



HARVARD Kennedy School

**MOSSAVAR-RAHMANI CENTER**  
for Business and Government

**JOHN G. RUGGIE**

Berthold Beitz Professor in Human Rights and International Affairs  
Affiliated Professor in International Legal Studies, Harvard Law School

19 September 2019

Ms. Saskia Wilks, Mr. Johannes Blankenbach  
Business and Human Rights Resource Centre  
2-8 Scrutton Street  
London EC2A 4 RT  
United Kingdom

Dear Ms. Wilks and Mr. Blankenbach,

I am writing in relation to the public letter addressed to you, dated 13 September 2019, from senior representatives of *economiesuisse* and *SwissHoldings* regarding their position on the Swiss Responsible Business Initiative.

My concern is that their letter misconstrues two foundational elements of the UN 'Protect, Respect and Remedy' framework and the UN Guiding Principles on Business and Human Rights (UNGPs), which operationalize it. I am the author of both. The UNGPs were endorsed unanimously by the UN Human Rights Council in 2011, and so-called Pillar II (the corporate responsibility to respect human rights) was incorporated virtually verbatim into the OECD Guidelines for Multinational Enterprises.

First, the Framework makes clear and the UNGPs elaborate that while states have existing obligations under international human rights law, companies have a responsibility to respect internationally-recognized human rights that is independent of whether or not states meet their obligations. This was one of the signature achievements of the UNGPs – clarifying the distinct but complementary duties and responsibilities of states and business.

Therefore, contrary to the letter's assertion, there is no inconsistency in states adopting measures that require businesses to meet their responsibility to respect human rights through legislation. States similarly may adopt legislative measures to encourage, support or incentivize businesses to do so. Indeed, Guiding Principle 3 and its extensive commentary emphasize that states are expected to adopt a mix of measures – voluntary and mandatory, national and international – to foster business respect for human rights in practice. By doing so they are not "imposing direct liability [on] companies for states' obligations," as the letter claims. They are doing what we expect governments to do: to govern, and to govern in the public interest.

TEL 617-384-7569 FAX 617-496-5821

EMAIL [john\\_ruggie@harvard.edu](mailto:john_ruggie@harvard.edu)

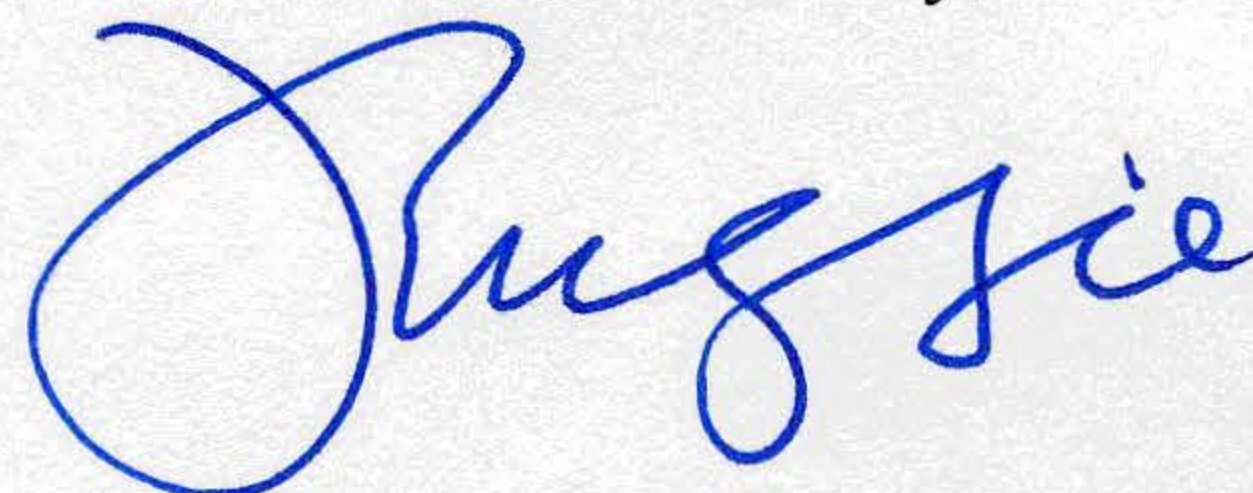
79 John F. Kennedy Street, Box 83  
Cambridge, Massachusetts 02138

[www.hks.harvard.edu/m-rcbg](http://www.hks.harvard.edu/m-rcbg)

Second, the letter raises the issue of extraterritorial jurisdiction. This is a complex, sensitive, and not entirely settled matter. I examined it closely in developing the UNGPs. In short, Guiding Principle 2 provides that states should make clear that the responsibility to respect applies throughout a company's operations. The commentary to Principle 2 goes on to explain that under international human rights law states are not generally required to regulate the extraterritorial activities of businesses domiciled in their jurisdiction, but nor are they generally prohibited from doing so provided there is a recognized jurisdictional basis. The commentary notes that states have adopted a range of approaches in this regard, specifically including domestic legislation that may have extraterritorial effects. In short, extraterritoriality is not per se *ultra vires*, as the letter seems to suggest, and the UNGPs make no such claim.

I fully understand and appreciate that there will always be legitimate differences in opinion about the appropriate role and most effective forms of legislation and other measures at national levels in implementing the UNGPs. But such debates need to be distinguished from assertions about what the UNGPs do or do not say - the text is there, 31 Principles with Commentaries.

Yours sincerely,



John G. Ruggie