

## United Nations Commission Open for Business? The Appointment of a Special Representative on Business and Human Rights.

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Resolution 2005/69 of the United Nations (UN) Commission on Human Rights (the Commission) has been called 'a breakthrough'. The 2005 Resolution on '*Human rights and transnational corporations and other business enterprises*' requests the Secretary-General of the UN to appoint a special representative on this issue<sup>1</sup>. Despite the human rights community welcoming the Resolution as '*historic*' and a '*new chapter in UN-business relations*', it is not without its sceptics. The business sector and the US Government are the most notable critics who view the Resolution as an example of the UN's anti-business stance. Indeed, some go one step further and question the inclusion of business issues in the Commission's human rights agenda. They argue that the internationally accepted human rights framework places responsibility for the protection and promotion of human rights firmly with individual countries, and any shift away from this could be perceived by those countries, and others, as a lessening of their human rights duties. This is certainly a valid argument; the modern international human rights regime, developed after the Second World War, was built on the notion that individuals needed to be protected from the power of the State. For this reason, international human rights treaties are directed at national Governments, who ratify and implement them<sup>2</sup>, and it is through this process that the Commission indirectly observes the conduct of businesses. Until now that is.

### Why is the Commission focussing on business issues?

It was only a matter of time before the Commission's attention turned to the impact of business activities on human rights. The current wave of economic globalisation has significantly increased the power of the business sector, and many Governments are unable, or unwilling, to regulate companies (especially multinational companies) operating in their countries. Recent high profile scandals and human rights abuses by companies compound this problem. The Commission first focussed on the business sector in 2004 in response to a Resolution adoption by its subsidiary body, the Sub-Commission on the Promotion and Protection of Human Rights<sup>3</sup>. This Resolution, called '*Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*' (the Norms), attempts to pull together a comprehensive list of human rights duties from existing internationally recognised human rights publications that are relevant for businesses and their global operations. The drafting of this Resolution has been hugely controversial and has led to a "**bitter, and often public, dispute**" (Ethical Corporation, 2005) between businesses, business lobby groups and some Governments on the one hand, and on the other, civil society groups and the academics that drew up the Norms. The main controversy relates to whether the Norms will become a binding instrument and businesses are strongly apposed to the notion of the UN acting as regulator of the business sector. Considering the controversy the Commission decided, rather than passing the Resolution, to request the Office of the United Nations High Commissioner for Human Rights<sup>4</sup> to examine the scope and legal status of existing initiatives and standards of transnational businesses in relation to human rights, taking into account the new Norms. This decision, together with the 2005 Resolution requesting a special representative, is hugely significant since it is the first time the Commission has officially recognised and seriously considered the impact of businesses on human rights. However, the UN as a whole has engaged the business sector before in the realm of human rights, for example in developing the UN Global Compact.<sup>5</sup> Despite this, the focus of the Commission represents a new undertaking for the UN in terms of the emphasis on research and analysis of business obligations versus State obligations, which is an important part of the mandate of the special representative.

### What is the mandate of the special representative on business and human rights?

Special representatives are experts appointed to a specific post created primarily by the Commission to examine human rights issues. The special representative on '*Human rights*

*and transnational corporations and other business enterprises'* is mandated to work on the following, as set out in the Resolution:

- To identify and clarify standards of corporate responsibility and accountability for transnational corporations and business enterprises with regard to human rights;
- 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;
- To research and clarify the implications for transnational corporations and other business enterprises of concepts such as “complicity” and “sphere of influence”;
- To develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises; and
- To compile a compendium of best practices of States and transnational corporations and other business enterprises.

The special representative for business and human rights was established in 2005, and is required to present an interim report to the Commission in 2006 and a final report in 2007. The mandate has been generally welcomed; although some civil society groups are disappointed that no specific reference is made to the Norms. This omission is perhaps understandable given the controversy surrounding the Norms, but it is hoped that the mandate will “**build on the Norms as a base for identifying human rights responsibility**” (Amnesty International, 2005). It is also significant that the mandate highlights work to be conducted on clarifying the role of the State in regulating business activities, as this should go some way towards answering those who criticised the Commission, and the Resolution, for its focus on business issues at the expense of the State. Indeed, this has also been stressed by the newly appointed special representative on business and human rights, who maintains that his work will include “**the full range of governmental responsibilities and policy options in relation to business and human rights**” (Ruggie, 2005a).

