

‘Re-righting business’: John Ruggie and the struggle to develop international human rights standards for transnational firms

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Abstract:

As the major players in globalization, firms often operate in states where human rights may not be respected. Without direct intent, firms may be complicit in human rights violations. In 2008, John Ruggie, the UN Special Representative on business and human rights, developed a framework for policymakers to protect human rights and executives to respect human rights. On 16 June 2011, the UN Human Rights Council endorsed Ruggie’s ‘Guiding Principles’ for implementing this framework. This article describes how firms, states, and to a lesser extent NGOs, have responded to this delineation of the human rights responsibilities of business. We make four key points: the Guiding Principles are an important advance in global governance; the process of developing the Guiding Principles was a model of transparent, inclusive 21st century governance, yet the public is generally unaware of the issue or the new policy; that the Guiding Principles are a creative and broad rethinking of how to evaluate the human rights performance of corporations; and that the Guiding Principles are unlikely to have much influence unless policymakers educate their home firms regarding their human rights responsibilities and press these executives to act.

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Some 55 years after the Holocaust, the chairman of SNCF, the French national railway company, apologized for transporting 76,000 people to Nazi death camps during the Second World War. Guillaume Pepy acknowledged that his firm’s failure to protect human rights in the past was creating business risk in the present. Pepy feared US state legislators would block the company from competing for high-speed rail contracts.²

Business violations of human rights create wounds that cannot be easily healed by apologies, time, or new management. As markets, technology, and politics change, many executives have struggled to ensure that their operations do not undermine the human rights of their stakeholders. For example, during the first days of the February 2011 protests in Egypt, Vodafone suspended mobile and Internet service at the behest of the government. The Mubarak regime then used the service to send pro-government text messages, calling for rallies and actions against democratic protestors.³ Vodafone executives claimed that they were forced to comply with the Egyptian government when it invoked emergency rules and that they could not contest the authorities.⁴ However, many human rights activists asserted that in so doing, Vodafone was indirectly complicit in violating human rights.

As the Vodafone example illustrates, when firms directly or indirectly violate human rights, they can create business risk. Such risk occurs when an existing practice, relationship or situation places the company at risk of involvement in human rights abuse. The costs to the firm may include reputational risk, legal liability, operational risk (such as work stoppages, boycotts, blackmail, and sabotage), and loss of investor or consumer

confidence.⁵ Firms should thus seek to prevent actual or perceived human rights risk. In so doing the firm can meet its human rights responsibilities while reducing potential threats to the company. But some executives may not be aware that their operations can affect human rights. Moreover, few executives know how to measure and assess their actual and perceived human rights risk.⁶ Executives will need guidance, tools, practice, and time to learn how to ensure that they do not undermine the human rights of their stakeholders.

This article describes how firms, states and, to a lesser extent, NGOs have responded to the efforts of UN Special Representative John Ruggie to delineate the human rights responsibilities of business. In 2008, after three years of research and numerous multi-stakeholder consultations held throughout the globe, Ruggie and his team issued *Protect, respect and remedy: a framework for business and human rights*.⁷ This framework outlined the *state duty* to protect citizens from human rights abuses, the *corporate* responsibility to respect human rights, and the need for *corporations as well as states* to provide access to effective remedies when rights are violated.⁸ The 47 members of the UN Human Rights Council (UNHRC) unanimously endorsed *Protect, respect and remedy* in 2008, and extended Ruggie's mandate so that he could report on 'operationalizing' the framework.⁹

From 2008-2011, Ruggie and his team focused on implementation. On 22 November 2010, he released a draft version of *Guiding Principles for the implementation of the United Nations 'Protect, respect and remedy' framework*.¹⁰ The draft was open for public consultation via an online forum (<http://www.srsgconsultation.org>) until 31 January 2011.¹¹ Ruggie released a final version which incorporated these comments, the

‘Guiding Principles on business and human rights’, on 21 March 2011. The 47 members of the UNHRC formally approved the Guiding Principles (GPs) by consensus on 16 June 2011.¹²

We make four important points about this innovative attempt to flesh out the human rights responsibilities of business. First, the GPs are an important advance in global governance. A growing number of policymakers, business leaders, investors, consumers and activists now recognize that *states* must do more to ensure that *firms* do not undermine human rights at home and abroad. Ruggie made it clear that the failure to promote human rights is not just a business risk problem, but also a public policy problem.¹³ In so doing, Ruggie is helping the global community create a governance hybrid: one that links governments’ international human rights obligations to voluntary (but increasingly ‘required’) actions by business. Secondly, the process of developing the GPs was a model of 21st century governance: it was transparent, global, and inclusive. However, the broad public and most executives were unaware and uninvolved in this process. Thirdly, the GPs are a creative and broad rethinking of how executives, activists, and policymakers can evaluate, monitor and mitigate the human rights responsibilities of firms operating across borders. They must attempt to monitor and measure their human rights risk ‘due diligence’ and provide injured parties with access to remedies. However, the GPs are *voluntary* recommendations to business. As of this writing, few firms have actually adopted human rights policies, performed impact assessments or tracked performance, devised means to ensure that they do not undermine human rights, or developed means to ‘remedy’ human rights problems. Moreover, unless they have already experienced human rights risks and recognize these costs, many executives could

resist the GPs because they could be costly and time consuming to implement. Finally, unless policymakers and corporate stakeholders press these executives to act, and government officials educate their home firms regarding their human rights responsibilities, the GPs are unlikely to have much influence. Thus, we believe governments must find ways to incentivize firms to respect human rights and work to make their human rights, trade, investment, and corporate governance policies more coherent.

This article proceeds as follows: we begin with an overview of what Ruggie did and how he worked to involve his stakeholders. Next we discuss how governments and civil society groups have responded. We then assess how executives have responded to the framework and the Guiding Principles. We conclude that the fate of the GPs rests not just with executives, but rather with policymakers. The members of the UN must find ways to encourage the bulk of the world's firms to implement these guidelines.

What Ruggie did and how he did it

In 2005, Secretary General of the United Nations Kofi Annan appointed Harvard Professor John Ruggie to be the Special Representative of the Secretary General (SRSG) on the issue of human rights and transnational corporations and other business enterprises. (Ruggie, one of the world's leading scholars of globalization, had worked closely with Annan as Assistant Secretary General for Strategic Planning from 1997-2001). Ruggie was a shrewd choice, as he was close to policymakers, NGOs, and business leaders, and he was also the architect of the UN Global Compact (an international initiative to promote globally responsible business behaviour).¹⁴

Ruggie was determined to develop workable human rights norms. He knew that many policymakers and executives viewed an earlier attempt to develop workable standards (the Norms) as a ‘train wreck’. He also recognized that although some corporations accept some human rights responsibilities (as shown by their human rights policies or codes of conduct); most executives have long opposed mandatory human rights obligations for firms.¹⁵ Ruggie and his team also wanted to ensure that firms could act on any policy recommendations – that they should be affordable, understandable and relatively simple to implement.

The team would not find it easy to develop actionable recommendations for several reasons. First, every firm is different, and the human rights that a textile firm may affect (for example labour rights and access to water) may be different from those that an Internet company could affect (such as freedom of speech or privacy rights). Secondly, managers may not be aware that their firms can impact human rights (they may never have had a scandal or seen human rights as posing risk). Third, because advancing human rights has long been seen as the exclusive domain of states ‘business policies and practices in the area of human rights remain largely voluntary.’¹⁶ Fourth, many multinationals businesses operate globally through subsidiaries and indirect suppliers; many of these firms are incorporated locally and are corporate citizens of the host country. These same firms often have thousands of suppliers. Therefore, it will not be easy to hold firms and their affiliates accountable. Finally, firms have different cultures and affinities toward human rights. That culture not only reflects leadership from the top, but also the economic and political culture of its host country.¹⁷

In addition, Ruggie would have to create an internationally acceptable framework for states to hold their firms accountable for human rights. Although the Universal Declaration of Human Rights calls upon all organs of society, whether civic groups, corporations, or governments, to protect and promote human rights, it does not delineate specific responsibilities for business.

