

Tribute

A Celebration of Professor David Weissbrodt's Impact on International Human Rights

Professor David Weissbrodt, Regents Professor and Fredrikson & Byron Professor of Law at the University of Minnesota Law School, is in the process of retiring after a lifetime of distinguished service to the cause of international human rights and the education of future lawyers.

Professor Weissbrodt served as a member of the United Nations Sub-Commission on the Promotion and Protection of Human Rights from 1996–2003 and was elected Chairperson of the Sub-Commission for 2001–02. He also was designated the U.N. Special Rapporteur on the rights of non-citizens for 2000–03. In 2005, he was selected as a member of the Board of Trustees of the U.N. Trust Fund for Contemporary Forms of Slavery, and in 2008, he was elected Chairperson of the Board. He has also represented and served as an officer or board member of the Advocates for Human Rights, Amnesty International, the Center for Victims of Torture, the International Human Rights Internship Program, Readers International, and the International League for Human Rights.

The following is a transcript of a celebration held in Professor Weissbrodt's honor that occurred at the University of Minnesota on October 8, 2015.

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DAVID WIPPMAN*

I would like to welcome you to this celebration of the human rights career of Professor David Weissbrodt. Please join me in thanking Professor Fionnuala Ní Aoláin, Professor Barbara Frey, the Center for Victims of Torture, and the Advocates for Human Rights who have joined me in organizing this event. I

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am delighted to see so many of David Weissbrodt's friends, colleagues, and former students here tonight.

We are all here to celebrate David's remarkable career, and yet each of us may be celebrating something different because each of us knows David in a different way. Some of us know him as an inspirational professor who has changed the lives of countless students. Some know him as a scholar, whose work has shaped how we understand human rights.

Some know him as a generous colleague, who helped their own careers flourish. Some know him as a co-founder of multiple human rights organizations, including both the Center for Victims of Torture and the Advocates for Human Rights. Some know him as a key player in United Nations human rights activities.

One of us knows him as the faculty member who gently chides the Dean when he wanders a little too far off track or speaks a little too long at events like this. And one of us, no points for guessing, knows him as a devoted husband of forty-five years.

In my own case, I knew of David long before I met him. I started teaching and writing about human rights in 1992, using David's casebook and his online human rights library. For me, the word "Weissbrodt" was—and remains—simply a synonym for human rights.

David has been doing so much, for so many, for so long, it is easy to lose track of just how much and for how long. David joined the faculty at the University of Minnesota Law School in 1975, some forty years ago. Just to give you a little context, that was the year the Watergate scandal broke, Saigon fell, and *Wheel of Fortune* first aired; I am not sure which was worst, but I think I will go with *Wheel of Fortune*. 1975 was also the year the Federal Rules of Evidence premiered, the year Bill Gates founded Microsoft, the year Muhammad Ali beat Joe Frazier in the "Thrilla in Manila," and the year the *Edmund Fitzgerald* sank. It was the year Andrei Sakharov won the Nobel Peace Prize, *One Flew Over the Cuckoo's Nest* won the Academy Award for best picture, and Pittsburgh beat Minnesota in the Super Bowl.

Though we lost the Super Bowl *again*, we gained something far more important. By recruiting David to the faculty here, Minnesota helped launch a transformative career. A career that cannot be measured by books and articles written (over twenty books and one hundred articles), or human rights organizations

initiated (I count at least five), or students taught (a lot).

But we do have some people tonight who can reflect on the transformative impact of David's work, all of them well known to everyone here, if not personally, then by reputation. So in a moment, we will hear from Curt Goering, who is the Executive Director of the Center for Victims of Torture and Robin Phillips, the Executive Director of the Advocates for Human Rights. I want to thank them both for speaking tonight and for the wonderful work they and their organizations do.

Our program will begin with a very special guest speaker, Sir Nigel Rodley. It has to be conceded that when it comes to titles, the British do it way better than the Americans. Still, Sir Nigel received his titles the old fashioned way—he earned them—as one of the world's leading authorities on human rights. So we are very fortunate to have him here.

Now, sadly, tonight is not about fundraising. We have 364 other nights of the year for that. On the other hand, I cannot help but observe that one way to honor David and to help cement his legacy is to make a contribution to the Law School's Human Rights Center. Sorry, I could not resist.

Before I ask again, however, please join me in welcoming Sir Nigel Rodley.

SIR NIGEL RODLEY*

It is a supreme privilege to be back in Minneapolis and to participate in today's events honoring my dear friend and mega-esteemed colleague, Professor David Weissbrodt.

We have both had the luck to reach professional maturity at a time when a relatively new field of international law was about to take off. It was a field enshrining the deepest human values, the importance of which was seared into our souls by the Second World War and the holocaust of Jews, Gypsies, homosexuals, and others. We shared the privilege of being able to use our professional skills to advance this new project, even if we did not know at the time just how far it would develop. However, as I see some of you already fiddling with your napkins, fearful I may miss the point of the evening and offer an ante-humous obituary, let me assure you I am fully aware that after-dinner speeches are meant to be a light-hearted backdrop to the serious business

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of emptying one's wine glass and, if you are lucky, getting it refilled.

So this talk will not just be about the remarkable range of David's professional involvement, but also about how he operates—David the Dynamo! This is also in my self-interest, as I am simply too ignorant of many of the areas David has specialized and path-broken. To list a few: fair trials, due process, immigration law, aliens' rights, business and human rights, and slavery and its contemporary forms. On the other hand, I have been able on numerous occasions to witness David the Dynamo in action, or benefit from some of the products of his creativity.

I do not quite recall when we first met, but our shared guess is at one of the annual International Council Meetings of Amnesty International. David was a prominent member of the U.S. section of Amnesty, and I was the Legal Adviser at the International Secretariat in London where I had started as Amnesty's first ever legal officer in 1973. After ten years on the job, I decided I was ready for what Amnesty laughingly called a sabbatical. Yes, it was unpaid.

My empire building skills are rather limited, so after ten years I had only recruited two assistant legal advisers. In that decade, the organization had mushroomed, as had the human rights project generally. This meant there was not enough slack for me to leave, unless a stand-in could be found. David evidently was the first potential candidate who came to mind, and I doubted he would be able to drop everything for a year, but gave it a try. And, glory be, he accepted.

At this point, I must mention to anyone who may not be aware that David's dynamism is not confined to the professional domain. More of you may be unaware that acquiring property, even rental property, in the United Kingdom is a protracted process. Making an offer, getting it accepted, and ultimately getting a lease signed by both parties would inevitably take weeks, if not months—not to mention the years it would take off your life. Add to the fact David and Pat wanted to live in an area with the best possible school for their young son Jamie (before he grew up and became James). You can imagine how worried I was when David came to London for just a few days to arrange these things.

Yes, you guessed it: he did it in twenty-four hours; school registration, signed lease, the whole deal—done. I suppose the documentation to prove it is long gone, otherwise I should,

however belatedly, advise David to enter his feat in the Guinness Book of Records.

Unfortunately, although my sabbatical was spent not too far from Amnesty, at the London School of Economics, I was unable to often witness how David went about things. Though I do have one or two pieces of evidence.

Since the office was, as I already suggested, quite small, interns could help us get things done. I had put in place what seemed to me and my colleagues like a practical system. We would take interns with some background in international human rights law for a minimum period of six months. That seemed to provide an appropriate balance between training demands and productivity. They would not be expected to do much at first, but once they got the hang of the place, they would be able to take on real professional responsibility for needed tasks.

Enter David. Within a matter of weeks, he was recruiting new interns. As far as I could gather, he could find work for as many as were qualified to do it and willing to be exploited. I do not begin to know where he conjured them up.

But I can assure you they were competent. I know this because David was offering me their services. I was using the year off to write a book, for which some research assistance would certainly be helpful. I particularly recall needing information on countries where corporal punishment was practiced. David asked me for my tasks and then farmed them out to his interns, one of whom would become a prominent barrister and First Lady of London.

A year or so after David's stint in the Amnesty International legal office, we were both in Strasbourg, lecturing on the summer course of the International Institute of Human Rights (the René Cassin Institute). One day I snuck into the back of the room where David was lecturing. They do it the methodical, parsimonious, French way there. By that, I mean that the audience for a lecture is in the several hundreds. So, it was reasonable to believe David did not know I was there.

I do not recall precisely how it fitted into his theme, but David referred to his recent experience in the Amnesty legal office, which he described as the best international human rights law firm in the world. That he gave it such an accolade really bowled me over. I have rarely been prouder to have received such a compliment, not least because it was not made to my face. Those are the ones that count.

I mentioned I first met David through Amnesty. He had responsible governance roles on the boards of Amnesty's U.S. section and later of the international Amnesty movement. This was on top of being a full-time academic scholar here at the University of Minnesota, teaching human rights law, immigration law, contracts, and torts. (But then he has been the Fredrikson and Byron Professor of Law, the Briggs and Morgan Professor of Law, the Julius E. Davis Professor of Law, and latterly, a Regents Professor—the first one in the Law School. I guess, on that count, he has only been teaching one course per chair!) Here, he also created and still co-directs the Human Rights Center with its fantastic human rights library and the now some five hundred fellows launched into human rights work around the world.

Still, for David the Dynamo, it was not enough. David was one of the individuals who advised the then-Governor of Minnesota on a possible human rights initiative that would become the Center for Victims of Torture. This was established in 1985 and David was one of the founding members of the Board of Directors, as well as Legal Counsel, for over two decades. I had the privilege of visiting the Center when I was here in 2002. It was impressive: a professional and caring place in a dwelling house. It was a high-powered clinic with a very non-clinical atmosphere, led by another powerhouse, Doug Johnson. And I am looking forward to visiting again tomorrow, under the relatively new leadership of another mutual old Amnesty friend and colleague, Curt Goering.

Never one just to take care of the job at hand, David pursued the same issues in Washington. I recall his being centrally involved in persuading Congress, probably on behalf of Center for Victims of Torture, to allocate a donation to the U.N. Voluntary Fund for Victims of Torture. That had the effect of, I think, tripling the annual budget of the Fund, thus enabling it to support a number of rehabilitation centers in countries where the problem was or had been occurring. Victims or survivors of torture would not have to be able to reach developed countries to get the care and treatment they needed.

Oh, and he was also instrumental in getting Congress to adopt the Torture Victims Protection Act of 1991 which built on the case law of the recently rediscovered Alien Tort Statute and provided a civil remedy against their torturers for victims who found themselves in the United States. And I suspect he may have been involved in sneaking in extra-judicial killings under the title of the Act, so families of victims of that sort of gross

human rights violations could find a similar remedy.

In the same vein in the late '80s or early '90s, heaven only knows which NGO David was representing when he, Reed Brody—then at the International Commission of Jurists, the ICJ—and I worked on a draft of what became the U.N. Declaration Against Enforced Disappearances. The U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities had entrusted the canny French member, Louis Joinet, with preparing a draft. Joinet then asked one of us to come up with a text he could put forward. We worked late, but what we came up with largely survived to become the 1992 Declaration. We could not know then or even suspect that David would soon be elected as the Sub-Commission's U.S. member and later even become its Chair. But I am getting ahead of myself.

I hope it is not inappropriate to mention that Reed remembers David particularly fondly. Another of David's sidelines was leading the International Human Rights Internship Program which he founded in 1976 and chaired for a decade and a half that allowed many promising new professionals the chance to have paid internships in major NGOs (not the shamefully exploitative other sort of internship we used at Amnesty). It seems Reed was a beneficiary of one of the Program's internships which permitted him to get his first job at the ICJ! Reed says "Hi, David."

Already two years earlier, David and Barbara Frey (she must have been three at the time) were among the founding members in 1983—when David was in London at the Amnesty legal office—of the Minnesota Lawyers International Human Rights Committee, which became Minnesota Advocates for Human Rights in 1992. Former Representative Don Fraser, whose pioneering of a U.S. focus on human rights is not sufficiently known in the outside world, was also among them. Congressman Fraser authored section 502B of the Foreign Assistance Act, the legislation that required the United States to report annually on the human rights records of countries in receipt of U.S. aid. Barb confirms my recollection that David was the architect of the new enterprise. David has been their legal counsel from the beginning.

One of the new organization's first projects, suggested by David to Sam Hines after consultation with his Amnesty colleagues, a project that was to achieve a major international impact, was the preparation and publication of the U.N. Manual

on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. The Manual contained the Minnesota Protocol and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. The Protocol provides professional guidelines for the investigation of suspicious deaths. The Principles are a set of standards by which can be measured for state claims of having conducted an independent, impartial investigation into suspicious deaths.

The Principles were adopted by the U.N. Economic and Social Council in 1989. Since then, they have been constantly cited by official bodies, including the U.N. Human Rights Committee and the European and Inter-American Courts of Human Rights. The Manual is evidently grist to the mill for the U.N. Special Rapporteur on Extra-Judicial, Arbitrary and Summary Executions. If a quarter of a century later, the current Special Rapporteur, Christof Heyns, has initiated a consultation aimed at updating the Manual, this itself is testimony to its enduring value.

