

2014

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Recommended Citation

David Weissbrodt, *Human Rights Standards Concerning Transnational Corporations and Other Business Entities*, 23 MINN. J. INT'L L. 135 (2014), available at https://scholarship.law.umn.edu/faculty_articles/221.

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Article

Human Rights Standards Concerning Transnational Corporations and Other Business Entities

David Weissbrodt¹

I. INTRODUCTION

The rapid expansion of transnational economic activity and corresponding growth in power of transnational corporations and other business entities have prompted renewed international discourse and action over the past decade to address the human rights abuses committed by businesses.² The responsibility of businesses to respect human rights has been at the heart of the discussion. The Universal Declaration of Human Rights (UDHR), adopted in 1948, states that “every individual and every *organ of society* . . . shall strive by teaching and education to promote respect for these rights and freedoms and . . . to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under

1. Regents Professor and Fredrikson & Byron Professor of Law, University of Minnesota. © 2014 David Weissbrodt. The author participated in drafting the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, as a member of the U.N. Sub-Commission on the Promotion and Protection of Human Rights. The author thanks Robert Ronan Slater, Thea Reilkoff, Corrine Lewis, P. Moyo Shepherd, and Andrew C. Thompson for their assistance in preparing this article.

2. See generally Daniel Aguirre, *Corporate Liability for Economic, Social and Cultural Rights Revisited: The Failure of International Cooperation*, 42 CAL. W. INT'L L. J. 123 (noting corporate control over government policy, the competing interests of states to protect human rights and attract investment, and the need to hold transnational corporations accountable for human rights violations); David Weissbrodt & Maria Kruger, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, 97 AM. J. INT'L L. 901, 901–03 (2003) (arguing that international human rights law should focus on transnational corporations due to their growing influence in dynamic economic sectors).

their jurisdiction.”³ The UDHR placed human rights responsibilities on individuals, as well as on every organ of society, which would presumably include businesses. Determining what exactly those responsibilities entail has been the subject of much debate ever since.

Since the 1970s there have been various attempts to improve the recognition of human rights by businesses. In 1974, the United Nations (UN) made its first attempt to solve this ever-developing problem by establishing the Centre on Transnational Corporations.⁴ By 1977, the Centre began negotiations on the Draft Code of Conduct on Transnational Corporations.⁵ Unfortunately, the negotiations stalled in the early 1990s, as there was a divide between proponents of a legally binding code, on one hand, and a voluntary code, on the other.⁶ Even today, this debate continues.⁷

In addition to the UN's efforts,⁸ guidelines for protection from human rights abuses have sprung up from other sources, such as voluntary codes from corporations themselves developed in-house, as well as certain thematic or sector-specific codes.⁹ This paper will largely focus on the overarching

3. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/RES/217(III), preamble (Dec. 10, 1948) (emphasis added), *available at* <http://www.un.org/en/documents/udhr/>.

4. ADAM MCBETH, JUSTINE NOLAN & SIMON RICE, *THE INTERNATIONAL LAW OF HUMAN RIGHTS* 615 (2011).

5. *Id.*

6. *Id.* (citing Code of Conduct on Transnational Corporations, G.A. Res. 186, U.N. Doc. A/RES/45/186 (Dec. 21, 1990); ; *see also* Jean-Marie Kamatali, *The New Guiding Principles on Business and Human Rights' Contribution in Ending the Divisive Debate Over Human Rights Responsibilities of Companies: Is It Time for an ICJ Advisory Opinion?*, 20 CARDOZO J. INT'L & COMP. L. 437, 438-440 (2012).

7. *See generally* Kamatali, *supra* note 6, at 437-41.

8. *See* Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 14 (entered into force Sept. 3, 1981), *available at* <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>; International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969), *available at* <http://www2.ohchr.org/english/law/cerd.htm>; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976), *available at* <http://www2.ohchr.org/english/law/cescr.htm>; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976), *available at* <http://www2.ohchr.org/english/law/ccpr.htm>.

9. MCBETH, NOLAN, & RICE, *supra* note 4, at 614. *See also* Labour Standards, International Labour Organization, <http://www.ilo.org/global/standards/lang--en/index.htm>.

attempts of UN bodies to address this issue.

On January 31, 1999, then UN Secretary-General Kofi Annan announced the Global Compact in an address to the World Economic Forum.¹⁰ The Global Compact was formally introduced in 2000, and promoted a set of nine principles (hereinafter “Compact Principles”) in the areas of human rights, labour, and environment that businesses should adopt.¹¹ A tenth anti-corruption principle was added in June 2004.¹² The Global Compact is a voluntary initiative through which corporations agree to implement the Compact Principles in their business operations.¹³ Each Compact Principle is very brief and only references the responsibilities in very general terms.¹⁴ The Compact Principles are derived from the UDHR, the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption.¹⁵ Currently over 10,000 corporations and other stakeholders from over 145 countries have participated in the Global Compact.¹⁶ The Global Compact is not without its critics, who claim that its voluntary nature and lack of meaningful remedies render it ineffective.¹⁷

In 2003, the U.N. Sub-Commission on the Promotion and Protection of Human Rights unanimously adopted the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (hereinafter “Norms”).¹⁸ The Norms contained more detail and took a more comprehensive approach than the Global Compact, outlining specific obligations that businesses should follow in

10. Press Release, Secretary-General Proposes Global Compact on Human Rights, Labour, Environment, in Address to World Economic Forum in Davos, U.N. Press Release SG/SM/6881 (Feb. 1, 1999), available at <http://www.un.org/News/Press/docs/1999/19990201.sgsm6881.html>.

11. *The Ten Principles*, U.N. GLOBAL COMPACT, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> (last visited Jan. 6, 2013).

12. *Id.*

13. *Overview of the U.N. Global Compact*, U.N. GLOBAL COMPACT, <http://www.unglobalcompact.org/AboutTheGC/index.html> (last visited Jan. 6, 2013).

14. *The Ten Principles*, *supra* note 11.

15. *Id.*

16. *Overview of the U.N. Global Compact*, *supra* note 13.

17. MCBETH, NOLAN & RICE, *supra* note 4, at 619.

18. *Id.* at 620.

several human rights domains.¹⁹ The Norms asserted that existing human rights frameworks already demanded that businesses must comply with international human rights standards.²⁰ There were no existing means to enforce these standards on businesses, however, so the “Norms therefore commenced two parallel projects: the clarification of the content of human rights responsibilities for corporations and the development of new methods for the enforcement of those responsibilities.”²¹ Because of their clear and comprehensive profile of the human rights responsibilities of businesses, the Norms were met with opposition from the International Chamber of Commerce and the International Organization of Employers, which said the Norms were too demanding.²²

In 2005, the U.N. Commission on Human Rights established a mandate for a Special Representative of the Secretary-General to address the issue of business and human rights.²³ Special Representative John Ruggie was highly critical of the Norms in his first report in 2006.²⁴ Specifically, he was critical of the Norms’ assertion that existing international law could be read to create human rights obligations on business enterprises: “What the Norms have done, in fact, is to take existing state-based human rights

19. See generally U.N. Sub-Commission on the Promotion and Protection of Human Rights, Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/38/Rev.2 (Aug. 26, 2003) [hereinafter Commentary on the Norms].

20. SARAH JOSEPH & ADAM MCBETH, RESEARCH HANDBOOK ON INTERNATIONAL HUMAN RIGHTS LAW 151-52 (2010).

21. *Id.* at 152.

22. See U.N. Sub-Commission on the Promotion and Protection of Human Rights, Joint Written Statement Submitted by the International Chamber of Commerce and the International Organization of Employers, Non-governmental Organizations in General Consultative Status, U.N. Doc. E/CN.4/Sub.2/2003/NGO/44 (July 29, 2003), available at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/918bbd410b5a8d2cc1256d78002a535a?Opendocument>.

23. Special Representative of the Secretary-General, *Report on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) (by John Ruggie) [hereinafter Guiding Principles].

