

ADDRESSING THE HUMAN RIGHTS IMPACTS OF ECONOMIC GLOBALISATION: AN ANALYSIS FROM SOFT LAW AND ISLAMIC PERSPECTIVES

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ABSTRACT

The recent trend of economic globalisation has resulted in massive emergence of international business corporations such as the multinational corporations (MNCs). The inherent aim of their establishment which was based mainly on profit-making has, to a certain extent, put social and human rights interests of their stakeholders at stake. The adverse human rights violations committed by MNCs worldwide, despite responded with mounting protests and concerns by global communities, are not readily addressed. Among the rights mostly affected by business operations include civil and political as well as economic, social and cultural rights. Aiming to enhance human rights compliance by business entities and thus to address the human rights impacts of economic globalisation, this paper seeks to analyse the solution mechanism from the perspectives of soft law approach and Islamic principles. This paper uses the library-based research method by analysing relevant materials such as the UN documents, legal journals, court cases and judgments, academic textual materials as well as internet sources. This paper concludes that there is no divergence between the tenets of Islam and the adoption of corporate responsibility through soft law approaches. Both soft law and Islamic principles could formulate viable solutions to address the mounting events of corporate human rights violations that feature the current era of economic globalisation. This paper believes that a success in harmonising economic growth and protecting human rights principles will harness the great power of economic development to align with the great principle of human dignity.

Keywords: Economic globalisation, business and human rights, multinational corporations, soft law and corporate responsibility, Islamic principles.

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INTRODUCTION

The development of transnational business operations through the establishment of massive multinational corporations (MNCs) has prompted the current phenomenon of economic globalisation. This phenomenon has led to the situation where the states are, first among equals, no longer the main providers of facilities and basic needs of people nor they are the main source of violence against individuals. What we are facing today are the powerful multinational business entities whose business operations have directly affected the people's enjoyment of human rights. The shift of powers from state to non-state actors is the result of mainly two new developments in international political and economic order: a strong wave of democratisation of governance and economic globalisation committed to the ideas of free market and trade liberalisation.⁶

It is acknowledged that many literatures⁷ suggest the need to empower binding legal mechanisms that mandate oversight of corporations as a truly successful process to hold business accountable for their alleged human rights violations. Nevertheless, this paper believes that the legally binding approach alone would not produce effective solution to this issue. This is because it was proved that there have been inadequacies in international and domestic legal standards which govern business entities. In addition, the state actors who hold political and judicial powers are either unable or reluctant to impose strict legal action on business and corporations for their human rights violations. As such, this paper suggests the need to explore the adoption of soft law mechanisms as alternative or complementary approaches. The soft law, which is based on self-regulatory and social responsibility, is very much interconnected with the principles of *maqasid syariah* under the Islamic syariah which uphold the principles of justice, fairness, accountability and transparency.

This paper is divided into a number of sections. At the onset, this paper aims to provide an explicit understanding of the phenomenon of economic globalisation, its human rights impacts and Islamic perspectives. Accordingly, this paper deals with soft law mechanism to explore the viable approach to address the issues of corporate human rights violations which underlie the current's era of economic globalisation. To this end, a number of soft law initiatives, mostly those developed by the United Nations, will be evaluated. The following section further expands the discussions by analysing the Islamic principles concerning corporate responsibilities. Finally, the concluding remarks summarise the paper by providing some recommendations as the way forward.

ECONOMIC GLOBALISATION: A THREAT TO HUMAN RIGHTS?

Economic Globalization and Human Rights

It is evident that, instead of spreading economic growth and wealth, globalisation has brought in its train, great inequities, mass impoverishment and despair. It has fractured society along the existing fault lines of class, gender and community while, almost irreversibly, widens the gap internationally between the rich and the poor nations. This development, being stimulated by the emergence of MNCs, has sparked escalating concerns over its threat to major human rights principles. The MNCs are increasingly subject to high-profile consumer boycotts over their alleged complicity in human rights abuses. The resource extraction companies, for example, have been accused of

⁶ See Natsvlshvili, A. (2007). *The Impact of Globalization on Human Rights in the Developing World: Transnational Corporations and Human Rights—The Masterpieces of Globalization in the Era of Democratized Violence*. Retrieved October 14, 2014, from: http://www.nottingham.ac.uk/shared/shared_events/conference/2007_March_PG_Natsvlshvili.pdf

⁷ See for example Connie de la Vega, Amol Mehra, and Alexandra Wong. (2011, July). "Holding Businesses Accountable for Human Rights Violations: Recent Developments and Next Steps" Friedrich Ebert Foundation. Retrieved October 14, 2014, from: <http://library.fes.de/pdf-files/iez/08264.pdf>

providing logistical and financial assistance to repressive state security forces and relying on those forces for protection in countries such as Burma, Colombia, Nigeria and Sudan.⁸ In general, the major threats of economic globalisation can be divided as follows;

a. Widening the gap between the rich and the poor

A primary effect of economic globalisation is the exacerbation of gaps between the rich and the poor. In other words, due to this phenomenon, the rich get richer and the poor get poorer. International Statistics prove this fact.⁹ It shows that:

