Mr. President, Excellencies, Ladies and Gentlemen,

One year ago, this Council welcomed the “protect, respect and remedy” policy framework for better managing the human rights challenges posed by transnational corporations and other business enterprises. The Council also extended my mandate by another three years, tasking me with providing “practical recommendations” and “concrete guidance” to States, businesses and other social actors on the framework’s implementation. I am honored and humbled by your continued confidence and support.

You will recall that the policy framework rests on three complementary 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 in essence means to act with due diligence to avoid infringing on the rights of others; and greater access by victims to effective remedy, judicial and non-judicial.

My 2009 report provides an update on work streams I have begun in order to fulfill the new mandate. I have also submitted an Addendum clarifying the nature of state obligations to provide access to remedy for human rights abuses by business.

As in the past, I am relying heavily on intensive research and extensive consultations: I have already convened several multi-stakeholder expert workshops and two major regional consultations, one in New Delhi, the other in Buenos Aires. I am very grateful to the governments of India and Argentina for facilitating the regional meetings as well as for highly informative bilateral discussions.

Mr. President,

Today, policymakers everywhere are focused on restoring the global financial system and restarting the engine of the real economy. Even countries that were relatively insulated from the original financial sector meltdown, including the majority of developing countries, are hard hit by its effects. In the face of what may be the worst economic downturn in a century, some may ask: is this the appropriate time to be addressing business and human rights? My answer is: there has never been a more critical time to do so, for three reasons.
First, human rights are most at risk in times of crisis, and economic crises pose a particular risk to economic and social rights. Any gains governments believe can be had by lowering human rights standards for businesses are illusory, and no sustainable recovery can be built on so flimsy a foundation. For their part, companies must weigh any corresponding temptations against the impact of declining public confidence in business, growing populism and an impending shift in regulatory environments.

Second, the same types of governance gaps and governance failures that produced the current economic crisis also constitute the permissive environment for corporate wrongdoing in relation to human rights. From my first report to the Commission on Human Rights in 2006 onwards, I have maintained that the widening gaps between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences, were unsustainable. For markets to work optimally they must have adequate institutional underpinnings and be embedded in broader social values. I employed this framing to explain challenges related to business and human rights. We now know that it holds for the world political economy as a whole.

Third, business and human rights matters more than ever because progress on this front directly contributes to the transition we all seek toward more inclusive and sustainable economic growth. The solutions for the economic crisis and for business and human rights point in the same direction: governments adopting policies that induce more responsible corporate behavior, and companies adopting strategies that reflect the inescapable fact that their own long-term prospects are tightly coupled with society’s well-being.

Permit me to outline some of the work streams I have begun in order to develop guiding principles under each of the three pillars.

Under the **State duty to protect**, I am currently examining four sets of issues.

1. Governments need to preserve their ability to meet their international human rights obligations. For example, they need to avoid signing on to overly broad investment agreements that may subject them to binding international arbitration if a foreign investor claims that new regulations or policies adversely affect its investment, which may require the government to make substantial compensation payments to the investor. Investor protection is essential, but so, too, are other *bona fide* public interest objectives, including human rights. Accordingly, I am exploring the feasibility of developing guidance for investment contracts that ensure investor protection while also safeguarding the ability of States to discharge their human rights duties.
2. Governments need to take human rights into account when they do business with business—whether as owners, investors, insurers, procurers, or simply promoters. Governments can adopt all the resolutions in the world, but if they don’t walk the walk then their talking the talk will lack credibility. One key area is the role of export credit and investment insurance agencies. Their active engagement in the business and human rights agenda helps home States to avoid the untenable position of being associated with possible overseas corporate abuse. And it can provide much-needed support to host States that lack the capacity to implement fully an effective regulatory environment on their own.

3. Even when governments are not connected directly to a business venture, they need to foster a corporate culture respectful of human rights at home and abroad. Here I am examining two areas of regulation and policy that directly shape business activity: corporate law, which is typically treated as a separate universe from human rights, and efforts to promote corporate social responsibility.

Regarding corporate law, nineteen major law firms around the world are surveying more than forty jurisdictions for the mandate, mapping the extent to which corporate law currently is an enabler of or impediment to corporate consideration of their human rights impact.

In terms of CSR policies, I have asked all UN Member States a series of questions on the content and form of such policies, if any exist, particularly their consideration of human rights. Please encourage your government to respond.

On the basis of this research and follow-up consultations, I hope to be able to propose recommendations for your consideration.

4. The resolution extending my mandate also asked me to take into account the role of international cooperation. Nowhere is cooperation more critical than in conflict situations. The international human rights regime cannot possibly be expected to function as intended where societies are torn apart by civil war or other major strife. Therefore, I am exploring the possibility of working with an informal group of home and host States to generate ideas about effective approaches and tools states could employ to help guide companies operating in conflict affected areas.

The framework’s second pillar is the corporate responsibility to respect human rights, the minimum requirement for companies in all situations. One major task here is to provide more concrete guiding principles for the human rights due diligence processes by which companies are able to demonstrate to themselves and other stakeholders that they respect human rights. This will be done through online and face-to-face consultations beginning this autumn.
Another task is to help identify constructive paths toward resolving some of the major dilemmas companies currently face—such as under what situations they may have human rights responsibilities greater than respect, or when they operate in situations where national law significantly contradicts and does not offer the same level of protection as international human rights standards.

The third pillar is access to remedy – without which efforts to protect and respect rights may be rendered weak or even meaningless. The mandate’s ongoing work includes both judicial and non-judicial remedy.

As part of their duty to protect, States are required to take appropriate steps to investigate, punish and redress corporate-related abuse of the rights of individuals within their territory and/or jurisdiction—in short, to provide access to remedy. Significant barriers to accessing effective judicial remedy persist, and most are not unique to business and human rights. My focus is on barriers that are particularly salient for victims of corporate-related human rights abuses. On the basis of research and consultations, I hope to be able to present possible options to you for addressing these barriers.

Remedy is sometimes equated entirely with punishment for wrongdoing. In my framework, it also includes prevention and early resolution of disputes before they escalate and greater harm occurs. Accordingly, I am working with existing non-judicial grievance mechanisms to improve them, while also exploring options for new ones at company, national and international levels. This work stream includes piloting grievance mechanisms at the company level in four industries; consulting with the International Coordinating Committee for National Human Rights Institutions on how to expand their contributions; and working closely with a number of international bodies involved in resolving corporate-related grievances. The mandate has also launched an online resource, available in multiple languages at www.BASESwiki.org, for sharing, assessing and discussing information about non-judicial mechanisms that address disputes between companies and their external stakeholders.

Mr. President,

It is gratifying that the “protect, respect and remedy” framework already enjoys considerable uptake by all stakeholder groups, even before its further operationalization. At the same time, I am under no illusion that our journey has reached its destination. I would put it this way: we have made it to base-camp, and through the clouds we can catch glimpses of the summit ahead. For the first time ever, we have a common platform of differentiated yet complementary responsibilities on the basis of which to move the business and human rights
agenda forward. But a steep climb still lies ahead. I look forward to completing the next steps with you.

Thank you, Mr. President and distinguished delegates.

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