

Libertas Working Paper, 1/2008



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Libertas Working paper 1/2008

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Corporate responsibility for human rights

A Review Essay on the 2008 report of the UN Special Representative of the Secretary-General on the issue of human rights and Transnational corporations and other business enterprises, Professor John Ruggie to the United Nations Human Rights Council, "Protect, Respect and Remedy: a Framework for Business and Human Rights" AH/HRC/8/5, 7 April 2008.

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AUTHOR, TITLE, LIBERTAS WORKING PAPER, PAPER NO./YEAR [URL]

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I. Introduction

Professor John Ruggie, the United Nations Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises (hereinafter J. Ruggie), submitted his final report under the title “*Protect, Respect and Remedy: A Framework for Business and Human Rights*” to the Human Rights Council on 3 June 2008.¹ Increasing international attention has, in the last twenty years, been devoted to the impact that corporations have on human rights.² There has been a growing body of allegations that the impact of activities of corporations on communities in developing countries, particularly in Africa, Asia and in Latin America, can result in violations of human rights. J. Ruggie’s 2008 report, and its contributory documents, have their weaknesses, but they can nevertheless be described as contributing significantly to the clarification of the relationship between the business community and national and international human rights standards.³ In contextualizing the report, J. Ruggie succinctly describes the underlying challenge as follows:

“The root cause of the business and human rights predicament today lies in the governance gaps created by globalization - between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge.”⁴

The aim of this short essay is to participate in the ongoing debate as to whether corporations have human rights obligations and responsibility in national law and in international law. As J. Ruggie correctly recognizes: “there is no single silver bullet solution ... in the business and

¹ *Protect, Respect and Remedy: A Framework for Business and Human Rights*, A/HRC/8/5 (7 April 2008) (hereinafter J. Ruggie’s 2008 report), available at <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>. All his materials are available at <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>.

² See, for example, the Economist, *A Special Report on Corporate Social Responsibility*, 19 January 2008.

³ A note of caution must be made. This essay does not attempt to cover all the content of J. Ruggie’s 2008 report.

⁴ J. Ruggie’s 2008 report, para. 3.

human rights domain.”⁵ This paper follows the line that corporations have substantive human rights obligations and responsibility to respect, protect and fulfil human rights. As a way of providing a background for the main part of this paper, section II will discuss J. Ruggie’s mandate and his 2006 and 2007 reports to the United Nations Human Rights Council. This is followed by a concise description of the 2008 report in section III, whereas section IV examines the recommendations of the report. Firstly, however, this paper analyzes the 2008 report and aims to establish whether this report can be said to have contributed to the recent clarifying and setting the standard in the field of business and human rights.

II. Background

The present section analyses the background of the UN SRSG on Business and Human Rights.⁶ This mandate was established to overcome a stalemate that arose due to disagreement leading to non-adoption of the UN Norms on the Responsibilities of Transnational Corporations and Other Business enterprises with regard to Human Rights⁷ within the former UN Commission on Human Rights. The arguments *pro et contra* UN Norms reflect varying opinions on the actual state of international law relating to business and human rights. Some commentators described the Norms as “restatement of international legal principles applicable to companies”⁸, whereas others submitted the response that the “norms exercise became engulfed by its own doctrinal excesses.”⁹

⁵ Id. 7

⁶ All his reports are available at <http://www.businesshumanrights.org/Gettingstarted/UNSpecialRepresentative>.

⁷ Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003).

⁸ David Weissbrodt and Muria Kruger, ‘Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’, 97 AJIL (2003) 901, 903.

⁹ J. Ruggie, Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, U.N. Doc. E/CN.4/2006/97 (2006). 59. He further suggests that “even leaving aside the highly contentious though largely symbolic proposal to monitor firms and provide for reparation payments to victims, its exaggerated legal claims and conceptual ambiguities created confusion and doubt even among many mainstream international lawyers and other impartial observers.

In April 2005, the former United Nations Commission on Human Rights requested the UN Secretary-General to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises, for an initial period of two years, and asked him to submit an interim report to the Commission at its sixty-second session and a final report at its sixty-third session, containing views and recommendations for the consideration of the Commission.¹⁰ In July 2005, John Ruggie, a professor at the John F. Kennedy School of Government of Harvard University, was appointed Special Representative of the UN Secretary General. The Special Representative was given a mandate to identify and clarify standards of corporate responsibility and accountability, to research and elaborate upon concepts such as “complicity” and “sphere of influence”, and to compile the best practices of states and corporations – in general, to provide a comprehensive mapping of current international standards and practices regarding business and human rights.¹¹ The Special Representative submitted his interim report in 2006, his second report in February 2007 and his final report in June 2008.