Moreover, until recently, states were neither empowered by law nor consistently willing to hold their home firms accountable for human rights violations abroad. If one state (country x) ignores the impact of such firms upon its citizens, there was little that another state, (country y), could do.¹⁸ In 2001, the members of the UN agreed that they have a duty to protect the citizens of country x. They agreed that states should work to address the causes of internal conflicts or man-made crises that put populations at risk; react to such violations with panoply of tools from sanctions to intervention; and finally, they admitted that they had a responsibility to help states and victims rebuild, achieve recovery, and reconciliation.¹⁹ However, many of the world's rising powers such as Brazil, China, and South Africa remain reluctant to intervene in the affairs of other states, even when those states experience human rights abuse.²⁰ In addition, some states such as China do not seem concerned with the human rights implications of their firms' overseas subsidiaries.²¹ These states not only are active recipients of corporate investment but have growing numbers of multinationals operating internationally.²²

Despite these challenges, Ruggie began by trying to map out the business and human rights landscape. He wanted to ascertain what firms were doing as well as what governments were asking their home country firms to do. Ruggie and his team recognized the complexity of this task. First, there are over 30 human rights delineated in

the Universal Declaration of Human Rights (UDHR). To ensure that governments promote these rights, policymakers developed two covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together, the UDHR and the two covenants comprise the International Bill of Human Rights. But not all states have signed onto both covenants, and that political reality may be reflected in the human rights practices of its host firms.

The ICCPR generally delineates rights that a state may not take away from its citizens (such as freedom of speech or freedom of movement). In contrast, the ICESCR generally delineates the rights that a state—insofar as it is able—should provide for its citizens, such as basic education or health care. Thus, to promote some human rights of its citizens the state must intervene, but at other times the state must refrain from intervening. As this shows, governments need significant governance expertise to juggle these at times contradictory actions.

To understand what executives thought and what firms were doing, the Ruggie team did four separate surveys of human rights practices among the world's firms. In 2005, the team surveyed the Fortune Global 500; some 102 executives responded (20 per cent). Ninety per cent of those respondents reported that they had an explicit set of human rights practices or management practices, but fewer than half said they had experienced a significant human rights issue. Almost all of the responding companies said they included human rights in their code; only forty per cent of those polled had a freestanding human rights protocol.²³ Most companies focused their codes on the rights of workers, referring to the ILO conventions. Almost no companies referred to the International Bill of Human

Rights, although some referred to the Universal Declaration.²⁴ The respondents had significant regional variations in human rights practices. For example, Canadian and US firms took a narrower spectrum of rights and rights holders than European firms. US firms were less likely, as example, to include policies related to economic and social rights such as access to health.²⁵

Finally the survey addressed how these firms were to be held accountable for human rights. Some 75 per cent of respondents said they engaged in external reporting; and one third said they routinely conducted human rights impact assessments; just under half reported that they did so occasionally.²⁶

These findings from the first survey seemed to indicate that business was relatively active in advancing human rights. Ruggie and his team concluded that this survey was skewed, as it had a relatively low response rate and few of the respondents came from Asia or Latin America.²⁷

The team next examined the human rights policies of a more general sample of 300 firms. As before, they found most companies include labour rights in their code, but fewer firms recognize non-labour rights, such as the right to privacy.²⁸

Next the team surveyed 25 Chinese companies in 2007. They found Chinese firms recognize fewer rights than European or North American companies. But they were 'slightly more likely to recognize social and economic rights, 'reflecting Chinese government activism related to some rights such as access to education.²⁹

Ruggie's team did one more mapping – a survey of the scope and patterns of alleged corporate-related human rights abuse. The author, Michael Wright, set out to ascertain which human rights were most affected by business operations as well as which

stakeholders were affected by these activities. He found: ‘abuse often generated impact on multiple human rights.’ Moreover, initial abuse led to further allegations of abuses. The others also found nearly 60 per cent of the cases were directly caused by the company, while 40 per cent of the cases involved indirect complicity (for example, a government used a company’s products to abuse its citizens). Some 45 per cent of cases affected workers; while some 45 per cent of other cases damaged communities. Wright found that firms involved in human rights abuse came from a wide range of sectors, from financial to extractive to manufacturing. He concluded, ‘the alleged abuses also appear to have domino effects and point to the dangers of business taking a narrow look into impacts.’³⁰ In short, the survey illuminated that many firms affect many different human rights, and firms need to become more aware of these effects to avoid human rights risk.

With this information, Ruggie and his team were able to put forward a framework which clearly delineated state and business responsibility. Ruggie made it clear that he found ‘little evidence to support the claim that companies have direct human rights obligations under international law.’³¹ But he also argued that this finding offered limited comfort to companies, as they came to find themselves ‘tried in the court of public opinion.’³² Ruggie added that where national legal systems already provide for the criminal punishment of companies, international standards meant to apply to individuals could also apply to business enterprises that are persons in the legal sense.³³

Ruggie’s team then surveyed governments through eight studies of how governments interpret the state duty to protect against human rights violations. They found that ‘not all states appear to have internalized the full meaning of the state duty to protect and its implications with regard to preventing and punishing abuses by business

enterprises.’³⁴ The team also discovered that policymakers were confused as to when and how they should protect citizens from corporate human rights abuse. For example, some human rights treaties require states to regulate non-state actors; others may require particular state actions to protect rights through regulation (for example, protecting against discrimination in employment). Finally, while no treaty bans extraterritorial actions, Ruggie argued that states do not take full advantage of available legal and policy tools to exercise extraterritorial jurisdiction over companies.³⁵

Ruggie concluded that states should take steps to ‘prevent, investigate, punish and redress’ human rights abuses.³⁶ In so doing, policymakers will ‘foster a corporate culture respectful of human rights.’³⁷ To achieve this goal, he asserted, policymakers can provide assistance and guidance to the businesses domiciled within their borders, enforce existing laws and create greater policy coherence among government departments such as trade and investment that can have unanticipated human rights spillover effects.³⁸ But there may be times when governments may need to regulate business.

By 2008 Ruggie had created a framework for governments to hold their firms accountable and for firms to manage their human rights responsibilities. In Ruggie’s vision, firms must have a means of due diligence -- ‘the steps a company must take to become aware of, prevent and address adverse human rights impacts.’³⁹ The framework included four components of due diligence. First, firms should adopt a human rights policy. Secondly, to understand their human rights footprint, firms should conduct impact assessments – taking ‘proactive steps to understand how existing and proposed activities may affect human rights.’⁴⁰ Third, firms should integrate their human rights policies throughout the company. Thus, all corporate employees should be aware of both their

human rights responsibilities and how to ensure that in doing their jobs the firm does not undermine human rights. Fourth, firms should track performance, which Ruggie defines as ‘monitoring and auditing processes’ to which ‘regular updates of human rights impact and performance are crucial.’ Ruggie also noted that due diligence should apply not only to the firm, but also to its business partners and suppliers.⁴¹ In so doing, he was arguing that firms would have to hold their stakeholders responsible for human rights.

Ruggie stressed that in order to hold firms accountable for their behaviour; policymakers, consumers, and other corporate stakeholders should be able to monitor corporate performance. Hence he encouraged firms to self-report and make such reports public. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them.⁴²

Finally, Ruggie recommended that both states and corporations provide victims and potential victims of human rights abuses with access to remedies through grievance mechanisms. He proposed that grievance mechanisms could be state-based judicial or non-judicial mechanisms or non-judicial mechanisms administered by a business enterprise alone or with stakeholders, by an industry association or multi-stakeholder group.⁴³ He also stressed that these grievance mechanisms must be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning, while companies’ mechanisms must also be based on engagement and dialogue.⁴⁴

Once the framework was approved in 2008, Ruggie focused his efforts on implementation. He tried to encourage firms to adopt the framework. To show that some firms were acting, he cited five corporate grievance mechanism pilot projects and four

states' references to the framework in policy assessments. He also referenced an article from the *Financial Times*, praising his initiatives for winning the support of different stakeholders.⁴⁵ But the numbers of implementing firms, as well as policymaker actions remained relatively small.

On 15 December 2010, Ruggie released a paper called *Applications of the UN 'Protect, respect and remedy' framework*. This document lists examples of both states and companies who Ruggie finds have 'applied' his guidelines in some manner. It also includes examples of applications from NGOs, national human rights institutions (NHRIs), business associations, multi-stakeholder initiatives, investors, academics, multilateral organizations and legal organizations. He has updated the list monthly since it was first published and includes an email address to which interested parties can send additional examples. However, in a cursory review of companies based on their web site, we found many of the companies supposedly implementing the Guidelines were in fact simply noting the existence of the Guiding Principles; we could find little evidence that these firms were actually altering their policies or business practices.

