

**Institute for International Economic Policy Working Paper Series
Elliott School of International Affairs
The George Washington University**

**Putting the Blame on Governments
Why Firms and Governments have Failed to Advance the
Guiding Principles on Business and
Human Rights**

IIEP-WP-2014-6

**Susan Ariel Aaronson
George Washington University**

**Ian Higham
EIRIS**

June 2014

Institute for International Economic Policy
1957 E St. NW, Suite 502
Voice: (202) 994-5320
Fax: (202) 994-5477
Email: iiep@gwu.edu
Web: www.gwu.edu/~iiep

Putting the Blame on Governments

Why Firms and Governments have Failed to Advance the Guiding Principles on Business and Human Rights

Susan Ariel Aaronson & Ian Higham¹

I. Introduction

Some sixty-seven years after the Holocaust, Guillaume Pepy, the chairman of Société Nationale des Chemins de fer français (SNCF), the French national railway company, apologized for transporting 76,000 people to Nazi death camps during the Second World War.² Pepy acknowledged that his firm's failure to respect human rights in the past was creating business risks in the present, and he feared that US state legislators would block the company from competing for high-speed rail contracts.³

When businesses violate human rights, executives may 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.⁴ The Mubarak regime then used the service to send pro-government text messages, calling for rallies and actions against democratic protestors.⁵ Vodafone executives claimed that they were forced to comply with the emergency rules invoked by the Egyptian government and that the company could not contest the authorities.⁶ However, many human rights activists asserted that in doing so, Vodafone was indirectly complicit in violating human rights.⁷

As these examples illustrate, when firms directly or indirectly violate human rights, they can create business risks. Such risks occur 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 legal liability, reputational and operational risks (such as work stoppages, boycotts,

blackmail, and sabotage), and loss of investor or consumer confidence.⁸ Firms should thus seek to prevent actual or perceived human rights risks. In doing so, the firm can meet its human rights responsibilities while reducing potential threats to the company. Some executives, however, may not be aware that their operations can affect human rights. Moreover, not all executives understand how to measure and assess their actual and perceived human rights risks.⁹ 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 chapter describes how the United Nations, and in particular Professor John Ruggie, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, developed the guidance and tools to help firms respect human rights. Under the Guiding Principles on Business and Human Rights (the GPs), executives are expected to attempt to monitor and measure their human rights “due diligence” and provide injured parties with access to remedies. These executives can no longer be willfully deaf, dumb or blind to the human rights consequences of their company’s actions.

We make several points about this innovative attempt to flesh out the human rights responsibilities of business. Most analysts focus on how the GPs are soft law related to business, but we focus also on what they demand of nation states. The GPs advanced global governance by telling policymakers that governments must do more to ensure that firms do not undermine human rights at home and abroad. The GPs are a governance hybrid: they link governments’ international human rights obligations to voluntary initiatives by businesses. Yet they are not well known or well understood by the people they are designed to serve. Although they were developed in a transparent, global and inclusive manner, very few individuals, firms, and NGOs actually participated in the development of the GPs. The public and most executives were

unaware and uninvolved in this process.¹⁰ Since the GPs were first issued in 2011 (and the *Protect, Respect and Remedy* framework in 2008), relatively few firms are implementing the GPs in full or in part. Despite the potential costs to the firm of human rights risks, many executives seem to believe it is too costly and time consuming to implement the GPs. Hence, we argue that this hybrid governance tool needs more policymaker support and creative thinking to succeed.

We have been studying the adoption of the GPs since 2011. Although the number of firms implementing the GPs is gradually increasing, the number of corporate adopters remains small. Herein, we blame governments, as well as business. We believe governments are not doing enough to inform their firms about their human rights responsibilities or about the GPs. After all, under international law governments have the principal responsibility to protect human rights against abuse by third parties, including business enterprises. According to the GPs, states “should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.”¹¹ The GPs also recommended that states could use tools, including regulatory or procurement policies, to encourage business respect for human rights.¹²

This chapter is organized as follows: we begin with background on Ruggie’s work. Next we assess how business and governments responded to the GPs. Finally, we develop our argument that states must do more to encourage understanding and uptake of the GPs.

II. Background

In 2005, UN Secretary General Kofi Annan decided it was time to develop clearer standards for business and human rights responsibilities. 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.¹³ 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.”¹⁴ 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 imposing mandatory human rights obligations.¹⁵

Ruggie and his team began the process that ultimately led to the GPs by mapping out the state of play in the realm of business and human rights. The team found that it would not be easy to develop actionable recommendations for several reasons. First, every firm is different, and the human rights that a textile firm may impact, for example labor rights and access to water, may be different from those that an Internet company may impact, for example freedom of speech or privacy rights. The team examined 320 instances of alleged corporate human rights abuse between February 2005 and December 2007. They found that firms not only violated labor rights, but also many other internationally recognized human rights, such as the right to a fair trial, the right to marry and form a family, and the right of peaceful assembly. Moreover, they found that workers constituted only 45% of the persons affected by these abuses; communities were affected in 45% of cases, and end-users in 10%.¹⁶ Second, managers may not be aware that their firms can impact human rights because they may never have had a scandal or seen human rights as creating liability. Third, because the advancement of 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.”¹⁷ Fourth, it would not be easy to hold firms and their affiliates accountable because many multinational corporations operate globally through subsidiaries and indirect suppliers. Many of these firms are incorporated locally and are corporate citizens of the host country. Therefore, these same firms could have thousands of suppliers, which would make

it difficult to hold firms and their affiliates accountable.¹⁸ Indeed, Ruggie's study of corporate human rights abuses found that 41% of alleged abuses occurred through indirect operations, such as through the supply chain.¹⁹ Fifth, firms have different cultures and affinities toward human rights. Those cultures not only reflect leadership from the top, but also the economic and political culture of the host countries.²⁰ This challenge was confirmed in another 2007 study Ruggie conducted, which indicated that the political culture of a firm's home country strongly influenced the rights the firm recognized.²¹ Furthermore, Ruggie had to create an internationally acceptable framework for states to hold their firms accountable for human rights. Although the Universal Declaration of Human Rights (UDHR) calls upon all organs of society to protect and promote human rights, whether civic groups, corporations, or governments, it does not distinguish specific responsibilities for business.²²

Despite these challenges, Ruggie began by trying to map out the landscape of the relationship between business and human rights. He wanted to ascertain what firms were doing as well as what governments were asking their domestic firms to do. Ruggie and his team recognized the complexity of this task, first analyzing options for a business and human rights treaty. He ultimately concluded that there was no appetite for a new human rights treaty amongst UN member states, that such a treaty could take many years to negotiate, and that a treaty may be ineffective, especially due to a lack of impact after ratification, the difficulties of establishing an enforcement mechanism, and conflicting obligations under other international treaties.²³

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. The team conducted their first survey in 2005, which focused on the Fortune Global 500; some 102 executives responded (20 percent).²⁴ Ninety percent 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 40 percent of those polled had a freestanding human rights protocol.²⁵ Most companies focused their codes on the rights of workers, referring to the International Labor Organization (ILO) conventions.²⁶ Almost none of the companies referred to the International Bill of Human Rights, although some referred to the UDHR, the second most frequently cited source of human rights standards after the ILO conventions.²⁷

The respondents showed significant regional variations in human rights practices. For example, Ruggie found, “European multinationals were more likely than their American counterparts to reference the rights to health and to an adequate standard of living. They were also more likely to state that their human rights policies extended beyond the workplace to include their impact on the communities where they operate. U.S. and Japanese firms tended to recognize a narrower spectrum of rights and rights holders. The most widely cited right by Chinese companies at the time... was the right to development, which few Western governments or companies recognize.”²⁸ Thus, how or whether firms protected human rights had a lot to do with the culture and priorities of firms’ home countries.

