



SRSG Leadership Group Meeting

Members of the Leadership Group advising the Secretary-General's Special Representative for Business and Human Rights met with the SRSG and his team in Salzburg, Austria, on 15 June 2009, to discuss the mandate and offer guidance on its strategic direction and focal activities.

The meeting was hosted by the Government of Austria and ResPACT Austria, and was held at the site of the Salzburg Global Seminar.

This note includes the background memo prepared for the meeting as well as a summary of the Leadership Group's discussion. The Leadership Group roster is annexed to this note.

I. Background Memo

In June 2008, after three years of extensive research and global consultations with business, governments and civil society, the SRSG proposed a policy framework for better managing business and human rights challenges. It is based on three pillars: the **state duty to protect** against human rights abuses by third parties, including business; the **corporate responsibility to respect** human rights; and the need for greater access by victims to **effective remedy**, judicial and non-judicial. The Human Rights Council was unanimous in welcoming the framework, and extended the SRSG's mandate by three years with the task of operationalizing it.

The framework already has enjoyed considerable uptake by states, companies and civil society. For example, Canada's export credit agency's new "Statement on Human Rights" referenced it and said the agency would monitor the SRSG's work to "guide its approach to assessing human rights." The UK's National Contact Point for the OECD Guidelines for Multinational Enterprises found against a company for failing to exercise adequate human rights "due diligence," using the term as defined in the SRSG's framework. The Norwegian Government's 2009 Corporate Social Responsibility White Paper draws on the framework extensively, and a UK parliamentary committee is using it as the basis for its inquiry into business and human rights.

The International Chamber of Commerce has described the framework as "a clear, practical and objective way of approaching a very complex set of issues." Amnesty International said it "has the potential to make an important contribution to the protection

of human rights.” The UN High Commissioner for Human Rights has hailed it as “an important milestone.” At the Human Rights Council’s June 2009 session, the SRSG’s progress report on operationalizing the framework won praise from all states that spoke on the issue, including Brazil, China, and India.

The SRSG aims to fulfill his mandate to “operationalize” the framework by developing guiding principles for each of the three pillars.

1. State Duty to Protect

The state duty to protect has both legal and policy dimensions. International law requires states to take appropriate steps to prevent, investigate, redress and punish human rights abuse within their territory and/or jurisdiction, including by business. The extra-territorial dimension of this duty requires further clarification.

But most Governments take a relatively narrow approach to managing the business and human rights agenda, and human rights concerns remain poorly integrated into other policy domains that directly shape business practices.

The SRSG’s work stream on state duties includes the following issues:

- Safeguarding states’ **ability to meet their human rights obligations**. One way states may tie their own hands is by signing on to overly broad investment agreements. The SRSG is exploring the feasibility of developing guidance for investment contracts that ensure investor protection without constraining *bona fide* human rights objectives and policies;
- Governments need to **consider human rights when they are involved in business ventures**—the SRSG has addressed the particular role of export credit agencies;
- Even when governments are not connected directly to a business venture, they should **foster corporate cultures respectful of rights** at home and abroad; the SRSG is examining the role of corporate law and states’ corporate social responsibility policies;
- The mandate is also seeking to clarify further the **extraterritorial scope** of the duty to protect, including drawing lessons from other areas where transnational regulation is applied, such as bribery and corruption;
- The SRSG is seeking to work with a small but representative group of states in an informal process to identify innovative policy measures and tools governments could employ to guide companies operating in **conflict-affected areas**, in which governance and the rule of law by definition is weak or non-existent.

2. Corporate Responsibility to Respect

The corporate responsibility to respect human rights in essence means to act with due diligence to avoid infringing on the rights of others. In addition to complying with national laws, the corporate responsibility to respect human rights is the baseline expectation for all companies in all situations. It is recognized by virtually every voluntary initiative, such soft law instruments as the ILO Tripartite Declaration and the OECD Guidelines, and is

a core principle of the UN Global Compact. Companies may take on additional responsibilities voluntarily; and in some situations, for example if they perform public functions, more may be required of them.

However, relatively few companies have systems in place enabling them to demonstrate that they respect human rights. What is needed, therefore, is a due diligence process whereby companies become aware of, prevent, and address adverse human rights impacts. The core elements of human rights due diligence are having a human rights policy, undertaking human rights impact assessments, integrating human rights throughout a company, and tracking and reporting performance.

For the remainder of his mandate, the SRSG will:

- Develop guiding principles for companies on how to fulfill their responsibility to respect human rights, including how to conduct **human rights due diligence**;
- Understand how human rights due diligence might vary among companies of different sizes and sectors, e.g. **small- to medium-sized enterprises** and **financial institutions**;
- Articulate how the responsibility to respect should be realized in **supply chains**;
- Achieve greater clarity on **dilemmas** for companies with respect to human rights, e.g. when international and national standards conflict;
- Highlight ways in which corporations should be held **accountable** by other market actors for their responsibility to respect, e.g. by investors, buyers, etc.