In sum, over a relatively short period, Ruggie and his team developed a workable approach for firms to evaluate, monitor, and address human rights that gained international approval. Ruggie's team also developed a process that was inclusive (multisectoral), transparent and multinational. His team held 41 multistakeholder meetings on every continent during the six-year mandate. Every document, comment, and meeting report was posted on the web site of the Business and Human Rights Resource Centre (BHRRC), www.business-humanrights.org. The team also asked for public comments on the GPs; commentaries could be submitted either for posting on BHRRC or

via the online forum from 22 November 2010 to 31 January 2011.⁴⁶ But the team received only 90 submissions by the deadline⁴⁷; and the bulk of the submissions came from academics and activists, rather than executives and policymakers.⁴⁸

Ambivalent Activists: The NGO Response to Ruggie

As Ruggie worked, policymakers, human rights and labour NGOs, and executives were quietly trying to shape his findings and the GPs. These groups were both important sources of information and potential supporters or opponents. Human rights and development groups were, at bottom, ambivalent about Ruggie. On one hand, they wanted clear human rights standards and were hopeful about his efforts. But on the other hand, they were afraid that any standards that could win approval would be the lowest common denominator, and ultimately ineffective.⁴⁹ But Ruggie was a good listener. The reports reveal that he and his team sought NGO and business advice, and he made his findings accessible and transparent. He constantly asked for feedback and by so doing gained considerable goodwill among his constituents.

However, although many NGOs agreed with Ruggie that states should be doing more to ensure that companies respected human rights, they also feared that ‘an over-reliance on voluntary initiatives... would be both inappropriate and inadequate.’⁵⁰ In the end, many NGOs went public with their concerns about the GPs.⁵¹ For example, Civicus, the World Alliance of Citizen Participation, said Professor Ruggie's report ‘fails to articulate the duty of states to regulate the overseas activities of businesses domiciled within their own jurisdiction.’⁵² In a joint statement some 27 European, African, and American human rights organizations complained that the GPs do not articulate measures that States should undertake to ensure the primacy of human rights law, particularly when

engaging in international trade and investment negotiations and in addressing the human rights impact of such agreements.⁵³ Finally some 50 prominent human rights and development NGOs including Amnesty International, Action Aid, Human Rights Watch, Pax Christi, and Oxfam International praised the ‘protect, respect, and remedy framework, but worried that the Council needed greater clarity and more specific recommendations on operationalization’ as well as ‘a strong follow-on mechanism.’⁵⁴ Many NGOs saw the GPs as inadequate. They wanted binding international law and an enforcement process to hold firms accountable.

The view from Government Capitals.

Throughout most of the period that Ruggie worked, policymakers were relatively silent about his objectives, strategy, and guidelines. Many policymakers seemed torn. On one hand, officials from many governments were concerned about the foreign policy implications of business failure to respect human rights. For example, the US was worried about allegations that Pfizer tried to blackmail judicial officials in Nigeria regarding allegations of human rights violations;⁵⁵ Norway was concerned about allegations of corruption related to Statoil in Ghana; and US, Canadian, Australian and EU officials were concerned about drug and human trafficking in areas where mining companies operated in Peru.⁵⁶ On the other hand, many of the same officials worried about economic and foreign policy spillovers from any attempt to ‘regulate’ business, even with voluntary initiatives. The global economy was recovering from two strong shocks: the September 11, 2001 attacks and the global recession; and the Great Recession which began after the 2007-2008 mortgage meltdown in the US and EU. Not

surprisingly, many officials did not want to add new burdens to business in a time of high unemployment.

Ruggie initially found government ambivalence about his work made it harder to map out what states were doing. In 2006, his team sent a survey to each of the UN's 192 member states, but only 29 responded. Moreover, many of those 29 governments did not respond to all of his questions.⁵⁷ As a result, the survey provided an incomplete picture of the role of states. The team found that most of the responding governments do very little to monitor the human rights practices of home or host firms or to educate home firms as to their human rights responsibilities. Most states did little to inform firms of their human rights responsibilities or to coordinate their foreign economic and human rights policies.⁵⁸ Some 30 per cent of the states replying did allow the prosecution of firms as legal persons and enabled extraterritorial jurisdiction over human rights violations committed overseas. For example, Australia, Belgium, Canada, France, the U.S. and the United Kingdom allow individuals to sue companies for human rights violations.⁵⁹

Ruggie's team also asked policymakers why they thought it is so difficult to encourage multinationals to advance human rights. Policymakers cited the nonexistence of an international framework; the absence of an internationally recognized body to monitor violations; the lack of information between states and 'the uneven playing field in this area, resulting in very different national laws and regulations.'⁶⁰ The team also asked what governments should do to ensure that firms did not undermine human rights. Eleven states responded they should promote CSR; 14 said states should enforce human rights norms for business and two argued that governments should mediate disputes

between firms and alleged victims of human rights abuse.⁶¹ Governments were clearly divided as to how to encourage business-human rights responsibility.

Ruggie's team also looked at how governments use corporate and securities law to affect business human rights practices. In a 2009 survey, the team found virtually no jurisdiction that explicitly regulates corporations on the issue of human rights through corporate and securities law.⁶²

Governments seemed to become more receptive after Ruggie presented his framework and then the Guiding Principles. The framework, as noted above, stressed that under international law governments have the principal responsibility to protect human rights. However, only 3 countries and the EU provided explicit public comments on the draft GPs.⁶³ The EU called for clarification on some vague components of the GPs, but was otherwise supportive. The EU also claimed the framework was 'already influencing policy development in the EU, with initiatives taken both by EU Member States and EU institutions.'⁶⁴ Norway was fully supportive of the draft GPs.⁶⁵ France evaluated each principle and offered 'constructive recommendations' for improvement, although the French government expressed its agreement with the GPs.⁶⁶ However, the British government expressed reservations. In 2009, the Foreign and Commonwealth Office said, 'it does not consider that there is a general State duty to protect under the core UN human rights treaties.' The government added some human rights are not amenable to the establishment of a duty to protect against non-State abuses.⁶⁷

Despite all this effort, and concern among business, policymakers and civil society, the response to the UNHRC approval of the GPS were muted. Norway, Argentina, United States, Ecuador, Hungary, United Kingdom made public statements

after the consensus vote, and some 18 government made comments in May. But the bulk of the members of the UN have said nothing about what they think of the GPs and whether or how they will encourage firms to implement them.⁶⁸ Hence we do not know what role these states will play in pushing their firms to implement the GPs.

Nonetheless, some states have worked multilaterally to reinforce Ruggie's work.⁶⁹ In May 2011, 42 countries (the 34 members of the OECD as well as many other middle income countries) endorsed the revised OECD Guidelines for Multinational Enterprises. The Guidelines are voluntary recommendations that governments make to their firms: they state that multinationals should respect human rights in every country in which they operate. Building on Ruggie's work, the revisions state that firms should have appropriate due diligence processes in place. The Guidelines also include a new, tougher process for complaints and mediation.⁷⁰

The members of the OECD and Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru, and Romania also approved a 'Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.'⁷¹ This 2011 recommendation was developed to provide guidance to firms that rely on conflict minerals, minerals mined in situations of conflict and human rights abuse. The Recommendation discuss how to identify and reduce use of these conflict minerals to ensure that mineral trade does not encourage human rights abuse or further conflict.

Some governments are also acting at the national level to clarify the human rights responsibilities of business. In 2010, the US Congress passed the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act). It requires companies to

file annual reports as to whether certain ‘conflict minerals’ used by the company originated in the Democratic Republic of the Congo or adjoining countries. The report must also describe the measures taken to exercise due diligence as to the source and chain of custody of the minerals. Such transparency should help the firm determine whether the minerals used by the company financed or benefited armed groups identified as perpetrating serious human rights abuses in certain US government reports.⁷² The EU executive is currently mulling similar regulation to broaden the scope to other sectors such as forestry or consumer goods.⁷³ In March 2010, the US Department of State convened the first meeting of information technology companies to discuss ways in which the private sector and government can work together to advance Internet freedom. In so doing, they hope to expand access to information and freedom of speech, while protecting citizens’ rights to privacy.⁷⁴ In April 2001, the British Government announced that it would work with Colombian NGOs to demonstrate to the Colombian government and private firms ‘that taking human rights into account makes economic sense.’ It will also research the costs to business of ignoring their human rights impact.⁷⁵ While these national efforts do not directly refer to the GPs, they are supportive of business taking greater responsibility for its human rights impact.