Meanwhile, as the elected member from the United Kingdom on the Human Rights Committee, I am myself the fortunate beneficiary of the importunings—sorry, I mean briefings—from the Advocates. In fact, they are frequently and, for me, felicitously, represented by Barb, sometimes others like Amy Bergquist and Jennifer Prestholdt, but always most professionally represented. They have done an amazing job in sensitizing us to the relevance and menace of the arms trade to the enjoyment of the right to life. As a result of their briefings, colleagues now pose questions to states on the issue. Indeed, our Concluding Observations after our 2014 review of the United States' report on its compliance with the International Covenant on Civil and Political Rights addressed the issue of gun violence in relation to the protection of the right to life.

A major opportunity for David to deploy his skills at an international policy level came when he was elected as the U.S. member of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, later renamed the Sub-Commission on the Promotion and Protection of Human Rights. Towards the end of his eight years on the Sub-Commission, he became its Chair, the only U.S. national to chair a U.N. human rights body since Eleanor Roosevelt chaired the Commission on Human Rights in the late 1940s and early 1950s.

The Sub-Commission started out as a sort of think tank. As

the taboo on addressing specific country problems at the United Nations began to relax in the late 1970s and early 1980s, the Sub-Commission began to serve as a forum for denunciation by NGOs of human rights violations and to develop focus clusters, such as the working groups on slavery, indigenous rights, and detention. Eventually, it even started adopting country resolutions. In doing all this, the Sub-Commission anticipated similar developments in its parent, the inter-governmental Commission on Human Rights. Although within a few years the Commission overtook the Sub-Commission, both on country-specific work and on thematic issues, the Sub-Commission still had one advantage over the Commission from the perspective of civil society: it was composed of individual experts, all supposedly independent, many of them genuinely so. For example, while David was a member, the Sub-Commission was able to adopt a resolution on China when the Commission could not.

David took on a remarkable number of projects during his tenure. He was an active member of the Working Group on Contemporary Forms of Slavery, as it had been renamed. Significantly, this was at a time when the Commission's thematic machinery was beginning to take more judgmental positions on states' behavior than the Sub-Commission. So, in cooperation with what is generally and reverently regarded as the first human rights NGO—the Anti-Slavery Society, now rebranded as Anti-Slavery International—David undertook an analysis of existing machinery on the issue of slavery and slavery-like practices, including the Sub-Commission's own Working Group on the subject. In a typically unconventional approach, he ensured the Society was credited as a co-author of the report.

An unusual element in the study was the option to terminate the Sub-Commission's Working Group, to be replaced by a Commission special rapporteur. This was because the Sub-Commission ultimately seemed unwilling to allow the Working Group to be anything more than a forum. At one time, merely having an official U.N. venue at which civil society could publicly denounce human rights violations—in this case, slavery and its contemporary forms—was exhilarating. But by the late 1990s, hearing and recording allegations were no longer sufficient. It was an unconventional step to propose the suppression of a hard-won piece of U.N. human rights machinery, but it was with the purpose of encouraging the development of something better.

Mike Dottridge, the then-Director of Anti-Slavery

International, recalls that the influence of the study and the eventual success of the recommendation (the Human Rights Council appointed a Special Rapporteur on the subject in 2007) was down to David's having persuaded the office of the High Commissioner for Human Rights to publish the report. Mike says, "Hi, David!"

Another Sub-Commission activity David engaged in was the Working Group on Transnational Corporations. In this, he had highlighted a human rights issue that became a key area of discourse in the first decade and a half of the new millennium. I expect it only to increase in significance. In the context of the activities of the Working Group, David produced a seminal study on the role of transnational corporations in human rights violations. Among the many ways this could be relevant could be the use of private security firms that could use force to 'protect' the corporation, for example, against armed groups seeking to harm the investment or even against the firm's own strikers or pickets. Or impose draconian terms of employment. Or they could provide aggressive governments with the means of enhancing their repression. And even get the governments to repress those challenging the corporations' interests.

The eventual product of the Group's work—the Norms on the Responsibilities of Transnational Corporations and of Business Enterprise—could have been a path-breaking, standard-setting text in the field. These principles would have enshrined the idea of state responsibility to ensure appropriate human-rights-respecting behavior by their corporations operating abroad. It would *also* have imposed responsibility directly on the corporations. It was this latter dimension that may well have led the Commission not to proceed with the text when it received it from the Sub-Commission. Eventually, the Human Rights Council adopted a different set of principles, the Guiding Principles on Business and Human Rights. Although in somewhat diluted form, the Guiding Principles maintain the notion of state responsibility for the acts of their business enterprises abroad. In my own view, this is precisely the right focus for promoting corporate responsibility in the human rights area. The Sub-Commission's work, led by David, paved the way for that.

The third major task David undertook at the Sub-Commission was as Special Rapporteur on the rights of non-citizens. An expert in U.S. immigration law, David had long been interested in and active on the issue of the rights of aliens in foreign countries. You do not need me to tell you how neuralgic

an issue this is, touching on atavistic reflexes about national sovereignty. Undaunted, David worked on the report for three years, covering the most salient issues, including migrant labor (the new Convention had not yet entered into force), asylum seekers (lawfully or not in the country where refuge is sought), and their detention. Just remember how immigration detention started being used to target suspected Islamic terrorists in the wake of the atrocities of 9/11. The study would repay consultation at this time of crisis with mass migrant and refugee movements in Africa, the Middle East, and across the Mediterranean. Consider how relevant the last two recommendations are at this very moment:

States should take actions to counter any tendency to target, stigmatize, stereotype, or profile on the basis of race members of particular population groups, such as non-citizens—by officials as well as in the media and society at large. States should ensure that all officials dealing with so-called ‘irregular migrants’ receive special training, including training in human rights, and do not engage in discriminatory behavior. Use of racist or xenophobic propaganda by political parties vis-a-vis non-citizens should be discouraged. Complaints made against such officials, notably those concerning discriminatory or racist behavior, should be subject to independent and effective scrutiny.

States are urged to comply with their obligations under international human rights, labor, refugee, and humanitarian law relating to refugees, asylum seekers, and other non-citizens. The international community is urged to provide such persons with protection and assistance in an equitable manner and with due regard to their needs in different parts of the world, in keeping with principles of international solidarity, burden-sharing, and international cooperation.¹

1. DAVID WEISSBRODT, *THE HUMAN RIGHTS OF NON-CITIZENS* 242–43 (2008) (citing Concluding Observations of the Committee on the Elimination of Racial Discrimination: Hungary, U.N. Doc. CERD/C/61/CO6 (2002); Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ukraine, U.N. Doc. A/56/18 (2001); World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, Durban, S. Afr., Aug. 31, 2001–Sept. 7, 2001, Programme of Action, U.N. Doc. A/CONF.189.5 (Sept. 8,

It should be required reading for governments right now, should it not?

At the Sub-Commission, David also proved to be a formidable political operator in what was, for historical reasons—and notoriously—a very political body. David's former British colleague, Françoise Hampson, tells me David worked assiduously to bring colleagues along. Since members from the other U.N. geo-political groups tended to concert their positions, David sought to do the same with the Western group. She described this as like herding cats, probably because several were genuinely jealous of their independence. It could not have been easy. Of course, none could have evinced more independence than David himself. He even, quixotically and certainly against the wishes of his own government, sought to persuade the Sub-Commission to adopt a resolution on Turkey. It eventually failed when at least one member who had co-sponsored the text failed to vote for it in secret ballot. Even David could not overcome such perfidy. However, he was more successful with Mexico, another country that usually managed to avoid official international human rights scrutiny despite suffering serious human rights problems. Françoise says, "Hi, David!"

One last note regarding his tenure on the Sub-Commission: Barbara Frey was his alternate during his second four-year term. Untypically of his colleagues, he ensured that Barb played a full role on all the matters he was involved with. She was even able to author a Sub-Commission study in her own name on—what else?—the small arms trade.

I realize I must say something about the prolific productivity David has also shown in his publications record: 243 at the last count! But do not worry, I shan't use the rest of the time I have reading out the titles. Anyway, I would be lucky to get through even 20%. I have already referred to a few that were public documents. A pretty good test of any publication's impact is if it is not remaindered. If, far from being remaindered, it is published in multiple editions, that means real significance and not just for the bottom line of the publisher.

So take what started out as Newman and Weissbrodt, *Human Rights: Law, Policy and Process*, published in 1994,

2001); Eur. Comm'n on Racism & Intolerance, Second Report on Croatia (1999); Eur. Comm'n on Racism & Intolerance, Second Report on the United Kingdom (2000); Eur. Comm'n on Racism & Intolerance, Second Report on Austria (2000)).

edited by David and the redoubtable and much missed Frank Newman—missed especially by many of the people here. Frank provided so many with the motivation and tools to get engaged in human rights. The second edition came only two years later. A third edition in 2001 appeared with the late Joan Fitzpatrick joining David as editor. Joan too has left us, appallingly early. For the latest, fourth edition, in 2009, David was joined by his University of Minnesota colleague, Fionnuala Ní Aoláin. Just think how many students have gone out into the world enriched by the knowledge and ideas this book has exposed them to.

A substantial number of David's writings have had to do with fair trial standards and the process of trial observation. I recall David's preparing a paper for Amnesty, I think after his year in its legal office, precisely on this topic. David undertook many missions himself, mainly for Amnesty but also for other organizations, but he could not do them all, so we needed a guide on what trial observers should look for, how to look for it (before, during, and after the trial), and how to conduct themselves.

The first mission I ever undertook myself for Amnesty was to a military tribunal hearing in Switzerland, where a number of soldiers who were political conscientious objectors were on trial for incitement to insubordination. I could certainly have used some guidance before going. David produced the guide and, of course, he has gone on from there to produce several works on the topic, including a 2001 book, *The Right to a Fair Trial under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights*, published by Brill.

David was able to build on his Sub-Commission work and his other, extensive work and scholarship in relation to aliens' rights to produce his 2008 book, *The Human Rights of Non-Citizens*. I should also mention the 2007 textbook he co-wrote with Connie de la Vega, which is on the general reading list for the University of Essex course, International Human Rights Law.

You may be noticing at this point I am just mentioning David's books and even then, only those on human rights themes. He has also written or co-written books on other topics such as *The Common Law of Torts*. I hope I am right in thinking my abstention from focusing on the others is justified by the immortal words of the Leaning Tower of Pisa to Big Ben: "I haven't the time and you haven't the inclination."

Let me end this superficial excursus into David's

scholarship by mentioning a very early piece he co-wrote with his wife Pat Schaffer. It was on "Conscientious Objection to Military Service as a Human Right," published in the *Review of the International Commission of Jurists*. Among the categories of 'prisoners of conscience' for whose release Amnesty campaigned were conscientious objectors. When I started at Amnesty in 1973, in addition to being legal officer, I was also a researcher on North America. At the time, Amnesty was adopting many American conscientious objectors who were objecting to serving in the Vietnam War. As I was having to find my feet very fast, you can guess how valuable their article was. I have no doubt that each of the hundreds of pieces written by David since then has been of at least as much help as that piece was to me. Not bad.

I cannot conclude this talk with a very personal word about our friendship that has always been easy and relaxed, or nearly always. I recall that time we were together in Strasbourg, we went to the local swimming pool. He had a rather professional swimming style and was, I think, somewhat taken aback by my decidedly amateur way of doing the breaststroke. Professional and pedagogic in everything he does, he wanted to teach me how to do a few strokes underwater and then only surface to take a deep breath and then re-submerge, like they do in the Olympics. He was quite intimidating wearing his swimming goggles and teaching the proper technique—like this! (*makes swimming motions*) So, I tried to be a good student, but failed completely.

I must also say how important the friendship of both David and Pat is to my wife Lyn and myself. We spent some quality time together in Galway about five years ago, when David and I were participating in the Ph.D. week there when the students would present their research for feedback from people like us. We were both so grateful to them for making it possible for Lyn to be with me on this special occasion.

It will be obvious from all that I have said about David that, as many here know better than I, he has made a remarkable contribution to international human rights law, to the evolution of the machinery aimed at securing its implementation, and to the protection of victims of human rights violations, through NGOs, through the United Nations, as a legal professional representing victims, and by educating and inspiring a new generation of human rights lawyers.

Appropriately, it has not gone unnoticed and David has received numerous accolades for this work. I can think of none

more apt than one he received in 1998: the Twin Cities International Citizen Award. That says it all. Thank you, Barb, Fionnuala, and all of you for the privilege of being able to salute on your behalf—International Citizen, Professor David Weissbrodt.

ROBIN PHILLIPS*

It is such an honor to speak about David Weissbrodt's impact on the international human rights movement. While I hope I can do it justice, I am sure there is no way to overstate it.

As many of you know, David was instrumental in the creation of the Advocates for Human Rights, originally called the Minnesota Lawyers International Human Rights Committee. It has been my great privilege to be part of the organization for more than twenty years.

