

## CEC Bulletin

(May, 2007)

### IOE Consultation Meeting with UN Special Representative Ruggie regarding his Report to the UN Human Rights Council (March, 2007)

On March 27, 2007, the UN Special Representative on Business and Human Rights, Professor John Ruggie, met with the International Organization of Employers (IOE) to discuss his report on the UN Draft Norms. Andrew Finlay and Jodi Gallagher attended the consultation meeting on behalf of the Canadian Employers Council. Special Representative Ruggie presented his report to the UN Human Rights Council on March 28, 2007.

The purpose of this Bulletin is to provide members with background information regarding Special Representative Ruggie's mandate, to provide a summary of his report and how it impacts business, and to provide some insight into the future path of Special Representative Ruggie's work.

#### Background to the UN Draft Norms

Special Representative Ruggie's report marks the culmination of an international dialogue regarding business enterprises' human rights obligations that dates back to at least 1999. At that time, the UN Commission on Human Rights began what became a four year consultation process that resulted in the adoption of the *Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights* (the "UN Draft Norms") in August 2003. Purporting to be a distillation of existing international instruments and principles, the UN Draft Norms address the human rights responsibilities of business "within their sphere of influence" including non-discrimination, ensuring safe and healthy work environments, adequate remuneration, freedom of association, freedom from forced labour and child labour, environmental protection, and maintaining transparency. The UN Draft Norms call on companies to be subject to periodic monitoring and verification by the UN or independent agencies, implying a level of enforcement that goes significantly further than voluntary compliance and reporting. The UN Draft Norms were seen as a first attempt towards establishing an international framework for mandatory Corporate Social Responsibility standards applicable to all businesses.

At the behest of the UN Commission on Human Rights, the High Commissioner of Human Rights conducted extensive stakeholder consultations and studied the existing initiatives and standards relating to the human rights responsibilities of transnational corporations. The High Commissioner's February 2005 report noted broad-based support by NGOs and worker organizations for creating a universal declaration of human rights standards applicable to business. Other reactions to the UN Drafts Norms were mixed. The US government objected to the norms being applied to non-state actors, while the IOE and International Chamber of Commerce expressed concern about the trend of "privatizing" human rights.

Building on the High Commissioner's report, the UN Commission on Human Rights adopted a resolution on April 20, 2005 requesting that the UN Secretary General appoint a Special Representative on Business Enterprises and Human Rights. On July 27, 2005, Professor John Ruggie of the United States, who previously served as Assistant Secretary-General to the UN and Special Advisor to the Secretary-General on the Global Compact, was appointed to the Special Representative role. Special Representative Ruggie's two year mandate was:

- (a) to identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights;
- (b) to elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation;
- (c) to research and clarify the implications for transnational corporations and other business enterprises of concepts such as "complicity" and "sphere of influence";
- (d) to develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises; and
- (e) to compile a compendium of best practices of States and transnational corporations and other business enterprises.

### **Ruggie's Draft Report Generated Controversy**

In his Interim Report, which was released in February 2006, the Special Representative strongly criticized the UN Draft Norms. He noted that the UN Draft Norms contain useful elements, such as a summary of rights that may be affected by business and a collation of source documents from international human rights instruments. However, the Special Representative stated that the UN Draft Norms exercise became "engulfed by its own doctrinal excesses", made exaggerated legal claims and created confusion because of

conceptual ambiguities. He further stated that the UN Draft Norms are said to merely restate existing international legal principles, but that at the same time they claim to be the first initiative at the international level that is non-voluntary. The Special Representative noted that there are no generally accepted legal principles that directly bind business, with the exception of certain war crimes and crimes against humanity, and that there is therefore little authoritative basis in international law for asserting that the provisions of the Norms are binding on corporations. Finally, the Special Representative stated that “the divisive debate over the Norms obscures rather than illuminates promising areas of consensus and cooperation among business, civil society, governments and international institutions.”

