International Chamber of Commerce
The world business organization

ORGANISATION INTERNATIONALE DES EMPLOYEURS
ORGANIZACIÓN INTERNATIONAL DE EMPLEADORES
INTERNATIONAL ORGANISATION OF EMPLOYERS

The Voice of OECD Business

Joint initial views of the International Organisation of Employers (IOE), the International Chamber of Commerce (ICC) and the Business and Industry Advisory Committee to the OECD (BIAC) to the Eighth Session of the Human Rights Council on the Third report of the Special Representative of the UN Secretary-General on Business and Human Rights

---

The International Organisation of Employers (IOE), the International Chamber of Commerce (ICC) and the Business and Industry Advisory Committee to the OECD (BIAC) welcome the third report of Professor John Ruggie, the Special Representative of the UN Secretary-General on business and human rights. This report, "*Protect, Respect and Remedy: A framework for Business and Human Rights*", presents a well-constructed and clearly articulated framework for addressing business and human rights. Together with the extensive work behind it, the report has significantly advanced the debate on business and human rights.

Consultation Process

We commend the Special Representative for the exemplary and transparent multi-stakeholder consultation process that he deployed and for the objective manner in which he researched the numerous and complex issues covered in his mandate. We believe this approach greatly helped to strengthen the value of the Special Representative's final views and recommendations. It should also serve as a model for all special procedures.

Proposed Framework

The IOE, ICC and BIAC believe that the proposed framework - the state responsibility to protect human rights, the corporate responsibility to respect human rights and access to remedies - is an appropriate and focused way of summarising the current state of business and human rights discussions. It will also provide an effective way to further the debate surrounding these issues.

In particular, the proposed framework recognises four key elements that have been missing or under-emphasised in the past. Firstly, the root causes of most human rights abuses are based in governance gaps, specifically the failure or inability of governments to protect human rights within their own jurisdictions. Secondly, most human rights abuses occur in countries with weak governance, limited political or civil freedoms, high levels of corruption or in actual conflict; any

serious effort to address human rights abuses must address these dynamics. Thirdly, governments and business have distinct and very different responsibilities in relation to human rights, and confusing these responsibilities would not serve to protect human rights. And lastly, these issues apply to all companies, including state-owned and private, small and medium-sized, national and multinational companies.

We recognise that the mandate involved significant examination and analysis and has led to the proposed framework, which we fully support. But we do have some specific comments on some aspects of the various elements contained within each element.

State duty to protect

Business welcomes the recognition of the role of States as the foundation for the framework. We believe the rule of law, good governance, and independent judicial systems require constant highlighting. A key issue remains the need for adequate implementation and effective enforcement of existing laws – addressing this issue alone would improve human rights in innumerable ways. These elements should be given the highest priority under the State duty to protect.

We also see a potential danger in the focus on multinational companies and foreign investment in this section, which reduces the attention on the vast majority of enterprises in the world which operate at the local and national level. If the goal is to reach down into the global supply chain, a large part of the focus should be on the suppliers and domestic companies themselves and the framework conditions in which they operate.

Corporate responsibility to respect

The inclusion of the corporate responsibility to respect human rights as distinct from the state duty to protect rightly recognises that companies cannot assume the responsibilities of states. The IOE, ICC and BIAC have been unequivocal in saying that all companies must comply with the law, even if it is not enforced, and that they should respect the principles of relevant international instruments where national law is absent. We also welcome the call to carry out due diligence in relation to human rights as a useful and practical part of the framework.

Access to remedies

Business fully supports the Special Representative's focus on this issue as part of the framework. Every part of society needs the ability to seek redress for grievances. We believe that judicial mechanisms are important and deserve the greatest attention and resources. The discussion relating to the extraterritorial application of the law, which raises significant issues of its own, risks diverting attention from improving national judicial mechanisms. Other non-judicial routes to redress can play important roles as well.

We do, however, have serious reservations about the idea of establishing a global ombudsman function as part of the business and human rights mandate. There are no convincing arguments that establishing an international ombudsman – even if it were practical and possible - would do anything to address the lack of access to effective and impartial judicial mechanisms at the national and local levels that the Special Representative mentions.

Conclusion

The IOE, ICC and BIAC urge the UN Human Rights Council to endorse the report of the Special Representative. In doing so, it is important that the Council uses the framework that he has put forward as the basis for a new mandate. Business will support such a move as it will give a clear, practical and objective way of approaching a very complex set of issues. We believe that the Council should not risk diluting or diverting the progress that has been made by loading a new mandate with a grievance receiving mechanism. By making the Special Representative's framework operational and addressing the issues that require further attention, momentum will be maintained and the focus will be on the right issues.

May 2008