- Half of the world (nearly three billion people) – live on less than two dollars a day.
- The wealthiest nation on earth has the widest gap between rich and poor of any industrialized nation.
- The top fifth of the world's people in the richest countries enjoy 82% of the expanding export trade and 68% of foreign direct investment – while the bottom fifth, barely more than 1%.
- In 1960, the 20 % of the worlds people in the richest countries had 30 times the income of the poorest 20%--in 1997 , 74 times as much.
- A few hundred millionaires now own as much wealth as the world's poorest 2.5 billion people.
- The combined wealth of the world's 200 richest people hit \$ 1 trillion in 1999; the combined incomes of the 582 million people living in the 43 least developed countries is \$ 146 billion.

Few studies doubt that the giant transnational corporate enterprises have played their part in creating both strands of this 'globalisation of poverty',¹⁰ in particular because of their embrace of the free market classical economic theories, which underpins so much of corporate activity. The weakness of international rules, bad policies and weak governance in developing countries, and corporate practices which prioritise short-term profit over long-term human development are undermining the capacity of poor countries and poor people to benefit from international trade. In many cases, economic liberalisation has been accompanied by greater inequality and people are left trapped in utter poverty. The Human Development Report of 1997 revealed that poor countries and poor people too often find their interests neglected as a result of globalisation.

b. Violation of fundamental human right

Economic globalisation has resulted in the violation of the internationally proclaimed human rights underlined by the Universal Declaration of Human Rights (UDHR). The rights most likely to be violated by the MNCs include non-discrimination, women rights, life, liberty and physical integrity of the person, civic freedoms, employees' rights, child labour, slavery, forced and bonded labour, right to food, health, education and housing and lastly, the environmental rights.¹¹ On the other hand, in their drive for profits, the MNCs have been restructuring their operation on a global scale. This has resulted in massive unemployment and underemployment, the worst situation since the 1930s. Similarly, in many industrialised countries unemployment has soared to levels not seen

⁸ Pegg, S. (2003). An Emerging Market for the New Millennium: Transnational Corporation and Human Rights. In Jędrzej George Frynas and Scott Pegg (eds.), *Transnational Corporation and Human Rights*, (Hampshire, UK: Palgrave Macmillan, 2003), 1.

⁹ Global Issues , Poverty Facts and Stats, <<http://www.globalissues.org/Traderelated/Facts.asp>>

¹⁰ See United Nations Development Programme, *Human Development Report 1992* (Oxford University Press, 1992).

¹¹ International Council on Human Rights Policy. (ICHRP). Beyond Voluntarism-Human Rights and the Developing International Legal Obligations of Companies. (February 2002), p.15. Retrieved April 15, 2008, from: <www.ichrp.org>

for many years and income disparity to levels not recorded since last century. The collapses of the economies of the Asian Tigers are examples of this. Because of this, more people are crossing borders in search of jobs and in most conditions people are forced to work in inhuman conditions for lower wages.

Some consequences of these deprivations of human rights are social and political unrest and even violence and counter violence. It also leads to an increasing resort to suppression and to chaos. Paradoxically the expenditure on suppressing protest and violence may be equal to or even exceeds the ought to be expenditure on implementing economic, social and cultural human rights for all the peoples of the world. What matters more is the loss of human lives and the loss of constructive contributions which all the deprived could have offered to the economic, social, scientific and cultural advancement of humanity if they were granted their basic human rights. Racism, prejudices, and discrimination are negatively associated with justice and implementation of human rights.

According to Nicola Jagers¹², MNCs play a threefold part regarding human rights. First, they can be direct violators of human rights such as by depriving the rights of their workers or violating the environment within their business operations. Secondly, they can indirectly violate human rights by supporting a regime that violates human rights. A clear example to explain this was that the violations of human rights by The Royal Dutch/Shell in the Delta Niger, Nigeria. Thirdly, beside the fact that MNCs may threaten an effective enjoyment of human rights, they can also be a positive influence, albeit very little, by raising the standard of living and improve respect for economic, social and cultural rights.

c. *Inflicting the demise of states sovereignty and democracy*

There has also been what could be termed normative constraints on state sovereignty. These have come about through the process of globalisation, which to a large extent is a form of Westernization.¹³ Some people also have termed this process as “Americanization” or “McDonaldization” due to tremendous participation of MNCs from the United States. This process naturally affects non-Western societies more than Western ones. Globalisation therefore has created a situation where the role and importance of nation-state is becoming irrelevant. In addition, the globalisation of recent decades was never a democratic choice by the peoples of the world. The process has been business-driven, by business strategies and tactics, for business ends. Globalisation has also steadily weakened democracy, partly as a result of unplanned effects, but also because the containment of labour costs and scaling down of the welfare state has required the business minority to establish firm control of the state and remove its capacity to respond to the demands of the majority. Another well-known and important antidemocratic force is the power of global financial markets to limit political options. Financial market effects on exchange and interest rates can be extremely rapid and damaging to the economy.