Business for Social Responsibility President and CEO, Aron Cramer, praised the Special Representative’s Interim Report as a “remarkable feat” and a “useful service to those wishing to understand complex questions at the heart of the business and human rights debate.” However, the Special Representative’s critique of the UN Draft Norms drew some criticism. Karsten Nowrot, from the Transnational Economic Law Research Center at Martin-Luther-University in Germany criticized the Special Representative’s negative assessment, concluding that the harsh language employed by the Special Representative was unnecessary and regrettable, and was likely to lead to a further polarization of the debate regarding the Norms.

### **Ruggie’s March 2007 Report and the IOE Consultation Meeting**

On March 28, 2007, the Special Representative presented his report to the UN Human Rights Council. His report was comprised of a main report mapping international standards of responsibility and accountability for corporate acts, as well as four addenda and a companion report that addressed the following areas:

- States’ responsibilities to regulate and adjudicate corporate activities under the UN core human rights treaties
- corporate responsibilities under international law and issues regarding extraterritorial regulation of corporate conduct
- the results of the Fortune Global 500 firms and government surveys regarding human rights policies and management practices; and
- global patterns, regional and sectoral variation in the recognition of human rights by business; and
- human rights impact assessments

During the consultation meeting with the IOE, Special Representative Ruggie provided insight into the key areas of his report. In particular, he noted that it was important to map existing standards and initiatives in order to create a useful framework for the corporate responsibility and accountability debate. In his view, existing initiatives could be categorized along a continuum from the most deeply rooted legal obligations, to voluntary business standards. What he termed the “clusters” along this continuum are:

- **The state duty to protect** against human rights violations, which includes an obligation to regulate and adjudicate human rights violations by business enterprises. A State’s failure to meet this obligation can create governance gaps, where business enterprises are permitted to operate unchecked. Also, Ruggie noted that little guidance is available under international law regarding extraterritorial control over business conduct, which is an area that should be explored further;
- **Corporate responsibility and accountability for international crimes;**
- **Direct corporate responsibility** for other human rights violations under international law. Ruggie found little evidence of direct legal obligations on business enterprises outside the criminal law context. There is also little evidence of any international shift towards placing human rights obligations directly on business enterprises. As Ruggie noted, however, this lack of direct regulation may be of little comfort to companies who are “tried in the court of public opinion” for human rights abuses;
- **Soft law mechanisms** such as ILO and OECD instruments, as well as hybrid initiatives that involve NGOs, government and business. In Ruggie’s view, these approaches represent a promising “way forward” in filling a regulatory gap; and
- **Self-regulation**, which includes voluntary initiatives by business enterprises. Ruggie noted that in recent years there has been good uptake by large, Western business enterprises involved with a brand, but less engagement by enterprises that are based in the developing world, or state-owned enterprises. Ruggie also noted that many self-regulation initiatives are not easily adaptable to small and medium sized businesses (SMEs), which is an ongoing challenge.

A key issue that arose during the consultation meeting, which was also raised by delegations to the UN Human Rights Council when Ruggie presented his report, is the lack of institutional capacity within the UN system to support an international instrument on business enterprises and human rights. Brent Wilton of the IOE voiced the concern that the UN lacks the competency to assist states in fulfilling their human rights obligations. None of the reporting and support mechanisms that exist within the ILO system regarding labour issues form part of the UN framework. Ruggie agreed with this

comment, noting that the UN's strategic plan of taking these issues forward does not align with the complexity and importance of the area of business enterprises and human rights. This will be a stumbling block going forward.

Special Representative Ruggie has requested a one year extension of his mandate to continue his work and to formulate recommendations for the UN Human Rights Council. This extension is likely to be granted, with a final report forthcoming in June 2008.

The full text of Special Representative Ruggie's March 2007 report can be accessed online at: <http://www.business-humanrights.org/Documents/RuggieHRC2007>

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