3. Access to Remedy

Even where institutions operate optimally, disputes over adverse human rights impacts of corporate activities are likely to occur, and victims must be able to seek redress. Currently, access to formal judicial systems is often most difficult where the need is greatest. Non-judicial mechanisms are seriously underdeveloped from the company level up through national and international spheres.

Effective grievance mechanisms play an important role in both the state duty to protect and the corporate responsibility to respect. Without adequate remedy, the duty to protect could be rendered weak or even meaningless. As part of the corporate responsibility to respect, grievance mechanisms help identify, mitigate, and possibly resolve grievances before they escalate and greater harm is done.

Non-judicial mechanisms, whether state-based or independent, should conform to principles of legitimacy, accessibility, predictability, rights-compatibility, equitability and transparency. Company mechanisms should also operate through dialogue and mediation rather than the company itself acting as adjudicator.

With regard to non-judicial mechanisms, the SRSG plans to:

- Examine the impact of **corporate culture** on the ability of companies to manage human rights disputes effectively;
- Pilot **grievance mechanisms** with companies in four different sectors;
- Consider the scope for alternative **international mechanisms**, including a networked mediation facility, in support of improved corporate-related human rights dispute resolution;
- Develop **BASESwiki.org**, the SRSG's online interactive forum on non-judicial grievance mechanisms, into a premier resource on dispute resolution in this field.

With regard to access to judicial remedy, the SRSG hopes to propose policy options to governments based on:

- Examining **legal barriers** to accessing judicial remedy arising from national standards of corporate liability, jurisdictional rules and other legal doctrines;
- Exploring **practical barriers** to accessing judicial remedy (e.g. costs, provision for group claims, evidentiary and enforcement challenges);
- Assessing particular barriers confronting “**at-risk**” or **vulnerable groups**, potentially including women, children, indigenous peoples and other minorities.

4. Mandate’s Value Added

As has been true throughout, the mandate’s own work in all three pillars will be combined with multistakeholder consultations, expert workshops and collaboration with relevant national and international organizations and initiatives.

The SRSG’s mandate was created because there was no clarity on corporate responsibilities with respect to human rights as a whole—and therefore no consensus on how best to prevent corporate-related human rights abuses from occurring. For example, the government of Canada said in 2006:

The existing international CSR framework is marked by numerous voluntary codes, moving benchmarks and ongoing debate regarding the appropriate boundaries between governments, business and other stakeholders. Furthermore, while most multilateral CSR initiatives make at least a reference to human rights, a significant gap in the existing framework is the lack of an authoritative statement – akin to the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work – on business and human rights against which company activity can be measured, or an accepted methodology with which to assess such activity. Canada welcomed the appointment of the Special Representative to the Secretary General on Human Rights and Transnational Corporations as a positive step toward clarifying this framework with respect to human rights.

To date, corporate responsibility initiatives have been developed for specific industries (e.g., the Fair Labor Association is based on a workplace code of conduct for factories; the Voluntary Principles on Security and Human Rights are for extractive companies to

protect their facilities while ensuring respect for human rights); for specific issues (e.g., anti-corruption); and for corporate responsibility at a very general level (e.g., the UN Global Compact).

Moreover, most existing initiatives are intended for discrete groups of private sector actors that choose to adopt them, while a few suggest how states should regulate or support companies in their jurisdiction: The International Labor Organization creates guidelines for how its member states should implement global labor standards; OECD member states are obligated to promote the OECD Guidelines for Multinational Enterprises; and the Montreux Document on Private and Military Security Companies agreed to by 17 states suggests good practices for states.

But no principles are addressed simultaneously to multiple actors, acknowledge their distinct nature and yet complementarity of roles, and have broad applicability. In other words, none takes a holistic, systemic view. The SRSG aims to fill this gap.

II. Summary of Discussion

Participants in the Salzburg Leadership group meeting expressed the view that the “protect, respect and remedy” framework was an effective way to set out the duties of states, responsibilities of companies, and the importance of improving access to remedy for victims of corporate-related human rights abuse. The Group also discussed the importance of explaining better that none of the three pillars stands in isolation, and of showing how they interact with each other. For example, the state duty to protect includes assisting companies to meet their responsibility to respect through incentives and policy guidance, as well as punitive measures.

