INTERNATIONAL HUMAN RIGHTS LAW AND TRANSNATIONAL CORPORATIONS: RESPONSIBILITIES AND COOPERATION

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A. Introduction

“[T]he goal of maintaining a secure operating environment [for transnational companies] is compatible with the goal of protecting human rights […] by supporting the rule of law, incorporating human rights into security arrangements, and working with NGOs, transnational companies can greatly strengthen and enrich the human rights environment in which they operate.”1

“Governments should not assume they are helping business by failing to provide adequate guidance for, or regulation of, the human rights impact of corporate activities. On the contrary, the less governments do, the more they increase reputational and other risks to business.”2

There have been a number of attempts at the national, regional and international levels to deal with the impacts on human rights of corporate activity through legal regulation.3 Most have not succeeded, largely through lack of political will by states or through strong resistance by corporations. At the same time, the perception of most of civil

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1 Statement by Harold Koh, then US Assistant Secretary for Democracy, Human Rights and Labour, as quoted in S. Murphy, Voluntary Human Rights Principles for Extractive and Energy Companies, 95 American Journal of International Law 636, at 637 (2001).
society is that corporations do not care about human rights. Yet, as the
two quotations above show, it can be in the interests of all participants
for corporations to uphold human rights and to work within a clear
legal framework. To do this requires clarity of the relevant responsi-
bilities and effective cooperation. Therefore, these issues are appropri-
ately encompassed within the broad themes of this book in honour of
Professor Rüdiger Wolfrum.4

This matter has taken a considerable step forward due to the activi-
ties of Professor John Ruggie since he was appointed the Special
Representative of the Secretary-General of the United Nations on the
Issue of Human Rights and Transnational Corporations and Other
Business Enterprises.5 He has created a framework, based on an
approach of “principled pragmatism”6 for dealing with the core issues
that has been supported by a wide range of states, corporations and
non-governmental organisations.7 This has given the issue some essen-
tial space to enable cooperation to be fostered.

The Ruggie framework has three elements (or “pillars”): the state’s
duty to protect against human rights abuses by corporations; the cor-
porate responsibility to respect human rights; and the need for more
effective access to remedies. The justification for this framework is
stated to be:

“[There is] the State duty to protect because it lies at the very core of
the international human rights regime; the corporate responsibility
to respect because it is the basic expectation society has of business;
and access to remedy, because even the most concerted efforts can-
not prevent all abuse…. The three principles form a complementary
whole in that each supports the others in achieving sustainable
progress.”8

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4 I have deep respect and admiration for Prof Rüdiger Wolfrum.
5 The original mandate was given by the UN Commission on Human Rights
(now the UN Human Rights Council) by Resolution 2005/69 of 20 April 2005, UN
6 Ruggie Report 2008 (note 2), para. 3: “principled pragmatism” is “an unflinching
commitment to the principle of strengthening the promotion and protection of human
rights as it relates to business, coupled with a pragmatic attachment to what works best
in creating change where it matters most—in the daily lives of people”.
7 See the portal created by the Special Representative on the Business and Human
Gettingstarted/UNSpecialRepresentative.