From Stabilization Clauses and Human Rights to Principles for Responsible Contracts

ANDREA SHEMBERG

Abstract: As Special Representative of the UN Secretary-General for Business and Human Rights (SRSG), John Ruggie re-opened a controversial discussion regarding the need for and the proper use of "stabilization clauses". Stabilization clauses or change of law clauses are a widely used risk-management device in investment contracts between states and investors. These clauses have long been used in investment agreements, but in 2003 they became the focus of a highly publicized controversy regarding their potential negative impact on the protection of human rights. After conducting an empirical study of stabilization clauses, Ruggie launched an extensive consultation process during which an idea was put forth to create a set of principles for responsible contracts. The four years of research and consultation led to the "Principles for responsible contracts: integrating the management of human rights risks into State-investor contract negotiations: guidance for negotiators", which Ruggie submitted to the Human Rights Council in June 2011. This paper describes the UN Mandate on Business and Human Rights and the work Ruggie undertook on stabilization clauses from 2007-2011. It will discuss the empirical research and the learning that emerged from the research and consultations carried out. Finally it will offer an introduction to the SRSG's Principles for Responsible Contracts.

Keywords: Stabilization, Ruggie, Responsible Contracts, Principles.