I learned early on that David had reached icon status in the human rights world. When I first started doing this work, I met people around the world working on a variety of human rights issues. When I said I was from Minnesota, I would often hear, "oh, then you must know David." David, like Cher and Madonna, only needed a first name.

It was David's idea to launch the Minnesota Protocol—a project to develop a forensic procedure for suspicious deaths to investigate whether human rights abuses had occurred. The United Nations adopted the Protocol's principles in 1989. Because of the advancements in forensic science since then, the U.N. Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions is working with an international team, including several Minnesotans who worked on the original project, to update the manual created from the principles. David's legacy on this important project will continue far into the future.

David has also been a mentor to countless students, lawyers, and advocates, many of whom are here tonight. In asking some of my colleagues who were also his students about David's impact, I heard stories about what a great teacher he was, how he inspired a whole generation of human rights activists, and how he is legendary for his effective use of the Socratic method. I see his impact first-hand every day in working with so many talented individuals who are his former students.

David has been an important mentor to me, preparing me,

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with our team, for the first Advocates' women's human rights fact-finding trip in 1993. He taught me how to write human rights reports and coached me through my first years as Executive Director.

David is also willing to explore new territory and new ideas. One year he co-taught the women's human rights course at the Law School with me. He was willing to ask provocative questions and engage in "he-said/she-said" debates on evolving women's human rights issues. He was able to hold his own, even when things got heated with well-schooled feminist studies students. I was very impressed!

We have heard about some of the extraordinary things David has done throughout the day. He was the first U.S. citizen to chair a U.N. human rights body since Eleanor Roosevelt. He was a trustee for the U.N. Trust Fund for Contemporary Forms of Slavery. He had a hand in starting several important human rights organizations, including two here in Minnesota, along with the Human Rights Center at the Law School. We are all very proud of David's many important, visible accomplishments.

Also—like Eleanor Roosevelt—he understands human rights start here, in small places close to home. David not only did the exciting work of starting organizations, he rolled up his sleeves and did the hard work of keeping them going when necessary. I have never seen him shy away from a difficult challenge. Like most organizations, the Advocates has had some bumpy transitions over the years, and David was there at every step.

During one particularly difficult time, David stepped in to help with some of the day-to-day problems. He met with the staff to assure us that the organization had strong community support, and he would make sure we would get through the pressing challenges we were experiencing. And he did . . . and we did get through them . . . and it is no exaggeration to say the Advocates for Human Rights would not be here without both his vision and commitment to real world human rights advocacy.

It is such a pleasure to be in the company of so many people who have worked so hard to improve human rights conditions around the world and to build this extraordinary community with a worldwide reputation for its commitment to human rights. I stand on the shoulders of human rights giants here in Minnesota. David's shoulders are the broadest and we are all better for being part of his community.

CURT GOERING*

I first came across David Weissbrodt's writings several decades ago as a student. I have to confess I did not seek them out—they were required readings! When I first started in human rights work at Amnesty in Washington, D.C.—also several decades ago—David or David's ghost, seemed to be everywhere, omnipresent, and sometimes intimidating. As some of his law students would attest, he was in the room even when he was not in the room!

Of course, it was not only David's ghost—he was also physically present at plenty of places in my world at that time: he was on the Amnesty USA Board, which is where I first met him; he was at meetings of the then-Commission on Human Rights at the United Nations or at the Sub-Commission; or testifying in Congress on human rights treaties. Then, he became a member of Amnesty International's International Board, et cetera, et cetera.

Though I first came to know David through his scholarly and legal work, I would soon learn that academia or developing human rights standards was not the only end. I also learned how he applied that work to human rights activism, and I saw his steadfast commitment to fight injustice around the world. Over the years, I saw how David shone a spotlight into the darkness of prisons, into the terror of torture chambers, and into the horror of death camps around the world.

David has been an unwavering voice of conscience in our often terrifying and cruel world. And he also understood that ordinary people could do extraordinary things—even though David is anything but ordinary.

He stands today as a giant and a pioneer in the human rights movement, a movement which did not really exist back then. The Universal Declaration of Human Rights was still largely unknown. The human rights treaties were still being drafted, not to mention being ratified. Human rights groups were few and tiny. Your role, David, in several of them, including where I am now—the Center for Victims of Torture—is legendary, and we are deeply grateful you remain intimately involved with us thirty years later.

So, as I think back over the period of David's career so far (and I know there is more to come), I think about how the human rights landscape has been transformed: how scores of human

* Executive Director, The Center for Victims of Torture.

rights treaties are in force—covering not only civil and political rights, but economic, social and cultural rights, too. How women's rights, children's rights, minority rights, workers' rights, the rights of disabled persons and the rights of non-citizens—how all of these have not only been defined and developed, but many codified and strengthened by declarations and conventions, protocols and national legislation, more than a few of which David had a hand in writing. Even multinational corporations today must abide by certain standards, thanks in part to David.

Now, there is an ever-growing human rights movement, and it is becoming genuinely global. In fact, some human rights groups have themselves become large multinational entities. Today, torturers and abusers have become international outlaws, even war criminals. And today, even the death penalty is—I believe you will agree—in its final throes. And you, David, have been involved in all of this, and so much more.

David, you not only played a vital role in developing this field. You have also inspired a new generation of human rights scholarship and human rights activism. You have shown that each of us can make a difference, can make the world a better place, as you have done—and as you are still doing.

Thank you, David. Thank you for being the inspiration you are to all us.

First Panel

BARBARA FREY*

Good afternoon and welcome to everyone. We are really delighted to see you all here.

A special warm welcome to those of you are from out-of-town, out-of-state, and out-of-country who have come to join us in this really well-deserved celebration of David Weissbrodt's contributions in the area of human rights. It is something we felt was important to emphasize and to really reflect on as a community.

My name is Barbara Frey. I am the Director of the Human Rights Program here at the University of Minnesota. It has been my pleasure and honor to work with David for many years in many different capacities here in Minnesota. I have seen

* Director, Human Rights Program, Institute for Global Studies, University of Minnesota.

Professor Weissbrodt make such an indelible mark on so many areas of law and practice. He is a prolific scholar, an outstanding teacher, and a tremendous advocate in the field of human rights. I have benefited from all of those areas for so many years.

As many of you know, David was a central force in creating what was then called the Minnesota Lawyers International Human Rights Committee from its earliest days when I was the director. He was also a central force in the Center for Victims of Torture. I see Doug Johnson has arrived in the room, and Doug was the director at that time. David and I also co-taught the human rights class here at the University of Minnesota Law School for more than two decades. I have stopped counting. It is not good for you. I also had the pleasure of serving as the alternate member, along with David, at the U.N. Sub-Commission on Promotion and Protection of Human Rights for a four-year term in the early 2000s.

I was thinking about what to say about David's place in the community, and I realize there are many of us here who live and work in the human rights community in Minnesota.

Human rights was one of the main reasons I moved to Minnesota, and I doubt I am alone in that. I bet there are a lot of people who moved here just to do human rights work, to live in this wintry outpost just because there was so much happening, and there was a lot of creative imagination being applied in the field of human rights.

We honestly would not be here if not for David Weissbrodt and his generous spirit. He was the center point at this cluster of human rights at a critical time that then attracted other professionals. I bet we could do a very interesting sociological mapping exercise just to see how central David's presence was to each of our individual careers and to the collective growth of human rights in Minnesota and in the broader global community.

Beyond his social importance to the human rights community, David has set an example as an energetic and progressive champion of human rights norms. The purpose of this continuing legal education program today is to discuss his role in some of these important normative developments and debate what the impact of those normative developments have been.

Fionnuala Ní Aoláin, who will chair the second panel, and I were the curators of these panels because we wanted to focus on what we felt were really interesting issues not only because of

David's involvement, but because they continue to be controversial in the international human rights field. Central to these well-known and controversial topics is one we will be discussing on this first panel: business and human rights. And specifically, the role of David's intellectual accomplishments as really the quarterback, the leader of the adoption in 2003 of the Norms on responsibilities of transnational corporations, and other business enterprises with regard to human rights.

The Norms were the culmination of many years of drafting and diplomacy. The binding nature of these Norms is what represented a dramatic shift from the voluntary efforts of previous decades. The proposal that you could create binding norms on businesses was controversial then, and it remains controversial. There are many of us in this room who know the work of the Sub-Commission, but it is not a household world, not a place where you catch a ton of media trying to cover the highlights of the legislation going on. In fact, the adoption of these Norms caught a lot of states and businesses by surprise. I know this first-hand because on the day the Sub-Commission was scheduled to vote for these Norms and subsequently adopted them unanimously, the head of the U.S. delegation, the head of the U.S. Mission to the U.N. that was covering the Sub-Commission at that time, came flying down. We watched him literally come running down and finding David and me on the floor of the Sub-Commission.

We were getting ready for the session, and he came in—out of breath—and said, "I just talked to [Washington], and we have to talk about these Norms. We have to put a stop to these Norms." His superior in Washington had just received an earful from the International Chamber of Commerce asking what we were doing. This diplomat was embarrassed to be caught sleeping on his watch. It was not a cat-nap either because this had been happening over a period of years. When the Sub-Commission is about to vote unanimously, you know there has been significant discussion already.

What did these Norms mean and what are the controversies they have generated? With me on this first panel to begin to elucidate that question, are three distinguished colleagues who are well known to many of you. I am going to introduce them in the order they will be presenting.

First to my right is Chip Pitts, who is a Lecturer in Law at Stanford Law School. Chip works on issues regarding ethical globalization, corporate responsibility, and sustainable

development, and the question of international business and human rights. He was formerly an adjunct and then a full-time professor at Southern Methodist University School of Law in Dallas. He has been a partner at the global firm of Baker & McKenzie, Chief Legal Officer at Nokia, and an investor and founding executive and consultant to various start-up businesses in Austin, Texas and the Silicon Valley. He has served as the elected Chair of human rights NGOs including Amnesty International USA, the Bill of Rights Defense Committee, and currently, the Electronic Privacy Information Center (the EPIC).

Second on the panel to my left is Professor Kathryn Sikkink, who is the Ryan Family Professor of Human Rights Policy at the Harvard Kennedy School of Government. She also holds a named professorship at Radcliffe College in the Institute for Advanced Study as well. Kathryn works on international norms and institutions, transnational advocacy networks, the impact of human rights law and policies, and transitional justice. What is also important—she is much more than an honorary Minnesotan, even though she lives in Boston—Kathryn was the founder of the Human Rights Program and served as its faculty chair from its founding in 2001, until she left for Harvard a couple years ago. We are always happy to have her back.

Finally, Professor Deepika Udagama, who is the head of the Department of Law at the University of Peradeniya in Sri Lanka. Previously, Deepika was the head of the Department of Law at the University of Colombo. She pioneered the teaching of human rights law and was the founding director of the Center of the Study of Human Rights of the University of Colombo in the 1990s.

Deepika is also a returning Minnesotan, a ‘once gone but never not Minnesotan.’ She was a Human Rights Fellow with the then-named Minnesota Lawyers International Human Rights Committee, which I say because Deepika is about the only other person on the planet who can roll that off her tongue without thinking—now the Advocates for Human Rights. She was here from 1989–91. Relevant to this discussion also is that Deepika served as an alternate member on the U.N. Sub-Commission at the same time I was an alternate and David was a member. There she authored a study on globalization and its impact on the full enjoyment of human rights.

First of all, let me just thank each of our panelists for taking the time to be here. It means a lot to all of us, and I know it

means so much to David. I am going to turn now to Chip Pitts.

CHIP PITTS*

I am glad to be here. It is a real pleasure to participate in the honoring of David Weissbrodt, a good friend and mentor—as several of us have already said in our memory book entries paying tribute to David.

In my career, I have gone back and forth between two facets of globalization, both of business (including technology) and of human values and human rights. The intersection of those two aspects of globalization—and David's contribution to understanding their interrelationship—is partly what we are here to talk about on this panel today. As we have just allocated our responsibilities, I am going to give you a little overview of the U.N. Norms and how they led to the current normative framework in this area. It is a currently underappreciated, but truly remarkable story. Then, Kathryn is going to talk about the normative development at the meta-level, and Deepika is going to turn to implementation, including some examples that are pretty exciting on the local level.

Before we delve deeper, let me just say regarding these drivers (business, technology, and globalization), that David is many things, but he is not a technologist. He is about the biggest Luddite I have ever met. As you have heard, I was former Chief Legal Officer of a telecom company, and then did a couple of technology startups. We tried for years to get David to use a mobile phone, but he just would not do it. Then finally we got one for him, and instead of holding it up to his ear to speak, as any normal person would, he takes it like this—'hello, hello'—like it was a CB radio, one of those old wireless microphones.

Anyway, it is great to be here with you, David. We are suitably honoring David because there is no doubt that the tremendous welcome normative development in this area of corporate responsibility (or the more focused business and human rights field)—and it is one of the most exciting, positive things happening on the global legal landscape today—can in no small measure be attributed to David Weissbrodt.

