

## Column A **Considering Business and Human Rights: What are Universal Human Rights?**

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### 1. Introduction.

In September 2022, the Japanese government released “Guidelines on Respecting Human Rights in Responsible Supply Chains” to promote corporate efforts to respect human rights. One month earlier, “Guidelines for Responsible Business Conduct for the Textile and Clothing Industry of Japan” was formulated by the Japan Textile Federation under the auspices of the Ministry of Economy, Trade and Industry. While the latter is specific to the textile sector, the industry still encompasses many sub-sectors from upstream to downstream, and the size of the actors varies from small to large companies. The position of each company in the textile industry value chain is different, and the management issues they face involve a variety of stakeholders. The fact that the guidelines were developed through constructive dialogue between workers and employers was groundbreaking.<sup>1)</sup>

These guidelines are all based on key international standards related to business and human rights (BHR), such as the Organization for Economic Co-operation and Development’s (OECD) “Guidelines for Multinational Enterprises on Responsible Business Conduct (MNE Guidelines),” the International Labour Organization’s (ILO) “Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration),” and the United Nations’ “Guiding Principles on Business and Human Rights (Guiding Principles)”<sup>2)</sup>. The development of those guidelines in Japan has been based on the growing attention within the government on issues related to BHR since the inauguration of the Kishida administration.

Shortly before these movements in Japan, the Biden administration, which also emphasized human rights, took office in the United States.

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1) Workers were represented by the Japanese Federation of Textile, Chemical, Commerce, Food and General Services Workers’ Unions (UA Zensen). The International Labour Organization (ILO) office in Japan provided technical assistance in the development of the guidelines. The author had the opportunity to participate in the development process as one of the ILO’s advisors.

2) Guiding Principles on Business and Human Rights: Implementing the United Nations’ “Protect, Respect and Remedy” Framework.

All businesses should recognize the intrinsic value and importance of human rights and respect it in their daily operations, not because it is “required.” However, it may still be important to understand the broader international political and economic context in which human rights issues have evolved to become central to business activities. One example in which this has manifested itself is the Indo-Pacific Economic Framework (IPEF). The IPEF is one of the main policies of the Biden administration related to the Asian region, which, unlike previous regional trade agreements, is now being discussed with an emphasis on “values,” such as human rights. We will discuss IPEF in the final part of this column. These broader international political-economic dynamisms will most likely affect the institutional context in which businesses must operate in the near future.<sup>3)</sup>

While the need for a technical response on BHR has been recognized, the discussion and understanding of the significance and universality of the issue of human rights, however, do not seem to have matured, at least not in the Japanese business world. As such, this column will take a step back and think of what “human rights” would mean for contemporary businesses, particularly in a globalizing context where it should be considered an issue that must be extended beyond the boundaries of individual companies and countries connected in global value chains (GVCs). Why should companies located in Japan be concerned not only with human rights issues within the boundaries of their country or companies, but also with those of workers of foreign business partners and even the local communities in which these partners operate? Given the context of GVCs, what is the underlying philosophy that mandates companies to bear responsibility for the human rights of workers of suppliers with which they have no direct contacts or contractual relationships? In order to address these questions, the next part briefly reviews how BHR became a prominent issue in GVCs, and then reviews its core principles, by focusing on the concept of universal human rights. This column will also discuss the challenges that this poses to businesses in the era of

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3) In “Kansai and the Asia Pacific Economic Outlook 2002,” the author reviewed the current situation of “Business and Human Rights” in Japan from both institutional and business perspectives, and discussed management issues related to the issue. Please refer to Goto (2023) for details.

globalization, and attempts to draw implications on the potential opportunities for Japan and Asia.

## 2. GVC Development and Human Rights

BHR is an old but contemporary issue. Its origins date back more than half a century to the 1960s, when the influence of corporations began to extend beyond national boundaries. The progression towards the free trade regime at a global scale in the postwar era led to the internationalization of business activities by multinational enterprises (MNEs) in developed countries, which has been recognized as a major contributor to the environmental and social problems in developing countries. It was an era in which, for example, human rights violations under policies such as the apartheid in South Africa were increasingly recognized as being problematic, and companies doing business with such countries were criticized. The MNE Guidelines and MNE Declaration were the international community's response requiring businesses to respect human rights (Yoshimura, 2021).

