ISO 26000 AND THE CONCEPT OF ‘SPHERE OF INFLUENCE’

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BACKGROUND

ISO 26000 is currently a draft standard for social responsibility.

John Ruggie is working as the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises. In late 2009, John Ruggie sent a note (Ruggie 2009) to the ISO 26000 Working Group which argued for greater consistency between his views and those expressed in the ISO 26000 standard. In particular he suggested that the treatment of the concept of ‘sphere of influence’ in the standard should follow his own treatment of it.

This document examines the arguments for and against such greater consistency.

THE RUGGIE FRAMEWORK AND ‘SPHERE OF INFLUENCE’

John Ruggie has developed a framework (Ruggie 2008b) for business and human rights which clarifies the relationship between the two. This has been widely accepted by businesses and the UN system, but challenged by some NGOs. The framework asserts that:

- The party with primary responsibility for protecting human rights is the State
- Businesses have a responsibility to respect human rights. (Note that this usage is not consistent with common international human rights law in which ‘respect’ is considered part of the duties of State (IHRB 2009))
- There should be greater access to remedy for aggrieved parties.

Business responsibility to respect for human rights is interpreted as compliance with relevant law together with the exercise of due diligence in relation to the potential human rights consequences of business operations. The practical application of due diligence requires a way to draw the boundary of responsibility in a workable way. Ruggie examined the concepts of ‘sphere of influence’ and ‘complicity’ in this regard. He concluded that:

- “The concept of ‘sphere of influence’ is...too broad and ambiguous a concept to define the scope of due diligence required to fulfil the responsibility to respect”, but that “sphere of influence remains a useful metaphor for companies to think broadly about their human rights responsibilities and opportunities beyond the workplace” (Ruggie 2008a).
- “In contrast, avoiding complicity is viewed as an essential ingredient in the due diligence carried out to respect rights because it describes a subset of the indirect ways in which companies can have an adverse effect on rights through their relationships” (Ruggie 2008a).

In the Note to the ISO 26000 Working Group, John Ruggie says that “the section [of the ISO/DIS 26000] on human rights (6.3) is aligned with the UN framework on the corporate responsibility to respect human rights, particularly as it relates to the due diligence necessary to discharge this responsibility” (Ruggie 2009). However he also says that the same alignment does not exist elsewhere in the document in relation to issues other than human rights, where the concept of sphere of influence is used more broadly. Against these broader uses, he
advances the same arguments he used to discard the concept of sphere of influence in relation to human rights due diligence.

THE RELEVANCE OF THE FRAMEWORK

John Ruggie's work has a very clear basis. He was concerned only with human rights. In relation to human rights he focussed on businesses’ corresponding responsibilities in general and businesses’ legal responsibilities in particular. It is also important that his conclusions were confined to the utility of the concept of ‘sphere of influence’ for the due diligence process.

ISO 26000, is indeed concerned with all the same issues, but it is also concerned with other issues, such as environmental impacts and with other kinds of organisation than businesses. Furthermore the standard is concerned with a much wider range of organizational activities and processes than due diligence alone.

It is therefore surprising that he should venture an opinion about the appropriate concepts for dealing with organisational responsibilities in areas outside his scope of work. However, if the arguments he uses have general application then they should be considered.

THE ARGUMENTS AGAINST ‘SPHERE OF INFLUENCE’

Ruggie considers the meaning of ‘influence’ (in the concept of sphere of influence) to mean either the same as ‘impact’ or the same as ‘leverage’. He appears to have no problem with the idea of a sphere of influence defined in terms of impact, even though influence could be considered as one kind of impact. However, if influence is defined in terms of leverage, on the other hand, then he is concerned that:

- It is erroneously implying that because a company could do something it should do it. This is, in Ruggie’s view a philosophical error, which might, for example, result in an absolute corporate obligation to give to charity whenever any funds were available
- It would suggest that companies would be held responsible even where they have no causal connection with the adverse outcomes in question. For example one company could be a large potential customer for a second company. Should the second company have adverse environmental impacts, the first company could be held responsible for those impacts
- If the existence of influence were sufficient to assign responsibility, then it could give rise to moral hazard such that governments might decline to act, expecting companies to assume responsibility
- The idea of a ‘sphere’ (of influence) is undefined. There seems to be no clear mapping of the idea of a ‘sphere’ onto any notion of proximity. It is counter-intuitive, for example, to consider that a company’s impacts in its home state, which may be considered ‘nearer’, should have priority over those affecting other states.

THE ARGUMENTS FOR ‘SPHERE OF INFLUENCE’

A principal concern with the clarity of legal responsibility is important when dealing with a concept so rooted in the law as is human rights, since legal responsibility requires duty to be clearly defined in terms of intention and effect. In these areas Ruggie’s arguments have merit. However this is not the case in the less clearly bounded areas of moral responsibility, which is the province of much of ISO 26000. From this wider perspective, Ruggie’s arguments are less convincing for the following reasons:

- Irrespective of any philosophical implications, the idea that an organisation should do anything it could do is absurd in its own right (and would of course have profound legal consequences). However the suggestion that organisations should seriously consider what they should do, in the light of what they can do is extremely important. Having taken account of their resources, priorities and the scale
of the impacts in question, it would appear on the face of it to be a natural part of organisational responsibility to consider what action is appropriate

• The idea that moral responsibility must be accompanied by causal responsibility is not consistent with John Ruggie’s own presentation of complicity. For the non-legal meaning of complicity, merely benefitting from a situation in which human rights abuse is committed, may be considered as complicity and therefore part of what there is a responsibility to avoid. The presence of causal responsibility will in general increase moral responsibility compared to its absence. However the mere absence of causal responsibility does not remove moral responsibility

• The problem of moral hazard only arises if there is a responsibility always to act where there is any influence. It is, of course, part of any responsibility to consider what the results of implied action might be. That includes a search for the best course of action when there is a danger of moral hazard

• A straightforward interpretation of the idea of a ‘sphere’ in terms of proximity is indeed problematic. However there is no need to define the size of the sphere other than in terms of influence. In other words, the concept of ‘sphere of influence’ is simply saying that there is a set of impacts over which an organisation has a variety of different levels of influence, with greatest influence being represented as towards the centre of the sphere.

CONCLUSIONS

1. There is, technically, no inconsistency between the ISO 26000 DIS and the Ruggie framework, given the latter’s exclusive focus on human rights.

2. The standard contains two types of concept of ‘sphere of influence’. One is suitable for legal purposes and defining due diligence responsibilities, the other for moral reasoning and a broader consideration of responsibilities.

3. It would be unwise to limit the interpretation of the concept of sphere of influence in the standard exclusively to the meaning most relevant to human rights and their legal implications, since an equivalent concept would have to be developed for the wider purposes of ISO 26000.

4. There may be scope for clarifying the language of the standard such that the important non-legal interpretations of the concept of sphere of influence are better stated.

REFERENCES


