The Jus Semper Global Alliance

Living Wages North and South

Human Rights and Sustainable Human Development

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A Dialogue with Ruggie?

To change so that everything remains the same... An assessment of John Ruggie's 2009 and 2010 Reports

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Alejandro Teitelbaum has devoted many years to work on the issue of human rights in the sphere of influence of global corporations and other business enterprises. As the former Permanent Representative to the United Nations Office in Geneva, for the American Association of Jurists –based in Buenos Aires, he spent time toiling with the bureaucracies of the UN and member states, in his pursuit of an international legal framework that would harness business activity so that it would stop violating a wide array of human rights in its sphere of influence, as is customarily the case today.

As such, he participated in the process followed by the now extinct Sub-Commission on the Promotion and Protection of Human Rights of the UN's Economic and Social Council to assess the impact on human rights of business activities and to prepare a legally-binding code of conduct on this issue. He witnessed how, time and time again, the bureaucracies succumbed to the will of the leading economic powers, who were adamant at maintaining the preeminence of corporate interest over their responsibility for their infringement on human rights.

In recent years Teitelbaum has assessed the clearly biased work of John Ruggie, the so-called Special Representative of the UN Secretary General for Business and Human Rights, appointed, arguably, to design a framework that would "increase the stakes" for corporations when infringing upon human rights in their daily operations. Teitelbaum has consistently criticised Ruggie's clear inclination for neoliberal ideology at the service of transnational economic power, which clearly opposes any kind of instrument that would govern, in a binding manner, business practices concerning human rights. In this brief, we have combined his assessments of Ruggie's 2009 and 2010 reports. Teitelbaum's commentary recounts how it all began at the UN, in the 1970s –when a growing concern for increasing human rights violations by business entities elicited a call to regulate their practices. This provides a very valuable background to expose how both governments and multilateral institutions have coalesced with corporations to block any attempt by civil society, up to now, to rein in business practice through a legally-binding framework.

In this way, he exhibits, by analysing Ruggie's argumentation –including the most relevant arguments from his previous reports, how his work is only a token effort "to change so that everything remains the same." Teitelbaum also exhibits the disregard shown by Ruggie for seriously taking into consideration, in his deliberations, the perspective on business and human rights of a great diversity of stakeholders –who are completely against the "laissez faire" ethos that is imposed on the world by global Darwinian capitalism through its increasing control of the public agendas of governments. A clear example, provided by Teitelbaum,

is that all of Ruggie's so-called consultations with stakeholders exclude, by design, anyone not well versed in the use of the English language.

We invited Teitelbaum to publish his most recent assessments of Ruggie's work with us, for we share a strong affinity on the views that he advances herein. In our own assessments of Ruggie's work, we reviewed his 2006 and 2007 reports as part of a broader assessment on the impact of business on human rights.[1] Subsequently, we prepared a specific assessment of Ruggie's 2008 Report "Protect, Respect and Remedy: a Framework for Business and Human Rights".[2] Not surprisingly, we arrived at the same conclusions that Teitelbaum did. Mr. Ruggie's work is only a token effort to maintain the precedence of the market over the rights of people and, to be sure, over true democracy. Furthermore, we also experienced the same arrogant disregard used by Ruggie to dismiss the critiques we posed in our assessment. In our own experience, Ruggie argued that "we need new and sharper analytical tools. For now, the rest of us can feel justified ignoring the edifice that is built on this imagined foundation because it won't stand up." And he recommended to buy his new book: "It is available at your bookstores now. A must read for Jus Semper—but only after they've developed analytical tools..."[3]

Ruggie must think that we are naive enough to waste our time reading his creative writing on the issue of "embedding global markets on society, through shared values and institutional practices", a recurring argument in his reports. The imagined foundation that he refers to in his criticism is that the primeval responsibility of any State that regards itself as democratic is to procure the welfare of every rank of society, and especially of the dispossessed. Therefore, in a truly democratic ethos, the market cannot be an end in itself and, thus, must be harnessed so that the welfare of people and planet have unequivocal precedence over the private interest. Ruggie obviously disagrees. He apparently thinks that the markets must rule over society, finance the political campaigns of public servants –a "business right" that the U.S. Supreme Court recently upheld– and, thus, dictate the public agenda, so that no legally binding-frameworks can annoy the pursuit of shareholder value at the expense of all other stakeholders, commonly regarded as "externalities".