Economic Globalisation from an Islamic Perspective

Many people, especially Muslims tend to say that globalisation - including its economic facet, is a ‘Western’ product. As such, it has nothing to do with Islam. However, this paper argues that globalisation is actually different from Westernization although the impetus of the former mainly comes from the West. Globalisation is a process in which

¹² Jagers, N. (1999). The Legal Status of the Multinational Corporations under International Law. In Addo. M. K. (ed.), *Human Rights and Transnational Corporations* (p. 260) The Hague: Kluwer.

¹³ Pendleton, M. D. (1998). A New Human Right--The Right to Globalisation, *Fordham Int'l L.J.* vol. 22, issue 5, p. 2056.

"the whole world becomes like a small village, where the less advanced communities can develop their capacities" and that "tends to be a two-way street process, which makes it possible for each community to take as well as to give."¹⁴ Westernization, on the other hand, tends to be a one-way street, meaning that one region attempts to dominate and control other regions in the name of globalisation. Moreover, while globalisation occurs through the free will of different communities, Westernization is characteristically imposed upon other regions.¹⁵ As such, based on several factors, this paper believes that Islam is compatible with the globalisation process.

First of all, it is important to note that Islam orders people to cooperate, to be helpful to one another according to goodness and piety, and not to be helpful in evil and malice.¹⁶ This principle is fully endorsed by Prophet Muhammad on the local level, regardless if your neighbour is a Muslim or not. Surely this principle can be extended into the international level, where a neighbouring country can be defined as any country that has normal economic and political relations with the Islamic world.¹⁷ Other factors illustrate Islam's acceptance and predominant role in the process of globalisation. "For several centuries, Arabic was the world's leading language in sciences. Muslims made important advances in mathematics, astronomy and medicine - a legacy from which European scholars derived great benefit," and which led to the Renaissance.¹⁸ Globalisation is not only a Western phenomenon, for "the agents of globalisation are neither European nor exclusively Western, nor are they necessarily linked to Western dominance. Indeed, Europe would have been a lot poorer - economically, culturally, and scientifically - had it resisted the globalisation of mathematics, science, and technology [from the East]".¹⁹

We therefore have to differentiate between the gifts of globalisation and the products of Westernization. Islam encourages partnership and interaction gifted by globalisation which can bring good to humanity but opposed the culture produces by Westernization process that contradicts its principle. More specifically, the Islam-globalisation debate in itself is built upon a number of mistaken diagnoses that misconstrue Islam's place in the globalized world - one that has been quite productive in the past and has the potential to be productive in the future. The misguided assumption that Islam opposes globalisation and modernization is dangerous, because it could potentially result in the loss of Islam's significant contributions to the rest of the world.

ADDRESSING HUMAN RIGHTS IMPACTS OF ECONOMIC GLOBALISATION VIA SOFT LAW MECHANISM

The Concept of Soft Law and its Development

There is no universally-agreed definition of the term 'soft law'. McNair²⁰ defines it as a 'transnational stage in the development of norms where their content is vague and their scope is imprecise.' In addition, Gold, in his analysis, further explained the essential ingredient of the term as an 'expectation that the states accepting these instruments will

¹⁴ Maisami, M.. Islam and Globalisation. *The Fountain Magazine*, THE LIGHT, INC., USA. <<http://www.fountainmagazine.com/article.php?ARTICLEID=33>> 12 August 2011 cited www.IslamOnline.com.

¹⁵ *Ibid.*

¹⁶ The Holy Quran. *Al-Maidah* verse 2.

¹⁷ *Ibid.* cited Choudhury, www.Islamic-finance.net.

¹⁸ *Ibid.* cited Hardy, <http://news.bbc.co.uk>.

¹⁹ *Ibid.* cited Sen, www.prospect.org.

