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**THE BUSINESS
HUMANITARIAN
FORUM**

THE POSITIVE POTENTIAL OF THE PRIVATE SECTOR

Workshop Report

Company Responsibilities in Countries with Human Rights Challenges

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Table of Contents

I.	INTRODUCTION	1
II.	WORKSHOP PRESENTATIONS	2
	<i>Opening Remarks</i>	2
	<i>First Session: Guiding Principles for the Implementation of the Protect, Respect and Remedy Framework</i>	2
	<i>Second Session: Due Diligence in Conflict Situations and with regard to the Supply Chain in Conflict Minerals</i>	7
	<i>Third Session: Further Perspectives on Implementing the UN Framework</i>	12
	<i>Fourth Session: Business and Human Rights: Where do we go from here?</i>	16
III.	CONCLUDING REMARKS	19
IV.	ABOUT THE WORKSHOP PARTNERS	19
	ANNEX I: WORKSHOP AGENDA	21
	ANNEX II: LIST OF ATTENDEES	22

I. Introduction

With a view towards continuing their constructive dialogue on business and human rights, **the Business Humanitarian Forum (BHF) and The Conference Board’s European Council on Corporate Responsibility & Sustainability (The Conference Board)** in collaboration with the **Swiss Department of Foreign Affairs (FDFA)** held a joint workshop on **“Company Responsibilities in Countries with Human Rights Challenges”** on February 3rd and 4th at the BHF in Geneva. The event was held against the backdrop of the recently published draft report “Guiding Principles for the Implementation of the United Nations ‘Protect, Respect and Remedy’ Framework” by the Special Representative of the UN Secretary-General on Business and Human Rights, Professor John Ruggie.

The Conference Board’s and the BHF’s third joint workshop, which has received the kind support of the FDFA, consisted of a combination of general policy discussions and practical case studies on business responsibilities with regard to human rights in the context of the Special Representative’s report. The workshop also featured a session on due diligence concerns in conflict situations and with regard to the supply chain in conflict minerals, provided sector specific experiences on implementing the proposed UN Framework and allowed participants to discuss options for follow-up measures and mechanisms to the current mandate.

The Special Representative’s mandate was created in 2005 to “move beyond what had been a deeply divisive doctrinal debate over the human rights responsibilities of companies”¹. Professor Ruggie and his team thus developed the “Protect, Respect and Remedy” Framework through extensive stakeholder consultations and research, and as a result, the Framework was unanimously accepted by the Human Rights Council in 2008. The Council then provided Professor Ruggie with a three-year mandate to identify how to “operationalize”² the Framework.

In response, the draft Guiding Principles were developed to provide the “concrete and practical recommendations”³ for the Framework’s implementation, which were presented on an online portal for feedback from 22 November 2010 through 31 January 2011. Submissions came from a multitude of stakeholders, including governments, individual companies, business associations, civil society, investors, academics, international organizations, and interested individuals. Currently, Professor Ruggie is in the process of finalizing his recommendations for consideration by the Human Rights Council at its June 2011 session.

1. Front page of website of the Special Representative of the UN Secretary-General for Business and Human Rights, <http://www.srsgconsultation.org/>, 2011

2. Ibid.

3. Preliminary Work Plan Mandate of the Special Representative on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, <http://198.170.85.29/Ruggie-preliminary-work-plan-2008-2011.pdf>.

In order to encourage frank exchange, the workshop was held under the Chatham House Rule of confidentiality. For that reason, individual speakers and their organizations are not identified in the present report.

II. Workshop Presentations

Opening Remarks

The workshop was opened with comments by senior leaders from both the BHF and The Conference Board. One of them remarked that the term “corporate responsibility”, which used to refer almost exclusively to safety in the workplace, has drastically changed in definition over time to now include the responsibility of businesses to respect human rights. He also claimed that evolving market forces have given companies a very clear economic motivation to pursue good practices with respect to human rights. The other opening speaker argued that there is a growing realization among businesses that economic success is dependent on how much they embrace all aspects of sustainability.

The moderator concluded the opening remarks by stating that we were now at a critical moment in the process of finalizing the Ruggie Framework, and that the emphasis of this meeting was on the practical aspects of implementing the Framework, thus encouraging active participation in the discussions by all attendees.

First Session: Guiding Principles for the Implementation of the Protect, Respect and Remedy Framework

The aim of the opening session was to consider issues arising from the Guiding Principles including aspects of interpretation, possible omissions and other considerations in terms of implementation by companies. This set the stage for more detailed discussions in the following two sessions which focused on specific responses and issues in particular industry sectors, as well as by government and civil society stakeholders.

The **first speaker** until recently represented a major UK-based lobbying organisation for businesses on national and international issues. He began by looking at the origins of the Guiding Principles: before Professor Ruggie began his mandate, the issue of businesses’ responsibilities with respect to human rights was mixed up and divisive. He complimented Professor Ruggie’s approach for being transparent, inclusive and thorough, especially in terms of the numerous consultations held with a range of stakeholders across the world. The speaker also found the report to be pragmatic and realistic, which is critically important for businesses. However, he reminded the audience that since the report needs to be presented to the UN Human Rights Council in June of this year, it also includes many of the “typical” characteristics of a UN document.

The report was also praised for several other points, including making a clear distinction between the state duty and corporate responsibility: at the heart of the draft Guiding Principles is the affirmation that it is the state's duty to protect human rights, which is in line with existing international standards. While the corporate responsibility to respect human rights applies to all companies, the report acknowledges that respective implementation may differ depending on a company's activity, size and where it is active.

The audience was also reminded that no new legal liabilities are created or foreseen by the draft Guiding Principles or their application. However, the grievance mechanism as described in the draft Guiding Principles allows companies to identify potential implications and problems at a local level before they



escalate into major issues. There would have to be a way of dealing with frivolous or vexatious claims too. But the speaker also noted that the business community was concerned that some of the language used in describing the state's duties may encourage more extraterritorial application of legislation. The human rights due diligence activities that businesses are encouraged to undertake also raised some concerns by the business community about a possible expectation of an extension of their responsibilities into areas over which they have no

control or ability to control (e.g., some parts of their supply chain). Finally, he noted that the Guiding Principles would have a different degree of relevance depending on the context of different legal systems and different corporate structures.

