The Reality of the United Nations Guiding Principles on Business and Human Rights

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1. INTRODUCTION

In June 2011 when the United Nations Human Rights Council (‘the Council’) adopted Resolution 17/4,1 it acknowledged the formal end of the successful mandate of John Ruggie as the Special Representative of the Secretary-General (SRSG) on Human Rights and Transnational Corporations and Other Business Enterprises. The Council was glowing in its appreciation of the contribution of the SRSG2 and the activities undertaken in the fulfilment of his mandate.3 The Council also endorsed the UN Guiding Principles on Business and Human Rights (GPs),4 which had been drafted by Ruggie,5 thereby affirming an important commitment to address the

2 Ibid. para 1.
3 Ibid. para 2.
human rights impacts of business. The GPs are the latest in a series of UN responses to this issue. This article assesses the steps being taken to transform the ideals embodied in the GPs into daily practice.

2. THE UN GUIDING PRINCIPLES

The thirty-one GPs, with commentaries, elaborate on methods to operationalise the three pillars proposed by Ruggie in 2008 in the Protect, Respect, Remedy Framework (‘PRR Framework’) and subsequently accepted by the Council. Under Pillar I, on the duty of the State to protect against human rights abuse by third parties, the GPs emphasise the importance of the steps to be taken by States in terms of effective policies, legislation and regulations to prevent, investigate, punish and redress human rights abuses. This duty provides an opportunity for States to set out their expectations to all business enterprises domiciled within their jurisdiction to respect human rights in their operations. Other important operational indicators of the State’s duty to protect human rights include the need for policy coherence (both horizontal and vertical) and the need for extra vigilance in the regulation of business in conflict-affected areas or when there is a State-business nexus.

Under Pillar II, the corporate responsibility to respect human rights, the GPs not only emphasise the need to avoid infringing the human rights of others, but also require that business enterprises know that they do this and show how they do this. The ‘knowing and showing’ principle is operationalised through the conduct of human rights due diligence by business enterprises and the communication of outcomes of such due diligence policies. The corporate responsibility to respect human rights covers both direct and indirect impacts, that is to say, impacts that are linked to the enterprise’s operations, products, services or through their business relationships ‘even if they have not contributed to those impacts’.

6 HRC Res 17/4, supra n 1 at para 1.
9 Principle 1 GPs.
10 Principle 2 GPs.
11 Principle 8 GPs.
12 Principle 7 GPs.
13 Principle 4 GPs.
14 Principle 11 GPs.
15 Principles 15–20 GPs.
16 Principle 21 GPs.
17 Principle 13 GPs.
Finally, the GPs under Pillar III - access to remedies - emphasise the need for an integrated application of different redress mechanisms including formal judicial, administrative and non-judicial processes alongside corporate grievance mechanisms. The GPs set out important criteria by which to determine the effectiveness of non-judicial grievance mechanisms. These include legitimacy, accessibility, predictability, transparency and human rights compatibility. In addition, for operational-level grievance mechanisms, the GPs recommend engagement and dialogue with stakeholder groups as especially necessary.

The GPs include a number of important features aimed at the avoidance, mitigation and ultimate elimination of adverse human rights impacts of corporate activity. First, they aim to reflect a common understanding of existing standards between stakeholders as distilled from many multi-stakeholder consultations over many years. During his mandate, Ruggie was at pains to assure all stakeholders that the PRR Framework and the GPs do not create new normative standards but rather elaborate ‘the implications of existing standards and practices that are integrated within a single, logically coherent and comprehensive template; and identifying [sic] where the current regime falls short and how it should be improved’. Secondly, the GPs propose a cooperative and integrative approach to the reconciliation of competing stakeholder claims. In this respect, the GPs recognise the contribution of every stakeholder to the effective avoidance and remediation of adverse human rights impacts.

