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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Report of the Special Representative of the Secretary- General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie

Business and human rights in conflict-affected regions: challenges and options towards State responses*

Summary

The most egregious business-related human rights abuses take place in conflict-affected areas and other situations of widespread violence. Human rights abuses may spark or intensify conflict, and conflict may in turn lead to further human rights abuses. The gravity of the human rights abuses demands a response, yet in conflict zones the international human rights regime cannot possibly be expected to function as intended. Such situations require that States take action as a matter of urgency, but there remains a lack of clarity among States with regard to what innovative, proactive and, above all, practical policies and tools have the greatest potential for preventing or mitigating business-related abuses in situations of conflict. In the present report, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises outlines a range of policy options that home, host and neighbouring States have, or could develop, to prevent and deter corporate-related human rights abuses in conflict contexts.

* The present report was submitted late in order that the most up-to-date information could be included.

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I. Introduction

1. The mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises includes identifying ways and means for States and business enterprises to prevent, mitigate and redress corporate-related human rights harm. In its resolution 8/7, the Human Rights Council unanimously welcomed the protect, respect and remedy framework proposed by the Special Representative and extended his mandate for an additional three years with the task of providing concrete guidance and practical recommendations on its implementation.

2. As part of operationalizing the duty of the State to protect human rights, the Special Representative convened three workshops involving officials from a small but representative group of States to generate practical and innovative ideas and policy proposals to support business respect for human rights in conflict-affected areas and to help ensure that business enterprises operating in those contexts are not involved with abuses. Participants were invited on the basis of their interest in dealing with the issue; their previous or current exposure to it; their willingness to engage in such a process; and the representation and balance between so-called home and host States. A number of countries agreed to participate, including Belgium, Brazil, Canada, China, Colombia, Guatemala, Nigeria, Norway, Sierra Leone, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

3. Each workshop was structured as a brainstorming session built around a scenario. Participants were asked to respond to the scenario with a view to identifying the range of policy options that home, host and neighbouring States have or could develop to prevent and deter corporate-related human rights abuses in conflict contexts. Workshop 1 addressed options for States to engage with business enterprises that find themselves physically present in conflict situations. Workshop 2 addressed options for States to engage with business involved in foreign investment and trade activities that extend to conflict situations. Workshop 3 focused on the State's individual and collective roles in fostering corporate accountability, in particular State responses to business enterprises that decline to engage in constructive engagement. The nature of the business activity differed from one scenario to the next, and each scenario assumed conflict situations involving escalating or variegated violence.

4. Participating States were not expected to reach a consensus or endorse any position, but to contribute to a policy discussion that the Special Representative could draw upon in making his own recommendations contained in the present report.

II. Challenges for States to support business respect for human rights in conflict situations

5. Conflict situations are one of the most difficult circumstances for human rights. Human rights abuses frequently spark or heighten conflict, and conflict in turn often leads to further human rights abuses. Many business enterprises have to operate in such environments either because their activities require them to be in the area already affected by conflict or because they get caught up in the outbreak of a conflict. Unsurprisingly, the most egregious business-related human rights abuses also take place in such environments, where the human regime cannot be expected to function as intended.

6. It is important for all States to address issues early before situations on the ground deteriorate. In conflict-affected areas, the "host" State may be unable to protect human rights adequately owing to a lack of effective control. Where transnational corporations are involved, their "home" States therefore have a role to play in assisting both those

corporations and host States to ensure that businesses are not involved with human rights abuse, while neighbouring States can provide important additional support.

7. Several existing initiatives address particular aspects of the role of business enterprises in zones of conflicts. They include recent efforts in the United Nations on conflict and natural resources; work by the [Organization for Economic Cooperation and Development](#) (OECD) and the World Bank on weak governance zones and fragile States; the Kimberley Process on conflict diamonds; or initiatives such as the Voluntary Principles on Security and Human Rights, the Guidance on Responsible Business in Conflict-Affected and High-Risk Areas of the Global Compact or the publication on business and international humanitarian law by the International Committee of the Red Cross.

