

Keynote Address by SRSG John Ruggie
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I am very grateful to the sponsors of this timely and important conference, and to our hosts, for giving me the opportunity to discuss my UN mandate on business and human rights.

The business and human rights agenda has moved rapidly since 2005, and in a constructive direction that business itself has found helpful. Today, I want to provide a bit of background on the mandate. Then I’ll focus on two key issues addressed by this conference: the corporate responsibility to respect human rights and human rights due diligence.

Background

Business and human rights began to be hotly contested in the 1990s, as a byproduct of that decade’s wave of privatization and off-shore production; the fact that extractive and infrastructure companies were operating in increasingly tough neighborhoods; and because companies assumed that getting a legal license to operate from a government, no matter how corrupt and unresponsive it was to the needs of local populations, also provided it with an effective social license to operate – but communities often pushed back.

The worst alleged corporate-related human rights abuses typically have involved third parties connected to a company’s operations, such as security forces or suppliers, with the company being accused of complicity in whatever act was committed by that third party. In a number of cases the allegations have included war crimes and crimes against humanity.

My mandate had its origins in a divisive debate generated by an initiative called the draft Norms on Transnational Corporations and Other Business Enterprises, presented to the then UN Commission on Human Rights in 2004 by a subsidiary body. The Norms sought to impose on companies, directly under international law, essentially the same range of human rights duties that States have adopted for themselves – to respect, protect, promote, and fulfill human rights. The two sets of duties were separated only by the slippery distinction between States as primary and corporations as secondary duty bearers, and by

the elastic concept of corporate spheres of influence, within which companies were said to have those duties.

Business was vehemently opposed to the Norms, human rights advocacy groups strongly in favor. After considering the matter for a year, the Commission declined to adopt the text, declaring that it had no legal status and that no action should be taken on its basis.

Instead, in 2005 the Commission requested the UN Secretary-General to appoint a Special Representative on the issue of business and human rights, with the goal of moving beyond the stalemate. Kofi Annan appointed me to the post and Ban Ki-moon continued the assignment. My own assessment of the Norms was that they were a deeply flawed formula, and I made it clear that I would not base my mandate's work on it.

The Framework

Now fast forward three years: in 2008 the UN Human Rights Council unanimously endorsed a policy framework I proposed for better managing business and human rights challenges. It 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 greater access by victims to effective remedy.

The Council also asked me to “operationalize” the framework—to provide concrete guidance to states, businesses and other social actors on its implementation.

The Framework's components are distinct yet complementary. The state duty to protect and the corporate responsibility to respect exist independently of one another, and preventative measures differ from remedial ones. But all are intended to work together and reinforce one another as parts of a dynamic, interactive system.

So, with the understanding that the corporate responsibility to respect human rights is but one component in a wider system of preventative and remedial measures, I will focus on it here.

The Corporate Responsibility to Respect

The term “responsibility” to respect rather than “duty” is meant to indicate that respecting rights is not an obligation current international human rights law generally imposes directly on companies, although elements may be

reflected in domestic laws. At the international level it is a standard of expected conduct acknowledged in virtually every voluntary and soft-law instrument related to corporate responsibility, and now affirmed by the Council itself when it endorsed the Framework.

The corporate responsibility to respect human rights means to avoid infringing on the rights of others, and addressing adverse impacts that may occur. It applies to all companies in all situations. As a joint statement by the IOE, ICC and BIAC made very clear, it exists even if national laws are poorly enforced, or not at all.

What is the scope of this responsibility? What range of acts or attributes does it encompass? Scope is defined by the actual and potential human rights impacts generated through a company's own business activities and through its relationships with other parties—such as business partners, entities in its value chain, other non-State actors, and State agents.

In addition, companies need to consider the country and local contexts of their operations for any particular challenges they may pose, and how those challenges might shape the human rights impact of company activities and relationships.

Attributes such as companies' size, influence or profit margins may be relevant factors in the scope of their promotional CSR activities, but they do not define the scope of the corporate responsibility to respect human rights.

