

Remarks by SRSG John Ruggie
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It is an honor for me to have been invited to join you at this celebration. I commend CPR for its many contributions to promoting alternative dispute resolution techniques and tools. And I congratulate Microsoft on receiving the annual leadership award for “its commitment to institutionalizing ADR into its corporate and industry culture.”

ADR is a promising approach for dealing expeditiously and effectively with conflict, not only in the workplace and B2B sphere. I'll turn in a moment to how it might play out in my world of business and human rights by helping to resolve disputes there, especially between companies and communities. But first, to provide a context, let me describe my UN mandate briefly.

In 2004, an expert subsidiary body presented the UN Commission on Human Rights with a text called the draft Norms on Transnational Corporations and Other Business Enterprises. This sought to impose on companies, directly under international law, essentially the same range of human rights duties that states have accepted for themselves. The two were separated only by the slippery distinction between states as primary and corporations as secondary duty bearers, and by the elastic concept of corporate spheres of influence, within which companies were said to have these duties.

Business was vehemently opposed to the draft Norms, human rights advocacy groups strongly in favor. The Commission declined to adopt the document, and declared that it had no legal status. Instead, in 2005, it requested the UN Secretary-General to appoint a Special Representative on the issue of business and human rights, with the goal of moving beyond the stalemate. Kofi Annan appointed me to the post and Ban Ki-moon has continued the assignment.

This past spring, in my final report under that mandate, I proposed a conceptual and policy framework as a new way to understand and advance the business and human rights agenda. In contrast to the divisions provoked by the draft Norms, the UN Human Rights Council, which by now had replaced the Commission, was unanimous in “welcoming” the framework. It extended my mandate for another three years, tasking me with “operationalizing” the framework in order to provide concrete guidance to states and businesses. My proposal was also supported by the major international business associations and leading international human rights organizations. A new consensus was formed.

The framework comprises three core principles: the state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which in essence means to manage the risk of human rights harm with a view to avoiding it; and greater access by victims to effective remedies.

This formula has embedded within it a critical distinction that many in the business community and corporate law firms seem not to appreciate fully: Governments define the scope of legal compliance, but the broader scope of the corporate responsibility to respect human rights is also defined by social expectations – as part of what is sometimes called a company’s social license to operate.

What does this mean? And how does it relate to ADR? To illustrate, consider these examples.

A few years ago, the Peruvian partner of a major US mining company said this in a TV interview about their troubled operation: “I don’t understand the social license to operate. I get my license to operate from the Ministry of Mines in Lima.” A little while later the local community successfully blockaded the only access road to the mine, out of frustration at not having their grievances dealt with. Then he understood what a social license to operate was.

Here is another example.

A large commodity mining company in Africa, a subsidiary of a transnational firm, reports to its parent that all is well because it has won six of the seven lawsuits brought against it by local communities around one of its major operations. But executives at the parent company are deeply puzzled, because with each lawsuit won the local dispute seems to escalate, not decline, while the parent company's international reputation is taking ever bigger hits. How can this be?

The answer may lie in a third example. A company negotiates a contract with the government of a developing country where it is investing. There are few regulatory requirements regarding the social impacts of its proposed activities, and the company's legal department is assiduous in minimizing the contractual requirements placed on the company in this regard. The company is in a strong negotiating position—and its lawyers are more numerous, probably better trained, and certainly much better resourced than those representing the government. When the impacted communities later mount a campaign for alleged abuses of their rights and adverse impacts on their welfare, the company's legal department says: We're in compliance with the law; we'll see you in court.

From here you can loop back to the second example, and start the cycle all over again. The lesson to be drawn from these cases is this: a serious misalignment exists in each instance between legal requirements and prevailing social expectations, and companies need to realize that they are subject not only to the first but to both.

In my mandate, I am, of course, exploring issues related to access to formal justice, including desirable legal and policy reforms. But I am equally concerned with what companies should do next Monday morning, wherever they operate, to obtain and sustain their social license to operate. And I need your help.

I am promoting two company-based approaches, especially in operating contexts where society's capacity to deal with the adverse impacts of corporate activities is limited or deficient.

The first is for companies routinely to adopt and follow adequate human rights due diligence processes. This would include performing human rights impact assessments. Because the purpose of the exercise is to secure the company's social license to operate, the company needs to engage affected groups and communities.

But when I made this recommendation last spring, a major Wall Street law firm issued a client memo practically warning of the apocalypse. It contended that I had proposed "expansive obligations" and "sweeping duties" that would impose on corporations and their boards of directors the responsibilities of states – exactly the opposite of what, in fact, I had done.

Fortunately, another prestigious Wall Street law firm issued its own memo, authored by some of the country's top corporate lawyers, including a former chief justice of the Delaware Supreme Court. It concluded that what I was proposing made good sense from a social risk management standpoint; that most leading companies are already doing or trying to do these things; and if they weren't, then they should. Thank you, Weil Gotshal.

My advice to the entire corporate legal community on this issue is this: don't operate on the premise that legal compliance alone fulfills the corporate responsibility to respect human rights, or that stakeholder engagement and transparency are nothing but a trap that companies should avoid. Because if you do, you may get your clients into serious trouble.

The second company-based approach I am promoting is for firms to adopt effective grievance mechanisms at the local level, especially in large footprint industries. And by effective, I don't just mean a complaints box or point of contact where anyone can register a grievance but where the company unilaterally decrees the response.

Today, many companies—especially CPR members—have recognized the benefits of alternative dispute resolution in resolving workplace and B2B conflicts. Yet too few have extended that same logic to disputes with external, non-commercial stakeholders.

So let me propose this as the next frontier of ADR. Effective grievance mechanisms for affected communities will directly benefit companies. I'll never forget the remark of the Peruvian community organizer who taught the mining executive the meaning of social license. He said to me: "the company didn't respond to small problems, so we had to create a big one."

Effective grievance mechanisms will also benefit individuals and communities. In the words of my colleague John Sherman, National Grid's former Deputy General Counsel, they can help transform "vicious cycles of mistrust and alienation to virtuous cycles of empowerment and recognition." And at the end of the day, empowerment and recognition is what human rights are all about.

To sum up, the companies and the law firms represented in this room tonight have a significant role to play in building a corporate culture that is respectful of the rights of individuals and communities wherever they operate, and one that manages and resolves disputes responsibly and effectively. I invite you to work with us to bring about these critical and transformative changes.

Thank you.