**Remarks by**

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Many thanks to the Fair Labor Association and the German Network of Business Ethics for inviting me to join you here in Bamberg.

Special thanks are due to Auret van Heerden and Mike Posner, who have been extraordinarily helpful to me in carrying out my mandate so far, and to a number of others in this room -- from business and NGOs alike -- who have tried to teach me how this industry actually works in real life rather than from 33,000 feet up in the air, where I often find myself.

Auret will confirm that when he asked me to speak at this Forum I was most resistant, for the simple reason that I wished merely to listen and learn from you. I am not an expert in your sector, but Auret, as always, was very persistent, so here I am.

I will keep my remarks informal and brief, and also share with you some reflections on what I have heard over the course of the past couple of days. I'll touch on five points:

- First, I will describe my UN mandate briefly;
- Second, I want to raise a concept that has not been mentioned here, but which is closely related to the issue of sustainable compliance that you have been discussing. That concept is sustainable globalization.
- Third, I'll say a few words about some of the challenges of compliance with supply chain codes;
- Fourth, I want to stress the need to bring efforts like yours up to scale so they can begin to make a systemic difference;
- That brings me, finally, to the urgency of bringing governments back into the equation.

**Mandate**

My mandate is complex and ambitious. First, it asks me to identify and clarify standards of corporate responsibility and accountability with regard to human rights. Although

that's only one subparagraph of the mandate, the team that the Office of the High Commissioner for Human Rights assigned to me prepared a six page, single-spaced memo on all the things this could mean and the options pertaining thereto.

In addition, the mandate asks me to identify best practices on the part of companies as well as governments; comment on the appropriate adjudication of issues related to multinational corporations and other business enterprises; develop methodologies for human rights impact assessments; and elaborate on the concept of corporate complicity and spheres of influence. All this is all supposed to happen within a two-year time frame and no budget to start with.

The mandate was requested by the U.N. Human Rights Commission, which has now become the U.N. Human Rights Council, and endorsed by the U.N. Economic and Social Council. They asked the Secretary General to find an individual who would be foolish enough to take this job, and he found me.

The creation of the Special Representative post came about as a result of a train wreck in Geneva. It was an outgrowth of an effort by the Sub-commission for Human Rights to draft what was intended ultimately as a legal code, called the Norms, regulating the human rights impact of multinational corporations and other business enterprises

This endeavor produced a train wreck because much of the business community was vehemently opposed to it, as were many governments. The process started out as an attempt to codify, in a non-legal sense, appropriate principles for companies with regard to human rights, but as it evolved it got carried away. One industry association official told me that his organization dropped out when the topic of discussion became the shape of the table in the tribunal chamber where companies would be tried. Whether this was hyperbole or not, the remark effectively symbolizes how negatively the effort came to be perceived. On top of that, the conceptual and legal foundations of the Norms were so poorly conceived that, if adopted, they would produce utterly perverse consequences on the ground, some of which I noted in my interim report last February. In any case, the Norms are dead, but the challenges they sought to address remain with us and need to be addressed. That's the essence of my mandate.

This past Monday I was in Geneva meeting with delegations that are going to sit on the new Human Rights Council. We had an excellent discussion of my overall work plan and preliminary findings. From here I go to Chatham House in London for the first of three legal workshops that we have planned. And later in the month we are convening a regional consultation in Bangkok, focused on the human rights challenges in global supply chains. In short, we are proceeding in a comprehensive and thorough manner, exploring the full diversity of challenges as well as the full range of possible instruments available to the international community for dealing with them. As a result, when I make my final recommendations to the Human Rights Council they will reflect extensive exposure to different sectors, various policy domains, case law, dispassionate doctrinal analyses and the very best normative thinking. I thank all of you who have been

responsive to my email traffic, to questions and questionnaires, and all sorts of other requests for help.

**Sustainable Globalization**

Globalization as we know it today is not sustainable, I fear, for the simple reason that market rationality by itself is not a sufficient basis for human community and social solidarity. We know that from the historical experience of the industrialized countries, and we are beginning to learn it quickly from the experience of the developing countries and the transition economies in the world today.

You may have seen an article in Monday's *Financial Times* by Samuel Palmisano, the CEO of IBM, on the fragility of globalization today. He expressed concern that disaffected populations will elect governments that strive to impose tighter regulations on the free flow of goods and services. Worse, people might gravitate towards more extreme forms of nationalism, xenophobia, and anti-modernism – because the current wave of globalization is outstripping the capacity of societies to adapt or the willingness of political elites to pursue policies of social inclusion that compensate those who lose in the process of transition.

This has happened before. Nationalism, xenophobia, and anti-modernism have been among the ways in which societies in the past have responded to the dislocation produced by growing gaps between markets, on the one hand, and forms of human community, on the other. The Victorian era's version of globalization collapsed for this reason. So, too, did the effort to restore the gold standard and laissez-faire economics after World War I. Markets erode traditional relationships and bonds of community much quicker than they give rise to new ones, so if we do not move fast enough to embed markets in shared values and institutional practices, social dislocation and tension can get out of hand, with potentially very deleterious consequences. However else they differed, National Socialism in Germany, Fascism in Italy, and Communism in Russia had this much in common: they represented extreme attempts to assert social control over economic forces – extreme forms of social protection.

