

HUMAN RIGHTS DAY: THE ROAD TRAVELLED SINCE 1948

10 December 2015 | Global, Africa, Australia, Bangkok, Beijing, Belfast, Berlin, Brisbane, Brussels, China, Doha, Dubai, Frankfurt, Germany, India, Israel, Jakarta, Johannesburg, Kazakhstan, Latin America, London, Madrid, Melbourne, Middle East, Moscow, New York, Nordic

Legal Briefings - By **Stephane Brabant**

Beyond the traditional judicial fora where business enterprises can be challenged for human rights violations, they now also face 'new judges' such as NGOs, consumers, financial institutions, OECD National Contact Points, social networks, and stock markets.

Human Rights Day has been celebrated on this day since a resolution passed by the United Nations General Assembly in 1950 and commemorates the anniversary of the adoption of the Universal Declaration of Human Rights in 1948.

Since then the efforts to protect human rights have been continuous and the respect for human rights has passed a new frontier, with businesses increasingly becoming key entities in safeguarding compliance.

Human Rights Day can also serve as a reminder of the road travelled by human rights advocates since 1948 and how they have endeavoured to reconcile two spheres that were often considered separate: human rights and business.

CONNECTING THE DEFENCE OF HUMAN RIGHTS AND THE BUSINESS WORLD

For a long time, international human rights law was addressed to States. However, in recent years, there has been a heightening focus on business and on how they could contribute more systematically to respect human rights.

Former UN Secretary-General Kofi Annan and Professor John Ruggie from the Harvard Kennedy School have been the leading figures of these ongoing efforts to join business and human rights together. Under their leadership, 15 years ago, the UN first launched the United Nations Global Compact which aims to create a more sustainable and inclusive global economy.

The Global Compact has now become the world's largest corporate sustainability initiative, with more than 9,000 participating companies.

The second landmark of this new era was the Human Rights Council's unanimous endorsement, in 2011, of the United Nations Guiding Principles on Business and Human Rights, which are built on a three pillar framework (protect, respect, remedy) and were designed to provide a global standard in preventing and addressing negative impacts of business activities on human rights.

MOVING RESPECT OF HUMAN RIGHTS FROM OPTIONAL TO A COMMITMENT FOR ALL BUSINESSES FACING 'NEW JUDGES'

While the Global Compact is a voluntary initiative, the Guiding Principles apply to all business enterprises, large and small.

The world has now moved beyond the traditional judicial fora where business enterprises can be challenged for human rights violations (ie via civil lawsuits or even criminal prosecutions) and businesses now also face 'new judges' such as NGOs, consumers, financial institutions, OECD National Contact Points, social networks, and stock markets.

Business enterprises now increasingly face 'hard sanctions' for failing to respect human rights, including damage to a company's reputation, disruption to operations or difficulty to get international funding for their projects.

The Guiding Principles have been widely welcomed by States and the business community. They are also increasingly reflected in national legislations and regulations, corporate human rights policies, as well as public and private contracts, thereby contributing all the more to their wide recognition and application.

THE INCREASING ROLE OF BUSINESS LAWYERS IN ADVANCING BUSINESS AND HUMAN RIGHTS

Business lawyers both in-house and in private practice, have an important role to play in advising businesses on the importance of respecting human rights.

For a long time, with the human rights sphere and the business sphere separated, advising on human rights was not viewed as falling within the role expected from business lawyers. In light of increased legal risks and the appearance of these 'new judges', businesses now need to integrate human rights considerations as part of the development of new and existing activities.

Therefore, business lawyers increasingly have a role to play in advising businesses on drafting their human rights policies and designing human rights clauses in contracts, in advising on crisis management in the context of human rights violations, in implementing processes to avoid negative impacts on human rights and remedies when the negative impacts materialise. They also have a role to play in bringing a human rights perspective on M&A transactions and financing, and on supply chains.

Lawyers must act not only as technical advisers but also as trusted advisers and work in strong cooperation with the various stakeholders involved in business and human rights issues, including communities, NGOs and international organisations.

Recognising this, several bar associations and law societies, including the International Bar Association, have started drafting various rulebooks and guidelines to assist business lawyers advising on how to best implement the Guiding Principles.

While Human Rights Day reminds us of the long road that we have travelled so far, this celebration also serves to reflect on the progress that remains to be done to ensure that business activities do not adversely impact human rights and to better communicate the important role of business lawyers in reaching this goal.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



**STÉPHANE
BRABANT**

PARTNER, PARIS

+33 1 53 57 78 32
stephane.brabant@hsf.com

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