And so, what can we expect from someone that –as Teitelbaum recounts, was one of the main architects of the Global Compact –a mockery of what true business responsibility should be? From the perspective of true democracy, nothing, whatsoever, but his categoric opposition to any binding framework that forces corporations to respect human rights. Indeed, Teitelbaum illustrates quite effectively Ruggie's disregard for justice and equality when he argues that "the ideology that inspires Mr. Ruggie's whole work, as Rapporteur, clearly reflects in the quote by Amartya Sen", included in his Report, in the sense that "there is no place for wishful thinking and that we would be better off working on those injustices that can be remedied."

As could be expected, Teitelbaum's succinct recommendation, at the end of his assessment of Ruggie's 2010 report, is that "the UN Human Rights Council should make an about turn of 180 degrees on this issue to be in sync with the gravity of the social and economic situation in which the world is living". Jus Semper is happy to welcome an intellectual work, based on first hand experiences, that makes an important contribution to expose the connivance between governments, multilateral institutions and the owners of the market to maintain the same "laissez faire" ethos that has brought the world to a very dangerous state.

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[1] Álvaro de Regil: Business and Human Rights. Towards a New Paradigm of True Democracy and the Sustainability of People and Planet or Rhetoric Rights in a Sea of Deception and Posturing. The good old formula of changing so that everything remains the same... The Jus Semper Global Alliance, TLWNSI Issue Study, January 2008.

[2] Álvaro de Regil: Business and Human Rights: Upholding the Market's Social Darwinism – An assessment of Mr. John Ruggie's Report: "Protect, Respect and Remedy: a Framework for Business and Human Rights" The Jus Semper Global Alliance, TLWNSI Issue Study, October 2008.

[3] Ruggie on Markets: Response to Jus Semper Global Alliance, Harvard John F. Kennedy School of Government, 21 october 2008.

❖ *Assessment of Ruggie's 2009 Report*

I. Background

As far back as the 1970s, and even earlier, it was evident that national laws and courts were not up to putting a stop to the multiple human-rights violations perpetrated by large transnational corporations (TNCs). That was (and is) true for two main reasons: On the one hand, poor countries were unable to confront the TNCs' colossal power, with a financial turnover in many cases greater than the GDP of many of these countries[4], who, for the most part, also lacked their governments' political will for such a confrontation. On top of this, there was the support of the leading powers to the overseas activities, legal or not, of those transnational corporations that were based in their territory. On the other hand, the laws of these leading powers were designed to facilitate the TNCs expansion, with their courts showing no willingness to examine the human-rights violations that ran parallel to such expansion.

To overcome that situation, the need for an international legally-binding framework for the TNCs became evident. This moved, in 1972, the United Nations Economic and Social Council to request the UN's Secretary-General to create a Group of Experts to study the TNCs' activities. Once formed, the Group advised ECOSOC to create a Commission of Transnational Corporations, which was established in 1974 with 48 Member States, and endeavoured itself to two priority tasks: to investigate the activities of transnational corporations and to prepare a Code of Conduct (with the idea to make it binding) for the TNCs. The Code began to be drafted in 1975 and was virtually finished by 1983. However, the opposition of the corporations and the pressure of the world's powers against the Draft was such that the Code never reached the light. The same thing occurred on a Code of Conduct Draft on technology transfer by transnational corporations, promoted at the time by the Group of Seventy-Seven (the so-called "developing countries") at the UNCTAD (United Nations Conference on Trade and Development).

II. Attempts to protect Human Rights in the sphere of business at the heart of the UN

In the early 1990s, the opportunity to readdress emerged in the United Nations to again advance the issue of control over the activities of transnational corporations. That was when the Sub-Commission for Human rights decided to appoint two special representatives who would study the problem of impunity in connection with human-rights violations.

In 1993 the Sub-Commission adopted a resolution whereby it charged one of the two rapporteurs with studying the impunity connected with violations of civil and political rights, and the other with studying the impunity related to violations of the economic, social and cultural rights.

Upon the submission in 1998 of the final report by the rapporteur on violations of the economic, social and cultural rights, the Sub-Commission adopted a resolution to assess the TNCs' activities and business practices in relation to the enjoyment of the economic, social and cultural rights and the right to development. One of the paragraphs in the resolution remarked that one of the obstacles against the exercise of those rights is the concentration of the economic and political power in the hands of large transnational corporations. Also in that resolution, the Sub-Commission resolved the creation –and established the mandate– of a Working Group that would execute the aforementioned assessment. The Working Group, appointed in 1998, had to analyse and investigate the business practices and activities of transnational corporations; an issue undoubtedly relevant for some and annoying and inopportune for others. They were also charged with putting together a Draft of a set of Norms for the TNCs.