A. 2006 and 2007 reports of the UN SRSG on business & human rights

The UN SRSG on Business and Human Rights mapped out, clarified and researched in his first two reports the fundamental legal and policy issues of corporate responsibility and accountability.¹² The reports appear to identify standards currently available for holding corporations responsible. They acknowledge that, in many cases, countries are failing to meet their obligations to protect people from human rights violations by corporations. In this light, the 2006 report framed the fundamental issues for the relationship between business and human

¹⁰ See Resolution 2005/69 of the UN Human Rights Commission. John Ruggie asked for a one-year extension of the mandate on 28 March 2007 and the Human Rights Council granted his request to extend until June 2008. Resolution 2005/69 invited him to submit his “views and recommendations” for consideration by the Council. Both reports are devoted to mapping evolving standards, practices, gaps and trends.

¹¹ *Id.*

¹² E/CN.4/2006/97; A/HRC/4/35 and addenda 1-4; A/HRC/4/74.

rights. It identified three broad contextual factors in the evolving business and human rights relationship: “institutional features of globalisation; overall patterns in alleged corporate abuses and their correlates; and their characteristic strengths and weaknesses of existing responses established to deal with human rights challenges.”¹³ Also, it attempted to frame “an approach for agenda to move forward effectively.”¹⁴ In this context, it examined the normative value of the UN Norms for Corporations and it concluded that “flaws of the Norms make ... a distraction from rather than basis for moving the SRSG’s mandate forward.”¹⁵ What is more, the SRSG noted that “divisive debate over the Norms obscures rather than illuminates promising areas of consensus and cooperation among business, civil society, governments, and international institutions with respect to human rights”.¹⁶ Lastly, the 2006 report argued for a principled form of pragmatism in the promotion and protection of human rights as they relate to business. It defines a principled pragmatism as “an unflinching commitment to the principle of strengthening the promotion and protection of human rights as it relates to business, coupled with a pragmatic attachment to what works best in creating change where it matters most – in the daily lives of people.”¹⁷ In this context, the 2007 report further investigated standards of corporate responsibility and accountability, state responsibility in regulating and adjudicating corporate activities and corporate complicity.¹⁸ J. Ruggie concluded that States have a duty to protect against human rights abuses by third parties, a key obligation under the United Nations core

¹³ J. Ruggie’s 2006 report, at 8.

¹⁴ *Id.* 54.

¹⁵ *Id.* 69.

¹⁶ *Id.* 69.

¹⁷ J. Ruggie’s 2008 report. *Id.* 81.

¹⁸ J. Ruggie, “Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts”, Report of the Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises, A/HRC/4/035, 9 February 2007.

human rights treaties, regional human rights conventions, and customary international law.¹⁹ In his 2007 report, J. Ruggie observed that evidence suggests that corporations operating in only one country, and state-owned corporations, are often worse offenders than their highly visible private sector transnational counterparts. He then recognized that the most consequential legal development by far had been the growing potential for companies to be held liable for international crimes in national jurisdictions. Also, the 2007 report identified some “best” practices by states and companies.

III. The Framework

Having briefly described the two previous reports of J. Ruggie on business and human rights, attention will now be turned to a description and an analysis of the recent 2008 report on business and human rights. In the 2008 report, J. Ruggie proposes a three-pillar framework for corporate accountability for human rights, which he describes as “Protect, Respect and Remedy”. The framework “rests on differentiated but complementary responsibilities”²⁰, which include:

- the state duty to protect against human rights violations by or involving corporations;
- the corporate responsibility to respect human rights; and
- effective access to remedies.

J. Ruggie argues that the framework can assist governments, companies and civil society “to reduce the adverse human rights consequences of these misalignments.”²¹ The next paragraphs describe each of three components of the framework “Protect, Respect and Remedy”.

¹⁹ United Nations Press Release, 28 March 2007, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, see <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/19207DD921EE5D22C12572AC00702E2C?opendocument>, last visited 14 May 2007.

²⁰ J. Ruggie’s report, 9.

