



Human rights in international trade: A legal approach

Nguyen Manh Tuan

Department of General Organization, Hai Duong University, Vietnam

Abstract

Human rights and international trade are interrelated. International trade offers opportunities for increasing peoples' enjoyment of human rights, while human rights can ensure that international trade leads to sustainable and inclusive development. International trade can increase the resources available to states for advancing human rights and may positively affect poverty reduction. At the same time, international trade - through bilateral, regional or multilateral agreements may have adverse impacts on human rights.

This paper reviews legal approaches to promote human rights in international trade. Legal approaches include prohibiting or mandating conduct and creating and enforcing the UN Guiding Principles on Business and Human Rights (UNGPs) for states, businesses, civil society, and other relevant stakeholders. The paper also discusses increasing the costs of negative impacts of trade on human rights and the negotiating process and agreements of international trade. We can deal with challenges for Human Rights in International Trade by promoting the "Guiding Principles on human rights impact assessments of trade and investment agreements", which offer guidance on how "trade affects the enjoyment of human rights and how to promote and protect human rights among the objectives of trade reform." In addition, the paper also identifies potential constitutional and practical limitations to legal approaches to Human Rights in International Trade at the national level.

Keywords: Human rights, international trade, business, united nations, UNGPs

Introduction

1. The concept of human rights in international law and legal approaches to promote human rights in international trade

In international law, human rights have the characteristics of being a unified whole. They are universal, and there is a dialectical unity between national and international characteristics, individual and collective rights, human rights and citizenship. The nature of natural and inherent rights means human rights are a typical value common to all societies, countries and peoples. They are linked to the conditions of international relations. The social nature of human rights makes human rights suitable to the specifics of history, political regime, cultural characteristics, and national traditions, which are associated with the conditions and development of each country's economy, culture and society.

The classification of human rights in international law uses specific criteria such as the criteria of the right holder (individual, group, collective); nature of rights (rights to freedom, equality, democracy, right to development); rights content (civil, political, economic, social, cultural rights). The classification of fundamental human rights according to the above criteria has relative meaning because the nature of human rights is unified. In international legal documents, the formation of the concept of civil, political or economic, social and cultural rights groups most commonly reflects the awareness and struggle for human liberation over the centuries, eras and development periods of humanity in general and in each nation and nation in particular.

From a legal perspective, human rights begin from the national environment before the international community can agree on values, standards, regulations or common principles to govern how states treat their citizens also citizens of other countries. From a national or international perspective, human rights standards aim to restrict the

State's freedom to infringe on human rights in both domestic and international relations. From a national or international perspective, human rights standards aimed at restricting the State's freedom to infringe on human rights in both domestic and international relations.

Human rights are the long-term development of human history. Human rights depend on respect for dignity, freedom, humanity, and tolerance inherent in all cultures. The concept of human rights emerged directly from the bourgeois-democratic revolutions in the West, typically the British Revolution with the "Law of Rights" in 1689, The American Revolution with the "Declaration of Independence" in 1776, the "Constitution" in 1789 and the French Revolution with the "Declaration of the Rights of Man and the Citizen" in 1789. Many national and international legal documents have mentioned human rights in general and human rights in international trade in particular.

"Universal Declaration of Human Rights (UDHR) in 1948":

^[1] The United Nations General Assembly adopted this declaration on December 10, 1948. The basic principles and 30 articles in the UDHR have become the common language, the ideological basis and the source of international and national legal documents, regardless of ideology, political regime, history, traditions and cultural identity of the peoples. One of the most fundamental legal implications of the UDHR is that it defines human rights principles and standards. These are the Principles of non-discrimination, civil, political, economic, social and cultural rights and international surveillance procedures. This document also refers to some rights as specific legal institutions of human rights that the United Nations later codified in many conventions. Although there are limitations due to historical conditions and differences in political views among members of the Drafting Committee, UDHR's great ideas on ethics, politics and law still have the

same value highly appreciated by the international community as the basic moral value and standard of human rights that still govern human life to this day.

“UN Guiding Principles on Business and Human Rights”, UN, 2011, United Nations Guiding Principles on Business and Human Rights, published in 2011 ^[2]. This legal document includes 31 principles implemented within the framework of the United Nations' work on "Protecting, respecting and correcting"; human rights issues of transnational companies and business enterprises. Văn bản pháp lý này bao gồm 31 nguyên tắc thực hiện trong khuôn khổ hoạt động của Liên hợp quốc về “Bảo vệ, tôn trọng và khắc phục lỗi” các vấn đề nhân quyền của các công ty xuyên quốc gia và các doanh nghiệp kinh doanh khác. The principles affirm that business rights provide the first global standard for preventing and addressing the risk of adverse impacts on human rights. These are relevant to business operations and raise standards and practices on business and human rights.