There have been many efforts historically. The deep history of the corporate responsibility field, including its more focused business and human rights aspects, remains unknown to most people. Despite the historic and ongoing scandals, it is not quite

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as antithetical between corporations and human rights as people might think. Corporations in the first analysis were actually public interest vehicles of a sort. There were entities in Roman times—*societates*—wherein nobles could come together to share the burden of collecting taxes and pooling resources for common welfare projects like utilities, water aqueducts, roads, bridges, and so on. The chartered companies of the exploration period, including the East India Companies of Holland or England (and later Britain), despite being responsible for horrendous atrocities on the human rights front, were associated with a sovereign public purpose. Other colonial companies, including the Massachusetts Company and the Hudson's Bay Company, similarly possessed and in turn, influenced social responsibilities and sometimes literally formed governments themselves. Slavery and the slave trade were early “business and human rights” issues, until the anti-slavery courts of the nineteenth century took action, including against non-state actors.

Then as modern multinationals came into existence, especially in the late nineteenth and early twentieth centuries, with the rise of Western companies (the so-called “seven sisters”) controlling oil production, refining, and distribution, prefiguring the modern state-owned seven sisters² which replaced them, people focused on the jobs and economic and technological development they brought. This was before the dramatic rise in transparency engendered by modern information and communications technologies, so few thought these multinationals would infringe human rights with impunity. The tremendous damage to the environment and society, ranging from climate change to growing inequality and persistent conflict, was not fully understood. That relative complacency was the prevailing view until critiques started, especially in the 1960s and 1970s, by authors in developing and developed nations, and under the auspices of such institutions as the U.N. Centre on Transnational Corporations.³

Corporations were thus seen, rightly or wrongly, as more aligned with society until about forty-five years ago. Around this time, free market fundamentalism came to the fore under the influence of Milton Friedman and the economists of the Chicago

2. Saudi Aramco (Saudi Arabia), JSC Gazprom (Russia), CNPC (China), NIOC (Iran), PDVSA (Venezuela), Petrobras (Brazil), and Petronas (Malaysia).

3. The U.N. Centre worked on an ultimately unsuccessful Draft Code of Conduct from the 1970s through the early 1990s.

School. This market fundamentalism eventually reached a political apogee during the Reagan and Thatcher era, where there was a growing divorce of power and public values. Now simultaneously, the human rights revolution (which had been taking shape for many decades) was accelerating. The preamble in the Universal Declaration of Human Rights talks about responsibilities not just of states but individuals and indeed “every organ of society” (i.e. including business enterprises) to secure the “universal and effective recognition and observance” of human rights and respect for human rights.

Then the treaty network developed and built upon these obligations. Again, people often do not realize this, but several of the most important treaties and instruments explicitly refer to private persons (sometimes expressly including legal, juridical persons such as business corporations), enterprises, and/or organizations.⁴ In the context of anti-discrimination, where private actors and businesses are such an important part of the problem, one could hardly imagine it being otherwise. Yet, the gap between theory and the reality of local exploitation was continuing and even getting worse with iconic examples like Bhopal in India, Exxon Valdez, or the BP oil spill. These sorts of examples where life, limb, and security are endangered are still happening today, as with the Rana Plaza tragedy, among too many others.

Another instance just in the last week involved a state of emergency declared with respect to a region of Peru because indigenous people had protested and four people were killed. There are persistent, recurring, and disturbing patterns in the business and human rights field requiring more effective regulation and control. How do you take the law and its theory and do something about it—stop what is happening on the ground?

That is where David and this whole project of more effective, actualized business human rights takes place. We will hear about many wonderful experiences and achievements during this conference, examples of where David took the initiative to

4. *E.g.*, International Convention on the Elimination of All Forms of Racial Discrimination art. 2(1)(d), 5(b), *opened for signature* Mar. 7, 1966, S. Exec. Doc. C 95-2 (1978), 660 U.N.T.S. 195 (“persons, group, or organization”; “individual, group, or institution”); Convention on the Elimination of All Forms of Discrimination Against Women art. 2(e), 4(c), Dec. 18, 1979, 1249 U.N.T.S. 13, 19 I.L.M. 33 (1980) (“any person, organization, or enterprise”); Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, art. 4(c), U.N. Doc. A/RES/48/104 (Dec. 20, 1993) (“private persons”).

spur collaborative work under stressful conditions, particularly the U.N. Norms' development at the U.N. Sub-Commission. We also had fun times at Pizza La Romana in Geneva, and eating and skiing across the border in France with Frank Newman, Theo Van Boven, Sandy Coliver, and other good friends. Some of my best memories are about those times, but despite the fondness I share with David and those others for wine and fondue, we cannot be under the illusion that it is not hard, ongoing work to undertake these multi-year scholarly and diplomatic efforts to put the normative and accompanying enforcement structures into place.

The context for the U.N. Norms effort was that the United Nations had failed in the multi-decades' effort to regulate transnationals through the Transnational Centre. The effort failed mainly because of the excessively ideological divide about whether market power could be subjected to any constraints. To drastically oversimplify, the developing countries took the position that such power had to be constrained, while the United States and its allies took the contrary position saying essentially, "no way, we are for the free market, which we justify on human rights grounds as important to economic growth, and therefore, to expanding opportunity." There is a lot of truth to that, but there is nothing there to excuse human rights violations, sweatshop conditions, rape, unjust imprisonment, forced labor, child labor, slavery, discrimination, and the like. These things are unacceptable. Fortunately, more and more people have realized such things are unacceptable and that law, values, and economics have roles in effectively prohibiting such behaviors. The social norms and mindset really have changed in recent years, and the U.N. Norms David advanced were a milestone in that globally beneficial legal and acculturation process.

How did the idea for the U.N. Norms project arise? We were on a Geneva tram when David was a member of the U.N. Sub-Commission. Like many others, I had been following David around the sessions of the U.N. Commission and Sub-Commission for years, chronicling the progress and working together to spur it wherever possible. We were discussing on that tram what David could do in his role. I was at Nokia at the time, but also volunteering with Amnesty International and its nascent Business and Human Rights group. David had been on the board of Amnesty USA repeatedly, with us eventually nominating him for the international board as well, where he served for several years. This area of business and human rights

clearly presented a gap in corporate responsibility and accountability because the power was there, and the idea it could operate without constraint was just unacceptable. The evidence on the ground of corporate impunity was both overwhelming and undeniable. So, an idea then arose of producing a human rights framework of norms to place rules and regulations on business, in contrast to the earlier failed transnational efforts. We saw it necessary to transcend the ideological objections, and to get people to understand that this is of vast practical importance both to the future of the global economy as well as to people on the ground—that was the idea at the heart of the U.N. Norms' effort, which then began in earnest.

The effort then took shape over a multi-year process in which David worked collaboratively with his colleagues on the Sub-Commission, the members of the Working Group, and others, like me and Muria Kruger. Even outsiders, like Geoffrey Chandler from the U.K. Amnesty Business and Human Rights Group and Klaus Leisinger of Novartis provided input. Contrary to conventional wisdom, there were many businesses and business leaders on board with this project because they realized it was bad to be perceived as human rights violators and that there needed to be rules of the road. With testimony not only from me (representing Nokia and sometimes organizations like the International Business Leaders Forum or NGOs like Human Rights First), but also from other supporting businesses, business leaders, and associations, such as the Business Leaders Initiative for Human Rights, the Prince of Wales International Business Leaders Forum, and former executives from BP and Shell, the draft U.N. Norms received notable business support during the process.

Having attended every official meeting of the Sub-Commission during this period and many of the informal, background and Working Group meetings, I can confirm without hesitation that business was not as uniformly opposed to the U.N. Norms as commonly stated. Indeed, the High Commissioner's Report produced shortly after the Commission Decision, noted that while some businesses opposed them, "non-governmental organizations and some States and businesses as well as individual stakeholders such as academics, lawyers and consultants were supportive."⁵

5. Report of the U.N. High Comm'r for Human Rights, E/CN.4/2005/91, at 9.

Based on my experience with David and my helping with the research, negotiations, and drafting, I can only take issue with one thing Barb Frey said. And we can discuss this in more detail, but I do not think the rules and standards in the U.N. Norms were ever conceived to be separately binding as a matter of law in and of themselves, although they referenced some pre-existing hard and soft law. The U.N. Norms were in fact attacked by some, as the later U.N. Framework and Guiding Principles have been, both for being too voluntary and/or too tough—which is probably the most realistic and reasonable place a negotiator would want to be during the respective stages of historical development of standards in this realm.

In my view, it was quite explicit, as David repeatedly noted on the floor of the Sub-Commission, that the U.N. Norms were not strictly voluntary, but neither were they a hard law treaty or treaty-like document as they are so routinely portrayed these days. Contrary to recurring criticisms, there was definitely no attempt to clandestinely impose a treaty on states without their knowledge, as if such a thing were even possible. Yes, the U.N. Norms did use mandatory (“shall”) versus permissive (“may”) language, in an attempt to emphasize the “non-discretionary” nature of these obligations (whether legal or ethical). But in my opinion, it is absurd and counter-historical to claim anyone at the time had the illusion that as a product of the Sub-Commission (which had previously had notable influence drafting standards), they had anything approaching hard-law treaty status.

They were in between, what is called soft law: non-binding, but authoritative, with a powerful and compelling purpose, and the ability to support the continued evolution toward even harder rules. Not unlike how the U.N. Framework and Guiding Principles eventually developed under the leadership of Harvard Professor John Ruggie and were approved by the U.N. Human Rights Council.⁶ Professor Ruggie has joined many others in recognizing the Guiding Principles’ soft law status and the fact that they do not create a law-free zone (as they reference hard law standards, both state and business obligations, and the need for greater state regulation and business efforts in this area, and, e.g., in GP23, for business enterprises to treat the risk of gross human rights abuses as a legal compliance matter).

Contrary to another oft-drawn distinction, the Framework

6. The successor to the then-existing U.N. Commission on Human Rights.

and Guiding Principles are thus inevitably influenced by law and legalistic approaches, and rightly so, in much the same way as the U.N. Norms. As discussed in the textbook I have edited and co-authored in this area, there are daily developments in hard and soft law. There is a new corporate responsibility law in India. There are new rules in China, the United Kingdom, the United States, the European Union, Africa, and truly all over the world. This is a dynamic area of fervent legal, ethical, and cultural evolution. As for the U.N. Norms, I think some of the most powerful actors in the international business community, supported by powerful state sponsors, were just not quite ready for something like the U.N. Norms.

The U.N. Human Rights Commission, again, contrary to popular wisdom, did not reject the U.N. Norms; instead, it “took note of” the U.N. Norms and expressed “appreciation” to the Sub-Commission for its work in preparing them, while also noting the obvious reality that, as a draft, they had no legal standing in and of themselves.⁷ Significantly, however, the same Commission Decision requested that the High Commissioner evaluate the U.N. Norms, along with other existing initiatives and standards, in order for the Commission to identify options for *strengthening* business and human rights standards. In other words, while the most powerful lobby for business interests, namely the International Chamber of Commerce and the International Organization of Employers, aligned with some powerful state interests to prevent the Commission from adopting the U.N. Norms, the Norms’ process directly connected the follow-up work by the Commission and its successor, the Human Rights Council, including the appointment of Professor Ruggie, the approval of the U.N. Framework in 2008, and the approval of the U.N. Guiding Principles in 2011.

Professor Ruggie did a fantastic job as Special Representative of the Secretary General. He was able to generate numerous resources for various reasons, including greater state support, strategic success in building greater business support, and because the position of Special Representative of the U.N. Secretary General is such a high-level position in the United Nations. Professor Ruggie also benefited from his prior knowledge and the political and diplomatic expertise that he developed while working in the United Nations, including with the U.N. Global Compact. There

7. U.N. Comm’n on Human Rights, Decision 2004/116, Apr. 20, 2004.

is neither the time nor space for a detailed analysis on this panel of the significant underlying substantive similarities between the content of the soft-law U.N. Framework and Guiding Principles and the earlier U.N. Norms, but suffice it to say the two sets of instruments have much more in common than is usually appreciated.

Having been considerably involved in both processes, assisting not only with the U.N. Norms but also joining and providing input for numerous meetings in the United States and abroad of “Team Ruggie,” I can offer my own candidates as the top ten similarities. Each process and set of standards:

1. Addressed the same basic problem of ongoing impunity for business violations of human rights;
2. Began with expressly recognizing the primary responsibility of states in ensuring rights
3. Recognized independent, direct responsibilities of business with respect to human rights, separate and apart from the duties of states;
4. Recognized the significant, existing global understanding of these business responsibilities, in various instruments;
5. Recognized the positive and negative impacts businesses can have regarding human rights;
6. Reinforced much-needed universalism by concluding that businesses can violate human rights, making it vitally necessary to recognize business obligations as well;
7. Embraced the role of transparency and reporting as a support mechanism, if not a substitute for accountability;
8. Recognized the role of both legal and non-legal mechanisms (including judicial and non-judicial grievance mechanisms) to encourage more rights-sensitive, rights-compliant behavior by businesses;
9. Contemplated a wide range of implementation and enforcement possibilities; and
10. Contemplated ongoing evolution and strengthening of both normative standards and enforcement/implementation options.