The first Draft was a sort of voluntary code for TNCs, which they could adopt or set aside; what is usually called a "soft law" or a "non-law". It was an attempt to change, so that everything would remain the same. The American Association of Jurists (AAJ), through our mediation, and the Europe-Third World Centre (CETIM) strove strongly to improve the Draft, proposing fundamental reforms to it so that it acquired some judicial consistency and some enforceability.

After four years of debates, of the organisation of an international multidisciplinary seminar, and of a two-day session with the members of the Working Group, the AAJ and CETIM achieved the improvement of the Draft. Yet many essential

[4] The business turnover of the largest multinationals is equal to or higher than the GDP of many nations, and that of just six TNCs is greater than the combined GDP of the poorest 100 countries." (Utting, Business Responsibility for Sustainable Development, UNRISD, Geneva, January 2000).

issues were left out, such as the civil and criminal responsibility of business officers, the solidary liability of transnational corporations with their suppliers and contractors, the precedence of the public service over the private interest, the prohibition of patenting life forms, etcetera[5].

In its sessions of August 2003, the Sub-Commission approved the Draft in a resolution and turned it over, under the terms of process, to the Human Rights Commission. But instead of asking the Commission to approve it, as is usual in similar cases, it requested the Commission to gather the observations on the Draft from governments, United Nations' organs, specialised institutions and non-governmental organisations, and to be prepared for the possibility of setting up an open Working Group to review the Draft.

It is worth highlighting the attitude of some large non-governmental organisations, which, from the first version of the Draft –which was decidedly unacceptable, requested its immediate approval by the Sub-Commission, without regard, it seems, for its quality and enforceability. And, every subsequent year, they adopted the same attitude with the new versions of the Draft, which hardly improved the first one. Perhaps some of them decided to keep a "low profile" so as to not disrupt their good relations with large transnational corporations.

III. Opposition to the regulation of human rights in the sphere of business

Notwithstanding that the Draft approved by the Sub-Commission was far from being a panacea for controlling and providing a legal framework for TNCs, these reacted vigorously against it, through a 40-some pages document, **signed by the International Chamber of Commerce (ICC) and the International Organisation of Employers (IOE), i.e., the institutions grouping big corporations globally.** In said document they asserted that the Sub-Commission Draft undermined human rights and the rights and legitimate interests of private enterprises, that human-rights obligations are to be met by the States and not by private actors, and they exhorted the UN Commission for Human Rights to reject the Draft that the Sub-commission had approved[6]**.**

Finally, in 2005, the Commission for Human Rights, completely disavowing the Draft Norms adopted by the Sub-Commission in 2003, approved Resolution 2005/69, where it invited the UN Secretary-General to appoint a special rapporteur for whom it suggested a mandate inspired in the *Global Compact*. In approving said resolution, the Member States of the Commission on Human Rights surrendered to the TNCs' pressures, clearly expounded in their document. Out of 53 members, 49 voted for it, South Africa and Burkina Faso abstained and the votes against were those of the United States and Australia, which held that the issue of TNCs should not be dealt with in the Commission in any way whatsoever. And so no one would think that the Draft of the Sub-Commission could be invoked as an international norm in force, the Human-Rights Commission took good care to have the last paragraph of its Resolution 2004/116 state precisely that such Draft "....as a draft proposal, has no legal standing, and that the Sub-Commission should not perform any monitoring function in this regard."

IV. John Ruggie´s regressive work

In July 2005 Secretary-General Kofi Annan finished up the regressive work of the Commission of Human Rights on this matter by appointing Mr. John Ruggie, his principal advisor as regards to the *Global Compact*, as his special representative in charge of studying the issue of transnational corporations.

Suffice it to read Mr. Kofi Annan's 1998 report announcing the *Global Compact*, conspicuously entitled "Entrepreneurship and privatisation for Economic Growth and Sustainable Development" (A/52/428), the speeches by Georg Kell, Executive Director of the *Global Compact*, and those by John Ruggie himself, to grasp the neoliberal ideology at the service of transnational economic power preeminent in that realm; and indeed opposed to the imposition on transnational corporations of any compulsory obligations. Mr. Ruggie himself asserted: "The *Global Compact* is no

[5] We examined in detail the weaknesses and omissions of the Sub-Commission's Draft in a statement that was submitted to the Commission on Human Rights in March 2004 (E/CN.4/2004/NGO/123).