24. See Special Representative of the Secretary-General, Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises ¶¶ 56-69, U.N. Doc. E/CN.4/2006/97 (Feb. 22, 2006) (by John Ruggie).

instruments and simply assert that many of their provisions now are binding on corporations as well. But that assertion itself has little authoritative basis in international law – hard, soft, or otherwise.”²⁵ Two years later, the Special Representative recognized that companies had at least a baseline responsibility, independent of state obligation, to respect human rights, but conditioned this conclusion in stating the scope is defined not by legal obligations, but social expectations—“what is sometimes called a company’s social license to operate.”²⁶

The Special Representative issued his final report on March 21, 2011, the Guiding Principles on Business and Human Rights (hereinafter “Guiding Principles”), primarily applying the UN’s “Protect, Respect and Remedy” Framework for States.²⁷ In essence, it is the State’s duty to protect human rights of individuals from abuses by businesses, while businesses have the responsibility to respect human rights, and the Guiding Principles call for “judicial and non-judicial remedies” to be established.²⁸ The Guiding Principles are meant to be an initial human rights framework for businesses.²⁹

The efforts of the Global Compact, Norms, and Guiding Principles seek the same goal of reducing human rights abuses by transnational corporations and other business entities. The efforts, however, do vary somewhat in their definitions, approaches, substance, and implementation. A comparison of the Global Compact, Norms, and Guiding Principles would provide insight into the relative strengths and shortcomings of each standard, as well as the current direction of international law in this arena. This article will compare the definitions of transnational corporations and other business enterprises used in each standard, the obligations each standard places on States and businesses, how each standard is implemented,

25. *Id.* at ¶ 60.

26. Special Representative of the Secretary-General, *Report on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, ¶ 54, U.N. Doc A/HRC/8/5 (Apr. 7, 2008) (by John Ruggie) (“Failure to meet this responsibility can subject companies to the courts of public opinion – comprising employees, communities, consumers, civil society, as well as investors – and occasionally to charges in actual courts.”).

27. Guiding Principles, *supra* note 23, at 3.

28. *Id.* at 4 (defining judicial remedies as access to courts and non-judicial remedies as passing new legislation, mediation, etc.).

29. *See id.* at 5.

what is implied by the name of each standard, and the current developments of each standard.

II. DEFINITIONS OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES

A. GLOBAL COMPACT OF 1999-2004

The Global Compact does not give an explicit definition of “transnational corporation” or “business enterprise.” It does not differentiate between the two terms, and merely uses the term “businesses.”³⁰ Because of the voluntary nature of the Global Compact, it is assumed that all businesses that subscribe to the Compact fall under the term “businesses” and are bound to conform to its values.³¹ The only companies that are excluded from joining the Compact are “companies involved in the manufacture, sale etc. of anti-personnel landmines or cluster bombs, companies that are the subject of a UN sanction or that have been blacklisted by UN Procurement for ethical reasons.”³² Overall, the definition of “businesses” for purposes of the Global Compact seems to be quite broad and inclusive.³³

B. NORMS OF 2003

An entire section of the Norms is devoted to definitions of key terms. The Norms define a “transnational corporation” as “an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries – whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.”³⁴ The phrase in this definition – “whatever their legal form” – implies that a transnational corporation need not actually be a corporation for the purposes of the Norms. A

30. See *Overview of the U.N. Global Compact*, *supra* note 13.

31. See generally *id.*

32. *Frequently Asked Questions*, U.N. GLOBAL COMPACT, <http://www.unglobalcompact.org/AboutTheGC/faq.html> (last visited Jan. 6, 2013).

33. See *id.*

34. U.N. Sub-Commission on the Promotion and Protection of Human Rights, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, ¶ 20, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (Aug. 26, 2003) [hereinafter Norms].

partnership or other form of business could meet the definition of a “transnational corporation” and be bound to the associated obligations.³⁵

The Norms also define the term, “other business enterprise,” which “includes any business entity, regardless of the international or domestic nature of its activities, including a transnational corporation, contractor, subcontractor, supplier, licensee or distributor; the corporate, partnership, or other legal form used to establish the business entity; and the nature of the ownership of the entity.”³⁶ “Other business enterprise” seems to be an all-encompassing term, and even includes transnational corporations. The Norms apply most strongly “if the business enterprise has any relation with a transnational corporation, the impact of its activities is not entirely local, or the activities involve violations of the right to security”³⁷ This focus of the Norms is important in clarifying to what extent each type of business must comply with its duties, with the Norms applying more strongly when it has a greater connection to transnational corporations. The Norms also frame businesses’ obligations “[w]ithin their respective spheres of activity and influence,”³⁸ further suggesting that the obligations of businesses are not uniform, and companies with broader reach will be held to a higher standard under the Norms.³⁹ The Global Compact employs similar language in that it “asks companies to embrace, support and enact, *within their sphere of influence*, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption”⁴⁰ (emphasis added). This notion is also similar to that of the Guiding Principles, which recognize that with respect to applying the Principles to businesses, “one size does not fit all.”⁴¹

C. GUIDING PRINCIPLES OF 2011

35. See *id.* at ¶ 21.

36. *Id.*

37. *Id.*

38. *Id.* at ¶ 1.

39. See Conference of Int’l Law Ass’n, Berlin, Ger., Aug. 16–21, 2004, Plenary Session on Corporate Social Responsibility and International Law; Menno T. Kamminga, *Corporate Obligations under International Law*, 71 INT’L L. ASSOC. 427 (2004).

40. *The Ten Principles*, *supra* note 11.

41. Guiding Principles, *supra* note 23, at 5.

The Guiding Principles, like the Global Compact, do not give an explicit definition of “transnational corporation” or “business enterprise.” The introduction to the Guiding Principles states that “these Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.”⁴² Transnational corporations are clearly a subset of “business enterprises.” Special Representative John Ruggie did not define “transnational corporations” in greater detail. Because the Principles were meant to apply to “business enterprises” of all sizes, perhaps the Special Representative thought it unnecessary to set out an explicit definition of “transnational corporations.” A clear definition of the different sorts of businesses could have been useful.⁴³

The Guiding Principles continue to say that the “States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.”⁴⁴ Therefore, business enterprises are a subset of “third parties,” and the Principles place the onus on States to protect against human rights abuses by all third parties.⁴⁵ “Third parties” are not defined, but probably mean parties other than States and victims of human rights abuses. Again, because the Principles are broad in their scope, and largely place the burden on States to act instead of business enterprises,⁴⁶ one could speculate that the Special Representative may have deemed that an explicit definition of “business enterprises” was unnecessary. Because the goal of the Principles was not to create new rights and duties but instead to elaborate and clarify an existing framework,⁴⁷ perhaps Ruggie is hoping that readers of the Principles will refer to definitions contained in existing UN documents.

All three of these documents subscribe to the idea that the means by which businesses respect human rights may differ

42. *Id.* at 6.

43. *Id.* at 5

44. *Id.* at 6

45. *See id.*

46. *See generally id.*

47. *Id.* (“The Guiding Principles’ normative contribution lies not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved”).

with business size, sector, and location, among other factors, while the obligation to respect human rights is all-inclusive regardless of these factors.⁴⁸ In taking a more explicit and comprehensive approach regarding these definitions, the Norms, in effect, would have applied more strongly to businesses with transnational connections.⁴⁹ In contrast, the absence of definitions in the Global Compact and the Guiding Principles renders them equally applicable to all businesses.

III. OBLIGATIONS ON STATES AND BUSINESS

A. GLOBAL COMPACT OF 1999-2004

The UN Global Compact takes an abbreviated approach to outlining the obligations of businesses. Of its Ten Principles, the first two apply to businesses' human rights obligations.⁵⁰ In a statement made in July 2011, the Global Compact endorsed the Guiding Principles, and stated that the second pillar of respecting human rights matches with the goals of the Global Compact's first two principles.⁵¹ When dealing with specific human rights obligations, the Global Compact defers to the UDHR.⁵² The UDHR, and by extension the Global Compact,

48. In articulating the due diligence requirement of assessing human rights impacts, the commentary to Global Compact Principle 1 states that "[t]he scale of the review will depend on the industry, company size and national and local context and should be commensurate with the level of risk." *Global Compact Principle One*, U.N. GLOBAL COMPACT, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle1.html>. Guiding Principle 14 states that "[t]he responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts." Guiding Principles, *supra* note 23, at 14. See Weissbrodt, *supra* note 2, at 911–12 (distinguishing between larger and smaller corporations); see generally, Norms, *supra* note 34 (articulating obligations for all business entities, but articulating focus on transnational business entities in Norm 21).

49. Norms, *supra* note 34, at ¶ 21.

50. *The Ten Principles*, *supra* note 11.