Similarly, it is significant to note that the GPs attempt to capture and take advantage of the uniquely special character of human rights as their point of reference for corporate social policy. Human rights represent values that are shared by all cultures; hence the claim that they are universal. In practice, human rights are sufficiently pervasive to be recognised and applied in all walks of society including in the conduct of business. Indeed, in a study undertaken by the SRSG of the Fortune 500 companies, it is concluded that business enterprises recognise the significance of human rights in their daily activities both as a matter of legal compliance and as part of good practice. This conclusion supports one of Ruggie’s key claims that the PRR Framework and GPs do not create new standards.

The PRR Framework and its operational GPs respond to a challenging environment for the conduct of business in which there are diverse governance regimes

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18 Principles 25–27 GPs.
19 Principles 28–30 GPs.
20 Principle 31 GPs.
21 Principle 31(h) GPs.
22 Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Ruggie, supra n 5 at para 14.
ranging from corporate codes, civil society guidelines, industry and multi-stakeholder initiatives to some intergovernmental regimes such as the OECD Guidelines (2011 Rev), the ILO Tripartite Declaration and the UN Global Compact. It is nevertheless important to maintain that the PRR Framework and GPs are not just another layer of corporate governance but a sophisticated and refined synthesis of existing standards and mechanisms that integrate both voluntary standards and legally compelling standards. This so-called ‘smart mix’ of governance mechanisms is original and unique to the PRR regime and underlies the importance of complementary responsibilities for all stakeholders as an indication of shared commitment to ensure the effective application of the GPs. That sense of shared commitment follows the organic manner in which the GPs were generated through intensive consultations with all key stakeholders. This was an important part of John Ruggie’s strategy of principled pragmatism that lay at the base of the consensus he so expertly secured on the scope of the GPs. The practical effect of this character of the GPs is the sense of inclusiveness and ownership of the GPs by all interested parties. This is reflected in the firm endorsement and growing uptake by stakeholders ranging from states, businesses, civil society groups and affected groups. No other governance initiative reflects this consideration.

3. THE WORKING GROUP ON BUSINESS AND HUMAN RIGHTS

One of the important distinguishing features of the PRR regime is the establishment of a Working Group (WG) on the issue of human rights and transnational corporations and other business enterprises. The WG comprises five independent experts, and it is mandated to promote the dissemination and implementation of the GPs in addition to supporting capacity building and providing advice upon request. The WG is expected to act as the guarantor of the integrity of the GPs and so is

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27 See: www.business-humanrights.org/Categories/Principles/GuidelinespreparedbyNGOs [last accessed 29 August 2013].
28 See, for example, The Extractive Industry Transparency Initiative (EITI) at: eiti.org/eiti/principles [last accessed 30 October 2013].
31 See: www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/ [last accessed 29 August 2013].
33 The term ‘regime’ is adopted here to refer to the collection of instruments such as the PRR Framework and the GPs, as well as the reports, statements, resolutions and activities of the bodies such as the UN Working Group on Business and Human Rights and the Human Rights Council.
35 See HR Council Res 17/4, supra n 1. The Members of the Working Group are Michael K. Addo (Ghana); Alexandra Guaquta (Colombia/USA); Margaret Jungk (USA); Puvan Selvanathan (Malaysia); and Pavel Sulyandziga (Russian Federation). For further details, see: www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx [last accessed 30 October 2013].
tasked with identifying, exchanging and promoting good practices and lessons learned from the implementation of the GPs. The WG is also mandated to explore and make recommendations for enhancing access to justice and more importantly guide an Annual Forum on Business and Human Rights.  

Although not a command and control mandate, the establishment of the WG helps to stop the slide of the GPs into insignificance and the strategy adopted by the WG to achieve its mandate helps to prevent this risk. The WG has been active for two years, and has held several sessions and its second Annual Forum. The WG has submitted two reports each to the Human Rights Council and the General Assembly.  

