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The Alchemy of “Business & Human Rights” (Part I): The BHR Boom Years

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Aaron Marr Page

Forum Nobis PLLC: International Law | Human Rights | The Environment

There is no begrudging the almost magical success of “Business & Human Rights” (BHR) — the new name for the newly revamped field of human rights advocacy that has emerged over the last decade to, well, supplement (read: not replace) what used to go by “corporate accountability.” But two high-profile recent public letters — one backed by a startling resignation — appear to be sounding the alarm for a need for recalibration in the field.

BHR and corporate accountability

BHR was pioneered through the work of Harvard Prof. John Ruggie, who as a UN Special Representative led the development of the [UN Guiding Principles on Business and Human Rights](#) (UNGPs). Ruggie has candidly admitted that his approach differed from the “traditional human rights approach” — including a contentious and ultimately aborted effort, immediately preceding Ruggie’s tenure, at codifying corporate human rights norms from a more purist “corporate accountability” perspective. The heart of the change to BHR may be more rhetoric than substance — but the rhetoric has delivered amazing dividends.

At the risk of oversimplifying, “corporate accountability” was built from an antagonistic perspective, reflecting what the advocates who built the field knew in their bones: that the corporations they were battling were guilty as sin, and rich because of it, and that the only meaningful question was whether our systems of justice and society at large would one day stop letting them get away with it. By contrast, BHR emerged at a time when the fight for human rights and environmental justice suddenly became less lonely; when major companies seemed to be talking more about social responsibility in their annual reports and ad spend than about their products or profit margins. The rhetorical warmth of “business *and* human rights” is as obvious as the antagonism in “corporate accountability.” Everybody is on the same side and everybody is “part of the solution.”

Courting business

In addition to offering an olive branch of respect and trust to the corporate world, BHR offered to re-frame the entire discourse in ways that were deeply attractive to business. For one thing, the UNGPs themselves stopped short of imposing concrete and legally binding obligations on corporations (although that notion has reappeared in a recent debate on the idea of a [binding BHR treaty](#)), but rather sketched the contours of an obligation of “respect” for human rights. BHR also shifted the focus, to an extent, from litigation to a broader array of rights-supportive mechanisms such as voluntary due diligence efforts, self-reporting, and corporate human rights promotion projects unrelated to the corporation’s operations. While this could be seen as an embrace of a public relations approach to human rights (“rightswashing,” as it were), the argument was that (1) some of the reporting would be done by independent consulting firms; and (2) the increased transparency alone would allow the larger BHR community to scrutinize the self-reporting and achieve accountability through a public process of criticism and dialogue.

Even where legal efforts still played a role, BHR sought to cast traditional lawsuits as just one among many options, including a variety of new (or established, but underutilized) quasi-judicial grievance mechanisms. The degree to which corporations are drawn to the BHR vision of the accountability process is illustrated by the case of Nestle, which [continues to viciously fight litigation efforts](#) regarding allegations of the existence of child labor in its cocoa supply chain in Liberia, even while it has moved into [full-scale mitigation mode in the BHR arena](#), admitting there is a problem, implementing a “Monitoring and Remediation System,” highlighting the cultural complexity of the problem, and so on.

Other carrots dangled to the business world by BHR were more specific. The central BHR private-sector institution is the [Business & Human Rights Resource Centre](#) (BHRRC), a “knowledge hub” which hosted Ruggie’s mandate website, maintains an exhaustive database of business-related human rights issues, and issues a weekly update which is a key resource in the field. Before BHRRC goes “live” with any alleged human rights violation, it offers the company involved the chance to respond with its own version of the facts, and usually publishes the response simultaneously with the news of the allegation. For companies, this is a powerful shift from the media dynamics they faced in the past, where in the best case they would get to provide a comment before a news story on alleged abuse broke, or in the worst case they would be hit with a press release or media campaign without any warning whatsoever. With the BHRRC, the company can be up and running with its competing narrative from the starting gun.

The honeymoon phase

The rhetorical and substantive moves made by BHR have attracted plenty of criticism. Some of it has been on fairness grounds, seeing any move away from “traditional” legal accountability as a double standard that gives corporations a separate (and softer) mode of justice. But mostly the criticism has reflected plain skepticism; the fear that corporations will gladly accept the invitation to dress themselves in the rubric of human rights aspirations, but will not make any of the

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serious changes to their business models that many advocates feel is necessary for meaningful human rights change.

In these early “boom” years of BHR, the latter critique has arguably been premature. The very substance of BHR, after all, was to set aside earlier underlying assumptions about corporations and embrace them as partners. While people might have different gut feelings about how this would go, only time could tell. Similarly, the assumption that certain “hard” sacrifices and changes to business models are necessary for meaningful change was also set aside by BHR to allow its new business partners the space to develop support for a counter-proposition: that mitigation efforts could lead to real change without such disruption. A nice idea, if it works.

When this “honeymoon phase” will come to an end is an open question. There is already pressure on BHR to show that its success in engaging corporations is translating into results on the ground, and in response there has been a great deal of attention to BHR [metrics](#) and an important new [Corporate Human Rights Benchmark](#). But the passage of time also offers an opportunity for deeper reflection on how the core promises and compromises of BHR have played out on the ground.

The path ahead

In the next blog in this series, we’ll take a closer look at two recent public letters — [one](#) by Prof. Ruggie and [another](#) by Puvan Selvanathan, formerly one of the five members of the [main UN panel](#) in the field — that reflect some anxiety about how some of the early, courtship-phase promises of BHR are being operationalized. They take aim at the extent to which corporations and their executives have so thoroughly accepted the invitation to be “part of the solution” that they have assumed a leadership role capable of, and poised to, profoundly reshape the movement’s antecedent principles and objectives. At issue is no less than the primacy of human rights in the BHR relationship, and whether BHR is even properly understood as a true human rights field, as opposed to new kind of hybrid: the business **of** human rights.

The “&” in “Business & Human Rights” can have the feel of magic, or alchemy: a symbol that both represents and mysteriously effects change. It is no surprise that finding the right balance is a delicate task, one that could take generations. The blogs in this series will look at how individuals and institutions are trying to (or need to) question and experiment with the BHR potion, understand its side effects, and turn a phenomenon, magical though it may be, into a dependable engine of change.

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