rights. Eleanor Roosevelt and the drafters of the Universal Declaration of Human Rights rejected the notion that governments bestow rights. Coming out of WWII and the Holocaust, they enshrined in the Universal Declaration the notion that every person is entitled to certain rights by virtue of their humanity. The Universal Declaration and the treaties that followed place the primary duty on states to protect human rights.

But today many states lack the capacity or the willingness to protect the rights of their own people. In today's globalized economy, these often are the very places where global businesses produce or sell their products and services or extract natural resources. So the harder question is to what extent and in what ways are businesses responsible when they operate in these places? And must companies step up when governments fail?

In 2011 the UN Human Rights Council began to answer this question, unanimously adopting a set of Guiding Principles on Business and Human Rights. The principles lay out a broad framework: governments have the principle duty to *protect* rights, companies have a responsibility to *respect* rights, and both governments and companies must work to provide a remedy when violations occur. These principles are an important first step, and create a sensible theoretical framework, but companies and other stakeholders need further guidance about how the principles apply to specific human rights challenges that arise in business operations. As the former UN Special Representative on Business and Human Rights, Professor John Ruggie, has aptly observed, we are now at the “end of the beginning.”

So what is the next step? For starters, companies and other stakeholders need to develop “rules of the road” – practical guideposts for applying, assessing and enforcing human rights standards that apply in different business sectors. A sector-specific, standards-based approach is sensible from a number of perspectives. First, these challenges often are much bigger than any single company can take on independently. Solving human rights problems requires the fiercest of competitors to agree on common standards. Second, a standards-based approach allows companies and others to develop metrics or benchmarks by which they can chart progress and

identify areas where companies need to do more. Finally, smart companies are coming to view respect for human rights as part of a long-term sustainable business strategy that also encompasses environmental stewardship and support for the communities where they operate.

A Closer Look at Five Industries

How does this approach play out in practice? Let's take a quick look at five industries.

Extractives: Violence and conflict often follow the discovery of a natural resource, and the poorer the country, the more likely there will be violent conflicts to control these resources. Because extractives companies go where these resources are found, they must ensure that there are adequate security services to protect their investments and operations. Since 2000, oil and mining companies have worked with human rights groups and governments in an initiative called the Voluntary Principles on Security and Human Rights. It sets a standard for these companies in some of the toughest places in the world, places where local communities often battle multinational companies. Twenty-six oil and mining companies, along with nine governments, and 10 non-governmental organizations are part of this initiative. The Voluntary Principles provide a framework for companies on issues of human rights and security.

Manufacturing: Supply chains now span the world, as manufacturing companies often compete to lower their production costs through low wage labor. In this highly competitive environment

global brands and retailers face daunting challenges in ensuring workplace safety and adherence to core labor rights standards for the workers producing their branded products.

Last year, more than 1100 workers were killed in a tragic garment factory collapse at Rana Plaza in Bangladesh. To activists Rana has become the iconic image of how vulnerable workers are not protected in the global supply chain. To manufacturers it is a symbol of the daunting challenges in ensuring workplace safety in places where there are significant costs associated with factory compliance. After Rana Plaza almost 200 global brands and retailers have begun to work together to set a common standard for factory safety inspections through two separate initiatives known as the Accord and the Alliance. This is an important first step in addressing the problem of poor working conditions but more needs to be done. At Stern we have been deeply engaged in Bangladesh. We have made a series of recommendations to global brands and retailers, local manufacturers, international organizations, and governments. We are encouraging them to create a common fund to allow more comprehensive solutions for the garment sector.

Collective efforts by global companies in Bangladesh have their origins in the anti-sweatshop movement of the mid-1990s. During this period, I worked with officials in the Clinton administration, large apparel companies, other NGOs, and universities to create the Fair Labor Association, the “FLA”. It has created a common code of labor conduct, a set of benchmarks to assess compliance, an independent auditing mechanism, and undertaken collective action to address entrenched problems. It is easy to say compliance needs to be better. Our challenge is to help guide companies on how to meet human rights standards in today’s fiercely competitive business environment.