²⁰ Jiang, L. (2009). "An Evaluation of Soft Law as a Method for Regulating Public Procurement from A Trade Perspectives," (PhD thesis, University of Nottingham, UK), cited Godefridus J. H. van Hoof (1983) *Rethinking the Sources of International Law*, (Deventer, Netherlands: Kluwer Law and Taxation Publishers), 187.

take their content seriously and will give them some measure of respect.²¹ However, according to Dupuy, soft law is a paradoxical term for defining an ambiguous phenomenon. This is because, from a general and classical point of view, the rule of law is usually considered “hard” i.e. compulsory, or else there is no law at all.²² There is no other category exists between hard law and non-law. In short, it can be concluded that soft law is distinguished from hard law mainly because of its voluntary and non-enforceable nature. In other words, any rules or codes can be considered as falling under the category of soft law if they adopt a non-binding form, contain vague and ambiguous provisions embodying merely hortatory,²³ aspirational, voluntary in nature or promotional obligations.²⁴

Generally speaking, the development of soft law has been engendered through a number of sources. First is the public international instrument. These instruments are either recommendations addressed by Inter-governmental Organisations (IGOs) or directly by governments to MNCs and business entities. Among the examples of soft law promulgated through this source are the collective voluntary approaches undertaken by the UN agencies and other IGOs such as the OECD Guidelines, the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the Declaration of the ILO on fundamental principles and rights, the Rio Declaration from the 1992 UN Conference on Environment Development and the UN Convention Against Corruption. These instruments, though ‘soft’ and non-binding in nature, contain influential follow-up mechanisms, supplemented by strict disclosure requirements to which a significant number of companies have so far adhered.²⁵

The second source through which soft law could be promulgated is guidelines by NGOs on corporate social responsibility or CSR. There are a number of NGOs working on environment, human rights etc which have contributed towards the creation of corporate codes of conduct in MNCs and business entities. Those NGOs includes Amnesty International, Human Rights Watch and Oxfam.²⁶ Accordingly, the third source of soft law has been the voluntary, self-regulated codes of conduct initiated by individual companies and MNCs. An inventory by the OECD, for example, lists up to 246 individual corporate codes of conduct.²⁷ The codes generally represent a company’s voluntary or self-regulatory approach in complying with certain regulations or relevant legal standards, for instance, international human rights law, national laws and regulations. Among notable companies that have adopted their own codes of conduct were Adidas, Nike, The Gap, Royal Dutch Shell, Rio Tinto Group and BP.

In a nutshell, there is not much difference between the substance of the codes, especially those initiated by the UN and individual companies/NGOs. Most of the individual codes of conduct make reference to the existing international documents such as the UDHR. Indeed, many MNCs and business entities view CSR and human rights

²¹ Jiang, L. (2009). *Ibid.* cited Gold (1983). Strengthening the Soft International Law of Exchange Agreements. *AM. J. INT’L L.* 77 at 443.

²² Dupuy, P.M. (1990-1991). Soft Law and the International Law of the Environment. *Mich. J. Int’l L.* p.420.

²³ “Hortatory” refers to a word used to describe a behaviour or an act that is encouraging but not forcing or compelling.

²⁴ Jiang, L. above, pp.11-12.

²⁵ Choudhary, V. (August 31, 2010). Corporate Social Responsibility of a Corporation Under International Law: A Critical Study. *Working Paper Series*. Retrieved on 24th September 2013, from: <http://ssrn.com/abstract=1669533> p.3.

²⁶ See for example Amnesty International. (January 1998). *Human Rights Principles for Companies. Guidelines*, AI Index: ACT/70/01./98. Retrieved on 18 August 2008, from: <http://www.Amnesty.org/en/library/asset/ACT70/001/1998/en/dom-ACT700011998en.pdf>

²⁷ Gereffi, G., Garcia-Johnson, R. and Sasser, E. (July-August 2001). The NGO-Industrial Complex, *Foreign Policy*, no. 125, p. 57.

voluntary initiatives as important and compatible with their profit-making agenda. Some studies indicate that there is improved financial performance as a result of social responsibility. There are also success stories, such as The Body Shop, that have succeeded in making ethics an important and profitable part of business.²⁸ In addition, many have seen codes as useful tools to familiarise business entities with human rights standards. By setting out the values, ethical standards and expectations of the company concerned, the codes of conduct might have a legal significance and therefore be used as evidence in legal proceedings with suppliers, employees and consumers.²⁹

Identifying the Relevant Soft Law Instruments

For the purpose of this paper, a number of soft law mechanisms – mostly developed at international level by inter-governmental organisations (IGOs) shall be briefly analysed in turn.

a. UN Guiding Principles on Business and Human Rights

The UN Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights in June 2011. The Guiding Principles serve to implement the UN “Protect, Respect and Remedy” Framework proposed by John Ruggie, the UN Special Representative on Business and Human Rights and endorsed by the Human Rights Council in 2008. The Guiding Principles provide an authoritative global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activities. They also provide tools to measure progress by business in meeting their human rights responsibilities.³⁰ Both the “Protect, Respect and Remedy” Framework and its Guiding Principles are the outcomes of six years of paper and consultations led by Ruggie involving governments, companies, business associations, civil society, affected individual and groups, investors and others around the world.