“Business and Human Rights: A Principle and Value-Based Analysis”, Wesley Cragg, Published as Chapter Nine The Oxford Handbook of Business Ethics, 2010. “Business and Human Rights: The analysis based on the Principle and Value by Wesley Cragg, published in chapter 9 of the Oxford Business Ethics, 2010. The work addresses two topical issues: Economic globalization and respect for human rights. Theoretically, if trade grows, it will increase economic welfare and protect human rights, ensuring individual dignity. However, the interplay between trade liberalization and human rights protection is complex, and tensions have arisen between the two areas. By exploring the different legal matrices of the two commercial-human rights schools and considering how to combine them, the authors offer a solution for international law-making agencies and dispute settlement mechanisms. By exploring the different legal matrices of the two commercial-human rights fields and considering how to combine them, the authors offer a solution for international law-making agencies and dispute settlement mechanisms. The work does not refer to the economic law of Vietnam but instead comprehensively mentions the interaction between globalization and human rights. The author's research results will significantly support the thesis.

“Determinants of Economic Freedom Theory and Empirical Evidence” Herbert Grubel, Fraser Institute, April 2015: “Determinants of Economic Freedom Theory and Empirical Evidence” ^[3], Herbert Grubel, Fraser Institute, April 2015. Based on economic liberal views and practical experiences in the book, the elements of economic freedom have been demonstrated, including the free market, free trade, tax reform and government intervention.

“The Road to Free Economy” Kornai Janos, paper for the World Bank's Annual Bank Conference on Development Economics - ABCDE, 18-20/4/2000. Washington DC: “The Road to Free Economy”, Kornai Janos, ^[4] paper for the World Bank's Annual Bank Conference on Development Economics. The book offers a total solution for the economic transformation of the socialist nation. Although it only mentioned the Hungarian economy, which was suitable for the situation before being converted, it has been translated into 16 languages worldwide. The author's point is that the private sector must include the Principle that the private sector can do anything in economic activity except forbid to enter the law. Liberalization of the private sector

requires many factors, among which the most important are: freedom to set up enterprises, engage in production, and invest money in other private enterprises, especially studies consistent with Vietnamese custom, which is to develop social respect for the private sector; it is time to stop slandering people who succeed in business as speculators, profiteers, wrigglers. Although this is not a legal issue, it is a significant issue related to socio-economics to promote the right to freedom of business and to remove "concerns" when entering the market. However, the book deals mainly with economic reform thinking, including the law's contribution through the role of the constructivist State. The issues raised by the book are related to one of the related areas of the topic, which is promoting the business market entry of the private sector.

“United Nations Global Compact” ^[5] Global Agreement (2000): is an international agreement adopted in 2000 on the initiative of the Secretary-General of the United Nations to call upon the heads of the United Nations agencies and civil society organizations jointly advocate ten fundamental principles in three areas: human rights, labour and environmental protection to support the achievement of the Millennium Development Goals.

Draft Rules on Responsibilities of Transnational Corporations and Other Businesses for Human Rights (2003): Based on the proposal of a group of experts on business and human rights issues. Tiêu ban thúc đẩy và bảo đảm quyền con người Sub - Commission on the Promotion and Protection of Human Rights ^[6] United Nations drafted the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises concerning Human Rights in 2003. Special Representative for human rights, transnational corporations and other businesses (2005-2011): The Secretary-General of the United Nations has decided to appoint the Secretary-General's Special Representative on Human Rights, Special Representative of the Secretary-General on Human Rights and transnational corporations and other business enterprises to continue researching this issue. Special Representative Mr John Ruggie performed his duties for two terms (2005-2011) ^[7]. The remarkable result was that the special Representative developed a framework for "assurance, respect and remediation" in 2008. This framework addresses three pillars: 1) The State's obligation to ensure that third parties do not violate human rights; 2) the obligation to respect the human rights of enterprises; 3) Ensuring that victims of human rights violations caused by enterprises have access to mechanisms, redress and compensation.

In addition to these instruments, the United Nations has also established and adopted several mechanisms to promote and secure business and human rights issues, such as the Working Group on Human Rights, Transnational Corporations and Other Enterprises (2011); The Intergovernmental Open Working Group on the Development of an International Instrument of International Binding on Human Rights and Business (2014); Business and Human Rights Forum (2011).