The View from the Corner Office

Executives, like policymakers, were initially deeply concerned about this UN sponsored attempt to delineate the human rights responsibilities of business. They feared explicit international regulation that would require executives to take specific steps to respect and remedy human rights violations, including past violations. But major international business associations such as the International Chamber of Commerce,

International Organisation of Employers, and the Business Industry Advisory Committee to the OECD fully participated in Ruggie's process and ultimately were supportive of the GPs, calling on UNHRC to endorse them.⁷⁶

Despite this international support, most firms have said little about the GPs. Some firms were critical. Talisman Energy generally opposed the principles, describing their comments as 'largely in the nature of caution or objection.'⁷⁷ Other firms were supportive but cautious. Control Risks expressed appreciation for Ruggie's work, but stressed, 'without clearer guidelines for States, we fear that these principles may remain aspirational when they deserve to be operational.'⁷⁸ BASF called for greater clarity regarding 'the effective limits of this extended scope for human rights diligence'.⁷⁹

Some firms were enthusiastic. Susanne Stormer, Vice President of Global Triple Bottom Line Management at Novo Nordisk stated, 'We welcome the guidelines'⁸⁰ A. P. Galaev, CEO of Sakhalin Energy, a joint venture among several oil companies, wrote, 'It is my sincere hope that the Human Rights Council will endorse the Guiding Principles at its forthcoming session in June, helping to establish them as the authoritative reference point for states, companies and civil societies.'⁸¹ Sime Darby, a Malaysian firm, also expressed its support for the framework and Guiding Principles.⁸²

Many but not all of the firms that expressed support for the GPs were motivated by experience; they had been accused of directly or indirectly undermining human rights. These firms wanted clarity regarding what human rights to respect and how to remedy alleged violations. According to Novo Nordisk, 'common standards for business would help to provide a level playing field and prevent human rights violations.'⁸³ Likewise, BP called the framework 'a unique chance to lay to rest a long-standing international debate

about whether mandatory norms are required.’ BP asserted that common standards will ‘help to clarify some of the more challenging human rights issues businesses face.’ The firm promised to align its human rights policies with the GPs.⁸⁴

These comments reveal that some firms are prepared to move quickly to adopt the GPs. But most firms will need greater understanding about the GPs and how to implement them. Moreover, unless the bulk of firms take action, early adopters could face an uneven playing field, where some firms adopt due diligence mechanisms at considerable cost and others do nothing. That imbalance well describes the current reality.

Corporate Uptake as of June 2011

Although a growing number of executives acknowledge human rights responsibilities, most firms don’t. In 2005, Ruggie found 102 of the Fortune Global 500 firms had human rights policies, and by May 2011, the Business and Human Rights Resource Center (BHRRC; www.business-humanrights.org) listed 275 companies that have explicit policies on human rights. Of that 275, only 21 (7.6 per cent)⁸⁵ refer to Ruggie’s work in their policies. The Ruggie team asserts that 15 companies are trying to align their business policies with the GPs.⁸⁶

To gain a fuller understanding of what firms are doing, we decided to drill down into the practices of the 275 companies with human rights policies as noted on BHRRC.⁸⁷ The site does not include all companies with strong human rights records, because such companies may not have formal policies or made such policies public.⁸⁸ Hence this list, like Ruggie’s surveys, is incomplete. Although each of these 275 companies (only 0.34 per cent of all 80,000 multinationals) has a policy, most of them do not meet the

minimum criteria of Ruggie's framework for the GPs (a publicly available human rights policy and operational policies and procedures that embed such policies throughout the enterprise).⁸⁹

Moreover, many of the companies with human rights policies do not address the full range of human rights suggested in the GPs. Ruggie suggested that "companies should look, at a minimum, to the International Bill of Human Rights and the core conventions of the ILO' when delineating their human rights responsibilities"⁹⁰ We found only ten companies commit themselves to the complete International Bill, which includes the UDHR as well the two covenants that make it law. Furthermore, only 35.3 per cent of companies with human rights policies reference the core conventions of the ILO. Only eight companies (or 3%) are fully aligned with Ruggie's criteria for human rights scope-the International Bill of Human Rights and the ILO core conventions.⁹¹

We also found significant regional variation among companies regarding human rights. European companies are more likely than those from other continents to delineate their human rights policies (159 out of 275 or 57.8 per cent of companies with human rights policies are incorporated in Europe). 144 of those companies are headquartered in EU member states, and 62 of them are in the United Kingdom. Only 52 companies with human rights policies are headquartered in the United States, along with eight in Canada. Thirty three of the companies are based in Asia, and 28 of those are Japanese; five companies are African, seven are from Latin America and four are from the Middle East in Egypt and Jordan.⁹² These regional variations may reflect national human rights cultures and priorities, as well as policymaker ambivalence about business' human rights responsibilities.

Some sectors are more likely than others to develop human rights policies. Extractive companies alone comprised 46 companies on the BHRRC list (16.7 per cent); banking and financial sector companies comprise 15.3 per cent, with 42 companies; telecommunications (16 companies, or 5.8 per cent) and energy (15 companies, or 5.5 per cent) are next on the list, followed by the pharmaceuticals, food and construction industries, represented by 11 companies each. Only five companies with human rights policies are in the apparel industry, and only seven consumer products companies with human rights policies. We concluded that companies that experienced human rights problems were more likely to develop policies and procedures to prevent and mitigate human rights risk.

Corporate Uptake of Specific Aspects of Due Diligence

Although a small but sizeable number had human rights policies, few go beyond these policies. As noted above, human rights due diligence includes performing *human rights impact assessments* on an ongoing basis; *integrating human rights into corporate practice*; *tracking performance* in a credible manner; and *adopting grievance mechanisms* as a means of preventing human rights abuse.

We found only 26 of the 275 companies on BHRRC's list have performed human rights impact assessments,⁹³ either by explicitly including human rights in their risk assessments or conducting stand-alone human rights impact assessments. Some firms such as BP⁹⁴, Barclays,⁹⁵ Credit Suisse,⁹⁶ and Control Risks have considerable experience with such assessments.⁹⁷ In addition, some eleven companies assess human rights impacts through country specific or product specific reviews.⁹⁸ But most firms have yet to examine how their practices may affect specific human rights.

The right to water provides an interesting example of how firms might use human rights impact assessments. The right to water is a key component of the right to life and the right of everyone to an adequate standard of living for himself and his family. States are obligated to provide access to safe and clean drinking water and sanitation, but the right is not legally binding on states or corporations.⁹⁹ However, human rights experts now assert that corporations must ensure that they do not over-consume or deplete community groundwater by using community dialogue, human rights methodology and impact assessments. Under the GPs, companies should examine if their activities undermine access to individuals or communities for safe, sufficient, acceptable, accessible, and affordable water.¹⁰⁰ But many executives will need training in how to do such human rights assessments for the 38 some human rights in the International Bill.

The GPs also call on firms to integrate human rights policies throughout their company.¹⁰¹ The framework lists three essential criteria for integration: leadership from the top, training employees, and building capacity to respond when unforeseen situations arise.¹⁰² Of the 275 companies listed on BHRRC, 37 (13.5 per cent of companies with a human rights policy) explicitly commit themselves to integrating human rights. Shell provides a model of what firms can do. The company trains all staff on compliance with their Code of Conduct and requires online human rights training, with more intensive training for employees working in areas with poor human rights records.¹⁰³ Barclays also uses online tools to train lending and relationship managers on how to integrate human rights issues into their assessment of financial transactions. It provides guidance on ‘identifying potential human rights risk in lending and investing; assessing the materiality of the risk; identifying possible risk mitigation opportunities.’¹⁰⁴

The Guiding Principles also call on companies to monitor their performance, but do not explain how. Firms will need to rely on metrics (means or indicators to understand social phenomena) so that they can monitor their performance over time. Such metrics can help firms link the conceptual discussion about human rights to actual implementation. However, for metrics to be useful, they must be comparable across companies and accepted by stakeholders as trustworthy.¹⁰⁵ Today's human rights metrics, however, are not widely accepted by human rights organizations as accurately and effectively conveying human rights conditions. There are several sources of human rights metrics widely used by scholars, such as the CIRC Human Rights Dataset (funded by the US NSF and for a time by the World Bank); and the New School/University of Connecticut Economic and Social Rights Empowerment Initiative.¹⁰⁶ However, George Washington University (USA) recently organized a conference on the utility of human rights and governance metrics, and we are not aware of any human rights metrics that are currently used by corporations.¹⁰⁷ Clearly, policymakers will need to work with scholars, activists, and executives to find common ground on metrics and on strategies for evaluation.