51. See *The U.N. Guiding Principles on Business and Human Rights: Relationship to U.N. Global Compact Commitments*, U.N. GLOBAL COMPACT (July 2011), http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf.

52. *Human Rights*, U.N. GLOBAL COMPACT, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/humanRights.html> (last visited Jan., 6, 2013).

states that businesses must respect rights to equality, life, security, and personal freedom; and economic, social, and cultural rights.⁵³ The additional eight principles of the Global Compact deal with the areas of Labour, Environment, and Anti-Corruption,⁵⁴ all of which were also elaborated in the Norms. All three – Global Compact, Norms, and Guiding Principles – recognize the interconnectedness of these areas and human rights, although they are not separated in the Guiding Principles.⁵⁵

B. NORMS OF 2003

The Norms are similar to the Global Compact, and differ from the Guiding Principles, in that they articulate obligations for businesses in certain subject areas of human rights. The Guiding Principles were initially meant to be a starting point, so they do not indicate specific obligations. Rather, the Guiding Principles were intended to “mark the end of the beginning: by establishing a common global platform for action, on which cumulative progress can be built, step-by-step,”⁵⁶ and placed the human rights responsibilities of States and businesses within the UN’s “Protect, Respect, Remedy” framework.⁵⁷ In contrast to the Guiding Principles, which do not delineate the “internationally recognized human rights”⁵⁸ that business has the responsibility to respect, the Norms elaborate specific obligations for businesses with respect to human rights in the areas of equal opportunity and non-discriminatory treatment (Norm 2), the right to security of persons (Norms 3-4), the rights of workers (Norms 5-9), respect for national sovereignty and human rights (Norms 10-12), consumer protection (Norm 13), and environmental protection (Norm 14).⁵⁹ Essentially what the Norms did was to take principles from existing human rights frameworks, describe them, and articulate responsibilities for States and businesses. The standards of

53. *Id.*

54. *The Ten Principles, supra* note 11.

55. *See generally id.*; Commentary on the Norms, *supra* note 19; Guiding Principles, *supra* note 23, at 8 (referring to states’ failure to enforce labour, anti-corruption, and environmental laws that directly or indirectly regulate businesses’ respect for human rights).

56. Guiding Principles, *supra* note 23, at 5.

57. *Id.* at 4.

58. *Id.* at 13.

59. Norms, *supra* note 34, at ¶¶ 2–14.

business obligations applicable to each set of rights are outlined below.

1. Equal Opportunity and Non-Discriminatory Treatment⁶⁰

The second Norm states that

[t]ransnational corporations and other business enterprises shall ensure equality of opportunity and treatment, as provided in the relevant international instruments and national legislation as well as international human rights law, for the purpose of eliminating discrimination based on race, colour, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, age – except for children, who may be given greater protection – or other status of the individual unrelated to the inherent requirements to perform the job or of complying with special measures designed to overcome past discrimination against certain groups.⁶¹

The Commentary to the Norms notes that “other status” includes health status, marital status, capacity to bear children, pregnancy, and sexual orientation.⁶² The Commentary further mentions the Code of Practice on HIV/AIDS and the World of Work⁶³ and the Code of Practice on Managing Disability in the Workplace⁶⁴ of the International

60. This section of the Norms stems from the following frameworks, among others: the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the recommendations of the International Labour Organization. See Norms prmb., *supra* note 34, at preamble.

61. *Id.* at ¶ 2.

62. Commentary on the Norms, *supra* note 19, at 4.

63. See generally ILO, *An ILO Code of Practice on HIV/AIDS and the World of Work* (June 2001), available at http://www.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--ilo_aids/documents/normativeinstrument/kd00015.pdf.

64. See generally ILO, *An ILO Code of Practice on Managing Disability in the Workplace*, TMEWDW-C-2001-10-0231-1.Doc (Oct. 2001), available at http://www.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--ilo_aids/documents/normativeinstrument/kd00015.pdf.

Labour Office as two international instruments to which businesses can refer to determine if they are in compliance with the Norms.⁶⁵ The UDHR also supports this notion, stating that “[e]veryone, without any discrimination, has the right to equal pay for equal work.”⁶⁶ Compact Principle 6 also deals with this issue, calling for “the elimination of discrimination in respect of employment and occupation.”⁶⁷

2. Security of Persons⁶⁸

The third Norm states that

[t]ransnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law.⁶⁹

This Norm stems from Article 3 of the UDHR, which states that “[e]veryone has the right to life, liberty and security of person.”⁷⁰ In the commentary, businesses which produce weapons or other military-related goods and services are held to a higher standard than other businesses, in that they shall take special care to determine that their products are not used to commit human rights violations.⁷¹

65. *Id.* at pml.

66. G.A. Res. 217A (III), *supra* note 3, at 75.

67. *UN Global Compact - 10 Principles*, *supra* note 11.

68. This section of the Norms stems from the following frameworks, among others: the Universal Declaration

of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; and the four Geneva Conventions of 12 August 1949 and two Additional Protocols thereto for the protection of victims of war. *See* Norms pml, *supra* note 34.

69. *Id.* at ¶ 3.

70. G.A. Res. 217A (III), *supra* note 3, at 72.

71. Commentary on the Norms, *supra* note 19, at 5.

The fourth Norm deals with security personnel for businesses, in that they too must observe human rights norms.⁷² In particular, business security arrangements shall only be used for preventive or defensive services and cannot violate rights of workers recognized by the International Bill of Human Rights⁷³ and the Declaration on Fundamental Principles and Rights at Work of the ILO,⁷⁴ among other international instruments.⁷⁵

3. Workers⁷⁶

The fifth Norm states that “[t]ransnational corporations and other business enterprises shall not use forced or compulsory labour as forbidden by the relevant international instruments and national legislation as well as international human rights and humanitarian law.”⁷⁷ The Commentary uses the ILO Forced Labour Convention of 1930 (No. 29) and the Abolition of Forced Labour Convention of 1957 (No. 105) as guidelines for businesses in this area.⁷⁸ In particular, the

72. Norms, *supra* note 34, at ¶ 4.

73. The International Bill of Human Rights is an informal name given to one General Assembly resolution and two international treaties established by the United Nations. It consists of the Universal Declaration of Human Rights (adopted in 1948), the International Covenant on Civil and Political Rights (1966) with its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights (1966), available at <http://www1.umn.edu/humanrts/instreet/auob.htm>.

74. ILO, *ILO Declaration on Fundamental Principles and Rights at Work*, 37 I.L.M. 1237 (June 19, 1998), <http://www.ilo.org/declaration/lang-en/index.htm>.

75. Commentary on the Norms, *supra* note 19, at 6. The ILO mentions security of persons in regard to specific industries. See ILO & IMO, *Code of Practice on Security in Ports*, U.N. ILO/IMO, U.N. Doc. MESSHP/2003/14 (2003), <http://www.imo.org/OurWork/Security/Instruments/Documents/ILOIMOCODEofPracticeEnglish.pdf>. Also, there is a voluntary initiative that addresses this issue. See THE VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS, <http://www.voluntaryprinciples.org/principles/introduction> (last visited Jan. 6, 2013).

76. This section of the Norms stems from the following frameworks, among others: The Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Rights of the Child; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. See Norms pmb., *supra* note 34.

77. *Id.* at ¶ 5.

78. Commentary on the Norms, *supra* note 19, at 7.

Commentary points to the ILO Convention No. 29 for guidance on when prison labour may be used.⁷⁹ Article 23 of the UDHR supports this notion as well, stating “[e]veryone has the right to work, to free choice of employment.”⁸⁰ Compact Principle 4 touches upon this area, calling for “the elimination of all forms of forced and compulsory labour.”⁸¹

The sixth Norm deals with child labour.⁸² The Commentary sets out specific age guidelines for what work is appropriate for children. Under the Commentary, children may begin light work (non-hazardous and not interfering with education) at the age of 13 if local laws allow.⁸³ At age 15 or when a child completes compulsory schooling, a child may perform work that is non-hazardous.⁸⁴ Furthermore, “[t]ransnational corporations and other business enterprises shall not employ any person under the age of 18 in any type of work that by its nature or circumstances is hazardous, interferes with the child’s education, or is carried out in a way likely to jeopardize the health, safety, or morals of young persons.”⁸⁵ The International Covenant on Economic, Social and Cultural Rights (ICESCR) addresses child labour as well, stating that “children and young persons should be protected from economic and social exploitation” and that “States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”⁸⁶ The ILO Convention No. 182 on the worst forms of child labour outlines categories of child exploitation, including slavery, prostitution, and drug trafficking.⁸⁷ Compact Principle 5 also deals with child labour, calling for “the effective abolition of child labour.”⁸⁸

The seventh Norm states that “[t]ransnational corporations and other business enterprises shall provide a safe and healthy

79. *Id.*

80. G.A. Res. 217A (III), *supra* note 3, at 75.

81. *UN Global Compact- 10 Principles*, *supra* note 11.

