
СЕКЦИЯ 2

МЕЖДУНАРОДНОЕ ПРАВО: ТЕОРИЯ И ПРАКТИКА ПРИМЕНЕНИЯ В СОВРЕМЕННЫХ УСЛОВИЯХ

UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: WHAT IS AND WHAT FOR?

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It has long been recognized that business can have a profound impact on human rights. This impact can be positive and negative [1; 2]. These situation heightened social awareness of businesses' impact on human rights and also attracted the attention of the United Nations [3, p. 3].

In 2011 the UN Secretary-General's Special Representative for Business and Human Rights Professor Ruggie proposed the Guiding Principles on Business and Human Rights in his final report to the Human Rights Council, which the Council endorsed by consensus.

The Guiding Principles divide into three parts or, as it stated by professor Ruggie, rest on three pillars [3, p. 4]. The **first** is the State duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication. The **second** is the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved. The **third** is the need for greater access by victims to effective remedy, both judicial and non-judicial.

Professor Ruggie insists that each pillar is an essential component in an interrelated system of measures: the State duty to protect because it lies at the very core of the international human rights regime; the corporate responsibility to respect because it is the basic expectation society has of business in relation to human rights; and access to remedy because even the most concerted efforts cannot prevent all abuse [3, p. 4].

Reaction to the Guiding Principles has varied from enthusiastic endorsement to vehement criticism. The Guiding Principles were endorsed by the Organization for Economic Cooperation and Development [4], welcomed by European Union [5] and incorporated by some companies [6].

However, many leading human rights nongovernmental organizations have publicly criticized the principles. According to Human Rights Watch, the en-

dorsement of the Guiding Principles amounted to nothing more than an “endorsement of the *status quo*: a world where companies are encouraged, but not obliged to respect human rights” [7]. Professor Ruggie commented that the Guiding Principles’ normative contribution lies not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses [3, p. 5].

It is true that the Guiding Principles are not an international treaty and do not consolidate customary rules of international law, therefore they did not create legal-binding rules. Concerning States obligations to protect and to grant access to remedies the Guiding Principles merely repeat the existing rules of international human rights law. Another problem is international human rights treaties generally do not impose direct legal obligations on private actors, such as companies. Therefore, some companies may claim that their sole obligation is to respect national laws, even where those laws failed to meet international human rights standards.

But the basis of the concept business and human right is the recognition that business enterprises as well as States held a responsibility to respect human rights in their operations. As a well-established and institutionalized social norm, the corporate responsibility to respect exists independently of State duties and variations in national law. This norm has received near-universal recognition by all stakeholders, namely the corporate responsibility to respect human rights, or, put simply, to not infringe on the rights of others [8, p. 13].

One of the leading international law scholars Louis Henkin found the legal ground for this point in the preamble to the Universal Declaration of Human Rights, noted that “every individual and every organ of society excludes no one, no company, no market, no cyberspace. The Universal Declaration applies to them all” [9, p.25].

It should be noted that the Guiding Principles and the whole concept of business and human rights apply to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure [3, p. 6], because every company in every industry sector has human rights impacts and responsibilities. Companies can affect the entire spectrum of internationally recognized human rights. In case law and world history we can find out the examples how companies influence on different human rights ranging from the right to life [2] to the freedom of speech [1] etc. The Guiding principle 12 refers to the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work [2, p. 13]. It means the companies should respect, at the minimum, the core internationally recognized human rights [2, p. 13].

Enterprises can affect the human rights of their employees and contract workers, communities around their operations and end users of their products or

services. That gives us the permission to distinguish inner responsibility of company towards employees (to implement the standards of ILO and adopt the complaint mechanism) and responsibility for their activities (e.g. for environment, the rights of indigenous people, promoting discrimination etc.).

In the past companies tended to approach social issues through their corporate social responsibility (CSR) programs. However, many CSR initiatives are undertaken selectively, based on what the company voluntarily chooses to address. Business and human rights concept approach requires companies to respect all human rights; they do not have the option of picking and choosing to deal with only those issues with which they feel comfortable. A human rights framework provides a universally recognized, people-centered approach to companies' social and environmental impacts [10].