The **second speaker** represented an international NGO that works to protect human rights and addressed the ongoing debate between certain civil society organizations and Professor Ruggie over the draft Guiding Principles. While some organizations admonished the existence of critical "loopholes" for companies in the Guiding Principles, her NGO was not aiming to advise the Human Rights Council not to support the draft Guiding Principles. They agreed that Professor Ruggie has managed to create a momentum around his Framework that helps to bridge the gap between the views and expectations of civil society on the one side, and of business and business associations on the other. Today, it is widely accepted that all companies have a responsibility for the human rights impact of their operations, which exists independently of the state's duty to protect. To implement the corporate responsibility to protect, companies must put into place a human rights due diligence process (which includes establishing a policy, conducting a human rights impact assessment, setting up a monitoring system and tracking as well as reporting on performance).

This speaker also pointed out three key challenges presented by the draft Guiding Principles as they stand today:

- 1) The fact that the Guiding Principles are not legally binding presents the potential for misinterpretation, as it allows each individual actor to decide how to apply these principles. Even though the Guiding Principles offer some good advice and incentives to on how to protect and respect human rights in business activities, the process is still based on the goodwill of companies and the political will of states. Even after the recent financial crisis, the market continues to be driven by financial performance and interest, with relatively little value placed on human rights. Therefore, it becomes critical to rely on a Framework that requires (not just advises) companies to uniformly respect all human rights, regardless of their size or the regions in which they operate.
- 2) There is a need for clear guidance on regulatory measures that should be required of companies to respect human rights and hold them accountable if they do not comply. Transnational companies can exploit loopholes in national and international regulations. For this reason, home states need to implement regulatory measures to prevent and sanction human rights abuses in other countries and assist in providing effective remedies (including through international cooperation). Furthermore, they should require companies to systematically undertake due diligence processes and oblige parent companies to properly oversee activities by subsidiaries and suppliers.
- 3) The Guiding Principles should also require home states to offer better access to remedies for the victims of human rights abuses which are committed outside their borders, but where the company in question is headquartered in their country. According to the speaker, company-based grievance mechanisms alone are not effective, especially in cases where the company is not willing to recognize its wrongdoing. Another question point is where the victims should address their complaints. States should also be required to ensure that companies do not construct barriers to remedy. The speaker's NGO found that some host government agreements could undermine the governments' obligations to protect the human rights of local communities.

The speaker also stressed that effective implementation of Professor Ruggie's Framework would necessitate a strong follow-up mechanism at the UN as well as at national and regional levels to monitor the human rights impact of the private sector, guarantee the application of effective remedies, and exchange experiences and information as well as exploring possible sanctions for human rights abusers.

The **third speaker** was from an international organisation which represents business interests relating to labour and social policies. He began by praising Professor Ruggie for making it comfortable for

businesses to engage for the first time in this debate by recognizing the fundamental and overwhelming responsibility of the state to protect human rights. He emphasized that the distinction between what companies can do and what states must do should be maintained.

He also noted that a key concern with the implementation of the Guiding Principles is that the debate thus far has tended to only include those who are willing and interested in protecting human rights. Additionally, the implementation of the Guiding Principles in a multitude of different social and cultural contexts would require educational support for businesses. Furthermore, businesses need to be given the tools (e.g., due diligence processes) to better live up to expectations but this would also need the support and overview of the UN and of states.



The speaker also argued for having local grievance and remedy mechanisms to address issues before they escalate, and against having one specific model for all businesses to use in trying to respect human rights. He also stressed the importance of continuing to use simple language in the Guiding Principles and related documents to ensure clear and consistent interpretation.

The speaker concluded by stating that the Framework must show how implementation of the Guiding Principles can improve business performance and that a period of stability (for the Guiding Principles) is needed for business, states and other actors to work through its implications and implementation. He also stressed that developed country governments have a very important role to play in helping other countries improve their rule of law.

The **fourth speaker** represented an international NGO dedicated to the primacy, coherence and implementation of international law and principles that advance human rights. To start, he re-stated the importance of viewing the Framework and the Guiding Principles as applying to all companies. For this reason, he argued that states should create appropriate legislation to put into practice relevant aspects of the Guiding Principles. However, he noted that the Guiding Principles do not currently provide sufficient guidance to states and therefore need to be further developed in this respect.

The speaker and his organization did not support the inclusion and the over-emphasis given to company-based grievance mechanisms as part of the guidance for the “operationalisation” of the third pillar (“Remedies”) for the same reason as the second speaker (i.e., such mechanisms are ineffective if the company involved is not willing to recognize its wrongdoing). He argued that more emphasis needs to be placed on public-based remedy/redress mechanisms. He considered the Guidance provided for Pillar II (“Business responsibility to respect human rights”) to be a good step forward, although it could

benefit from additional detail about the involvement of local communities in due diligence processes carried out by companies and also from the inclusion of some details about external and independent verification processes. He also argued for placing more emphasis on local companies in the due diligence process, but noted that since the “due diligence” concept was not a legal category, none of the due diligence processes can in fact shield companies from legal liability when it arises under national law. He concluded by stating that he and his organization value the Framework and want to preserve it, but wish to see standards that are clearly and legally defined for all actors.

The moderator opened the discussion that followed by re-emphasizing the importance of dialogue between various actors for the Framework’s success thus far and going forward. An audience member agreed that one of the major achievements of Professor Ruggie before the Framework has even been accepted is to have brought different communities together through the process itself. One of the speakers added that international institutions working alongside companies in this learning process can provide a lot of value.

A question from the audience asked the panel and audience members to address the issue of extraterritorial responsibility of companies and states with respect to human rights. Another member of the audience responded that home states should engage in dialogue with internationally operating companies. One of the speakers also responded that there are many states unwilling or unable to protect human rights and thus companies have a very important role protecting against human rights abuses outside of their home state. He added that a binding international standard was needed but willingness from companies to go beyond minimum standards was also essential.