Economic globalization peaked during the rise of neoliberalism in the 1980s and the post-Cold War period that followed in the 1990s. The key characteristic of GVCs, which have evolved since, is that it intricately connects firms from various countries with different factor endowments through complex intra- and inter-firm relationships. Firms in developing countries with a comparative advantage in labor-intensive processes participate in GVCs by undertaking such processes. Lead firms in developed countries that organize and manage GVCs have a strong influence on the firms in other countries connected to them and on the local economies in which they operate. Therefore, when a human rights issue arises in a company in a developing country connected to a GVC, the lead firm in the developed country that coordinates the GVC is held primarily responsible. Such GVCs have developed most extensively in Asia, which has also been the main driver of the region's economic growth (Goto, 2019).

BHR became a critical issue for businesses particularly when the United Nations Human Rights Council unanimously endorsed the UN Guiding Principles (UNGP) in 2011. This was largely driven by the

widespread view that corporations in developed countries, including Japan, have encouraged or been complicit in human rights abuses in the process of improving their competitiveness through the formulation of GVCs. The UNGP include three requirements: (1) the obligation of states to respect, protect and fulfill human rights and fundamental freedoms; (2) the responsibility of businesses to comply with all applicable laws and to respect human rights; and (3) to have in place appropriate and effective remedy mechanisms and to guarantee access to them in the event of human rights violations or non-compliance. It is important to note that, while the protection or extension of human rights has traditionally been considered the role of the state, now the responsibility of corporations has also been clearly stated (Goto, 2023).

The UNGP requires businesses to respect the human rights particularly of the workers not only in their own companies in their home countries, but also in their overseas operations. These include workers of their suppliers with whom they have no capital (ownership) relationships. The UNGP further stipulates the responsibility to respect the human rights not only of those workers of “direct suppliers,” but also of “indirect suppliers” with which they may have no direct contractual relationships. In many cases, Japanese companies are in a position to configure and manage GVCs in Asia, and given their stronger position in those chains, it is understandable that they are expected to lead responsible business practices by example. The UNGP, however, is asking for more. Why should Japanese businesses be concerned and take action when there are potential human rights violations of those workers of business partners in foreign countries, even when there are no direct contracts? To address this question, it would be useful to revisit the concept of universal human rights.

### 3. The Concept of Universal Human Rights

The Universal Declaration of Human Rights of 1948 states that “All human beings are born free and equal in dignity and rights.” (Article 1) and that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin,

property, birth or other status” (Article 2). As can be understood from the Declaration, human rights are inherently “international” (Yokota, 2021) and universal in nature. It would be useful to take a look at this concept, according to the views presented by Tsutsui (2022).

Humanitarianism is a concept similar to human rights, and includes dimensions such as relief of the weak, equality, justice, freedom, and dignity. Institutions based on this concept have existed since ancient times. For example, the Mesopotamian civilization’s Code of Hammurabi, which was written in the B.C. era, reflects these values. Tsutsui, however, sees the current human rights ideals as transcending these humanitarian concepts by virtue of their universality. The first key concept to understanding the nature of this difference is the distinction between in-groups and out-groups.

The idea of natural rights, that people are born with inherent rights, has existed since ancient Greece, and later took root in Western Europe with the spread of Enlightenment thought. However, these natural rights were applied to “members of society” as defined by social, political, and cultural factors, and were often understood in a limited manner. In other words, although people were considered to be born with rights, the scope of “people” was limited to in-groups such as “residents of a country” and “adult males within that country,” excluding people with specific attributes such as women and foreigners. The arbitrary treatment of people who did not belong to such groups is evident in the history of the world, including that of Japan. In fact, the distinction between in-groups and out-groups is a characteristic that is widely seen in human society. It has been considered the role of the state to give priority to the in-group and to protect the lives and rights of its members. However, the concept of universal human rights is revolutionary in the sense that it holds that certain human rights must be guaranteed to everyone, regardless of the distinction between in-groups and out-groups.

It was not until after World War II that the concept of human rights as universal rights was established, which states that people must be guaranteed basic human rights simply because they are human beings. The Universal Declaration of Human Rights, whose definition is cited earlier, was the first to specifically define human rights as universal rights in an international context. Tsutsui evaluates the universal human rights

that emerged at this time as revolutionary and a landmark in the history of mankind. Tsutsui also points out the 1970s, when interest in universal human rights grew rapidly in the international community, and the 1990s, when institutions related to human rights began to take effect after the Cold War, as important milestones in the promotion of universal human rights. Understanding human rights as a universal concept in this way makes it clear that distinctions between in-groups and out-groups, defined by boundaries such as corporations and nations, cannot be reasons to neglect the respect for human rights.

