Business for the Rule of Law

CONSULTATION WORKSHOP REPORT

LOCATION:
Germany, Munich

DATE:
23 January 2014

HOST/FACILITATOR:
Global Compact Network Germany and Gibson Dunn
Part I: Executive Summary

1. UN Global Compact and Business for the Rule of Law Overview
   - Prosperity is tied to the Rule of Law.

2. Business Support for the Rule of Law in Practice [Explained]
   - Business can profit from supporting the Rule of Law.
   - Business will become involved if it is a win-win initiative that serves both the Rule of Law and the business environment.

3. Business Case for Supporting the Rule of Law
   - Non-secular countries should also be included in the UN Global Compact Business for the Rule of Law Initiative.

4. Business Actions and Business Examples in Support of the Rule of Law
   - Exemplary companies and civil society organizations are the driving force behind the Rule of Law.

5. Call to Action (to Business and by Business) to Support the Rule of Law
   - Respect and support of local law is essential to strengthen the Rule of Law.

6. Mobilizing Business to Support the Rule of Law
   - UN Global Compact should be more inclusive with regard to the countries involved in the workshops.

7. Any other comments or questions (including “quotable quotes” that may be included in the Framework)
   - The “win-win-principle” is key.
Part II: Workshop Report

1. UN Global Compact and Business for the Rule of Law Overview

- In total, 14 participants attended the B4ROL workshop hosted by Gibson Dunn on January 23, 2015 from 11 a.m. to 3 p.m. The participants have different backgrounds. While a larger group belonged to the industry sector (amongst others pharma, engineering, as well as aviation and transportation sector), members from academia, NGO, and criminal justice were also present.

- Following the introduction of the UN Global Compact Business for the Rule of Law Initiative by M. Zimmer, a participant pointed out that the “cartel of the good” (Kartell der Guten) follows the same path. By organizing and carrying out collective action initiatives under the keyword “cartel of the good”, companies aim to strengthen certain legal regulations and to put pressure on “black sheep” to do the same. In this context another participant mentioned the initiative “Integrity Alliance” (Allianz für Integrität) organized by the German Global Compact Network. A further participant pointed out the “German Sustainability Code” (Deutscher Nachhaltigkeits Kodex).

- The participants discussed the current status of the UN initiative regarding the Sustainable Development Goals. The participants pointed out that it is essential to collect the input of civil society organizations in their eyes in order to guarantee that the initiative will be successfully implemented.

2. Business Support for the Rule of Law in Practice [Explained]

- A participant informed the group about his involvement in the local commercial and industry chamber (Industrie- und Handelskammer) that provides a platform for companies to exchange their views, concerns, and organize joint initiatives like “cartel of the good”-collective actions. The participant added that it is in the interest of business to strengthen the Rule of Law around the world in order to create better investment possibilities for the business. He described the support of the business for the Rule of Law as a “win-win-project”.

- A very experienced and senior prosecutor among the participants who has built up a special expertise in anti-corruption reported to the group about her good experiences in the cooperation between business and justice in large corruption proceedings. She also described such good cooperation as “win-win-situations” that allow efficient legal proceedings, while limiting the impact on the daily business and reputation of the company that is subject to the proceedings. The participants agreed that such good cooperation with legal institutions during corruption proceedings also helps the company concerned with its internal self-purification.
3. Business Case for Supporting the Rule of Law