²¹ *Id.* 17. See also John Knox, *Concept Paper on Facilitating Specification of the Duty to Protect*, Prepared for Special Representative John G. Ruggie, 14 December 2007, <http://www.business-humanrights.org/Documents/Knox-Specification-of-Duty-to-Protect-14-Dec-2007.pdf>.

A. The State Duty to Protect Against Abuses by Non-State Actors

The report primarily recognizes the responsibility of States in the protection and promotion of human rights. This obligation requires that States “take all necessary steps to protect against such abuse, including to prevent, investigate, and punish the abuse, and to provide access to redress.”²²

J. Ruggie further observed that “governments are uniquely placed to foster corporate cultures in which respecting rights is an integral part of doing business”.²³ Also the report notes that “where States lack the technical or financial resources to effectively regulate companies and monitor their compliance, assistance from other States with the relevant knowledge and experience offers an important means to strengthen the enforcement of human rights standards”.²⁴ The report mentions another controversial issue, which is whether the home state of nationality of the corporation should be held responsible for human rights violations by its corporation abroad. It appears, however, that the debate is divided on this issue.²⁵ All in all, the report appears to suggest that States have primary responsibility in protecting human rights from violations by or involving corporations.

B. The corporate responsibility to respect human rights

The 2008 report acknowledges that corporations have a responsibility to respect human rights.²⁶

J. Ruggie also confirms that “the corporate responsibility to respect exists independently of States’ duties.”²⁷ J. Ruggie’s 2008 report rejects the imposition of a limited list of human rights on corporations, arguing that business can “affect virtually all internationally recognised

²² J. Ruggie’s 2008 report, 10. 19.

²³ J. Ruggie’s report 31-32.

²⁴ *Id.* 45.

²⁵ *Id.* 14. See, for example, Robert McCorquodale and Penelope Simons, Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law 70 (4) Modern Law Review [MLR] 598 (2007).

²⁶ J. Ruggie notes “In addition to compliance with national laws, the baseline responsibility of companies is to respect human rights.” J. Ruggie’s 2008 Report, para. 54.

²⁷ *Id.* 55.

rights”.²⁸ Corporations can discharge the responsibility to respect by employing *due diligence*, a concept which “describes the steps a company must take to become aware of, prevent and address adverse human rights impacts”.²⁹ Further, the report notes that “because the responsibility to respect is a baseline expectation, a company cannot compensate for human rights harm by performing good deeds elsewhere”.³⁰ The report suggests that determining the scope of due diligence includes an inductive and fact-based process directed by three sets of factors.³¹ The first includes »the country contexts in which their business activities take place, to highlight any specific human rights challenges they may pose.«³² The second factor involves »what human rights impacts their own activities may have within that context - for example, in their capacity as producers, service providers, employers, and neighbours.«³³ The third requires a corporation to assess »whether they might contribute to abuse through the relationships connected to their activities, such as with business partners, suppliers, State agencies, and other non-State actors.«³⁴ The report also notes that “companies need to adopt a human rights policy³⁵ and suggests that “the corporate responsibility to respect human rights includes avoiding complicity.”³⁶ The next section briefly examines the “Remedy” part of tripartite framework for business and human rights.

C. Access to remedies

²⁸ *Id.* para. 6. Paragraph 52 of the Report includes a list of nearly thirty previously recognized rights that businesses were alleged to have “impacted” between 2000-07. This list is drawn from a study conducted for the mandate of 320 cases of alleged human rights abuses by corporations. The study was submitted as Addendum 2 to the Report: *A Survey of the Scope and Pattern of Alleged Corporate-Related Human Rights Abuse*, A/HRC/8/5/Add.2 (23 May 2008), available at <http://www.reports-and-materials.org/Ruggie-2-addendum-23-May-2008.pdf>.

²⁹ *Id.* 56. Due diligence is “a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it.” J. Ruggie’s 2008 report. 25

³⁰ *Id.* 17.

³¹ *Id.* 57.

³² *Id.* 57.

³³ *Id.* 57.

³⁴ *Id.* 57.

³⁵ *Id.* 60.

³⁶ *Id.* 73.