It is most unfortunate that for strategic purposes of getting

business organizations on board in a face-saving way, the Ruggie effort saw it necessary to distance itself from and even disrespect the pioneering and invaluable groundwork that had been laid by David Weissbrodt and the U.N. Norms. The still extant narratives to that effect constitute an inaccurate revisionist history about the U.N. Norms, erroneously characterizing realities ranging from whether they were conceived, imagined, intended, or drafted to be a treaty or hard law (again, no); whether they discounted the fundamental role of states in enforcing human rights (no); or shifted obligations from governments to businesses or privatized human rights or substituted businesses in place of that crucial governmental role (no, no, and no).

The U.N. Norms, although they used “shall” versus “should,” were always conceived of and explicitly referenced on the floor during the debates as a draft soft law instrument produced by the experts of the Sub-Commission (following the path of other instruments) and not by nation states. While there was discussion about whether they were too hard on businesses, enough time has passed for there to be a more accurate recognition of the indispensable foundation provided by the U.N. Norms—not only for the Framework and Guiding Principles, but as a vital stepping-stone in the continued positive evolution of the regulatory ecosystem for business and human rights. It is well beyond time to give the U.N. Norms and their architect, David Weissbrodt, the overdue credit deserved for this crucial intermediary achievement.

Distinctions regarding details can and rightly have been made regarding the U.N. Norms and the subsequent leading instruments in this field. The Framework and Guiding Principles do a better job of sketching out the practical aspects of the business obligation to respect human rights *with due diligence*, and making the practically useful distinction between the primary obligations of states *to protect* and businesses *to respect* (even though those obligations may overlap and blur in specific contexts including privatization, with state-owned enterprises, or as a matter of contract). The distinction between primary, default obligations of states versus businesses helps by building consensus and acceptance of the normative standards, and also guiding how attention and resources should be directed in practice.

Like those subsequent instruments, the U.N. Norms make clear it is not just the responsibility of states, but also the responsibility of businesses to take care when it comes to human

rights and to do no harm. That is the core common denominator between these two instruments.

In recent years, this normative principle has spread throughout the international regulatory ecosystem and continues to do so. While a testament to the Framework and Guiding Principles, I think this should also be seen as part of the legacy of the U.N. Norms. These obligations on businesses continue to influence dynamic legal developments at every level (global, regional, sectoral, national, provincial/state, and local) but are nowhere more important than at the local level, where most enforcement of international law and actual progress happens.

I think the sea change in this area, that mindset change I have referenced, depended crucially on the catalyst that David Weissbrodt and the U.N. Norms put in place. I just want to go on record saying that. Thank you again, David, for your vital leadership in this area.

KATHRYN SIKKINK*

First, thank you for inviting me. I am very happy to be here to honor David Weissbrodt and his work. I will turn shortly to the topic of the panel, but I think David's involvement in the field of business and human rights is really emblematic of his work in general, so I wanted to say a few words about his broader career in order to set this business and human rights work in context. Those of us who know David know that he is a visionary; he is often ahead of his time in understanding and systemizing new human rights issues and bringing them to the attention of scholarly and policy communities. In this sense, I would like to talk about David's contribution to the creation of the whole field of human rights.

Most of the people in this room know this but for people who may be less familiar with the topic, the whole field of human rights is relatively new. David Weissbrodt is one of the very small handful of senior people, many of whom are in this room by the way, who literally helped create and sustain the human rights field and developed into one of the fastest growing and most dynamic areas of research at the intersection of law and social science. When David began publishing on human rights in

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the 1960s, it was not well-defined as a field of law. It would take a decade before it would become a field in the social sciences.

There were few law schools involved in this field as well. I think maybe only Berkeley, where David studied and where a number of cohorts studied, were human rights classes even taught at the time.

You have to remember the main treaties in this area had been open for signature, but were not yet in effect until 1976. International human rights institutions, with the exception of the European Court of Human Rights, had not yet developed mechanisms or procedures that would allow them to work effectively. No state had yet incorporated human rights as an explicit part of its foreign policy. When David arrived at the University of Minnesota Law School in 1975, he introduced his own course of human rights law, putting Minnesota in a place that it would occupy ever since: one of a small handful of law schools in the vanguard of developing the field of human rights law. In 1976, he developed the Human Rights Internship Program, pioneering hands-on human rights training. In 1988, he established the Human Rights Center, which was only the fourth such center in the United States at the time after Harvard, Columbia, and the Cincinnati law schools.

The Human Rights Center at the University of Minnesota, became a model for other law schools around the country. Today, virtually every major law school in the country has its own human rights center, many of them modeled after David Weissbrodt's in Minnesota. Almost every human rights center in turn has human rights internships at the core of its program, once again following, I think, a path David Weissbrodt set for us.

Throughout his career, he has translated his practical knowledge into scholarly work and his scholarly knowledge into forms that could be used by practitioners. As Barb Frey said, David Weissbrodt was the first human rights-scholar-teacher-advocate at the University of Minnesota. Then, he helped foster a whole human rights community here at the University and in the Twin Cities, of which I am very proud to be included along with many others in this room.

As Giovanni Mantilla's article that some of you read for this workshop said, David Weissbrodt was again ahead of his time in his work on business and human rights. We have heard he was the principle author of the U.N. Human Rights Norms for Transnational Corporations, so I will not go into that in more detail. I do want to stress how much the Norms were, again,

ahead of their time because they envisioned binding obligations placed on corporations to respect a long and comprehensive list of human rights. Though not a treaty, of course, they were intended to develop into more fully legalized obligations for corporations. That is one reason why there is conflict in this area.

It was not quite as consensual as the process Chip painted earlier. There were some people who wanted more binding law, and other people who wanted less binding norms. You have already heard the story. It was defeated in the Human Rights Commission largely due to the lobbying of corporations that put pressure to bear on powerful governments. Although the progress of norms was blocked, in this case, the Norms—capital N—for business and human rights was blocked, they were nevertheless a key stepping stone to everything that has come later. They served to build momentum. Even though they were not adopted by the Commission at the time, they were crucial, a part of the process that happened afterwards.

As we heard, the United Nations moved onto other more non-binding, voluntary, and soft law approaches led by John Ruggie. There was an important disagreement about the way to proceed. Now, I am a scholar of the evolution of dynamic international norms. I am a political scientist, not a lawyer. One of the things I can say is this kind of conflict is very common in normative development. We can go as far back as the anti-slavery movement or the women's suffrage movement and find exactly these kinds of deep conflicts and divisions within movements for human rights change.

What I can say to you is conflict does not necessarily impede or slow down progress on human rights. Indeed, sometimes this kind of conflict contributes to really moving things ahead. It generates a lot of debate and a lot of excitement. People take sides. They each work hard and sometimes you get a better outcome than you might have in the absence of conflict. I think it is important, again, to stress that David has been as what we call a 'norm entrepreneur' or as Chip said, a catalyst that affected later development in this area.

John Ruggie's Guiding Principles have gained very important support, but they have also been very contested, especially by NGOs and human rights activists who hoped for more binding norms like those initially proposed by the U.N. human rights Norms. In particular, they criticized the Guiding Principles and the associated Working Group on human rights

and transnational corporations for not incorporating more civil society participation especially by affected communities.

There is a new book coming out edited by Cesar Rodriguez-Garavito out of a conference at Brown University where John Ruggie met with his critics, especially from the developing world. I want to share with you a few of the insights of this forthcoming book, entitled *Business and Human Rights: Beyond the End of the Beginning*.

This book has an odd title because John Ruggie himself has said the Guiding Principles were not intended to be the final word on the regulation of business but rather, “the end of the beginning: by establishing a common global pattern for action, on which cumulative progress can be built, step-by-step, without foreclosing any other promising long-term developments.”⁸

Keeping this in mind, Rodriguez-Garavito has argued the achievements and limitations of the Guiding Principles should be evaluated not only in terms of their static dimension such as the content of the standards they include but also in terms of their own dynamic dimension such as their capacity to push the development of new norms and practices that might go beyond the initial content of the Guiding Principles and improve corporate compliance with human rights.⁹ I suggest that when we go beyond the end of the beginning, it may look very much like what David Weissbrodt and his colleagues proposed with the Norms. Once again, they were ahead of their time, they were a stepping stone for later work including the Guiding Principles, but they also envisioned a future that looks rather like the Norms that they proposed.

Garavito says he can make a theoretical and empirical case for creating a virtuous circle between the Guiding Principles and an eventual binding treaty for business and human rights; something underway since 2015, since there has been a resolution to begin an intergovernmental group to draft an international instrument for business and human rights. To end, I want to suggest that in this area, similar to other areas of David’s work, he has been a visionary. In a ‘back to the future’ scenario, the U.N. process seems to have circled around to begin taking up his original proposal for creating more legally binding

8. John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011).

9. See BUSINESS & HUMAN RIGHTS: BEYOND THE BEGINNING (Cesar Rodriguez-Garavito ed., forthcoming).

norms for business and human rights. Thank you.

DEEPIKA UDAGAMA*

Thank you very much. It is really an absolute pleasure to be here. I consider it to be an honor to be invited to felicitate Professor Weissbrodt from among the many legal fellows who have worked at the Minnesota Lawyers International Human Rights Committee and learned the finer points of the craft of human rights advocacy. I consider Professor Weissbrodt, whom we call 'DW' affectionately, to be a mentor who helped shape my work in a major way. Again, it is an absolute honor.

Speaking of David as a mentor, I must also mention we share a common legacy: we had Frank Newman from Berkeley Law as our mentor. And tonight is a continuation of that legacy. I think an important part of the Berkeley-Newman legacy is that human rights law was never purely a theoretical proposition. I find in David's work that combination—the straddling of on the one hand, the norm-making, the pushing of boundaries, the pushing the envelope so to speak of the international normative framework on human rights, and on the other hand, working so consistently to bringing that normative framework to work for the community. That is what I truly appreciate about David's work.

My tribute to David would be incomplete if I do not place on record my personal reminiscences. I first met David when I interviewed for the legal fellowship at the Minnesota Lawyers International Human Rights Committee (now the Advocates for Human Rights) in 1989 after completing my doctoral studies at Berkeley. I wanted to experience hands-on community human rights work that was combined with rigorous conceptual analysis. The Twin Cities had earned a great reputation by then with the establishment and work of the University of Minnesota Human Rights Center, the Advocates, and the Center for Victims of Torture. I was warned, however, that David was tough and does not suffer fools. True to form, David put me through a tough interview, but I could see this warm glint in his eyes. For whatever reason I made it, and as they say, the rest is history. Working with individuals like David, Barb, and the larger Twin Cities' active human rights community, exposed me to innovative perspectives of human rights work. The experience

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would eventually inspire many of my initiatives when I returned to Sri Lanka.

After completing my stint at the Advocates, I had a teaching job waiting for me at the University of Colombo in Sri Lanka. At the time, there was a civil war raging in the northeastern part of my country with a lot of political upheaval in the southern part as well. A few weeks before my departure, I remember David calling me on a very cold winter day. (Being the tropical woman I am, the Minnesotan winters were particularly hard to take!) He told me "When you go back, you must make sure you do something meaningful. It would be a good idea for you to set up a human rights center, and through that program, pursue the work that you want to do." After that conversation, he sat me down, and helped me draft a proposal to set up a human rights center at the University of Colombo, which is still operating. The alumni of the Centre for the Study of Human Rights have become very important human rights practitioners in Sri Lanka. They are now judges, diplomats, and activists at every level. With his advice, it was through the Centre that I channeled the desire to reach out to a larger community and not be confined to the ivory towers.

When paying tribute to David, it would be a disservice to only talk about his intellectual work. He has an academic agenda that is inherently linked with real people and the community, and I think that is just an absolutely marvelous way for an academic to work and inspire. I hope that inspiration will transfer to the younger generation.

Also, I hope that the re-named the Advocates for Human Rights would have 'Minnesota' as part of its organizational identity. The political commitment to human rights here in Minnesota is your brand. I was so very impressed by the human rights community and the work that was done here when I came directly from a large coastal cosmopolitan center of human rights activism within the United States. As an outsider to the United States, I see a certain superior sense on either coast that pre-supposed sophisticated international human rights work. What all of you have accomplished here over the years is simply amazing. I really do urge, therefore, that the Advocates have the 'Minneapolis' tag in its name.

Now onto business and human rights, a very contested area. This normative complexity is not unlike many others in the field of human rights law. In my opinion, what we are witnessing now in regard to the debate on the human rights obligations of

private business entities is a difficult period of the normative framework 'shaping up' and settling down.

Many decades ago when I was first introduced to human rights law, I was told that there are economic, social, and cultural rights, but that they are not human rights that are legally enforceable—it was only civil and political rights that matter. That is exactly what Professor Ní Aoláin just alluded to during the last lecture. Over the years, however, we have brought clarity to this issue.