The Human Rights Council has tasked the SRSG with developing broadly applicable principles rather than publicizing the details of specific cases. Some members of the Group noted that not all stakeholders appear to be equally aware of the mandate’s purpose in this regard, leading to an impression by some stakeholders that the SRSG is not paying enough attention to problems on the ground—despite his extensive engagement with affected individuals and communities through five regional consultations to date, site visits, statements and correspondence. It was agreed that communications could be strengthened around the SRSG’s many outreach activities.

It was also said that such matters as investment agreements and extraterritorial jurisdiction are not simply technical in nature, but occur in contexts of politics and power. There are complexities and unintended consequences in working towards single global standards, whether they concern child laborers “freed” from factory or field work only to end up in the sex industry, different countries needing to make different cost-benefit calculations vis-à-vis foreign direct investment, or companies having to take local conditions into account in implementing their global policies. At the same time, universality can level the playing field, avoid relativism, and facilitate predictability.

There was an extended discussion about whether the SRSG should focus on large transnational corporations. The mandate specifically requires consideration of “other business enterprises” as well, but the point was taken that large companies are powerful force multipliers. The SRSG does need to ensure that the capacities of small and medium-sized enterprises are taken into account, for example when developing principles for human rights due diligence.

The Group addressed an apparent confusion on the part of some observers about the corporate responsibility to respect, either because they equate it with the “support and respect” principle of the UN Global Compact, or because they think the bar is set too low. Three points were made in response:

- The SRSG mandate is very different from the UN Global Compact. The Compact is a values-based learning forum in which companies can choose to participate or not. In contrast, the SRSG’s mandate is meant to result in specific policy recommendations that the Human Rights Council and possibly the General Assembly will consider, as well as to clarify directly for business the baseline expectations of all companies in all situations and providing guidance on how to meet those expectations.
- The corporate responsibility to respect human rights is not merely passive, but involves extensive proactive measures. For example, the human rights due diligence process required for companies to demonstrate their responsibility to respect involves positive steps to manage the risk of human rights harm with a view to avoiding or mitigating it.
- Many people, including within companies, confuse philanthropy with core human rights responsibilities. Promoting fulfillment of human rights through charitable activity is desirable and should be encouraged, but it is not a human rights requirement. Nor is there any equivalent to carbon off-sets in human rights; companies cannot compensate for failing to meet their responsibility to respect by doing good deeds in other ways.

The Group discussed what success might look like when the mandate concludes in 2011. One clear theme in that discussion was that the breadth of topics and stakeholders that this mandate has engaged is extremely valuable. Therefore, the hope was expressed that the mandate’s work would have an impact on many different parts of society, including but reaching well beyond the traditional human rights community (which speaks to the additional challenge of discussing the issues in a way that is broadly accessible to others). It was agreed that multistakeholder dialogues should continue to constitute an important part of future work on these issues.

Finally, the Group addressed briefly the need to think through carefully what recommendations the SRSG might make to the Human Rights Council about any possible follow-up process to the mandate.

Annex: Leadership Group Roster

Kofi Annan (Ghana), former Secretary-General of the United Nations

Souhayr Belhassen (Tunisia), President, Fédération Internationale des Ligues des Droits de l'Homme

John Browne (UK), Managing Director of Riverstone Holdings LLC; former Group Chief Executive of BP plc

Maria Livanos Cattai (Switzerland), member of the Board of Directors, Petroplus Holdings AG; former Secretary General of the International Chamber of Commerce

Stuart Eizenstat (USA), Partner, Covington & Burling LLP; former U.S. Deputy Secretary of the Treasury, Under Secretary of State, Under Secretary of Commerce, Ambassador to the European Union

Luis Gallegos (Ecuador), Ambassador of Ecuador to the United States; former Vice-Chair, UN Commission on Human Rights; Member of the UN Committee against Torture

Neville Isdell (USA), Former CEO and Chairman of the Board of Directors, The Coca-Cola Company

Hina Jilani (Pakistan), Member of the Council, Pakistan Human Rights Commission; former UN Secretary-General's Special Representative on Human Rights Defenders

Kishore Mahbubani (Singapore), Dean, Lee Kuan Yew School of Public Policy, National University of Singapore; former Ambassador of Singapore to the United Nations

Narayana Murthy (India), Chairman, Infosys Technologies Limited

Sonia Picado (Costa Rica), Chair, Inter-American Institute of Human Rights; former Judge and Vice-Chair of the Inter-American Court of Human Rights

Cyril Ramaphosa (South Africa), Executive Chairman, Shanduka Group; former Secretary General of the African National Congress

Mary Robinson (Ireland), Chair, Realizing Rights: The Ethical Globalization Initiative; former President of Ireland and United Nations High Commissioner for Human Rights

Guy Ryder (UK), General Secretary of the International Trade Union Confederation

Marjorie Yang (China), Chairman of Esquel Group.