

Introduction

EMILIO D'ORAZIO*

This special issue of *Politeia*, devoted to “Business and Human Rights: In Search of Accountability”, contains the papers delivered at the Eighth Politeia Forum on Business Ethics and Corporate Social Responsibility in a Global Economy held on December 12 and 13, 2011 in Milano, Italy, and reviewed by the authors for publication. In addition, other relevant essays are included. The Forum was organized by the Research Centre Politeia, in partnership with the Department of Political and Social Studies of the University of Milano and the Centre for Environmental Law Decisions and Corporate Ethical Certification (CIGA) of the University of Padova, and with the support of the Promoting Committee, composed of several well-known Italian companies and organizations.

The publication of this issue – the eighth since 2004 – is particularly important for *Politeia*, because it witnesses the success and the consolidation over time of the Forum, which is reference point in the community of scholars and practitioners in the field of business ethics and CSR. From 2004 onward, some of the most important scholars and experts of business ethics and CSR at an international level have offered a contribution of knowledge and experience to an international public, discussing a number of very important themes related to the ethical challenges emerging in the global economic system¹. The series of special issues of *Politeia*² is a valuable tool for all those who work in the field: scholars, top managers, ethics officers and CSR managers, consultants and trainers, NGOs and stakeholders' representatives, business and union organizations, political institutions, and also media. Moreover, the series is thought as a further contribution to the fulfillment of the main aims of the Forum: those of providing the theoretical support necessary for the programmes on business ethics and CSR emerging in an ever increasing number of companies, and of raising the awareness of companies on the ethical and social responsibilities of economic organizations, through an approach meant to fill the gap between ‘experts’ and ‘practitioners’.

The Eighth edition of the Forum is in continuity with the Seventh on “The Corporation as a Political Actor: A New Role of Business in a Global Society” (Milano, May 2011), which analyzed how, in a globalized world, transnational corporations and NGOs play an increasingly active role in the formulation and implementation of regulation in policy areas such as the protection of human rights,

* Director of Politeia.

the implementation of social standards, the preservation of the environment, the struggle against corruption and the production of global public goods: this trend results in the promotion of positive social changes and thus in the assumption of direct *political* responsibilities which traditionally belonged to governments (Kline, 2008; Crane, 2011; Palazzo, 2011).

The Eighth edition of the Forum has developed the theme of the new role of business in a global society, by analyzing in particular the impact of business activities on human rights. The debate on the legal and ethical responsibility of multinational enterprises to respect human rights is one of the most significant recent developments in the field of business ethics, mostly thanks to the work done by the 'Special Representative of the UN Secretary General on the issue of human rights and transnational corporations and other business enterprises', John Ruggie: in 2008, he elaborated the *Protect, Respect and Remedy Framework on human rights and business*, which outlines the distribution of human rights responsibilities between governments and corporations; in June 2011, Ruggie concluded his mandate with the publication of the *Guiding Principles*, which are based on the conceptual groundwork of the Framework and are meant to implement it, thus fulfilling the need of practical guidance much felt by transnational corporations who are pressured to uphold human rights in countries where the rule of law is weak and abuses are commonplace.

In his third report to the UN Human Rights Council, Ruggie claimed "the root cause of the business and human rights predicament today lies in the governance gaps created by globalization" which have provided a "permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation". The solution he proposes is a Framework resting on "differentiated but complementary responsibilities", as the basis to outline "the specific responsibilities of companies in relation to all the rights they may impact". The framework "comprises three core principles: the State duty to protect against human rights abuses by third parties including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies" (Ruggie, 2008).

Thus the Framework, in addition to the traditional attribution of primary responsibility for human rights to governments, established direct responsibility to *respect* human rights also for corporations. While the duty of States to protect is grounded in International Law, the corporations' responsibility to respect has a non-legal base, consisting in a "societal expectation" for all corporations to respect human rights wherever they operate. The reason Ruggie gives as to why companies ought to respect human rights is an economic reason, since the "failure to meet this responsibility can subject companies to the courts of public opinion [...] and occasionally to charges in actual courts", and subsequently affect their reputation or their very "license to operate". Due to its non-legal nature, the corporate responsibility to respect human rights applies even where the law does not require compliance, thus filling the "governance gaps" created by globalization.