Executives may be reluctant to measure their human rights performance because they fear legal or reputational consequences.¹⁰⁸ For this reason, the GPs recommend that companies adopt strategies that can help managers avoid human rights violations such as grievance mechanisms. Many companies have a hotline or some other reporting service for employees who notice violations of the companies' code. However, in general, few companies have grievance mechanisms that cover non-labour rights and the rights of external stakeholders, such as access to water or property rights.¹⁰⁹ Five companies – HP,

Cerrejón Coal (a joint-venture of Anglo America, BHP Billiton and Xstrata), Esquel Group, and Sakhalin II (a joint venture of Gazprom, Shell, Mitsui and Mitsubishi) – road tested grievance mechanisms in 2009-2010 as part of a research project for the CSR Initiative at Harvard’s Kennedy School of Government.¹¹⁰ Managers will need more information about these grievance mechanisms to encourage broader adoption.

Conclusion

Ruggie’s GPs represent a governance innovation: they are a transparent and multisectoral effort to clarify the human rights responsibilities of business. The Guiding Principles encourage firms to move beyond apologies towards positive actionable steps. In so doing, the GPs are ‘righting business.’ But most people, governments and firms, have not been aware of or involved in this debate.

If some firms see risk and high costs in the failure to respect human rights, why aren’t more firms following the GPs or even adopting human rights policies? We believe there may be several reasons. First, human rights are relatively new on the business agenda. Secondly, governments have long struggled to respect human rights—firms are in an early phase of the learning curve. Early adapters may be better positioned to amortize costs of adhering to human rights and could use their support of human rights as a marketing and public relations tool. But we found the early adapters are rare. Those companies that have not acted may not perceive that their firm is at risk for directly or indirectly violating human rights or they may not be aware of this initiative. Thirdly, implementing the GPs will be expensive and time consuming. Many executives are not yet convinced they need to do more than they are already doing.

Moreover, the few firms that are acting to implement the GPs so far are acting in a piecemeal, ad hoc manner. Activists and policymakers can continue to pressure these firms—through shareholder resolutions, court cases, legislation and regulation, and naming and shaming. But ultimately, it is up to the members of the UN to prod their home firms to adopt all four elements of due diligence.

If policymakers want to be supportive of the GPs, they should take several steps to encourage business implementation. First, policymakers must educate their home firms regarding their human rights responsibilities. They should clearly delineate their expectations for firms and provide assistance in implementing human rights impact assessments, grievance mechanisms, and other aspects of due diligence. Policymakers should also make it clear that firms are responsible for the behaviour of their suppliers.

Governments such as the US, which have not signed onto both covenants of the UDHR, will need to decide if they will selectively encourage adherence to the GPs or be fully supportive. US officials as example may find it difficult to encourage US companies to respect and remedy human rights (such as the right to health, access to affordable medicines and access to water) which are not reflected in national law.

Secondly, policymakers should do their own due diligence and examine the signals domestic laws and regulations send to market actors about protecting human rights. If trade, investment, tax, and corporate governance rules send confusing signals, policymakers should find ways to foster greater coherence. In addition, they should develop a regular channel for human rights concerns to enter into the policymaking process. The US and the EU already examine the labour and environmental impacts of their trade agreements; they and other countries could broaden that analysis to human

rights in general.¹¹¹ Such reforms may slow policy, but over time state policy will be more coherent.

Countries should also take advantage of the leverage they have with taxpayer-funded programs, such as export finance, to encourage responsible business practices. When companies benefit from taxpayer largesse, they should be held to the highest standards—including fully implementing the GPs.

At the same time, policymakers will have to develop incentives for firms to adhere to the GPs. One possible route is procurement policies: many states use such policies not only to buy needed goods and services but to achieve other important policy objectives such as energy efficient production. The international system of rules governing trade (the WTO) which regulates trade among 153 member states requires governments to use procurement policies in a manner that does not distort trade among WTO members. These governments could give firms that adhere to the GPs bonus points in procurement bids, but these states must also ensure that they do not discriminate among foreign and domestic firms. But who will decide if firms are adhering to the GPs, and how can such performance be measured and validated? Moreover, for this incentive to really move markets, the US, EU and other countries might have to find ways to collaborate on procurement.¹¹²

In sum, Ruggie and his team effectively altered the debate over business and human rights. They made it clear why firms and states needed to act.¹¹³ If only some firms from some countries implement the GPs, the GPs will have minimal impact.

We note two key gaps in the GPs. The first gap relates to the power of business to influence government policy and to pressure governments to lower taxes. In an influential

article published in 1982,¹¹⁴ Professor Ruggie argued that many industrialized countries found a compromise to make globalization acceptable: embedded liberalism. These countries put in place a social compact: workers would receive a cushion from the vagaries of globalization; this cushion (unemployment, retraining, and in many countries healthcare) would be paid for by higher taxes. But in recent years, policymakers have been battered by conflicting demands. First, corporations have signaled less willingness to accept this grand bargain. Executives recognize that they can move to lower tax venues or shelter income.¹¹⁵ In response to this pressure, as well as recent record high unemployment, many industrialized states have gradually lowered their taxes on multinational corporations. Policymakers see tax policy as a key element of competitiveness. They also acknowledge that if they cannot establish an environment conducive to generating private sector jobs, their country may experience stalled economic growth, less investment, increased poverty and greater social tension.¹¹⁶ Meanwhile, many of these same countries are under pressure to reduce their government spending. Hence, countries such as the US, UK, Greece, and Spain have reduced access to essential public services (from education to health care) in the interest of shrinking deficits.¹¹⁷ Finally, the public has been sending contradictory signals to policymakers. While many people want policymakers to reduce these deficits, they also want governments to take care of the needy. A 2010 poll of 22,000 people in 22 countries found a global consensus for increased government action. Nearly four in five around the world (78 per cent), and majorities in all but one of 22 countries polled, think that government should subsidize food. Two-thirds overall (67 per cent), and majorities in 19

out of 22 countries, think that government regulation and oversight of their national economy needs to be increased¹¹⁸

The Guiding Principles say little about the political responsibilities of business to pay taxes to ensure that citizens have access to affordable healthcare, education, water, et cetera, which are basic human rights according to the International Bill of Human Rights. Hence, the corporate responsibility to pay taxes – essentially, investments in public goods – is a key, albeit missing, element of the Guiding Principles.

In addition, Ruggie did not receive a mandate to build a public case for business to protect human rights. Thus, although the debate over the GPs was open to the public, the public was uninformed and uninvolved. As governments, activists, and firms work to implement the Guiding Principles, they should begin by explaining to the public why these principles, are necessary, useful, and in the public interest.

¹ Susan Ariel Aaronson is Associate Research Professor, The George Washington University and Research Fellow, World Trade Institute. Ian Higham is her former research assistant and a student at the London School of Economics. Aaronson is grateful to the Institute of International Economic Policy at GWU for research support.

² Maïa de la Baume, 'French railway formally apologizes to Holocaust victims,' *New York Times*, 25 Jan. 2011, <http://www.nytimes.com/2011/01/26/world/europe/26france.html?_r=1&ref=nazihunting>.

³ Salil Tripathi, 'How should Internet and phone companies respond in Egypt?', *Institute for Human Rights and Business Commentary*, 4 Feb. 2011, <http://www.institutehrb.org/blogs/staff/internet_providers_in_egypt.html>. Pepy was not the only executive apologizing for his predecessors' failure to respect human rights. Aetna, J.P.Morgan, and Wachovia have all apologized for their financing the slave trade in the United States. Other companies have apologized for their failure to respect human rights in Brazil (slave labor) and China (right to privacy).

⁴ Vodafone said it was unwilling to let these text messages to be sent in Vodafone's name, and limited its circulation. Vodafone then formally informed the Egyptian authorities in Cairo and London that any future instructions to send sms messages must clearly show the authority requiring the message to be sent, and the text of the message must make this clear. While taking this position undoubtedly increased risk to our employees, it also stopped short of actual non-compliance, which Vodafone hoped would mitigate that risk to some extent. *Vodafone Group Plc – Response on Issues Relating to Mobile Network Operations in Egypt* 22 February 2011, <<http://www.business-humanrights.org/media/documents/vodafone-statement-re-egypt-22-feb-2011.pdf>>; and <http://www.salon.com/news/feature/2011/02/03/egypt_vodafone_text_messages>.

⁵ Aaron Bernstein, 'Incorporating labor and human rights risk into investment decisions,' *Capital Matters* No. 2, Sep. 2008.

⁶ Mark B. Taylor, et al, 'Due diligence for human rights: a risk-based approach,' Working Paper No. 53, Harvard Corporate Social Responsibility Initiative," October 2009, 6,7, <http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_53_taylor_etal.pdf>.

