



Ruggie report

Ignore human rights at your peril

By Peter Davis, politics editor

John Ruggie's third report to the UN argues that although companies do not have the same human rights responsibilities as states, they should cover themselves from accusations of complicity in abuses

It is nearly three years since Kofi Annan, as UN secretary-general, appointed John Ruggie as his special representative on issues of human rights, transnational corporations and other business enterprises. The Harvard professor's remit was "to identify and clarify standards of corporate responsibility and accountability with regard to human rights".

His final report, "Protect, Respect and Remedy: A Framework for Business and Human Rights", was published in April and will be presented to the UN Human Rights Council this month.

Ruggie opens by defining what he sees as being the problem – why his task as special representative needed doing at all. In his view, what he calls the "predicament" of business and human rights stems from "governance gaps created by globalisation" – where the impact of corporations on human rights (and indeed on other issues) exceeds the ability of states and societies to manage the adverse consequences.

As Ruggie observes, progress has been made in the past decade in attempting to fill these "governance gaps". However, while the steps taken – for example initiatives such as the Kimberley Process and the UN Global Compact – are to be welcomed, the fundamental problem "is that there are too few of them ... and they do not cohere as parts of a more systemic response", Ruggie says. The aim of his

report is therefore to propose a systematic framework for the management of business responsibility and accountability for maintaining human rights.

State duty

The first element in Ruggie's governance framework rests on the state's duty to protect the human rights of its people. As he observes, this duty is well understood, and is enshrined in international law and custom. The problem is "how states may fulfil this duty with respect to business activities". He makes a number of recommendations on how this might be achieved.

First, states need to foster corporate cultures in which respect for human rights is integral. This might be done, for example, through modifying disclosure requirements for listed companies.

Second, states need to align their policies much more closely. While he does not name names, he criticises governments that "take on human rights commitments without regard to implementation".

Ruggie is also critical of bilateral agreements by which governments seek to promote foreign investment by providing legal protections to investing companies.

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Ruggie argues that such agreements can undermine the ability of governments to protect human rights. He cites the current example of investors from Italy and Luxembourg claiming exemption from South Africa's black economic empowerment laws under the terms of a bilateral investment agreement.

Thirdly, he advocates more help from the international community to individual states to achieve greater policy coherence on business and human rights. This work he ascribes firmly to human rights bodies such as the UN Office of the High Commissioner for Human Rights.

The second part of his trinity is "the baseline responsibility of companies to respect human rights". Central to this is the need of companies to observe due diligence in understanding and managing the human rights impacts of their operations. He

argues that companies already have in place systems to assess and manage financial and legal risks, and this approach should be extended also to cover human rights impacts.

Ruggie makes it clear that companies' human rights due diligence should extend beyond evaluation of their own activities to include consideration of "abuse through the relationships connected with their activities".

Through such a process, Ruggie argues, companies can avoid complicity in human rights abuses. Legal complicity is clearly defined but, as Ruggie makes clear, differing non-legal interpretations made by campaigners, social investors and others make this a grey area in which "it is not possible to specify definitive tests for what constitutes complicity in any given context".

A similar grey area is evident in Ruggie's discussion of the vexed issue of a company's sphere of influence. He makes it clear that where a company's "activities or relationships" are causing actual harm, then remediation is part of a company's "duty to respect" human rights. However, he also says a company's sphere of influence extends to any "leverage a company may have over actors that are causing harm". Companies should only be expected to manage these issues "in particular circumstances".

But in what circumstances? He refers to the ongoing difficulties of Google and other internet companies, making it clear that a company's sphere of influence is defined by its business activities "and the relationships connected to those activities". On Ruggie's test, companies are complicit if their direct "activities or relationships" are causing harm.

As Ruggie points out, any system of human rights protection is useless unless there are effective mechanisms to investigate, punish and redress abuses. He acknowledges that a number of processes already exist, including international agreements such as the Convention on the Rights of the Child; national mechanisms such as the UK Health and Safety Executive; and multi-stakeholder initiatives such as the Voluntary Principles on Security and Human Rights. However, he concludes that this "patchwork of mechanisms" is flawed and is in serious need of improvement.

Ruggie says states should strengthen the legal frameworks to "hear complaints and enforce remedies against all corporations operating or based in their territory". He also argues for a strengthening of existing structures, such as the National Contact



Responsibility at the top will help at the bottom

Points for the OECD Guidelines, which he describes as "potentially an important vehicle for providing remedy".

He also says companies themselves should institute grievance mechanisms as part of their commitment to respecting human rights. And he criticises both the Voluntary Principles on Security and Human Rights and the Equator Principles on the weakness of their grievance processes.