[6] International Chamber of Commerce, Organisation Internationale des Employers, Joint views of the IOE and ICC on the draft "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights," www.iccwbo.org. See also Corporate Europe Observatory (CEO), Shell leads International Business Campaign Against UN Human Rights Norms, CEO Info Brief, March 2004

code of conduct, and the United Nations have neither the mandate for making it so nor the capacity to verify its application."

In 2007 the Sub-Commission was dissolved. That was perhaps the toll that it had to pay for engaging in issues that proved irritating for world powers and the transnational economic power. An Advisory Committee to a new Human-Rights Council took its place, with much more restricted powers in comparison with those of the defunct Sub-Commission.

As for John Ruggie, in 2006 he wrote his first report for the Commission on Human rights (E/CN.4/2006/97). The first paragraphs of Ruggie's Report are "descriptive" as he himself writes at the start of paragraph 13 of his report –and quite objective, we would add. Though, further on, he drifts towards attributing corporations and business entities a decisive role in society: *"civil society actors and policymakers increasingly appreciate the fact that active corporate involvement is an essential ingredient for success"* (par. 17). And immediately, in the following paragraph, he shifts the axis of gravitational balance from the political society to the business enterprises: it was *"...difficult, if not impossible for Governments to meet mounting domestic demands for full employment and greater economic equity. Both failures contributed to the emergence of ugly 'isms' inimical to business, human rights and, in the end, to world peace. In contrast, the post-1945 institutional arrangements for monetary and trade relations balanced commitments to international liberalisation with ample scope for domestic safety nets and social investments."* (par. 18). And herein we already are in the midst of neoliberal philosophy: **mitigate** social demands and suppress conflicts and the "ugly 'isms'" through "safety nets", substituting political authority exercised on behalf of citizens, all equal before the law, by "social actors" –some with great power, others disenfranchised– in order to **mitigate, not satisfy**, the social demands.

Ruggie presented his second report to the UN Human-Rights Council in February 2007 (A/HRC4/74). He develops arguments that strive to demonstrate that transnational corporations are not bound by international law and that the most appropriate course is to bring together business enterprises, the United Nations (*Global Compact* interceding) and "civil society" to institute statements of good will in the form of *soft law*, codes of conduct and so forth, whose application will be controlled by the enterprises themselves and "civil society" representatives[7].

In his April 2008 report (A/HRC/8/5), albeit there are no concrete proposals (the author claims he is presenting a conceptual framework) Ruggie comes up with an amazing 180 degree turn in relation to previous reports, maybe influenced by the world's financial crisis' devastating effects and especially taking on the demagogic style of world leaders ("moralise capitalism", "put an end to offshore/tax havens"), aimed at reassuring public opinion the world over. Ruggie begins his April 2008 Report declaring: "The international community is still in the early stages of adapting to a human rights regime that provides more effective protection to individuals and communities against corporate-related human rights harm."

After the customary homage to the market economy he adds, "But markets work optimally only if they are embedded within rules, customs and institutions [...] Indeed, history teaches us that markets pose the greatest risks [...] This is such a time and escalating charges of corporate-related human rights abuses are the canary in the coal mine, signalling that all is not well." He writes that a permissive environment has been provided for wrongful acts by companies without adequate sanctioning or reparation [...] Against the notion that business entities may harm certain specific rights, this time Ruggie asserts that "...business can affect virtually all internationally recognised rights." He underscores and differentiates between three issues: the State's duty to protect human rights; the corporate responsibility to respect them, and "the need for more effective access to remedies" in the face of violations; he overcomes the confusion created over the role of business as responsible –along with the State- of ensuring respect for human rights.

He goes on to say that "the rights of transnational corporations have been expanded significantly, which has created ... imbalances between firms and States that may be detrimental to human rights." As an instance he notes "the more than 2.500 bilateral investment treaties currently in force. Despite giving legitimate protection to foreign investors, these treaties also allow them to take receiving States hostage by subjecting them "to binding international arbitration, in

[7] We wrote a commentary on Mr. Ruggie's first report, a summary of which may be found at http://alainet.org/docs/13433.html, and another on his second report, which the Centre Europe Tiers Monde presented at the Human Rights Council's session in March 2007, with the code A/HRC//4/74. Also the Transnational Institute (www.tni.org) published a summary of the same in English and Spanish.

particular for alleged damages resulting from implementation of legislation to improve domestic social and environmental standards- even when the legislation applies uniformly to all businesses both foreign and domestic."

