

Remarks at International Chamber of Commerce
Commission on Business in Society
John G. Ruggie
Harvard University and United Nations
Paris, 27 April 2007

I am pleased to be here with you today. It gives me the opportunity personally to thank the ICC – and the International Organization of Employers, which I see is also represented – for your active engagement in my mandate. In particular, I could not have surveyed the human rights policies of the Fortune Global 500 firms without ICC and IOE help. And your policy paper on the human rights dimensions of business operations in weak governance zones moved the debate forward in important ways.

In the Geneva process that preceded my appointment as Special Representative, business was on one side, NGOs on the other, and governments, with some notable exceptions, wanted little more than avoid having to make tough decisions. I think we've come a long way in a relatively brief period of time. Let me bring you up to date, and then pose a challenge that I hope you'll accept.

To start with, I needed to examine in depth the “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights,” which had been the focal point of the previous divisive debate. In my first report, I spelled out why the Norms could not provide a basis for my mandate. In particular, I concluded that their failure to provide any principled basis for differentiating state and business obligations would have generated adverse consequences for the realization of rights.

Another problematic feature of the Norms debate was that factual claims about the state of the law were so entangled with normative preferences and institutional interests that little progress seemed possible without establishing a common empirical basis for any future deliberations.

Therefore, my most recent report provides a detailed mapping of current international standards, legal and otherwise, of corporate responsibility and accountability with regard to human rights.

I identified five clusters of standards, ranging from the most deeply rooted international legal obligations held by states at one end, to voluntary initiatives adopted by business at the other. Let me briefly summarize them:

- The state duty to protect against human rights abuses by third parties is foundational. The UN treaty bodies and their regional counterparts indicate that this duty requires states parties to take reasonable steps to protect against abuses by all social actors, including business enterprises – essentially a due diligence standard. The report concludes that not all states seem fully to have internalized this duty.
- The possibility that companies may be held liable for international crimes or complicity in such crimes appears to be growing – imposed under domestic law, but reflecting international standards. This can occur as a result of a country incorporating the International Criminal Court statute into its domestic legal system. Where national law already provides for criminal punishment of companies, the international standards for individuals may be extended, thereby, to corporate entities as legal persons. But ICC ratification isn't the only means for the domestic incorporation of international standards; more than 40 civil cases have been brought against companies under the US Alien Tort Claims Act.

Most cases brought against companies allege complicity, where another party, often agents of the host state, is claimed to have committed the actual crime. Mere presence in a country and paying taxes in and of themselves are highly unlikely to render a company complicit. But deriving indirect economic benefit from the wrongful conduct of others may do so, depending on such facts as the closeness of the company's association with

those actors. However, even where a corporation did not intend for a crime to occur it may be held liable if it knew, or should have known, that it was providing assistance that had a substantial effect on the commission of the crime.

- Third, there appears to be little movement in establishing direct legal obligations of corporations under the international bill of human rights and related instruments.

That fact leaves a sizeable protection gap for victims, because not all governments recognize all relevant human rights instruments. And even when they do, some may be unable or unwilling to enforce them.

At the same time, it also creates a predictability gap for companies, who even when innocent of wrongdoing may still find themselves tried in the court of global public opinion – often by the standards of those same international human rights instruments. Closing these gaps remains an urgent task.

- Next, soft-law initiatives, like the OECD Guidelines, can play important roles in addressing grievances against business. My report also examines evolving practices in more operational soft law or hybrid mechanisms – such as the Voluntary Principles on Security and Human Rights, the Kimberley Process Certification Scheme, and the Extractive Industries Transparency Initiative.

These initiatives seek to close regulatory gaps that contribute to human rights abuses, like the illicit diamond trade. They embody a model of shared responsibility and joint governance among different stakeholders. And they can be established with far greater ease and speed than treaty instruments. This model deserves greater attention and support from governments, business, and civil society actors.