Capitalism in the West was saved by Keynes, social democracy, the social market economy and the New Deal, all of which figured out ways of reconciling markets with the requirements of human community and social justice. But they also were predicated on markets being essentially national in scope. As markets have grown and gone global, however, the relevance of those twentieth-century forms of reconciling markets and community has eroded. Today, we need to figure out ways of doing at the global level what we learned painfully to do at the national level in the West: to embed market forces in shared principles and institutional practices.

This is the fundamental challenge before us. This is what you are doing is all about, and it is a race against time, with no guarantee that the progressive side is going to win before even worse forms of backlash than we have seen already set in.

At the global level, human rights must be a core element of any resolution. At the national level, we could draw on our own identity as nations. When social and economic rights were extended at the national level to workers and other segments of society that had not enjoyed them before, we treated this as an attribute of citizenship – extending this concept to the economic sphere. In doing so, we drew on our collective sense as Danes, Germans, Americans or Brits, or whatever the case may have been.

What do we do at the global level? Living in a divided world, we have only our common humanity to draw upon, and it is most eloquently and effectively enshrined in human rights -- universally endorsed, even if sometimes honored only in the breach. So the project of human rights, I believe, must be at the very core of any attempt to construct a sense of global community in which to embed market forces so that globalization itself becomes sustainable. And it is worth trying to sustain globalization because, at the end of the day, it does have the potential to do enormous good and, in fact, in many ways it already has.

This is my macro agenda and, I believe, it is also behind the work you do -- even though down in the trenches you probably don't talk a whole lot about sustainable globalization.

**Compliance**

Let me say a few words about what you have been calling sustainable compliance. As I understand it, in the strategic reorientation the FLA is undergoing the idea is to move beyond monitoring, not because monitoring is unimportant, but because by itself it is not enough to produce significant behavioral changes in the factories. And so, moving beyond monitoring into sustainable compliance involves, among other things, elements of capacity building.

If I may just share a couple of thoughts about what I have heard on this subject – and not being an expert in this sector I may get it wrong, so please correct me if I do.

We always need to be careful when we pick up a telescope not to look through the wrong end, because the world is distorted when seen that way.

Dusty Kidd from Nike is sitting here. I understand Nike convened a task force chaired by the CEO that looked at the role of the company itself, the brand, in non-compliance issues on the part of suppliers. It concluded that perhaps in as many as one out of two instances of serious non-compliance the problem can be traced back to things the brand does: flexible production, fast turnaround, surge orders, changed orders, and all the rest of it. One out of two is 50 percent, so that has to be on the table if we are going to talk about sustainable compliance. Capacity building in the supply chain is desirable and necessary, but it won't take care of brand-induced problems. That's one thought.

A second issue relates to code proliferation coupled with the multiplicity of audits, and the burdens they impose on suppliers. It requires suppliers to allocate scarce resources, financial and human, to a highly inefficient process that is more likely to produce a

checkmark compliance mentality rather than a sense of ownership.  It is hard to imagine achieving major breakthroughs in achieving sustainable compliance until the issues of code and audit proliferation are dealt with.

Let me express a third thought in the form of a question:  Is the fundamental business model of value brands, as opposed to the premium brands that you represent, even compatible with any concept of sustainable compliance?  I do not know the answer, but we need one, because there are far more of them than there are of you.

In sum, when we look through the supply chain management telescope from the correct end these issues stand out in stark relief. They need to be addressed is sustainable compliance is to be achieved.

**Scale and Systemic Impact**

Another pressing issue I want to touch on is scale and systemic impact.  According to a paper I commissioned in preparation for our regional consultation in Thailand, the total revenue of the brands actively involved in multi-stakeholder initiatives in your sector accounts for about 10 percent of the total.  Archimedes might have been able to figure out how to use this fraction as leverage, but I can't. We need to create scale if we are to achieve systemic change.  How do we do that?

One obvious answer is that there has to be alliance building and information sharing among the various initiatives.  Harmonization of codes undoubtedly would be very difficult, but there is no reason that every initiative has to do its own auditing and hoard the information produced. This domain cries out for merger mania. So consolidate. Go beyond five factories in Turkey; the problems are global.  And act quickly.

**Bringing Governments Back In**

My final point is related to the previous one.   I am convinced that compliance efforts cannot fully succeed unless we bring governments back into the equation.  This is sort of ironic, because initiatives like the FLA started in the first place because governments were not doing their job.  But you cannot achieve the needed scale and have systemic impact unless you bring the governments back in.

There are a number of ways to do that. For example, if you are going to do capacity building, such as training managers in supplier factories in basic human resource management skills, why not also include labor inspectors so that they, too, can have access to the latest ideas and practices, and can begin to form networks and feel empowered?

Another element is government procurement policies. Every government in the world buys footwear and apparel.  The companies in the room are very effective in lobbing for a whole bunch of things.  Why not lobby for procurement policies requiring that certain

labor standards are met?  Or join NGOs to lobby for stronger labor standards in bilateral and multilateral trade agreements.

These are some thoughts and reflections on your discussions over the course of the past couple of days. Let me conclude with one final observation. I've observed the back and forth between business and NGOs at this Forum. You have different interests and responsibilities, and when you're together ironically it is often the differences that get stressed. But in the judgment of this outsider, everybody in this room, without exception, belongs to the family of good guys. You are a small cadre of people trying hard to improve the lives of working people within your reach by raising the level and expanding the range of rights they enjoy.  And for that I salute you.

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