a. What does the rule of law mean in this country?
   - The participants discussed certain deficiencies in the corporate behavior in Germany and the western world even though there is a strong support and infrastructure for the Rule of Law in these countries.
   - A participant mentioned that Germany's strong support and infrastructure for the Rule of Law serves as one “quality factor” for German products being exported abroad.
   - Another participant raised the question what the meaning behind Rule of Law from an academic standpoint is. The participant added that Rule of Law certainly requires strong and efficient judiciary and asked the group if the best way forward really is to install such legal processes, and institutions in less developed countries that may not be in compliance with local culture and current practices. The participants discussed the question, whether the Rule of Law requires a secular state and what the Rule of Law can look like in non-secular states. The participants asked N. Naqschbandi, the representative of the German Network, how UN Global Compact has addressed these concerns. N. Naqschbandi replied that he believes that certain countries' problematic in this regard were not included in the program. A participant added that if such countries are not involved in the stage of drafting the Business for the Rule of Law it cannot be expected that these countries will implement the framework once it is drafted and adopted.
   - A third participant mentioned that Rule of Law may already exist in every country if it is interpreted as “you have to follow local rules”, however, the content of the rules differ enormously between the countries. Problems arise if local law is not in compliance with human rights. How should business treat such discrepancies? The participants discussed property law of indigenous people in Indonesia that is not in compliance with the western understanding of property law. A participant added that Rule of Law has to be interpreted not only as “you have to follow local rules” but in a broader sense. The rules that have to be followed have to meet certain requirements.

b. How does business benefit when there is a strong rule of law? Alternatively, what challenges exist for business when the rule of law is weak?
   - See above.
4. Business Action and Business Examples in Support of the Rule of Law

a. Explore the meaning of the business action and how it relates to business.

   o A participant reported to the group that the pharmaceutical industry has a zero tolerance policy and does not conduct business in countries that do not meet a certain Rule of Law standard. The participant added that the security and corruption risks in such countries are so high that the pharmaceutical industry rather opts not to do business in those countries than to carry those risks. Another participant added that business should especially conduct business in such countries in order to support and strengthen the weak Rule of Law infrastructure. He added that business and civil society are the driving force behind any strengthening of the Rule of Law.

   o The participants agreed that it is important to open new markets. As long as all companies comply with compliance and anti-money laundering regulations, corruption will be dried out eventually. The participants again stressed the importance of the “win-win-approach”.

b. Explore how the business action can be implemented by business by sharing an actual or hypothetical example.

   o See below.

c. Are these the correct business actions to include in the Framework?

   o See below.

d. Are there business actions that are missing from the Framework that should be included?

   o See below.

5. Call to Action (to Business and by Business) to Support the Rule of Law

a. What are some concrete steps business can take to respect and support the rule of law?

   o The group split up in two teams of three participants, and two teams of four participants to discuss possible business actions with regard to the topics listed under items three to six on page 35 of the presentation.
After the break-out session, the group of participants discussing possible business actions to “support and encourage the equal enforcement of the law, and independent adjudication of the law” (item three on page 35 of presentation) suggested to the rest of the group that every company doing business abroad should make sure that every employee receives compliance training. Further, the participants stress the importance of business partner due diligence when conducting business with foreign business partners. Companies should serve as “compliance-ambassadors”, however, the participants agreed that business can be most effective when they work together in collective actions.

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b. What actions can other actors, including Government, academia and civil society take to improve legal institutions, access to justice, equality before the law, capacity building and other such action?

The participants discussed that it is essential for the Rule of Law that judges receive sufficient compensation in order to assure their independence.

The participants further discussed that embassies, and commercial and industry chambers can play a leading role in the avocation Rule of Law abroad. Further, state-owned enterprises should be a leading example and subject themselves to certain rules.

The participants discussed again that it is important to respect and use local law and legal institutions so that local people experience the importance of legal institutions.
The participants agreed that government should work more closely with business representatives making use of their expertise and experience.

6. Mobilizing Business to Support the Rule of Law

a. What obstacles, if any, does your organization experience that prevents it from supporting the rule of law in this country or in any other country it has an interest in, such as investments, operations, business relationships?
   o See above.

b. How can the UN Global Compact, and other actors, support business to take action in support of the rule of law (e.g. information sharing via webinars on specific rule of law topics, in-person events, leveraging online resources, strategic partnerships)?
   o UN Global Compact should be more inclusive with regard to the countries involved in the workshops.

7. Additional Comments, Suggestions or Questions

[Workshop Report End]