- Finally, we conducted extensive surveys of voluntary initiatives. They indicate that leading firms and collective arrangements, both industry-based and multi-stakeholder, have come to recognize a broad spectrum of rights in their policies, and include rudimentary accountability mechanisms such as internal and external reporting.

That is where we are, in brief – 18 months, a dozen or so international consultations, and as many research papers later.

When I presented my latest report to the March session of the Human Rights Council, governments from across the spectrum of regions and levels of development expressed appreciation for the objective, systematic and inclusive approach we've taken. The response from business has been favorable. And the major NGOs have voiced agreement that no single silver bullet can resolve all business and human rights challenges. As a result, I believe we have a good basis for the next phase – devising recommendations that promise to generate positive results on the ground.

But I need your help – and your own business constituencies need your help. The ICC and IOE are uniquely equipped to create greater awareness, identify best practices, and share lessons across different regions and industry sectors within the business community. So I encourage you to convene a global business and human rights forum with your memberships, intended to address some key dilemmas that my mandate has turned up and for which I do not yet have good answers:

- First, few if any voluntary efforts have reached a scale where they can move markets. Uptake is significant but has slowed down and in some areas, like non-financial reporting, appears to have levelled off. There still are lots of laggards in industrialized countries. And firms from emerging market countries are vastly underrepresented – though the Global Compact has made some inroads there. How do we expand the relatively small circle of friends? How can we best raise

awareness of the need and opportunities for all companies to get engaged? What are the benefits of good performance and the potential negative consequences of ignoring these issues? There are certain to be lots of answers to these questions embedded within your networks, and they should be more widely shared.

- Second, in my view nothing would yield more immediate results in the human rights performance of firms than conducting human rights impact assessments in contexts where significant uncertainty prevails or adverse effects could be expected. It is my impression that more companies have gotten themselves into trouble out of sheer ignorance of their operating environment than any other single reason. And yet relatively few go through the exercise of looking at projects through the lenses of the people and communities they will affect. The International Finance Corporation has developed a human rights impact assessment tool, and others are available. I would urge you to promote awareness of these tools among your memberships, and encourage a representative sample of them to participate in road testing these tools.
- Third, few if any widely accepted process standards exist in business and human rights that firmly establish the effectiveness and credibility of voluntary accountability mechanisms. There has been a proliferation of codes, social auditing, reporting systems, indices, and so on. Companies spend a great deal of money but with uncertain results. This has created mounting frustration all around. Your networks embody rich and diverse information about what works, what doesn't, and why, which I would urge you to pull together and disseminate widely among your memberships and beyond.
- Fourth, a significant weakness in the current system is the dearth of viable grievance and alternative dispute resolution mechanisms for business and human rights. Differences of views and interests are inevitable in all social activity. But their

escalation into serious conflicts is not inevitable – it is more likely to occur if means to resolve differences do not exist or are not effective.

Company-based complaints mechanisms tend to be more internally than community focused. Only about one-third of all countries have national human rights commissions, and the majority of those lack statutory authority to take up issues involving non-state actors. Within the OECD's ambit the National Contact Points system lacks minimum levels of consistency and predictability in handling "specific instances" under the Guidelines. Besides, they do not provide global coverage. At the global level little exists apart from the International Finance Corporation's Compliance Advisor Ombudsman Office, limited to IFC projects.

The lack of adequate complaints and conciliation mechanisms virtually invites campaigning and excessive litigation by other social actors – which can hardly be in the business interest.

Again, individual companies and even sectoral industry associations have only limited scope to redress these shortcomings. The ICC and IOE have considerable institutional experience in complaints and arbitration processes that you can draw on to promote good practices.

In sum, I hope that you will convene a global business and human rights forum for dialogue and information exchange among your memberships. Every company should respect human rights. But shared understanding and collective action are needed to optimize the business contribution to the realization of rights, which is required if we are to achieve a socially sustainable globalization. I look forward to working with you as you fulfill your critical role.

Thank you.