⁷ Ruggie initially only had a 2 year mandate to "identify and clarify" existing standards and practices. But after significant research, he was able to convince the Human Rights Council in 2007, to renew the mandate for an additional year. In June 2008, the Council agreed to support his framework. A/HRC/17/31, p. 3, 4, 5.

⁸ A/HRC/8/5, pp.4-5, #9.

⁹ A/HRC/11/13, p. 3, #1.

¹⁰ John Ruggie, *Guiding Principles for the Implementation of the United Nations 'Protect, Respect and Remedy' Framework* (Draft), 22 Nov. 2010, <<http://www.reports-and-materials.org/Ruggie-UN-draft-Guiding-Principles-22-Nov-2010.pdf>>.

¹¹ <<http://www.srsconsultation.org>>.

¹² Office of the High Commissioner for Human Rights, 'New Guiding Principles on business and human rights endorsed by the UN Human Rights Council', United Nations, 16 June 2011, <<http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-endorsed-16-jun-2011.pdf>>.

¹³ The OECD Guidelines for Multinationals were first issued in 1976 to set rules regarding the behavior of multinationals. The latest revision (2011) was greatly influenced by the work of Prof. Ruggie.

<<http://www.state.gov/secretary/rm/2011/05/164340.htm>>.

¹⁴ ‘John Ruggie,’ Harvard University, <<http://www.hks.harvard.edu/about/faculty-staff-directory/john-ruggie>>.

¹⁵ The UN Commission on Human Rights had developed the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights but the UN declined to act in the face of significant opposition. <http://www1.umn.edu/humanrts/links/norms-Aug2003.html>. On view of Norms as a train wreck, See UK Parliament, Human Rights Joint Committee, Examination of Witnesses, 20 June 2009,

<<http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/5/9063002.htm>>. On business rejection of the Norms, see David Bilchitz, ‘The Ruggie Framework: An Adequate Rubric for corporate Human Rights Obligations?’, *Sur Journal*, 12,

<http://www.surjournal.org/eng/conteudos/getArtigo12.php?artigo=12,artigo_10.htm>.

¹⁶ A/HRC/4/35/Add.3, p. 20, #65.

¹⁷ Susan Ariel Aaronson, ‘Minding our business: What the United States government has done and can do to ensure that US multinationals act responsibly in global markets’, *Journal of Business Ethics* (2005), 59, 175-198.

¹⁸ Tom Campbell, ‘A human rights approach to developing voluntary codes of conduct for multinational corporations,’ *Business Ethics Quarterly*, 2006, 16 (2) 255-269.

¹⁹ International Commission on Intervention and State Sovereignty (2001): *The Responsibility to Protect*. Ottawa: International Development Research Centre: VII, IX.

²⁰ ‘BRICS urge nonintervention in the Middle East and Northern Africa,’ *Reuters*, 13 Apr. 2011, <<http://www.moneyweb.com/mw/view/mw/en/page295022?oid=316559&sn=2009+Detail&pid=312424>>; and Dr. Tim Murithi, ‘The African Union’s transition from non-intervention to non-indifference: An ad hoc approach to the responsibility to protect,’ IPG, Jan. 2009, <http://library.fes.de/pdf-files/ipg/ipg-2009-1/08_a_murithi_us.pdf>.

²¹ Workers protesting poor work conditions at a Chinese operated mine in Zambia were shot by the Chinese managers. The managers were tried and found not guilty of murder; they did not speak the local language and could not communicate with the workers. But conditions did not improve at the mines. Barry Bearak, 'Zambia uneasily balances Chinese investment and workers' resentment,' *New York Times*, 20 Nov. 2010, <<http://www.nytimes.com/2010/11/21/world/africa/21zambia.html><http://thinkafricapress.com/development/re-thinking-china-africa>>. Also see Stephen J. Kobrin, 'Private political authority and public responsibility: transnational politics, transnational firms and human rights', *Business Ethics Quarterly*, (2009), 19, #3.

²² Peter Gammeltoft, 'Emerging multinationals: outward FDI from the BRICs countries', 2009, <<http://smartech.gatech.edu/handle/1853/35121>>.

²³ A/HRC/4/35/add.3, p. 22, # 72-74.

²⁴ A/HRC/4/35/Add.3, p. 3, Summary (b) (ii)

²⁵ A/HRC/4/35/Add.3, p. 26, #99-101.

²⁶ A/HRC/4/35/Add.3, p. 5, Summary (iv), (vi)

²⁷ A/HRC/4/35/Add.3, p. 21 67-70.

²⁸ Michael Wright and Amy Lehr, 'Business recognition of human rights: global patterns, regional and sectoral variations, iii, and # 6, p. 5, 12 Dec. 2006, <<http://www.business-humanrights.org/SpecialRepPortal/Home/Materialsbytopic/Companyoliciespractices/Companyolicies>>.

²⁹ A/HRC/4/35/Add.3, p. 27, #102.

³⁰ The report examined some 320 cases posted on the Business and Human Rights Resource Center webpage from Feb. 2005-Dec. 2007, pp. 2-9, p. 29, #69.

³¹ John Ruggie, 'Prepared remarks at Clifford Chance', 19 Feb. 2007, p.4, <<http://www.reports-and-materials.org/Ruggie-remarks-Clifford-Chance-19-Feb-2007.pdf>>.

³² Ruggie, 'Prepared remarks', p.4.

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- ³³ Ruggie, 'Prepared remarks', p.2.
- ³⁴ Ruggie, 'Prepared remarks', p.6.
- ³⁵ Ruggie, 'Prepared remarks', p.6.
- ³⁶ A/HRC/17/31, p. 6, #1.
- ³⁷ A/HRC/8/5, p. 9, #27.
- ³⁸ A/HRC/17/31/Annex, Section I.
- ³⁹ A/HRC/8/5, p.17, #56.
- ⁴⁰ A/HRC/8/5, p.18 #61
- ⁴¹ A/HRC/8/5, p.18, #63
- ⁴² A/HRC/17/31, p.20, #21.
- ⁴³ A/HRC/17/31, p.24, #28.
- ⁴⁴ A/HRC/17/31, p.26, #31.
- ⁴⁵ A/HRC/14/27, p.5, #15.
- ⁴⁶ 'Public consultation on draft UN Guiding Principles for business and human rights attracts input from 120 countries', 2 Feb. 2011, < <http://www.business-humanrights.org/media/documents/ruggie/public-consultation-on-guiding-principles-press-release-2-feb-2011.pdf>>.
- ⁴⁷ 'Public consultation'.
- ⁴⁸ Submissions to consultation on draft Guiding Principles, Business & Human Rights Resource Centre, <<http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples/Submissions>>.
- ⁴⁹ Susan Ariel Aaronson, 'Ruggie tells states to mind their business', *Policy Innovations*, 5 Mar. 2007, and Robert Senser, 'The UN and business', <http://www.americamagazine.org/content/article.cfm?article_id=11253>.
- ⁵⁰ Human Rights Council, 4th Session, 12-30 Mar., 'Oral Intervention: Amnesty International, ESCRnet, Human Rights Watch, International Commission of Jurists, International Federation for Human Rights', <http://www.escr-net.org/actions_more/actions_more_show.htm?doc_id=471732>.

⁵¹ See as example, Business and Human Rights Resource Centre, et al, Joint Note to the SRSR, 'Follow Up Action in South-East Asia,' 1 June, 2011, <<http://www.business-humanrights.org/Links/Repository/1006456>>.

⁵² 'Group urges international community to address human rights abuses by corporations', Ghana Business News, 1 June 2011, <<http://www.ghanabusinessnews.com/2011/06/01/group-urges-international-community-to-address-human-rights-abuses-by-corporations/>>.

⁵³ 'Statement to the Delegations on the Human Rights Council 2011, 17th Session, Agenda Item 3', <<http://www.fian.org/news/press-releases/CSOs-respond-to-ruggies-guiding-principles-regarding-human-rights-and-transnational-corporations/pdf>>.

⁵⁴ Joint civil society statement, 'Advancing the global business and human rights agenda', <<http://www.fidh.org/IMG/pdf/Joint-civil-society-statement-on-business-and-human-rights-May-2011.pdf>>.

⁵⁵ Walter Armstrong, 'Did Pfizer bribe its way out of criminal charges in Nigeria?', 27 Dec. 2010, <<http://www.theatlantic.com/international/archive/2010/12/did-pfizer-bribe-its-way-out-of-criminal-charges-in-nigeria/68495/>>.

⁵⁶ 'US embassy cables: Mining companies worried about security', *Guardian*, 31 Jan. 2011, <<http://www.guardian.co.uk/world/us-embassy-cables-documents/38881>>.