Finally the survey addressed how these firms were to be held accountable for human rights. Some 75 percent of respondents said they engaged in external reporting. One-third said they routinely conducted human rights impact assessments; and just under half reported that they did so occasionally.²⁹ These findings from the first survey seemed to indicate that businesses who responded were 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.³⁰

The team next examined the human rights policies of a more general sample of 300 firms through a second survey in 2006.³¹ As before, they found most companies include labor rights in their code, but fewer firms recognize non-labor rights, such as the right to privacy.³²

The third survey, administered in 2007, focused on twenty-five Chinese companies. The results showed that Chinese firms recognized fewer rights than European or North American companies, but were “slightly more likely to recognize social and economic rights,” reflecting Chinese government activism related to some rights, such as access to education.³³

With this mapping, Ruggie and his team were able to create a framework that defined the responsibilities of states and business.³⁴ He considered voluntary initiatives, such as corporate social responsibility (CSR) practices, to be “a significant force to build on,” although they “fell short as a stand-alone approach,” as firms were reluctant to integrate CSR activities into core business functions and to provide affected individuals with any means of recourse.³⁵ It was therefore necessary to determine the role of states as well. Ruggie found “little evidence to support the claim that companies have direct human rights obligations under international law.”³⁶ However, companies would be “tried in the court of public opinion” for their failure to respect human rights.³⁷ 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.³⁸

Ruggie’s team conducted eight studies of how governments interpret the state duty to protect against human rights violations. There are over thirty human rights set forth in the UDHR.³⁹ 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).⁴⁰ Together, the

UDHR and the two covenants comprise the International Bill of Human Rights.⁴¹ However, not all states have signed onto both covenants, and that political reality may be reflected in the human rights practices of their national firms.⁴² The ICCPR generally delineates rights that a state may not take away from its citizens, such as freedom of speech or freedom of movement.⁴³ In contrast, the ICESCR generally lists the rights that a state, insofar as it is able, should provide for its citizens, such as basic education or health care.⁴⁴ Thus, under the ICESCR, a state has an active duty to promote some rights, while under the ICCPR, a state is restricted from acting in a manner that jeopardizes or adversely affects other rights.

The team 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.”⁴⁵ The team also discovered that policymakers were confused as to when and how they should protect citizens from corporate human rights abuse as part of the state duty to protect.⁴⁶ 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.⁴⁷

Ruggie concluded that states should take steps to “prevent, investigate, punish and redress” human rights abuses.⁴⁸ In doing so, policymakers will “foster a corporate culture respectful of human rights.”⁴⁹ 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.⁵⁰

By 2008, Ruggie had developed the foundation of his effort: *Protect, Respect and Remedy: A Framework for Business and Human Rights*.⁵¹ 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.⁵² The forty-seven 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.⁵³

This framework declared that firms should have a means of due diligence, which is "the steps a company must take to become aware of, prevent and address adverse human rights impacts."⁵⁴ The framework included four components of due diligence. First, firms should adopt a human rights policy. Second, to determine their potential human rights footprint, firms should conduct impact assessments by taking "proactive steps to understand how existing and proposed activities may affect human rights."⁵⁵ 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 the framework defines as "monitoring and auditing processes" to which "regular updates of human rights impact and performance are crucial."⁵⁶ The framework also stated that a firm's due diligence process should apply to its business partners and suppliers.⁵⁷ In so doing, Ruggie's team had made it clear that firms would be expected to hold their affiliates responsible for human rights.

From 2008-11, Ruggie and his team focused on implementation. On 22 November 2010, he released a draft version of the *Guiding Principles for the Implementation of the United Nations 'Protect, Respect and Remedy' Framework*.⁵⁸ The draft was open for public consultation via an online forum until 31 January 2011.⁵⁹ Ruggie released a final version which incorporated these comments, the *Guiding Principles on Business and Human Rights*, on 21 March 2011.⁶⁰

The forty-seven members of the UNHRC formally approved the GPs by consensus on 16 June 2011.⁶¹

Ruggie stressed that in order to hold firms accountable for their behavior, policymakers, consumers, and other corporate stakeholders should be able to monitor corporate performance.⁶² Hence the framework encouraged firms to report on their human rights impacts 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.”⁶³

Finally, the framework stated that both states and corporations should provide victims and potential victims of human rights abuses with access to remedies through grievance mechanisms.⁶⁴ Grievance mechanisms could either be state-based judicial or non-judicial mechanisms or non-judicial mechanisms administered by a business enterprise alone or with stakeholders, an industry association, or multi-stakeholder group.⁶⁵ The framework also stated that these grievance mechanisms must be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning, while company-provided mechanisms must also be based on engagement and dialogue.⁶⁶

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 found 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.⁶⁷ He updated the list monthly until June 2011 and included an email address to which interested parties could send additional examples.⁶⁸ However, many of the companies supposedly implementing the GPs were in fact simply noting that they existed; and there was

little evidence that these firms were actually altering their policies or business practices. Barclays Bank provides a good example. Although Barclays was supposedly implementing the GPs, as of December 2013, it had not outlined a commitment to conducting systematic human rights impact assessments, and it is still part of an informal group “reviewing the implications” of the GPs for the financial sector.⁶⁹ GE was also highlighted in this report for changing its policy to reflect Ruggie’s guidelines. Yet, as of December 2013 the company’s policy still did not recognize the complete International Bill of Human Rights, the company did not have robust reporting on its human rights and did not publish information on how it had integrated human rights into its operations and whether it had established grievance mechanisms. The company does state that it conducts impact assessments “as appropriate,” but only related to major infrastructure project financing.⁷⁰ Both Barclays and GE are doing more to monitor their human rights footprint, but we can hardly argue that either firm is implementing the GPs.