Because companies can affect virtually the entire spectrum of internationally recognized rights, the corporate responsibility to respect applies to all such rights. In practice, some rights will be more relevant than others in particular industries and circumstances, and they will be the focus of ongoing company attention. But situations may change; therefore broader periodic assessments are necessary to ensure that no significant issue is overlooked.

Where should companies look for an authoritative "list" of internationally recognized rights? At minimum, to the so-called International Bill of Human Rights (the Universal Declaration and the International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights) and the ILO Core Conventions. While the legal obligations embodied in these instruments apply to states, not to companies directly, companies can infringe on the actual rights these instruments recognize. Moreover, these rights are the baseline benchmarks by which other social actors judge companies' human rights practices.

Depending on circumstances, companies may need to consider additional standards: in conflict-affected areas, for instance, they also should take into account international humanitarian law; and in projects affecting “at-risk” or vulnerable groups—for example, indigenous peoples or children—standards specific to them.

Due Diligence

How does a company avoid infringing on the rights of others, and address adverse impacts where they do occur? Here is where due diligence comes in.

Human rights due diligence is a potential game changer for companies: from “naming and shaming” to “knowing and showing.”

Naming and shaming is a response by external stakeholders to the failure of companies to respect human rights. Knowing and showing is the internalization of that respect by companies themselves through human rights due diligence.

Companies routinely conduct due diligence to satisfy themselves that a contemplated transaction has no hidden risks. Starting in the 1990s, companies added internal controls for the ongoing management of risks to both the company and stakeholders who could be harmed by its conduct—for example, to prevent employment discrimination, environmental damage, or criminal misconduct.

Drawing on the features of well-established practices and combining them with what is unique to human rights, I have laid out the basic parameters of a human rights due diligence process. Because this process is a means for companies to address their responsibility to respect human rights, it has to go beyond simply identifying and managing material risks to the company itself, to include the risks a company’s activities and associated relationships may pose to the rights of affected individuals and communities.

But one size does not fit all in a world of 80,000 multinational corporations, ten times as many subsidiaries and countless national firms, many of which are small-and-medium-sized enterprises. My aim is to provide companies with universally applicable guiding principles for meeting their responsibility to respect human rights and conducting due diligence, recognizing that the complexity of tools and the magnitude of processes they employ necessarily will vary with circumstances.

Considered in that spirit, human rights due diligence comprises four components: a statement of policy articulating the company’s commitment to

respect human rights; periodic assessments of actual and potential human rights impacts of company activities and relationships; integrating these commitments and assessments into internal control and oversight systems; and tracking as well as reporting performance.

Company-level grievance mechanisms can contribute in two ways: under the tracking and reporting component of due diligence they provide the company with ongoing feedback that helps it identify risks and avoid escalation of disputes; they can also provide remedy, a means of alternative dispute resolution.

But merely having a set of components of a due diligence process in place is no guarantee that the system will work. Therefore, I am also developing guidance points for their implementation. One example is that companies must understand that the responsibility to respect human rights is not a one-time transactional activity, but is ongoing and dynamic. Another is for companies to accept that, because human rights concern affected individuals and communities, managing human rights risks needs to involve meaningful engagement and dialogue with them. And a third is that, because a main purpose of human rights due diligence is enabling companies to demonstrate that they respect rights, a measure of transparency and accessibility to stakeholders will be required.

In an online consultation, I am exploring how to elaborate these components and processes further, along with other aspects of the corporate responsibility to respect: please check it out and add your views: www.srsgconsultation.org.

Why Bother?

Before concluding, let me address a question that may be on the minds of some of you: why bother? Doesn't all this just add burdens on business? My answer is decidedly no, for three reasons.

I've already noted the first: due diligence can be a game changer for companies. Knowing and showing is necessary for companies to demonstrate they respect human rights. If they don't know, and can't show, their claim is just that—a claim, not a fact.

