

**Keynote Remarks at Annual Plenary
Voluntary Principles on Security & Human Rights
Ministry of Foreign Affairs
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I am honored that the Government of the Netherlands invited me to this, my fifth, VPs plenary. It is beginning to feel like a family reunion. Of course, I am here in my personal capacity and speak only for myself. I have always cared deeply about this initiative because it deals with the most palpable and widely recognized of all human rights: the physical integrity and security of the person. The VPs can contribute critically to creating positive relations between company and community, avoiding situations where lives might be at risk.

The VPs family continues to grow. Australia is the newest member. And I welcome the participation in this plenary of colleagues from the governments of Angola, Democratic Republic of Congo, Ghana, Indonesia, Nigeria, Peru, South Africa and Tanzania.

To provide some overall context, I would like to touch on two subjects this morning. First, to reflect on what has happened in the wider world of business and human rights since the last time I spoke at a VPs plenary. And second, to offer some observations on the VPs going forward.

As I'm sure you know, in June 2011 the United Nations Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights that I had developed over the course of six years—with the involvement of all stakeholder groups, and nearly 50 international consultations on five continents.

UN endorsement of the GPs represented two firsts. It was the first authoritative guidance the Council had ever issued on how to meet the complex global challenges of business and human rights; and it also was the first time that the Council, an intergovernmental

body, had ever endorsed a normative text on *any* subject that governments had not negotiated themselves.

The Guiding Principles rest on three pillars: the state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulations, and adjudication; the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved; and greater access by victims to effective remedy, judicial and non-judicial.

The Human Rights Council established an inter-regional working group of experts to promote the dissemination and implementation of the Guiding Principles. You'll be hearing shortly from Margaret Jungk, one of its members.

In addition to being endorsed by the Human Rights Council, key elements of the Guiding Principles have also been internalized by other major international and national standard setting bodies, by business enterprises themselves, and by civil society organizations. So we see yet another first: unprecedented convergence around a common set of principles and process standards, helping to create a more level playing field and a solid foundation on which we can build. Let me give some examples:

The OECD has updated its Guidelines for Multinational Enterprises, adhered to by 42 countries, including such non-members as Brazil. Two innovations are particularly relevant for the VPs. First, the OECD added a chapter on human rights that explicitly draws on and is fully aligned with the second pillar of the UN GPs—the corporate responsibility to respect rights. Second, it added the provision that companies should carry out risk-based due diligence in order to identify and address their adverse impacts in *all* areas covered by the OECD Guidelines, not only human rights, and that they do so not only with regard to their own activities, but also their business relationships including supply chains. Roel Nieuwenkamp,

the chair of this plenary, led that OECD process with enormous skill and in close cooperation with the United Nations.

The International Finance Corporation, the private sector arm of the World Bank, has updated its sustainability policy and the performance standards it requires corporate clients to meet. For the first time, these now explicitly reference the business responsibility to respect human rights, which leads companies back to the due diligence processes described in the UN GPs. The nearly 80 private sector project lending institutions that track the IFC standards—the so-called Equator Banks—have revised their policy requirements to reflect the UN GPs; they account for roughly 70 percent of project lending worldwide. The OECD grouping of national export credit agencies are similarly aligning their common approaches.

ISO26000 is a new social responsibility standard adopted by 93 percent of the membership of the International Organization for Standardization, including China. It, too, has a human rights chapter that explicitly drew on and is closely aligned with the UN Framework. ISO plays an important role in reaching companies that may be new to the business and human rights agenda, and its standards traditionally have had particular uptake in Asia.

In the European Union, the Commission has asked member states to submit national plans for implementing the Guiding Principles, and the Commission itself is developing additional guidance for several industry sectors and for small and medium-sized enterprises.

In the United States, the concept of human rights due diligence, a central component of the corporate responsibility to respect human rights under the Guiding Principles, found its way into Section 1502 of the Dodd-Frank Wall Street Reform Act, in relation to certain minerals companies procure in the Democratic Republic of Congo and adjoining countries.

The U.S. government also has referenced the Guiding Principles as a benchmark in a new reporting requirement for U.S. individuals or entities investing more than \$500,000 in Myanmar, now that most economic sanctions have been eased.