For the GPs to be successful, policymakers need to make them well-known and well-understood. Ruggie’s team tried: they held forty-one multi-stakeholder meetings on every continent during the six-year mandate.⁷¹ Every document, comment, and meeting report was posted on the website of the Business and Human Rights Resource Centre (BHRRC).⁷² The team also asked for public comments on the GPs, and commentaries could be submitted either by posting on BHRRC or via the online forum from 22 November 2010 to 31 January 2011.⁷³ However, they received only ninety submissions by the deadline.⁷⁴ Moreover, the bulk of the submissions came from academics and activists, rather than executives and policymakers.⁷⁵ We don’t know why executives were so uninvolved, but the failure to encourage firms, NGOs, and in particular governments, to participate in the development of the GPs resonates today.

II. What States Have Done

Throughout most of the period in which the framework and GPs were developed, policymakers were relatively silent about Ruggie's objectives, strategy, and guidelines. In 2006, his team sent a survey to each of the 192 UN member states, but only twenty-nine responded.⁷⁶ Moreover, many of those twenty-nine governments did not respond to all of his questions.⁷⁷ As a result, the survey provided an incomplete picture of the role of states in encouraging firms to respect human rights. But the survey provided a revealing picture of policymakers' ambivalence about prodding firms to respect human rights. The team found that most of the responding governments did very little to monitor the human rights practices of national or host firms or to educate national firms as to their human rights responsibilities.⁷⁸ Most states did little to inform firms of their human rights responsibilities or to coordinate their foreign economic and human rights policies.⁷⁹ Some 30 percent of the states replying did allow the prosecution of firms as legal persons and enabled extraterritorial jurisdiction over human rights violations committed overseas.⁸⁰ For example, Australia, Belgium, Canada, France, the United States, and the United Kingdom allow individuals to sue companies for human rights violations.⁸¹

Ruggie's team also asked policymakers why they found it 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." The team also asked what governments should do to ensure that firms did not undermine human rights. Eleven states responded they should promote CSR, fourteen said states should enforce human rights norms for business, and two states argued that governments should mediate disputes between firms and alleged victims of human rights abuse.⁸² 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.⁸³

As noted above, the GPs make clear that governments have the principal responsibility to

protect against human rights abuse by third parties, including business enterprises. States were thus advised to meet their duty to protect by enforcing existing human rights laws, ensuring policy coherence, providing guidance to firms on how to respect human rights, and encouraging firms to report on their human rights performance. The GPs also advised on how states could use tools such as procurement policies, new legislation and regulation, and denying access to public support to advance business respect for human rights.⁸⁴

In 2011, some states worked multilaterally to reinforce the GPs.⁸⁵ In May, forty-two countries (the thirty-four members of the Organisation for Economic Co-operation and Development (OECD) as well as many other middle income countries) endorsed the revised OECD Guidelines for Multinational Enterprises, which for the first time included human rights language from the GPs.⁸⁶ These guidelines are voluntary recommendations that governments make to their firms; they state that firms should adopt human rights due diligence processes.⁸⁷ The OECD Guidelines also include a new, tougher process for complaints and mediation on human rights issues.⁸⁸

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.”⁸⁹ This 2011 recommendation was developed to provide guidance to firms that rely on conflict minerals, which are minerals mined in situations of conflict and human rights abuse. The recommendation discusses how to identify and reduce use of these conflict minerals to ensure that mineral trade does not encourage human rights abuse or further conflict.⁹⁰

States also began to act within their borders to advance the GPs. In October 2011, the European Commission invited member states to develop by the end of 2012 national action plans

(NAP) for implementing the GPs.⁹¹ Although the EC asked members to submit plans by the end of 2012,⁹² as of December 2013 only one state had published its NAP: the United Kingdom, in September 2013. Spain and the Netherlands had announced plans to publish NAPs by the end of 2013, and Norway (not an EU member state) began drafting a NAP in November 2013.⁹³ The Spanish government released a draft NAP in November 2013, and it was unclear at the time of writing whether the Dutch government finalized a draft.⁹⁴ The EC published sector-specific human rights guidance for employment and recruitment agencies, ICT/telecommunications firms, and oil and gas firms in June 2013. These guidelines provide specific guidance, tailored by sector, for each component of human rights due diligence, including what the GPs expect, why that component is important and how to develop and implement the relevant policies and systems.⁹⁵

The British government has been active in trying to encourage adopting the GPs and other voluntary initiatives. The government partners with other countries, such as Colombia, that seek to implement the GPs. It uses diplomacy to encourage other states to support implementation of the GPs, as well as internationally recognized voluntary standards such as the OECD Guidelines. The UK NAP also approaches this policy issue by sector and ownership, with specific plans for information and communications technology companies, private security service providers and state-owned companies. The plan also includes provisions for fostering wider participation in multistakeholder initiatives, such as the Voluntary Principles on Security and Human Rights.⁹⁶

The United States has also become active in implementing both the GPs and specific U.S.-led initiatives to advance business and human rights. The Department of State has argued that it is in the U.S. national interest to ensure that business respects human rights at home and

abroad, and thus bolsters, rather than undermines U.S. soft power.⁹⁷ Hence the Obama Administration has taken several steps. In July 2012, the U.S. State Department developed reporting requirements for national firms investing in Burma. This new rule forces US firms with operations or suppliers in Burma to report on, amongst other anti-corruption and environmental issues, their due diligence policies and procedures that address operational impacts on human rights and worker rights.⁹⁸ The State Department clarified in September 2013 that these requirements are directly informed by the best practices outlined in the GPs.⁹⁹

The U.S. has also used public-private partnerships to encourage business respect for human rights. For example, the U.S. government has been active in shaping the Public Private Alliance for Responsible Minerals Trade, an initiative “designed to support conflict-free supply chains in the Democratic Republic of the Congo, and promote conflict-free sourcing from within the region.”¹⁰⁰ The US was an early leader on the issue of conflict minerals in corporate supply chains. The 2010 Dodd-Frank Act included a provision for the Securities and Exchange Commission (SEC) to adopt rules requiring companies to disclose the use of conflict minerals where such minerals are necessary to the production or function of the company’s product. The SEC adopted these final rules in August 2012.¹⁰¹

The U.S. government has also been active in public-private partnerships pertaining to the human rights of privacy and freedom of expression. The US helped to create the Freedom Online Coalition, a group of 19 governments engaging with private sector companies and coordinating diplomatic efforts to promote Internet freedom. The government was also involved in creating the Global Network Initiative, which assists technology companies in developing policies and best practices for respecting these human rights.¹⁰²

In sum, several industrialized nations are taking steps to encourage the firms they call home to adopt the GPs. The UK is also trying to encourage other governments to adopt the GPs.

But these governments are few. Moreover, no government has found a way to ensure that all of its firms implement the GPs in all operating contexts. Sector-specific guidelines and regulations for firms investing in high risk jurisdictions could be useful, but such initiatives may not cover the full range of internationally recognized human rights.

III. What Companies Have Done

The global business community's response to the GPs was relatively unenthusiastic. 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 expressed support for the GPs, calling on the UNHRC to endorse them.¹⁰³ They did not however, explicitly call on member firms to adopt them.

