



CONSULTATION WITH MEMBER STATES ON THE IMPLEMENTATION OF THE UN “PROTECT, RESPECT AND REMEDY” FRAMEWORK

Summary Note

6 October 2010, Palais des Nations, Geneva, Switzerland

A. Background

On 6 October 2010, the Special Representative of the UN Secretary-General (SRSG) for business and human rights, Professor John Ruggie, held a consultation with representatives of UN Member States in Geneva on the implementation of the UN “Protect, Respect and Remedy” Framework. The consultation, which was organised by the Office of the UN High Commissioner for Human Rights, was supported by the five core sponsors of the SRSG’s mandate, which are Argentina, India, Nigeria, Norway, and the Russian Federation.

The purpose of the consultation was to provide an opportunity for Member States 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 consultations in October with representatives of business as well as civil society representatives. 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 participating delegations is attached.

B. Opening remarks

The consultation was opened by Her Excellency Ambassador Ms Bente Angell Hansen, Permanent Representative of Norway to the UN. 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.

More than 40 delegations participated in the consultation (see Annex B). All delegations who made interventions expressed appreciation for the consultation and the work that has been carried out to date. Delegations also noted that they were encouraged by the progress achieved and expressed support for the remaining process.

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.

Several delegates referred to recent developments where the work of the SRSG has informed steps taken by their governments to strengthen various aspects of the state duty to protect against corporate-related human rights abuse and to encourage corporate respect for human rights. A number of different issues were raised, including: how to ensure that there is an adequate link between the state duty to protect and the corporate responsibility to respect human rights; whether the issue of policy coherence would be further elaborated; the duties of state-owned enterprises; how to address the need for community involvement under the state duty to protect; questions involving extraterritorial jurisdiction; the possibility of a UN system of “red flags” for companies; the capacity of multilateral institutions to address these issues; and the specific challenges posed by transnational corporations.

Some delegates asked whether a binding international regulatory framework for business should be considered. The SRSG responded that this is a question that is entirely in the hands of states. Several state representatives addressed the challenges posed by corporate actors operating in conflict-

affected areas, including companies that directly profit from conflict, and the respective responsibilities of “home” and “host” states in these situations. The SRSG noted this is an area where a move towards an international legal framework could be envisioned, and the same point was made by some delegates.

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.

During the discussion, issues raised by delegations included: the challenges posed by complex corporate group structures; the linkages between companies’ political influence and their human rights due diligence responsibilities; appropriate reporting on corporate implementation of the Guiding Principles; the potential for certification with regard to the Guiding Principles; “going beyond” the corporate responsibility to respect; the human rights due diligence responsibilities of small and medium-size business enterprises; the role of human rights impact assessments; and the need for development of measurable standards and key performance indicators.

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.

The SRSG stressed that the third pillar is closely linked to the other two because of the need for effective remedy when negative human rights impacts do occur. One delegate informed the meeting that the UN Framework had been reflected in a recent revision of that state’s National Contact Point under the OECD Guidelines for Multinational Enterprises. Other issues raised included: how to ensure access to remedy if a state does not accept the justiciability of some human rights; potential limitations of operational-level grievance mechanisms; the importance of legitimate representation of victims; the relevance of international framework agreements and works councils; the role of national human rights institutions; and the role of external stakeholders in the context of grievance mechanisms.

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

In this session, delegates discussed options that the SRSG might present to the Human Rights Council for how the Human Rights 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. Delegates suggested various ways in which the forthcoming Guiding Principles might be adopted and otherwise supported. The need to sustain multi-stakeholder involvement, as well as continued transparency, in the upcoming process was also stressed.

The SRSG then thanked participants for their time and input and closed the meeting.

ANNEX: LIST OF PARTICIPATING DELEGATIONS

1. Algeria
2. Argentina
3. Australia
4. Austria
5. Bahrain
6. Bangladesh
7. Belgium
8. Brazil
9. Canada
10. Cote d'Ivoire
11. Cyprus
12. Egypt
13. European Commission
14. European Parliament Rapporteur on CSR
15. European Union
16. Finland
17. France
18. Germany
19. Ghana
20. Greece
21. India
22. Iran
23. Iraq
24. Morocco
25. Nepal
26. Netherlands
27. Nigeria
28. Norway
29. Occupied Palestinian Territories
30. People's Republic of China
31. Philippines
32. Poland
33. Qatar
34. Romania
35. Russian Federation
36. Saudi Arabia
37. South Africa
38. Sweden
39. Switzerland
40. United Kingdom
41. United States
42. Venezuela