Ruggie, a Professor at Harvard University was appointed as the Special Representative of the UN’s Secretary-General (SRSG) on the issues of human rights and transnational corporations and other business enterprises in July 2005.³¹ The mandate was created in an effort to move beyond what had been a long-standing and deeply divisive debate over the human rights responsibilities of business entities. Ruggie’s aim was to build meaningful consensus among all stakeholders about the roles and responsibilities of both States and companies with regard to business’ impact on human rights.

Furthermore, the Guiding Principles also *highlight what steps States should take* to foster business respect for human rights; *provide a blueprint for companies* to know and show that they respect human rights, and reduce the risk of causing or contributing to human rights harm; and constitute a set of *benchmarks for stakeholders* to assess business respect for human rights.³² The principles are organized under the UN three-pillar – ‘protect, respect and remedy’ framework which ‘rest on the differentiated but complementary responsibilities’. Such responsibilities include; the state duty to protect

²⁸ McCrudden (2000). Human Rights Codes for Transnational Corporation: The Sullivan and MacBride Principles. In Dinah Shelton (ed.), *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System*. Oxford: Oxford University Press. pp.418-449

²⁹ Gatto, A. J. C. (September 2002). The European Union and Corporate Social Responsibility: Can the EU Contribute to the Accountability of Multinational Enterprises for Human Rights. *Working Paper No. 32 – Institute for International Law, K.U. Leuven*, p.42

³⁰ Ruggie, J. (9 April, 2011). *UN Guiding Principles for Business and Human Rights*. The Harvard Law School Forum on Corporate Governance and Financial Regulation. Retrieved February 28, 2012 from: <<http://blogs.law.harvard.edu/corpgov/2011/04/09/un-guiding-principles-for-business-human-rights/>>

³¹ Černič, J. L. (2011). United Nations and Corporate responsibility for Human Rights. *Miskolc Journal of International Law*, 8(1), p. 27. Retrieved in December 2011, from: <<http://ssrn.com/abstract=1796962>>

³² Ruggie, J.

against human rights violations by or involving corporations; the corporate responsibility to *respect* human rights; and effective access to remedies.³³

Since its endorsement by the UN Human Rights Council, the UN Guiding Principles have been adopted and implemented by various States, IGOs and companies in many ways. Such implementations are made through; the incorporation of Guiding Principles into CSR policies, the development of specific industry sectors through new multi-stakeholder accountability approaches, the realisation of State mandatory human rights due diligence and reporting, the use of leadership in striving for policy coherence and finally the regular review to identify potential gaps.³⁴ For example, in October 2011, the European Commission (EC) issued a new CSR-based strategy by explicitly referring to the guidelines and principles contained in the Guiding Principles. The EC “expects all European enterprises to meet the corporate responsibility to respect human rights, as defined in the UN Guiding Principles.”³⁵ Also, in June 2012, European Member States have included Guiding Principles in the European Union’s Framework and Action Plan on Human Rights and Democracy.³⁶

b. UN Global Compact

The Global Compact was initially proposed by the Secretary-General Kofi Annan in his remarks to the Davos World Economic Forum on 31 January 1999.³⁷ The initiative’s operational phase was later officially launched at the UN New York Headquarters on 26 July 2000. In general, the Global Compact is a 10-principle framework that directly addresses MNCs and business entities covering four fundamental matters concerning human rights, environmental protection, labour rights and anti corruption. The principles enjoy universal consensus as they are derived from leading intergovernmental instruments namely; the Universal Declaration of Human Rights (UDHR), the International Labour Organisation (ILO)’s Declaration on Fundamental Principles and rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention against Corruption. It was initially nine principles when the Compact was devised in 1999 while the tenth principle was added in 2004.³⁸

Despite being far less detailed than that of other international initiatives and frameworks like the ILO Tripartite Declaration, the UN Sub-Commission on Human Rights code or the OECD guidelines, the central aim of Global Compact should be perceived as putting those codes in another direction, that is by inviting MNEs to join in the collective efforts of governments, international organisations and NGOs in projects that will advance social

³³ Amao, O. (undated). Review of the Report of the Special Representative of the Secretary-General on the issue of human rights and Transnational Corporation and other business enterprises; Professor John Ruggie to the United Nations Human Rights Council, ‘Protect, Respect and Remedy; a Framework for Business and Human Rights’ HRC/8/5, 7 April 2008. Retrieved from; <<http://ssrn.com/abstract=1131682> p.5.