Today, we recognize that economic, social, and cultural rights and civil and political rights are no different from one another. Both require resources, both put positive and negative obligations on the state, and both have overlap amongst the different rights. We are now quite convinced of the concept of indivisibility of human rights. Similarly, there was a great degree of conceptual confusion about the concept of 'equality.' This was borne out by the United States' constitutional interpretation of the equal protection clause. For well over a century, efforts of the United States Supreme Court to interpret the concept of equal protection of the law employing varied reasoning illustrates this difficult evolutionary process. I believe when it comes to business and human rights, what we are witnessing is that struggle to find conceptual clarity and legitimacy.

The U.N. Sub-Commission's efforts at the turn of the millennium on how large business interests impact human rights was not an accidental initiative. It resulted from years of intervention by the global civil society, and of course, the commitment of individual experts on the Sub-Commission. I was privileged to be part of the Sub-Commission when the process of drafting the Norms on business and human rights commenced. The process was preceded by the study on globalization and its impact on human rights that I was engaged in with Professor Joe Oloka-Onyango of Uganda as Sub-Commission Special Rapporteur. The Sub-Commission was moving away from its comfort zone of merely looking at state violations, especially with the obvious reality around the globe of how especially large businesses were negatively impacting human life.

I do believe that the Norms David created were much more radical. They were more radical in the sense that the obligations placed on the corporate sector were stronger than the would-be current norms, what are now commonly called the Ruggie Principles. David's Norms were also more visionary in that

although states would be under the primary obligation to protect and to promote human rights, transnational corporations would also have the obligation to respect and also 'protect' human rights, which is not found in the Ruggie Principles. Such a concept was revolutionary and unorthodox to say the least.

What was important about the process was it was not an elite project of the Sub-Commission with these experts sitting at the United Nations level, just discussing and debating the formulation of the Norms. Instead, they were very much informed by voices on the ground and by representatives from various countries who were on the ground, be it non-governmental organizations or activists. Human rights norms cannot be successful if voices at the ground level are ignored. It can never be an elite enterprise, it can never be an elite project. I think the formulation of the Norms truly had that legitimacy in the eyes of individuals who operate at the ground level. Of course, the transnational corporations were not very happy. And as already mentioned, they were not subsequently adopted by the then-U.N. Human Rights Commission.

The Ruggie Principles are more flexible, and they are more voluntary. And though the Ruggie Principles have greater clarity, we should, in my opinion, push to see whether it could become a more ambitious project vis-à-vis transnational corporations. The state has, on the one hand, an obligation to protect people from violations, but transnational corporations only have an obligation to respect and to remedy. It is a second level of obligation, and we have got to push that further.

Notably, while this difficult debate is occurring at the international level, the national level's debate on the horizontal application of human rights obligations versus the vertical is becoming sharper and more concrete. The vertical aspect referring to obligations placed on states, and the horizontal aspect referring to the non-state actors obligated to protect human rights. There is a strong demand by individuals that constitutional protections should encompass horizontal obligations of private entities, simply because of their lived realities. Big businesses more often than not have a huge impact, perhaps a disproportionate impact, on individuals' daily lives.

An early example is the 1996 South African Constitution which recognizes horizontal obligations in appropriate situations. Also, some apex courts, such as that of India, have recognized horizontal obligations through judicial interpretations of the constitutional bill of rights.

There was an earlier debate as to whether economic, social, and cultural rights should enter the realm of constitutional protection. Now, several new constitutions around the world have incorporated justiciable guarantees of such rights. Of course, South Africa took the lead in recent years after the demise of old socialist constitutions. Before that, the Indian Supreme Court had recognized the justiciability of socio-economic rights. The Kenyan Constitution serves as another example. With such developments, it was difficult to understand the debate in the United States over socialized health care. As the debate on economic, social, and cultural rights has gained maturity, I bet the debate on horizontal application will gain maturity as well.

This is an evolutionary process, a very dynamic process. The various actors will come together, and I am sure that in our lifetime we will see corporations put under stronger obligations. This is the world we live in. Coming from a person who currently works at a national level, although I do things sometimes for the United Nations, I can truly say that the spirit of the people is indomitable. The demands for change are very great, and international norms setting cannot ignore those demands. Norms must be fashioned according to the needs of the people whose very rights we are speaking of, rather than expect the people to fashion their needs according to technically drafted norms.

Thank you very much.

QUESTION 1

One of the things that came up today was the new horizons for human rights. One new horizon I would appreciate this group addressing is neuroscience. A billion dollars has gone into it in Europe, and God knows how much has gone into the Defense Advanced Research Projects Agency in the United States. There could be profound ramifications from this research, not only for helping with human disease and problems but also military applications and other things that are more sinister from a human rights perspective. Thoughts?

CHIP PITTS

On the neuroscience, you are right. This is a key test of the human rights system and of our political and economic systems because technology is largely neutral. Something like a drone can be used for humanitarian purposes or for extrajudicial

killings. This implicates not just neuroscience but the melding of the organic with the inorganic—our brains with machines. The capabilities of phones are gradually integrating into our bodies, if you consider cochlear implants, retinal scans, augmented reality, and the like. Google Glass is just a precursor.

We must have rules. There is a whole movement, including many elites like Elon Musk, Stephen Hawking, and Bill Gates, who, like me, have signed a Future of Life letter which calls for more thoughtful integration of human rights and values into technological development, including Artificial Intelligence. Christof Heyns, Special Rapporteur on Extra-Judicial Killings, is very seized with these issues; it is in his mandate to try and call for similar attention to risk management and more careful technological development. In other words, that is exactly right—we need to have more clear societal roles linked with human rights and values.

QUESTION 2

This is excellent timing in light of the recent adoption of the Trans-Pacific Partnership (TPP). I am wondering how the panel feels that these cases illustrate the tension that they were talking about between the law, which in some cases U.S. courts are not very sympathetic, and the reality on the ground, especially in light of some success in modifying the investor state . . . and European negotiations

There has been a broad debate in civil society and NGO groups for a number of years over whether the tools David gave us through these Norms can be put up against the laws in the courts. How do we apply it? How do we actually engage our court systems and our governments to succeed because obviously, the corporate lobbying that has been going on for these free trade agreements has overwhelmed the citizen lobbying? Governments and intergovernmental organizations have themselves taken positions that do not reflect the popular will. The question is whether these trade agreements, which are still secret, are just illustrative of this tension that we are seeing where the investor state disputes them, but may allow in some form for unelected panels to trump some of the norms and conventions of international law.

CHIP PITTS

As for the TPP, this raises the issue of not just private sector actors, the companies, but how in combination with states they

create regimes that are either pro-human rights or anti-human rights.

Typically, such agreements were completely oblivious to human rights historically. Starting with the North American Free Trade Agreement, we were able to achieve at least side agreements to some extent on labor and environmental rights, despite weak dispute resolution mechanisms. The World Trade Organization too, in its dispute resolution mechanism, has informally taken on board these public values, human rights concerns, and environmental concerns to some extent, but it has been inadequate. Why? Because of corporate lobbying, mainly. That is the problem. The regime of trade, investment, and finance has existed and continues to exist in splendid isolation from the parallel regime, in which the states are also obligated to respect, protect, fulfill and ensure human rights (and some even note a duty to promote).

That is the next big horizon as a structural matter—reconciling these economic (trade, investment, financial) regimes on one hand, with public values (human rights, environmental) regimes, on the other hand. On this point, there is the political will question. I will give some facts I find astounding. First of all, two recent polls, one by Gallup a year and half ago and a more recent poll by the U.N. Global Compact, indicate that of the top executives and CEOs in the world, the majority of them now think smart regulation is required in climate change and human rights. Why is that? Because they realize their economic enterprises are being tainted. Trust has plummeted. Trust is down there with the U.S. Congress people, car salesmen, and lawyers.

Businesses are simply not that respected or trusted any more. It is a risk issue for global business on the macro-level. Again, rather incredibly, a majority of executives in *The Economist Intelligence Survey* polled in the spring of this year agree with those other surveys: they actively want regulation in order to have a more level playing field. They want hard law.

That is astounding. That is the kind of mindset change for which David Weissbrodt has been a key catalyst. With the U.N. Norms, and the success such as it has been of the Guiding Principles making their way into the global regulatory ecosystem, and now this new treaty project where for the first time a significant number of nation states have come together in an Open-Ended Inter-Governmental Working Group (OEIWG). OEIWG has already met to begin negotiations of a sort toward a

more binding instrument or instruments in this field of business and human rights. I do not want to overstate things because there are significant current and foreseeable obstacles, but on the specific question of political will, it is incredible to see all this activity.

I am an independent expert for the OEIWG, the intergovernmental treaty process. It is not just experts providing input anymore but also input from the community on the ground—a “treaty coalition” of over 600 NGOs. This input is sometimes truly heard, but more often (unfortunately) not truly heard, listened to, or understood. It is actually 85 states that endorsed this resolution that carries forth these treaty negotiations, and they were discussing the treaty in Geneva in a formal session earlier this year. For those of us who have worked on these issues for decades, that is pretty amazing. So, more political will is there, but the jury is still way out on whether or not this will be substantively good or bad. If it is regressive of the U.N. Norms, the Framework, and the Guiding Principles in content, then that would be very bad.

With broader public awareness, expert input, NGO input, the Center for Torture included, and most importantly, input from affected people, everyone should monitor this process. It could do something astounding, which is to put in place the hardening of those norms that are currently, in my opinion, still quite soft, too soft.

PANELISTS

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Of course, this kind of change, as with all change in the human rights area, is slow and contested and certainly depends almost entirely on whether the pressure is kept on. Yes, the change will not happen unless there continues to be pressure not just on civil society, but from small states in the system that may have an interest as well.

Unfortunately, we may need to wait to see some shocks in the system. Sometimes a shock of corporate abuse could lead to a demand for more norms. In terms of the political will question and the question about these new trade agreements and unelected panels—we should be clear about unelected panels. Human rights law wants unelected panels. That is what the International Criminal Court judges are. It is important to recognize that unelected panels can promote human rights.

In the case of these trade panels, I just taught the WTO

Shrimp-Turtle case. One crucial issue is how national legislation of corporations can change the opinions of corporate leaders. They want a level playing field out there. If national legislation makes some of these regulations in order to get a level playing field, corporations may start pressing harder for international regulation.

About the question of political will, one of the biggest problems about strong regulation is the fear of loss of competitive business advantage. I think there has to be that sense. Further, I believe civil society has a very major role to play because small countries are under too much pressure to play the game in order to attract investments and so on. I agree with you in principle that it should happen. The political will, I believe, will come about when states realize the lack of regulation is a problem. Until that consciousness arises, we are going to have this debate about one country having higher regulation than the other, some countries having an advantage, et cetera.

I guess they have to make it fashionable in a way to ensure states have an obligation to regulate and that regulation is good. It is good for business. The tripartite type of relationship among the consumer, the corporate sector, and the states, should work in a political direction. These things are achieved only by lawmaking, and that is something recognized at the ground level.

Great. Instead of a hook, we have a dead battery. Please join me in thanking this first panel for starting us off today.

Second Panel

FIONNUALA NÍ AOLÁIN*

Welcome back. For those of you who were here for the first session, this is part of a two-part CLE session and celebration of the work of David Weissbrodt. It reflects some of his particular research and advocacy interests over the years.

My name is Fionnuala Ní Aoláin. I am a faculty member here at the University of Minnesota Law School and a colleague of David's. It is my pleasure to chair this panel and to introduce our three illustrious speakers. I am going to do so briefly in the interest of time because we are going to try to finish right at 5:00,

* Robina Chair in Law, Public Policy, and Society, University of Minnesota Law School.

so we can all make our way over to the Campus Club, which is on the other side of the river.

It is my great pleasure to introduce the CLE program, specifically a program addressing a human rights practice reflecting David Weissbrodt's long commitment to advocacy and the practice of human rights in the real world, as it were, as well.

It is my great pleasure to introduce first Amy Bergquist, who is a former student of David's at the University of Minnesota Law School, and currently a staff attorney at the International Justice Program of Advocates for Human Rights, where she works on a number of issues including LGBTI rights and discrimination, rights of minorities and non-citizens, and the death penalty. We are all so pleased to welcome the Advocates for Human Rights and the Center for Victims of Torture who were key in putting this CLE event together. We will have both of the Executive Directors of those organizations speaking at tonight's dinner. A particular welcome to Amy, but also a welcome to the Advocates for Human Rights, which is one of the core partners of the Law School in our human rights work.

Our second speaker is my colleague, Stephen Meili, Professor of Law here at the University of Minnesota Law School. Stephen's particular area of research and writing is on the rights of non-citizens and asylum law. He teaches a range of courses related to these issues and also has written extensively on these issues.

The third speaker is who is actually paying for his supper because this is his second appearance at the Law School today, Professor Hurst Hannum. He is Professor of International Law at the Fletcher School of Tufts University. In addition to being a professor of international law, he teaches broadly on a range of issues related to international public law and international human rights. He has served as consultant and advisor to a number of intergovernmental and non-governmental organizations. It is my very great pleasure to welcome them all. We will start with Amy and then follow with Stephen, and finish with Hurst. Amy, it is over to you.

