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Third United Nations Forum on Business & Human Rights
Closing Plenary Remarks
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I am honored to have been asked to make closing remarks at this third United Nations Forum on Business and Human Rights. When I proposed to the Human Rights Council in 2011 that it convene such an annual event, I hoped that it would turn into a global town hall meeting, where people from every region and every sector of society could come and share experiences with implementing the UN Guiding Principles on Business and Human Rights, and identify what additional steps might need to be taken to strengthen the promotion and protection of human rights in relation to business activity.

Moreover, when I presented the Guiding Principles to the Human Rights Council, I said that its endorsement would not end all business and human rights challenges, but that it would mark the end of the beginning—by providing, for the first time, an authoritative conceptual, normative, and policy framework, stipulating minimum standards regarding the respective duties of states and responsibilities of enterprises in relation to business and human rights, including the need for rights holders to enjoy greater access to effective remedy.

I further stated that implementing and building on the Guiding Principles would require "a smart mix of measures," voluntary as well as mandatory, which are capable of generating cumulative change and achieving transformational scale.

What I've seen and heard these past three days shows that my vision for the Forum is being realized. We have learned a great deal about the achievements and also challenges in implementing the Guiding Principles. And we have heard vigorous arguments for and against a proposed binding instrument to regulate transnational corporations under international human rights law.

Let me stress at the outset that, given my commitment to "a smart mix of measures," I see no intrinsic contradiction between implementing the Guiding Principles, on the one hand, and further international legalization, on the other. Therefore, I urge in the strongest possible terms that as the treaty negotiations unfold, we resist any attempt to polarize the debate as one between the Guiding Principles and a treaty.

At the same time, it seems only reasonable to expect that future legalization should reinforce and build on the regulatory dynamics that are already underway in implementing the Guiding Principles, which the Human Rights Council endorsed unanimously just three years ago. And if legalization is to be effective, it also must take into account the rapidly changing international landscape it seeks to influence.

So what are some of those regulatory dynamics? And what are the key features of the landscape that should inform further steps?

A graphic way to describe what has been achieved since 2011 is that the Guiding Principles are becoming embedded in the regulatory ecosystem for business and human rights, and that their place in this ecosystem has begun to expand from the international to the national and local spheres.

Almost from the start, elements of the Guiding Principles were incorporated into policies of other international bodies, public and private, including the OECD, the International Organization for Standardization, and the International Finance Corporation, whose standards are tracked by most project lending banks. The Guiding Principles are also drawn upon by regional initiatives, initially European Union, and more recently ASEAN, the African Union, and the Organization of American States. UN treaty bodies and Special Procedures increasingly reference them.

States have begun to take additional steps to act upon the Guiding Principles, ranging from comprehensive National Action Plans, to non-financial reporting requirements, down to the more granular level of the Peruvian Superintendency of Banks, Insurers and Private Pension Funds establishing human rights standards for local businesses that service international mining companies. The Guiding Principles also feature in China's new Guidelines for Outbound Mining Investments.

Some of the measures that have already been adopted include binding legal and policy requirements, with penalties for non-compliance.

During the past three days we have also learned how businesses are aligning their policies and practices with the Guiding Principles, particularly the due diligence requirements and provisions for grievance mechanisms. We have heard that the International Bar Association and several national bar associations are engaged in efforts to incorporate the Guiding Principles into the practice of law firms and in house legal departments. The number of human rights complains brought to National Contact Points under the OECD Guidelines has spiked since the Guiding Principles' adoption, as have shareholder resolutions raising human rights concerns, while workers organizations and NGOs report that they are using the Guiding Principles in their policy and legal advocacy work.

The Guiding Principles seem even to have had some influence in the world of investor/state arbitration. UNCITRAL, the United Nations Commission on International Trade Law, recently adopted new rules ensuring greater transparency and accessibility to the public, for which I lobbied at several Commission sessions. And a new generation of international investment agreements has begun to acknowledge the need for governments to have adequate domestic policy space for genuine efforts to improve environmental and social conditions, including labor standards and other human rights—an issue to which my mandate devoted considerable time and resources, focused in particular on Africa where highly asymmetrical contracts were standard practice in the past.