It is important to note that the WG continues to draw on the lessons of the Ruggie Mandate by adopting, as well as recommending, a multi-stakeholder approach to the conduct of business and human rights. It has also initiated a number of projects focusing on a search for effective ways of implementing the GPs. Similarly, the WG sees the business and human rights field as continually evolving as reflected in the changing emphasis in its strategy. The WG gave greater impetus to the third pillar of the UN Framework—access to remedy—following the lessons from the First Annual Forum. In the same vein, following the bid to reach new audiences, an objective that has always been part of its strategy, the WG proposed to undertake regional forums in Africa, Asia and Latin America. The first of these regional forums took place in Medellin, Colombia on August 28–30 during which the WG were able to

36 Ibid.  
37 The phrase ‘command and control’ is used here to reflect mandates that are authorised to deliver compelling or binding directives and decisions. This is often associated with certain regulatory authorities but also judicial authorities.  
39 The WG began its work in November 2011.  
40 The WG held its fifth session in June 2013 with a sixth session planned for November 2013.  
41 The second Annual Forum was held on 2-4 December 2013, see www.ohchr.org/EN/Issues/Business/Forum/Pages/2013ForumonBusinessandHumanRights.aspx [last accessed 18 December 2013]. This follows the first Forum that was held in December 2012: see Summary of discussions at the Forum on Business and Human Rights, 23 January 2013, A/HRC/FBHR/2012/4.  
45 See First Report to the General Assembly at 19 et seq.  
46 See Summary of discussions, supra n 41; see also the project on Access to Remedies undertaken by ACCESS, details available at: www.accessnow.org [last accessed 30 October 2013].  
47 See Outcome of fourth session, supra n 44.  
elicit stakeholders’ perspectives of the GP in the region. The outcomes from these regional forums are expected to feed into the Annual Forum scheduled for the end of each year.

As with all special procedures mandate holders of the Human Rights Council, the WG undertakes country visits to assess the progress and challenges associated with its mandate. With a special focus on the promotion of the dissemination and implementation of the GPs, country visits are an especially valuable tool for direct engagement with national authorities and other stakeholders on effective ways of moving the GPs from ideals to reality. Indeed, the mere presence of the WG in any country creates an awareness raising opportunity that may be leveraged in support of efforts to implement the GPs at the national level. Similarly, in circumstances where differences exist between stakeholders as to the significance of the GPs, a country visit will enable the members of the WG to assess the situation on the ground and initiate or facilitate a dialogue towards reconciliation if necessary.

The WG has undertaken three country visits so far. These were to Mongolia in October 2012,\(^\text{49}\) to the United States in April 2013,\(^\text{50}\) and to Ghana in July 2013.\(^\text{51}\) A country visit scheduled for Russian Federation has been postponed.\(^\text{52}\) In principle, while no two country visits are the same in terms of priorities, opportunities and outcomes, there are nevertheless some fairly common considerations such as raising awareness of the GPs, meeting with the different stakeholders to discuss the implications of the GPs for their work and activities, assessing evidence of any adverse impacts of business activities as well as any good practices and initiatives concerning the GPs. At the end of every country visit the WG prepares an initial assessment or end of mission statement of the situation of the GPs to be followed by a formal report incorporating its recommendations to the Human Rights Council. These statements and reports represent a rich source of information from which to share useful lessons concerning the opportunities and challenges arising from the implementation of the GPs.

The question why the WG chose to visit Mongolia, the United States or Ghana is an interesting one. The decisions were both opportunistic and strategic at the same time. The decision as to which country to visit is opportunistic because, at this rather early stage in its mandate, a lot depends on which country responds promptly and constructively to the request from the WG to undertake the visit. It is also, at the end of the day, a strategic decision to ensure that the country visits are spread across a wide spectrum of countries at different stages of economic and political development. After all, in seeking to promote the implementation of the GPs globally, this is one sure way of appreciating the subtle political and economic nuances of national

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implementation. In any case, the Mongolian and United States country visits, along-
side the visits to Ghana and Russia, represent the tradition in UN practice of ensuring that such visits reach the different geographical regions of the organisation.

As a country at an early stage of strategic economic reform, the WG approach to and expected outcomes of the visit to Mongolia understandably differed from the focus of the visit to the United States whose economic strategy is relatively settled or to Ghana as a country that is in transition to modernisation. The United States has formalised institutions, agencies and mechanisms through which to apply the GPs, while Mongolia is in the process of establishing such institutions and mechanisms. Ghana, in contrast, has established relevant institutions but they are not as effective as those of the United States. These differences between jurisdictions are important determinants of whom the WG meets with during a country visit. In Mongolia, it was a fairly important consideration for the WG to meet with government ministers in order to explore with them the policy significance of the GPs. The WG delegation to the United States focused its attention on officials of government agencies with a view to assessing policy coherence between the agencies and departments at both federal and state levels. The delegation to Ghana met up with a mixture of government ministers and public officials.