Second, human rights due diligence can help companies lower their risks, including the risk of legal non-compliance. This point is a bit more complex, so let me proceed by way of example.

There are situations in which companies currently harm human rights and, at the same time, may be non-compliant with existing securities and corporate governance regulations. Why? Because they are not adequately

monetizing and aggregating stakeholder-related risks, and therefore are not disclosing and addressing them.

Such risks stem from community challenges and resistance to company operations, typically on environmental and human rights grounds. The evidence to date comes largely from the extractive and infrastructure sectors, especially where companies operate in conflict-affected or otherwise seriously contested contexts. But I suspect that such internal control and oversight gaps exist in other sectors as well.

Stakeholder-related risks to companies include delays in design, siting, permitting, construction, operation and expected revenues; problematic relations with local labor markets; higher costs for financing, insurance and security; reduced output; collateral impacts such as staff distraction and reputational hits; and possible cancellation, forcing a company to write off its entire investment and forgo the value of its lost reserves, revenues and profits—the last of which can run into the billions of dollars.

A Goldman Sachs study of 190 projects operated by the international oil majors indicates that the time for new projects to come on-stream has nearly doubled in the past decade, causing significant cost inflation. It attributes delays to projects' "technical and political complexity." An independent and confidential follow-up analysis of a subset of those projects indicates that non-technical risks accounted for nearly half of all risk factors faced by these companies, with stakeholder-related risks constituting the single largest category. It further estimated that one company may have experienced a \$6.5-billion "value erosion" over a two year period from such sources, amounting to a double-digit fraction of its annual profits. These are big numbers.

What seems to be happening is that these costs are atomized within companies, spread across different internal functions and budgets, and not aggregated into a single category that would trigger the attention of senior management and boards. But when added up, some of these risks undoubtedly would count as being "material" on even the narrowest definitions, and thus also would be of interest to shareholders and could involve compliance issues under securities regulations and corporate law.

This is a lose-lose-lose proposition: human rights are adversely impacted, serious corporate value erosion occurs, and disclosure requirements as well as directors' duties may be implicated. Human rights due diligence can avoid all three.

Third, conducting human rights due diligence also should provide corporate boards with strong protection against mismanagement claims by shareholders. And in the context of Alien Tort Statute and similar suits, proof that the company took every reasonable step to avoid involvement in the alleged violation can only count in its favor.

So I hope I've answered the "why bother" question satisfactorily – apart from the fact that it's the right thing to do.

Conclusion

I'm very pleased that the Protect, Respect and Remedy Framework as a whole, and the due diligence component specifically, have been well received by all the relevant stakeholder groups.

A number of individual countries have utilized the Framework in conducting their own policy assessments, ranging from Norway to the UK and South Africa. Several major global corporations are already realigning their due diligence processes based on the Framework. Civil society actors have employed the Framework in their analytical and advocacy work. Other UN Special Procedures have drawn on the Framework in their analysis of corporate issues, as has the UK government in findings under the OECD Guidelines.

I am liaising with the OECD as it updates its Guidelines for Multinational Enterprises; the International Finance Corporation as it revises its Performance Standards; the Human Rights Working Group of the UN Global Compact, in identifying best practices; and the European Commission, which is exploring new approaches to ensuring responsible behavior overseas by European firms.

I was asked to provide input for the human rights chapter of the ISO26000 social responsibility guidance; and I've presented the Framework to the National Human Rights Institutions' Business and Human Rights Working Group, the UN Treaty Bodies, the UN Permanent Forum on Indigenous Issues, and the Inter-American Commission on Human Rights.

From the outset of this mandate, I stated that there is no single silver bullet solution to the very complex business and human rights challenges. Instead, all social actors – states, businesses, and civil society – must learn to do many things differently. But those things must cohere and generate an interactive dynamic of cumulative progress – and that is precisely what the Protect, Respect and Remedy framework is intended to help achieve.

Thank you.