Research by Jernej L. Cernic on the relationship between Human Rights Law and business; Daria Davitti on the responsibility to ensure human rights of business entities in the relationship between International Investment Law and International Human Rights Law; John H. Knox on the application of the Human Rights Law to the company Lorand Bartels on sustainable development obligations in the EU Free Trade Agreement and human rights.

2. Implement the united nations guiding principles on business and human rights (ungp) for countries, businesses, civil society and other stakeholders

2.1. The state should protect human rights

There is more and more evidence of the economic and cultural values that businesses have by putting human rights into practice in their business strategies. If the business does not focus on this issue, there may be significant costs that businesses have to spend to overcome the risks of human rights violations. Respecting human rights has well-managed human rights risks. It can create new business opportunities, including access to capital markets, suppliers and consumers, because sustainable development trends are towards modern civilization for people. In particular, in the trend of globalization in international trade, the issue of human rights is critical to businesses and corporations; it must be consistent with the provisions of international law and the laws of other countries.

“Guiding Principles for Business and Human Rights”^[8] adopted by the United Nations Human Rights Council Resolution 17/4 of June 16, 2011. The guiding principles consist of three chapters, with 31 principles defining the roles and responsibilities of the State and enterprises and ensuring that affected individuals and groups have access to effective remedial measures based on the UN's "guarantee, respect and remedy" framework. These guiding principles are the first international normative document that provides specific guidelines for countries and businesses can develop policies, laws, procedures, and processes to prevent and address risks and impacts on human rights when corporations and businesses conduct business activities. Among the basic principles guided by the United Nations, the fundamental principles and operational principles specified in "Guiding Principles for Business and Human Rights" must be mentioned:

- The State must protect against human rights abuses by third parties, including businesses, within its territory and jurisdiction.
- Nhà nước phải bảo vệ nhằm chống lại các hành vi lạm dụng quyền con người do bên thứ ba, bao gồm các doanh nghiệp, gây ra trong lãnh thổ và/hoặc thẩm quyền của mình. This includes taking appropriate steps to prevent, investigate, punish and remediate infringements through effective policies, laws, regulations and jurisdictions. States should establish clear expectations that all businesses operating in their territory and jurisdiction should respect human rights^[8].
- To fulfil its duty of protection, the State should:
 1. Law enforcement aims to, or impacts requires businesses to respect human rights and periodically evaluates the adequacy of those laws and addresses legal gaps;
 2. Ensure that other laws and policies governing the establishment and operation of enterprises, such as corporate law, do not limit but create conditions for enterprises to respect human rights;
 3. Provide practical guidance to businesses on how to respect human rights throughout their operations;
 4. Encourage and, if necessary, ask businesses to inform how they deal with issues that impact human rights^[8].

The State and enterprises have an inseparable relationship in the implementation of human rights, in which: States need

to take further measures against human rights abuses by state-owned enterprises, controlled or that receive substantial support and services from State agencies such as export credit agencies, insurance or investment guarantee agency by requesting a human rights review where appropriate; The State should carry out adequate supervision to meet international human rights obligations when contracting with, or making regulations, regulate businesses to conduct activities that have the potential to affect human rights, The State should promote businesses with which they have commercial transactions, respecting human rights^[8]. The State must also promulgate policies to support human rights-respecting businesses in conflict-affected areas because conflict-affected areas have a high risk of severe abuse of human rights. The State should ensure that businesses in these areas do not engage in such abuses by preventing and mitigating human rights risks in business activities and relationships. Besides it, the State also should provide adequate support for businesses to assess and address increased risks of abuse, with particular attention to acts of sexual and gender-based violence and not support and provide public services to businesses that engage in human rights abuses and refuse to cooperate in solving the problem to ensure the effectiveness of government policies, laws, regulations and enforcement measures as well as address the risk of businesses engaging in severe abuses of human rights.

2.2. Businesses should respect human rights

To fulfil the obligation to protect human rights in business, enterprises need to: 1) control their activities not to cause or contribute to human rights violations; 2) In cases of a violation, the enterprise should take the initiative to take remedial measures. At the same time, it must strictly and fully comply with the principles of the UNGP, including:

1. Businesses respect human rights, avoid violations and address adverse human rights impacts;
2. Businesses have a responsibility to respect all human rights as universal rights;
3. Enterprises prevent adverse human rights impacts and address impacts when violations occur;
4. Corporate responsibility irrespective of its base of operations, scale and scope, or those of its business partners, including units in the supply chain;
5. To fulfil their responsibility to respect human rights, businesses need policies and procedures appropriate to their size and operating circumstances^[9].