Most important, there is growing anecdotal evidence that where the Guiding Principles are being applied, the incidence of human rights harm is reduced. Effective due diligence and grievance mechanisms clearly contribute to that outcome. As for improvements in legal remedy, the Human Rights Council has tasked the Office of the High Commissioner with research and consultations addressing obstacles in cases where severe harm is done, and identifying practical solutions for reducing them. The results will be submitted to the Council for its consideration.

Of course, given the magnitude of business and human rights challenges, these achievements remain modest. Much more needs to be done, as I am the first to stress. But let me ask this of those who still harbor doubt about the Guiding Principles' utility: how many treaties dealing with comparably complex and controversial subjects do you know of that generated this level of activity within three years of their adoption? I know of none.

Let me now turn to some key characteristics of the institutional landscape that any attempt at further legalization needs to bear in mind if it is to have any practical effect. I'll highlight just three.

First, the issue of transnational corporations no longer falls easily into the North-South cleavage that drove UN coalition building in the past, and which some have sought to resurrect rhetorically in recent months. One of the most profound global geo-economic shifts today is the rapid increase of transnational corporations based in so-called emerging markets. In the year 2000 they numbered just 12 on the Fortune Global 500 list. In 2010 the number had risen to 85. By 2025 their number is expected to reach 230, or nearly half of the entire FG 500.

Let's look at this picture a bit more closely. Who is the world's largest oil company? Is it Exxon? Shell? No, it's Saudi Aramco. None of the Western majors even makes it into the top 10. Who is the world's largest manufacturer of electronic equipment? Samsung? Ericsson? No, it's Foxconn, headquartered in Taiwan with production facilities in China employing 1.3 million people. Who is the largest manufacturing employer in the United Kingdom? Not to keep you in suspense, it is India's Tata Group. Many of us like a good brew, so what about the world's largest beer

companies? Number one grew out of a merger between a Belgian and Brazilian company, and number two is South African. Notably, at the recent Asia-Pacific Economic Cooperation Summit, President Xi Jinping predicted that China's outbound direct investment would reach US $ 1.25 trillion over the next decade, tripling its current level. We are entering a new and different world.

Why is this shift important for future international legalization? The answer is contained in how China's representative explained its vote in the Human Rights Council on the resolution to launch treaty negotiations. The issue of business and human rights is complex, he said; and differences exist among countries in terms of their economic, judicial, and enterprise systems, as well as their historical and cultural backgrounds, which need to be taken into account. Thus, he continued, it will be necessary to carry out "detailed and in-depth" studies, and for the negotiations themselves to be "gradual, inclusive, and open."

Bottom line: the larger the number and the greater the diversity of home countries of transnational corporations, the more complex the process of international legalization becomes in this space. Exactly the same has been true across all areas of international lawmaking, which is one reason why we have seen such a rapid expansion in the use of soft-law instruments, like the Guiding Principles, while the number of new multilateral treaties has declined dramatically for the past two decades—not a single one was deposited with the United Nations in 2011.

My second point is that a human rights treaty focused exclusively on transnational corporations is highly problematic. Under the definitions of transnational corporations and other business enterprises contained in the current treaty proposal, the international brands and retailers that sourced apparel products from local suppliers in Rana Plaza would have been covered by the treaty, but not the factories in which some 1,200 workers were killed. NGOs have rightly expressed their dismay at this omission because victims don't care whether they are abused by transnational or local firms. And they have pointed out that excluding national companies represents a regression from the Guiding Principles, which do encompass all business enterprises.

