Ruggie Tells States to Mind Their Businesses
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March 5, 2007

The morning after Professor John Ruggie of Harvard University delivers his forthcoming report on business and human rights to the United Nations, the world will look the same. The sun will rise and set, parents will go to work, children to school. But for executives of multinational corporations as well as many policymakers, the earth will have moved.

His report remains under wraps, but in a February 19 speech in London, Ruggie, the Special Representative of the UN Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, gave a preview of his findings. Ruggie and his team found that firms from every corner of the globe acknowledge that they have human rights responsibilities. But the business commitment to protecting these human rights varies, depending on the type of human rights under examination, the corporate culture and location, and other factors. Most importantly, they discovered that executives remain confused as to which human rights they should take responsibility for and how best to advance those rights.

Ruggie and his team do not believe that this confusion is strictly a business implementation problem; it is also a public policy problem. UN member states are not fulfilling all of their duties under international law to regulate and monitor the behavior of multinational corporations, especially when these firms operate in nations with inadequate governance. With their extensive review of what business and governments actually do at the intersection of global commerce and human rights, they found a “protection gap” for individuals that policymakers in all states must ultimately address.

The report was developed at the behest of the UN's Commission on Human Rights. In 2005, this Commission (which was replaced last year by the Human Rights Council) asked the Secretary-General of the UN to examine the human rights responsibilities of global firms. Kofi Annan appointed Ruggie, a former senior UN official, as Special Representative. With a staff of three (and help from the Swiss Government, Harvard University, and various governmental and foundation donors), Ruggie and his team handled that enormous task with aplomb and a careful review of evidence.

It was not easy to map out the human rights responsibilities of business. First, there are over 30 human rights delineated in the Universal Declaration of Human Rights. To ensure that governments promote these rights, policymakers developed two covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICCPR generally delineates rights that a state may not take away from its citizens (such as freedom of speech or freedom of movement). In contrast, the ICESCR generally delineates the rights that a state—insofar as it is able—should provide for its citizens, such as basic education or health care. Thus, to promote some human rights of its citizens the state must intervene, but at other times the state must refrain from intervening. While a state's human rights responsibilities are well laid out at the national level, questions remain about what policymakers should do about human rights violations in other countries, especially when such violations stem from inadequate governance.
Not only did Ruggie wrestle with these rights and government practices, he also had to find ways to ensure the general applicability of his findings. Every firm is different, and the human rights that a textile firm may affect will be very different from those that an Internet company could affect. Moreover, every firm has a different culture toward human rights. That culture not only reflects leadership from the top, but also national culture. Every country has its own particular human rights objectives, priorities, policies, and expertise.

Finally, Ruggie and his colleagues had to struggle with business and civil society groups, which were important sources of information and sources of opposition. Ruggie and his team entered this territory at the very moment that business and civil society groups were circling their wagons. Many civil society and business groups welcomed his appointment, but it also made them nervous. Although Ruggie had developed the UN's Global Compact, they knew Ruggie was neither a human rights expert nor a man with practical experience in business. (Perhaps they didn't know of his incisive contributions to the scholarship of globalization and governance.) Some NGOs complained that he was not supportive of efforts to delineate clear human rights standards for business. Those concerns grew when Ruggie described a previous effort to clarify the human rights responsibilities of global business as a "train wreck" and "classic overreach." But Ruggie was a very good listener. He sought their advice, and made his work accessible and transparent. He gained both goodwill and trust over time. (Read all of the Ruggie documents and submissions by NGOs, academics, and advisors to Ruggie.)

Meanwhile, many business groups expressed support for Ruggie. Stefano Bertasi, policy director of the Paris-based International Chamber of Commerce, said his organisation was "very positive" about Ruggie's work to date. Ruggie in turn was pleased when the three leading international business organizations—the International Chamber of Commerce, the International Organization of Employers, and the Business and Industry Advisory Committee to the OECD—collaborated on a paper on companies operating in weak governance zones. The paper stated, "All companies are expected to obey the law, even if it is not enforced, and to respect the principles of relevant international instruments where national law is absent." Corporate representatives were particularly pleased to hear him claim that corporations have adopted a wide range of robust human rights policies. Nonetheless, despite this verbal support, many corporate executives are nervous about his findings and ultimately, his recommendations.

Ruggie will present his report in Geneva in early March. In the February 19 preview of his findings, Ruggie warned he would have something to displease everybody. He found "little evidence to support the claim that companies have direct human rights obligations under international law." But he also said, "The absence of direct corporate responsibilities offers limited comfort to companies," because they may find themselves "tried in the court of public opinion." And where national legal systems already provide for criminal punishment of companies, "the international standards for individuals may be extended to corporate entities because corporations are persons in the legal sense."

Ruggie's team conducted eight studies of how governments interpret the state duty to protect against human rights violations. His summary report about governments stated, "Not all states appear to have internalized the full meaning of the state duty to protect and its implications with regard to preventing and punishing abuses by business enterprises." But he also found that states are not consistently protecting against corporate abuse. For example, some human rights treaties require states to regulate non-state actors; others may require particular state actions to protect rights through regulation (for example, protecting against discrimination in employment).

What states should do remains unclear. Ruggie and his team noted that while no treaty bans extraterritorial actions, "it is difficult to derive from the treaties or the treaty bodies... any general obligation on States to exercise extraterritorial jurisdiction over violations by business enterprises abroad." Finally, Ruggie warns that human rights activists should not count on business to advance human rights: "where governments lack capacity or abdicate their duties,
the corporate sphere of influence looms large by default, not due to any principled underpinning. In the end, it is governments that have the primary responsibility to promote, protect, and respect human rights.

Although Ruggie’s study will show that governments need to do more to create incentives for positive behavior or regulate the behavior of transnational corporations when necessary, Ruggie will not at this point put forth policy recommendations. Ruggie plans to ask for an extension of his mandate to seek this Holy Grail in his report next year. Nonetheless, he has hinted that governments should carefully examine their trade and investment agreements, which may empower business in ways that can undermine human rights. He also suggests that policymakers look to incent human rights behaviors—given the purchasing power of industrialized country governments, procurement policies can move markets and could provide significant motivation.

By presenting an evidence-based case, examining the behavior of business and government, John Ruggie and his team will show that business can do more to ensure that it doesn’t undermine human rights. But determining the human rights responsibilities of business is not just a business problem; it's a global public policy problem. Ultimately, it is up to citizens and policymakers to mind their businesses.

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