Another audience member questioned how the process can be scaled up and where business can seek support in implementing the Guiding Principles. One of the panel members responded that the process will take time and trialling, and business needs to be given the “space” to trial without being attacked. He also added that the current debate over business and human rights needs to be extended into areas where it has received little attention, such as national and local companies and communities outside of the Western world. Another speaker felt that education is key and that this will require states to provide funding.

An audience member added that the follow-up mechanism will be a huge challenge, and all actors have some “homework” to do. For example, there is often insufficient communication between various departments of the same government, and a lack of common goals, terms and language when approaching business responsibilities. She also stressed the importance of involving local communities in reacting to and finding solutions to human rights challenges. Another member of the audience suggested using specially developed reporting tools to measure community and human rights impact of companies as a way to track their commitments and performance with respect to human rights in a more transparent manner.

An audience member also commented that the value of the Framework must not be underestimated in internal efforts of companies and groups in trying to address and respect human rights – the change in mindset that the Framework is helping to bring about is just as important as its content. Another member of the audience agreed that simple, practical efforts can change the internal culture of companies with respect to human rights, including developing a common language when discussing this topic.



Another audience member asked how it could be ensured that “boxes are not just checked” by various departments within companies in performing their human rights due diligence. One of the speakers responded that with respect to human rights, “tick the box” solutions in fact do not exist, even if this is something that many companies want. Another speaker pointed to the reference in the Guiding Principles to “actual and potential harm”; therefore,

businesses need to consider the potential harm of their actions. Business peer learning groups and cross-fertilization of ideas can help in this process. Tracking mechanisms are also an appropriate course of action, even if one size does not fit all.

An audience member added that commitment from the highest levels of management is critical to ensuring that human rights do not just become a “tick box” exercise. She also added that the monitoring role should not only fall to NGOs but rather, all actors ought to monitor each other (e.g. sectoral monitoring). The moderator agreed that commitment from the top is critical and policy changes (which must be approved at this level) take a lot of time to achieve, but are nonetheless crucial. Another audience member added that harms usually happen through “sins of omission” (not commission). Therefore, it makes sense for companies to put into place many defensive measures (e.g. due diligence) to avoid abuses.

Lastly, it was noted that while the Guiding Principles themselves will not be negotiated once Professor Ruggie and his team have produced the final version of their report, the follow-up mandate will be negotiated within the Human Rights Council. A meaningful follow-up mandate is currently being discussed in the council and will likely include information dissemination, implementation and capacity building.

Second Session: Due Diligence in Conflict Situations and with regard to the Supply Chain in Conflict Minerals

The opening remarks of this session were delivered by a representative from a Western European government and focused on why states need to play a role in advancing both business and human rights. The speaker highlighted his own country’s constitution, which included the goal of poverty reduction, as

well as its humanitarian tradition. He also pointed to his government's interest in the concept of human security, which includes ensuring freedom from poverty, as potentially offering some guidelines for doing business. The speaker went on to emphasize the importance of the Ruggie Framework in helping the government form a coherent policy and speak with "one voice" in its approach to human rights issues, regulation and international cooperation.

The speaker also acknowledged that although the Framework has been a long process, it has already had several positive impacts (as highlighted in the previous session) and also in terms of internal successes within organizations (e.g., internal consultations as a response to the draft Guiding Principles can bring everyone onto the same page). He also emphasized that governments need to take the responsibility for pushing the agenda forward on implementation.

With respect to companies, he agreed that more of them need to establish clear human rights policies, but also needed are changes in management attitudes from reactive to proactive, integration of the policies at all levels of the companies, tracking of performance and development of grievance mechanisms, forums to discuss how and to what extent these principles are implemented and the implications they have for companies' practices at all levels.

He concluded by encouraging all actors to seize the momentum of the Ruggie process to go forward, while being alert to "red flags" (including companies and governments only talking about the Framework without real action or implementation).

The **second speaker** from a think tank on human rights and business began by explaining that a focus on minerals is critically important as they connote wealth, and the ways in which this wealth is acquired and used impacts all five types of human rights: civil, political, economic, social and cultural. He also pointed out that the circumstances of mineral extraction, trade and handling carry the potential risks of financing conflict or fuelling conditions of conflict.

The speaker touched on the Kimberley Process, which is an international governmental certification scheme that was set up to prevent the trade in diamonds that fund conflict. Formally launched in 2003, the scheme requires governments to certify that shipments of rough diamonds are conflict-free. The key success factors of this initiative to date have included the highly elastic nature of demand for the product (i.e., no one has to buy a diamond) with high industry concentration (i.e., making it easy to "name and shame"). However, the process has been weakened by various actors wanting to expand the initiative to also address other issues (e.g. child labour, poverty reduction), as well as lack of implementation by states that were themselves often participating in the mining which was exacerbating conflicts. The definition of "conflict diamonds" also meant that opposition groups, and not "legitimate" governments, were the target of the initiative, which meant that abuses in mining areas controlled by the state were not covered.

Therefore, companies that might be involved even indirectly with systems of conflict minerals must try to ensure that human rights are respected, making due diligence critically important. In these fragile zones, it is crucial that the due diligence is at an enhanced level and not just a “tick box” procedure. Regulation and the political will for prosecution must also be in place to protect against and respond to grave abuses of human rights such as genocide or war crimes.

The speaker concluded by emphasizing that such efforts need to go beyond focusing only on minerals to reach all sectors, especially considering that non-mineral products such as cocoa and cotton can have the same effect as mineral wealth.

The **third speaker** was from an international organization that brings together mining and metals companies and associations to address the core sustainable development challenges faced by the industry. His focus was on implementation challenges and he made three related points. Firstly, he signaled a need for a systematic approach to the conduct of due diligence, embedded in management-system logic – which is aligned with Professor Ruggie’s draft Guiding Principles. However, there are practical challenges in implementing some of the Guiding Principles relating to due diligence. For example, requirements for meaningful engagement and transparency can be inherently problematic in conflict situations. This is not to suggest that companies should shy away from doing due diligence – but that they should be cognizant of the implementation challenges.

