
Business and Human Rights: Together at Last?

A CONVERSATION WITH JOHN RUGGIE

FLETCHER FORUM: *You recently released the Guiding Principles on Business and Human Rights. Could you briefly describe their development as well as that of the “Protect, Respect, and Remedy Framework?”*

JOHN RUGGIE: The process began in 2005. My mandate emerged out of a collision between the human rights and the business communities over an initiative called the “Norms on Transnational Corporations and Other Business Enterprises.” This was a code of conduct that came out of the Sub-commission on Human Rights, and it was intended to become legally binding. It was a problematic instrument on substantive grounds, intermingling the respective roles of states and businesses so that it would have been impossible to tell who was responsible for what on the ground. Politically, it managed to unify business in opposition and it had no champions among governments. NGOs liked it because it promised to be binding. The Commission on Human Rights declined to adopt it. Instead, they asked the Secretary-General of the United Nations to appoint a Special Representative to begin the process all over again, and hopefully get it right. That’s how I got into the act. So, I began the process all over again, in an incremental fashion.

John Ruggie is the Berthold Beitz Professor in Human Rights and International Affairs at Harvard University’s Kennedy School of Government. In 2005, he was appointed by then UN Secretary-General Kofi Annan as the Secretary-General’s Special Representative for Business and Human Rights, a post he held until the summer of 2011. From 1997 to 2001, Dr. Ruggie also served as Assistant Secretary-General for Strategic Planning, a post created specifically for him by Secretary-General Annan. A fellow of the American Academy of Arts and Sciences, Dr. Ruggie is a recipient of the International Studies Association’s Distinguished Scholar Award and the American Political Science Association’s Hubert Humphrey Award for outstanding public service by a political scientist.

My initial mandate was simply to “identify and clarify” the nature and extent of the problem, existing standards, and best practices. For two years I conducted extensive research and submitted reports responding to

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..... this request. At the end of those two years, what by then had become the Human Rights Council said thank you very much, but would you please take another year and come back with recommendations. During the course of that year, on the basis of a large number of international consultations, I developed and proposed what has become known as the “Protect, Respect, and Remedy Framework.” The Framework says that it is the duty of the state to protect against human rights abuses by third parties, including business; that there is an independent corporate responsibility to respect human rights; and there is a need for access to effective remedy by victims of human rights abuses.

My sole recommendation to the Council was it endorse this Framework. What was needed most of all was a common focal point and policy platform around which the expectations and actions of the various players could converge. The Council unanimously endorsed the Framework. And they asked me to spend yet another three years operationalizing it. They wanted specific recommendations about exactly what states are supposed to do, exactly what corporations are supposed to do, and what both judicial and non-judicial remedies should look like to deal more effectively with business and human rights challenges. And so that is what I spent the last three years doing, and the Guiding Principles are the result of that.

FORUM: *The Guiding Principles were not without their controversies and challenges. What were some of those that you faced?*

RUGGIE: Dealing with all rights; all states; all businesses, national and transnational, large and small; and getting all of that diversity into a simple and coherent Framework, with guidance on how it should be implemented, was both intellectually and politically challenging. Every stakeholder, seeking to maximize their particular interests and concerns, sees flaws and

would have wanted something different. But that is true of everybody, and they mostly cancel each other out. If you accommodated everybody you would have nothing left. Juggling all of that, and yet keeping the various stakeholders on board—which by and large they have been, whether its business, states, or civil society actors—has been the most challenging thing I have ever done.

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FORUM: *How do you see the rise of China as a global actor affecting the international system and United Nations, particularly related to business and human rights?*

RUGGIE: China is already a permanent member of the Security Council and it is already a member of the WTO and the international financial institutions, so there is nothing new there. Over the years, Chinese views on international laws have not been radically different from those of other countries. The Chinese government pursues its interest the way the United States government pursues its interest. As its economic power has increased, China has become more self-confident in expressing its views, but that hardly makes for revolutionary change.

FORUM: *Do you think that the power of Chinese corporations operating abroad will have any impact, maybe not on international law, but for instance on the success of the Guiding Principles or the Protect, Respect, and Remedy Framework?*

RUGGIE: The Chinese government is increasingly interested in making sure that its companies abroad do not generate a friction in the areas in which they operate. Many of them are state-owned enterprises, and their behavior reflects on China. When North American mining companies first moved into the Andean region and encountered indigenous communities, they had no idea what they were doing or what to expect and got into trouble. They behaved like cowboys from Denver or Calgary. Over the course of time, they learned how to engage with communities in a much more effective way. Chinese companies operating overseas are going through the same learning curve, perhaps ten or fifteen years behind other multinationals—but learning faster because the overall context has changed as a result of those earlier experiences.

