Statement by Professor John Ruggie

MANDATE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON THE ISSUE OF HUMAN RIGHTS AND TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES

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Excellencies, Ladies and Gentlemen,

This is my final report to you as Special Representative of the Secretary-General for business and human rights. It has been an honor to serve in this capacity. I am deeply grateful to Kofi Annan and Ban Ki-moon for entrusting me with this complex and sensitive assignment, and to the sponsors of the mandate—Argentina, India, Nigeria, Norway and the Russian Federation—who have guided the intergovernmental process with such skill and commitment.

The mandate was created in 2005 by the then Commission on Human Rights, to map the global challenges of business and human rights, and to recommend effective means for addressing them.

My first task was to frame the issue. Business is the major source of investment and job creation, and markets can be highly efficient means for allocating scarce resources. They constitute powerful forces capable of generating economic growth, reducing poverty, and increasing demand for the rule of law, thereby contributing to the realization of a broad spectrum of human rights.

At the same time, recent decades have witnessed growing gaps between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. No country or region is immune. These gaps create the permissive environment within which blameworthy acts by business enterprises may occur without adequate sanctioning or reparation. Their human rights consequences have become a major global concern. Our challenge is to narrow and bridge these gaps.

It did not take long for me to figure out that there is no single silver bullet solution to bridging these gaps in the business and human rights domain. The task is not comparable to States identifying and recognizing a single right—as they did recently in the case of access to safe water and sanitation; or to their promoting the rights of a particular group, as in the Declaration on the Rights of Indigenous Peoples. My mandate includes State duties and corporate responsibilities in relation to all rights and rights holders; as well as all businesses, large and small, national and transnational. Therefore, the only viable path forward is to identify ways whereby all actors—states, businesses, and civil society—must begin to do many things differently.

Although the number of public and private initiatives in business and human rights has increased rapidly in recent years, they have not acquired sufficient scale to reach a tipping point, to truly shift markets. One major reason has been the lack of an authoritative focal point around which the expectations and actions of relevant stakeholders could converge—be they states, businesses, affected individuals and communities, or civil society at large.
Therefore, when I was requested to make recommendations to the Human Rights Council in 2008, I made only one: that it endorse what I called a conceptual and policy framework—the Protect, Respect and Remedy framework. In itself, this would hardly resolve all outstanding business and human rights challenges. But it was my hope that it would become a common foundation on which thinking and action by all stakeholders could build over time. The Council was unanimous in welcoming the framework, and it extended my mandate to 2011 with the task of “operationalizing” and “promoting” it.

The framework rests on three pillars: the state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur; and greater access by victims to effective remedy, judicial and non-judicial.

As requested by the Council, I am currently preparing draft “Guiding Principles” for the implementation of the framework. In a few weeks’ time they will be sent to all delegations and posted on the Internet for comment, before being finalized early next year. I am also preparing an options paper for the Council on how it might most effectively follow up on my mandate when it ends next June. Both the Principles and the Options paper draw on extensive research and inclusive consultations—I recently concluded the forty-sixth international consultation since 2005, held on every continent.

So what are the key areas that require improvement?

For States, it is dealing with widespread legal and policy gaps and incoherence. The most common gap is the failure to enforce existing laws, although for “at-risk” and vulnerable groups there often is inadequate legal protection in the first place. The most prevalent cause of legal and policy incoherence is that government departments and agencies that directly shape business practices—including corporate law and securities regulation, investment promotion, export credit and insurance, trade and so on—typically work in isolation from, are uninformed by, and sometimes undermine, their government’s own human rights obligations. The same disconnect is replicated at the international level. The Guiding Principles will recommend ways for States to improve upon current performance.

Areas affected by conflict require special consideration. The worst corporate-related human rights abuses tend to occur in these contexts. The international human rights regime cannot possibly be expected to function as intended amidst serious strife over territory, its resources or the government itself. You may recall that I convened a group of States in informal, scenario-based, off-the-record brainstorming sessions to generate innovative and practical approaches for preventing and mitigating corporate abuses in these difficult contexts. The States that agreed to participate include Belgium, Brazil, Canada, China, Colombia, Ghana,
Guatemala, Nigeria, Norway, Sierra Leone, Switzerland, the United Kingdom and the United States of America. The third and final session was held just one week ago, and the lessons learned will be reflected in the Guiding Principles.

Turning to companies, the major area requiring improvement is that business must come to realize that the era of declaratory CSR is over. The corporate responsibility to respect human rights cannot be met by words alone: it requires specific measures by means of which companies can “know and show” that they respect rights. A policy commitment to respect human rights, approved at the highest level in the company, forms the foundation, and should be embedded within all relevant business units and functions, including internal oversight and control systems. Conducting human rights due diligence is necessary for the enterprise to be able to identify and address adverse human rights impacts of its activities and relationships. This involves assessing such impacts; integrating the findings into planning and decision-making processes so as to prevent, mitigate or remediate adverse impacts; and tracking as well as communicating performance. The Commentaries to the Guiding Principles will elaborate upon these steps through which companies can ensure that they respect human rights. Needless to say, the scale and complexity of these processes will vary with an enterprise’s size and human rights impacts. The smaller both are, the less formalized these processes will need to be.

Access to remedy is an integral part of both the State duty to protect and the corporate responsibility to respect. Yet on the State side, the universe of State-based non-judicial grievance mechanisms is under-populated and under-resourced, while obstacles to judicial remedies abound. The Guiding Principles will map the main obstacles and suggest ways of overcoming some of them.

For companies, grievance mechanisms at the site of their operations can be particularly useful. First, they serve as early warning systems, providing companies with ongoing information about their current or potential human rights impacts from those impacted. By analyzing trends and patterns in complaints, companies can identify systemic problems and adapt their practices accordingly. Second, these mechanisms make it possible for grievances to be addressed and remediated directly, thereby preventing harm from being compounded and grievances from escalating. I am pleased to report that five major companies are participating in a pilot project under my mandate, designed to test effectiveness criteria for operational-level grievance mechanisms. The country sites include China, Colombia, the Russian Federation, South Africa and Vietnam. The Guiding Principles will further elucidate what makes such grievance mechanisms effective.

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These are a few illustrative examples of the comprehensive approach taken by this mandate to a complex—indeed, historic—set of challenges. But no matter how complex the challenges, our actions must cohere and become cumulative. That is
what the “Protect, Respect and Remedy” framework and the Guiding Principles for its implementation are intended to help achieve.

Let me say in conclusion that the mandate’s work already has enjoyed considerable uptake, even before its conclusion. States have drawn on it in their own policy assessments. Several major corporations have announced publicly that they are realigning their risk management systems to include human rights due diligence. The human rights chapter in the new ISO26000 guidance standard on social responsibility is based directly on framework provisions, and OECD proposals to update its Guidelines on Multinational Enterprises explicitly reference and build on the framework. Leading civil society groups and workers organizations are using it in their analytical work and advocacy. And there is great interest in the framework in regional human rights organizations across the world.

In sum, the mandate has established the solid foundation needed for continued step-by-step progress. With this foundation in place, I believe that the follow-up to the mandate should include a mixed portfolio of activities, with the aim of ensuring that momentum is sustained, the multi-stakeholder character of the effort is maintained, policy guidance is provided, implementation on the ground is facilitated, and the most critical enforcement gaps are closed. The Options paper for the Council will elaborate upon these criteria for a mandate follow-up that adds real value.

Thank you again for your engagement and support. I look forward to our interactive dialogue.

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