Moreover, most firms 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."¹⁰⁴ 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." BASF called for greater clarity regarding "the effective limits of this extended scope for human rights diligence."¹⁰⁵

Executives from a few firms expressed more enthusiastic support. Susanne Stormer, Vice President of Global Triple Bottom Line Management at Novo Nordisk, stated, "We welcome the guidelines."¹⁰⁶ 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 GPs at its forthcoming session in June, helping to establish them as the authoritative reference point for states, companies and civil society.”¹⁰⁷ Sime Darby, a Malaysian firm, also expressed its support for the framework and GPs.¹⁰⁸

Many of the more supportive firms had been seeking clarity on the human rights responsibilities of business. These firms wanted to avoid business risk in the future and to ensure fair practices by their competitors. According to Novo Nordisk, “[C]ommon standards for business would help to provide a level playing field and prevent human rights violations.”¹⁰⁹ Likewise, BP called the framework “a unique chance to lay to rest a long-standing international debate about whether mandatory norms are required.”¹¹⁰ BP asserted that common standards will “help to clarify some of the more challenging human rights issues businesses face.”¹¹¹ The firm also claimed that in 2012 it developed an action plan to implement the GPs, although it was not clear as of December 2013 whether this plan had been integrated into the firm’s operations.¹¹²

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

Although a growing number of executives acknowledge human rights responsibilities, most executives at the bulk of the world’s firms do not. In Ruggie’s studies at the onset of his mandate, he received responses from only 102 of the Fortune Global 500 firms regarding their human rights policies. In May 2011, the BHRRC listed 275 companies that had explicit policies on human rights; these 275 companies formed the basis for our initial study on corporate uptake

the framework and GPs.¹¹³ As of December 2013, that number had increased to 323.¹¹⁴

We took a closer look at the 323 companies with human rights policies to obtain a fuller understanding of what firms are doing and where.¹¹⁵ The BHRRC list does not include all companies with strong human rights records, because such companies may not have formal policies or made such policies public.¹¹⁶ Hence this list, like Ruggie's surveys, is incomplete. Nonetheless, we chose to use this list as the basis of our study as it is the most complete list available, and some firms note their inclusion in the list in their CSR reporting. Moreover, having a policy is the primary component of a due diligence process according to the GPs and is the basis for integrating respect for human rights into corporate operations.

In the nearly three years that have passed since the GPs were approved by the UNHRC, only 48 companies have been added to this list of firms that have human rights policies. Although this represents an increase of 17.45%, the 323 firms listed account for just 0.40% of all 80,000 multinational corporations. Additionally, while each of these 323 firms has a policy, most of them do not meet the minimum criteria of Ruggie's framework for the GPs, which is a publicly available human rights policy that is approved at the most senior level of the business enterprise, is informed by internal and external expertise, stipulates the enterprise's human rights expectations of personal and business partners, is communicated internally and externally to all personnel and business partners, and is reflected in operational policies and procedures necessary to embed it throughout the enterprise.¹¹⁷ It is difficult to quantify the policies that meet these criteria, as firms do not consistently report on the extent to which they communicate human rights policies to staff and the level at which the policy has been approved. Moreover, many companies with human rights policies do not address the full range of human rights covered 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 determining their human rights responsibilities.¹¹⁸ While in our original study we found that only eight companies acknowledged the complete International Bill and the five ILO core conventions, we also found that it was common for companies to selectively implement aspects of these standards, such as the Universal Declaration of Human Rights and some of the five ILO conventions.

It is important to note the significant variation we have found based on the state in which each company is incorporated. Of the 323 firms with human rights policies, 192 (59.44%) are incorporated in Europe, with 172 (53.25%) in EU member states. British companies are by far the most heavily represented, with 59 firms having human rights policies – 18.27% of the total and 30.73% of the total in Europe. The list also includes 30 Swedish firms, 20 French firms, 18 German firms, 13 Dutch firms and 11 Spanish and Swiss firms. North American (defined as Canada and the United States) firms comprised 20.74% of the total, with 67 firms represented. Of these, 58 (17.96% of the total) are incorporated in the United States. Just 7 firms on the list are incorporated in Australia, 7 in Sub-Saharan Africa, 5 in the Middle East-North Africa, 10 in Latin America, and 35 in Asia (28 of which are Japanese).

We believe that country trends are the most pronounced in our study and clearly support our thesis that governments must encourage firms to implement the GPs in order for the guidelines to have an impact. Although it is difficult to establish a direct causal relationship between state implementation of the GPs and corporate uptake of human rights policies, it is clear that these firms’ self-regulatory actions reflect national policy agendas. The UK and the EU in general are disproportionately represented on this list, and both governing bodies have made the GPs a policy priority. This confirms Ruggie’s earlier findings that European firms are more likely to respect human rights than North American firms, while firms in developing countries

and countries that do not make human rights a priority are less likely to acknowledge their human rights responsibilities.

VI. Going Forward: Human Rights Council Follow-up

Ruggie asked the UN Human Rights Council to develop a “follow-up mechanism” to his mandate. In 2011, the Council set up the UN Working Group on Business and Human Rights consisting of five independent experts. The Working Group was given three years to ‘provide advice and recommendations regarding developing domestic legislation and policies relating to business and human rights’; ‘to conduct country visits and to respond promptly to invitations from States’; ‘to integrate a gender perspective throughout the work of the mandate and to give special attention to persons living in vulnerable situations, in particular children’; and ‘to develop a regular dialogue and discuss possible areas of cooperation with Governments and all relevant actors, including relevant United Nations bodies, specialized agencies, funds and programmes...’.¹¹⁹ Throughout 2012, the Working Group held a series of meetings designed to stimulate international policy convergence.¹²⁰

It is not clear whether governments are serious about engaging with this initiative to foster corporate respect for human rights. The Working Group issued a call for recommendations from states, NGOs, corporations, and other stakeholders on 4 November 2011.¹²¹ They only received responses from fourteen firms and thirteen governments: Colombia, Costa Rica, France, Guatemala, Iraq, Japan, Norway, Oman, Russia, Sweden, Switzerland, United Kingdom, and Uruguay, as well as the European Union.¹²² While no respondent expressed hostility to the Working Group or its mission, most states did not specifically call for guidance on regulatory policies. Only Sweden and the UK made such a request, and as noted above, this was included in

the UK's NAP. Sweden said that priority focus areas of the Working Group should include providing, "advice and recommendations regarding the development of domestic legislation and policies relating to business and human rights."¹²³ The UK called for work on Principle 3 "in order to assist states in their efforts to regulate the activities of businesses operating in their territory."¹²⁴ Thus the response from governments remains limited and shows that policymakers are not ready yet to bolster the GPs with clear regulation.