As stated, the debate on business responsibility for human rights is quite recent, even in the field of business ethics: up to the mid-1990s, the conventional human rights thinking had placed upon corporations only an indirect human rights responsibility,

alongside the direct responsibility of States. Yet globalization, by broadening the reach of multinational corporations, unveiled the issues related with the actual capability and willingness of governments to effectively protect human rights. The events occurred in Nigeria in 1995, when members of the Ogoni people were executed by the Nigerian government while a well-known and influent MNC stood watching, proved the need to change the conventional view in order to hold corporations accountable for human rights abuses. NGOs like Amnesty International were the first to pressure for this change, and have ever since played a crucial role in this respect. This process has thus lead the UN to elaborate and promote the Framework. Since its academic reception in the field of business ethics, the corporations' responsibility for human rights has been justified according to different theories: from Donaldson seminal work (1989), which based this responsibility on the theory of social contract, and was then taken up by Cragg (2000), to Arnold's agent based conception of human rights (2010). The importance of this subject for business ethics scholars is acknowledged by its being the theme of a recent special issue of *Business Ethics Quarterly* (Cragg, Arnold, Muchlisnki (eds.), 2012).

Politeia's special issue is meant as a contribution to the debate on the legal and ethical responsibilities of non-state actors to respect of human rights in a globalized world. Most of the essays collected, written by scholars of business ethics and of international law, are devoted to the critical analysis of the UN Framework and of the *Guiding Principles*, which constitute the first global standard to prevent and address the risk of adverse impacts of business activities on human rights.

The special issue of the journal is divided into three sections – I. *Ethics and Economic Success*; II. *CSR and International Law*; III. *Ethical Values in Global Business* – in which leading scholars and experts examine the subject 'Business and Human Rights'. Each section is completed by a panel – *From Principles to Practice* – in which managers and representatives of NGOs and of authorities illustrate the actual projects and experiences of their organizations in the fulfillment of business responsibility for human rights.

The first section consists of four essays, respectively by Denis G. Arnold (University of North Carolina), Florian Wettstein (University of St Gallen), Davide Fiaschi, Elisa Giuliani, Chiara Macchi, Oriana Perrone (University of Pisa, Sant'Anna School of Advanced Studies of Pisa, Bocconi University), and Germano Torkan, Dario Schirone (University of Bari).

In the essay *The United Nations Business and Human Rights Framework*, Arnold provides an introduction to the business and human rights discourse, focusing in particular on some aspects of the implementation the Framework for Business and Human Rights endorsed by the UN Human Rights Council. The Author believes that a declaration of respect for human rights in global operations may be made by corporations as a nearly cost free way of gaining legitimacy among external stakeholders, but in order to have a positive impact on the performance of a corporation, it "must be incorporated into the culture and systems of the organization". The Author further states that efforts to institutionalize due diligence require a third-party verification of compliance with internal human rights policies.

In the essay *Human Rights as a Critique of Instrumental CSR: Corporate Responsibility Beyond the Business Case*, Wettstein, exposes the conceptual flaws underlying the instrumental account of corporate responsibility to respect human rights, account on which the UN Framework is based. The Author claims that only a genuinely moral argument, based on “the inherent ethical value of human rights as moral entitlements”, would be more plausible and would place corporate responsibility beyond the mere respect of human rights, thus overcoming the strict boundary between State responsibility and the responsibility of corporations. He suggests “a reinterpretation of corporate responsibility as collaborative responsibility”, since “honoring human rights in all their dimensions is a deeply collective task”.

In the essay *Orientamento sessuale e business. Analisi socio-economica di un target settoriale*, Torkan and Schirone, on the basis of the results of an empirical research they carried out in some Italian companies, argue that, as the company is the “dynamic outcome” of economic and social forces that influence each other, the effort to protect the worker also in his sexual orientation may positively influence the economic results of the whole business.

The second section consists of four essays, respectively by Peter T. Muchlinski (University of London), Nicola Jaegers (University of Tilburg), Angelica Bonfanti (University of Milano) and Marco E. Grasso (University of Milano-Bicocca).

In the essay *Rethinking International CSR: Due Diligence in the UN Framework on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and in National Laws*, Muchlinski examines the impact of the emergence in International Economic Law of the concept of *due diligence*, which constitutes the basis of the corporate responsibility to respect human rights as conceived in the UN Framework, and which acquired a wider role in relation to the 2011 revision of the OECD Guidelines. The Author believes the use of this concept by corporate actors in relation to social responsibility issues will “open the door to the development of due diligence based binding duties of care under national laws relating to the observance of human rights”, with significant consequences also for the future development of legally binding duties under International Law.

In the essay *The Missing Right to Know. A Critique of the UN Protect-Respect-Remedy Framework and the Guiding Principles*, Jaegers argues that the UN Guiding Principles do not provide sufficient guidance on how to ensure stakeholders adequate access to the information which would allow them to monitor if and how corporations are discharging their corporate responsibility to respect; thus, “the SRSB could have more explicitly articulated the duties resting on the State to ensure access to vital information as part of the State obligation to protect”, which in turn have their source in international human rights law and in the national legislation on the right to information.

The essay *Access to Remedy for Victims of Business-related Abuse: Some Remarks in the Light of the UN Guiding Principles on Business and Human Rights*, by Bonfanti, examines the access to remedy, by focusing on the civil proceedings available before the US and European courts and on the follow-up procedure established by the OECD Guidelines. The Author notes that the Working Group

recently established by the Human Rights Council to promote the effective dissemination of the Guiding Principles has emphasized the necessity of greater access to effective remedy for victims of business-related human rights abuses.