8. Most of these initiatives primarily address the role of business enterprises. They provide useful guidance for responsible businesses, which increasingly seek ways to avoid contributing to human rights harm in these difficult contexts. But they do not provide much guidance for States, as a result of which there remains a lack of clarity with regard to what innovative, proactive and, above all, practical policies and tools States may have or should acquire for preventing or mitigating corporate-related abuses in situations of conflict.

III. States' options towards businesses operating in conflict-affected areas

9. The engagement of States with business enterprises is needed in order to help those enterprises meet the challenges of working in conflict situations, in particular to avoid contributing to human rights abuse. States should not assume that businesses invariably prefer or benefit from governmental inaction and should not hesitate to contact enterprises proactively.

10. The above engagement should start early, because prevention is cheaper than reaction for both States and business enterprises. It is furthermore more likely that engagement can be effective in helping business enterprises to avoid involvement in human rights abuse if it takes place before violence becomes widespread. Nonetheless, prevention might not be enough, and States should remain engaged with the business enterprise through the conflict cycle.

11. Responsible businesses increasingly seek guidance from States on how to avoid contributing to human rights harm in these difficult contexts. Thus the options for States can be divided based on the willingness of the business to cooperate with them.

A. Cooperative enterprises

12. States should warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas and clearly communicate their expectations with regard to business respect for human rights, even in such challenging environments. With few exceptions, States have yet to convey their expectations of business behaviour in situations of conflicts. Normally, States would convey such expectations through policies, laws and regulations. For example, in the area of anti-corruption, States in recent years have agreed upon and communicated their expectations regarding standards of business conduct with respect to bribery through international conventions and domestic policies and regulations. However, unlike anti-corruption, the existing legal and policy framework relevant to conflict-affected regions does not have a component that is specifically designed to deal with the problems of business involvement.

13. This lack of regulatory clarity limits the ability of States to engage or advise business enterprises regarding acceptable conduct in or connected to conflict-affected regions. Therefore, states should review whether their policies, legislation, regulations and

enforcement measures effectively address the heightened risk of businesses operating in conflict situations being involved in gross human rights abuses, including through provisions for human rights due diligence by business. They should ensure that their regulatory frameworks are adequate, the applicability to business entities is clarified and, for the most extreme situation, make sure that the relevant agencies are properly resourced to address the problem of business involvement in international or transnational crimes, such as corruption, war crimes or crimes against humanity.

14. States can also help business enterprises to assess and address the risks of human rights abuses by providing basic information and by assisting in identifying the tools necessary for business enterprises to do so. For example, the concept of due diligence, introduced by the Special Representative in the Protect, Respect and Remedy framework in 2008, has been elaborated as a method by both OECD in its Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and endorsed by both the International Commission on the Great Lakes Region and the Security Council in its consideration of the Democratic Republic of the Congo.

15. States should ensure that their own agencies are sufficiently competent to provide useful and effective advice. Home States in particular should foster closer cooperation among their development assistance agencies, foreign and trade ministries, and export finance institutions in their capitals and within their embassies, as well as between these agencies and host Government actors. This is particularly important for embassy commercial and political officers, export credit agencies and other such bodies that engage directly with the private sector. Agencies that act in the market, or abroad, where business enterprises operate, play a critical role in communicating expectations about business behavior. States should expand on such efforts as, for example, the training of diplomatic commercial officers in human rights “red flags”, encouraging export credit agencies to begin discussing human rights as part of non-financial (social and environmental) risks as well as developing early warning indicators to alert Government agencies and business enterprises to problems.

16. Public sector mechanisms through which this might be implemented include:

(a) Rules requiring a human rights/conflict sensitivity policy (analogous to an anti-bribery pledge) on the part of business enterprises operating in a violent context;

(b) Gathering and communicating information on legal obligations (for example, home State legislation, Security Council and other sanctions) and advisories (such as advice from the State concerning particular operating contexts, human rights responsibilities and corporate social responsibility tools);

(c) Gathering or making available public domain information about the human rights situation in a particular conflict area;

(d) Establishing and communicating heightened due diligence standards in conflict situations, such as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;

(e) “White listing” cooperative business enterprises for State procurement, investment, export credit and other transactions based on due diligence policies and practices;