82. Norms, *supra* note 34, at ¶ 6.

83. Commentary on the Norms, *supra* note 19, at 7–8.

84. *Id.* at 7.

85. *Id.*

86. International Covenant on Economic, Social and Cultural Rights, Art. 10, *open for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976), *available at* <http://www2.ohchr.org/english/law/pdf/cescr.pdf>.

87. ILO Worst Forms of Child Labour Convention (No. 182), June 17, 1999, 38 I.L.M. 1207 (entered into force Nov. 19, 2000), *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:498017306411845:NO:12100:P12100_INSTRUMENT_ID:312327:NO.

88. *UN Global Compact- 10 Principles*, *supra* note 11.

working environment as set forth in relevant international instruments and national legislation as well as international human rights and humanitarian law.”⁸⁹ Businesses must comply with both national laws and international standards found in the ICESCR and other instruments to secure a safe working environment.⁹⁰ The Commentary also deals with working hours, and creates limits of 48-hour work weeks and 10-hour work days, though individuals can elect to work longer.⁹¹ Similarly, the UDHR recognizes “the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.”⁹²

The eighth Norm states that businesses shall provide their employees with pay that ensures an adequate standard of living.⁹³ In determining a wage policy, the Commentary directs businesses to the Equal Remuneration Convention, 1951 (No. 100),⁹⁴ the Discrimination in Employment and Occupation Convention, 1958 (No. 111)⁹⁵ and the Workers with Family Responsibilities Convention, 1981 (No. 156)⁹⁶ for guidance.⁹⁷

The ninth Norm protects workers’ rights to collective bargaining and freedom of association.⁹⁸ Specific rights outlined in the Commentary include the right to strike, the right to submit grievances, and the right to be free from discrimination based on participation in a trade union.⁹⁹ The commentary refers businesses to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.

89. Norms, *supra* note 34, ¶ 7.

90. For a more complete list of international instruments, see Commentary on the Norms, *supra* note 19, at 8.

91. Commentary on the Norms, *supra* note 19, at 9.

92. G.A. Res. 217A (III), *supra* note 3, at 75.

93. Norms, *supra* note 34, at ¶ 8.

94. ILO, *Equal Remuneration Convention*, adopted June 29, 1951, 165 U.N.T.S. 302 (entered into force May 23, 1953), available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_84_en.pdf.

95. ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (Entered into force June 15, 1960), available at http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312256.

96. ILO Workers with Family Responsibilities Convention, 1981 (No. 156) (entered into force Aug. 11, 1983), available at http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312301.

97. Commentary on the Norms, *supra* note 19, at 10–11.

98. Norms, *supra* note 34, at ¶ 9.

99. Commentary on the Norms, *supra* note 19, at 11.

87)¹⁰⁰ and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98),¹⁰¹ among other international instruments for further clarification.¹⁰² This Norm is similar to the Compact Principle 3, which states “[b]usinesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.”¹⁰³ The Guiding Principles do not delve into any of these labour issues.¹⁰⁴

4. National Sovereignty and Human Rights¹⁰⁵

The tenth Norm states generally that

[t]ransnational corporations and other business enterprises shall recognize and respect applicable norms of international law, national laws and regulations, as well as administrative practices, the rule of law, the public interest, development objectives, social, economic and cultural policies including transparency, accountability and prohibition of corruption, and authority of the countries in which the enterprises operate.¹⁰⁶

Specific human rights that businesses must respect under

100. ILO, *Freedom of Association and Protection of the Right to Organise Convention*, adopted July 9, 1948, 68 U.N.T.S. 17 (entered into force July 4, 1950), available at http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312232.

101. ILO, *Right to Organise and Collective Bargaining Convention*, 96 U.N.T.S. 257 (entered into force July 18, 1951), available at <http://www1.umn.edu/humanrts/instree/m2rocb.htm>.

102. Commentary on the Norms, *supra* note 19, at 11.

103. UN Global Compact, *10 Principles*, *supra* note 11.

104. See Guiding Principles, *supra* note 23.

105. This section of the Norms stems from the following frameworks, among others: the United Nations Convention against Transnational Organized Crime; the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development; Committee on Economic, Social and Cultural Rights, General Comment 4, *The Right to Adequate Housing*, 6th Sess., U.N. Doc. E/1992/23, annex III at 114 (1991), <http://www1.umn.edu/humanrts/gencomm/epcomm4.htm>; and the “Health for All in the Twenty-First Century” policy of the World Health Organization. See Norms pmbl., *supra* note 34; and the “Health for All in the Twenty-First Century” policy of the World Health Organization. See Norms pmbl., *supra* note 34.

106. *Id.* at ¶ 10.

this Norm are the right to development, the rights of local communities affected by the business, and intellectual property rights.¹⁰⁷

The eleventh Norm states that a business shall not engage in bribery in any form, and “ensure that the goods and services they provide will not be used to abuse human rights.”¹⁰⁸ Businesses must cooperate with State authorities to combat corruption in any form. The Norm is similar to Compact Principle 10, which states that “[b]usinesses should work against all forms of corruption, including extortion and bribery.”¹⁰⁹

The twelfth Norm states that businesses “shall respect economic, social and cultural rights as well as civil and political rights and contribute to their realization.”¹¹⁰ In particular, the Norm mentions the rights to adequate housing, adequate food and water, and adequate health.¹¹¹ The commentary refers to the standards set forth in the ICESCR as well as the International Covenant on Civil and Political Rights (ICCPR).¹¹²

5. Consumer Protection¹¹³

The thirteenth Norm states that

[t]ransnational corporations and other business enterprises shall act in accordance with fair business, marketing and advertising practices and shall take all

107. Commentary on the Norms, *supra* note 19, at 12.

108. Norms, *supra* note 34, at ¶ 11.

109. UN Global Compact, *10 Principles*, *supra* note 11.

110. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, Sub-Comm'n Res. 2003/16, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2, ¶ 12 (Aug. 26, 2003), available at <http://www1.umn.edu/humanrts/links/norms-Aug2003.html>.

111. Norms, *supra* note 34, at ¶ 12; see also G.A. Res. 217A (III), *supra* note 3, at 75 (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.”).

112. Commentary on the Norms, *supra* note 19, at 14.

113. This section of the Norms stems from the following frameworks, among others: Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices of the United Nations Conference on Trade and Development; the International Code of Marketing of Breast-milk Substitutes adopted by the World Health Assembly; and the Ethical Criteria for Medical Drug Promotion. See Norms, *supra* note 34, at preamble.

necessary steps to ensure the safety and quality of the goods and services they provide, including observance of the precautionary principle. Nor shall they produce, distribute, market, or advertise harmful or potentially harmful products for use by consumers.¹¹⁴

The Commentary suggests the use of the standards of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices of the United Nations Conference on Trade and Development, among other instruments.¹¹⁵ Accordingly, the Commentary discourages price-fixing and monopolies, and encourages the safety of all goods/services produced.¹¹⁶ While neither the Global Compact nor the Guiding Principles delves into these consumer protection issues, both broadly apply to human rights consequences through supply chains, including impacts on customers or consumers.¹¹⁷

6. Environmental Protection¹¹⁸

The fourteenth Norm states that businesses should respect the environment, “and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development.”¹¹⁹ The Commentary takes note of the relationship between the environment and human rights, and

114. *Id.* at ¶ 13.

115. Commentary on the Norms, *supra* note 19, at 15; *see generally* U.N. Conference on Trade and Development, Geneva, Switz., Sept. 25–29, *The United Nations Set of Principles and Rules on Competition*, U.N. Doc. TD/RBP/CONF/10/Rev.2 (Oct. 4, 2000).

116. Commentary on the Norms, *supra* note 19, at 15.

117. *See Global Compact Principle One*, *supra* note 48; *see also* U.N. OHCHR, *THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS: AN INTERPRETIVE GUIDE 17* (2012) (stating that respecting human rights includes impact on customers and providing as examples targeting high-sugar foods at children with impact on childhood obesity).