The significance of the GPs in the extractive industry has emerged as an important focus of attention for the WG country visits. This may be due to the visibility of the impact of this industry on human rights, as well as the fact that the industry has been, and continues to be, relatively more engaged with the GPs. In Mongolia, the effect of the GPs on mining was the main focus of the country visit, taking account of the reform proposals for the mining sector, including the new mining legislation. The delegation met with the Minister for Mining, visited mining operations and met with officials of foreign mining companies. In contrast, the interest in the mining sector in the United States was narrow and specific. In this context, attention was limited to the human rights impacts of surface mining of coal for which the delegation seemed content to meet with representatives of coal companies. The mining sector was also high on the agenda of the Ghana visit albeit with a different emphasis on problems concerning land tenure and child labour.

Following the central importance of the multi-stakeholder approach to the conduct of its mandate, the WG always insists on meeting and consulting with non-governmental stakeholder groups. So in the extractive sector, the WG met with affected communities during their visits to Mongolia, the United States and Ghana to hear their views on the implications of mining on their rights. While the

53 See visit to Mongolia, supra n 49.
54 See Statement at the end of visit to the United States, supra n 50.
56 Other issues such as child labour and worker in the construction and cashmere industries were mentioned in the report: see Visit to Mongolia, supra n 49 at 17–18.
58 Statement at the end of visit to Ghana, supra n 55.
Mongolian end of mission statement and formal report to the Council highlighted the central importance of consultation with affected communities, the United States and Ghana end of mission statements were more specific about the allegations that it had heard. Unlike the Mongolian visit, the delegation to the United States explored the significance of the GP beyond the extractive industry to include the agriculture, information and communication technology, and the hospitality and finance sectors, and in the process needed to give some attention to the business human rights impact of vulnerable groups such as migrant workers and indigenous communities. The WG noted allegations of violations of freedom of association in the work place and other poor labour practices such as ‘wage theft and chronic disregard for minimum health and safety measures’. At the same time, this failure in governmental regulation is contrasted with the success of a multi-stakeholder initiative by Florida tomato growers and the Coalition of Immokalee Workers in addressing core labour rights backed by an independent and robust enforcement regime in the Fair Food Code of Conduct.

In Ghana, the question of child labour was a more dominant concern for the WG. This concern was raised not only in relation to the mining sector but also in the agriculture sector, including the fishing industry. It was also a concern in street trading. According to the WG, it received ‘harrowing information on children as young as six years old being engaged in the hazardous labour in the fishing industry, including untangling underwater fishing nets at risk to their lives’. The WG also noted concerns about children on cocoa farms ‘being exposed to harmful chemicals, carrying heavy loads and operating dangerous tools’ with serious injuries. It is even worse to know that some of these children are victims of trafficking.

That the emphases in the recommendations of the visits are different is no surprise. While 38 of the 47 (81 per cent) of the recommendations of the Mongolian visit were to the government, the end of mission statement for the United States visit is more balanced with recommendations to all stakeholders. The Working Group may need to undertake a few more country visits before it is able to collate and synthesise any credible lessons worth sharing. There are nevertheless some important indicators of these lessons from the Mongolian and United States visits. First, that awareness-raising about the GPs is a critical factor in every jurisdiction regardless of level of economic and political development. Secondly, the priorities and opportunities for the implementation of the GPs will differ from country to country and from region to region. Sharing any lessons will have to take account of this fact. Thirdly, although it will take the co-operative effort of all stakeholders to effectively

59 See ibid. and visit to Mongolia, supra n 49 at paras 59–68.
60 See Statement at the end of visit to the United States, supra n 50; and Statement at end of visit to Ghana, supra n 55.
61 Statement at end of visit to the United States, supra n 50.
62 Ibid. For Fair Food Code, see: fairfoodstandards.org/code.html [last accessed 30 October 2013].
63 Statement at end of visit to Ghana, supra n 55.
64 Ibid.
65 Ibid.
66 Ibid.
67 Visit to Mongolia, supra n 49 at Section IV.
68 See Statement at the end of visit to the United States, supra n 50.
implement the GPs, the leadership role of government in this exercise is indispensable.