The Working Group hopes to encourage business leaders and policymakers to include the Guiding Principles in existing international initiatives.¹²⁵ For example, the group collaborated with the OECD to launch a Global Forum on Responsible Business Conduct in 2013 to support dialogue between non-OECD and OECD countries to ‘promote greater convergence both in standards regarding how businesses should understand and address the risks of their operations, and in understanding how Governments should support and promote responsible business practices’.¹²⁶ In addition, the Working Group identified regional organizations as ‘key multipliers in dissemination efforts’ and were planning to engage with the African Union and the African Commission on Human and Peoples’ Rights.¹²⁷ Despite this progress, the Working Group has admitted, ‘awareness in most industry sectors remains low’, and ‘there is an overwhelming lack of awareness of the Guiding Principles among stakeholders globally, particularly business, and especially small and medium-sized enterprises.’¹²⁸ We believe that this persistent ignorance from business stems from a lack of education from governments.

IV. Conclusion

The Guiding Principles represent a governance innovation: they are a transparent, multi-sectoral effort to clarify the human rights responsibilities of business. The GPs encourage firms to move beyond apologies towards positive actionable steps. In doing so, the GPs are righting business. However, governments and corporations have thus far taken little initiative to implement the GPs.

Readers may wonder why so few firms are implementing the GPs or adopting human rights policies. First, human rights are relatively new on the business agenda. Second,

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 the costs of adhering to human rights and could use their support of human rights as a marketing and public relations tool. Unfortunately, early adopters 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. Third, implementing the GPs will be expensive and time consuming. Many executives are still unconvinced they need to do more than they are already doing.

However, herein we put most of the blame on governments. We argue that most states have not made implementing the GPs a policy priority. It is evident that firms' respect for human rights is more prevalent when business and human rights is higher on a national policy agenda. The few states that have created actionable plans for implementing components of the GPs also see higher numbers of domestic firms adopting human rights policies. Until governments provide the incentive for executives to act, uptake of the GPs will continue to be minimal.

If policymakers want to be supportive of the GPs, they should take several steps to encourage business implementation. First, policymakers must educate their national 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 behavior of their suppliers.

Governments, such as the U.S., South Africa and Malaysia, that have not ratified all components of the International Bill of Human Rights, will need to decide if they will selectively encourage implementation the GPs.¹²⁹ U.S. officials, as an example, may find it difficult to encourage U.S. 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. Second, 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 messages, policymakers should find ways to foster greater understanding. Additionally, they should develop a regular channel for human rights concerns to enter into the policymaking process. The U.S. and the EU already examine the labor and environmental impacts of their trade agreements; they and other countries could broaden that analysis to include other human rights.¹³⁰ Such reforms may slow policy, but over time state policy will become more coherent.

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.¹³¹ However, if only a few firms from some countries implement the GPs, these guidelines will have minimal impact.

In our earlier study, we noted two key gaps in the GPs: they do not discuss the important role of business in paying taxes and in so doing, being good corporate citizens; and Ruggie never received a mandate to build a public case for business to respect human rights.¹³² In an influential article published in 1982, Ruggie argued that many industrialized countries found a compromise to make globalization acceptable, which became known as embedded liberalism.¹³³ 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. In recent years, however, embedded liberalism has been under threat by corporations and policymakers. First, corporations have signaled less willingness to accept this grand bargain. Executives recognize that they can move to lower tax venues or shelter income.¹³⁴ They have directly and indirectly pressured government officials to keep taxes and

budgets low. Many industrialized states have gradually lowered their taxes on multinational corporations. Policymakers recognize that they can't maintain jobs if they don't entice business to invest.¹³⁵ Secondly, these same officials are under pressure to reduce government spending to bring deficits under control. But these cuts often hurt the poor and needy, who benefit from subsidies, such as as healthcare and education.¹³⁶

The GPs say nothing about the political responsibilities of business to pay taxes to ensure that citizens have access to affordable healthcare, education, water, etc., which are basic human rights according to the International Bill of Human Rights.¹³⁷ We therefore argued that the corporate responsibility to pay taxes, which essentially are investments in public goods, is a key, albeit missing, element of the GPs. As of December 2013, we still have not found evidence of governments addressing these issues from a human rights perspective, nor has the Working Group provided any clear guidance on this front.

Additionally, 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 GPs, they should begin by explaining to the public why these principles are necessary, useful, and in the public interest. The Working Group has tried to market the GPs to more people around the world, but the principles remain relatively unknown, unappreciated, and underachieving.

Endnotes

1 Susan Ariel Aaronson is Research Professor of International Affairs at George Washington University. She is the author of six books and numerous articles on trade, human rights, corruption, and development. Her current research examines the effects of government use of malware on human rights and trust, and the relationship between repression, leadership tenure, and socio-economic conditions. Ian Higham is a research analyst at EIRIS, where he focuses on the environmental, social and governance performance of publicly traded US companies and analyzes how companies with Sudan-related operations are implementing the Guiding Principles. An earlier version of this chapter appeared in *Human Rights Quarterly* 36 (2013) 333-364.

2 Maïa de la Baume, *French Railway Formally Apologizes to Holocaust Victims*, N.Y. TIMES, 25 Jan. 2011, available at http://www.nytimes.com/2011/01/26/world/europe/26france.html?_r=1&ref=nazihunting.

3 *Id.* ¶ 5.

4 Salil Tripathi, *How Should Internet and Phone Companies Respond in Egypt?*, Institute for Human Rights and Business Commentary, 4 Feb. 2011, available at http://www.institutehrb.org/blogs/staff/internet_providers_in_egypt.html.

5 *Id.* ¶ 21. 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).

6 Vodafone said it was unwilling to let these text messages to be sent in Vodafone's name, and limited its circulation. Press Release, Vodafone, Vodafone Group Plc—Response on Issues Relating to Mobile Network Operations in Egypt (22 Feb. 2011) available at <http://www.business-humanrights.org/media/documents/vodafone-statement-re-egypt-22-feb-2011.pdf>; Raphael Satter, *Vodafone: Egypt forced us to send text messages*, 3 Feb. 2011, available at http://www.salon.com/news/feature/2011/02/03/egypt_vodafone_text_messages.

7 See Tripathi, *supra* note 3; see also Satter, *supra* note 5.

8 See AARON BERNSTEIN, INCORPORATING LABOR AND HUMAN RIGHTS RISK INTO INVESTMENT DECISIONS, OCCASIONAL PAPER NO. 2 (Capital Matters, Harvard Law School), Sept. 2008, at 2, available at http://www.law.harvard.edu/programs/lwp/pensions/publications/occpapers/occasional_paper2.pdf.

9 Mark B. Taylor, et al., *Due Diligence for Human Rights: A Risk-Based Approach*, 6-7 (Harvard Corporate Social Responsibility Initiative, Working Paper No. 53, 2009), available at http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_53_taylor_et.al.pdf.