Victims of human rights violations by or involving corporations have at their disposal only a few effective legal avenues for enforcing corporate responsibility for human rights. J. Ruggie's 2008 report acknowledges that "judicial mechanisms are often under-equipped to provide effective remedies for victims of corporate abuse".³⁷ As progress is often slow and victims are often left without any recourse to remedy, J. Ruggie observes that "States should strengthen judicial capacity to hear complaints and enforce remedies against all corporations operating or based in their territory, while also protecting against frivolous claims. States should address obstacles to accessing justice, including for foreign plaintiffs, especially where alleged abuses reach the level of widespread and systematic human rights violations."³⁸ What is more, Professor J. Ruggie confirms that "state regulation proscribing certain corporate conduct will have little impact without accompanying mechanisms to investigate, punish and redress abuses".³⁹ The report also notes that effective complaints mechanisms within corporations form part of the responsibility to respect corporations. Such mechanisms would have to comply with the principles of accessibility, legitimacy, predictability, equitability, human rights standards compatibility and transparency. It appears, however, that the report does not make clear what has to be done to move beyond the weakness of the current normative framework to effectively tackle the allegation of human rights violations by or involving corporations. Nonetheless, J. Ruggie correctly observed that victims of corporate human rights violations must be provided with adequate information on available mechanisms and how to access them.

IV. Recommendations

³⁷ *Id.* 88.

³⁸ *Id.* 91.

³⁹ *Id.* 82.

Professor J. Ruggie admits himself that “the report in fact makes only one single solitary recommendation: that the Human Rights Council welcomes the “protect, respect, and remedy” framework and invite its further operationalization.”⁴⁰ It appears, nonetheless, that the report indirectly offers several recommendations that have often been raised during past years in the field of business and human rights.

- Human rights treaty bodies should make recommendations to States regarding their duty to protect against human rights abuses by business actors.
- The Office of the High Commissioner for Human Rights can assist in “capacity-building in States that may lack the necessary tools by providing technical advice.”⁴¹
- The OECD Guidelines for Multinational Enterprises should be revised because “in key respects they have fallen behind the voluntary standards of many companies and business organizations”⁴²
- Creating a “well-resourced” “global ombudsman office that could receive and handle complaints.”⁴³
- It argues that the Human Rights Council has the unique ability to contribute by setting expectations and aspirations that will close the governance gaps between business activity and human rights observance.⁴⁴
- Improvement of national complaints mechanisms.⁴⁵

Notwithstanding the relative vagueness of the legislation and, in particular, the law on access to justice for victims of corporate violations, the business and human rights field has, arguably,

40 The statement by John Ruggie, Special Representative of the UN Secretary-General on business & human rights, is in response to the June 2008 paper by MISEREOR / Global Policy Forum: “Problematic Pragmatism – The Ruggie Report 2008: Background, Analysis and Perspectives” [PDF].

41 J. Ruggie’s 2008 report, 43.

42 *Id.* 46.

43 The International Organisation of Employers (IOE), the International Chamber of Commerce (ICC) and the Business and Industry Advisory Committee to the OECD (BIAC), have submitted very negative responses to proposals to create a global ombudsman institution. They note: “We do, however, have serious reservations about the idea of establishing a global ombudsman function as part of the business and human rights mandate. There are no convincing arguments that establishing an international ombudsman – even if it were practical and possible - would do anything to address the lack of access to effective and impartial judicial mechanisms at the national and local levels that the Special Representative mentions.” Joint initial views of the International Organisation of Employers (IOE), the International Chamber of Commerce (ICC) and the Business and Industry Advisory Committee to the OECD (BIAC) to the Eighth Session of the Human Rights Council on the third report of the Special Representative of the UN Secretary-General on Business and Human Rights, May 2008. (www.reports-and-materials.org/Letter-IOE-ICC-BIAC-re-Ruggie-report-May-2008.pdf).

44 J. Ruggie’s 2008 report, 107.

45 *Id.* 21.26.

through the efforts of civil society groups, corporations and governments, reached the next level in its development. What is important for further development is that all actors from different parts of society must learn to cooperate in learning, advocacy and policy implementation without forgetting the perspective of the victims who allegedly suffered human rights violations by or involving corporations. Finally, J. Ruggie aptly suggests that “the United Nations is not a centralized command-and-control system that can impose its will on the world - indeed it has no “will” apart from that with which Member States endow it. But it can and must lead intellectually and by setting expectations and aspirations.” All in all, it appears that much remains to be done in clarifying standards in the field of business and human rights. The next part of this paper turns to an analysis of the 2008 report with the aim of assessing its contribution to the on-going debate in the field of business and human rights.

