



Special Representative of the Secretary-General for Business and Human Rights

3 March 2011

The Hon. Robert B. Zoellick
President
The World Bank Group
1818 H Street, NW
Washington, DC 20433

Dear Mr. President:

In December 2008 I had the pleasure of meeting with you and your senior team. At that time, I briefed you on my United Nations business and human rights mandate, and mentioned that the UN Human Rights Council earlier that year was unanimous in welcoming the “Protect, Respect and Remedy” Framework for managing the risks of business operations having adverse human rights impacts. Since that time, under a new Council mandate, I have been developing Guiding Principles for the implementation of the Framework. The mandate’s core sponsors then and now are Argentina, India, Nigeria, Norway, and the Russian Federation (one from each region).

I understand that the UN Framework has been raised, internally and by external stakeholders, in the context of the consultations on the International Finance Corporation’s own Sustainability Framework. Therefore, I thought it might be useful for me to provide a short summary of the legislative history behind it; what the Framework and Guiding Principles actually are, and why this initiative has enjoyed such broad stakeholder support also beyond States, including by business itself; and how it may relate to the IFC’s own ongoing deliberations.

Perhaps I should note at the outset that since the mandate was established in 2005, I have convened 47 international consultations, in every part of the world. I have held bilateral discussions in capitals with numerous OECD governments, and also (at their invitation) the governments of Argentina, Colombia, Egypt, India, and the Russian Federation. I have conducted pilot projects with companies operating in China, Colombia, South Africa, the Russian Federation and Vietnam. And my team and I have made site visits to business operations and their local stakeholders in more than twenty emerging economy countries. This inclusive approach reflects my determination that the mandate’s products not only should provide practical guidance – but guidance that is informed by actual practice.

Legislative History

In June 2008, following three years of extensive research and consultations on every continent conducted at the request of the UN Human Rights Council, I proposed the 'Protect, Respect and Remedy' Framework for the Council's consideration. The Council resolution "welcoming" the Framework and extending the mandate to "operationalize" it (Resolution 8/7, attached) was introduced by India on behalf of all five core sponsors. The following States then joined as co-sponsors: Andorra, Angola, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, Colombia, Cuba, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, the Netherlands, Nicaragua, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland and Venezuela (Bolivarian Republic of).

In the ensuing Council debate the following States took the floor: Bangladesh, Brazil, China, Cuba, Egypt, France, India, Indonesia, Italy, Nigeria, Pakistan (on behalf of the Organization of the Islamic Conference), Peru, Republic of Korea, Russian Federation, Slovenia (on behalf of the European Union), South Africa, United Kingdom of Great Britain and Northern Ireland, Argentina, Norway, and Venezuela (Bolivarian Republic of). All supported the resolution. In the end no vote was called for, and the resolution was adopted by acclamation.

The Framework and Guiding Principles

So what is this UN initiative all about? Its normative contribution does not lie in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved. The Framework elaborates the "what" question; and the Guiding Principles (still being finalized after an extensive consultative period) the "how."

The Framework itself rests on three pillars. The first is the State duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication. The second is 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. The third is the need for greater access by victims to effective remedy, both judicial and non-judicial.

Corporate Responsibility to Respect

I understand it is the second pillar that has been the main focus of discussions in and around the IFC review.

The corporate responsibility to respect human rights is acknowledged by virtually every company and industry corporate social responsibility initiative, endorsed by the world's largest business associations, embedded in the UN Global Compact and its world-wide network of participating companies, and has been affirmed by the UN Human Rights Council.

The corporate responsibility to respect means managing the adverse human rights impact of a company's own business activities and relationships. We do not expect and would not wish businesses to take on the role governments. But we do want to make sure that they reduce the risk of adversely affecting the human rights of others, and to remediate harm that they cause or contribute to. This responsibility relates to each company's own human rights impacts, and thus is unrelated to issues of conditionality based on a host State's human rights practices.

The value-added of my mandate in relation to this corporate responsibility was to ask whether companies currently have systems in place that would allow them to know and show that they respect human rights – and in light of the fact that most I surveyed did not, to provide them with the means to do so. We call this “human rights due diligence.” In brief, human rights due diligence involves companies assessing their human rights impacts; integrating the findings across their various functions; acting upon them; and tracking their performance. Of course, this can be part of a broader set of ongoing risk assessments, provided it is understood that it involves not only risks to the company, but risks to individuals' human rights posed by the company.

The workability of these human rights due diligence provisions was tested internally by ten companies, and it was the subject of detailed discussions with corporate law professionals from more than twenty countries with expertise in over forty jurisdictions representing all regions. The due diligence provisions recognize that small and medium-sized enterprises typically will have less need and capacity in this regard than large companies, but the severity of impacts also must be taken into account irrespective of an enterprise's size.

The due diligence provisions have already been taken up by several other international initiatives, including the new ISO26000 social responsibility guidance, as well as the current update of the OECD Guidelines for Multinational Corporations – both of which have drawn explicitly on the UN Framework. Moreover, these provisions also have been well received by the business community itself and endorsed by leading civil society organizations.

IFC Review

Needless to say, there is no obligation on the part of the IFC to “align” its policies and performance standards with the UN Framework. But allow me to make two final points.

First, as noted, the corporate responsibility to respect human rights has emerged as a robust global norm. Companies look to the IFC for concrete guidance as clients; based

on IFC's reputation for addressing environmental and social issues in projects through the Performance Standards; and through its role as the benchmark for the Equator Principles. Therefore, the IFC needs to provide the most up-to-date guidance. The current draft revision of the Policy Framework and related Performance Standard does not fully meet that test because it lacks clear references to the corporate responsibility to respect human rights and its operational implications for companies.

Second, because of the proliferation of competing codes and standards, one of the most common requests I hear from companies is for consistency, clarity and predictability in the standards expected of them across their global operations. The 'Protect, Respect and Remedy' Framework has gone some way towards providing a consensus-based platform for human rights – which is why other initiatives have drawn their human rights provisions from it. I hope that it might be similarly helpful to the IFC in its own deliberations.

In sum, far from diverting the IFC from its traditional role as a provider of development finance, more explicit references to better managing the human rights impacts of business operations that it supports would respond to client needs and better reflect international norms and best practice.

I would be pleased to discuss further any of these issues further with you – or, if you would wish me to do so, to work with your team as they finalize the draft revisions.

With continued good wishes,

Yours sincerely,

John G. Ruggie

cc: Lars Thunell, Executive Vice President, IFC
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