It is a pleasure to be back at Chatham House, where I was a research fellow many years ago. It was a fertile eighteen months, yielding not only numerous publications but also our son, born at the Royal Free Hospital. So this is a homecoming for me, for which I am grateful.

My thanks also go to the Confederation of British Industries and to the Business and Human Rights Resource Centre, for helping to orchestrate this event, and for their ongoing and invaluable assistance to the UN mandate from the very beginning.

I recently submitted a report to the Human Rights Council on how the business and human rights agenda can and should be managed more effectively going forward. The Economist magazine has reported that my proposals face “no significant opposition.” That sounded too much of a jinx to me, so I am making every effort to explain what I’ve done and why, including official discussions here in London.

To begin, it is important to remind ourselves that 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. But business can also do harm to the realization of rights by individuals and communities, or abuse rights altogether, and that concern is the focus of my mandate.

The issue of business and human rights burst into global public consciousness in the 1990s. Some of the early cases have acquired iconic status: Shell accused of complicity for standing by silently as the Nigerian military government executed a leader of community groups demonstrating against the company’s environmental degradation of the Delta region; BP
accused of being responsible for alleged acts of murder, disappearances, torture, rape, and forced displacement of communities by a Colombian army brigade protecting its installation; allegations of sweatshop conditions and child labor in Nike’s Indonesian, and the GAP’s Salvadorian, suppliers.

To create viable solutions to problems of any sort one needs to identify their causes and correlates. By now my team has analyzed nearly 400 public allegations against companies; we have followed dozens of court cases; and I have met personally with victimized indigenous peoples groups and other affected communities, with workers in global supply chains, and with labor leaders whose colleagues were killed by paramilitaries protecting company assets.

We find that no industry, and no region, has a monopoly on corporate abuses; all have been implicated. Moreover, it is clear that companies can have adverse effects on virtually all internationally recognized rights, not only a relatively narrow range of labor standards or issues related to communities in the proximity of a business operation. For example, think of telephone companies and internet services providers landing people in prison by revealing their identities to the authorities in certain countries.

Our studies also show that the worst instances of corporate-related human rights abuses occur where governance challenges are greatest: disproportionately in low income countries; in countries that often have just emerged from or still are in conflict; in countries where the rule of law is weak and levels of corruption high; and in connection with projects that have a large physical or social footprint. A significant fraction of the worst cases involves companies being complicit in human rights abuses by governments or various non-state actors.

At the same time, there has been considerable progress on the response side. We have documented extensively what’s new in how businesses, governments, and other social actors are attempting to manage the challenge, and have assessed what works, what doesn’t, and why.

For example, the universe of voluntary initiatives by companies and industry groups has expanded rapidly, especially among brand-sensitive or otherwise highly visible companies and sectors. Not surprisingly, some of the companies hit hardest were first movers. But a survey I conducted of the
Fortune Global 500 indicates that only about half of the firms that have adopted human rights policies say they had a bad experience themselves, indicating that learning from others’ mistakes is also at play.

Emerging market firms remain underrepresented in these initiatives, although growing numbers of them are finding their way to the UN Global Compact, a first port of call in corporate responsibility for developing country companies.

Numerous collaborative initiatives have emerged, involving business, civil society, and sometimes governments, often combining voluntary commitments with legal requirements, as in the Kimberley Process to stem the flow of conflict diamonds.

Market-based measures are becoming more widespread. They include public reporting, screening by socially responsible investment funds and large pension funds, as well as shareholder activism.

Complaints against companies can be brought to the OECD’s National Contact Points, and to the International Finance Corporation’s Ombudsman in relation to IFC projects.

Evolving international criminal law standards are being incorporated into domestic jurisdictions, expanding the web of potential legal liability of companies. More than forty cases have been brought against firms under the US Alien Torts Claims Act.

In the future, a larger number of domestic courts may be hearing cases against firms for possible involvement in international crimes, drawing on international standards. The jurisdictions in which this possibility exists are those that have incorporated the statute of the International Criminal Court into national law, and which also provide for corporate criminal liability. The cases would include alleged company involvement in war crimes, genocide, and crimes against humanity.

Each of these developments has strengths and weaknesses. But their overall problem is that they constitute clusters of unrelated fragments, and they don’t add up as parts of an overall systemic response with cumulative effects. That needs fixing. And that is what my report to the Council is intended to help achieve, in ways I will describe next.
In pursuing my mandate, I have conducted no fewer than fourteen multi-stakeholder consultations, on five continents. One common theme has run throughout. Every stakeholder group, despite their other differences, has expressed the urgent need for a common framework of understanding, a foundation on which thinking and action can build in a cumulative fashion.