Some human rights may be more at risk of abuse than others in specific industries or situations, requiring more attention. Businesses can influence most internationally recognized human rights and therefore have a responsibility to respect all of these rights. The responsibility to respect human rights requires businesses to: avoid causing or contributing to adverse human rights impacts through their business activities and address these impacts as they arise; seek solutions to prevent or minimize the negative impacts directly to the operations, products or services of the business by business relationships, even if the businesses do not contribute to those impacts.

The responsibility to respect human rights applies to all businesses, regardless of size, sector, operating context, owner and governance structure. However, the size and complexity of the methods businesses use to fulfil this

responsibility can vary depending on the above factors and according to the degree of the negative impact of business on human rights. In addition, to fulfil their responsibility to respect human rights, businesses need to have policies and procedures appropriate to their size and operating circumstances, including:

1. A policy commitment to fulfil a responsibility to respect human rights;
2. A human rights review process to identify, prevent, mitigate and account for how businesses address human rights impacts;
3. Processes that remedy the adverse human rights impact caused or contributed to by the business. Businesses should provide clear and comprehensive information about their human rights review process and the results achieved at all steps of the review process.

3. Some solutions to promote and protect human rights are among the goals of trade reform

To contribute to the development and improvement of the provisions of national and international laws on human rights in commercial business, the author offers some specific solutions as follows:

- First: Develop and improve the provisions of national law and ensure legality in protecting human rights.

States must comply with international legal provisions on human rights by respecting, protecting and realizing human rights. Principle 26 UNGP: "It is the State's responsibility to take appropriate measures to ensure the effectiveness of domestic judicial mechanisms when dealing with human rights violations related to business activities." [9]. The State should take appropriate judicial, administrative, legislative or other appropriate measures to ensure that affected people can access such effective remedies when infringements occur.

The development and improvement of the law on commercial business or the law on human rights in international trade are carried out by countries committed to implementing to ensure national legal policies, and it is consistent with the provisions of international law. Developing appropriate legal policies will bring many benefits to businesses and the country in the relationship between enterprises and the State, where workers can enjoy the good values that enterprises and the State bring.

- Secondly: The State must actively participate in international conventions and forums on human rights in the global and regional scope.

The world has two significant conventions: the Convention on Economic, Cultural and Social Rights and the Covenant on Civil and Political Rights. The world considers the following seven conventions to constitute the "core" of human rights: Convention on the Elimination of All Forms of Racial Discrimination (adopted in 1966, entered into force in 1969); Convention on the Elimination of All Forms of Discrimination against Women (adopted in 1979, entered into force in 1981); Convention Against Torture (adopted in 1984, entered into force in 1984); Convention on the Rights of the Child (adopted in 1989, entered into force in 1989); Convention on the Rights of Persons with Disabilities (adopted in 2006, entered into force in 2008); Convention on the Protection of the Rights of Migrant Workers and Their Families (adopted in 1990, entered into force in 2003). Vietnam has acceded to most of these conventions. On November 7, 2013, our country officially joined the

Convention Against Torture. Therefore, Vietnam's participation in these conventions will contribute to raising Vietnam's position in the international arena.

- Thirdly: Enterprises need to develop policies and measures to build a culture of respecting human rights in the enterprise. It also provides remedial measures in case human rights are negatively affected.

The purpose is to help establish perspective and lay the groundwork for a culture of respect for rights. Commitment does not need to be a separate human rights policy but a signal to workers, partners and other stakeholders that businesses and leaders are serious about respecting human rights, and they expect those who work with businesses to do the same.

Building a culture that respects human rights requires taking several steps to translate this commitment into corporate culture. Human rights also require considering the current corporate culture that may inadvertently hinder building a culture that respects human rights. A prevalent problem, such as Business imperatives such as price and time considerations, which can lead to respectful treatment of colleagues, compliance with health and safety rules, or for suppliers, it becomes more difficult to pay wages fairly and on time to workers.

- Fourthly: Actively integrating into the international economy, taking economic strength as a long-term foundation to improve human rights, and at the same time attracting international attention and preventing forces that want to take advantage of human rights issues from intervening in our country.

Ensuring and promoting human rights, especially economic, cultural and social rights, depends on the country's economic development level. Therefore, we must strive for economic growth and per capita income increase by implementing the sustainable development model. The country's poverty will nullify all the priorities of the State, every slogan, even humane or the best. On the other hand, in the context of developing a market economy, economic interests are the most critical attraction and, at the same time, an invisible but effective deterrent against all criticisms and attacks of powerful forces that lack goodwill towards our country. We can expand economic relations on trade and investment with foreign countries and create conditions for foreign companies to have excellent economic benefits in trading and investing in Vietnam. The problem is choosing the beneficial areas for both sides, which depends on the country's economic development strategy and improving investment and trade laws [10].

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