



CONSULTATION WITH BUSINESS STAKEHOLDERS ON THE IMPLEMENTATION OF THE UN “PROTECT, RESPECT AND REMEDY” FRAMEWORK

Summary Note

5 October 2010, Paris, France

Hosted by Mouvement des Entreprises de France (MEDEF)

A. Background

On 5 October 2010, the Special Representative of the UN Secretary-General (SRSG) for business and human rights, Professor John Ruggie, held a consultation with business stakeholders in Paris on the implementation of the UN “Protect, Respect and Remedy” Framework, hosted by Mouvement des Entreprises de France with support from the International Organisation of Employers.

The purpose of the consultation was to provide an opportunity for representatives of industry and employer organizations, as well as representatives of individual companies, to share their views with the SRSG as he prepares a draft of the Guiding Principles on the operationalization of the UN Framework, which he will present to the UN Human Rights Council in June 2011. Participants also discussed options and recommendations for how the Council and other UN actors might follow up on the business and human rights agenda after the SRSG’s mandate concludes next June. The SRSG held similar stakeholder consultations in October with delegates from UN Member States, as well as with representatives of civil society organizations. Summary notes from those consultations are also available.

Prior to the three consultations, an outline of key elements of the UN Framework that the Guiding Principles could address was distributed by the SRSG to all participants, and is now posted on his online forum at <http://www.srsgconsultation.org/>. The outline will remain up until late November when a draft version of the Guiding Principles will be posted for public comment. All are welcome to register on the forum and contribute comments until early 2011 when the SRSG will finalize the Guiding Principles for submission by early March.

The Guiding Principles will draw on the extensive research and consultations the SRSG has conducted since his mandate began, the findings of which are summarized in his annual reports to the Human Rights Council, and since 2008 to the General Assembly as well. (All mandate-related documentation may be accessed at <http://www.business-humanrights.org/SpecialRepPortal/Home>.)

This summary is not an exhaustive record of the discussion. A number of key issues are described here, without attribution, as the meeting was held under the Chatham House rule. A list of participants is attached.

B. Opening remarks

The consultation was opened with welcoming remarks by Ms Laurence Parisot, President of MEDEF. Ms Parisot emphasized how important the SRSG's work is for business in developing genuine global competence on human rights. She also stressed how critical it is for States to fulfill their duties with regard to human rights. She underscored the need for the UN Office of the High Commissioner for Human Rights to increase its capacity on business-related issues, and expressed her hope that the SRSG's mandate would lead to increased collaboration and confidence-building between all stakeholders if fair competitiveness based on respect for human rights were to be achieved.

The SRSG then gave an overview of his mandate, the UN "Protect, Respect and Remedy" Framework, and his hopes that participants would provide frank and constructive input as he develops the Guiding Principles over the coming months.

C. The State Duty to Protect

The first session focused on the first pillar of the UN Framework: the state duty to protect against human rights abuses committed by third parties, including business, through appropriate policies, regulation and adjudication. Participants discussed issues relating to the core topics identified in the consultation outline document, namely:

- Ensuring policy coherence
- Doing business with business
- Fostering business respect for human rights
- Supporting business respect for human rights in conflict-affected areas, and
- Multilateral institutions.

A number of participants emphasized the importance of the state duty to protect, as business often faces the greatest challenges where governments fail to enforce their own laws, for example where a multinational's audits of its suppliers substitute for official audits by government labor inspectors. Some expressed concern about the perception that the responsibilities of business increase in such situations, though it was noted that the UN Framework provides a strong response to this argument.

Other issues included the dilemmas raised by conflicting norms at the national and international levels, including how to define business responsibilities in such situations, and where barriers to the rule of law (such as corruption or lack of adequate recognition and protection of property rights) undermine human rights protection. A few participants expressed concern about the respective roles of "home" and "host" states, particularly in relation to extraterritorial measures. The SRSG noted that

the exercise of direct extraterritorial jurisdiction is clearly not a general solution to the lack of enforcement of existing laws in some states.

A few participants asked the SRSR whether he was addressing the informal sector, which plays a large role particularly in developing economies. The SRSR acknowledged the importance of the informal sector, but stressed that his mandate is explicitly about transnational corporations and other (formal) business enterprises.

D. The Corporate Responsibility to Respect

The next session addressed the second pillar of the UN Framework, the corporate responsibility to respect human rights, which means that business enterprises should avoid infringing on the rights of others and should address adverse impacts that may occur. Participants discussed issues relating to the following topics:

- Policies and Processes
- Conducting Human Rights Due Diligence, and
- Issues of Scale and Context.

A number of company participants shared their experiences with implementing various aspects of the Framework, including assessing human rights impacts and the development of operational-level grievance mechanisms. In their view, policies and processes that support the corporate responsibility to respect can benefit the company itself as well as the people it impacts. All agreed that there was a need to disseminate promising approaches (if not best practices) as part of a process of shared learning.

In discussion, some participants expressed concern about the dynamic between risk management (typically an internal, confidential exercise) and disclosure, and specifically about how companies might be expected to communicate with respect to human rights. The SRSR reiterated his view that communication is essential but need not follow a “one-size-fits-all” approach and that transparency must be moderated by, for example, legitimate commercial confidentiality or security concerns.

Other issues included the responsibilities of different entities in supply chains; the ‘normalization dilemma’ the SRSR referred to in his 2010 report concerning how to integrate human rights considerations into existing corporate procedures while maintaining what is unique about human rights; the challenges posed by operating in conflict-affected areas; ensuring that small and medium-sized enterprises can and do meet the responsibility to respect human rights; and the responsibilities of financial institutions. The SRSR stressed that the corporate responsibility to respect applies to all business enterprises but is responsive to issues of scale and context.

E. Access to Remedy

The third session addressed the final pillar of the UN Framework: the need for greater access by victims to effective remedy, both judicial and non-judicial. Participants discussed the following topics:

- Judicial Grievance Mechanisms
- State-Based Non-Judicial Grievance Mechanisms, and
- Operational-level Grievance Mechanisms.

Issues raised by participants included: the importance of relying on local remedy wherever possible; the importance of ongoing stakeholder engagement in addition to operational-level grievance mechanisms; the relationship between judicial and non-judicial mechanisms (including regarding parallel proceedings); and concerns about vexatious claims. There was discussion of the need to clarify situations in which the exercise of extraterritorial jurisdiction might be an appropriate response, for example in cases of egregious abuse where denial of access to remedy is otherwise at issue.

F. Ideas and recommendations for follow-up to the SRSG's mandate

In this session, participants discussed options that the SRSG might present to the Human Rights Council for how the Council might follow up on his mandate so as to build on the progress achieved to date, ensure the integrity of the Guiding Principles, and carry forward the business and human rights agenda.

A number of participants flagged the need for the Office of the High Commissioner for Human Rights to build its own capacity in this area so as to be able to provide information and guidance to other actors. Other ideas included: the need for a period of stability after June 2011 to enable business to adapt and to start developing best practices; the potential role of periodic performance reviews that would bring all stakeholder together for discussions; and the view that carrying the business and human rights agenda forward was too much to place on one individual, but that instead it required all stakeholders to make the UN Framework and Guiding Principles “live”.

Mr Christophe de Margerie, Chief Executive Officer of Total, then gave closing remarks. The SRSG thanked participants for their time and input and closed the meeting.

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