



15 October 2007

Ms. Julieta Rossi
Director, ESCR-Net
211 East 43rd. St., Suite 906
New York, NY 10017

Dear Ms. Rossi:

It was a pleasure to share the podium with you at the recent Interfaith Center for Corporate Responsibility event in New York, and to have had the chance to chat with you beforehand. As I said on that occasion, the role of NGOs in agenda setting and social mobilization is absolutely critical to achieving progress in this and so many other areas. My thanks and admiration go to all those who are making a difference.

I am grateful to you and your impressive list of co-signatories for your thoughtful and detailed letter concerning the current and future directions of my UN mandate. It must have taken considerable time and effort. I am pleased to see that there is so much common ground among us. The more than 1,000 pages of documentation my mandate has produced to date address many of the issues your letter touches upon, at times in virtually identical language.

For example, your letter asks me to “assess the inherent limitation of voluntary initiatives.” In paragraph 74 of my February 2007 report to the Human Rights Council I state: “even among the leaders, certain weaknesses of voluntarism are evident.” The sentences and paragraphs that follow note essentially the same limitations as your letter. Two lengthy addenda to that report, one summarizing my survey of the Fortune Global 500 companies, and the other of a broader cross-section of firms, lay out these issues in great detail. The same is true of the points your letter raises about the state duty to protect against corporate human rights abuses. Our voluminous work in this area is already being used as a reference by the relevant UN bodies and others. To share our research to date with a wider professional audience, I have also published an overview of it in the October issue of the *American Journal of International Law*. In case not everyone is familiar with the mandate’s extensive output to date, I invite them to visit <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>, where it is all posted.

Your letter asks me to endorse a number of proposals. I have dedicated this last year of the current mandate to the systematic study of, and consultations about, various options for moving the agenda forward. I certainly will take your suggestions seriously, but I don't expect to reach any closure until sometime in the spring. In the meantime, I do want to take this opportunity to clarify for everyone the specific nature of my mandate, and also to indicate broadly the approach I bring to it, both of which may help set expectations appropriately. I begin with the mandate itself.

1. Mine is not an open-ended mandate regarding the many challenges of business and human rights. On the contrary, it is focused and detailed. Perhaps the best thing to do is simply to quote from the authorizing resolution by the then Commission on Human Rights, as approved by the UN Economic and Social Council in July 2005. I am required:

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

Your letter makes a number of suggestions for other subjects the mandate might include. But I am sure you will understand that I am obliged to fulfill the mandate I've actually been given as faithfully as I can.

2. My mandate is also a very particular type. The Commission on Human Rights could have established a special rapporteur or expert working group to receive complaints and urgent appeals, conduct field investigations, and report findings back to the relevant governments and the Commission itself. Many such mandates exist on other subjects. But the Commission chose not to go that route. Judging from the context within which the decision was taken, I would guess that the Commission felt a need for assistance in determining how to achieve progress on the overall policy front, rather than in addressing or redressing specific cases. And so it requested the Secretary-General to appoint a Special Representative to advise both the SG and the Commission (now Council) on the five sets of issues enumerated above. In turn, the Office of the High Commissioner made no budgetary provisions for any of those more traditional special procedures functions, including for travel beyond Geneva.

It was I who decided to seek greater exposure to various perspectives and voices. And I have raised the funding for doing so. But I have had neither the mandate nor the capacity to act in the role you urge me to play now and recommend for the future.

3. In my desire to learn from and draw upon the widest possible sources of experiences and areas of expertise, I have conducted three regional multi-stakeholder consultations (in Johannesburg, Bangkok, and Bogotá); four international workshops of legal experts; and site visits to the international operations of companies and surrounding communities on three continents. I have also met with civil society organizations on numerous occasions, wherever I have travelled. In addition, I have engaged a half dozen law firms around the world in pro bono research for the mandate. The authorizing resolution did provide for two multi-stakeholder consultations focused on individual sectors, held in Geneva (extractives and financial services). These activities, and the extensive research by a small team I assembled and raised funding for, have been part of the “fact finding” phase of my work.

In all of these encounters I have explained the nature of my mandate and made it clear that my purpose in reaching out so widely was to inform me, so that I can do my job better—not to investigate, bear witness, or report on specific occurrences.

4. We are continuing in the same inclusive and transparent manner now that we have turned to the mandate’s recommendatory phase. We have scheduled a series of expert workshops, each organized together with civil society organizations. Among other subjects, these will explore recommendations to states for business operations in conflict zones (organized jointly with Global Witness); the governance of multi-stakeholder initiatives and supply chain code implementation (organized jointly with the Clean Clothes Campaign and Oxfam/NOVIB); the state duty to protect (organized jointly with the Danish chapter of the International Commission of Jurists); and the corporate duty to respect (organized jointly with the Ethical Globalization Initiative and co-chaired by Mary Robinson). A multi-stakeholder workshop on grievance and accountability mechanisms will be held here at Harvard. In addition, we are exploring the possibility of convening a fourth regional consultation in a developing country, and conducting one more set of site visits. If we do proceed with those, we will ask ESCR-Net to suggest participants, as we have done on every previous occasion.

Attached you will find a conceptual overview of the current work stream, which I presented in remarks at the World Bank last week.

I hope you will concur that these past and planned activities constitute a significant effort to consult broadly and to include the voices of victims themselves, in particular through the regional consultations and site visits. Given the enormous scope of the current mandate, I’m afraid they also stretch my capacity to the limits—if not beyond. The (unpaid) SRSG post supposedly is a “part time” assignment, and it comes on top of my “day job” as a professor and research center director at Harvard.

5. The resolution establishing my mandate also invites me to submit “views and recommendations” for consideration by the Human Rights Council, including on where to go from here. As indicated above, I have reached no closure on these matters. But I will be guided by the objective of building a stronger international human rights regime

to govern the activities of all actors, including corporations, through means that promise to be effective and are achievable.

We can all agree that statements of principles, soft law declarations, and international treaty instruments will play a role in the future evolution of the human rights regime, as they have done in the past. But we also need to acknowledge that progress on that front is slow at best. The recently adopted Declaration on the Rights of Indigenous Peoples marks a major milestone. But it has been twenty-two years in the making, it is not a binding legal instrument, and even if it were to be developed into a treaty, ratification remains a voluntary act on the part of individual states. In the meantime, some initiatives of far more recent origin that critics dismiss for being purely “voluntary” are already being enacted through domestic laws, regulations, and policies.

It is also worth noting that when the challenge we face is imposing human rights obligations on states there is no “higher” expression of authority than international legal norms and instruments that we can turn to. Hence our options are limited. In contrast, corporations are subject to multiple sources of authority higher than themselves, including home and host states, shareholders, broader market forces, and their more informal social licenses to operate. All can and need to be mobilized in devising an effective response to business-related human rights challenges.

Therefore, I have resolved one issue regarding my recommendations to the Human Rights Council: I will not submit a final report that limits itself to solutions that may—or may not—materialize a quarter century hence. We need progress now. That is how I interpret taking the victims’ perspective seriously.

Please be so kind and circulate this letter to all co-signatories of your letter, as well as posting it on your website.

Many thanks again for this opportunity to exchange views. I look forward to keeping in touch.

With best regards,

A handwritten signature in blue ink, appearing to read "J. Ruggie".

John G. Ruggie

Kirkpatrick Professor of International Affairs and Director, Mossavar-Rahmani Center for Business and Government, Kennedy School of Government; Affiliated Professor in International Legal Studies, Harvard Law School; Special Representative of the UN Secretary-General for business and human rights.