Ruggie also addresses in this Report an issue that for us is crucial: the solidary liability of the transnational parent company with its subsidiaries *de jure* or *de facto*, as well as with its suppliers and contractors, in confronting the problems raised by the generalised policy of externalising both risks and costs. Ruggie continues, "...the legal framework regulating transnational corporations operates much as it did long before the recent wave of globalisation. A parent company and its subsidiaries continue to be construed as distinct legal entities. **Therefore, the parent company is generally not liable for wrongs committed by a subsidiary**, even where it is the sole shareholder, unless the subsidiary is under such close operational control by the parent that it can be seen as its mere agent." And he adds, "Factors such as these make it exceedingly difficult to hold the extended enterprise accountable for human rights harm."

In May 2008 Ruggie submitted an addendum report (A/HRC/8/5/Add.2) entitled "Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuse", wherein he acknowledges the negative effect of multinationals' activity over the enjoyment of human rights, whether labour-related or not. Nonetheless Ruggie seems unable to infer from his own 2008 Report the obvious conclusions: on 28 January 2009 the news website of the UN's Office in Geneva (UNOG) divulged a note by Ruggie himself announcing he had obtained the voluntary services of fifteen international law offices (list provided), specialised in counselling big corporations, to review the corporate legislations of 40 nations and their effect in promoting a pro-human-rights culture among their clients. One cannot think, even for a second, that such counsels will perform a study objective and unbiased enough as to oppose the interests of their affluent clients, sworn enemies of any national legislation that could regulate or restrict their activities.

In his 2009 report Ruggie kept unchanged the bottom line imposed by transnational corporations: no proposal, whatsoever, of binding international norms for business enterprises.

Paragraph 4 of said report contains a pearl that we entirely transcribe herein:
4. Leading business entities have endorsed the framework. In a joint statement, the International Organisation of Employers (IOE), the International Chamber of Commerce (ICC) **(ADD I: THE VERY SAME WHO "RECOMMENDED" THE COMMISSION ON HUMAN RIGHTS TO BURY THE SUB-COMMISSION'S DRAFT NORMS, see paragraph III above)** ***and the Business and Industry Advisory Committee (BIAC) to the OECD said that the framework provides "a clear, practical and objective way of approaching a very complex set of issues". It was welcomed by the International Council of Mining and Metals and the Business Leaders Initiative on Human Rights. Forty socially responsible investment funds wrote to the Council, saying that the framework helped them by promoting greater disclosure of corporate human rights impacts, and appropriate steps to mitigate them. The oil company Exxon Mobil, in a public commemoration of the sixtieth anniversary of the Universal Declaration of Human Rights, cited the framework's corporate responsibility to respect principle as a benchmark for its own employees.*** A saying aptly comes to mind: "...Tell me who praises you"

By the same logic, Ruggie himself and the EU representatives to the Human Rights Council have opposed authorising the Rapporteur to receive denunciations of violations committed by multinationals, as most rapporteurs engaged in various human-rights related issues usually do.

V. Human Rights in the sphere of business and international law

The exclusion of transnational corporations from the international framework guaranteeing protection to human rights results in the TNCs being bound solely by regular domestic law, which is manifestly insufficient to hold them responsible. Such inadequacy is so because, as earlier noted, transnational corporations enjoy a favourable legislation and, especially, the Governments' unconditional endorsement. Whereas in poor nations they can infringe domestic legislation and, by the way, incur on human rights abuses, knowing that they count on the complicity of many of these countries' leading elites and, thus, on their consequent impunity.

Moreover, it is well known that the economic power of several transnational corporations exceeds that of many poor countries, and, furthermore, that in the last twenty years they have accrued an impressive juridical arsenal at their service (bilateral free trade agreements, treaties for fostering and protecting investments, among others), and favourable

jurisdictional venues as well (including the arbitration panels of the International Centre for the Settlement of Investments Disputes – ICSID, a member of the World Bank Group whose president, ex officio, presides the World Bank itself, the WTO Dispute Settlement Body, etc.). All of the above, joined together with the extreme fluidity in the TNCs' trans-border moves, which allow them to evade compliance with national laws and regulations, make domestic legislations clearly inadequate and compellingly demand the exercise of existing international procedures and mechanisms of public law, and, where necessary, the creation of new procedures and mechanisms that bind TNCs to respect human rights and sanction them every time that they abuse them.