'Corruption in Norway, Ghana, or both? Statoil v. BioFuel and the Kroll Inc.', Private intelligence report, Feb. 2009, <http://mirror.wikileaks.info/wiki/Corruption_in_Norway,_Ghana_or_both__Statoil_v._BioFuel_and_the_Kroll_Inc__private_intelligence_report,_Feb_2009/>.

⁵⁷ Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations... Addendum: Human Rights Policies and management Practices: Results from questionnaire Surveys of Governments and Fortune Global 500 Firms', A/HRC/4/35/Add.3, 28 February 2007, pp. 6-7, # 4-10. The respondents were a good mix: Bahrain, Belgium, Bosnia-Herzegovina, Canada, Chile, Colombia, Croatia, Cyprus, Ecuador, Finland, France, Germany, Guatemala, Honduras, Italy, Japan, Jordan, Lebanon, Mexico, Netherlands, Poland, Portugal, Romania, Rwanda, Spain, Sweden, Switzerland,

Tunisia, and the UK. Interesting Norway, which has played a prominent role in assisting Ruggie, did not respond and neither did the US-home to a large percentage of the world's multinationals.

⁵⁸ A/HRC/4/35/Add.3, pp. 14-17, #45-53.

⁵⁹ A/HRC/4/35/Add.3, p. 2 Summary and p. 12-13, #35-39; and Susan Ariel Aaronson, 'Courting international business: what are the human rights obligations of global capitalism', *International Economy* (2003), March.

⁶⁰ A/HRC/4/35/Add.3, pp. 17-18, #54.

⁶¹ A/HRC/4/35/Add.3, pp. 18-19, # 56.

⁶² 'Overarching trends and observations', Corporate Law Project, July 2010, p.1, <<http://www.reports-and-materials.org/Ruggie-corporate-law-project-Jul-2010.pdf>>.

⁶³ Submissions to consultation on draft Guiding Principles, Business & Human Rights Resource Centre, <<http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples/Submissions>>.

⁶⁴ 'EU comments on the draft Guiding Principles for the implementation of the UN "Protect, Respect and Remedy" Framework', Business & Human Rights Resource Centre, 31 Jan. 2011, <<http://www.business-humanrights.org/media/documents/ruggie/eu-comments-on-draft-guiding-principles-31-jan-2011.pdf>>.

⁶⁵ Erik Lahnstein, State Secretary, 'Comments on draft Guiding Principles', Business & Human Rights Resource Centre, 31 Jan. 2011, <<http://www.business-humanrights.org/media/documents/ruggie/norway-comments-on-draft-guiding-principles-31-jan-2011.pdf>>.

⁶⁶ 'Written contribution of France regarding the final recommendations of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises in addition to its representative's contribution to the consultation of States held on 17 January in Geneva', Business & Human Rights Resource Centre, 31 Jan. 2011, <<http://www.business-humanrights.org/media/documents/ruggie/france-comments-on-draft-guiding-principles-31-jan-2011.doc>>.

⁶⁷ David Bethlehem, Legal Advisor, Foreign and Commonwealth Office to Professor John Ruggie, 9 July 2009, <<http://www.reports-and-materials.org/UK-Foreign-Office-letter-to-Ruggie-9-Jul-2009.pdf>>. He noted, 'It is not accepted that the right to freedom of association requires States to ensure that membership or participation in every private organization is unrestricted.'

⁶⁸ Daniel Baer, 'Business and transnational corporations have a responsibility to respect human rights', *HumanRights.gov*, 16 June 2011, <<http://www.humanrights.gov/2011/06/16/businesses-and-transnational-corporations-have-a-responsibility-to-respect-human-rights/>>; and <http://www.business-humanrights.org/SpecialRepPortal/Home/ReportstoUNHumanRightsCouncil/2011#67876>.

⁶⁹ 'Applications of the UN "Protect, Respect and Remedy" Framework', Business & Human Rights Resource Centre, 4 Apr. 2011, <<http://www.business-humanrights.org/media/documents/ruggie/applications-of-framework-4-apr-2011.pdf>>.

⁷⁰ 'New OECD guidelines to protect human rights and social development, *OECD Newsroom*, 25 May 2011, <http://www.oecd.org/document/19/0,3746,en_21571361_44315115_48029523_1_1_1_1,00.html>.

They were also agreed to by Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru, and Romania.

⁷¹ 'OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas', OECD, <http://www.oecd.org/document/36/0,3343,en_2649_34889_44307940_1_1_1_34529562,00.html>.

⁷² Report of the special Representative of the Secretary-General on the Issue of Human rights and Transnational Corporations and Other business Enterprises: Addendum: Human Rights and Corporate law: Trends and Observations from a Cross national Study Conducted by the Special Representative, 23 May 2011, A/HRC/17/31/Add.2
A/HRC/17/31/Add.2, p. 30, 130, 135.

⁷³ 'EU to table oil, mining transparency bill', *EurActiv*, 4 Marc. 2011, <<http://www.euractiv.com/en/specialreport-rawmaterials/eu-table-oil-mining-transparency-bill-news-502755>>.

⁷⁴ 'The NetFreedom Taskforce', *Internet Freedom*, US Department of State, <<http://www.state.gov/e/eeb/cip/netfreedom/index.htm#taskforce>>; 'Internet Freedom and Human Rights' *Internet Freedom*, US Department of State, <<http://www.state.gov/e/eeb/cip/netfreedom/index.htm#hr>>.

⁷⁵ British Embassy Human Rights and Democracy Project Portfolio 2011-12, Human Rights Bulletin, British Embassy, Bogota, April May, 2011, <http://www.business-humanrights.org/media/documents/boletin-junio-ingles.pdf>

⁷⁶ ‘Statement on Business & Human Rights to the United Nations Human Rights Council’, Business & Human Rights Resource Centre, 30 May 2011, <http://www.business-humanrights.org/media/documents/ioe-icc-biac-submission-to_the-un-hrc-may-2011.pdf>.

⁷⁷ Joe Cyr, ‘Talisman Energy’s comments’, p. 1.

⁷⁸ Richard Fenning, CEO Control Risks, Letter to John Ruggie, 31 Jan. 2011, <<http://www.business-humanrights.org/media/documents/ruggie/control-risks-re-guiding-principles-31-jan-2011.pdf>>.

⁷⁹ ‘BASF comments: draft Guiding Principles for the Implementation of the United Nations “Protect, Respect and Remedy” framework’, BASF, 21 Jan. 2011, <<http://www.business-humanrights.org/media/documents/ruggie/basf-comments-re-draft-guiding-principles-21-jan-2011.pdf>>, p.2.

⁸⁰ Susanne Stormer, ‘Novo Nordisk welcomes new guidelines on human rights’, *CSRwire*, 10 Dec. 2010, <http://www.csrwire.com/press_releases/31280-Novo-Nordisk-welcomes-new-guidelines-on-human-rights>.

⁸¹ Galaev A.P., CEO of Sakhalin Energy Investment Company Ltd., Letter to John Ruggie, 5 May 2011, <<http://www.business-humanrights.org/media/documents/ruggie/sakhalin-energy-ltr-re-guiding-principles-5-may-2011.pdf>>.

⁸² Puvan J. Selvanathan, Group Chief Sustainability Officer of Sime Darby, Letter to John Ruggie, 20 May 2011, <<http://www.global-business-initiative.org/Home%20files/Letter%20from%20Sime%20Darby%20supporting%20UN%20GPs.pdf>>.

⁸³ ‘Human rights’, Novo Nordisk, <http://www.novonordisk.com/sustainability/sustainability-approach/human_rights.asp>.

⁸⁴ ‘Human rights’, BP, 20 June 2011, <<http://www.bp.com/sectiongenericarticle800.do?categoryId=9036198&contentId=7066931>>.

⁸⁵ ‘Company policy statements on human rights’, Business & Human Rights Resource Centre, accessed April 2011, <<http://www.business-humanrights.org/Documents/Policies>>. We surveyed all of the human rights policies on this list looking for certain criteria and documented our findings.

⁸⁶ We did not include associations of firms. The firms included Anglo Gold, Barclays, Barrick gold, Cerrejon, Chevron, Citi, Eni, ExxonMobil, GE, Goldcorp, Nestle, Phillips Van Heusen, Shell and TNT. <<http://www.business-humanrights.org/media/documents/ruggie/applications-of-framework-6-jun-2011.pdf>>

⁸⁷ Aaronson is an advisor to BHRRC.