10 See, e.g. Special Representative of the United Nations Secretary-General for Business & Human Rights, Public Consultation on Draft U.N. Guiding Principles for Business and Human Rights Attracts Input From 120 Countries, 2 Feb. 2011, available at <http://www.business-humanrights.org/media/documents/ruggie/public-consultation-on-guiding-principles-press-release-2-feb-2011.pdf> *supra*.

11 U.N. Doc. A/HRC/17/31, at 7.

12 *Id.*, at 7-12.

13 Ruggie, who is one of the world's leading scholars of globalization, had worked closely with Annan as Assistant Secretary-General for Strategic Planning from 1997-2001. See John Ruggie, Harvard University, available at <http://www.hks.harvard.edu/about/faculty-staff-directory/john-ruggie>.

14 Examination of Witnesses, Human Rights Joint Committee, UK Parliament, 20 June 2009, available at <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/5/9063002.htm>.

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. See *Norms in the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003), available at, <http://www1.umn.edu/humanrts/links/norms-Aug2003.html>. On view of norms as a train wreck, see Examination of Witnesses, *supra* note 23. On business rejection of the norms, see David Bilchitz, *The Ruggie Framework: An Adequate Rubric for Corporate Human Rights Obligations?*, 12 SUR J. (2012), available at http://www.surjournal.org/eng/conteudos/getArtigo12.php?artigo=12.artigo_10.htm; See e.g., Hewlett-Packard Global Human Rights Policy, available at <http://www.hp.com/hpinfo/globalcitizenship/humanrights.html>

16 John Ruggie, *Just Business*, (New York: W.W. Norton & Company Inc., 2013), at 19-24.

17 John Ruggie, Special Representative of the Secretary-General, *Human Rights Policies and Management Practices: Results from questionnaire surveys of Governments and Fortune Global 500 firms*, Hum. Rts. Council, ¶ 65 U.N. Doc. A/HRC/4/35/Add.3 (2007).

18 See 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*, 59 J. BUS. ETHICS 175, 178 (2005); John D. McKinnon and Scott Thurm, *U.S. Firms Move Abroad to Cut Taxes*, WALL ST. J., 28 Aug. 2012, available at <http://online.wsj.com/article/SB10000872396390444230504577615232602107536.html>.

19 Ruggie, *Just Business*, at 27.

20 Aaronson, *Minding our Business*, *supra* note 24, at 175-76.

21 Ruggie, *Just Business*, at 73.

22 UDHR, adopted 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess, arts. 1, 11, U.N. Doc. A/RES/3/217A (1948).

23 Ruggie, *Just Business*, at 55-68.

24 U.N. Doc. A/HRC/4/35/Add.3, *supra* note 25, ¶ 68.

25 *Id.* ¶¶ 72-74.

26 These conventions, sometimes called the “fundamental” ILO conventions, include the Freedom of Association and Protection of the Right to Organise Convention (1948), the Right to Organise and Collective Bargaining Convention (1949), the Forced Labour Convention (1930), the Abolition of Forced Labour Convention (1957), the Minimum Age Convention (1973), the Worst Forms of Child Labour Convention (1999), the Equal Remuneration Convention (1951), and the Discrimination (Employment and Occupation) Convention (1958). See, <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

27 U.N. Doc. A/HRC/4/35/Add.3, *supra* note 25, at 3; UDHR, *supra* note 28; and Ruggie, *Just Business*, at 12.

28 Ruggie, *Just Business*, at 73.

29 U.N. Doc. A/HRC/4/35/Add.3, *supra* note 25, at 5W.

30 *Id.* ¶ 67-70.

31 MICHAEL WRIGHT & AMY LEHR, BUSINESS RECOGNITION OF HUMAN RIGHTS: GLOBAL PATTERNS, REGIONAL AND SECTORAL VARIATIONS ii (2006) [hereinafter BUSINESS RECOGNITION OF HUMAN RIGHTS], available at <http://www.reports-and-materials.org/Business-Recognition-of-Human-Rights-12-Dec-2006.pdf>.

32 *Id.* at ii, 30, 36-37.

33 Human Rights Policies of Chinese Companies: Results from a Survey, September 2007, *available at* <http://www.business-humanrights.org/Documents/Ruggie-China-survey-Sep-2007.pdf> at 1.

34 John Ruggie, Prepared Remarks at Clifford Chance 2 (19 Feb. 2007), *available at* <http://www.reports-and-materials.org/Ruggie-remarks-Clifford-Chance-19-Feb-2007.pdf>.

35 Ruggie, *Just Business*, at 76.

36 Ruggie, Prepared Remarks at Clifford Chance 2, at 4.

37 *Id.*

38 *Id.* at 2.

39 UDHR, *supra* note 28.

40 ICCPR, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976); ICESCR, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976).

41 U.N. Doc. A/HRC/17/31 *supra* note 9 at ¶ 12 ; UDHR, *supra* note 28.

42 U.N. Treaty Collection, Status of Ratification: International Covenant on Civil and Political Rights, *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en; U.N. Treaty Collection, Status of Ratification: International Covenant on Social, Economic, and Cultural Rights, *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en.

43 ICCPR, *supra* note 37, arts. 19, 12.

44 ICESCR, *supra* note 37, arts. 10, 12.

45 Ruggie, Prepared Remarks at Clifford Chance 2, at 6.

46 *Id.* at 6.

47 Ruggie, Prepared Remarks at Clifford Chance, *supra* note 54, at 6.

48 U.N. Doc. A/HRC/17/31, *supra* note 9, at 6.

49 U.N. Doc. A/HRC/8/5, *supra* note 10, ¶27.

50 U.N. Doc. A/HRC/17/31, *supra* note 9, at 8.

51 Ruggie initially only had a two 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. *See* John Ruggie, Special Representative of the Secretary-General, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, Hum. Rts. Council, ¶ 5, U.N. Doc. A/HRC/17/31 (2011).

52 John Ruggie, Special Representative of the Secretary-General, *Protect, Respect and Remedy: A Framework for Business*

and Human Rights, Hum. Rts. Council, ¶ 9, U.N. Doc. A/HRC/8/5 (2008).

53 John Ruggie, Special Representative of the Secretary-General, *Promotion of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Business and Human Rights: Towards Operationalizing the “Protect, Respect and Remedy” Framework, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, Hum. Rts. Council, ¶ 1, U.N. Doc. A/HRC/11/13 (2009).

54 U.N. Doc. A/HRC/8/5, *supra* note 10, ¶ 56.

55 *Id.* ¶ 61.

56 *Id.* ¶ 63.

57 *Id.*, ¶ 63.

58 John Ruggie, Special Representative of the Secretary-General, *Guiding Principles for the Implementation of the United Nations “Protect, Respect and Remedy” Framework* (Draft), 22 Nov. 2010, available at <http://www.reports-and-materials.org/Ruggie-UN-draft-Guiding-Principles-22-Nov-2010.pdf>.