³⁴ UN, Human Rights Council. (16 April 2013). *Uptake of the Guiding Principles on Business and Human Rights: practices and results from pilot surveys of Governments and corporations*. Report of the Working Group on the issue of Human Rights and transnational corporations and other business enterprises UN. Doc. A/HRC/23/32/Add.2. pp. 14-18.

³⁵ European Commission (25th October 2011). A Renewed EU strategy 2011-2014 for Corporate Social Responsibility, COM 681, Brussels. p. 6.

³⁶ The Council of the European Union. (25th June 2012). EU Strategic Framework and Action Plan on Human Rights and Democracy, 11855/12, Luxembourg.

³⁷ UN Global Compact. Retrieved on 15 February 2012, from; <http://www.unglobalcompact.org/issues/human_rights/The_UN_SRSG_and_the_UN_Global_Compact.html

³⁸ Tully, S. (ed), (2005) *International Documents on Corporate Responsibility*. Cheltenham, UK: Edward Elgar Publishing. p.3

and economic development.³⁹ After all, the universal values being rooted in business practices, although quite sceptical in the beginning, will bring massive and profitable social and economic gains. Many have seen the values being conveyed by the Global Compact principles being significant in the quest to improve the company's CSR standards. This fact was proven by the universal acceptance given to this initiative. By July 2011, which is exactly 11 years after its official launch, it was recorded that the initiative has grown to more than 8000 participants, including over 6000 businesses in 135 countries all over the world, making it the largest corporate citizenship network in the world.⁴⁰

c. OECD Guidelines

Initially drafted in 1976, the OECD Guidelines were the first intergovernmental CSR initiative whose general application aimed at Multinational Enterprises and business entities. The guidelines are the product of an international organisation comprising 30 of the richest states in the world. The Guidelines are directed primarily at the OECD member states and provide guidance as to how national policies ought to contemplate the regulation of MNCs that are nationals of such states. One of the unique features of the Guidelines is that, unlike many of the other soft law instruments and codes of conduct surrounding business activity, they are the only international CSR initiative that obliges member-states to monitor their implementation.⁴¹ In so doing, every state adheres to the Guidelines is required to provide a national contact point (NCP). The NCP are the government offices charged with promoting the Guidelines, handling inquiries and investigate any complaints or issues raised at the domestic level (known as "specific instances").

Even though the Guidelines only apply to 30 OECD member states, it has to be borne in mind that, according to the 2005 Annual Report on the OECD Guidelines, 97 out of the world's top 100 multinationals originate from any of adherent states (the term adherent states refers to member states and non member States of OECD which adhere to the Guidelines).⁴² In fact, the Guidelines' scope was further widened when 11 non-OECD member states⁴³ have become parties to the Guidelines. In addition, the Guidelines also have influence beyond the borders of its adherent countries. To quote the Guidelines directly; "*Since the operations of the multinational enterprises extend throughout the world, international co-operation in this field should similarly extend to all countries. Governments adhering to the Guidelines encourage the enterprises operating on their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.*"⁴⁴ This is probably where the Guidelines have the potential to make the most impact.

³⁹ Murphy, S. D. (2005). Taking Multinational Corporate Codes of Conduct to the Next Level. *Colum. J. Transnat'l L.*, 43, p. 399.

⁴⁰ UN Global Compact, above, "Participants and Stakeholders."

⁴¹ Grene, H. (2009). Corporate Accountability for Human Rights: Using the OECD Guidelines for Multinational Enterprises as a Tool. *Trocaire Development Review*. 37-54, p.38.

⁴² See OECD (2005). *Annual Reports on the OECD Guidelines for Multinational Enterprises 2005: Corporate Responsibility in the Developing World*. OECD: Paris.

⁴³ Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia.

⁴⁴ OECD Guidelines (2008). Section I, Concepts and Principles, § 2.

d. *Global Business Initiative on Human Rights*

The Global Business Initiative on Human Rights (GBI) is an initiative pioneered by a group of 18 major corporations domiciled in Asia, Europe, Latin America, Middle East, North Africa and North America. Being officially launched in 2009, the initiative aims to advance human rights in a business context around the world. It also shows the participants' commitment to respect the dignity and rights of the people they impact and interact with. Despite only participated by 18 MNCs, the member companies represent a vast number of workforces of approximately 1.75 million employees, and hundreds of thousands of business partners located in over 190 countries. Business activities of GBI members cover areas as diverse as agriculture, automation and power, chemicals, electronic, food and beverages, healthcare, mining, oil and gas, property development and shipping.⁴⁵ In operating and organizing its work plan, two parallel tracks have been used.