Secondly, the speaker signaled the need for a mix of incentives (“hard” law and “soft” law) to encourage companies that do not regard the conduct of due diligence as “enlightened self-interest”. In particular, delivering on the responsibility to respect is likely to be supported by full implementation of the state duty to protect. In terms of soft law, the IFC Performance Standards are an important benchmark – but there is a risk of inadequate attention to human rights in the current revisions to the drafts of the performance standards.

Thirdly, the speaker warned against viewing human rights impact assessment and due diligence as synonymous, and made the case that stand-alone impact assessments would be more appropriate for some circumstances than for others. Additional approaches such as due diligence carried out by investors and financial institutions, political risk assessments, audits, and social and environmental impact assessments could also deliver on the need to conduct due diligence.

The **fourth speaker** represented an international organization which assists governments in addressing economic, social and governance challenges of a globalized economy. She focused on the work her organization has done on improving transparency and accountability of companies in the global minerals supply chain by developing practical corporate due diligence guidance. The Guidance further elaborates on the draft Guiding Principles by describing the practical steps companies should take to improve transparency and accountability in mineral supply chains, and provides advice on what supply chain due diligence actually means in high risk areas.

The objective of the Guidance is to help companies respect human rights, observe applicable rules of international humanitarian law in situations of armed conflict, avoid contributing to conflict, and cultivate transparent mineral supply chains and sustainable corporate engagement in the mineral sector with a view to enabling countries to benefit from their natural mineral resources and preventing the extraction and trade of minerals from being a source of conflict, human rights abuses, and insecurity.

This work is the first example of a collaborative government-backed multi-stakeholder initiative on responsible supply chain management of minerals from conflict-affected areas. The Guidance was developed through a multi-stakeholder process with in-depth engagement from industry, civil society, African countries, as well as the United Nations and the World Bank. Three multi-stakeholder consultations were held in Paris in December 2009 and April 2010 and in Nairobi in September 2010. As a result, the guidance is practically oriented, with emphasis laid on collaborative constructive approaches to complex challenges.

The Guidance is structured as follows: a five-step risk-based due diligence framework as a basis for responsible supply chains of minerals; a model mineral supply chain policy providing a common set of principles for all actors in the mineral supply chain; suggested measures for risk mitigation and indicators for measuring improvement; and mineral supplements with specific due diligence recommendations tailored to the challenges associated with the structure of the supply chains of the minerals considered, and to the different roles and positions that companies may have. The Guidance includes a Supplement on Tin, Tantalum and Tungsten and further supplements will be added on other minerals starting with a Supplement on Gold and Other Precious Metals to be developed in 2011.

The Guidance could also serve as a model for home and host countries' initiatives to set corporate due diligence requirements to improve transparency and accountability in minerals supply chains. This would ensure consistency across national jurisdictions, thus avoiding the risk of exposing companies in the global supply chain to different and potentially conflicting requirements, depending on the jurisdiction in which they operate.

The Guidance has been approved by the Investment Committee and the Development Assistance Committee and is now submitted to the OECD Council for adoption as a formal OECD Recommendation. The Guidance has also been endorsed by the eleven Heads of State and Government of the International Conference on the Great Lakes Region (ICGLR) in the Lusaka Summit Declaration, which was adopted on 15 December 2010. In the Declaration, the ICGLR Heads of State and Government also called on companies sourcing minerals from the Great Lakes Region to comply with the Guidance and further directed the ICGLR Secretariat and the Regional Committee on Natural Resources to integrate the OECD Due Diligence Guidance into the six tools of the Regional Initiative against the Illegal Exploitation of Natural Resources. The United Nations Security Council supports taking forward the due diligence recommendations contained in the final report of the United Nations Group of Experts on the Democratic Republic of the Congo, which endorses and relies on the Guidance.

The **fifth speaker** represented a multinational manufacturer and distributor of construction materials. She used several case studies from her own company's experience to highlight the necessity of raising human rights awareness throughout the company and to incorporate respective considerations in business decisions. One relatively simple way of doing this is to include so-called risk maps in the decision making process. Moreover, the speaker stressed the importance of engaging stakeholders early on and of implementing community engagement plans on the ground as ways to limit potential human rights issues and liabilities for the company.

She also argued that risk management and corporate social responsibility divisions within companies must make the case internally to strengthen human rights policies and behavior within corporations. However, sometimes companies need to prioritize which human rights ought to be of prime concern as the latter cover a wide field of activities.



The speaker viewed the Ruggie Framework as a catalyst in developing a comprehensive approach for human rights. She also saw it as a valuable tool for obtaining buy-in from management for adopting such an approach since the process and Professor Ruggie himself have gained a lot of credibility within the private sector. However, she emphasized that companies need to translate the Ruggie Framework into something that is relevant to the specific company, thereby avoiding making it into solely a “tick box” exercise. She also mentioned that challenges still existed in trying to determine how far down the supply chain a company's responsibility extends.

In the discussion period which followed, an audience member commented that Western countries could do more to deter companies from violating human rights at home and abroad by adopting stricter legislation. Such legislation should define and clearly establish the direct responsibility of businesses and determine the price and sanctions for companies that violate human rights (because as long as the price is undetermined, it does not discourage companies strongly enough).

In response, one of the panel members commented that companies often end up investing in places where it is indeed unclear what price they would have to pay in case of potential violations. Therefore, companies operating in conflict zones need to be fully informed of potential risks and consequences prior to starting operations on the ground. On the downside of adopting stricter legislations, he noted that sanctions can end up hurting many innocent people. Hence, specific actions such as arms embargoes may be more effective than general sanctions. Another panel member agreed that company-specific sanctions could be too severe in some situations, especially when concerning questions of supply chain responsibilities for companies. In that regard, companies are not always able to track or control where

their products end up or who buys them. The speaker argued that instead, market forces should set a price for companies that are either directly or indirectly complicit in human rights abuses. It might also be more effective to provide incentives for companies' good performance rather than sanctioning or setting "prices" for negative behaviour.