FORUM: *What are the reactions from groups, the stakeholders, who may have supported the previous norms? One international human rights organization criticized the Guiding Principles despite the work that went into putting them together and the tremendous support behind them. Do you think these reactions will affect the success of the Principles?*

RUGGIE: Well, as Yogi Berra said, predications about the future are hard; it's much better to make predications about the past. But I feel okay about how things are going to go in June. I think the various stakeholders you referred to will, in the end, express their support, saying that at minimum this is a good starting point and that it gives us something to build on. I suspect that some of what you may have heard in the last couple of months has been related to positioning and trying to nudge things in one direction or another before the process ends. That's only natural.

FORUM: *You were also instrumental in the United Nations Global Compact, which started in 2000 and grew significantly in just ten years. However, there are quite a number of companies that have been delisted—over 1,800 in total. What problems do you see with the UN Compact, and how do you think it can be improved?*

RUGGIE: Rapid growth in membership probably had something to do with it. As far as I know, those companies were delisted mostly for non-performance. The requirements of participating in the Global Compact are not onerous, but there are requirements. For example, you need to submit a "Communication on Progress" periodically on what you as a company are doing to internalize the principles of the Global Compact. I would guess most of those 1800 companies didn't bother to submit that, and so were automatically delisted. Apparently they simply wanted to sign up and associate themselves with this UN initiative and get co-branded, but didn't intend to do anything. Also, rapid growth may have exceeded the limited capacity. The Compact leadership has tried to decentralize to national networks, where more peer vetting and peer assistance can take place, rather than having to do it centrally. The New York office is tiny when you compare it to the number of companies the Compact is dealing with.

I think one of the unheralded contributions of the Compact is that it has become the point of entry into the global corporate responsibility world for companies in emerging markets and developing countries generally. There is a level of comfort because the Compact is a UN initiative, expressing universally endorsed principles; it's a safe space in which to learn what corporate responsibility is all about. I think that has been an extremely important contribution.

FORUM: *Businesses were consulted and were a large part of drafting the ten UN Global Compact Principles, as well as the Framework and the Guiding Principles. Do you think that the involvement of business in these three efforts will change the international system or global governance in the future?*

RUGGIE: The idea behind the business engagement in the Global Compact was to get companies to become champions of certain universal values or principles, to get them to develop more socially inclusive business models, to align behind UN anti-poverty goals, and so on. It was an engagement mechanism. My mandate is slightly different because it is more normative in character than the Global Compact. It's really important that a process that develops normative principles for business be a multi-stakeholder process. It needs not only to engage with states, but also engage with civil society and businesses themselves. At the end of the day, the instruments that we proposed as part of the Guiding Principles—for example human rights due diligence as a method for companies to identify and address what their adverse human rights impacts might be—have to make sense inside of a company. Otherwise, it is not going to get done.

But we did more than sit around the table with companies and other stakeholders. We asked companies to road-test many of our proposals. In the case of the human rights due diligence, ten companies spent eighteen months trying to figure out how human rights could be incorporated into enterprise risk management systems—without losing the unique qualities of human rights: namely, that they deal with rights-holders. We did the same thing

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with our proposals for company-community grievance mechanisms: we had pilot projects in five different countries in five different industries because we needed to figure it out how these things would work on the ground. It is one thing to make a recommendation on paper, but does it actually have traction on the ground? There is no substitute for actually trying things out and learning from that experience, which we have done.

FORUM: *What's next? The UN released the Guiding Principles on March 24, 2011, and they are going to be voted on this summer. What's next for human rights, and what's next for you?*

RUGGIE: At the same time as I've been working through UN, I've also

been working with a number of other international institutions to make sure that their policies become aligned with the UN Framework and Guiding Principles. The OECD, for example, long ago adopted an instrument called the OECD Guidelines for Multinational Corporations, but it has never had a human rights component. I've worked closely with the OECD to get such a chapter into an updated version of their Guidelines. The negotiations just concluded, and now the OECD instrument is fully aligned with the UN Guiding Principles. I also worked closely with the International Finance Corporation and the International Organization of Standards, to make sure their standards are aligned with the Framework. It is important for such convergence to take place, and because it makes it more likely that there will be a level playing field for all. Numerous individual companies are already aligning their policies and practices with the UN Guiding Principles. And consulting firms and corporate law firms are sending out client memos offering their services to make companies "Ruggie proof"—honestly, I didn't invent the term; they did.

What am I going to do in the future? First off, go to Cape Cod and sit on the beach for a while. ■