



# HARVARD Kennedy School

JOHN F. KENNEDY SCHOOL OF GOVERNMENT

## Keynote Address

John G. Ruggie

### Above Ground/ICAR Conference

## Business & Human Rights: Bringing Responsibility Home

Ottawa, 28 September 2017

As a lapsed Canadian, I'm very pleased to have been allowed to return. Thank you, Above Ground and ICAR.

Actually, the first time I spoke on business and human rights in Canada was in November 2006, at the final session of the National Roundtables held in Montreal. I was so enthused by the experience that I later described it in a UN setting as a model of deliberative democracy. Of course, as with all models implementation is the key challenge.

Those were early days in my UN mandate, which ultimately produced the Guiding Principles on Business and Human Rights. The Government of Canada was enormously supportive of the mandate, both diplomatically and financially, for which I remain deeply grateful.

A great deal has happened in the business and human rights space since the UN Human Rights Council endorsed the Guiding Principles in 2011. For me, the least expected and most unusual development involves FIFA, the governing body of what the rest of the world calls football. So, Canada, when you submit your joint bid with Mexico and the U.S. for the 2026 World Cup, you will be asked to include a plan aligned with FIFA's new statutory commitment to respect all internationally recognized human rights. I'm happy to help out, as I did with FIFA.

Our subject today is the role of home states. Let me begin by briefly reviewing some recent developments.

The role of home states remains a controversial subject – though far less so than it was a decade ago. I think it's fair to say that the Guiding Principles have helped to advance the agenda. They spell out the different

but interrelated roles of states and business enterprises in protecting and respecting human rights, and ensuring that people whose rights are infringed upon by enterprises have access to effective remedy.

By the standards of the international human rights regime, the uptake of core elements of the Guiding Principles has been encouraging – by states both North and South, businesses, civil society and workers organizations across a range of economic sectors, law societies, some financial institutions, and not only global sports organizations like FIFA but also professional players unions.

Nearly forty states are developing or have already issued national action plans for the Guiding Principles. Several home states have taken additional steps aimed at strengthening human rights due diligence and reporting by companies, which are core elements of the corporate responsibility to respect human rights under the Guiding Principles.

For example, the Dutch government has convened multi-stakeholder processes to establish sector-wide agreements on responsible business conduct signed by businesses and all key stakeholders. They comprise more than ten sectors, including corporate lending and project finance activities.

The United Kingdom has adopted a Modern Slavery Act. It requires companies to issue an annual statement indicating steps taken (or not) to ensure that no forms of slavery or trafficking is taking place in their operations and supply chains. Australia is also considering such an act. The Netherlands is considering legislation focused specifically on child labor. France has adopted a due vigilance law that requires companies above a certain size to institute effective human rights and environmental due diligence throughout their global operations.

Germany has given firms with more than 500 employees until 2020 to demonstrate that they have a human rights due diligence system in place; if fewer than 50 percent meet the goal then the government may consider additional measures. The EU as a whole has adopted non-financial disclosure requirements.

The common element throughout these measures is specificity of target and prevention of harm. Some are focused on a particular set of rights holders, as in modern day slavery or child labor. And all demand human rights due diligence and transparency. Only the new French law contemplates possible punishment for wrongdoing if a company lacks adequate due diligence systems that could have prevented the harm – in that sense it, too, is geared in the main toward preventative steps.

Not everyone is equally happy with these developments. To some businesses and governments they suggest creeping extraterritorial jurisdiction. On the side of many human rights advocates they do not go far enough because they fail to provide remedy. I address each in turn.

Brevity does not allow for subtlety. And I do want to stress that the subject of extraterritorial jurisdiction is enormously complex. But let me make a few observations.

There is a critically important distinction between true extraterritorial jurisdiction, exercised directly in relation to actors or activities in other jurisdictions, and domestic measures that have extraterritorial effects. An example of direct extraterritorial jurisdiction is criminal regimes governing child sex tourism, on the basis of which home states prosecute their offending nationals in home state courts.

