4 Contextualising the Business Responsibility to Respect: How Much Is Lost in Translation?

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1. Introduction

As the work of the UN Special Representative of the Secretary-General (SRSG) for business and human rights moves towards its conclusion in mid-2011, the ‘responsibility to respect’ principles have received widespread endorsement from businesses, non-governmental organisations (NGOs) and governments. The corporate responsibility to respect is based on an account of ‘negative’ responsibility, namely the imperative that business should ‘at least do no harm’. There has been broad-based support for this proposition that business should respect (but not necessarily protect or promote) internationally recognised human rights.

The Protect-Respect-Remedy Framework articulates non-negotiable goals, but endorses flexible means for achieving these goals. The SRSG’s final report states clearly that “the responsibility to respect human rights applies fully and equally to all business enterprises.”

Deployment of such a positive/negative distinction by the UN Special Representative’s ‘responsibility to respect’ Framework is explicit in ‘Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development; Protect, Respect and Remedy: A Framework for Business and Human Rights’, in Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie (Human Rights Council, 2008), p. 9: “To respect rights essentially means not to infringe on the rights of others – put simply, to do no harm.”


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principles into specific obligations governing business activity will need to differ according to context and that “[w]hen it comes to means for implementation … one size does not fit all”. What is needed is flexibility – the capacity to take account of particular circumstances to ensure that all businesses, irrespective of circumstance, can fulfil their responsibility to respect human rights.

However, close scrutiny needs to be paid to how this flexibility is manifest both in code development and implementation. Clearly, there are benefits to a flexible approach. Flexibility can help ensure that demands placed on businesses are both reasonable and feasible given prevailing conditions. This in turn can strengthen both the legitimacy and enforceability of regulatory standards governing business activity. However, the practical task of translating general standards into varying local contexts is complex and contested, especially when dealing with business responsibilities for indirect forms of harm. These contests mean that flexibility can undermine the achievement of human rights. As we have discussed in more detail elsewhere, human rights abuses often result from business interaction with other actors and institutions in their external environment. Varying contextual environments therefore have an important bearing on defining the specific obligations required of businesses to avoid indirect harm. There is significant room for disagreement regarding which business obligations are both reasonable and feasible to demand in any particular locale. In diverse arenas, and under conditions of uncertainty and political contestation, there is a risk that flexibility can result in a ‘watering down’ of general principles to the lowest common denominator.

The central goal of this chapter is to understand why and under what conditions this loss or watering down is likely to arise, and how regulatory standards for business and human rights might be designed to enable the responsibility to respect principle to be applied in context-sensitive ways, without losing regulatory force. The complex and politically contested reasons why overarching regulatory principles can get ‘lost in translation’ when applied in practice have important implications for understanding how the corporate responsibility to respect can be meaningfully implemented across widely varying regulatory contexts. This chapter takes an important first step in unpicking how watering down occurs, though much analytical work remains to be done.

Our empirical analysis draws its insights from multiple, intersecting academic literatures. In section 2 below we tease out the various contributions from political

3 Ibid., p. 5.