If instituting international binding norms for TNCs was a cause of concern and led to the elaboration of drafts in the 1970s-80s, currently, when circumstances have dramatically worsened –since the lex mercatoria (a kind of neo-feudal, corporate law that we have described two paragraphs above) absolutely prevails over human rights– the necessity for international legal and social controls over TNCs has become imperative, as part of the striving effort to restore human rights at the peak of the hierarchy of the social, cultural and juridical norms.

That is, exactly, what transnational corporations, their counsels, mentors and gatekeepers –among them Ruggie– do not want.

Isabelle Daugareilh writes: "...But for the time being nothing concrete has emanated from the United Nations, and the extension or Ruggie's mandate fails to contribute any concrete order at the normative level, save that of developing the framework for the Protect, Respect and Remedy trilogy." (Responsabilidad social de las empresas trasnacionales: Análisis ...Cuadernos de Relaciones Laborales 2009, 27, No. 1 pages 77-106. Universidad de La Rioja, Spain).

VI. To dialogue with Ruggie

Presently Ruggie has launched an "online forum", an all-English one. That is, for the exclusive use of English-speakers, with the evident purpose of legitimising himself by saying that he dialogues with people the world over.

As for a dialogue with Ruggie, I already had my own personal experience. The Transnational Institute, upon publishing my comments about one of Ruggie's reports, sent them to him inviting him to respond in the TNI Bulletin's pages. Ruggie's response, e-mailed to the TNI, was (more or less literally) that he was an important professor and could not stoop down to a discussion with an unknown person/ a nobody.

Is it worthwhile posing queries to Ruggie? That could be, provided that your questions are clear and uncomplicated. You can ask, for instance, if he plans to propose the elaboration of international documents binding for TNCs, taking into account where possible the 1983 Draft Code of Conduct and the Sub-Commission's 2003 Draft Norms –leaving untouched their drawbacks and omissions. And not allowing yourself to be distracted by his reports' factual-juridical

fallacies[8] (5), which are a manner of utilising "storytelling", which someone has defined as a "weapon of mass distraction". A tactic ordinarily used by politicos and "marketing" managers.

❖ *Assessment of Ruggie's 2010 Report*

We will examine three aspects of Mr. Ruggie's Report for 2010: his work methodology, his legal focus, and his ideological content.

I. Work methodology

Despite the appearance of an all-encompassing consultation with various social sectors, Mr. Ruggie's true interlocutors have been big corporations, business organisations such as the International Chamber of Commerce and the International Organisation of Employers, as well as the legal counsels of those big corporations. Quite a few of these multinational corporations, including some that form part of the Global Compact, cannot show a very clean track record concerning respect for human rights and corrupt practices.

It is illustrative that the Rapporteur, in trying to demonstrate that big oil corporations lose much money and petroleum gets expensive for several reasons –including popular resistance to polluting projects- cites in paragraph 71 a study by Goldman Sachs, who stands out –for its cheating and illegal practices– as one of the major culprits in the current financial crisis. On the other hand, all other participants in the numerous meetings organised by the Rapporteur have been mere extras whose opinions have not been taken into account in any significant way.

II. Legal focus

The axis of the Rapporteur's juridical focus could well be summed up as: corporations do not have duties or obligations but solely responsibilities. Responsibilities that, as Milton Friedman clearly asserted, consist on increasing their revenue ("The social responsibility of business is to increase its profits"). The end result is that, in Mr. Ruggie's report, there is no proposal of binding rules for companies. This is fully in accordance with what the International Chamber of Commerce and the International Organisation of Employers demanded in the document they issued on March 2004 against the Norms Draft approved by the UN Sub-Commission on Human-Rights in 2003.