The essay *I ‘diritti delle generazioni future’: tra etica, sostenibilità e diritto*, by Grasso, focuses on the meta-legal nature of the concept of the “rights of future generations”, which developed within the fields of ethics, sustainability and environmental law and is mentioned by sources and authors belonging to different fields. The Author claims that in order to attribute to this concept a precise autonomy we should take into consideration collective duties imposed on the present generation and directed toward the entire human race and therefore also toward future generations.

The third section consists of six essays, respectively by Michael A. Santoro (Rutgers Business School), Elena Pariotti (University of Padova), Andrea Shemberg (Former Legal Adviser to the SRSB for Business and Human Rights), S. Prakash Sethi (The City University of New York), Lorenzo Solimene, Claudia Stracchi, Francesca Testani (KPMG) and Paola Russo (University of Insubria).

In the essay *Sullivan Principles or Ruggie Principles? Applying the Fair Share Theory to Determine the Extent and Limits of Business Responsibility for Human Rights*, Santoro presents a “fair share” theory of responsibility for human rights, according to which responsibilities are ‘shared’ by a variety of actors – MNC, national governments, intergovernmental organizations and NGOs – and when determining the “fair share” of responsibility of a MNC, the relative strengths and weaknesses of other actors must be taken into account. The Author then applies this theory to two alternative approaches – the ‘Sullivan Principles’ for doing business in apartheid South Africa and the ‘Ruggie Principles’ enunciated in the UN Guiding Principles – to decide which of these two comes closer to embodying the moral obligations of business. The conclusion is that Ruggie Principles are “inconsistent with the moral requirements of human rights and they represent a step backward in the struggle to establish business responsibility for human rights”.

In the essay *The United Nations “Protect, Respect and Remedy” Framework on Transnational Corporations and Human Rights: On a Pitfall of a Reductionist Approach*, Pariotti argues that the Framework, with its “reductionist” definition of business responsibilities for human rights as mere moral responsibilities, may bring troubling consequences. To overcome this “pitfall”, it is necessary to clarify the meaning and the scope of the notions of ‘accountability’ and ‘responsibility’ in order to understand which impact – whether moral, legal or a more complex one – can be achieved through the Framework and the international tools in this field: “These concepts refer [...] to different kinds of obligations, may rest on different implementation measures, and can be supported by different sorts of justifications”.

In the essay *From Stabilization Clauses and Human Rights to Principles for Responsible Contracts*, Shemberg describes the four years work John Ruggie undertook on stabilization clauses, which are a risk-management device widely used in investment contracts between states and investors and in 2003 became the focus of a controversy regarding their potential negative impact on the protection of human rights. The paper analyzes the whole process which led to the Principles for

responsible contracts, and offers an introduction to the Principles, which were submitted to the Human Rights Council in June 2011. According to the Author, the Principles foster “reflection and dialogue at the state level, inside commercial entities and law firms, between parties to an investment, among civil society groups, and inside institutions that participate in and support investment and beyond and result in improved contracting practice”.

In the essay *Global Supply Chains and Labor Standards: Two Faces of Apple*, Sethi argues that multinationals should use their bargaining leverage to prevent their suppliers from exploiting workers, yet they are unwilling “to honestly assess the cost of their expectations and build them into the price that they pay for their products from the suppliers”. Considering Apple’s recent case, the only remaining option for society is to find ways to enhance corporate culture and ethical standards of companies’ top leaderships. As a social institution, the multinational corporation “must become an active agent for social change if it is to make the world safe for democracy and, indeed, for capitalism”, and in consequence Apple should play “a leadership role and thereby solidify its reputation not only as a leading corporate innovator but also leading socially responsible corporate citizen”.

In the essay *Business, diritti umani e catena di fornitura*, Solimene, Stracchi and Testani, note the ever increasing focus of stakeholders on CSR and human rights and believe each company should spontaneously consider not only its direct impacts, but also those generated through its supply chain, in order to manage the related risks and reduce negative impacts. They further suggest the adoption of the Guidelines conceived by the Italian Ministry of Economic Development.

In the essay *Big Pharma e accesso alle cure. La questione della responsabilità d'impresa tra etica e mercato*, Russo examines the relationship between multinational pharmaceutical companies and human rights, focusing on the question as to whether or not healthcare access should be considered as a human right enforceable against pharmaceutical companies. The Author then claims that the global issue of healthcare access requires transnational cooperation between WHO, NGOs and pharmaceutical companies.