In response, I have proposed such a framework in my latest report to the Council. It is organized around the three foundational principles of “protect, respect, and remedy”: the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies. The state duty to protect is critical because it lies at the very core of the international human rights regime; the corporate responsibility to respect because it is the basic expectation society has of business; and access to remedy, because even the most concerted efforts cannot prevent all abuse.

The three principles form a complementary whole in that each supports the others in achieving sustainable progress.

The first element is to bring the state back in. It is often stressed that governments are the most appropriate entities to make the difficult balancing decisions required to reconcile different societal needs. But in the area of business and human rights, I question whether governments have got the balance right. My research and consultations indicate that most governments take a narrow approach to managing the business and human rights agenda. It is often segregated within its own conceptual and (typically weak) institutional box—kept apart from, or heavily discounted in, other policy domains that shape business practices, including commercial policy, investment policy, corporate law, and securities regulation. This is roughly equivalent to a company setting up a corporate social responsibility unit in splendid isolation from its core business operations. Inadequate domestic policy coherence is replicated internationally.

My main recommendation for states is that human rights concerns in relation to business need to be pushed beyond their currently narrow institutional confines. Governments need to ensure that human rights compliance becomes part of defining an ethical corporate culture. And they need to consider human rights impacts when they sign trade agreements or investment treaties, and when they provide export credit or investment
guarantees for overseas projects in contexts where the risk of human rights challenges is known to be high.

The second component is the corporate responsibility to respect human rights—meaning, in essence, to do no harm. In addition to legal compliance, companies are also subject to what is sometimes called a social license to operate—that is to say, to prevailing social expectations, which typically evolve more rapidly than the law. The baseline social expectation of companies is that they respect rights. Indeed, this corporate responsibility is recognized by virtually all voluntary initiatives companies have undertaken, and it is stipulated in several soft law instruments.

Yet how do companies know they respect human rights? Do they have systems in place enabling them to support the claim with any degree of confidence? It turns out that relatively few do. Accordingly, my report lays out the elements of a due diligence process for companies to manage the risk of human rights harm with a view to avoiding it.

The scope of due diligence should include not only a company’s own activities, but also the relationships connected with them—relationships with governments and other non-state actors. That can help companies avoid complicity issues as well.

Access to remedy is the third principle. Even where institutions operate optimally, disputes over adverse human rights impacts of companies are likely to occur, and victims will seek redress. Currently, access to formal judicial systems is often most difficult where the need is greatest. And non-judicial mechanisms are seriously underdeveloped—from the company level up through national and international spheres. My report notes some desirable changes on the judicial front. It identifies criteria of effectiveness for non-judicial grievance mechanisms, and draws on them to suggest ways of strengthening the current system and narrowing the gaps in it.

So that, in very truncated form, is what we have done and where we are today. The Human Rights Council will debate my report in early June, and decide on next steps. Experience has taught me never to predict the outcome of intergovernmental deliberations. But while the Economist article I referred to earlier surely exaggerates, most signals do seem positive.
The core human rights NGOs have issued a constructive statement acknowledging that the mandate has moved the debate forward. The major global business associations have expressed their support for our work, as has the Business Leaders Initiative on Human Rights, comprising thirteen global firms whose aim is to find "practical ways of applying the aspirations of the Universal Declaration of Human Rights within a business context." A leading Wall Street law firm has issued a legal commentary, focusing especially on the corporate responsibility to respect human rights, concluding that “the basic concepts embodied in the Report are sound and should be supported by the business community…”

Finally, having just met with Human Rights Council members in an informal session earlier this week, I can report that the reception in Geneva, too, was positive. The Council will consider a resolution in June to extend the mandate in order to move the discussion from the level of general principles, on which we now appear to have consensus, to greater operational detail.

One of the core attributes of globalization is the increased integration of economic forces, as we have just witnessed in the meltdown of credit markets and soaring oil prices. Firms increasingly operate globally, and even local firms increasingly view themselves as part of a global whole. In contrast, the world’s social fabric and political institutions have not kept pace. History teaches us that such misalignments are not sustainable. Corporate-related human rights abuses are the canary in the coal mine, signaling that all is not well.

The international community is still in the early stages of adapting the human rights regime to provide more effective protection to individuals and communities against corporate-related human rights harm. There is no single silver bullet solution to the many challenges in the business and human rights domain. Instead, all social actors—states, businesses, and civil society—must learn to do many things differently. But those things must cohere and become cumulative, if they are to make a difference. That is what the “protect, respect, and remedy” framework is intended to help achieve.

Thank you.