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UNITED NATIONS

Statement on behalf of the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Professor John Ruggie, to the Eighth Session of the UN Permanent Forum on Indigenous Issues

[18 May 2009] Distinguished members of the Permanent Forum, representatives of indigenous peoples, distinguished elders:

The Special Representative has asked me to convey his sincere regrets that he is not able to be here in person as he is currently attending a mandate consultation in Buenos Aires, Argentina.

In 2005, the then Commission on Human Rights requested the Secretary-General to appoint a Special Representative on the issue of business and human rights. John Ruggie, a Professor at Harvard Kennedy School and former UN Assistant Secretary-General, was appointed to the post.¹

In June 2008, he proposed a conceptual and policy framework to advance the business and human rights agenda. The framework rests on three pillars: first, the state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; second, the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others; and third, greater access for victims to effective remedy, both judicial and non-judicial.

The Council unanimously “welcomed” the “protect, respect and remedy” framework – the first time that it, or its predecessor the Commission, had endorsed a substantive policy position on this issue. The framework was also supported by leading international human rights organizations and by the major international business associations. The Council extended the Special Representative’s mandate for another three years, tasking him with “operationalizing” the framework to provide concrete guidance to states, businesses and other social actors.

The first pillar of the framework – the state duty to protect – is grounded in international human rights law. Most states have adopted core human rights standards, but there is still

¹ Materials relating to the SRSG’s mandate are available on his website, kindly hosted by the Business and Human Rights Resource Center at <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>.

considerable legal and policy incoherence at the domestic and international levels. The Special Representative has urged governments to drive the business and human rights agenda into those areas that most directly shape business practices, including corporate law, export credit and insurance, and investment and trade agreements. He has also called for enhanced cooperation between so-called home states (where companies are headquartered) and host states (where companies operate) to better protect rights, including in challenging environments like conflict affected areas.

The second pillar of the framework, the corporate responsibility to respect rights, is based on the near-universal recognition that companies should not infringe on the rights of others. This responsibility is the baseline norm for all companies in all situations, and it applies to the entire spectrum of internationally recognized rights. Companies should put in place a process of ongoing 'human rights due diligence' to become aware of, prevent, and mitigate adverse human rights impacts. This has four core elements: having a human rights policy; assessing the human rights impacts of company activities; integrating those values and findings into corporate cultures and management systems; and tracking and reporting on performance.

Without access to effective remedy, the framework's third pillar, the rights of affected individuals and communities would be rendered weak or even meaningless. For states, this means enforcing and encouraging corporate compliance with relevant laws and standards. For companies, this means putting in place operational-level grievance mechanisms to provide early warning and help resolve problems before they escalate. Significant barriers to accessing effective judicial and non-judicial remedies persist and the Special Representative is identifying those that are particularly salient for victims of corporate-related human rights abuses, as well as strategies to reduce them.²

In operationalizing this framework, the Special Representative considers it important to better understand the particular position and experiences of indigenous peoples. States have clear duties to protect their rights under regional and international human rights treaties, and the Special Representative has noted the guidance provided by the relevant human rights bodies on how these state duties may operate in the context of corporate-related abuse. He has also referenced other key international instruments, including the Indigenous and Tribal Peoples Convention (ILO Convention No 169) and the recent UN Declaration on the Rights of Indigenous Peoples – which many of you worked so hard to see come to pass.

In relation to the corporate responsibility to respect, he has consistently said that in projects affecting indigenous peoples, companies should consider additional standards specific to those communities. In 2007, he held a consultation in Colombia focused on how companies can maintain their social license to operate with regard to local

² The Special Representative has launched a global "wiki", an interactive online forum for sharing, accessing and discussing information about non-judicial mechanisms that address disputes between companies and their external stakeholders: Business and Society Exploring Solutions – A Dispute Resolution Community at www.baseswiki.org. It is currently available with English, French, Spanish, Chinese and Russian portals; Japanese, Korean and Arabic are under development.

communities, particularly indigenous peoples. He notes the important, ongoing work of the Forum on these issues,³ as well as that of related UN initiatives.⁴

Throughout his mandate, the Special Representative has sought to adopt an evidence-based, consultative approach. He has been pleased to receive, and continues to welcome, submissions on his work from civil society, including groups focused on indigenous peoples' rights, and he has benefited from the constructive involvement of a wide range of participants, including local NGOs and representatives of indigenous peoples, in his various multistakeholder consultations. Several representatives of indigenous communities from South America are attending the current mandate consultation in Buenos Aires.

The international community is still in the early phases of adapting the human rights regime to provide more effective protection to individuals and communities against corporate-related harm. The framework proposed by the Special Representative and endorsed by the Human Rights Council provides a common platform for advancing the business and human rights agenda. States, companies, and civil society, including indigenous peoples, all have an important role to play in making this happen, and the Special Representative welcomes your input.

Thank you and best wishes for a successful meeting.

³ Such as the recent International Expert Group Meeting on Extractive Industries, Indigenous Peoples' Rights and Corporate Social Responsibility in Manila, Philippines, 27-29 March 2009.

⁴ Such as the International Workshop on Natural Resource Companies, Indigenous Peoples and Human Rights convened by the Office of the High Commissioner for Human Rights in Moscow, Russia, 3-4 December 2008.