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[8] In my discussions of Mr. Ruggie's successive reports I believe I have effectively made such fallacies not only to stand out, but the mediocrity and legal frivolity of such reports as well.
His glorious "three pillars (protect, respect and remedy)" are concepts customarily used by specialists as well as human rights activist. In the particular case of business entities, we wrote in the submittal of our Observations to Mr. Ruggie's 2006 first report, a commentary on one of his critiques to the Draft Norms approved by the Sub-Commission:
…Ruggie has a point in deeming problematic the proposal of "allocating human rights responsibilities to (both) States and corporations." The Rapporteur insists on his critique of the Draft Norms -which we share- on paragraphs 66 and 68 of his Report.
Indeed, in the Draft Norms, after stating that: "even though States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights..." it adds on that: "TNCs and other business enterprises are also responsible for promoting and securing the..."
We expediently pointed out this error to the Sub-Commission's Working Group, who proposed to leave out the phrase "are also responsible for promoting and securing..." in order to have that paragraph state: "(they) must respect and contribute to make respect, protect and promote human rights..." (See AAJ-CETIM, "Proposal of Amendments to the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights", 28 pages, Geneva, July 2003).
There is no doubt that the State has a responsibility, which it cannot delegate, for enforcing human rights within its jurisdiction; it too must prevent their violation or abuse either by the State itself and/or its officials or by private persons or entities. If the State's does not comply with said obligation it incurs in an international liability.
Indeed, the term responsibility holds two tangential, yet different, meanings, which the English language expresses through two distinct words: responsible, responsibility, and accountable, accountability.
One of them is "charged with", for instance, the officials charged with enforcing the law. It also can be said that a company's management is in charge for (i.e., responsible for) ensuring respect for labour rights within the company's environment.
The other meaning implies that each person (either an individual or a juridical person/entity, the latter through its decision-makers) is accountable for its acts, for which it must account for (accountable). For example, the party violating labour rights must account for such violation before the relevant public institutions (of the State's administration and the courts of justice), and repair the damage caused (liability).
In some instances the first meaning is extrapolated in the sense of making corporations, particularly large corporations, a general responsibility of "being in charge of" enforcing respect for human rights. This would be tantamount to delegating on business enterprises the responsibilities inherent to State institutions, of enforcing respect for human rights in general; or it would be a State responsibility proper, shared with business enterprises.
The above conception might elicit that a privileged status in society is bestowed to business enterprises, based on their power and influence, which goes against the fundamental tenets of a democratic society, including equality before the law.

It is indisputable that multinational corporations, like all private persons, are bound to respect the law, and they must endure civil and criminal sanctions if they fail to do so, including those at the international level: a conclusion that clearly emerges after some attentive examination of the international instruments in force. This is true despite the lack of progress in the initiative to incorporate the criminal liability of juridical persons to the Statute of the International Criminal Court, in the Rome Conference, due mainly to strong pressure by the United States, who at the end did not adhere to the Statute.

III. Ideological context

The ideology that inspires Mr. Ruggie's whole work, as Rapporteur, clearly reflects in the quote by Amartya Sen at the end of his Report (paragraph 121), in the sense that there is no place for wishful thinking and that we would be better off working on those injustices that can be remedied. So who decides which injustices can be remedied and which cannot? Perhaps the International Chamber of Commerce? Or the glaring inequalities and injustices made evident by the present global crisis that imperiously demand a radical change in social relations?

Amartya Sen, in his book *Un nouveau modèle économique. Développement, justice et liberté,* comes to the defence of free markets and is bent on trying to prove that one can be poor, even very poor, and still live better than other people who have greater income. Translated to popular language, the favourite saying of the very rich for the poor: money can't buy happiness.

Perhaps that is why former UN Secretary General Koffi Annan said about Sen that "the world's poor and dispossessed could have no more articulate or insightful a champion."
It bears remembering that Mr. Koffi Annan's 1998 report, where he announced the creation of the Global Compact - where one of the main architects was Mr. Ruggie- was conspicuously entitled "Entrepreneurship and privatisation for economic growth and sustainable development" (A/52/428).

The UN Human Rights Council should make an about turn 180 degrees on this issue to be in sync with the gravity of the social and economic situation in which the world is living.

Realated links:

- http://www.jussemper.org

- **About Jus Semper:** The Living Wages North and South Initiative (TLWNSI) constitutes the sole program of The Jus Semper Global Alliance (TJSGA). TLWNSI is a long-term program developed to contribute to social justice in the world by achieving fair labour endowments for the workers of all the countries immersed in the global market system. It is applied through its program of Corporate Social Responsibility (CSR) and it focuses on gradual wage equalisation, for real democracy, the rule of law and living wages are the three fundamental elements in a community's quest for social justice.

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