59 *Id.*

60 U.N. Doc. A/HRC/17/31, *supra* note 9.

61 Press Release, Office of the High Commissioner for Human Rights, *New Guiding Principles on Business and Human Rights Endorsed by the UN Human Rights Council* (16 June 2011), available at <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-endorsed-16-jun-2011.pdf>.

62 U.N. Doc. A/HRC/17/31, *supra* note 9, at 19.

63 *Id.* at 20

64 *Id.*

65 *Id.* at 24.

66 *Id.* at 26.

67 Special Representative of the Secretary-General for Business & Human Rights, *APPLICATIONS OF THE UN “PROTECT, RESPECT AND REMEDY” FRAMEWORK*, 30 JUNE 2011, AVAILABLE AT [HTTP://WWW.BUSINESS-HUMANRIGHTS.ORG/MEDIA/DOCUMENTS/APPLICATIONS-OF-FRAMEWORK-JUN-2011.PDF](http://WWW.BUSINESS-HUMANRIGHTS.ORG/MEDIA/DOCUMENTS/APPLICATIONS-OF-FRAMEWORK-JUN-2011.PDF).

68 *Id.*

69 Barclays, “Human rights,” available at <http://group.barclays.com/about-barclays/citizenship/human-rights>.

70 GE, “Human Rights,” available at <http://www.gecitizenship.com/human-rights/>.

71 See Business & Human Rights Resource Centre, *Consultation, meetings & workshops*, available at <http://www.business-humanrights.org/SpecialRepPortal/Home/Consultationsmeetingsworkshops>.

72 See BHRRC, UN Secretary-General's Special Representative on business & human rights, *available at* <http://www.business-humanrights.org/SpecialRepPortal/Home>.

73 Special Representative of the United Nations Secretary-General for Business & Human Rights, Public Consultation on Draft U.N. Guiding Principles for Business and Human Rights Attracts Input From 120 Countries, 2 Feb. 2011, *available at* <http://www.business-humanrights.org/media/documents/ruggie/public-consultation-on-guiding-principles-press-release-2-feb-2011.pdf>.

74 *Id.*

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

76 U.N. Doc. A/HRC/4/35/Add.3, *supra* note 25, ¶ 8.

77 *Id.*, ¶¶ 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 UK. Interestingly 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 multinational corporations.

78 *Id.* ¶¶ 61-64.

79 *Id.* ¶¶ 45-53.

80 *Id.* ¶ 35.

81 *Id.* ¶¶ 35-39; Susan Ariel Aaronson, *Courting International Business: What Are the Human Rights Obligations of Global Capitalism*, INT'L ECONOMY, Spring 2003, at 63.

U.N. Doc. A/HRC/4/35/Add.3, *supra* note 25, ¶ 54.

82 *Id.* ¶¶ 55-56.

83 SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON THE ISSUE OF HUMAN RIGHTS AND TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES, CORPORATE LAW PROJECT, OVERARCHING TRENDS AND OBSERVATIONS 1 (July 2010), *available at* <http://www.reports-and-materials.org/Ruggie-corporate-law-project-Jul-2010.pdf>.

84 *Id.*, at 7-12.

85 Applications of the U.N. "Protect, Respect and Remedy" Framework, BHRRC, 4 Apr. 2011, *available at* <http://www.business-humanrights.org/media/documents/ruggie/applications-of-framework-4-apr-2011.pdf>.

86 *Id.* at 11

87 *Id.* at 10

88 Press Release, OECD, New OECD Guidelines to Protect Human Rights and Social Development (25 May 2011), *available at* http://www.oecd.org/document/19/0,3746,en_21571361_44315115_48029523_1_1_1_1,00.html

89 OECD, OECD due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, *available at* http://www.oecd.org/document/36/0,3343,en_2649_34889_44307940_1_1_1_34529562,00.html

90 OECD, OECD due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, *available at* <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/GuidanceEdition2.pdf>

91 A Renewed EU strategy 2011-14 for Corporate Social Responsibility, 25 Oct. 2011, *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>.

92 Andreas Graf, Developing National Action Plans on Business and Human Rights, Swiss Peace, at 6, *available at* http://www.business-humanrights.org/media/documents/essential_4_2013_%281%29.pdf.

93 *Id.* at 6.

94 BHRRC, *Implementation by governments, tools and examples: National Action Plans*, *available at* <http://www.business-humanrights.org/UNGuidingPrinciplesPortal/ToolsHub/Governments/TypeInitiative/natlactionplans>.

95 European Commission, ‘European Commission publishes human rights guidance for 3 business sectors, 17 June 2013, *available at* http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=6711.

96 Her Majesty’s Government of the United Kingdom, ‘Good Business: Implementing the UN Guiding Principles on Business and Human Rights,’ September 2013, *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf.

97 *See*, United States Department of State, “U.S. Government Approach on Business and Human Rights: 2013,” 1 May 2013, *available at* <http://www.humanrights.gov/2013/05/01/u-s-government-approach-on-business-and-human-rights/>.

98 Reporting Requirements on Responsible Investment in Burma, *available at* <http://www.humanrights.gov/wp-content/uploads/2012/07/Burma-Responsible-Investment-Reporting-Reqs.pdf>

99 United States Department of State, ‘Responsible Investment Reporting Requirements Frequently Asked Questions,’ 23 Sept. 2013, *available at* <http://www.humanrights.gov/2013/09/23/responsible-investment-reporting-requirements-frequently-asked-questions/>.

100 *Id.*

101 *Id.*

102 *Id.* and Global Network Initiative, *available at* <http://globalnetworkinitiative.org/>.

103 Joint Statement on Business & Human Rights to the United Nations Human Rights Council, BHRRC, 30 May 2011, *available at* http://www.business-humanrights.org/media/documents/ioe-icc-biac-submission-to_the-un-hrc-may-2011.pdf.

104 Joe Cyr, Talisman Energy’s Comments, 1.

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

105 BASF Comments: Draft Guiding Principles for the Implementation of the United Nations “Protect, Respect and

Remedy” Framework, BASF 2, 21 Jan. 2011, *available at* <http://www.business-humanrights.org/media/documents/ruggie/basf-comments-re-draft-guiding-principles-21-jan-2011.pdf>.

106 Press Release, CSRwire, Novo Nordisk Welcomes New Guidelines on Human Rights, 10 Dec. 2010, *available at* http://www.csrwire.com/press_releases/31280-Novo-Nordisk-welcomes-new-guidelines-on-human-rights.

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

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

109 Novo Nordisk, Human Rights, *available at* http://www.novonordisk.com/sustainability/sustainability-approach/human_rights.asp.

110 BP, BP and the UN Guiding Principles, *available at* <http://www.bp.com/sectiongenericarticle800.do?categoryId=9040224&contentId=7073403>.