In contrast, there are domestic measures that may involve operations abroad. A common business example is consolidated financial reporting for corporate parents and their overseas subsidiaries and other affiliates. Deceptive financial reporting draws the attention of home state authorities no matter where it originated within the global enterprise. No one thinks of this as creeping extraterritorial jurisdiction.

So here's my question: is there a principled reason why such a jurisdictional basis could not hold for similar due diligence including reporting of salient human rights issues? And would not the rationale be even stronger where the home state itself is involved in funding or otherwise supporting the overseas investment?

Now, on the other side there are many in the human rights community who demand direct forms of extraterritorial jurisdiction, including not only prescriptive regulation but also enforcement action. Both home and host states generally are apprehensive about this form of extra-territorial jurisdiction – often viewing it as inappropriate interference in others’ domestic affairs.

Here I am led to ask a different foundational question. For which particular harm or classes of harms should such extraterritorial jurisdiction exist? Is it remotely conceivable that states would commit to the effective implementation of prescriptive regulation and enforcement action in relation to business covering all provisions of all UN human rights treaties, UN Declarations, the main ILO conventions, and so on, in one fell swoop?

The overwhelming pattern of rulemaking in complex and contested global policy domains is this: if you want comprehensiveness, go soft law; if you want hard law, go specific. This is as true of business and human rights as it is of climate change. In such contexts, success is never guaranteed, but failure *is* when attempting to combine hard law with comprehensiveness and expect meaningful results.

Finally, allow me to offer some thoughts on the current debate in Canada. Civil society and business, especially the extractives, are more divided today than they have been for some time. And the Government of Canada no longer enjoys the same leadership in the business and human rights space that it once had. So I urge a reset.

Pick up where the Roundtables left off. Pocket any gains that have been made since. And have the Government convene multistakeholder consultations around practical policy questions. Among them might be: What is the value added of some of the institutional infrastructure the Government created in recent years? What can be consolidated, or done away with altogether? When should Export Development Canada be required to align its decisions with NCP findings? What would a workable Canadian fact finding and dispute resolution facility look like in the business and human rights space? How can Canada follow up on the important work done by the Office of the High Commissioner on Human

Rights, which has identified practical barriers to access to justice and proposed practical steps to address them? And finally, what message do we want to send to victims of severe abuse in host countries where no reasonable person can claim that it will provide justice?

I appreciate that the Government of Canada has a lot on its plate these days, not least of which is renegotiating NAFTA. But let us not forget the inextricable connection between NAFTA's troubles and the broader business and human rights agenda. NAFTA has contributed significantly to the political backlash in the United States against international trade because it lacks adequate protections for the human rights of workers. That backlash threatens to engulf progress that has been painstakingly achieved toward a more open and sustainable world economy.

Equally, the business and human rights agenda is deeply entwined with Prime Minister Trudeau's priorities on sustainability, gender and indigenous rights. They are of one piece.

As my favorite boss, Kofi Annan, said at the World Economic Forum in Davos as far back as 2001: "My friends, the simple fact of the matter is this: If we cannot make globalization work for all, in the end it will work for none."

The world needs Canada – its civil society, businesses and government – to be fully engaged in addressing business and human rights challenges, at home and abroad.

Thank you.

*John G. Ruggie is the Berthold Beitz Professor in Human Rights and International Affairs at the Harvard Kennedy School of Government, Affiliated Professor in International Legal Studies at Harvard Law School, and a Fellow of the American Academy of Arts & Sciences. He also chairs the non-profit Shift. From 1997-2001 he served as UN Assistant Secretary-General for Strategic Planning, and from 2005-2011 as Special Representative of the Secretary-General for Business and Human Rights, in which capacity he produced the UN Guiding Principles on Business and Human Rights. His book reflecting on that experience, Just Business: Multinational Corporations and Human Rights (W.W. Norton), has been translated into Chinese, Japanese, Korean, Portuguese and Spanish.*