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The U.N. Guiding Principles: Beyond Soft Law

Noura Barakat*

I. INTRODUCTION

In today's global economy, transnational corporations ("TNCs") are among the most prominent violators and promoters of international human rights norms. On the one hand, TNCs have been accused of horrific human rights abuses. Coca-Cola has been associated with, or has been directly responsible for, the systematic intimidation, torture, kidnapping, unlawful detention, and murder of trade unionist employees.¹ Other corporations such as Nike and Gap have been accused of violating their workers' rights by paying unfair wages, requiring unreasonable overtime, and providing unsafe working conditions.² In the extractive industries, Shell's oil production in Nigeria and BHP Billiton's copper mining in Papua, New Guinea, have caused environmental disasters.³ On the other hand, TNCs have been behind some of the most ambitious initiatives to promote human rights around the globe. With its experience in addressing technology-facilitated crime and the newly established Microsoft Technology and Human Rights Center, Microsoft has dedicated itself to advancing human rights by working with a broad range of stakeholders in an effort to combat human trafficking worldwide.⁴ To help support lesbian, gay, bisexual, and transgender ("LGBT") rights, Ben and Jerry's donated one-hundred percent of every purchase of its "I Dough, I Dough" flavor to the Human Rights Campaign fight for LGBT equality when bought from the Human Rights

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1. David Kinley & Junko Tadaki, *From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law*, 44 VA. J. INT'L L. 931, 933 (2004).

2. *Id.*

3. *Id.*

4. *Human Trafficking*, MICROSOFT (Jan. 2013), <https://www.microsoft.com/about/corporatecitizenship/en-us/working-responsibly/principled-business-practices/human-rights/> (follow "Human Trafficking" link to download).

Campaign website.⁵ They also have grant programs and community service projects to help support endeavors led by grassroots organizations focusing on Human Rights and Social Justice.⁶ Other companies like Adidas, Reebok, and Rio Tinto, have implemented codes of conduct requiring suppliers to adhere to global labor standards.⁷

The size and global reach of corporations places them in a position to affect the enjoyment of human rights both positively and negatively. As a result, recent human rights scholarship and advocacy has focused on TNCs as engines for promoting human rights around the globe through the adoption of Corporate Social Responsibility (“CSR”) principles. However, despite the tremendous power TNCs have to influence human rights, international human rights legal obligations have continued to focus on states as the locus of human rights compliance and have not been formally extended to corporations. While the United Nations’ (“U.N.”) most recent effort to integrate corporations into the international human rights framework, called the “Protect, Respect, and Remedy” Framework or “Guiding Principles,” encourages corporations to observe international human rights norms, it confirms that such observance is voluntary. By contrast, the GPs reiterate that states have mandatory duties under international law to protect the human rights of their citizens and to enact laws imposing these obligations on corporations that operate within their borders.

The fashionable status of CSR obscures the fact that states remain the primary implementers and protectors of human rights under international law, as well as the primary stewards of their corporations’ human rights practices. This paper examines exactly what that implementation means and how nations around the world have sought to comply with these duties. While states have formally binding obligations under international law, there are virtually no mechanisms for legally enforcing them. Nonetheless, states have taken a variety of concrete steps to ensure that their corporate citizens observe international human rights norms. This paper reviews the literature and compiles a comprehensive catalogue of states’ efforts to improve the human rights practices of corporations. Contrary to those who see a declining role for the state in a globalized economy, this paper argues that states have an important role to play in raising the human rights standards of TNCs.

5. Victor Luckerson, *Ben & Jerry’s Just Renamed This Ice Cream Flavor in Honor of Gay Marriage*, TIME (June 27, 2015), <http://time.com/3938424/ben-jerrys-ice-cream-flavor-gay-marriage/>.

6. *Grassroots Organizing for Social Change Program*, BEN & JERRY’S FOUND., <http://benandjerrysfoundation.org/the-grassroots-organizing-for-social-change-program/> (last visited Dec. 12, 2015).

7. Kinley & Tadaki, *supra* note 1, at 954.

The paper will proceed as follows. First, I trace the genealogy of U.N. efforts to raise the human rights standards of TNCs, culminating in the adoption of the GPs. Second, I discuss the structure and the key provisions of the GPs, which carve out a prominent role for states in raising business human rights standards. Third, I explain the challenges states face in regulating the human rights practices of TNCs. Fourth, I review the efforts states have made to do so. I conclude that although the GPs are not binding, they set a pathway for states to seriously advance the mission of having more human rights-friendly corporations.