Responses

The response to Ruggie's report has been broadly favourable, but muted. Benedetta Lacey, economic relations projects director at Amnesty International UK, says: "The broad framework of protect, respect and remedy that Professor Ruggie proposes is useful in that it has the potential to advance human rights protection."

There is criticism that the report does not go far enough. Writing for Ethical Corporation (see overleaf), Sir Geoffrey Chandler argues that the report fails "to harness the influence of companies in positive support of the human rights". Lacey adds: "More is needed, including greater attention to the development of legal options, to ensure accountability and justice."

These and other critics are right: more is needed. Indeed, Ruggie himself has provided some clear indications of where he believes effort ought to be focused. He speaks of the need for "home states to take regulatory action to prevent abuse by their companies overseas"; for governments to "support and strengthen market pressures

on companies to respect rights"; for export credit agencies to "require clients to perform adequate due diligence on their potential human rights impacts"; and for companies to "take proactive steps to understand how existing and proposed business activities may affect human rights".

There is a huge range of reports that Ruggie could have written – he could have produced a report examining any one of these issues in detail. However, it is no coincidence that Ruggie's day job is as professor of international relations at Harvard. The report that he has chosen to write is one that draws on this experience to define a framework by which all of these

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other issues might systematically be dealt with within the realities of international governance structures.

As Ruggie himself put it in a 1993 article, global governance is a "top-down affair, with state-dominated institutions a given". Although companies have significantly increased their size and scope over recent decades, the international system still sees territorial states as the base unit of international currency. As he makes clear in this report, companies are not states and "their responsibilities cannot and should not simply mirror the duties of states".

Realpolitik

Ruggie's report recognises this political reality and puts forward a plausible framework within which corporate responsibility and accountability for human rights abuses might be better governed even given external constraints of global governance. It is a framework, and it is for others to fill it in.

Yet this report has the potential for still wider impacts. The human rights agenda is not the only one where "governance gaps" exist. American academic Virginia Haufler describes a "growing asymmetry" between growing corporate power on the one hand and the power of international relations theory and international institutions on the other. Ruggie's framework of protect, respect and remedy may prove to be one that can be applied to other aspects of the changing role of business in global affairs. ■

Ruggie report

Finally, let the real work begin

John Ruggie's final report to the UN offers a springboard for all parties with an interest in raising business standards on human rights, says Geoffrey Chandler

It is now nearly ten years since the United Nations embarked on its latest and most sustained attempt to underpin corporate activity with principles based on the Universal Declaration of Human Rights.

The objective, seeking to marry the most effective economic mechanism the world has so far known – the competitive market economy – with the internationally agreed values of society, made eminent sense.

That this destination is still not in sight is owed to a number of causes.

First, to the flawed exercise initiated in 1998 by the UN Sub-Commission on the Promotion and Protection of Human Rights, which became known as the Norms and to the intemperate assault of the business community that followed it.

Then, after the torch had passed to the special representative of the UN secretary-general for business and human rights, Professor John Ruggie, to the attempt by Amnesty International and other human rights non-governmental organisations to deflect him from his mandate. Most importantly this called on him "to identify and clarify standards of corporate responsibility and accountability with regard to human rights" – an objective in which lay the hope of preventing future corporate abuse. The NGOs argued instead for the further study of existing abuse, something neither called for by his mandate nor necessary to its completion.

Ruggie has therefore had to tread a lonely road, his remarkable contribution inadequately appreciated. The NGOs that should have been his natural allies have proved an obstacle. The few companies sympathetic to the basic concept have kept their heads below the parapet. It is therefore not surprising that Ruggie's "final" report should constitute a point of departure for advance towards the fulfilment of the mandate – "a conceptual and policy framework to anchor the debate" – rather than that advance itself, which, in the



Hard talk reaps rewards

absence of a consensual basis, could provoke further sterile controversy.

Comprehensive

Ruggie's report is a valuable contribution, providing an admirably comprehensive introduction to the challenge of a globalised economy, describing the failure of markets to work optimally and the gaps in governance that underlie that failure. It is to fill these gaps that Ruggie proposes a three-fold approach – the state duty to protect, the corporate responsibility to respect, and the need for access to remedies.

The report also provides further ground-clearing, which, despite Ruggie's three years of unprecedented consultation and evidence-gathering, still needed to be done if common ground was to be established.

It has long needed to be firmly stated that companies are fully responsible for the impact of their operations on human rights. "The corporate responsibility to respect," says the report, "exists independently of states' duties."

Important too is the implied rejection by omission of the NGOs' call for an overarching treaty imposing binding standards under international law. The victims of abuse, as Ruggie argued in the May issue of Ethical Corporation, cannot be asked to wait the decades that this would take for a hope of rescue. It is a sentiment echoed by