In response to another question from the audience about the relationship between ISO 26000 standards and the draft Guiding Principles, the panel agreed that there is a high level of concordance between ISO 26000 and the Ruggie Framework. However, these standards deal mainly with due diligence while the Ruggie Framework also addresses the state's responsibility to protect and businesses' responsibility to respect human rights (ISO standards are silent on these). While the ISO 26000 standard is not officially certifiable as it is not a management system standard, most of its elements may already be covered by other existing internal or external standards.

Another question from the audience addressed whether reporting on human rights performance should become mandatory for companies. The panel agreed that the meaningful and material reporting was more important than a pro forma exercise, and there seemed to be more support for a voluntary system. In fact, making reporting mandatory could run the risk of reducing such reporting to pro forma, "tick box" exercises. On the other hand, having such reporting in place can help to track and improve performance on human rights – therefore, such reporting eventually becoming mandatory may be beneficial. In response to the same question, it was also noted that the investment community needs more information about the performance of other sectors, and that governments have a responsibility to provide some Frameworks and "common ground" for reporting.

Third Session: Further Perspectives on Implementing the UN Framework

The **first speaker** of this session represented a global agribusiness company and focused on its initiative to assess the risks of child labour in its Indian seed supply chain. It joined with several non-profit organizations to assess these risks, and initial studies revealed that in addition to the issue of child labour, problems with wages, hours of work, and occupational safety and health also existed. Given the large number and fragmented nature of stakeholders (the company has thousands of small holder farmers supplying it with seeds), engaging them was critical to finding incentives for farmers to change their practices. This included awareness building with farmers to help them understand potential benefits of new practices, multi-stakeholder meetings and negotiations, as well as a phased implementation which engaged stakeholders at every step.

Key learnings from the initiative included the reinforcement of the idea that child labour is a complex issue that can best be understood and regulated through understanding the local cultural context and that women need to be very involved for family practices to change. Eventually, the initiative also led to the development of a code of conduct for all of the company's suppliers which addresses issues of child

labour, working standards and hours, the extension of its quality management process to include labour standards and the development of incentives for farmers to comply with labour standards (e.g., by paying premium prices if they comply). Ultimately, it has created a sense of ownership both within internal and external stakeholders and changed the way the company looks at its own supply chain through adopting the mindset that it wants to be the customer's (and supplier's) first choice.

The **second speaker** of this session was from an international engineering company who began by crediting Professor Ruggie and his team for bringing the debate over business and human rights from the “train wreck” of five years ago to where it is now. However, he warned that there was still a possibility that the Framework could fail unless the document and its ideas are strongly endorsed by various stakeholders. He cautioned that many companies still do not understand the idea that respecting human rights constitutes good risk management at all levels.

He advised that the marketing of the Framework needs to be strengthened, and suggested that Professor Ruggie and his team engage with top management directly or indirectly (e.g. through pressure groups) as the issue of human rights is still not truly on most CEOs' agendas. He argued that market forces are not yet driving business to take into consideration human rights and therefore, pressure from both internal and external sources was needed to ensure that top management understood that stakeholder expectations of businesses' actions with respect to human rights have changed irrevocably.

To accomplish this, it must be kept in mind that most CEOs listen to governments, customers and investors and dislike bad publicity or the idea of feeling “left behind” in the market. The speaker



offered several tactical suggestions for the next twelve months: proactive support for the Framework from the IFC and OECD, further marketing of the Framework by governments, roundtables with CEOs and senior management, provoking internal discussion within companies and countries as well as pressure from export credit agencies and from investors. Encouragingly, he added that there appears to be an increasing level of interest from mainstream

investors in businesses' responsibility and action with respect to human rights, and this sense of curiosity must be fostered so that human rights considerations become an integral part of the investment decision process.

He also suggested that the follow-up mandate for Professor Ruggie should include engagement with top investment banks, promote discussions where executives are gathered (e.g., Forbes meetings) and redouble efforts to make sure industry associations are supportive of the Framework and its implementation.

The speaker's own company (which largely offers business-to-business products and services) has human rights criteria built into supply chain questionnaires, processes for assessing the risks of projects, a checklist for mergers and acquisitions, and has also introduced human rights criteria into the security area. He also added that the company had turned down contracts on the basis of human rights considerations. However, such initiatives are not necessarily without flaws: front end sales-people who simply tick the box, employees with insufficient understanding of human rights implications, different degrees and nature of implementation in different parts of the world, and general hesitation throughout the company given the intangible nature of such rights.

He concluded that while it was good to have such processes in place, his own company and others could not make further progress with respect to human rights without the full buy-in of senior management. Furthermore, the next twelve months were very important in terms of getting through to top management teams, ensure their full support for the Framework and readiness to integrate the Framework into the culture of the company.

The **third speaker** represented a Public Private Partnership between the UN and the global financial services sector across the banking, insurance and investment industries. The mission of the partnership is to identify, promote, and realize the adoption of best environmental, social and sustainability practice at all levels of financial institution (FI) operations. With growing human rights accountability being placed on financial institutions, a sound human rights record has become a material risk element to FIs - as participation in or association with human rights violations may negatively affect a company's profitability or reputation. FIs, as they are associated with all industry sectors, will need to take account of the human rights risks and issues of each sector when evaluating financial propositions. FIs will be expected to conduct appropriate due diligence to avoid or mitigate adverse human rights impacts associated with the provision of financial services to clients. In this respect, the responsibilities of the finance sector are broader, more indirect and more diffuse than in almost every other sector.

Thus, the speaker's organization is currently in the process of writing a business case for a multi-year project on banking and human rights, which provides knowledge and tools to the banking industry to help deal effectively with human rights risks and impacts. The programme will provide practical guidance, information and training to increase awareness and understanding and so assist the banking industry in identifying and mitigating potential for association with human rights violations.