### **The Special Representative on Business and Human Rights: John G. Ruggie**

In July 2005 John Ruggie, a Professor of International Affairs at Harvard University, was appointed to this post. It is somewhat ironic that an American has been selected considering the US Government, along with only two other countries, voted against the Resolution (with 49 countries voting in favour of the Resolution). According to Ethical Corporation magazine, his appointment has received “**a reasonably warm welcome**” (2005) from a range of groups, which is understandable given his credentials. The impartiality of special representatives is considered to be of paramount importance and Ruggie is not from a business, government or civil society group background. His academic background lends itself to the research and analytical focus of the Resolution’s mandate. Ruggie has considerable relevant experience and knowledge of UN mechanisms. He was senior adviser for strategic planning to the UN Secretary-General from 1997 to 2001, and was pivotal in the development of the UN Global Compact. His experience and skills in diplomatic relations will be crucial if he is to successfully consult with a broad range of actors, and manage their highly conflicting viewpoints.

The mandate that Ruggie has been given is ambitious and will be extremely difficult to achieve within two years, especially as it has no budget attached to it. He recognises the complexity of the job.

**I don’t underestimate how difficult this mandate will be. The issues are complex, we are in novel terrain, and the debate to date has been highly polarized** (2005b)

On top of this, he is expected to continue his day job at Harvard University. Ruggie may find the difficulty of this post is also compounded by the decline in the Commission’s integrity of recent years. Kofi Annan (UN Secretary General) stated in 2005 that “**we have reached a point at which the Commission's declining credibility has cast a shadow on the reputation of the United Nations system as a whole**” (Annan, 2005). Ruggie does,

however, have support from a range of experts, including two UN human rights officers, a full-time special adviser from the Government of Switzerland, and a Harvard Law School group set up especially to advise the representative. Ruggie's achievements to date have been limited because of the short time he has been in this job and the fact that he is **“still very much in a listening mode”** (Ruggie, 2005b). Considering the scope of the mandate and the controversy surrounding this area it will be difficult to measure Ruggie's success. Not surprisingly, Ruggie has contemplated this and believes his key aims are to facilitate working relationships between the various groups within this field, as **“the only “way forward” is by our working together – first to build, and then build upon, such a foundation”** (Ruggie, 2005a).

John Ruggie has recently made his first official step towards fulfilling the mandate, announcing in December 2005 that he has requested the International Organization of Employers (IOE) to examine effective ways companies can deal with dilemma situations encountered in 'weak governance zones'. Asking the IOE to carry out this work is a strange move in view of the considerable attack that this group launched against the Norms Resolution in particular. However, work conducted in this area will interest many due to the confusion and ambiguity surrounding the issue, and it also illustrates Ruggie's commitment to avoiding **“doctrinal debates”** (Ruggie, 2005b), to make sure his work is of practical relevance to the business world. Many will look forward to the findings of the IOE study, as well as the special representative's interim report due this year in 2006.

## References

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<sup>1</sup> For more background information on the Commission and the role of special representatives see <http://www.ohchr.org/english/about/publications/docs/factsheet27.pdf> (published by the Office of the United Nations High Commissioner for Human Rights, 2000).

<sup>2</sup> For more information on the international human rights framework see Louise Obara's Comment & Analysis, '*Human rights and sustainability*', available on the BRASS website.

<sup>3</sup> The Sub-Commission is composed of 26 experts who are elected by The Commission, and undertake studies and make recommendations, amongst other things, to The Commission.

<sup>4</sup> The Office of the United Nations High Commissioner for Human Rights acts as secretariat to the Commission and Sub-Commission, as well as taking the lead in efforts to integrate a human rights approach within all work carried out by United Nations agencies.

<sup>5</sup> The Global Compact is a direct initiative of the UN Secretary-General (Kofi Annan), initiated in 1999, and is aimed primarily at business leaders, challenging them to support ten universal principles: two of which relate to human rights. See <http://www.unglobalcompact.org> for more information.