I am glad to announce that the Ninth Politeia Forum will take place in the second part of 2012 and will focus on “Corporations and Global Justice”, developing further the themes treated in the two preceding Forums: multinational corporations, and in particular Transnational corporations, continue to be called upon to assume greater responsibilities toward those living in the developing countries in which they operate. In particular, the Forum focuses on the *positive* obligations that TNCs might be said to have and that are outlined in the UN Global Compact: while most authors recognize that TNCs have obligations not to engage in certain harmful activities, it is taken as less clear that TNCs have positive obligations to provide benefits and services to those living in developing countries (De George, 1993; H. Nsieh, 2009; Wettstein, 2009; Pogge, 2010).

I would like to conclude with a few acknowledgements.

The Eighth Forum and this issue have been possible thanks to the sponsorship offered by the following organizations: Acquisti&Sostenibilità, Barilla, Bombardier

Transportation, Cittadinanzattiva, Eni, Ferrovie dello Stato, IMF-Impianti Macchine Fonderia, Inail, Legambiente Onlus, Telecom Italia, Terna, Transparency International Italia, UBI Banca, UniCredit. The support we have received is a reason for us to carry on pursuing new projects.

I wish also to thank the many persons who gave their precious contribution to the success of the Forum and to the making of this publication. First of all, a special thank goes to all the Authors for making this special issue possible, and to Paola Branchi, Domenica Di Donato and Nicola Pasini, for their precious contribution to the scientific organization of this edition of the Forum.

I wish to acknowledge Marco Maraffi (Department of Social and Political Studies, University of Milan) and Vittorio Domenichelli and Elena Pariotti (CIGA, University of Padova), for their support in promoting the Forum.

My special thanks go to Giuseppe Sammarco, Director of the Fondazione Eni Enrico Mattei, who contributed to the success of Forum by hosting it in the venue of the Palazzo delle Stelline in Milano.

I thank warmly Guido Palazzo (University of Lausanne), leading scholar who elaborated the theory of ‘Political CSR’, for his participation to the Eight Forum as chair of a session and for his Foreword to this special issue.

Last but not least, I wish also to acknowledge Marta Minoia, Maria Beatrice Vanni, Beatrice Lestani, Sarah Songhorian, and Eleonora Viganò for their organizational contribution to the Forum and Alessia Giaccone for her help in the editing of the proceedings.

Notes

¹ More details about the Annual Forum past editions are available in the web page: www.politeia-centrostudi.org/forum.

² The proceedings of the First, Second, Third, Fourth, Fifth, Sixth and Seventh Forum, edited by Emilio D’Orazio, are published in *Notizie di Politeia*, respectively under the title “Business Ethics and Corporate Social Responsibility in a Global Economy” (n. 74, 2004), “New Perspectives on the Stakeholder View of the Firm and Global Corporate Citizenship” (n.82, 2006), “Corporate Integrity, Ethical Leadership, Global Business Standards. The Scope and Limits of CSR” (n. 85/86, 2007), “Restoring Responsibility: the Accountable Corporation” (n.89/2008), “Corporate and Stakeholder Responsibility. Theory and Practice” (n.93/2009), “Corporate and Stakeholder Responsibility for Sustainability”(n. 98/2010), “The Corporation as a Political Actor: A New Role of Business in a Global Society” (n. 103/2011).

References

Arnold, D.G. (2010), “Transnational Corporations and the Duty to Respect Basic Human Rights”, *Business Ethics Quarterly*, 20(3): 371-399.

Crane, A. (2011), “Private, Public, or Both? How companies manage their quasi-governmental roles and responsibilities”, *Notizie di Politeia*, 28(103): 51-65.

Cragg, W. (2000), "Human Rights and Business Ethics: Fashioning a New Social Contract", *Journal of Business Ethics*, 27(1-2): 205-214.

Cragg, W., Arnold, D. and Muchlinski, P. (eds.) (2012), "Human Rights and Business", Special issue of *Business Ethics Quarterly*, 22(1): 1-177.

De George, R.T. (1993), *Competing with Integrity in International Business*, Oxford: Oxford University Press.

Donaldson, T. (1989), *The Ethics of International Business*, Oxford: Oxford University Press.

Hsieh, N. (2009), "Does Global Business Have a Responsibility to promote Just Institutions?", *Business Ethics Quarterly*, 19(2): 251-273.

Kline, J. (2008), "Value Choices for Global Business: Who Decides and How?", *Notizie di Politeia*, 24(89): 361-370.

Palazzo, G. (2011), "The Corporation as a Political Actor: Understanding corporate responsibility for the 21st century", *Notizie di Politeia*, 27(103): 11-26.

Pogge, T. (2010), *Politics are Usual*, Cambridge: Polity Press.

Ruggie, J.G. (2008), *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN doc A/HRC/8/5.

Wettstein, F. (2009), *Multinational Corporations and Global Justice: Human Rights Obligations of a Quasi-governmental Institution*, Stanford: Stanford University Press.