The **fourth speaker** headed a non-profit organization dedicated to ending sweatshop conditions in factories worldwide. He began by discussing the history of his organization, which stemmed from an initiative of U.S. President Clinton in the 1990s which challenged companies and labour, consumer, religious, and human rights groups to improve working conditions around the world and to provide the public with information it could use to make informed purchasing decisions. Today, the organization has moved from its initial consultation role to an independent and transparent review process which levies member companies for having their facilities audited unannounced, with the results published on its website.

To overcome the initial reluctance and lack of trust that companies displayed in the face of such an idea, the organization developed comprehensive technical methods to make the process as objective and neutral as possible. However, cultural, economic and social contexts make a huge difference in determining the methods and results of its evaluations. To maximize its effectiveness, the organization uses a bottom-up strategy wherever possible. For example, the organization consulted the local people of poor areas on which methods and criteria to use in determining what constitutes child labour in those specific settings and what would be appropriate remediation.

The organization has also found that the company itself is not always the best vehicle for remediation. Often, the result of discussions is better when the supplier is able to work directly with local NGOs without getting the buyer involved. However, codes of conduct for buyers and suppliers, national law systems, local expectations and NGO standards do not always form a coherent picture.

The speaker felt that determining appropriate remedies is very difficult, due to the competitive pressures of modern globalized supply chains. He has found that there is a fundamental contradiction between the buying and supply ends of the chain: the buyer has unreasonable expectations of the supplier to deliver products and services while respecting working standards. However, global competitive pressures within supply chains are making it very hard for suppliers to respect working standards, and such pressures can lead to harassment and abuse. The speaker emphasized that in fact, it is us, the consumers, who drive these pressures with our demand for ever-lower prices. What we may not realize or acknowledge is that these lower prices are ultimately paid for by workers' wages. We have to take responsibility for this, and to do that, the speaker suggested a forum that brings together consumers, workers, buyers, suppliers, and local civil society to talk about the whole supply chain, not just the factory that is producing these items.

In the discussion that followed, an audience member representing a financial institution commented that his organization welcomed the Ruggie Framework, but that it needs to be adapted to the financial industry. In that regard, he was pleased that the PPP intended to translate the Guiding Principles into targeted guidelines for financial sector companies after "road testing" such guidelines. He also added that in addition to legal complicity, financial institutions are also impacted when they are seen as financing companies which violate human rights when customers for instance close their accounts in protest. There is also discomfort amongst banks that they may be drawn into the grievance procedures, and in fact his organizations is already dealing with this as some NGOs are approaching banks for remediation (for financing companies that have violated human rights).

Another audience member added that what differentiates financial sector companies with respect to human rights and business is that they have to factor in their clients' due diligence in addition to carrying out their own. His organization, which provides investments and advisory services to build the private sector in developing countries, is currently trying to decide how to monitor and strengthen the due diligence of its clients.

A question from the audience addressed the fact that in some of the documents coming from the OECD, the latter tried to adapt or shorten the language that Professor Ruggie uses in a way that changes its meaning. The panel was asked to comment on the stability of the Framework at this point in time and how it could be further strengthened. There was general agreement among the panelists that there is a critical need for the Framework to be perceived as a stable platform and that there needs to be clarification as to which organization is the main driver of the process going forward. It was suggested that it could be embedded in the Office of the High Commissioner. Another panel member added that the financial institutions that he deals with are interested in educating their staff on human rights, but usually within the broader context of sustainability.

Fourth Session: Business and Human Rights: Where do we go from here?

The **first speaker** of the fourth session, who represented an UN agency, stated that much progress on the issue of human rights and business has been achieved, and that it is now up to the Human Rights Council to decide about the follow-up to the business and human rights mandate. The speaker presented the key



elements proposed by the Special Representative of the Secretary General on business and human rights, Professor John Ruggie, for the Human Rights Council to consider when deciding on the follow up mechanisms. The key elements proposed by Professor Ruggie address the functions that he thinks a new mandate should cover to become most effective: dissemination of the Guiding Principles on business and human rights, including capacity building for stakeholders to support implementation

of the Principles; continued multi-stakeholder engagement; addressing existing protection gaps in the context of corporate involvement in gross human rights abuses; addressing current imperfect patterns of judicial and non-judicial mechanisms for corporate-related human rights grievances. It was noted that Professor Ruggie has argued that follow-up should be anchored within the UN as a platform for interpretation and have a multi-stakeholder element to strengthen sustain the momentum of the process.

The **second speaker** represented a global business-led initiative to advance human rights in business around the world. She stated that to look forward, we must first look back: a few decades ago, it would have been much more difficult to bring states, businesses as well as civil society onto a common platform. It must be acknowledged that we have come a long way on this path and need to remind ourselves not to repeat past mistakes.

The speaker called for a globalization of the debate: more actors from a larger number of countries need to be involved. There is a need to support company staff who are trying to convince their senior management that respecting human rights is an important issue which must be addressed.

Especially since market forces are not yet driving this mindset. In terms of scaling up, the speaker saw a need to ensure appropriate qualification of “experts” who are advising businesses on this subject.

She argued that companies that are wilfully ignoring this debate may necessitate the establishment of legal mechanisms that force them to make efforts in respecting human rights. While we have not reached this stage in the process, we are all responsible for ensuring this Framework does not end up sitting on a shelf. The discussion on the Framework has advanced rather quickly (especially when considering debates on other issues at the UN) and it is critical to keep this momentum going forward.

The **third speaker** represented an international NGO specializing in international law and principles that address human rights. He stressed the need to continue building an international architecture to tackle the governance gaps identified by Professor Ruggie as being at the origin of the business and human rights predicament. This would involve continuing work in terms of fostering a culture of respect, establishing clear rules for all actors, building effective institutions and improving capacity of actors. In this respect, initial suggestions to establish a High Level Task Force with tripartite composition in the Human Rights Council (business, governments and civil society) seems to be an insufficient remedy and is likely to be ineffective. There have also been suggestions that we need an international legal instrument to address the protection gaps that exist in conflict areas or situations of heightened risks. This suggestion deserves careful and serious consideration. We also need to build strong national legal and redress systems capable of providing effective remedies to those who claim to suffer harm. Finally, if OHCHR is to have a role in the follow-up, one valid question that arises is whether the full mandate of the UN High Commissioner for Human Rights, including her protective role, will come into play in relation to businesses.