⁸⁸ The site does not include companies that supported the GPs such as Sime Darby; those that roadtested the grievance mechanisms such as Sakhalin, or firms with a strong commitment to human rights such as PVH 2011 Corporate Social Responsibility Report, <<http://www.pvhcsr.com/csr2010/Default.aspx>>; or Yahoo! Business & Human Rights Program, <<http://www.yhumanrightsblog.com/>>.

⁸⁹ A/HRC/17/31, p. 15, #16.

⁹⁰ A/HRC/8/5, p.17, #58.

⁹¹ A/HRC/8/5, p. 17, #57.

⁹² ‘Company policy statements on human rights’, 1 June 2011, Business & Human Rights Resource Centre, <<http://www.business-humanrights.org/Documents/Policies>>.

⁹³ A/HRC/8/5, p. 18, #61.

⁹⁴ ‘Human rights: a guidance note’, BP, 2006, <http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/downloads/BP_Human_Rights_2005.pdf>.

⁹⁵ ‘Statement on human rights’, Barclays Group, June 2006, <http://www.personal.barclays.co.uk/PFS/A/Content/Files/barclays_group_statement_on_human_rights.pdf>.

⁹⁶ ‘Human rights’, Credit Suisse, <https://www.credit-suisse.com/citizenship/en/banking/human_rights.jsp>.

⁹⁷ ‘Human rights policy’, Control Risks, 10 June 2009, <<http://www.control-risks.com/pdf/Human%20rights%20policy%20POL.pdf>>.

⁹⁸ ‘The “state of play” of human rights due diligence: anticipating the next five years’, Institute for Human Rights and Business, June 2010, p. 30, <http://www.ihrb.org/pdf/The_State_of_Play_of_Human_Rights_Due_Diligence.pdf>.

⁹⁹ Article 1 and Article 11 of the Universal Declaration of Human Rights. On July 26, 2010, the UN General Assembly declared “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.” (It is not specifically delineated under the UDHR), <http://www.un.org/waterforlifedecade/human_right_to_water.html>.

¹⁰⁰ ‘The human right to water and sanitation’, United Nations, <http://www.un.org/waterforlifedecade/human_right_to_water.html>; <<http://www.un.org/waterforlifedecade/reference.html#assessment>>; and Alia Karsan and Lesley Fleischman, ‘Corporate social responsibility and the human right to water’, <http://www.hks.harvard.edu/cchrp/initiatives/right_to_water/study_group/CorporateResponsibilityR2W.pdf>.

¹⁰¹ A/HRC/8/5, p. 18, #62.

¹⁰² A/HRC/8/5, p. 18, #62.

¹⁰³ ‘Human rights training, tools and guidelines’, Shell, <http://www.shell.com/home/content/environment_society/society/human_rights/training_tools_guidelines/>.

¹⁰⁴ ‘Human rights’, Barclays, 2011, <<http://group.barclays.com/Citizenship/The-way-we-do-business/Human-rights>>.

¹⁰⁵ A/HRC/4/35/add.3, p. 27, #103; Sibhan McInerney-Lankford and Hans-Otto Sano, *Human Rights Indicators In Development: An Introduction*, World Bank, 2010, pp. 14-15.

¹⁰⁶ CIRI Human Rights Data Project, <<http://ciri.binghamton.edu/>>; and Economic and Social Rights Empowerment Initiative, <<http://www.serfindex.org/>>.

¹⁰⁷ *Human Rights, Development and Economic Growth – Metrics, New Ways of Thinking and New Strategies*, <<http://www.gwu.edu/~iiep/events/humanrights.cfm>>. A conference on Statics, Development

and Human Rights in Montreux also concluded that human rights indicators should be used cautiously, see Lankford and Sano,

¹⁰⁸ ‘State of play’, Institute for Human Rights and Business, p. 37.

¹⁰⁹ ‘State of play’, Institute for Human Rights and Business, p. 38.

¹¹⁰ Governance and Accountability Program: Access to Remedy, Corporate Social Responsibility Initiative, <http://www.hks.harvard.edu/m-rcbg/CSRI/ga/access_to_remedy.html>.

¹¹¹ See Susan Ariel Aaronson, ‘Human Rights,’ in Jean-Pierre Chauffour and Jean-Christophe Maur, editors, *Preferential Trade Agreements: A Handbook for Development*, World Bank, 2011, <http://publications.worldbank.org/index.php?main_page=product_info&cPath=1&products_id=24014>.

¹¹² Susan Ariel Aaronson and Jamie M. Zimmerman, *Trade Imbalance: The Struggle to Weigh Human Rights in Trade Policymaking* (NY: Cambridge U. Press, 2007), p. 204.

¹¹³ Human Rights Council, ‘Council holds dialogue with Experts on summary executions, independence of judges and lawyers, transnational corporations,’ 30 May 2011, <<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11082&LangID=E>>.

¹¹⁴ ‘International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order’, *International Organization*, 36 (Spring 1982); also in Stephen D. Krasner, ed., *International Regimes* (Ithaca, N.Y.: Cornell University Press, 1983); Oran R. Young, ed., *The International Political Economy and International Institutions*, vol. 2 (Cheltenham, U.K.: Edward Elgar, 1996); Charles Lipson and Benjamin J. Cohen, eds., *Theory and Structure in International Political Economy* (Cambridge, Mass.: MIT Press, 1999); Benjamin J. Cohen, ed., *International Political Economy* (Aldershot, UK: Ashgate, forthcoming).

¹¹⁵ On the US, see GAO, ‘U.S. Multinational Corporations: Effective Tax Rates Are Correlated with Where Income Is Reported,’ GAO-08-950 12 Aug. 2008, <<http://www.gao.gov/products/GAO-08-950>>; and GAO, ‘U.S. Foreign Relations and Multinational Corporations: What’s the Connection?’ PAD-78-58 23 Aug. 1978. On comparative, Andre Dammert and Scott A. Hodge, ‘U.S. lags while Competitors Accelerate Corporate Income Tax Reform,’ Fiscal Fact No. 184, 5 Aug. 2009; and M. P. Devereux et al, ‘do

Countries Compete over Corporate Tax Rates, *Journal of Public Economics* 92, No. 5-6: June 2008, 1210-1235.

¹¹⁶ The U.S. statutory corporate tax rate has changed little since 1986. Meanwhile most other advanced industrial countries have lowered their tax rates, with the result that the U.S. rate is now substantially higher than the average tax rate among member countries of the Organization for Economic Cooperation and Development. U.S. multinationals paid 26 percent on average, slightly more than the global average of 25 percent. Companies without major overseas units, such as retailers, often have higher effective rates. Brookings Institution, Tax Policy Center, 'How does the Current System of International Taxation Work?', <<http://www.taxpolicycenter.org/briefing-book/key-elements/international/international-work.cfm>>; Peter Cohn and Matthew Caminiti, 'The Multinational Tax Advantage,' *Bloomberg/BusinessWeek*, 20 Jan. 2011, http://www.businessweek.com/magazine/content/11_05/b4213031803349.htm; and Larry Elliott, 'Global unemployment has reached dangerous levels, ILO report shows', *Guardian – Poverty Matters Blog*, 25 Jan. 2010, <<http://www.guardian.co.uk/global-development/poverty-matters/2011/jan/25/ilo-high-unemployment-young-global-recession>>.

¹¹⁷ Gavin Hewett, 'Europe's shrinking public sector', *BBC News*, 1 Oct. 2010, <http://www.bbc.co.uk/blogs/thereporters/gavinhe Witt/2010/10/europes_shrinking_public_secto.html>; 'Anti-austerity protests across Europe', *BBC News*, 29 Sep. 2010, <<http://www.bbc.co.uk/news/world-europe-11439084>>; 'Greece protestor: "we need to leave the euro now"', *BBC News*, 19 June 2011, <<http://www.bbc.co.uk/news/world-europe-13832840>>; and Jesse Drucker, 'Biggest Tax Avoiders Win Most Gaming \$1 Trillion US Tax Break,' *Bloomberg/BusinessWeek*, 28 June 2011.

¹¹⁸ 'Governments misspend more than half our taxes – global poll', *World Public Opinion*, 27 Sep. 2010, <[http://www.worldpublicopinion.org/pipa/articles/btglobalizationtradera/668.php?lb=btgl&pnt=668&nid=&id](http://www.worldpublicopinion.org/pipa/articles/btglobalizationtradera/668.php?lb=btgl&pnt=668&nid=&id;)>; and BBC World Service Poll, 27 Sep. 2010, <http://www.worldpublicopinion.org/pipa/pdf/sep10/BBCEcon_Sep10_rpt.pdf>.