4. GOODWILL AND UPTAKE

The next distinguishing indicator of uniqueness to recall is that the Human Rights Council achieved unanimity in its endorsement of the PRR Framework and GPs.69 This is a rare event. The goodwill behind that success and the belief among stakeholders in the quality and sustainability of the GPs is reflected in the high level of uptake by stakeholders so far.

A. The European Union

Concerning the uptake of the PRR Framework and its GPs, the European Commission of the European Union adopted a Communication on Corporate Social Responsibility in 2011,70 which calls on all Member States to adopt a National Action Plan for the implementation of the GPs by 201271 and all European-based companies to meet the corporate responsibility to respect human rights as defined in the UN GPs.72 In January 2013, 19 States reported that they had initiated or progressed on the development of a National Action Plan. In September 2013, the UK became one of the first EU countries to launch a policy strategy73 to implement the UN GPs. The real challenge is to roll out this strategic approach to the implementation of the GPs across the entire UN family. This has been identified as one of the priority projects of the WG.74 In addition to the call for National Action Plans, the European Commission has prepared and issued specialised guidance based on the GPs for small and medium enterprises75 and for three sectors: oil and gas,76 information and communication technology77 and employment and recruitment agencies.78

71 Ibid. at para 4.8.2. This deadline has now been extended to 2013.
72 Ibid.
74 See First report to the General Assembly, supra n 45.
B. United Nations

As required by Human Rights Council Resolution 17/4, the Secretary-General submitted a report to the Council at its 21st session in September 2012 detailing recommendations on how the UN system as a whole can contribute to the advancement of the GPs. This includes increased coordination within the UN system on the issue of business and human rights at the strategic level, through embedding the GPs in the strategies, activities, engagement and advocacy by UN agencies, including at the field level by UN Resident Coordinators.

In consequence, the United Nations Conference on Trade and Development (UNCTAD) has initiated a programme for the integration of the GPs within its programme of work. In its 2012 World Investment Report, UNCTAD adopted a comprehensive Investment Policy Framework for Sustainable Development, consisting of a set of core principles for investment policymaking, guidelines for national investment policies, and options for the design and use of international investment agreements. The Investment Policy Framework encourages governments to set out investor obligations and responsibilities, including adherence to the GPs, and to consider the issue of non-compliance with the GPs when determining and applying treaty protection as well as compensation measures, and also to consider translating the GPs into national legislation. It further encourages investors to adhere to the GPs and to carry out corporate due diligence relating to economic, social and environmental risks. The WG has continued to work with the UNCTAD in exploring further opportunities for the application of the GPs in national investment policies. The International Finance Corporation (IFC) has called on business enterprises to respect human rights, and the human rights due diligence requirements, in its revised Sustainability Framework of the IFC.

The WG has always drawn on the interpretation and jurisprudence of the UN human rights treaty body mechanisms in framing the scope of the State duty to protect. The work of the treaty bodies to further clarify the links between core human rights treaties and the issue of business and human rights has remained of particular interest to the WG. For this reason the WG has collaborated with the Committee on the Rights of the Child in the preparation of a general comment on child rights and the business sector. In the same vein, the statement issued by the Committee on

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79 Supra n 1 at para 11.
81 See First report to the General Assembly, supra n 45 at 7.
83 Ibid. at Chapter IV.
84 See Outcome of fourth session, supra n 44; and Outcome of 3rd session, supra n 44.
86 CRC, General Comment No 16: State obligations regarding the impact of the business sector on children’s rights, 17 April 2013, CRC/C/GC/16.
Economic, Social and Cultural Rights on the obligations of States parties to the Covenant regarding the corporate sector and economic, social and cultural rights, which references the due diligence dimension of the PRR Framework, is of immense interest. The Outcome statement of the WG’s fourth session records a continuing collaboration with the Committee on the Elimination of Racial Discrimination.