AMY BERGQUIST*

Thanks, Fionnuala. I will just echo the comments of the panelists from the first session about what an honor it is to be here today, especially with David being a mentor to me and so

* Staff Attorney, The Advocates for Human Rights.

many other students who have walked through the halls of this Law School.

I will not take on Professor Udagama's suggestion as to revising the name of the Advocates for Human Rights. Our Executive Director is here, so you can lobby her afterward if you feel strongly about it. What I would like to speak about today with respect to the practice of human rights is the volunteer model for the practice of human rights, the idea that human rights is not just for elites or experts—that human rights is for everyone. David Weissbrodt recognized early on that people with regular day jobs can be a powerful force in the human rights world, and that human rights is not only an issue reserved for the elites.

I want you to think about two ways in which this plays out. One is with respect to his interaction in his work with students and one is at the Advocates for Human Rights itself, and how that volunteer model works in day-to-day practice at our office. First, I want to speak a bit about David's unending advice and mentorship for law students. He taught me and other students that in order to practice human rights you do not have to make it your full-time job. You can, but it is not required.

I was a research assistant for David during the summer after my first year of law school and like, I am sure, countless students have done, I met with him and asked for his advice about finding a way to practice human rights. He gave me advice that I bet he gives to every student who comes to him with this question. He said, "Go into private practice. Make a lot of money. Have great support staff in a private law firm and do a lot of pro bono work. That is a great way to go and practice human rights law."

This is one of the few times that, in the end, I ended up not following David's advice, but I did follow it in my year as a first- and only-year associate at a firm. I billed about 400 hours of pro bono time and got a little exposure to that life and then quickly abandoned it.

It is an important message for students who come to law school with an interest in human rights law to realize their options. I do not see Dean Wippman in the audience, but I believe he would back me up that over a third of the applicants to this Law School specifically mention human rights in their application essays. Human rights is a reason this Law School is a draw for students and realistically, not all of them are going to be able to practice human rights law full-time. It is really wise

advice, and it is advice that the Advocates for Human Rights really benefits from. I will talk about that momentarily.

Another aspect from the students' perspective is that David really walks the walk. He helps build the capacity for students to practice human rights. He gets all sorts of wonderful opportunities and projects and generously hands them off to students. In particular, he creates opportunities for students to learn about the United Nations but also to do human rights work through internships and fellowships, allowing students to serve as research assistants to people who work on the treaty bodies and as independent experts. An experience I greatly benefited from was the chance to engage in legal scholarship with David. He helped me learn more about the world of human rights scholarship through that process. He is very generous not only with his time, advice, and mentorship, but also, if you look at his publications, very generous with co-authorship credits for people who probably do not deserve to be named as co-authors of the publications he has authored.

David has inspired a new generation of human rights practitioners: practitioners both in terms of people like myself who practice full-time and those who are part-time or pro bono practitioners as well.

Now, a segue into what it means to be a volunteer-based human rights organization. David, of course, was one of the founders of the Advocates for Human Rights under its previous name. It was truly part of his vision for the Advocates, and some people who know the history better than I do, refer to David as the first volunteer the Advocates had, during the formative first years. He was based in London with Amnesty, and those at the Advocates were constantly on the phone with him seeking advice. He was the idea guy, providing the ideas in terms of what projects should be taken.

Most importantly, it was a lawyer's committee. This was a group of lawyers that David was able to corral and channel their skills and enthusiasm toward promoting and protecting human rights here in Minnesota and around the world. It was in that volunteer capacity that he steered the organization's direction.

How does that work today, now that the Advocates has been around for more than thirty years, and we still consider ourselves to be a volunteer-based organization? What does that mean for the practice of human rights? I learned the answer early on actually.

When we have various opportunities, projects, and

proposals that come our way and we are considering taking them, the first question I was trained to ask and the first question we do ask—is there a way to get volunteers involved in the project? That is the first consideration—can we include volunteers in some way for this project? That is truly part of our mentality and our approach.

It is a great way to approach things, and it also allows us to leverage our small staff to do much more than if we were to retain the projects for ourselves. One example of this approach is the project we did with the Liberian diaspora for the Liberian Truth and Reconciliation Commission. This three-year project involved about eight hundred volunteers to take statements from twelve hundred Liberians in the diaspora. The volunteers are not only attorneys, but also stenographers, court reporters, videographers, photographers, professional formatters; all sorts of different people bringing their professional skills to the table to help us do this very important work to incorporate the voices of the Liberian diaspora in the Truth and Reconciliation Commission's work. This idea of leverage is a great benefit to a human rights organization, especially a small organization like ours, to be able to do more with the resources we have.

That does not mean the staff simply turn over the work to the volunteers, let the volunteers do the project, and then have nothing more to do with it. The staff have a crucial role in training the volunteers, so they know what to expect and how to handle situations, because a lot of our volunteers do not have an extensive human rights background or experience. Also, staff supervise the attorneys and other volunteers as they do the work, then review the work, giving them feedback and suggestions for how it can be improved.

Another special aspect of our work is if we are working in another country, we work with partners on the ground. We help maintain the connections between our partners and our volunteers, so we can work as this three-legged stool—our volunteers, the Advocates, and the partners who are on the ground.

As a staff member, part of this meant adjusting to giving away some of our best, most exciting, and exotic projects to our volunteers. We get a chance to write an amicus brief—we are not going to write it, we are going to find volunteers, and we are going to work with them. They are going to do the writing, the really exciting, juicy stuff. You get used to that. It is exciting to work with the attorneys in the firms as well. It makes me

grateful for my one year in private practice. It gives me a perspective our volunteer attorneys have in terms of chasing those billable hours and the other demands they have on their time. It also gives me a little opportunity to be a bit envious of them from time to time, especially the support staff they have, especially after I have spent half an hour trying to unjam our shredder.

In terms of how this volunteer-based model of human rights advocacy works in practice, I want to give you an example, and it has to do with our advocacy with the United Nations. One of the things that the Advocates for Human Rights does is write shadow or parallel or alternative reports for the treaty body review mechanisms and for the Universal Periodic Review mechanism at the Human Rights Council. To illustrate an example of this process, if we have a partner organization on the ground in a country that is coming up for a review, many times our partner does not have the capacity to draft a report on their own. They do not know the U.N. language and they do not know how to do a shadow report. Our partner organization comes to us with this request, and then, we find an attorney or a team of attorneys who want to help with the project. We provide that team of attorneys with training about what the reporting process is, how to write the report, what language to use, et cetera.

Then, we pair them up through Skype or through email with the partners on the ground because the partners on the ground are the ones who have the facts. They know what is happening on the ground—that is gold for the treaty body experts and the Human Rights Council, who want to know what is actually happening. Our partner organizations are able to feed those facts to our volunteer attorneys. Our volunteer attorneys put those facts together in a legal document that looks like a report. Next, we help review and revise it, and get more input from our partners on the ground. What recommendations do you want to have made? What would be the best outcomes? What should we be working for here? Finally, the report is completed and submitted.

We also use volunteers in doing advocacy on the ground in Geneva. Just this year, we have taken two teams of volunteers to Geneva to help us do the lobbying piece of what it means to do advocacy at the United Nations. Some of the volunteers were lawyers, but we also had other professionals, including doctors, business people, and other professionals. We even have volunteers help us do research before these trips to help us identify which countries we want to target in our lobbying

efforts.

There are several, diverse ways for our volunteers to get involved. One part of David's legacy with the Advocates for Human Rights is how we are able to include so many people into so many different facets of the work we do. It makes us a valuable asset to partners in other countries who are able to work with our volunteers, and we are able to keep those connections and that advocacy going.

What messages does this send? I would say an important message that human rights is not just for experts, professors, or elites. It further sends a message to us and to our volunteers that human rights is something real, it is something tangible. They are not just studying it in an academic sphere, but are seeing this work making an actual difference in the lives of our partner organizations when they get victories, when their government changes the law, or when the government accepts a recommendation at the Human Rights Council. Our volunteers recognize they can make tangible contributions to our work and to the work of our partners, and our partner organizations are impressed.

They are amazed that people would give their time, their talents, and their services to help advance human rights. It sends the message that we are all advocates for human rights. You do not need to be a lawyer or a specialist. You all have something to contribute.

With that, I will close. Part of David's important legacy to the practice of human rights is the volunteer model that we have operationalized at the Advocates, thanks to his initiatives.

STEPHEN MEILI*

Thanks very much. It is a pleasure to be here. David, on a personal note, I just have to say a couple of things. Barb alluded to this generally in the last panel but for me personally, David was a key reason for me crossing the border from the Badger State to the Gopher State seven or eight years ago. It was a once in a lifetime opportunity to work with David and to be part of a thriving human rights community here at the Law School, the University more generally, and this community. David has been a mentor for me on my scholarship. He has been a co-author. And also, he has been teaching immigration law with me for the past several years. David, it is a real honor to be here and

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participate in this event.

What I will talk about today is the way that David's scholarship, particularly his 2008 book, *The Human Rights of Non-Citizens*, seeks to bridge the gap between human rights theory and practice.

First of all, if you want a concise and readable summary of the human rights instruments applicable to non-citizens, I would recommend this book. Unlike most legal texts, it is actually quite thin and is a very useful volume. Bridging the gap between human rights theory and practice is a theme that we have been hearing quite a lot about today. I believe that is because David's career has consistently been about finding ways to make the highest aspirations of the human rights paradigm applicable to everyday life so as to ensure that the human rights law in the books improves the lives of its intended beneficiaries.

This has particular resonance for me as a clinical professor here at the Law School, where we have several clinics that apply human rights principles to situations involving a variety of categories of non-citizens, whether that advocacy is in domestic courts, international tribunals, public policy bodies, or through community education and outreach. In fact, I do not think it is a surprise that the Center for New Americans, which is an umbrella for three different clinical programs devoted to the rights of non-citizens, is located at the same Law School where David has been a strong voice for the rights of non-citizens for decades.

Today, I am going to focus on three themes that run throughout *The Rights of Non-Citizens* and indeed through much of David's work. That book, with which I am sure many of you are familiar, is a comprehensive review of the existing treaty and non-treaty principles relating to the international human rights of non-citizens. By non-citizens, David is including refugees, asylum seekers, trafficked persons, immigrants and non-immigrants, those with temporary permission to remain within a country but no permanent status, as well as stateless persons.

The first of the themes is the need for equal treatment of citizens and non-citizens alike. David asserts the human rights apparatus is more effective in protecting the rights of citizens than of non-citizens. Most nations grant certain rights to citizens they deny to non-citizens. We see that in the case of the detention of non-citizens in many countries, including the United States and the United Kingdom. They are detained for

the mere reason of their status as non-citizens, rather than because they committed any sort of criminal offense. These individuals do not receive the same rights and protections that are granted to criminal defendants, such as the right to counsel and certain due process protections. United States law, in particular, has explicitly and consistently recognized a distinction between the rights of citizens and non-citizens.

David's book, and his entire career, has been devoted to eradicating this distinction, or at least to reducing the impact of some of its more harmful manifestations. That cause has been taken up by the Advocates for Human Rights as we have heard today, both in the Twin Cities and beyond, as well as in this Law School through its clinical work.

The second general theme in the book is the gap between the rights protected under international human rights instruments and the grim reality that many non-citizens face. David's focus on this gap between human rights rhetoric and reality relates to one of the most fundamental questions with which human rights scholars have struggled for decades. That is the usefulness of the human rights apparatus for non-citizens altogether. This calls to mind the question raised by Hannah Arendt about whether non-citizens have the right to have rights at all.

The subtext of much of David's work is the question of whether human rights treaties have any real use or are a mere window dressing which states feel free to ignore whenever it is in their interest to do so. This relates to the extensive debate within academia, some of it authored by people in this room, about the effectiveness of human rights treaties and the circumstances which lend themselves to greater treaty compliance by states. These circumstances include the presence of an active civil society that can hold states accountable for treaty violations, an independent judiciary, and the constitutionalization of human rights laws. I think it is fair to say that David's career has been devoted to seeking ways to ensure human rights treaties do in fact have meaning, but that it takes and will continue to take, a concerted effort by advocates, policymakers, and scholars to ensure that this is the case.

The book reflects David's understanding that human rights treaties are merely words on a page, or principles debated in hearings and behind closed doors at least until they are transformed into durable mechanisms through which non-

citizens can receive state protection from discrimination and other forms of abuse. The book certainly is a road map for bridging the gap between rhetoric and reality.

That brings me to the third and final theme from the book, which is the need for a comprehensive, rather than piecemeal, approach to protecting the rights of non-citizens. David asserts it is useful to see the human rights of non-citizens not as an amalgamation of the rights of various subgroups of non-citizens such as asylum seekers, stateless persons, immigrants, and the like, but rather as a unified domain. According to David, the piecemeal approach to protecting non-citizens has resulted in or at least exacerbated three phenomena that he sees as harmful to the interests of non-citizens generally.

