

First published by the [Triple Crisis Blog](#)

January 11, 2011

Business and Human Rights: Searching for transformation

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I don't regularly co-mingle with international human rights lawyers but I do regularly investigate the local sustainability impacts of foreign investment, including in the ethically and environmentally challenged extractives industry. Thus it was that in early December, I found myself at a [conference](#) in The Hague organized by the World Legal Forum. Tagged "Business and Community in Dialogue: Connecting Corporate Responsibility and Global Governance," the conference aimed to promote the emerging [UN Framework](#) for business and human rights. The main draw was Harvard Professor John Ruggie, the UN Secretary-General's Special Representative for Business and Human Rights and the primary mover and shaker in articulating and now operationalizing the Framework.

The Framework sprouted from the ashes of a long and bitter fight between business and NGOs. In the 1990s, concern about [business abuses of human rights](#) mushroomed as oil, gas and mining companies expanded into more marginal areas and as apparel, footwear and electronics industries began to outsource production to countries with poor working conditions. An intense advocacy effort targeting the then-UN Commission on Human Rights led to the creation of the [Draft Norms](#) on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. While re-affirming that states have "primary" responsibility, the Norms asserted that companies have "secondary" but legally binding duties to uphold existing human rights treaties, including on worker rights, the environment, and personal security. Willing to go along with the voluntary standards, business fought tooth and nail against the "legally binding" concept—and the Human Rights Commission did not adopt the Norms.

Enter round two. At the Commission's request, Kofi Annan appointed Ruggie to figure out how to move beyond the stalemate. After three years of extensive consultation with governments, business and civil society groups around the world, Ruggie concluded that what was missing was a "focal point", a framework articulating roles and responsibilities that could be embraced by all stakeholders. In [June 2008](#), he presented to the Human Rights Council a policy—not a legal—framework based on three pillars: *protect*, meaning state responsibility to legislate and regulate; *respect*, meaning corporate responsibility to act with due diligence and to address adverse impacts; *remedy*, meaning greater access by victims to judicial and non-judicial redress.

The Council enthusiastically embraced the “protect, respect, remedy” Framework, marking the first time the UN has adopted a substantive policy position on business and human rights, and asked Ruggie to stay on and “operationalize” it. He and his team are on a whirlwind of conferencing and researching, including the December conference, which focused on “remedy”. A set of [draft principles for implementation](#) of the Framework was released for comment at the end of November. A final draft will be presented to the Human Rights Council in June 2011.

What does—and doesn’t—the Framework offer? Does it significantly move the agenda and portend real change in the way that business does business, or does it let business—and government – off the hook?

There is little doubt that the Ruggie process moved beyond stalemate and significantly deepened and broadened the global conversation about business and human rights. Changing business norms is a slow process, involving much “hearts and minds” work to shift thinking and embrace, integrate and implement new values. By providing a forum and a focus for governments, business, and NGOs to talk, the Ruggie process has sparked and facilitated a lot of learning on all sides.

Though deeply engaged, human rights groups nonetheless remain cautious of what they fear could be a voluntary “corporate social responsibility” approach not backed up by state legal muscle. Speaking at the Conference, [Audrey Gaughran](#), Amnesty International’s head of Business and Human Rights, pointed out, for example, that non-judicial mechanisms have little or no capacity to actually deliver remedy to victims of human rights abuses unless companies are required by law to participate and compensate or change their practice. She highlighted the “National Contact Points” that implement the OECD’s voluntary [Guidelines for Multi-National Enterprises](#), which have no authority to require companies either to participate in an investigation or to agree to a grievance resolution.

There is little doubt that a transformation in the way that business operates requires pithy state legislative and regulatory action, at the national and global level. But the innovation in the Ruggie Framework is that it holds that business has human rights responsibilities even in the absence of state action. In many instances of corporate abuse of human rights, companies have simply pointed the finger at the local government.

Optimistically, the Ruggie process will permanently shift the willingness of business to embrace human rights as part of modern corporate governance and management. Such a shift, in turn, would strengthen the resolve of governments to regulate and legislate. Indeed, the optimal outcome would be a mutually reinforcing process of ratcheting up commitments by both business and government, with civil society watch-dogging and helping both players. The risk is that, as with many “legally binding” attempts at global environmental and human rights governance, it falters in the implementation stage.

My guess is that it won’t. It’s not that legally binding global norms implemented in national law are not needed. They are. But without buy-in of “hearts and minds”, the legal approach doesn’t work, faltering either in adoption or enforcement. Transformation “from below” takes longer and it’s messier, but in the end, it is the stuff of lasting change in social norms.