REFERENCES

1. Yahoo! lawsuit (re China) [Electronic resource]. – Mode of access: <https://business-humanrights.org/en/yahoo-lawsuit-re-china-0#c9340>. – Date of access: 21.01.2018.
2. Blackwater USA lawsuit (re 16 Sep 2007 Baghdad incident) [Electronic resource]. – Mode of access: <https://business-humanrights.org/en/blackwater-usa-lawsuit-re-16-sep-2007-baghdad-incident-1>. – Date of access: 21.01.2018.
3. Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: UN doc. A/HRC/17/31. – New York, 2011. – 27 p.
4. OECD Guidelines for Multinational Enterprises [Electronic resource] // OECD, 2011. – Mode of access: <http://www.oecd.org/dataoecd/43/29/48004323.pdf>. – Date of access: 21.01.2018
5. Business and Human Rights: New United Nations Guidelines [Electronic resource] // European Commission. – June 17, 2011. – Mode of access: http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=5220. – Date of access: 21.01.2018.
6. Letter to Professor John G. Ruggie, Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corps [Electronic resource] // Bob Corcoran, Vice President, Corporate Citizenship, General Electric. – May 20, 2011. – Mode of access: <http://www.global-business-initiative.org/SRSGpage/files/GE%20letter%20to%20John%20Ruggie.pdf>. – Date of access: 21.01.2018.
7. U.N. Human Rights Council: Weak Stance on Business Standards [Electronic resource] // Human Rights Watch. – June 16, 2011. – Mode of access: <https://www.hrw.org/news/2011/06/16/un-human-rights-council-weak-stance-business-standards>. – Date of access: 21.01.2018.
8. Business and human rights: Towards operationalizing the “protect, respect and remedy” framework, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises: UN doc. A/HRC/11/13. – New York, 2009. – p. 27.
9. Henkin, L. The Universal Declaration at 50 and the Challenges of Global Market / L. Henkin // Brooklin Journal of International Law. – 1999. – № 25:3. – P. 17–25.

10. Business and human rights – a brief introduction [Electronic resource] // Business and Human Rights Resource Centre. – Mode of access: <https://business-humanrights.org/en/business-human-rights-a-brief-introduction>. – Date of access: 21.01.2018.

К ВОПРОСУ О КВАЛИФИКАЦИИ ДЕЯНИЯ ГОСУДАРСТВА КАК МЕЖДУНАРОДНО-ПРОТИВОПРАВНОГО ПРИ НАРУШЕНИИ ПРАВА НА ВОДУ И ПРАВА НА ДОСТАТОЧНОЕ ПИТАНИЕ

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Осуществление социально-экономических прав человека обеспечивается государствами «в максимальных пределах имеющихся ресурсов», в соответствии с возможностями государства[1]. Такое формулирование соответствующих обязательств в Международном пакте об экономических, социальных и культурных правах от 16 декабря 1966 года (далее – Пакт) ставит вопрос об особенностях привлечения государств к ответственности за нарушение указанных прав. В частности, актуальным является вопрос о квалификации поведения в качестве нарушения международно-правового обязательства. Указанные вопросы будут рассмотрены на примере права на воду и права на достаточное питание.

Специфика права на воду заключается в том, что как таковое оно не закреплено в международно-правовых документах, а выводится из права на достаточный жизненный уровень, а также права на наивысший достижимый уровень человеческого здоровья (п. 3 Замечания общего порядка № 15 (2002) Комитета по экономическим, социальным и культурным правам, далее – Замечание № 15). Причем на основании права на достаточный жизненный уровень право на воду понимается как основополагающее условие для выживания, а развитие права на наивысший достижимый уровень человеческого здоровья – как предупреждение угрозы здоровью в связи с небезопасными и токсичными источниками воды (пп. 3 и 8 Замечания № 15). В целом право человека на воду может быть определено как «обеспечение достаточного количества безвредной и доступной в экономическом и физическом плане питьевой воды для удовлетворения его повседневных потребностей» (п. 2 Замечания № 15).

Право на достаточное питание закреплено в п. 1 ст. 11 Пакта. При этом его следует отграничивать от закрепленной в п. 2 ст. 11 свободы от голода, имеющей обычно-правовую природу [2, с. 12]. Содержание права на достаточное питание заключается в наличии и доступности продовольствия, позволяющего по своему количеству и качеству удовлетворить потребности людей и обеспечиваемого надежными способами (п. 8 Замечания