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John Ruggie
Special Representative
of the UN Secretary-General
for “business and human rights”

14 October 2005

Dear Mr Ruggie,

**Initial IOE-ICC views on the mandate of the
UN Special Representative on “business and human rights”**

On behalf of all those who attended the consultation with you in Geneva on 16 September 2005, we would like to thank you for listening to the points we raised. As we said at the time, business is supportive of both your mandate and your appointment by the Secretary-General to be his Special Representative. We stand ready to do all that we can to assist you in a positive and open manner as you consider what are often complex and difficult issues.

We thought it may be useful to provide a written input to your work that covers much of the ground we discussed at the consultation.

Main principles

The following elements seem to us to offer the basis for your work:

- Business is committed to operating in a responsible manner. This means, amongst many other elements, a respect of and for human rights. Much is already being done by business. It is important that this is acknowledged and recognized.
- An ongoing dialogue will be vital over the period of the mandate. As the mandate focuses on business, the major input should be drawn from us, remembering that states create the framework within which business operates.
- It is the state that is the duty-bearer in protecting and promoting human rights. The law sets a framework of standards and business complies with the law or, quite rightly, faces appropriate action and sanction.

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- Business does not believe there is a need for a new international framework. There are issues that should be addressed and many of them have been identified in the mandate, not least of which is the focus on states discharging their responsibilities.
- We want to be forward-looking and to get beyond the somewhat sterile debate that has surrounded the draft of so-called norms. Business recognizes the value in effective partnership, clarity in the roles and accountabilities of all sectors in society, and the flexibility offered through existing frameworks, standards and codes. Best practice can and does help capacity-building.

For each part of the mandate, we have some basic thoughts:

Identifying and clarifying standards

- Much has already been done, but there needs to be more recognition of the depth and breadth of these standards. We would be happy to provide examples – international standards, codes of conduct, sectoral initiatives, individual company approaches – to show that diversity reflects a complex world.
- Multinationals and domestic companies face the same or similar challenges. Business organizations represent a wide base of companies and have a role to play.
- We support the idea of a short questionnaire/survey. Business organizations present and those affiliated to us will undertake to assist you in this information-gathering exercise. The survey could have an option of anonymity if companies desire it, but the goal would be to build up a true picture of what is out there and how companies respond to the challenges they face. It could also help to define what is actually meant by human rights in the business context.

Elaborate role of states

- States have a duty to promote and protect human rights. National governments need to create the right legal framework to enforce it.
- Enforcement by states is an issue that needs attention.
- Care should be taken over the nature and level of development in and between countries. Business often has to act with local sensitivities.
- Education, understanding and respect for the law is vital. Capacity building should be sought where states fail in their duties.
- Weak governance or failure to enforce the rule of law often leads to dilemmas for business. Recognition should be given to efforts that are underway, for example at the OECD, to address these problems and the way in which business already responds.



- Companies can never be surrogate governments.
- International organizations, for example ILO and the OECD, can create obligations on states.
- The UN Secretary-General has identified the building of strong human rights institutions at national level under his “Action 2” programme. This part of the mandate should reflect that.
- We can ensure you have access to current work and to offer business perspectives.

Complicity and sphere of influence

- Business believes that a philosophical debate on these issues would not be productive. The focus instead should be on the practical experience of companies who face such issues.
- The mandate asks you to research and clarify the implications of these concepts, which again argues for a practical approach.
- Attention should also be given to what the law already says about complicity and sphere of influence.
- We can assist in compiling business experiences.

Human rights impact assessments

- Much material already exists and this should be a good starting point.
- There is a need to recognize that although companies of all sizes face often similar challenges, their capacity to respond may be different.
- Some thought should be given to the positive impacts of business and how to capture this effectively.
- We can try to help in identifying companies who would be prepared to share their experiences.

Best practice

- There is a lot out there at all levels. This reflects both existing and evolving concerns internationally and nationally, sector by sector, and with individual companies.
- Business believes that building on good practice is vital. It may be productive to look at good practice and bad experience, where companies have tried to do the right thing but have encountered difficulties due to other factors.



- We can assist in identification of good practice and offer to help with the dissemination of it, particularly through business organization networks.

Finally, we have a number of other areas where we believe we can provide a positive input. We would be happy to assist you in any regional or sectoral events you may plan. Business believes it is important to get a broad view on the responses to your mandate, preferably on the ground, where business – both international and national - are dealing with these types of issues on a regular basis.

The mandate might also be helped by using the website approach to collating and dissemination of information. Perhaps you could consider whether this could be set-up.

In closing, we should like to reinforce the positive nature of our dialogue, which we hope will continue and develop. As you think about the challenges ahead, business believes the success of your work could be defined by the way in which you are able to:

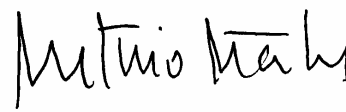
- reinforce the extent to which business already makes a contribution and move the debate away from anti-business rhetoric to create a more effective partnership approach;
- identify and clarify the wide range of instruments, codes and other mechanisms for assisting companies;
- explicitly recognize that there is no need for a new international framework.
- ensure that good practice is promoted and extended;
- find ways for states to better discharge their obligations and to encourage ways of improvement where the rule of law is less than adequate.

We trust that the above is useful and we look forward to working with you to assist you in discharging your mandate.

Yours sincerely,



Guy Sebban
Secretary General
ICC



Antonio Peñalosa
Secretary-General
IOE