V. Analysis of the Report

Having strolled through J. Ruggie’s 2008 report “*Protect, Respect and Remedy: A Framework for Business and Human Rights*” it is now time to draw some, at least preliminary, conclusions as to the value of the report. This section therefore briefly analyses the report. The first observation is that the 2008 report has triggered different responses. Whereas most responses, particularly from the side of state governments, have so far been positive⁴⁶, there are

⁴⁶ Christina Ochoa; The 2008 Ruggie Report: A Framework for Business and Human Rights, ASIL Insight, June 18, 2008, Volume 12, Issue 12. Intl. Council on Mining & Metals: "ICMM welcomes Ruggie report", 12 Jun 2008; Geoffrey Chandler: "Business and human rights: Ruggie report – Finally, let the real work begin", in Ethical Corporation, 2 Jun 2008; Business Leaders Initiative on Human Rights: Initial statement on the report [PDF], May 2008; Intl. Org. of Employers, Intl. Chamber of Commerce, Business & Industry Advisory Committee to OECD: Initial views on the report [PDF], May 2008; Martin Lipton & Kevin S. Schwartz of Wachtell, Lipton, Rosen & Katz: "A United Nations Proposal Defining Corporate Social Responsibility For Human Rights" [PDF], 1 May 2008

also some responses which offer a critical perspective on the report.⁴⁷ While the report correctly argues that corporations can affect all human rights, it appears that the report awkwardly avoids questions as to whether there should be some minimum fundamental human rights obligations of corporations, which could then form a normative foundation and a starting point for regulation of corporations in relation to other human rights. This is not only to limit the obligations of corporations for fundamental human rights, but also to set out a normative floor of human rights obligations, which each and every corporation would be required to comply with. It has been argued that such an approach could be employed on the basis of practicality - the regulations must start at some point. Such group of rights would be open-ended and would be employed only for pragmatic reasons.

In addition, the report correctly identifies some of the problems and challenges in the field of business and human rights. It lacks, however, suggestions for solutions of the conundrum of corporate responsibility. Also, it may appear that the framework “protect, respect and remedy” does not offer *the* right answer for explaining the normative framework of corporate responsibility. What it is more; J. Ruggie does not attempt to explain how his proposed framework relates to the generally accepted framework under international human rights law, where state obligations are usually classified into three categories: the obligation to respect, the

⁴⁷ Elisabeth Strohscheidt and Jens Martens, *Problematic Pragmatism The Ruggie Report 2008: Background, Analysis and Perspectives*, June 2008 MISEREOR and Global Policy Forum Europe; Joint NGO statement on the report, 20 May 2008, signatories are: Action Aid, Amnesty Intl., EarthRights, Friends of the Earth, Intl. Federation for Human Rights (FIDH), ESCR-Net, Human Rights Watch, Intl. Commission of Jurists, Oxfam Intl., Rights & Accountability in Development, Women's Environment and Development Organization (WEDO); Olufemi Amao; Review of the report of the Special Representative of the Secretary-General on the issue of human rights and Transnational corporations and other business enterprises, Professor John Ruggie to the United Nations Human Rights Council, “Protect, Respect and Remedy: a Framework for Business and Human Rights” HRC/8/5, 7 April 2008 - http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1131682. Peter Davis, Political Editor, Ethical Corporation: "Business and human rights: Ruggie report – Ignore human rights at your peril", 2 Jun 2008.

obligation to protect and the obligation to fulfil.⁴⁸ J. Ruggie nonetheless recognizes that corporations have obligations and responsibility to respect (“obligation to do no harm”), but he refrains from addressing the question as to whether corporations also have obligations and responsibility to protect and fulfil fundamental human rights of individuals.⁴⁹ This is somehow surprising, particularly as some corporations have already recognized that they have also obligations to protect and fulfil human rights.⁵⁰ In this light, it may well be argued that not only do states have obligations to respect, protect and fulfil, but also that corporations have obligations to respect, protect and fulfil. Moreover, it can be argued that corporations have obligations to protect human rights. In other words, an obligation to protect would mean that corporations are obliged to adopt internal regulations and take other measures to prohibit and prevent FHR violations *internally*, in their own activities, but also *externally*, in business relationships with third parties (subsidiaries, contractors, sub-contractors and business partners), throughout their supply chains. On the other hand, the obligation to fulfil FHRs would require that a corporation adopts a human rights policy and internal codes of conduct that address human rights challenges and this would include measures on how to prevent and respond to FHR violations. Similarly, the