First, the *Member Peer Learning* offers a platform for member companies for experience- and knowledge-sharing on best practices and specific issues regarding business and human rights as well as in the implementation of UN Guiding Principles. Second, *Global Business Outreach* concentrated on awareness-raising and capacity building for business in diverse regions in the world, particularly in emerging and developing markets. In so doing, GBI works with local business and human rights, CSR and other diverse organisations alongside UN Global Compact Local Networks to catalyze awareness and commitment regarding corporate respect for human rights. In the past four years, GBI has played an active role in supporting leadership from the United Nations in clarifying the role and expectation on corporations regarding human rights.

In 2010/11, during the final year of the mandate of the United Nations Special Representative on Business and Human Rights, Professor John Ruggie, GBI members made statements (individually and collectively) in support of the UN Guiding Principles on Business and Human Rights. On the occasion of international human rights day 2011, GBI submitted written input to the UN regarding the priorities of the newly formed UN Working Group on Business and Human Rights.

ADRESSING ECONOMIC GLOBALISATION FROM AN ISLAMIC PERSPECTIVE

Indeed, the violations of human rights committed by the MNCs and corporate entities discussed earlier are totally against the Islamic teaching and principles. Despite there has been a general view, especially in the West, that Islam as incompatible with the ideals of the internationally-recognised human rights principles,⁴⁶ such generalisation, however, is not true as Islam is actually a strong proponent to the full enjoyment of human rights. In fact, the first major contribution of Islam is a paradigm shift towards human rights. As globalisation implicates interactions between people, Islam offers a holistic view in which the rights and obligations of human beings over one another help in forging a social reality reflective of commitment to and a sense of social responsibility. The individual, without being marginalized, becomes part of a whole. The key terms used by the Qur'an and the Sunnah in this regard are *huquq Allah* and *huquq al-'ibad*, the rights due towards the Creator and the Sustainer and the rights of Allah's servants, i.e., human beings. In addressing the human rights violations resulted in the economic

⁴⁵ Global Business Initiative on Human Rights (GBI) (2012). *About*. Retrieved on 24th September 2013, from: <http://www.global-business-initiative.org/about/>

⁴⁶ Baderin, M.A. (2003). *International Human Rights and Islamic Law*, Oxford Monograph in Islamic Law. Oxford: Oxford University Press. p.3

globalisation, this paper underlined six global ethical principles⁴⁷ advocated by Islam as the key foundations to be incorporated within the business structures of business and corporate entities to establish good respect to human rights principles;

The first global ethical principle is the principle of Unity in life. Contradictions in one's personality, family and social life, professional dealings or international relations are to be avoided. Realization of a unified personality, irrespective of colour, creed and ethnicity, leads to a unified vision of life. It liberates a person from double standards, contradictions and fragmentation in life. Similarly, application of one and the same criterion in one's economic activities results in total quality management of resources, with the highest standards of fairness and transparency in transactions. In the Islamic framework of thought and culture, the term used for unity in life is *tawhid*. In its wider generic connotation, it stands for unity in the cosmos, in society, and in humankind, as well as in the life of the individual. The resultant coherence and order is realized with a clear vision of meaning and purpose of life and without a conflict between the individual interest and the collective good.

The second vital principle, which provides an axiological basis for human rights in Islam, is the value of equity, "*adl*" or justice. It begins from the point that a human being must act with justice towards and cause no harm or danger to his/her own self. It also requires the observance of justice towards parents, spouses, children, servants, neighbours, even strangers who may be in need of help and assistance. Observance of '*adl*' or justice as the second pillar of the Islamic concept of human rights implies fair and equitable fulfilment of one's duties and obligations and not simply demand of certain rights. '*Adl*' in the Qur'an is a positive and substantive value. The purpose of human presence on earth, in the Islamic world view, is to realize '*adl*' in individual life, family, society, economy, polity and culture, or observance of human rights. '*Adl*' also refers to fair and sincere observance of human rights even for those one may not like.⁴⁸

The Qur'an reminds its followers: "*O you who believe, be steadfast witnesses for Allah in equity, and let not hatred of any people deviate you from justice that you deal not justly. Deal justly that is near to your duty (taqwa). Observe your duty to Allah. Lo Allah is informed of what you do...*"⁴⁹ It elsewhere tells us that absence of '*adl*' invites Allah's displeasure and punishment on people. To benefit and enjoy justice in society one does not have to be a Muslim. As a universal ethical value it is to be realized at individual and collective level irrespective of colour, denomination, culture, or economic and political status. Social justice, fairness, and equity lead to creation of an unbiased, honest, open, and reasonably global human community.

The third global ethical principle on which human rights in Islam are founded is the value pertaining to protection of life (the rights to life). Perhaps nowhere has the sanctity of human life been so emphatically established as in the Qur'an, which says: "*Whosoever killed a human being for other than manslaughter or corruption into earth, it shall be as if he had killed all mankind, and whoso saves the life of one, it shall be as if he had saved the life of all mankind...*"⁵⁰ Sanctity of life, in the Qur'anic context, is not particular to any cultural, religious or ethnic group of people. Preservation, protection, and promotion of life is a universal value to be observed at global level.