111 *Id.*

112 BP, Human Rights, *available at* <http://www.bp.com/en/global/corporate/sustainability/society/human-rights.html>.

113 Susan Ariel Aaronson and Ian Higham, “Re-righting Business: John Ruggie and the Struggle to Develop International Human Rights Standards for Transnational Firms,” *Human Rights Quarterly*, 35:2 (May 2013): 264-333.

114 BHRRC, *Company Policy Statements on Human Rights*, *available at* <http://www.business-humanrights.org/Documents/Policies>. All of the human rights policies on this list were surveyed when looking for certain criteria and documenting the findings.

115 Susan Ariel Aaronson is an advisor to BHRRC.

116 The site does not include companies that supported the GPs such as Sime Darby; those that road tested the grievance mechanisms such as Sakhalin, or firms with a strong commitment to human rights such as PVH 2010. PVH, Corporate Social Responsibility Report, *available at* <http://www.pvhcsr.com/csr2010/Default.aspx>; *see also* Yahoo! Business & Human Rights Program, Business & Human Rights at Yahoo!, *available at* <http://www.yhumanrightsblog.com/>. Moreover, the list excludes companies that are signatory to the United Nations Global Compact or that adhere to other international standards but have not developed stand-alone human rights policies.

117 U.N. Doc. A/HRC/17/31, *supra* note 9, at 15.

118 U.N. Doc. A/HRC/8/5, *supra* note 10, ¶ 58.

119 A/HRC/RES/17/4, < <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/144/71/PDF/G1114471.pdf?OpenElement>>.

120 A/HRC/WG.12/2/1, < http://www.ohchr.org/Documents/Issues/Business/A-HRC-WG-12-2-1_en.pdf>. para. 3.

121 Submissions to Working Group, United Nations Human Rights Council, *available at* <http://www.ohchr.org/EN/Issues/Business/Pages/Submissions.aspx>.

122 *Id.* at 1.

123 Submission to Working Group, Ministry for Foreign Affairs of Sweden, *available at* <http://www.ohchr.org/Documents/Issues/TransCorporations/Submissions/States/Sweden.pdf>.

124 Submission on Behalf of the Government of the United Kingdom of Great Britain and Northern Ireland, *available at* <http://www.ohchr.org/Documents/Issues/TransCorporations/Submissions/States/UnitedKingdom.pdf>.

125 A/67/285, < <http://www.business-humanrights.org/media/documents/un-working-group/un-working-group-business-human-rights-report-to-gen-assembly-10-aug-2012.pdf>> para. 15.

126 *Id.* para. 22.

127 *Id.* para. 33.

128 *Id.* para. 4-5.

129 UDHR, *supra* note 28; ICCPR, *supra* note 37; ICESCR, *supra* note 37.

130 See Susan Ariel Aaronson, *Human Rights, in* PREFERENTIAL TRADE AGREEMENT POLICIES FOR DEVELOPMENT: A HANDBOOK, 447 (Jean-Pierre Chauffour & Jean-Christophe Maur eds, The World Bank 2011), *available at* http://publications.worldbank.org/index.php?main_page=product_info&cPath=1&products_id=24014. http://issuu.com/world.bank.publications/docs/9780821386439_part2?mode=embed&layout=http://skin.issuu.com/v/light/layout.xml&showFlipBtn=true.

131 UN Office of the High Commissioner for Human Rights, Council Holds Dialogue with Experts on Summary Executions, Independence of Judges and Lawyers, Transnational Corporations, *available at* <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11082&LangID=E>.

132 Higham and Aaronson, 2013.

133 This article was published when Ruggie was an Associate Professor of Political Science at Columbia University. John Gerard Ruggie, *International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order*, 36 *Int'l Org.* 379, 390 (1982); *THEORY AND STRUCTURE IN INTERNATIONAL POLITICAL ECONOMY* (Charles Lipson & Benjamin J. Cohen eds., 1999); *INTERNATIONAL POLITICAL ECONOMY* (Benjamin J. Cohen ed., forthcoming).

134 U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-08-950, REPORT TO THE COMMITTEE ON FINANCE, U.S. SENATE: U.S. MULTINATIONAL CORPORATIONS: EFFECTIVE TAX RATES ARE CORRELATED WITH WHERE INCOME IS REPORTED (12 Aug. 2008), *available at* <http://www.gao.gov/products/GAO-08-950>; U.S. GENERAL ACCOUNTING OFFICE, PAD-78-58, REPORT TO THE CONGRESS: U.S. FOREIGN RELATIONS AND MULTINATIONAL CORPORATIONS: WHAT'S THE CONNECTION?, 2 (3 Aug. 1978), *available at* <http://www.gao.gov/assets/130/123830.pdf>; Andre Dammert & Scott A. Hodge, *U.S. Lags While Competitors Accelerate Corporate Income Tax Reform, Fiscal Fact No. 184* (Tax Foundation, ed. 2009), *available at* <http://taxfoundation.org/article/us-lags-while-competitors-accelerate-corporate-income-tax-reform>; Michael P. Devereux et al, *Do Countries Compete over Corporate Tax Rates*, 92 *J. PUB. ECON.* 1210, 1231 (2008).

135 “The US effective tax rate is now is now substantially higher than the average tax rate among member countries of the Organization for Economic Cooperation and Development.” Tax Policy Center: Urban Institute and Brookings Institution, *How Does the Current System of International Taxation Work?*, *available at* <http://www.taxpolicycenter.org/briefing-book/key-elements/international/international-work.cfm>; “US 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.” *The Multinational Tax Advantage*, BLOOMBERG BUSINESS WEEK, *available at*, http://www.businessweek.com/magazine/content/11_05/b4213031803349.htm; Larry Elliott, Global Unemployment has Reached Dangerous Levels, ILO Report Shows, GUARDIAN—POVERTY MATTERS BLOG, 25 Jan. 2010, *available at* <http://www.guardian.co.uk/global-development/poverty-matters/2011/jan/25/ilo-high-unemployment-young-global->

recession.

136 Gavin Hewett, *Europe's Shrinking Public Sector*, BBC NEWS, 1 Oct. 2010, available at http://www.bbc.co.uk/blogs/thereporters/gavinhewitt/2010/10/europes_shrinking_public_secto.html; *Anti-Austerity Protests Across Europe*, BBC NEWS, 29 Sept. 2010, available at <http://www.bbc.co.uk/news/world-europe-11439084>; *Greece Protestor: "We Need to Leave the Euro Now"*, BBC NEWS, 19 June 2011, available at <http://www.bbc.co.uk/news/world-europe-13832840>; Jesse Drucker, *Biggest Tax Avoiders Win Most Gaming \$1 Trillion US Tax Break*, BLOOMBERG BUSINESS WEEK, 28 June 2011, available at <http://www.bloomberg.com/news/2011-06-28/biggest-tax-avoiders-win-most-gaming-1-trillion-u-s-tax-break.html>.

137 UDHR, *supra* note 28; ICCPR, *supra* note 37; ICESCR, *supra* note 37.