⁴⁸ For a detailed discussion on tripartite human rights typology see: Asbjørn Eide, *Right to Adequate Food as a Human Right*, Human Rights Study Series No 1, United Nations publication (Sales No. E.89.XIV.2) (United Nations, New York, 1989); Eide, *The right to adequate food and to be free from hunger -- Updated study on the right to food, submitted by Mr. Asbjørn Eide in accordance with Sub-Commission decision 1998/106*, UN Doc E/CN.4/Sub.2/1999/12; Magdalena Sepulveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (Intersentia, 2003). See also Ida Elisabeth Koch, *Dichotomies, Trichotomies or Waves of Duties?*, Human Rights Law Review 2005 5(1):81-103. Brigit C.A Toebe, *The Right to Health as a Human Right in International Law*, Antwerpen, Groningen, Oxford: Intersentia, Hart Publishers, 1999. Chapter 4. G.J.H. van Hoof: “Legal nature of economic, social and cultural rights: a rebuttal of some traditional views”, in: *The right to food*, P. Alston and K. Tomaševski (eds.) Martinus Nijhoff Publishers, 1994, 106-108. Nicola Jägers, *Corporate human rights obligations*, Intersentia, 2002, chapter 4. Ernst-Ulrich Petersmann, On ‘Indivisibility’ of Human Rights, European Journal of International Law 2003 14(2):381-385.

⁴⁹ J. Ruggie’s 2008 report suggests that corporate “responsibilities cannot and should not simply mirror the duties of States.”⁵³

⁵⁰ BP: Promoting security and human rights: “We recognize that we also have a responsibility to contribute to protecting the security of the communities where we operate. We have therefore continued our work to implement the Voluntary Principles on Security and Human Rights, which aim to help extractive industry companies maintain the safety and security of their operations in a framework that upholds respect for human rights.” <http://www.bp.com/sectiongenericarticle.do?categoryId=9022092&contentId=7044181>.

UN Norms for Corporations recognize much wider obligations of corporations: “Within their respective sphere of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights (...).”⁵¹ The introduction of the framework “protect, respect and remedy” cannot, therefore, be described as a normative framework for regulation of corporations, but, at most, as a policy framework. All in all, it may appear that the proposed framework leaves much to be clarified in the future, particularly in relation to the nature of the obligations of corporations under human rights law.

It appears that the report is far from an authoritative document on business and human rights, as some commentators have attempted to describe it.⁵² Nonetheless, it must be recognized that Professor John Ruggie produced an impressive collection of materials on business and human rights, having received contributions from major corporations, corporate law firms, NGOs, and international institutions. Taken together, these documents have mapped out a comprehensive understanding of the challenges facing the field of business and human rights. It appears, however, that all three reports and complimentary documents have failed to identify and propose an appropriate answer and response to human rights violations by or involving corporations. This becomes even more apparent when one investigates the normative value of reports from a victim-oriented perspective.

Several leading international non-governmental organisations have, in the past, expressed their concerns regarding overemphasizing voluntary initiatives for corporate responsibility since “initiatives lack credibility because they fail to ensure that the principles which they advocate are

⁵¹ Christina Ochoa; The 2008 Ruggie Report: A Framework for Business and Human Rights, ASIL Insight, June 18, 2008, Volume 12, Issue 12.

⁵² Christina Ochoa; The 2008 Ruggie Report: A Framework for Business and Human Rights, ASIL Insight, June 18, 2008, Volume 12, Issue 12.

upheld in practice.⁵³ In a similar vein, they noted that “an over-reliance on voluntary initiatives as a means of safeguarding the human rights of the victims of corporate human rights abuses would be both inappropriate and inadequate.”⁵⁴ Action Aid, for example, suggested that J. Ruggie appears to be advocating a self-regulatory approach favouring voluntary initiatives – such as those emerging in the global mining industries with the certification of non-conflict diamonds – rather than tougher global legislation.⁵⁵ All in all, J. Ruggie appears to concentrate on producing a solid and objective evidentiary foundation in the light of the fact that factual claims about corporate obligations in the prior debate were so entangled with normative preferences and institutional interests. However, it may appear that the reports afforded him little opportunity to develop the “views and recommendations” he was invited to submit. Accordingly, this consideration should rightly form part of his future mandate.