C. The Organisation of Economic Cooperation and Development

Upon the adoption of the GPs in 2011 the Organisation of Economic Co-operation and Development (OECD) revised its Guidelines for Multinational Enterprises to incorporate new standards that align with the GPs. In the chapter setting out the general principles for the OECD Guidelines, enterprises are called upon to respect the internationally recognised human rights of those affected by their activities alongside carrying out ‘risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts’. In addition, enterprises are called upon to avoid causing or contributing to adverse impacts through their own activities, or, where they have not necessarily contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship.

In the commentary concerning the above recommendations the OECD guidelines provide further clarity on the scope of the due diligence expectation in the following terms:

For the purposes of the Guidelines, due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems. Due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the enterprise itself, to include the risks of adverse impacts related to matters covered by the Guidelines. Potential impacts are to be addressed through prevention or mitigation, while actual impacts are to be addressed through remediation. The Guidelines concern those adverse impacts that are either caused or contributed to by the enterprise, or are directly linked to their operations, products or services by a business relationship.

The revised OECD Guidelines also include a separate chapter on human rights in which enterprises are called upon to ‘respect human rights, which means they should

87 Statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights, 12 July 2011, E/C.12/2011/1.
88 Outcome of fourth session, supra n 44 at para 5.
89 OECD Guidelines, supra n 29.
90 Ibid. at 19.
91 Ibid. at 20.
92 Ibid.
93 Ibid. at 23.
avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved\textsuperscript{94} as well as seeking ‘to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts’.\textsuperscript{95} According to the commentary on the human rights provisions in the OECD Guidelines the Chapter ‘draws upon the United Nations Framework for Business and Human Rights “Protect, Respect and Remedy” and is in line with the GPs for its implementation’.\textsuperscript{96}

The commentary is especially helpful in its acknowledgement and recommendation that

[a] State’s failure either to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights. In countries where domestic laws and regulations conflict with internationally recognised human rights, enterprises should seek ways to honour them to the fullest extent which does not place them in violation of domestic law, consistent with paragraph 2 of the Chapter on Concepts and Principles.\textsuperscript{97}

Beyond the OECD Guidelines, the wider OECD activity in this field has been used to develop further alignment with the UN GPs. The OECD has embarked on a number of initiatives to issue guidance to its member States on comprehensive implementation of the OECD Guidelines. In 2011, the OECD adopted helpful guidance for Due Diligence for Responsible Supply Chains of Minerals from Conflict-affected and High-risk Areas.\textsuperscript{98} This is proving to be the best industry standard for the effective management of risks in the corporate supply chain. In June 2012, the Export Credit Group of the OECD issued a recommendation\textsuperscript{99} on common approaches for officially supported export credits and environmental and social due diligence. The recommendation highlights the need for members of the Export Credit Group to take the GPs into account and carry out human rights due diligence in order to identify how project-related human rights impacts are being addressed, prior to approving such credits.

In 2013 the OECD Investment Committee launched a Global Forum on Responsible Business Conduct to support dialogue between OECD and non-OECD economies, and promote greater convergence both in standards regarding how businesses

\textsuperscript{94} Ibid. at 31.
\textsuperscript{95} Ibid.
\textsuperscript{96} Ibid. at 31.
\textsuperscript{97} Ibid. at 32.
\textsuperscript{98} Available at: www.oecd.org/fr/daf/inv/mne/mining.htm [last accessed 30 October 2013].
should understand and address the risks of their operations, and in understanding how governments should support and promote responsible business practices.100

D. Private and Multi-Stakeholder Initiatives

Private and multi-stakeholder initiatives such as the Fair Labor Association,101 the Global Network Initiative102 and the Voluntary Principles on Security and Human Rights adopted by the International Council on Mining and Metals103 and private initiatives, including the Thun Group of banks104 are also aligning their work with the GPs. The International Organisation for Standardisation has also referenced the GPs in the development of their standards.105

5. LESSONS FOR INTERNATIONAL LAW

The PRR Framework and GPs are relatively recent, but in their short lives they have generated lessons that may be shared with the wider field of international law. Some of these lessons, especially concerning the role of non-state actors in international law, are predictable but others such as the evolving significance of soft law sources and the role of political institutions such as the Human Rights Council in international law making are not as evident.