ASEAN is exploring ways to align its new business and human rights program with the UN Guiding Principles; the African Union is on a similar track.

The number of companies developing human rights policies, due diligence procedures and grievance mechanisms is increasing significantly; the London-based Business and Human Rights Resource Centre keeps track of this on its website.

International business associations and labor federations have issued user's guides to the Guiding Principles; civil society groups invoke them in their work, as do National Human Rights Institutions.

The new International Code of Conduct for Private Security Providers references the UN Guiding Principles.

And the first ever guidance document for investors on business and human rights was just issued, mirroring the UN GPs.

Finally, the GPs have even featured in a critical U.S. Supreme Court case, *Kiobel v. Royal Dutch Petroleum*, testing the applicability of the U.S. Alien Tort Statute to companies and their overseas conduct, a case in which I submitted an amicus brief, in support of neither party, clarifying the applicable international legal standards.

These highlights illustrate the fact that the international community has achieved considerable convergence around common normative principles and policy guidance for their enactment. This provides greater clarity and predictability all around, as well as authoritative benchmarks for assessing how effectively governments and companies are putting those principles into practice. Of course, it is still early days and much more needs to be done.

Now let me make a few observations on the state of play in the Voluntary Principles. I begin by stressing that if the VPs initiative did not already exist, it would have to be invented. The UN GPs provide high-level guidance, with the expectation that more granular elaboration may be required for specific sectors and operating contexts—which is what the Voluntary Principles address. In short, the VPs can be seen as complementing the UN GPs. I applaud the effort by 14 VPs companies to develop key performance indicators for the VPs. This is an important step for the initiative, and is aligned with UN GPs 20 and 21 concerning tracking and communicating company responses to human rights challenges. Ensuring that company operations have effective grievance mechanisms in place, in keeping with UN GP 29, is another step toward close alignment.

Second, going forward I would stress the importance for the VPs of ramping up in-country activities. That is where the need is greatest, and the payoff is highest. Consider developing a strategic plan with multi-year targets for in-country work disseminating and embedding the VPs. As I travel around, I am struck by how fragmented the effort remains at many country levels: I see limited collaboration among companies facing similar challenges in the same country; limited engagement around these issues by home-country governments with governments in countries of operation; and a civil society presence that may loom large at the global level while often being thin on the ground. Collective action to advance the VPs agenda needs to expand where it matters most: in the daily lives of affected individuals and communities.

My third observation is that VPs concerns need to enter the picture earlier in the investment cycle, to avoid companies being unprepared for all-too-frequent legacy issues. Moreover, at the contracting stage, when company and host country first set out the terms of the investment, I sense that security requirements and the associated training, vetting and deployment of public security forces are often underestimated or insufficiently considered by negotiators on both sides. As a result, when challenges arise, and they can do so

rapidly, neither the governing framework nor the operational capacity may be sufficient to meet the challenges. We need to keep reminding contract negotiators that it isn't simply property and profits that are at stake; more importantly, human lives may be at risk. And we need to keep reminding them that in the extractive industry in particular, the costs of conflict with communities is a major driver of the overall cost inflation that companies are experiencing.

As a corollary, I wonder if the VPs initiative itself might consider developing a model agreement that could serve as a template for individual company-country contract negotiations.

One final observation if I may. The VPs are part of an increasingly dense universe of multi-stakeholder initiatives, public/private partnerships, and new legislative requirements in related domains—all intended to close global governance gaps. Therefore, almost by definition decisions made by others will increasingly impact the VPs themselves. As a result, the VPs initiative needs to develop the capacity to try to influence, or at least safeguard its interests from, potentially incompatible or contradictory requirements. We came close to this risk recently during negotiations over the governance mechanism and certification requirements under the International Code of Conduct for Private Security Providers. It was fortuitous that some of us were alerted to potential double jeopardy for VPs companies, and that several VPs companies were able to attend the final negotiating session in Montreux and helped avert the problem. The VPs may not always be so lucky. My point is that establishing the capacity to act on behalf of the collectivity is part of the natural evolution of any successful initiative.

My friends, you have a very fully agenda, so I'll get out of the way and let you get on with it. But I did want to share with you how rapidly the business and human rights agenda has evolved, to thank you again for inviting me, and to express my gratitude for the important work you do.

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