118. This section of the Norms stems from the following frameworks, among others: The Convention on Biological Diversity; the International Convention on Civil Liability for Oil Pollution Damage; the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment; the Declaration on the Right to Development; the Rio Declaration on the Environment and Development; the Plan of Implementation of the World Summit on Sustainable Development; and the United Nations Millennium Declaration. *See Norms*, *supra* note 34, at preamble.

119. *Id.* at ¶14.

declares that businesses need to be cognizant of both the environmental and human health impact of their activities.¹²⁰ Businesses shall ensure that negative environmental effects of their activities shall not “fall on vulnerable racial, ethnic and socio-economic groups.”¹²¹ Business will need to make assessments on their environmental impact in a manner accessible to the U.N. Environmental Programme, as well as ensure the means of disposal of any hazardous waste.¹²² Currently, there is a U.N. Special Rapporteur who examines at the impact of hazardous waste on the enjoyment of human rights.¹²³ The Global Compact speaks more broadly on the issue of environmental protection in Compact Principles 7-9, stating that “Businesses should support a precautionary approach to environmental challenges; undertake initiatives to promote greater environmental responsibility; and encourage the development and diffusion of environmentally friendly technologies.”¹²⁴

C. GUIDING PRINCIPLES

The Guiding Principles rest generally on the UN’s “Respect, Protect, Remedy” framework,¹²⁵ which Ruggie calls the “three pillars.”¹²⁶ The first pillar is the State’s obligation to “protect against human rights abuses – not only those committed by state agents, but also by third parties. . . . By definition third parties include businesses.”¹²⁷ The Principles state that:

[t]he State duty to protect is a standard of conduct.
Therefore, States are not per se responsible for human

120. Commentary on the Norms, *supra* note 19, at 16.

121. *Id.*

122. *Id.*

123. See generally U.N. Human Rights Council, *Mandate of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, U.N. Doc.A/HRC/RES/18/11 (Oct. 12, 2011).

124. *The Ten Principles*, *supra* note 11.

125. See *id.* at 6; see also Guiding Principles, *supra* note 23.

126. See *Business and Human Rights: Interview with John Ruggie*, Business Ethics (Oct. 30, 2011), available at <http://business-ethics.com/2011/10/30/8127-un-principles-on-business-and-human-rights-interview-with-john-ruggie/>.

127. *Id.*

rights abuse by private actors. However, states may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse.¹²⁸

Under the Guiding Principles, the States have the primary duty to protect against human rights abuses. States have discretion in how they protect against human rights abuses from businesses, whether through preventative laws or remedial measures.¹²⁹ It is ultimately the States', not businesses' duty to make sure that human rights abuses do not occur.¹³⁰ Ruggie states that "[t]he bedrock of the Guiding Principles is that they do not attempt to privatize human rights protection: it's a fundamental duty of states."¹³¹ The privatization (the shifting of human rights obligations from States to private actors) of human rights was one of the Norms' chief criticisms, though the first paragraph of the Norms reflects a focus similar to the Guiding Principles that "States have the primary responsibility."¹³²

The Guiding Principles' second pillar is "the corporate responsibility to respect rights."¹³³ Ruggie "chose the word responsibility, rather than duty, because for the most part international law doesn't apply directly to companies. It applies to states, and through what states do domestically, it applies to companies."¹³⁴ States have the duty to protect human rights, and through their actions businesses may be held accountable at the domestic level.¹³⁵ Guiding Principle 13 outlines what the responsibility to respect human rights entails:

(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address

128. Guiding Principles, *supra* note 23, at 7.

129. *Id.*

130. See *Business and Human Rights: Interview with John Ruggie*, *supra* note 126.

131. *Id.*

132. Norms, *supra* note 34, at ¶ 1.

133. *Business and Human Rights: Interview with John Ruggie*, *supra* note 126.

134. *Id.*

135. See generally Guiding Principles, *supra* note 23.

such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.¹³⁶

This Guiding Principle is similar to the general obligations under the Norms, in that businesses shall ensure “that their activities do not contribute directly or indirectly to human abuses.”¹³⁷ In Ruggie’s view, the Guiding Principles differ from the Norms in that businesses are not held directly accountable to international human rights bodies.¹³⁸ Rather, international law creates obligations for States, who then in turn must create their own laws to make sure businesses avoid human rights abuses.¹³⁹ The Norms sought to make businesses directly accountable to international human rights bodies, in addition to State laws.¹⁴⁰ The actual language of the Guiding Principles, however, is vague on the subject of business accountability, and it is possible that the Guiding Principles may lead to some direct accountability of businesses at the international level in the future.¹⁴¹ Adam McBeth suggests that the Norms go one step farther than the Guiding Principles:

The key point of difference came down to the scope of the business duty. The UN Norms did not stop at a duty to respect human rights – essentially an obligation to refrain from doing harm to the realization of human

136. *Id.* at 14.

137. Commentary on the Norms, *supra* note 19, at 4.

138. See *Business and Human Rights: Interview with John Ruggie*, *supra* note 126.

139. *Id.*

140. See Norms, *supra* note 34, at ¶ 16 (“Transnational corporations and other business enterprises shall be subject to periodic monitoring and verification by United Nations, other international and national mechanisms already in existence or yet to be created, regarding application of the Norms.”); see also Commentary on the Norms, *supra* note 19, at 18–19.

141. See U.N. Human Rights Council, *Report of the Working Group on the Issue of Human Rights and Transnational Corporation and Other Business Enterprises*, ¶ 56, A/HRC/20/29 13 (Apr. 10, 2012) [hereinafter Report of the Working Group] (“The Working Group also recognizes the important role of enhanced accountability in promoting the uptake of the Guiding Principles, and thus ensuring comprehensive and effective implementation by companies. In this connection, the Working Group notes that it is specifically mandated to explore options and make recommendations at the national, regional and international levels for improving access to effective remedies.”)

rights. Instead, the Norms advocated an obligation “to promote, secure the fulfillment of, respect, ensure respect of, and protect human rights recognized in international as well as national law.”¹⁴²

Similar language also occurs in the first two Compact Principles: “Businesses should support and respect the protection of internationally proclaimed human rights; and make sure that they are not complicit in human rights abuses.”¹⁴³ All of these documents place responsibility on businesses to avoid human rights abuses in activities which they are either directly or indirectly responsible.

In the Introduction to the Guiding Principles, Ruggie *inter alia* criticizes the Norms, saying, “[e]ssentially, this sought to impose on companies, directly under international law, the same range of human rights duties that States have accepted for themselves under treaties they have ratified.”¹⁴⁴ This criticism does not reflect the first paragraph of the Norms, which declares: “States have the primary responsibility to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including ensuring that transnational corporations and other business enterprises respect human rights.”¹⁴⁵ The Norms also contain a savings clause, which states that “[n]othing in these Norms shall be construed as diminishing, restricting, or adversely affecting the human rights obligations of States under national and international law.”¹⁴⁶ Under the Norms, States still have the primary obligation to protect human rights. The Norms do not “privatize” human rights protection.¹⁴⁷ A more correct interpretation of the Norms is that the “intention of the drafter of the Norms obviously was that obligations of companies

142. *Human Rights in Economic Globalization*, *supra* note 20, at 153.

143. *The Ten Principles*, *supra* note 11.

144. Guiding Principles, *supra* note 23, at 3.

145. Norms, *supra* note 34, at ¶ 1.

146. *Id.* at ¶ 19.

147. *See Business and Human Rights: Interview with John Ruggie*, *supra* note 126; *see also* U.N. Sub-Comm. on the Promotion and Protection of Human Rights, Economic, Social and Cultural Rights: Joint Written Statement Submitted by the International Chamber of Commerce and the International Organization of Employers, Non-Governmental Organizations in General Consultative Status, U.N. Doc. E/CN.4/Sub.2/2003/NGO/44 (July 29, 2003).

would *supplement* and not *replace* the obligations of States.”¹⁴⁸ While the Norms do create stronger obligations for businesses than the Guiding Principles, primary responsibility in both standards remains with the States.