The **fourth speaker** represented a Western European government, and began by stating that the biggest violators of human rights continue to be governments. Multi-stakeholder dialogues are necessary but we must not forget where the real responsibility for human rights lies. He also stressed that while Professor Ruggie and his team aim to find a consensus among various stakeholders, the resulting report will not be negotiated by the Human Rights Council – it can only be adopted or refused.

The speaker then examined the recent global financial crisis and the 2010 Gulf of Mexico oil spill for implications of the latter regarding business and human rights. He concluded that building a culture of honesty, transparency and responsibility is critical. Getting both middle and senior management engaged in these debates is essential, as is the participation of industry associations, civil society and other actors. He also emphasized the need to move past merely disseminating information on human rights to adopting a true “human rights learning approach” in order to bring about real changes in mindsets.

He concluded that from a government perspective, human rights and the environment are becoming increasingly important and interlinked issues. While the business community seems to be more concerned with environmental issues, it should be encouraged to have a more pro-active role in dealing with other human rights issues as well.

In that regard, the speaker encourages initiatives such as holding CEO roundtable discussions and engaging with the investment community. Finally, he reiterated his positive appreciation of the Ruggie Framework and his hope that it will be adopted later this year by the Human Rights Council.

In the discussion which followed, an audience member suggested that the follow-up mandate should also entail: embedding the Guiding Principles within a UN body; providing technical assistance and capacity building; sustaining and promoting the multi-stakeholder nature of the work; exploring ways and means of dispute resolution; and exploring ways in which human rights may be violated by businesses in conflict areas. Finally and as mentioned previously, it will be up to the Human Rights Council to decide on next steps but the attendee suggested that it may be useful to build on existing work such as the Universal Periodic Review.

Another member of the audience maintained that the short, medium and long-term implementation steps still needed to be agreed upon. Moreover, businesses in different sectors and active in particular countries, as well as states in various regions of the world, will likely need to adopt distinct implementation steps and strategies. While different from each other, such strategies must be coherent, involve grassroots organizations and address governance gaps (e.g., some branches of the government do not know what other departments are doing). She encouraged Western governments to also get involved, both in assisting companies in their own countries as well as other state governments to develop and implement these strategies.

One of the panel members agreed that different branches of government may not be well-informed about each other's actions on particular issues, but bringing up such topics with governments may not necessarily result in obtaining satisfactory solutions. According to the panelist, the general culture of a society will first have to change in order for corporate mindsets to follow suit. In this regard, he felt that the Ruggie process was one step in that direction. He also added that governments in countries with serious human rights challenges are not operating in a vacuum – they know where the challenges lie and may be willing to address such issues, though likely not all. Therefore, the current discussion over human rights and business ought not to take place solely amongst Western elites.

An audience member commented that it was very useful to see this topic through the prism of the sustainability agenda. Another member of the audience agreed that topics such as environment and human rights could no longer be treated in silos. We should look at all of these together in an integrated manner, and Professor Ruggie's endorsement of "do no harm" should apply to businesses' operations in all of these areas.

Lastly, several members of the audience and the panel agreed that there was a need to identify partners for the Human Rights Council to work with to expand the resources available to them on this issue.

III. Concluding Remarks

The workshop on “Company Responsibilities in Countries with Human Rights Challenges” brought together approximately 60 senior representatives from companies, governments, UN agencies, non-profit organizations and academia to engage in a constructive and lively dialogue about the evolution and future prospects for Professor Ruggie’s “Protect, Respect and Remedy” Framework. Several challenges for the implementation of the Guiding Principles were identified but there was also general agreement amongst speakers and attendees that Professor Ruggie and his team had done excellent work thus far and made significant progress in engaging a variety of stakeholders in the debate over business and human rights. Further, the workshop identified several opportunities and mechanisms to maximize the Framework’s chances for success going forward.

IV. About the Workshop Partners

About The Conference Board

The Conference Board is a global, independent business membership and research association working in the public interest. Our mission is unique: to provide the world’s leading organisations with the practical knowledge they need to improve their performance and better serve society. Our membership includes over 1,200 companies in both the established and the emerging markets of the world. A non-advocacy, not-for-profit entity, we conduct research and convene business leaders, working within and across four main subject areas: Economies, Markets & Value Creation; Human Capital; Corporate Leadership, and High-Performing Organizations. Founded in 1916, The Conference Board established its European headquarters in Brussels in 1977. Please visit the website at www.conference-board.org for further information.

About The Business Humanitarian Form

The Business Humanitarian Forum (BHF) established in 1999, encourages better understanding and cooperation between the public and private sectors, and works with partners to address humanitarian problems and promote sustainable economic development. The BHF does this by arranging for direct private sector involvement and investment in areas where it is needed, and by providing training and facilitating dialogue between organizations and private companies. The BHF builds awareness that business has a strong, long-term economic, political and social interest in supporting the work of the humanitarian community, and that private sector investment is the key element for economic development and overcoming long-term humanitarian problems. Both sectors are essential for the stabilization and social progress of developing and post-conflict societies. The BHF has initiated and carried out several reconstruction projects in post-conflict areas and helped create partnerships between businesses, humanitarian agencies and local governments. The BHF has also sponsored contact groups,

workshops and conferences to heighten awareness of the important role business can play in alleviating humanitarian problems. The BHF is a non-profit association based in Geneva and was founded with the encouragement of UN Secretary General Kofi Annan.

For more information on the BHF, visit www.bhforum.org.