(f) Recommending caution or adopting certain steps/measures in risk areas, for example, a “travel advisory” model that would trigger greater – or different kinds – of engagement between State agencies and business enterprises;

(g) Ensuring that agencies are able to meet the State’s obligations to prevent stolen and looted goods from entering their jurisdiction;

(h) Offering governmental or other conciliation or mediation services where local conflicts arise involving the business;

(i) Offering confidential advice by foreign, trade or industry ministries, either in capitals or via embassies. In addition to trade promotion activities, a number of countries make it an obligation of trade promotion officers to discourage business enterprises from heading into what appear to be problematic activities, such as corruption. To create a parallel duty concerning, for example, international crimes, would require mandating and training commercial and political officers/sections in embassies and foreign ministries;

(j) Working bilaterally with partner States to ensure effective cooperation among all relevant States with regard to the operation of business enterprises in a particular conflict situation. For example, where a host State requires business enterprise payment directly to the military or security forces (i.e., directly to units and not via taxes to the treasury) or the provision of logistical assistance, bilateral diplomacy could attest that signed and transparent agreements govern those business enterprise-military relationships;

(k) A peer review model could address State responses to business in conflict-affected regions, as adapted from the African Peer Review model, which is focused on governance.

B. Uncooperative enterprises

17. In situations where a State feels that a business enterprise is unwilling to meet the standards set out, does not implement the recommended processes in good faith or refuses to refrain from behaviour that puts human rights at risk, additional measures may need to be considered. These might be considered in a sliding scale, and include such measures as:

- An embassy or other State agency might be asked to investigate
- Official interventions might be made at a senior level, communicating State expectations to corporate leadership if it is a large business enterprises, for example, via meetings by senior officials with managers, or a communication from the relevant minister to a chief executive officer
- Media statements or statements in parliament might be made questioning business enterprise behaviour and/or distancing the State from the business enterprise
- A mission may be appointed to investigate and report, for example, to Parliament
- An ombudspersons/national contract point mechanism may be activated
- Neighbouring countries in the region may involve partner countries in investigation, conciliation and mediation, for example, through the European Union, the African Union or the Organization of American States
- The State may threaten the withdrawal of consular and/or business development support
- A process might be initiated to exclude a business enterprise from the State procurement market, investment universe, export credit eligibility and other State transactions

18. In most extreme situations, where enterprises commit or contribute to gross human rights abuses and disregard any advice to mitigate or remediate their impact, other additional measures should need to be considered, such as:

- States should explore civil, administrative or criminal liability
- Unilateral or multilateral sanctions may be imposed (targeting a person or a business entity)
- Shipments of commodities might be seized, where a determination has been made that there is a reasonable risk that they are illicit (for example, similar to dual use

goods regulation) or where a ban has been imposed by a sourcing country or the Security Council

- Asset freeze, detention or arrest warrants issued for key individuals suspected in connection with international crimes
- The Security Council might list a business enterprise or senior executives for support to parties to the conflict (which would require a Member State to put a name forward for listing)
- Law enforcement may investigate/indict on international crimes, both senior managers and the business enterprise itself
- Law enforcement may investigate/indict a chief executive officer or a business enterprise for money laundering, for example, the “proceeds of crime” provisions
- States should consider multilateral approaches to prevent and address business-related gross human rights abuses and support effective collective initiatives

IV. Conclusions: first and next steps?

19. **Some States have already begun to implement a number of the steps laid out above aimed at strengthening the advisory role of the State where businesses are involved in conflict-affected areas. These would appear to be logical first steps in the development of public policy options for the States concerned about these issues.**

20. **States should also have to consider how to take advantage of the variety of options available to them to respond to businesses that disregard good practices. One of the first steps is defining what risks or activities should prompt a State response and what responses would be appropriate and necessary.**

21. **Such a standard setting exercise would be greatly supported by multilateral agreement on risks and prohibited activities with respect to business in conflict or other high-risk situations. States are more inclined to adopt policies that set standards that do not put their own businesses at an unfair disadvantage, indicating that multilateral standard-setting on this issue may be a necessary part of ensuring that States move forward in the fulfilment of the State duty to protect human rights.**