The GPs have informed the continuing debate about the role of non-state actors in international law.106 The indispensable nature of the multi-stakeholder approach to the development of the PRR Framework and GPs affirms the growing importance of non-state actors in international law making. This success of the PRR Framework and GPs when contrasted with the spectacular failure of the UN Norms107 may be attributed to the role played by non-State actors, especially in this context, the lobbying of the business community. As a constituency likely to be directly impacted by


the emerging standards, their direct involvement in the development of the GPs led to a high level of appreciation but also affirmed the significance of the principle of subsidiarity in international law-making. The lesson for the wider international law-making process of consultation and the consideration of the perspectives of affected non-State actor communities in the preparation of new standards is a compelling one. While the development of international law norms such as those concerning diplomacy and international organisations will continue to draw on the contribution of State actors, the development of norms such as international economic law, international development law or international environmental law, for example, with direct impact on non-State actors may have to be approached differently from the traditional State-centred process if their full potential is to be appreciated.

The value of the non-State actor consultative approach lies beyond the potential quality of the normative outcomes of international law making. In fact, this approach also generates useful lessons for the effective implementation of international law as well. There has been a relatively high uptake of the PRR Framework and GPs precisely because the commitment to effective implementation by affected non-State actors. Looking beyond State implementation, the PRR Framework and GPs adopt a different approach to the realisation of the standards by defining independent but complementary responsibilities for non-State actors that may affect or be affected by the GPs. This successful approach to the implementation of international human rights standards recognises the reality of the human rights landscape in which actors other than States that affect human rights are expected to take responsibility for their actions. This approach suggests the need to revise the traditional focus on States that has not always been entirely effective. This is especially important in the age of globalisation where non-State actors have gradually assumed roles often associated with governmental institutions.

6. CONCLUSIONS

Can the PRR Framework and GPs make a difference to the search for effective regulatory and governance mechanisms in response to gradually increasing influence and impact of corporations? This article has argued that the PRR Framework and GPs approach to the subject is uniquely different and sufficiently robust when compared with the limitations and shortcomings of other governance regimes.

It is important to recall some of the key characteristics in the PRR regime that make it special, including its flexibility, the smart mix of processes and substantive standards as well as the endorsement and uptake by stakeholders from different sectors. It is especially important to recall also that the PRR regime is not a governance or regulatory regime in and of itself but rather a platform of guidelines by which stakeholders may define mechanisms using either compelling regulatory mechanisms or indeed voluntary initiatives. This is in recognition of the inherent nuanced differences in the conduct of business and that the UN regime recommends the direct engagement of all stakeholders in the definition of appropriate standards for the management of human rights risk. This may require entirely different and untested ways of relationships between stakeholders, and yet such changes to the conventional
conduct of business with affected and interested stakeholders may be one of the necessary modifications that is unavoidable.

Similarly, the focus on human rights provides an equally important platform to redefine the significance of business as an instrument for contributing to the welfare of society rather than a mere profit generating process regardless of consequences. Most business executives and owners are unlikely to disagree with this objective of business. The question has always remained one of how to strike the fair and workable balance between profit and human welfare. This PRR regime proposes an excellent strategy for the determination of this balance.

The favourable responses and uptake of the different stakeholder constituencies to the PRR framework and GPs are an important indicator of their uniqueness. It is important to note that no other global strategy for the reconciliation of business with human rights has received the level of endorsement that the UN regime has received and so suggesting the recognition of quality and robustness of the balance that the PRR framework proposes. This quality will be tested in the coming months as the PRR framework is implemented in the policies and activities of stakeholders (governments, business enterprises and civil society groups) under the guidance of the WG whose mandate to identify and share evidence of good practice will be especially useful in defining the future direction and emphasis of the PRR framework.

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