Tsutsui further states that the second key concept that distinguishes modern universal human rights from the humanitarianism of the past is the exception to the principle of non-intervention in internal affairs of states. This means that if there is a violation of human rights in another country against some of its citizens, it should not be ignored as an internal affair of another country. The principle of non-intervention granting exclusive sovereignty over its territory started since the Peace of Westphalia in 1648, and domestic affairs has since often been regarded as sacred for states. Therefore, given the reality of international politics, the affirmation of intervention in internal affairs may only be a theoretical possibility. Nevertheless, under the universal human rights concept, domestic human rights violations in the name of state sovereignty are not allowed, at least in theory, and this concept itself has been groundbreaking. If this exclusion of non-intervention underlies the concept of universal human rights in BHR, then companies overseeing GVCs will need to take action toward human rights issues of those connected in their value chains in distant countries, even when their connections remain indirect. In other words, from the perspective of universal human rights, it is essential that Japanese companies, as the lead-firms of GVCs in Asia, take some action to improve the situation when there are human rights violations in, for example, the labor conditions of suppliers with which they do not have direct contracts.

#### 4. Challenges for Japanese Companies

On May 27, 2023, a ministerial-level meeting of the IPEF was held in Detroit, MI, in the U.S. Unlike the Comprehensive and Progressive

Agreement for Trans-Pacific Partnership (CPTPP) or the Regional Comprehensive Economic Partnership (RCEP), this U.S.-led initiative, which includes 14 countries including Japan, does not address issues related to market access such as tariff reductions. Instead, discussions are underway in the four areas of “fair and resilient trade (Pillar I),” “supply chains (Pillar II),” “clean economy (Pillar III),” and “fair economy (Pillar IV). Discussions in relation to IPEF are different because of a strong emphasis on “values.”

At the Detroit meeting, it was announced that there had been an agreement on Pillar II related to resilience of supply chains. However, there has been one issue in this agreement that has not received much attention from the Japanese media, that being the establishment of an “IPEF Labor Rights Advisory Board” as a mechanism to ensure respect and promotion of labor rights, based on a tripartite structure of government, workers, and employers. Labor rights are at the heart of the BHR agenda, and the ILO’s core labor standards (10 conventions and 1 protocol in 5 areas, including “Recognition of the right to freedom of association and collective bargaining,” “Prohibition of forced labor,” “Prohibition of child labor,” “Elimination of discrimination,” and “Safe and healthy working environment”) are generally referred to as minimum rights to be respected. In Asia, however, BHR is not yet frontloaded in policy discussions. As there may be diverse reactions to human rights issues, various challenges may rise when it comes to mainstreaming BHR into practice.

In Japan, respect for human rights by businesses has so far remained a voluntary requirement. However, in Europe and other areas, it is becoming mandatory (Goto, 2023). Even if the IPEF negotiations proceed and a framework is agreed upon, it will not be enforceable unless member countries ratify the framework and enact it into domestic law. Nevertheless, it is possible that such legal measures for businesses to respect human rights might be taken in Japan in the future.

If a legal framework would be established to respect human rights and to conduct due diligence along their entire value chains, businesses would most likely respond with strong incentives. However, we must remember that it should be a natural obligation for those companies to operate in a manner that fully respects human rights, considering the

magnitude of their influence. In addition, in light of the universality of human rights, demands for respect for human rights and criticism of human rights violations cannot be used arbitrarily in relation to specific countries or companies, as discussed earlier. One of the main challenges to mainstream human rights in business practice is to design and implement a mechanism for dialogue that is inclusive of a diverse set of stakeholders in accordance with the principles of universal human rights throughout the entire value chain.

Given these challenges, what can Japanese businesses offer, especially to their partners in Asia? In addition to formal regulations and rules, business practices aligned with respect for human rights can also emerge in the pursuit of competitiveness without regulatory enforcement. In economic terms, they can be considered as institutions in forms of informal equilibria. For example, Japanese management practices often emphasize long-term, stable inter-firm and employment relationships, which may entail practices consistent with the ideas behind BHR (Goto and Arai, 2018; Goto, 2022). Whether these “good practices” can be applied in other contexts, or the external validity of such specific cases, is of course a question that should be addressed. However, such good “*de facto*” practices are often embedded as tacit knowledge in the daily operations of Japanese companies, and sharing them with Asian partners and adapting them to local contexts may provide new insights to mainstream human rights concerns into business strategies. Identifying such good practices and reevaluating them from the BHR perspective may have important implications.

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