IV. PUTTING STANDARDS INTO PRACTICE

A. GLOBAL COMPACT

The Global Compact is a voluntary initiative, so the task of implementation falls on the companies themselves.¹⁴⁹ The Compact requires that businesses submit a Communication on Progress (COP), which is an annual disclosure to both their stakeholders and the Global Compact website.¹⁵⁰ The COP must contain three parts: a statement from the chief executive expressing the business’s continued support for the Global Compact, a description of practical actions taken by the company implementing the Compact principles, and a measurement of the outcomes from their actions.¹⁵¹ Businesses must submit a COP within one year of joining the Global Compact and every year following the first submission.¹⁵² If a business submits its COP in a timely manner, it is designated as “GC Active.”¹⁵³ It is possible to be designated “GC Advanced” if its COP meets certain advanced criteria in line with overall UN goals.¹⁵⁴ Failure to submit a COP will result in a business receiving “non-communicating status.”¹⁵⁵ If a non-communicating business fails to submit a COP within the following year, it will be expelled from the Global Compact.¹⁵⁶ The Global Compact lists participating businesses along with their statuses (either GC Active, GC Advanced, non-communicating, or expelled) publicly on their website.¹⁵⁷ While businesses enter the Global Compact voluntarily, they are

148. Kamminga, *supra* note 39, at 432.

149. *Overview of U.N. Global Compact*, *supra* note 13.

150. U.N. Global Compact Policy on Communicating Progress 1 (updated Feb. 25, 2011), *available at* http://www.unglobalcompact.org/docs/communication_on_progress/COP_Policy_Feb11.pdf.

151. *Id.*

152. *Id.* at 2.

153. *Id.*

154. *Id.*

155. *Id.* at 3.

156. *Id.*

157. *Id.* at 1.

largely compelled to implement its standards to avoid the unfavorable designation of non-communicating or expelled, and the bad press that would come with it.

Another voluntary initiative is the Human Rights Compliance Assessment (HRCA) from the Danish Institute for Human Rights. The HRCA began in 1999, and was a set of questions that allowed businesses to assess their compliance with international human rights principles.¹⁵⁸ In 2010, HRCA 2.0 was launched, containing streamlined features and 200 questions.¹⁵⁹ The questions assess how well a company lives up to the standards of the UDHR, the ILO Conventions, and other international human rights instruments.¹⁶⁰ If a company does not want to pay for the full HRCA, it can download the shortened Quick Check version free of charge.¹⁶¹ The Danish Institute for Human Rights also develops human rights checklists tailored to specific industries.¹⁶² Overall, the HRCA allows a company to proactively check how well it complies with human rights law, and see in which specific areas it needs improvement.

There also exist certain sector-specific initiatives to which States and businesses can voluntarily subscribe. For example, the Voluntary Principles on Security and Human Rights applies to companies in the extractive and energy sectors.¹⁶³ Governments, companies, and NGOs can all subscribe to these Voluntary Principles, which seek to bring these parties together in a constructive dialogue regarding security and human rights.¹⁶⁴ The Voluntary Principles point out that States have the primary duty to protect human rights, much like the Norms and Guiding Principles mention.¹⁶⁵ Like all

158. REED ADDIS, HUMAN RIGHTS AND THE CORPORATION: THE DEVELOPMENT OF THE HUMAN RIGHTS COMPLIANCE ASSESSMENT (Liam Mahony ed., 2004), available at <http://www.newtactics.org/resource/human-rights-and-corporation-development-human-rights-compliance-assessment>.

159. *About the HRCA*, HUMAN RIGHTS AND BUSINESS PROJECT, <https://hrca2.humanrightsbusiness.org/Page-AboutTheHrca-1.aspx> (last visited Jan. 30, 2014).

160. *Id.*

161. *Id.*

162. *Id.*

163. *The Voluntary Principles on Security and Human Rights*, VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS (2000), http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf (last visited Jan. 30, 2014).

164. *Id.*

165. *Id.* ("Understanding that governments have the primary responsibility

voluntary initiatives, however, the obligations are largely unenforceable.¹⁶⁶

B. THE NORMS

The Norms devote a whole section to implementation, and discuss the subject in greater detail and specificity than either the Global Compact or Guiding Principles. Norms 15-19 address implementation.¹⁶⁷ Norm 15 states that business shall adopt internal rules in compliance with the Norms, apply the Norms to their course of business, and periodically report on implementation measures.¹⁶⁸ The comments to Norm 15 require businesses to disseminate its implementation procedures to all stakeholders, which is similar to the COP requirement of the Global Compact.¹⁶⁹ The comments go further, and mention that businesses shall only conduct business with other entities which follow the Norms or a similar human rights framework.¹⁷⁰ Businesses should also provide training for their workers regarding the Norms, and promote transparency wherever possible.¹⁷¹

Norm 16 addresses monitoring, to be conducted by the UN, or other international or national mechanism already in place or yet to be created.¹⁷² Businesses should provide avenues for workers to file complaints of violations of the Norms.¹⁷³ Furthermore, businesses shall make periodic evaluations of their practices to determine if they are in line with the Norms.¹⁷⁴ The comments charge U.N. treaty bodies with creating additional reporting requirements for States, so that they may monitor violations of the Norms by businesses within

to promote and protect human rights and that all parties to a conflict are obliged to observe applicable international humanitarian law, we recognize that we share the common goal of promoting respect for human rights.”), <http://2001-2009.state.gov/g/drl/rls/2931.htm> .

166. Adam McBeth, *What do Human Rights Require of the Global Economy? Beyond a Narrow Legal View*, in HUMAN RIGHTS: THE HARD QUESTIONS 153, 168 (Cindy Holder & David Reidy eds., 2013).

167. Norms, *supra* note 34, at ¶¶ 15-19.

168. *Id.* at ¶ 15.

169. See Commentary on the Norms, *supra* note 19, at 17; see also *Policy on Communicating Progress*, *supra* note 148, at 1.

170. Commentary on the Norms, *supra* note 19, at 18.

171. *Id.* at 17-18.

172. Norms, *supra* note 34, at ¶ 16.

173. Commentary on the Norms, *supra* note 19, at 19.

174. *Id.*

their boundaries.¹⁷⁵

Norm 17 places a responsibility on States to establish the “necessary legal and administrative framework for ensuring that the Norms and other relevant national and international laws are implemented by transnational corporations and other business enterprises.”¹⁷⁶ States should take the Norms under consideration when drafting legislation relating to business activities.¹⁷⁷

Norm 18 deals with remedies, which is similar to the third pillar of the Guiding Principles.¹⁷⁸ The Norms charge businesses with providing effective reparations to those adversely affected by failures to comply with the Norms.¹⁷⁹ Furthermore, the Norms should be applied by national and international courts in determining damages, pursuant to national and international law.¹⁸⁰

Norm 19 reinforces the proposition that States are the primary bearers of human rights obligations, and states that nothing in the preceding Norms should be read to diminish their role in implementing the Norms.¹⁸¹ Furthermore, the commentary to Norm 19 states that when State law or internal business procedures call for greater human rights protection, the more protective standards shall be used.¹⁸² Therefore, mere compliance with the Norms would not absolve a business of its more stringent obligations under a different form of law.¹⁸³ In fact, businesses are encouraged to go beyond the call of the Norms in respecting human rights.¹⁸⁴

C. GUIDING PRINCIPLES

The Guiding Principles call for remedies as a means for

175. *Id.* at 18.

176. Norms, *supra* note 34, at ¶ 17.

177. Commentary on the Norms, *supra* note 19, at 20.

178. Norms, *supra* note 34, at ¶ 18; *see also* Guiding Principles, *supra* note 23, at 5 (stating that the Guiding Principles are established for an “effective prevention of, and remedy for, business-related rights harm”).

179. Norms, *supra* note 34, at ¶ 18.

180. *Id.*

181. Norms, *supra* note 34, at ¶ 19.

182. Commentary on the Norms, *supra* note 19, at 20.

183. *See id.*

184. *See* Adam McBeth, *Privatising Human Rights: What Happens to the State's Human Rights Duties When Services are Privatised?*, 5 MELB. J. INT'L L. 133, 148 (2004).

implementation. The Introduction to the Guiding Principles states that “when it comes to means for implementation, . . . one size does not fit all.”¹⁸⁵ These Principles do not mention specific mechanisms for their implementation. They often speak of what would be “appropriate,” indicating that discretion is given to the States and business enterprises to implement the Principles as they see fit. The Guiding Principles address some implementation concepts in general terms, however.