VI. Conclusion

It appears that the report promotes “corporate cultures in which respecting rights is an integral part of doing business.” As J. Ruggie's 2008 report notes in the opening sentence: “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”.⁵⁶ The question is what is the added value of the report? The report correctly identifies the challenges and the need for corporate responsibility for human rights. It seems, however, that its suggestions do not offer comprehensive answers as to how corporations should be best regulated

⁵³ Oral Intervention Amnesty International, ESCR-Net, Human Rights Watch, International Commission of Jurists, International Federation for Human Rights, Human Rights Council
<http://www.reports-and-materials.org/NGO-joint-statement-to-UN-re-Ruggie-report-29-Mar-2007.pdf>, last visited 3 May 2008.

⁵⁴ *Id.*

⁵⁵ Tougher measures needed for corporations on human rights abuses, says ActionAid, <http://www.actionaid.org/pages.aspx?PageID=34&ItemID=251>, last visited 3 May 2008.

⁵⁶ J. Ruggie's 2008 report, 1.

in relation to human rights. In other words, the suggestions appear rather general, superficial and appear to need further explanation.⁵⁷ What is necessary, but remains undelivered, are concrete victim-oriented measures and solutions. Nonetheless, J. Ruggie's 2008 report provides a good foundation, albeit that much more requires to be done over the next three years in order to achieve the desirable results. It is hence of seminal importance that the UN Human Rights Council decided on 18 June 2008 to extend the mandate of the Special Representative for a period of three years.⁵⁸ It is imperative that a victim-oriented perspective to business and human rights field is adopted. What is already clear at this stage, however, is that corporations have obligations and a responsibility to protect human rights and to claim that only⁵⁹ states have human rights obligations would distort and the inherent essence of human rights law and the promotion and protection of human rights. Human rights are best protected in national legal orders and this is where any examination of obligations and responsibility for human rights should and must start at national level. It appears, therefore, that any attempt to regulate corporations must focus primarily at domestic level and only secondarily within international law approaches. It seems that the normative framework *de lege lata* in the field of business and

⁵⁷ Olufemi Amao, 2008, 9.

⁵⁸ The UN Human Rights Council requested the Special Representative to »to provide views and concrete and practical recommendations on ways to strengthen the fulfilment of the duty of the State to protect all human rights from abuses by, or involving, transnational corporations and other business enterprises; to elaborate further on the scope and content of the corporate responsibility, to respect all human rights and to provide concrete guidance to business and other stakeholders; to explore options and make recommendations for enhancing access to effective remedies available to those whose human rights are impacted by corporate activities; to integrate a gender perspective throughout his work and to give special attention to persons belonging to vulnerable groups, in particular children; to identify, exchange and promote best practices and lessons learned on the issue of transnational corporations and other business enterprises, in coordination with the efforts of the human rights Working Group of the United Nations Global Compact; and to report annually to the Council and the General Assembly. The Council also requests the Office of the High Commissioner for Human Rights to organize, within the framework of the Council, a two-day consultation bringing together the Special Representative of the Secretary-General, States, business representatives and all relevant stakeholders, including non-governmental organizations and representatives of victims of corporate abuse, in order to discuss ways and means to operationalize the framework, and to submit a report on the meeting to the Council, in accordance with its programme of work. UN Human Rights Council, *Human Rights Council adopts 13 Resolutions, appoints 13 new mandate holders and extends eight mandates*, 18 June 2008.

⁵⁹ Andrej Logar, speaking on behalf of the European Union, regarding Action on Resolution on Mandate of Special Representative of the Secretary-General on Human Rights and Transnational Corporations, <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/F862D09328BA5EACC125746C006CB1DF?opendocument>.

human rights is directed towards the ends rather than the means. When the focus would be directed towards the means rather than the ends, the framework for corporate responsibility for FHRs could provide some guidance on how to tackle the challenges facing business and human rights fields. However, the historical momentum of development of corporate responsibility and accountability for human rights will be difficult to halt, and, thanks to its normative development, it is hoped that it will be possible to bring timely justice and reparations to those who have suffered due to harmful conduct by or involving corporations.

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