⁴⁷ Ahmed, A. *Human Rights: An Islamic Perspective. Policy Perspectives* Vol 3 No.(1) available at <http://www.ips.org.pk/faith-a-society/islamic-thoughts/1128-human-rights-an-islamic-perspective.html#_ftn3> retrieved 12 August 2011.

⁴⁸ See generally, Mohamed Adil, M. A. & Ahmad, N. M. (2014). "*Islamic Law and Human Rights in Malaysia*". *Islam and Civilisational Renewal*, Vol. 5 No. 1, (January 2014): 43-67.

⁴⁹ The Holy Quran, Al-Ma'idah 5:8.

⁵⁰ *Ibid*, Al-Maidah 5:32.

The fourth primary global ethical foundation of human rights in Islam relates with the dynamic role and value of the intellect (*'aql*) (freedom of expression). *'Aql*, as a faculty, stands for responsible rational conduct confirming the need and transcendence of *wahy* (revealed knowledge) as well as legitimacy of intellect. Many rationalist approaches uphold ultimacy of reason, but, with all their calls for rationalism, some lead to scepticism and agnosticism – denial of knowledge as such. Islam, however, is very clear about the limits of human knowledge. In Islam, it is intellect and reason that discover their own limitations and arrive at the justification for *wahy*. The promotion of the intellectual attitude or exercise of reason in ethical judgments liberates a person from the grip of scepticism, agnosticism and from the finitude of experiences. It promotes an environment of dialogue, understanding, coexistence, cooperation and interaction. Respect for human rights and for difference of opinion creates a friendly and conducive environment for sincere and meaningful realization of justice and human rights.

The fifth global ethical value relates to preservation of honour, dignity and lineage of humankind in order to maintain, secure and sustain the identity of the members of a society. Islam insists on the human rights of the child to be identified and known through his biological relationship and genetic lineage. It even refers to the sanctity and human right of the gene. Therefore, it does not permit confusion of a gene except through the ethical and legal bonds of marriage. The first family on earth is recognized and honoured by Islam in the person of Adam and Eve. Finally, the sixth global ethical principle is on the sanctity of ownership and property (*mal*) or the right to property. No human being is, consequently, allowed to deprive a person of property in any way. This right to ownership of the men and women in a society applies equally to the resources of nations. No one is allowed to deprive others of their economic independence by imposing a so-called economic world order.⁵¹

These six global, universal and primary ethical values provide the basis for human rights in Islam. As far as economic globalisation issues are concerned, the six principles can establish a clear bottom-line towards which the business activities should operate. The specific human rights identified by Islam translate the philosophy of these seven values in tangible human conduct and behaviour which will finally create human rights- and socially-responsible business activities.

CONCLUSION AND THE WAY FORWARD

This paper examines the important roles played by the soft law mechanism in bridging the accountability gap between business entities and human rights which was resulted in the phenomenon of economic globalisation. Taking into consideration the insufficient nature of the existing binding human rights standards in monitoring corporate behaviour – including their human rights violations, a more social-based enforcement through the use of soft law instruments could serve as an alternative option. This paper explains the meaning, development and examples of soft laws through which the public and civil society can make use to put pressure on alleged companies to ensure better human rights compliance. The 'soft' approach in such instruments is seen as more effective due to its non-rigid nature, speedy remedy, cost-effective and less bureaucracy.

In this paper also, it was argued that Islam does not oppose economic globalisation as well as the full enjoyment of human rights. The six basic principles provided could serve

⁵¹ See John Zinkin and Geoffrey Williams. (February, 2006). Islam and CSR: A Study of the Compatibility between the Tenets of Islam and the UN Global Compact. Working Paper, Nottingham University Business School, Malaysia Campus. p. 8.

as guidelines for business entities in creating and carving their corporate code of conducts which will eventually help them enhance their respect and compliance with the human rights principles of the people within their sphere of influence. A business entity that respects human rights will give rise to the notion of “globalisation with responsibility” that will benefit the people at large without any discrimination. Indeed, Islam is not only to be seen as a religion of worship or ritual but also a religion that support human rights for the benefit of humanity and this in line with its purpose as a mercy to the whole universe.

In a nutshell, this paper concludes that there is no divergence between the tenets of Islam and the adoption of corporate responsibility through soft law approaches. The soft law approach, which based on human rights principles, is consistent with the principle of *maqasid syariah* and Islamic teaching. Both soft law and Islamic principles could formulate viable solutions to address the mounting events of corporate human rights violations. This paper believes that a success in harmonising economic growth and protecting human rights principles will harness the great power of economic development to align with the great principle of human dignity.

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