The Guiding Principles make three operational suggestions to businesses in order to meet their responsibility to respect human rights: “(a) A policy commitment to meet their responsibility to respect human rights; (b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”¹⁸⁶

Guiding Principle 16 states that “business enterprises should express their commitment to meet this responsibility through a statement of policy.”¹⁸⁷ “The term ‘statement’ is used generically, to describe whatever means an enterprise employs to set out publicly its responsibilities, commitments, and expectations.”¹⁸⁸ The Guiding Principles ask businesses to enumerate their “human rights expectations” so that they are publicly available to all members of the business organization as well as the public at large.¹⁸⁹ A business is free to make this statement in whatever form it chooses.¹⁹⁰ Guiding Principle 16 seems to promote the goal of transparency as does the Global Compact’s Communication on Progress and Norm 15 discussed above.

An important concept for the Guiding Principles is “Human Rights Due Diligence,” which is described in Guiding Principles 17-21. Accordingly, “[t]he process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”¹⁹¹ The Principles

185. Guiding Principles, *supra* note 23, at 5.

186. *Id.* at 15.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.* at 16.

do not say exactly how businesses should engage in human rights due diligence. Rather, the Principles state that the process “will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations.”¹⁹² It seems clear that the Principles are only meant to be a starting point, “establishing a common global platform for action, on which cumulative progress can be built, step-by-step.”¹⁹³ Human rights due diligence has been a principle in international law since the Inter-American Court of Human Rights case, *Velasquez Rodriguez v. Honduras*.¹⁹⁴ In that case, the Inter-American Court held “that the state’s failure or omission to take preventive or protective action ‘itself represents a violation of basic rights on the State’s part.’ This is because the state controls the means to verify acts occurring within its territory.”¹⁹⁵ Special Representative John Ruggie applied human rights due diligence to businesses in the Guiding Principles. Since businesses themselves are in the best position to assess their human rights impacts, they should take preventative measures to ensure that human rights abuses do not occur.¹⁹⁶

Further, Guiding Principle 22 states that “where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.”¹⁹⁷ Where a business has identified an adverse human rights impact, “its responsibility to respect human rights requires active engagement in remediation, by itself or in cooperation with other actors.”¹⁹⁸ Remedies are only required when the business has itself caused or contributed to a human right abuse; a link through a business relationship is not enough to require that the business provide remediation.¹⁹⁹ In this context, the

192. Guiding Principles, *supra* note 23, at 16.

193. *Id.* at 5.

194. The Duty of Due Diligence, Ad Hoc Committee on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe (May 21, 2010), available at http://www.coe.int/t/dghl/standardsetting/convention-violence/CAHVIO/CAHVIO_2010_7%20The%20duty%20of%20Due%20Diligence.pdf.

195. *Id.*

196. See Guiding Principles, *supra* note 23, at 17.

197. *Id.* at 20.

198. *Id.*

199. *Id.* at 20–21.

Guiding Principles use strong language, “requir[ing]” businesses to engage in remediation for their human rights abuses.²⁰⁰ Businesses do seem, however, to have substantial leeway in determining exactly how to engage in remediation.²⁰¹

In providing access to a remedy for human rights abuses, the Guiding Principles primarily charge the States with the task: “As part of their duty to protect against business-related human rights abuse States *must* take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.”²⁰² Businesses are encouraged to take their own remedial measures as well. The Guiding Principles state that “business enterprises *should* establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.”²⁰³ The language concerning remedies from the Guiding Principles typifies their overall approach: States carry the “duty to protect” human rights (*i.e.*, there are things they “must” do), while businesses have the “responsibility to respect” human rights (*i.e.*, there are things they “should” do).²⁰⁴ The Guiding Principles differ from the approach of the Norms, which puts much stronger obligations on businesses in addition to similarly strong obligations for States.²⁰⁵ The Norms use the word “shall” throughout in enumerating the obligations of States and businesses,²⁰⁶ which would create a stronger obligation more akin to “must” than “should.” Placing the burden solely on the States could be problematic, especially with multinational corporations where determining a State jurisdiction would be difficult.²⁰⁷

The Guiding Principles set out criteria to gauge the effectiveness of non-judicial grievance mechanisms, whether State-based or business-based.²⁰⁸ The mechanisms should be:

200. *See id.*

201. *See id.*

202. *Id.* at 22 (emphasis added).

203. *Id.* at 25 (emphasis added).

204. *See generally* Guiding Principles, *supra* note 23, at 25.

205. Joseph & McBeth, *supra* note 20, at 153.

206. *See Norms, supra* note 34.

207. McBeth, *supra* note 166, at 163.

208. Guiding Principles, *supra* note 23, at 26. Also, States and corporations share responsibilities.

(a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes; (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access; (c) Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation; (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms; (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake; (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights; (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms; . . . (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.²⁰⁹

These criteria were put in place to ensure that people who use a particular grievance mechanism “know about it, trust it and are able to use it.”²¹⁰ The Commentary to the Norms mentions similar goals with respect to grievance mechanisms, stating that internal complaint procedures should be “legitimate and confidential.”²¹¹ The Guiding Principles’ grievance mechanisms further the goal of transparency, which is common to the Global Compact, Norms, and Guiding Principles.

209. *Id.*

210. *Id.* at 27.

211. Commentary on the Norms, *supra* note 19, at 19.

V. WHAT'S IN A NAME?

While these documents each seek to prevent human rights abuses by transnational corporations and other business enterprises, they all have different titles, which may imply a different level of commitment from the States and corporations.

A. GLOBAL COMPACT OF 1999-2004

The word, "Compact," in the Global Compact implies that a contract or agreement has been entered into by the parties involved. Contract obligations are typically quite strong in relation to business dealings. Also, the word "Global" implies a universal application, which also suggests strength. Judging by its name, the Global Compact would appear to be a strong international law instrument, despite its voluntary nature. Indeed, the Global Compact is essentially a social contract that is entered into voluntarily, in which businesses pledge to abide by the ten Compact Principles.²¹² Companies that break this social contract are not subject to any significant penalties, however, other than being declared a non-participating member and the resulting unfavorable coverage from the media.²¹³

B. NORMS OF 2003

The title and wording of the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights imply a stronger commitment. The title declares that business "shall" have certain responsibilities that they will need to follow. The term, "Norms," implies a customary international law obligation, which further hints at their relative strength. Indeed, the Norms outline responsibilities with greater specificity than the Global Compact or Guiding Principles, employs stronger language ("shall" rather than "should"), and discusses implementation in greater detail.²¹⁴ The language in its title suggests that the Norms are more obligatory than either the Global Compact or the Guiding Principles.

212. *Overview of the U.N. Global Compact*, *supra* note 13.

213. *Id.*

214. *See Norms*, *supra* note 34.

C. GUIDING PRINCIPLES OF 2011

The term, "Principles," is one that has been used in established international law documents, beginning with the U.N. Charter.²¹⁵ Because of its widespread use in international law, the term "Principles" implies a strong obligation in international law. The word "Guiding," however, weakens this implication, as it suggests that the principles are not obligatory, but merely serve as an incomplete set of guidelines. Taken together, the title, "Guiding Principles," suggests international law obligations that could be strong one day, but are presently in the fledgling or emerging stage of development. The title's implications prove fairly accurate, as while there are responsibilities outlined for businesses to follow, they are much vaguer than the Norms and suggest a starting point for further developments.²¹⁶

VI. CURRENT DEVELOPMENTS

A. GLOBAL COMPACT OF 1999-2004

As of 2012, the Global Compact had over 10,000 participants, including over 7000 businesses, from 145 different countries.²¹⁷ As of 2013, however, only 512 of those companies consider their implementation of the Global Compact to be at an "advanced level," while over 1,500 were identified as "non-communicating participants," and over 4,000 had been expelled

215. See Charter of the United Nations, 1 U.N.T.S. XVI, art. 2 (1945), available at <http://www.un.org/en/documents/charter/chapter1.shtml> ("The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles").