About The Federal Department of Foreign Affairs (Switzerland) / Desk Human Security and Business

The principle legal duty to protect human rights will always lie with the state. Similarly, the promotion of peace and human rights and the provision of a sustainable socio-economic order is the responsibility of the state. However, the implications for human rights and the private sector go beyond legal interpretations. The implementation of governmental human rights obligations may impact on the activities of business, just as activities of corporations and private actors may impact on governments to meet these obligations positively and negatively, Switzerland therefore regards dialogue with non-state actors with a specific impact on human rights, such as corporations, and their integration into peace and human rights policies as an important form of cooperation. With a specific focus on conflicts the Political Affairs Division IV (Human Security) is therefore constantly working together with representatives of the private economy, civil society and governments to develop methods and instruments, aimed at minimizing the negative influences of business activities on human rights and the course of conflicts, and promoting ways in which they can have a positive impact.

Annex I: Workshop Agenda

Company Responsibilities in Countries with Human Rights Challenges

International Environment House II
Geneva, Switzerland
February 3 & 4, 2011

Thursday, 03 February 2011

- 12.00 Registration & Networking Lunch
- 13.00 Opening and Welcome Remarks
- 13.15 First Session: Guiding Principles for the Implementation of the Protect, Respect and Remedy Framework
- 15.30 Coffee Break
- 15.45 Second Session: Due Diligence in Conflict Situations and with Regard to the Supply Chain in Conflict Minerals
- 17.30 Meeting adjourns

Friday, 04 February 2011

- 08.30 Council Business
(Only Members of the European Council on Corporate Responsibility & Sustainability)
- 09.15 Coffee Break
- 09.30 Third Session: Further Perspectives on Implementing the UN Framework
- 11.00 Coffee Break
- 11.15 Fourth Session: Business and Human Rights: Where do we go from here?
Options for Follow-up Measures and Mechanisms to the Current Mandate
- 12.45 Networking Buffet Lunch
- 14.00 Meeting Adjourns

* This BHF and Conference Board meeting is held under the Chatham House Rule: 'Participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed'.

Annex II: List of Attendees and their Organisations

ABB Ltd.

Mr. Ron Popper
Head of Corporate Responsibility

Amnesty Switzerland

Ms. Danièle Gosteli Hauser
Head, Business and Human Rights

Amnesty International

Ms. Liz Umlas
Member of the Business and Human Rights
Group

BASF SE

Mr. Thorsten Pinkepank
Head of Sustainability Coordination

BP plc

Mr. Anton Mifsud-Bonnici
Group Strategy and Policy

Confederation of British Industry

Mr. Gary Campkin
Former Head, International Group

Credit Suisse AG

Mr. Bruno Bischoff
Vice President
Public Policy - Sustainability Affairs

Delegation of the European Union

Mr. Michael Cerulus
Human Rights Intern

DSM

Dr. Patrick Van Bael
Senior Advisor Sustainability

Fair Labor Association

Mr. Auret van Heerden
President and CEO

FXB International

Mr. Rafael Rovaletti
Director, Resource Management

Global Business Initiative on Human Rights

Ms. Kathryn Dovey
Director

G4S plc

Mr. Michael Clarke
Director of Public Affairs

Global Reporting Initiative

Ms. Teodorina Lessidrenska
Senior Associate

Holcim

Ms. Ariane Lüthi
SD - Social Responsibility

Holcim

Ms. Stefanie Koch
CSR Manager

Huntsman Europe

Dr. Bill Brooks
Vice President, Environment, Health & Safety
(Europe)

The Evian Group at IMD

Ms. Carine Dind-Dunand
Research Associate

Institute for Human Rights and Business

Mr. Salil Tripathi
Senior Policy Adviser

International Commission of Jurists

Mr. Carlos Lopez
Senior Legal Advisor

International Committee of the Red Cross

Ms. Claire de Feu
Attachée, Division for Multilateral
Organizations, Policy and Humanitarian
Action

International Committee of the Red Cross

Mr. Claude Voillat
Economic Advisor

International Council on Mining & Metals

Mr. Aidan Davy
Senior Program Director

International Finance Corporation

Mr. Yann Wyss
Business and Human Rights Officer

International Labour Organization

Ms. Githa Roelans
Senior Specialist
Multinational Enterprises Programme

International Organisation of Employers

Mr. Brent Wilton
Deputy Secretary-General

La Caixa

Mr. Ángel Pes
General Manager, Corporate Reputation

LEGO System A/S

Ms. Helle Sofie Kaspersen
Vice President, Corporate Governance &
Sustainability

Lundin Petroelum

Ms. Christine Batruch
VP Corporate Responsibility

Mission of Palestine to the UN

Mr. Adel Atieh
Counsellor

Nestle S.A.

Mr. Christian P. Frutiger
Public Affairs Manager

**Network for Governance, Entrepreneurship &
Development**

Mr. Jean Freymond
President

**Office of the High Commissioner for Human
Rights, UNOG-OHCHR**

Mr. John E. Grova
Associate Expert

OECD

Ms. Lahra Lberti
Advisor
International Law, Investment Division

PBI-Schweiz

Mr. David Brockhaus
Co-Director

Permanent Mission of Norway

Ms. Beate Stiro
Minister Counsellor

Royal Dutch Shell plc

Mr. Andrew Vickers
VP Policy & External Relations

Safestainable

Mr. Heinrich Hanspeter
Managing Director

Siemens AG

Ms. Daniela Otten
CS EO Corporate Sustainability Office

Siemens AG

Ms. Christina Rinberger
Sustainability Consultant

SKF Group, The

Ms. Sim Tee Lam
Communications Manager
Corporate Sustainability

Solvay S.A.

Mr. Thierry Lefevre
Corporate Social Responsibility Manager

Sulzer Ltd.

Dr. Ruth E. Blumer
Head of Corporate QESH and Sustainable
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Ms. Corrina Morrissey
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Swiss Federal Department of Foreign Affairs

Mr. Nils Rosemann
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Ms. Ylva Stiller
Corporate Responsibility Manager

UBS AG

Mr. Yann Kermodé
Director, Group Environmental Policy

United Nations Development Programme

Mr. Ronald Derks
Coordinator, World Alliance of Cities Against
Poverty

United Nations Environment Programme

Mr. Michel Crevecoeur
UNEP Finance Initiative

UPEACE Council

Amb. Mohamed Sahnoun
Vice President

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