Information and communication technology: The Snowden revelations focused much-needed public attention on NSA surveillance policies and practices. It has stirred a fierce debate about personal privacy online and the role of global internet companies in protecting the privacy rights of their customers. Companies should play a role in shielding users from invasive government surveillance practices. The release of documents last week related to Yahoo!'s 2008 lawsuit against the government in defense of its users private data is an excellent example of this principle. Companies also face immense challenges in securing user data from malicious intrusions by criminals and spies, as we've seen in the Target and Home Depot data breaches. What is less clear is companies' responsibility to protect private information in a business context. The premise of free online services, and increasingly even paid services, is that users exchange private data about themselves for convenience, innovation, and better understanding of the world around them. As we move to an even more digitized world – the Internet of things and the industrial Internet – we need rules of the road to enable economic growth, the spread of ideas, and new innovations to solve complex problems, while respecting individual users' right to privacy.

Since 2006, companies like Google, Yahoo!, Microsoft and now Facebook and LinkedIn have joined together in the Global Network Initiative. They are working with NGOs, academics and social investment firms to develop principles on privacy and freedom of expression and to identify best practices to defend these human rights vis a vis governments and in their own business operations. We are only beginning to understand the nature of the challenge in protecting human rights online in the same way we do offline.

Agriculture: Coffee, cocoa, cotton, and other agricultural products are produced by tens of thousands of small farms. The use of child labor throughout these diffuse supply chains is a daunting challenge. Cotton from Uzbekistan is a prime example: If a company buys Uzbek cotton they need to know that the government takes thousands of children and teachers out of school each year and forces them to work long hours in the field, picking cotton. What they harvest ends up in the supply chain for t-shirts, sheets, and other cotton products we use every day. Similarly, cocoa from West Africa is grown on thousands of family farms, many of which employ children in backbreaking physical labor. Major chocolate companies have yet to develop a comprehensive approach for combatting child labor in their supply chains.

What are we as consumers to do? And how do we differentiate among companies? Oxfam is giving us an early answer. It has developed an online scorecard for assessing 12 food and beverage companies on their human rights, land, and environmental records using common benchmarks. It's called "Behind the Brands," and represents a first generation social index that consumers want and need to help them make more informed purchasing decisions. Still in its early days, Behind the Brands is a bellwether of the types of industry assessment tools that are likely to evolve in the next decade.

Financial sector: Large investors, including fiduciaries like state pension funds and college endowments, have an important role to play in encouraging companies to uphold minimum standards for human rights and environmental performance. It's the right thing to do, but it's also a smart thing to do from a sustainability perspective. Across business sectors, long-term growth

is dependent on healthy operating environments for companies. But today, most investors focus exclusively through the lens of maximizing short-term profits of the companies in which they invest. They know very little about human rights and other social and environmental factors that affect long-term company performance. While so-called “socially responsible investment” approaches have become more prominent in recent years, mainstream investors pay too little attention to these issues. There is also a shortage of credible, objective information that would allow investors to incorporate these factors into their strategies. What is needed now is the development of standards for minimum performance on social and environmental factors across different industries that can help shape and inform investment strategies.

Best Practices for Smart Companies

Let me close with three broad principles – best practices for company leaders thinking about business and human rights across different industries:

1. **Commitment:** The first step for companies confronting human rights issues is for the most senior leadership within a company to develop high-level company-wide commitments on human rights. This is an area where it does not make sense for companies to compete. Company leaders should develop broad human rights principles, and then translate them into concrete guidelines for their respective industries. The best companies do this at the company level as well as sector or industry levels. It is critical that a company’s senior leadership visibly support these principles.

2. **Organizational structures:** Putting principles into practice requires companies to align organizational structures and procedures to create incentives for respecting human rights in routine business operations. Too often companies seek to address human rights challenges as a matter of public relations. While communicating about human rights performance is important, a company's approach has to be rooted in sound operational systems.

3. **Engagement:** Companies don't succeed if they don't engage. Smart companies find ways to draw on the expertise of other companies, NGOs, academic experts, and other investors to identify the most salient human rights issues and develop sophisticated responses to complex challenges.

A last word about what each of you can do to advance this agenda. These problems will not be addressed unless each of us takes initiative in our roles as consumers, investors, future business leaders or lawyers advising them. Business and human rights issues are becoming more visible fueled especially by social media and digital technology. Human rights standards and metrics applicable to businesses are emerging and evolving. Advocacy and other groups like OXFAM and Good Guide are beginning to gather comparative data on how companies are responding to these challenges. But especially as consumers, it's up to each of us to apply our concerns about human rights and apply them to our daily lives, to the products we buy, the places we work and the investments we make. In these ways we can help shape the future of human rights.