216. See Guiding Principles, *supra* note 23.

217. U.N. Global Compact Participants, U.N. GLOBAL COMPACT, http://www.unglobalcompact.org/COP/analyzing_progress/expelled_participant_s.html (last visited Dec. 9, 2012); *Progress and Disclosure*, U.N. GLOBAL COMPACT, http://www.unglobalcompact.org/COP/analyzing_progress/advanced_cops.html. Over 1,000 had been expelled in 2012. See *id.* (listing participants that had been expelled by date); see also Letter from Exec. Dir. Of the U.N. Global Compact Georg Kell to Global Compact participants (Dec. 15, 2010), at 1-2, available at http://www.unglobalcompact.org/docs/email_downloads/2010_12_15_ALs/AnnualLetter_2011_EN.pdf (highlighting the results of the annual survey of more than 1,000 participating companies which found only nine percent of participating companies had identified their implementation to be at the advanced level).

for “failure to communicate progress by the required deadline.”²¹⁸ Looking toward the future, the Global Compact seeks to get more companies operating at an “advanced level,” as well as tackle more specific issues, such as climate change and sustainable water.²¹⁹

B. NORMS OF 2003

The Norms were never accepted by the Commission on Human Rights. In lieu of accepting the Norms, the Commission appointed John Ruggie to undertake a new process, which eventually developed into the Guiding Principles.²²⁰ While this decided the fate of the Norms, opportunity remains to borrow from them in the continued and evolving efforts to implement the Guiding Principles.

C. GUIDING PRINCIPLES OF 2011

On July 6, 2011, the United Nations created a five-expert working group to discuss how to best implement the Guiding Principles.²²¹ This working group will exist for a period of three years.²²² The members of the working group formally took up their role on Nov. 1, 2011, and held its first session on Jan. 16-20, 2012.²²³ The group provided its first annual report to the Human Rights Council on April 10, 2012.²²⁴ In the report, the working group mentioned that the Guiding Principles have been endorsed and implemented by several international organizations, including the Organization for Economic Cooperation and Development and the U.N. Global Compact, as well as several States, including the Netherlands, Colombia, and the United Kingdom.²²⁵ The working group notes, however, that despite its efforts to disseminate the Guiding Principles, “a majority of State, business and civil society actors are unaware

218. Kell, *supra* note 217.

219. *Id.*

220. Guiding Principles, *supra* note 23, at 3.

221. U.N. Human Rights Council, Human Rights and Transnational Corporations and Other Business Enterprises, A/HRC/RES/17/4 2 (July 6, 2011).

222. *Id.*

223. Report of the Working Group, *supra* note 141, at 1.

224. *Id.*

225. *Id.* at 7–8.

of the Guiding Principles, precluding even the possibility of implementation.”²²⁶ For future strategy, the working group plans to first continue to promote the Guiding Principles as a common reference point from which future human rights standards should grow.²²⁷ Second, the working group plans to use the Guiding Principles to enhance accountability.²²⁸ The group did not commit to specific methods of promoting accountability, noting the “challenging nexus between the role of the State, business activities and the situation of indigenous peoples.”²²⁹ Third, the working group will attempt to disseminate the Guiding Principles on a global scale, reaching more States and businesses.²³⁰ It acknowledges that there is still much work to be done with the Guiding Principles, as they are still very much in the early stages.

In addition to the working group, the Human Rights Council established a Forum on Business and Human Rights to discuss the challenges in the implementation of the Guiding Principles and to promote dialogue and cooperation on addressing human rights issues linked to business activity.²³¹ The first Forum was held in December 2012, in Geneva and included over 1,000 participants, representing 85 countries, 40 state delegations, 150 business enterprises, and 170 civil society organizations.²³²

CONCLUSION

The effectiveness of the Guiding Principles and, by extension, the notion of preventing human rights abuses by businesses, will depend largely on the Guiding Principles’ third pillar: access to remedy. Without adequate remedies available, businesses cannot be held accountable for their human rights abuses in a practical sense. The Guiding Principles place much

226. *Id.* at 10.

227. *Id.* at 12.

228. *Id.* at 13.

229. *Id.*

230. *Id.* 14.

231. See U.N. Human Rights Council, Forum on Business and Human Rights: Programme Information, 1st Sess., Dec. 4–5, 2012, U.N. Doc. A/HRC/FBHR/2012/INF.1 (Nov. 30, 2012).

232. *Largest Global Dialogue on the Impact of Business on Human Rights Starts in Geneva, 3–5 December*, U.N. OHCHR, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12845&LangID=E> (last visited Jan. 2, 2013).

of the burden on the States in providing access to effective remedies, stating that the burden falls within the States' duty to protect,²³³ though businesses are encouraged to provide their own non-judicial remedies as well.²³⁴ Though the Guiding Principles set forth criteria for appropriate remedial measures (discussed above, Section IV(C)), they do not mandate specific remedial mechanisms.²³⁵ The Norms, in contrast, would have created a periodic monitoring system to hold businesses accountable for their human rights abuses and allow for complaints from individuals.²³⁶ The next step, therefore, would be getting specific mechanisms for remedies in place. Until there is access to concrete remedies, there is no real incentive for businesses to abide by the Guiding Principles.

Since the State has the primary duty to protect human rights, States must proactively create judicial avenues for wronged parties to seek damages from businesses, and/or enact legislation outlining how businesses must deal with human rights abuses internally.²³⁷ There still would remain the challenge of dealing with multinational corporations and a State's ability to wield judicial power over them. The United States has used the Alien Torts Statute (ATS) to bring foreign entities into domestic courts. The ATS states that the "district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."²³⁸ But the ATS applies only to the most egregious human rights abuses – those recognized as customary international law – and thus could not be used to enforce many of the Guiding Principles against foreign corporations absent their inclusion in a U.S. treaty. Recently, application of the ATS for even the gravest human rights abuses has been challenged. After hearing arguments on whether the ATS applies to corporations in *Kiobel v. Royal Dutch Petroleum Co.*, the Supreme Court called for further briefing and re-argument on the question of whether the ATS

233. Guiding Principles, *supra* note 23, at 22 ("As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.").

234. *Id.* at 25.

235. *See id.* at 26.

236. Norms, *supra* note 34, at ¶ 16 (2003).

237. *See* Guiding Principles, *supra* note 23, at 6–12.

238. 28 U.S.C. § 1350 (2013).

should apply to human rights abuses committed on foreign soil at all.²³⁹ Petitioners claimed that European oil companies aided the Nigerian government in killing and torturing civilian protesters.²⁴⁰ The Supreme Court held that the ATS would not apply to a claim based on conduct that took place outside the United States.²⁴¹

In a related case involving the torture and killing of a U.S. citizen by the Palestinian Authority, the Court unanimously held that organizations, and by extension, corporations, cannot be held liable for abuse under the Torture Victims Protection Act (TVPA), although individual officers or employees may be subject to suit.²⁴² The TVPA provides both U.S. citizens and non-citizens with a cause of action similar to that granted to non-citizens only under the ATS; however, unlike the ATS, the TVPA specifies that an "individual" shall be liable for damages.²⁴³ The ATS is less clear as to whether corporations should be held liable.²⁴⁴

While the ATS will not provide U.S. courts with jurisdiction over the foreign operations of foreign multinational corporations, other States could adopt similar legislation and perhaps obtain the extraterritorial jurisdiction the U.S. currently cannot by way of the ICESCR. Because the Guiding Principles are simply an elaboration of responsibilities and human rights articulated in the Economic Covenant, the 160 States that have ratified it could presumably use legislation like the ATS to hold foreign companies accountable for human rights abuses that do not yet qualify as customary international law.

There is much work to be done if the Guiding Principles are to lead to a substantive change in the respect for human rights by transnational corporations and other business enterprises. As mentioned by the working group, it is important for the Guiding Principles to be clearly and globally disseminated to all States and businesses.²⁴⁵ From there, it will take cooperation between all of these parties to determine how

239. *Kiobel v. Royal Dutch Petroleum Co.*, 132 S.Ct. 472, *argued*, No. 10-1491 (Oct. 17, 2011).

240. *See Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 117 (2010).

241. *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1678 (2013).

242. *See Mohamad v. Palestinian Authority*, 132 S.Ct. 1702, 1710-11 (2012).

243. Torture Victims Protection Act, Pub. L. 102-256, 106 Stat. 73 (1992).

244. *See* 28 U.S.C.A. § 1350.

245. *See* Report of the Working Group, *supra* note 141, at 12.

to create an effective access to remedies. Perhaps, the specific suggestions of the Norms could be of value in this process. There is still much work to be done, but if States and businesses become completely aware of the Guiding Principles and committed to implementing their standards, they can use the Guiding Principles as a framework to greatly reduce human rights abuses by transnational corporations and other business enterprises.