An exclusive focus on transnational corporations also poses deeper conceptual and legal challenges—again, because the world is changing profoundly. Transnational corporations are no longer the entities they once were: vertically integrated, multidivisional organizations structured in the form of a pyramid. The 21st century transnational corporation is a far more complex economic entity. In addition to its traditional relationships with subsidiaries, joint ventures are commonplace, many with state-owned or other national companies. But the biggest change has occurred through non-equity relationships. Here what you see today is the corporation as a bundle of contracts: contract manufacturing, contract farming, contracted service provision, franchising and licensing, to name but the more prevalent networked forms. This so intermingles transnational and national firms that even drawing legal boundaries around a transnational corporation can be exceedingly difficult, let alone imposing liability only on the foreign entity in any but the most obvious situations. Therefore, a treaty should encompass all business enterprises.

My final point concerns the scale of any future treaty. There is a certain intuitive and even moral appeal to the idea that there ought to be one law, one international law, governing the conduct of all business enterprises everywhere under a common set of standards protecting all human rights. But such a treaty would have to be pitched at so high a level of abstraction that it would be of little if any use to real people in real places. The crux of the problem is this: while business and human rights may be a single label that we attach to a range of activities, it is so vast, diverse, and conflicted an issue area that it does not lend itself to governance through a single set of comprehensive and actionable treaty obligations. That is why the principled pragmatism on which the Guiding Principles rest recommends international legal instruments that are carefully crafted precision tools.

In addition, it is doubtful that any overarching treaty in practice would extend protection of all internationally recognized human rights against corporate abuse, as the Guiding Principles do. This is so even if the treaty were to encompass all business enterprises, which the proposed treaty does not. The reason simply is that not all states that can make the biggest difference have signed on to the full range of human right standards.

Those who haven't are unlikely to impose them on their corporations as a matter of hard law. That not only results in an ineffective treaty, of which there are many. It also risks undermining the broad state support achieved by the Guiding Principles for addressing all internationally recognized rights at the level of policy and practice.

How, then, do we move ahead? My answer is simple: the same way we've come this far, step by step. First, we need to redouble efforts to implement and build on the Guiding Principles—or to start the process where it has not yet begun. The Guiding Principles work, as we have seen. But they don't magically implement themselves. And as our Chairman noted in his opening remarks yesterday, we need to measure and report on implementation.

Second, we need to identify specific gaps that the Guiding Principles and other such means cannot reach, and then assess options for narrowing those gaps based on evidence about which are likely to be the most effective and achievable where it matters most: in the daily lives of people.

As many of you know, I have suggested as an initial step consideration of a legal instrument addressing corporate involvement in the category of "gross" human rights violations. I did so because of the severity of the abuses involved; because the underlying prohibitions already enjoy widespread consensus among states yet there remains considerable confusion about how they should be implemented in practice when it comes to legal persons; and because the knock-on effects for other aspects of the business and human rights agenda would be considerable.

In closing, I want to express my deepest appreciation to all of you—for your commitment and for the important work you do. At the end of the day, whatever differences may exist, everyone at this Forum is part of a movement. Achieving further progress is within our reach. We must and we can succeed—for the sake of individuals and communities everywhere, and for the sake of our precarious system of global governance on which people and planet depend.

John G. Ruggie is the Berthold Beitz Professor in Human Rights and International Affairs at Harvard's Kennedy School of Government, Affiliated Professor in International Legal Studies at Harvard Law School, and a Fellow of the American Academy of Arts and Sciences. From 1997-2001 he served as the first-ever UN Assistant Secretary-General for Strategic Planning, where his responsibilities included establishing the UN Global Compact and proposing and gaining General Assembly approval for the Millennium Development Goals. From 2005-2011 he was the Special Representative of the UN Secretary-General for Business and Human Rights, in which capacity he developed the UN Guiding Principles on Business and Human Rights. His book reflecting on that experience, entitled Just Business: Multinational Corporations and Human Rights *(W.W. Norton, 2013), has been translated into Chinese, Japanese, Korean, Portuguese, and Spanish. In June 2014 Professor Ruggie received the Harry LeRoy Jones Award of the Washington Foreign Law Society, honoring "an individual who has made an outstanding contribution to the development and application of international law."*