One is the scapegoating of certain groups of non-citizens whenever it is convenient for the state, certain media outlets, or xenophobic society members to do so, such as during economic downturns. The second is more favorable policies towards those categories of non-citizens with greater resources and accompanying access to power, such as investors, traders, merchants, and business people. The third is the current human rights treaty apparatus consists of numerous treaties focusing on the rights of certain categories of non-citizens—refugees and asylum seekers, for example—but not on the rights or interests of non-citizens as non-citizens per se. Again, according to David, and I think this is accurate, this is because the advocates for various categories of non-citizens have pursued their own agendas despite their similar goals, common circumstances, and the common circumstances facing their particular constituency.

We see some of the hazards of this piecemeal approach in the current debate over immigration reform here in the United States. While the efforts of advocates have assisted certain categories of non-citizens, for instance, the so-called 'dreamers,' the children of undocumented persons who have received a pathway to citizenship under certain conditions, it has not assisted the vast majority of non-citizens who have entered the United States without documentation. In encouraging an all-inclusive approach, David urges policymakers and advocates to recognize areas where they might work together rather than apart. Thus, he focuses on advocacy strategies that deal with rights as protecting all non-citizens rather than just certain subgroups within that category.

While this kind of unified approach is laudable in theory, David is enough of a realist to recognize this goal is more likely

to be achieved through existing international instruments and legal precedents which recognize that human rights law should be applied equally to citizens and non-citizens. I am going to give you one concrete example of this integrative approach, or this all-inclusive approach David has consistently recommended, and it is right here at the Law School—an example in which I am quite familiar.

For many years the Law School has represented asylum seekers in one of its clinical programs. We do it in conjunction with the Advocates for Human Rights and with the Center for Victims of Torture. It is a very successful program, but a few years ago through the Center for New Americans, the Law School was able to broaden its advocacy of non-citizens to include detainees and other undocumented persons. We stress to our students the importance of seeing their work on behalf of particular clients within the larger context of the problems facing non-citizens generally.

This expansion of clinics within the Law School, which I should say was made possible through the generosity of the Robina Foundation, is an example of exactly the kind of all-inclusive approach to non-citizens which David has recommended throughout his career. It is a concrete manifestation of David's ideas in this area.

In conclusion, I would like to stress two enduring legacies of David's work and how it continues to challenge advocates. One is for advocates to work in concert on behalf of non-citizens generally rather than in piecemeal fashion on particular projects for particular groups of non-citizens. Secondly, he also challenges those of us who teach the next generation of advocates to encourage our students to see their work on behalf of certain groups of non-citizens within the larger context of human rights for non-citizens generally.

David, thank you once again, and thank you all.

HURST HANNUM*

First, let me thank Barb, in particular, for making this visit possible and inviting me here. Actually, I think I invited myself because when I heard David was being feted. I realized I had not seen him in far too many years and decided I had to attend. I even had the opportunity to speak twice today, although I do not

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know if that was a bonus or a price I had to pay. I also have to confess that I am not quite sure what I am going to talk about because I did not know the first panel would address David's contribution to issues of business and human rights, which I also had planned to discuss. The good news is I can now eliminate much of what I wanted to say. The good or bad news is I will take this opportunity to make a few more general comments and observations with respect to what was said earlier.

I want to talk a bit about David at the end, but I will begin by identifying two traits we have in common. I did not know about one of them until this afternoon, and that is David is a Luddite. He thinks technology is the bane of our existence. I, too, am a Luddite. While it will not mean much to most of you, it may mean something to David that I still write using WordPerfect for DOS, which remains the best word processing program ever developed. The second thing David and I share and have shared for many years is, whether in Geneva or elsewhere, after trying to lobby unhelpful and unsympathetic diplomats or draft in the wee hours of the morning, we would occasionally (well, as often as possible) allow ourselves to escape and appreciate good wine and good food together.

I was reminded just this afternoon of the first time I went to a Michelin three-star restaurant in France, which was with David. I also remember fondly, when David was living in Washington, D.C., many years ago, visiting him frequently and enjoying a number of bottles of excellent Chateauneuf du Pape from his cellar. When one is doing human rights work, even if only part time, it is difficult and sometimes depressing enough that you have to have either a very good, irreverent sense of humor or a very good appreciation of wine and food—preferably both.

Let me address a couple of issues that were raised by the earlier panel. The first was the interesting disagreement as to whether or not the infamous Sub-Commission Norms were binding or not, whether they were law or not.

I think what David said was they were “non-voluntary” insofar as they were intended to apply to all business entities, whether or not they accepted the Norms. It is not uncommon that experts create standards that are not binding on anyone and with which the “targets” do not necessarily agree. Then, you create an institution or procedure to oversee the standards, as though people who played no role in drafting them should actually be expected to pay attention to them.

Let me quote a couple sentences from an article David co-authored to illustrate the scope of the Norms. At one stage, he says, “The Norms reflect and restate a wide range of human rights, labor, humanitarian, environmental, consumer protection, and anti-corruption legal principles, but also incorporate best practices for corporate social responsibility.”¹⁰ To say that David was ambitious would be an understatement.

On the next page, he states, “The legal authority of the Norms”—and this is what frightened the United States and multinational companies—“The legal authority of the Norms derives principally from their sources in treaties and customary international law as a restatement of international legal principles applicable to companies.”¹¹ Now who could disagree with just restating existing law? As a brilliant lawyer, which David is, he just slipped in the idea that existing law applied to companies as though it were obvious that they did. Of course, it was not obvious at all, which is why many businesses were so upset.

We should compare this to the Guiding Principles developed subsequently by Professor John Ruggie. Ruggie was very specific in the introduction to the Principles that “[n]othing in these Guiding Principles should be read as creating new international law obligations.”¹² In the Commentary to Principle 12, he even made a rather odd distinction between the “responsibility” of business enterprises to respect human rights as “distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions.”¹³

Now, perhaps only a Harvard law professor could come up with this distinction between responsibility and obligation, but it does reflect, as suggested by the first panel, there really is a difference in approach between the visionary norms David developed, and that were adopted in large part due to his personal powers of persuasion, and the much more conservative approach of Professor Ruggie. (In passing, I might note these powers of persuasion were enhanced by the fact that David took

10. David Weissbrodt & Muria Kruger, *Norms on the Responsibilities of Transnational Corporations and Other Business Entities with Regard to Human Rights*, 97 AM. J. INT'L L. 901, 912 (2003).

11. *Id.* at 913.

12. John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, U.N. Doc. A/HRC/17/31, at 1 (Mar. 21, 2011).

13. *Id.* at 14.

it upon himself to learn Spanish after he was elected to the Sub-Commission, in part to help convince human rights nemesis Miguel Alfonso Martinez, the expert from Cuba, to support the effort. One should not underestimate the extraordinary achievement it was to get a consensus on these Norms).

However, the issue of the role of human rights in influencing business is not just about David and his persuasive abilities. It is actually about how you think we should go about governing the world. The questions that are raised in comparing the Sub-Commission Norms to the Guiding Principles are, first, who should and can regulate business? Second, what is the relevance of human rights to how we should regulate those businesses? The international community (whatever that is) simply does not have the legitimacy or competence to regulate business directly. Most people on the first panel referred to the need for domestic, legal, and political action in order to make the principles real.

This is still very much the case. The United Kingdom, for instance, even before the Guiding Principles were adopted, amended its company law in 2005 to require boards of directors to take into account the impact of their activities on a larger category of stakeholders than just those who own shares in the company. In 2013, the United Kingdom again amended the law to require companies to include reference to human rights in their annual reports. These simple changes at the domestic level are an example of how those who have the real power to regulate companies—national governments—can require changes by companies that do business within their jurisdiction, with or without international norms.

By the way, remember these principles apply not only to transnational companies, the most commonly targeted “bad guys.” They also encompass, for example, the wholly Chinese-owned companies in China that put plastic in baby formula and sell toxic floor paneling. There cannot be one norm in human rights for big foreign companies whose politics we do not particularly like, and another for local businesses that we might like better, but which are also harming people in similar ways.

One of the realities we often forget is in order to achieve effective domestic change, we actually have to strengthen governments, not seek to bypass them. Very often what is done at the international level is a useful beginning, but sometimes it seems like it is, in practice, too much of an end in itself, as well. Kathryn Sikkink mentioned Cesar Rodriguez-Garavito’s book entitled, *Business and Human Rights: Beyond the End of the*

Beginning, which appears to suggest that we may yet move forward to international norms that look more like those in the Norms drafted by David. However, the question is whether we need yet more international norms, or whether we simply need to encourage governments to take actions only they can take, in order to transform what to some may be disappointingly soft principles into domestic laws that can be effectively implemented.

A friend in Boston who used to work with Reebok back when it was a company that believed in human rights, said the most revolutionary thing in the Guiding Principles is the call for companies to ensure there is some sort of remedy for people who think their rights have been violated at work. For most companies, the idea of allowing their employees to complain, even if only through a complaint box, is something revolutionary. This does not sound like much, but it exemplifies how taking practical measures at the ground level may have a much greater impact on people's lives than merely creating new international norms.

My larger point is we should be very careful about linking human rights too closely to every important social and economic issue, in part because we run the risk of asking too little of companies and other actors, if all we require is compliance with human rights norms. Human rights do not require companies to be good neighbors. They will not encourage them to make charitable contributions or to help nearby communities develop, in the way corporate social responsibility principles might encourage them to do. For example, one of the initiatives Reebok undertook when it was in China, with the Chinese government's permission, was to encourage and make possible the formation of factory-specific trade unions in Reebok's Chinese factories. No international norm is ever going to require a company to do that, and our attention should be on fostering new practices rather than on adopting new U.N. resolutions.

While law, including international human rights law, is extraordinarily important, we should not look to law in order to solve problems that cannot be resolved simply by appeals to right and wrong or to rights or non-rights. Difficult issues such as the environment, social justice, and economic equity have to be resolved by appealing to facts and theories and figuring out first, what we want to do, and, second, how to do it. The "how to do it" part is something law is not very good at, and we should not overemphasize its capabilities.

Let me end by returning to David and his contributions to human rights.

Several people have described David as visionary, and that is certainly accurate. I always think of myself as something of a plodder in human rights, someone who teaches, occasionally brings cases, works with NGOs, and writes books but who does not imagine much beyond the world as it is. For better or worse, for instance, the Westphalian system of sovereign states is going to remain with us during our lifetimes, and so I tend to focus on what we can get governments to do within existing structures. David's perspective is much broader than that. Fortunately, he is not only a visionary, but he is a progressive visionary. However, do not forget there also are regressive visionaries out there, and more and more of them all the time. This is another reason why we need to be careful what we ask for and to be leery of asking more U.N. institutions to invent more norms, because in many cases, such norms will not necessarily be better than what we have now.

David and his work demonstrate the influence of not only ideas but of ideas coupled with some kind of procedure designed to give structure to these ideas, whether we call the ideas hard law, soft law, or something in between. Thus, David consistently has gone beyond theory to create possibilities for people to act, at both the international and domestic levels. This is an essential element of effective human rights work.

You have to be a good lobbyist; you have to be persuasive to accomplish the things David has accomplished during his life. Those of you who are law students know law school teaches you how to argue, but it does not always teach you how to be persuasive, and it is a mistake to confuse the two skills. You also need to be a creative lawyer, which David certainly is, as evidenced by the sentence I read from in the Norms, which blithely asserted that human rights law applicable to states also is applicable to companies.

Both David and I had the benefit of learning from Professor Frank Newman, our legendary professor at Berkeley many years ago. There are a number of other members of the Berkeley mafia in the room whom I am delighted to see again, and all of us are proud to be members of that large group of Newman students. I believe perhaps the best compliment I can give to David today is to say the Berkeley mafia has not only been equaled, but perhaps even eclipsed, by the Minnesota mafia. I think Frank would join me in that tribute. Congratulations, and thank you, David.

FIONNUALA NÍ AOLÁIN

There are a number of members of our faculty in the room today. On behalf of the Minnesota Law faculty and the colleagues assembled here, we always want to recognize David's incredible congeniality on this faculty. David has recruited many of us, some of us from further than across the city, but across the border. He has been extraordinary and generous to many of his colleagues, and not just intellectually. He is also known as the best house hunter in town when you arrive. He will find you a place to live, or even a boyfriend if you need one, as it has been known. I am not in that category for those of you who know my husband, who he also recruited.

David's generosity is profound and he is a gifted intellectual. He also has a generosity of spirit, of time, and of brave and extraordinary forthrightness and diplomacy. That is an amazing combination, both the capacity to speak his mind when he knew and felt it was important, but also to do so in a way that brought people with him. That I think has been one of his enduring legacies on the faculty, but also one of his enduring legacies to the work he has done internationally—his capacity to build coalitions, big and small. Moreover, the 162 people who are joining us for dinner tonight will attest to his capacity to engender great spirit, great friendship, and great congeniality wherever he has gone. Thank you, David, for bringing us together.