

# Opening Statement to United Nations Human Rights Council

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Mr. President, Excellencies, Ladies and Gentlemen,

I am honored by and grateful for this opportunity to discuss with you a truly historic human rights mandate – and as a student of history, I do not use the term lightly.

The mandate touches on foundational questions in the evolution of modern international law and governance: to what extent, and how, must they be modified in order to manage the impact of non-state actors – in the case at hand, business enterprises?

The stakes for people everywhere could not be higher: as Secretary-General Kofi Annan has said on numerous occasions, “If we cannot make globalization work for all, in the end it will work for none.” Previous eras of globalization unraveled because they failed adequately to embed market forces within frameworks of rules and values that secured the needs of human community and the desire for social justice. The success of this mandate can help make globalization work for all.

As if those challenges weren’t enough, it is a highly politicized mandate, as you know well, devised as a means to move beyond the stalemated debate over the “Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises.”

My interim report addresses these issues, and I hope you found it of interest. Rather than repeating its contents in detail, permit me to describe briefly the overall approach that informs it, outline my work plan, and indicate where it might lead.

The mandate has the normative aim of strengthening the promotion and protection of human rights in relation to business activities. But the very specific use of verbs in the authorizing resolution makes it clear that your predecessors on the Commission conceived of it as a ground-clearing effort, not one intended to endorse any particular pre-existing normative approach. The resolution asks me to “identify” and “clarify,” to “research” and “elaborate,” to “compile” compendia and “develop” materials. Only then, with that solid analytical and evidentiary basis established, am I to make recommendations for your consideration.

Therefore, I see it as my job to provide you with the best and most dispassionate analysis possible, within our resource and time constraints, as to where matters stand today regarding standards of corporate responsibility and accountability; state responsibility; complicity; best practices; and so on. Having done that, I will point out where weaknesses and gaps exist in the current system, and propose ways by which to overcome them.

Mr. President,

My bottom line is that the last thing victims need is more unenforced declarations; they need effective action.

I raise this issue because my approach differs from the preferences of some that I should simply have taken the draft Norms as my point of departure and built onto them. It soon became clear that neither the near-universal opposition to the Norms by business, nor the disinclination by governments to adopt them, had ended the debate for all Norms advocates: my mandate merely became its new venue. Therefore, I felt obliged to study, consult about and ultimately express my own views on the Norms in the interim report.

Like the Commission, I found useful elements in the Norms. Any fairminded compilation of standards must cover some of the same ground, though not necessarily all of it or in the same manner. I

did not address the implementation provisions because I thought the subject was premature, requiring far greater prior clarity about the differential legal status of various standards in relation to companies.

My major concern was the legal and conceptual foundations of the Norms, especially as expressed in the General Obligations section and the implications that flow from it. I judged them to be poorly conceived and, therefore, highly problematic in their potential effects.

In the best case scenario, these formulations would do little more than keep lawyers in gainful employment for a generation to come. But in the worst case scenario, I fear, they would turn transnational corporations into more benign twenty-first century versions of East India companies, undermining the capacity of developing countries to generate independent and democratically controlled institutions capable of acting in the public interest – which to my mind is by far the most effective guarantor of human rights.

Accordingly, I moved on with the mandate I was assigned – not to universal applause, I am well aware, but with the thoughtful engagement of stakeholders across a broad spectrum, from global business associations to campesino groups in the Andean highlands.

Let me now turn to a brief description of our work program. Above all else, in light of the history just recounted I was eager to expand the business and human rights debate beyond the confines of Geneva's corridors, and therefore launched a series of regional multi-stakeholder consultations.

We've convened two so far, one in Johannesburg, focused on human rights dilemmas of business operations in Africa's zones of conflict, and another in Bangkok, looking at supply chain management issues in Asia. A third will take place in Bogota this coming January, examining corporate relations with local communities, especially indigenous peoples.

To better understand the realities of business practices I have made private site visits to the operations of major global firms in developing countries, including the mining industry, footwear and apparel, and in the near future, the food and beverages sector. Each is complemented by separate civil society encounters.

We have held a multi-stakeholder sectoral consultation on the extractive industries, and are exploring the possibility of convening another on information technology.

In coming to grips with some of the complex legal issues raised by the mandate, I am benefiting from the expertise of participants from around the world in four legal workshops. Our partners in organizing them include Chatham House; the Norwegian Council on Ethics for the Government Pension Fund; the Ethical Globalisation Initiative, headed by former High Commissioner, Mary Robinson; Philip Alston, himself a Special Rapporteur; and Olivier de Schutter of the Fédération internationale des ligues des droits de l'Homme.

On the research front, to begin the documentation of best practices called for in the mandate, we recently conducted a survey of the Fortune Global 500 firms, in collaboration with key international business groups, and we are following up with a detailed study of a broader cross-section of companies. A questionnaire has also been sent to all member states, asking them for information on their policies and practices related to the mandate.

We are conducting research on state obligations to regulate and adjudicate the role of private companies, as defined in the seven core international human rights treaties. A project is also under way on state-owned enterprises.

To map emerging legal standards of corporate direct and vicarious liability for human rights abuses we are drawing on an international survey of jurisdictions conducted by the Norwegian Institute for Applied International Studies, pro bono research by a major Australian law firm, and other sources.

All of our research reports as well as discussion papers are posted on a special SRSG portal on the website of the Business and Human Rights Resource Centre. The URL is <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>.

I am immensely grateful to the governments, foundations and the many others who are supporting our work, and also my team in Boston, Geneva and London for their extraordinary efforts and personal sacrifices to ensure that this mandate succeeds.

We've been at it for only a year now, and despite the fact that I spend more time on the mandate than on my day job, much remains to be done. Mr. President, if there is any discretion as to the timing of my final report, I would much prefer June 2007 to March.

What can you expect by then?

- A thorough analysis of state responsibilities;
- A mapping of emerging legal standards for direct and vicarious corporate liability (or “complicity”) for grave breaches;
- A framework to help identify and clarify standards for corporations in other areas of human rights;
- An update on human rights impact assessments;
- A better understanding of what rights companies themselves recognize, and through what means, though it will fall short of a detailed inventory of best practices;
- And we still require additional information from states before we can even begin a meaningful review of their best practices;
- Finally, you can expect a set of recommendations drawing on the empirical and analytical work we will have concluded.

Mr. President,

If there were easy solutions to the challenges this mandate is meant to meet and manage, they would have been adopted long ago. I look forward to continuing to work with you, the other members of

the Council, and all stakeholders to bring us closer to our historic aim. At the end of the day, our efforts will be judged by whether they make a difference where it matters most: in the daily lives of people.

Thank you.

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