II. UNITED NATIONS EFFORTS TO EXTEND HUMAN RIGHTS OBLIGATIONS

For decades, as the influence of TNCs has risen in an increasingly globalized economy, the U.N. has promoted socially responsible business practices. The U.N. mission to promote corporate social responsibility began in 1973 when it formed the United Nations Commission on Transnational Corporations (“UNCTC”). This group, aimed at providing a permanent intergovernmental forum for deliberations on issues related to TNCs, and included three broad objectives.⁸ First, it sought to further understand TNC activity.⁹ Second, it aimed to secure international arrangements that promote the positive contributions of TNC’s national development goals.¹⁰ Third, it worked to strengthen the negotiating capacity of host countries.¹¹ By establishing these three objectives, the U.N. hoped to use UNCTC to ratify a corporate code of conduct.¹² Unfortunately, due to disagreements between developed and developing countries,¹³ an agreeable code of conduct could not be formed and UNCTC was dissolved in the early 1990s.¹⁴

8. OLUFEMI AMAO, CORPORATE SOCIAL RESPONSIBILITY, HUMAN RIGHTS AND THE LAW: MULTINATIONAL CORPORATIONS IN DEVELOPING COUNTRIES 32 (2011), available at https://books.google.com/books?id=QUvOD7ZC7_sC&pg=PA32&lpg=PA32&dq=aimed+at+providing+a+permanent+intergovernmental+forum+for+deliberations+on+issues+related+to+TNCs&source=bl&ots=rObOrYkplx&sig=LBtmvPHAV8G4E8zGOKwWkuwLXVE&hl=en&sa=X&ved=0ahUKEwifgbqPmufMAhWMOCYKHV4MAiUQ6AEIKDAC#v=onepage&q=aimed%20at%20providing%20a%20permanent%20intergovernmental%20forum%20for%20deliberations%20on%20issues%20related%20to%20TNCs&f=false.

9. *Id.*

10. *Id.*

11. *Id.*

12. *United Nations Guiding Principles on Business and Human Rights*, WIKIPEDIA, http://en.wikipedia.org/wiki/United_Nations_Guiding_Principles_on_Business_and_Human_Rights (last visited Dec. 12, 2015) [hereinafter *U.N. Guiding Principles*].

13. Surya Deva, *Guiding Principles on Business and Human Rights: Implications for Companies*, 9 EUR. CO. L. 101, 102 (2012), <http://ssrn.com/abstract=2028785>.

14. READINGS IN GLOBALIZATION: KEY CONCEPTS AND MAJOR DEBATES 187 (George Ritzer &

As economic globalization continued to expand in the 1990s, the U.N. sought new approaches to ensure corporate adherence to human rights norms. The creation of the U.N. Global Compact (“the Compact”) in July 2000 was one of those approaches.¹⁵ The Compact was a principle-based framework designed as a public-private partnership between corporations and the UN.¹⁶ Its goal: To encourage businesses worldwide to adopt sustainable and socially responsible policies and to report on their implementation.¹⁷ In essence, TNCs became recognized as pioneering the shift toward globalization, thereby becoming part of the solution rather than the problem.¹⁸ By pledging to honor ten principles surrounding human rights issues, the Compact allowed businesses to become signatories, letting them gain legitimacy through the U.N.¹⁹ This public-private partnership reflected both the growing influence of TNCs in international law and a step towards their recognition as subjects of international law.²⁰ However, despite best efforts to make the Global Compact effective, it faced much criticism. Its biggest limitation is that it is entirely voluntary, leaving no repercussions if companies deviate from its principles.²¹ It has no effective monitoring enforcement provisions and businesses often used it for PR purposes without having any real intention to follow its rules.²² Despite the fact that a transparent system for evaluating corporations conduct is desirable, it is very unlikely that corporations will agree to external monitoring or mandatory enforcement of the Compact principles.²³

The failures of the Compact led certain constituencies in the U.N. to push for binding legal obligations on TNCs. Toward this end, the U.N. Working Group on the Working Methods and Activities of Transnational Corporations, developed the “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to

Zeynep Atalay eds., 2010).

15. Surya Deva, *Global Compact: A Critique of the U.N.’s “Public-Private” Partnership for Promoting Corporate Citizenship*, 34 SYRACUSE J. INT’L LAW & COM. 107, 110–11 (2006), <http://ssrn.com/abstract=925692>.

16. *Id.* at 108.

17. *United Nations Global Compact*, WIKIPEDIA, https://en.wikipedia.org/wiki/United_Nations_Global_Compact (last visited Dec. 12, 2015).

18. Jena Martin Amerson, “*The End of the Beginning?*”: *A Comprehensive Look at the U.N.’s Business and Human Rights Agenda from a Bystander Perspective*, 17 FORDHAM J. CORP. & FIN. L. 871, 892 (2012).

19. *Id.* at 890–91.

20. Deva, *supra* note 15, at 109.

21. Amerson, *supra* note 18, at 893.

22. Jo Confino, *Cleaning up the Global Compact: Dealing with Corporate Free Riders*, GUARDIAN (Mar. 26, 2012, 12:47 PM), <http://www.theguardian.com/sustainable-business/cleaning-up-un-global-compact-green-wash>.

23. Deva, *supra* note 15, at 146–47.

Human Rights,” also known as “the Norms,” in 2003.²⁴ The Norms sought to change TNCs legal status under international law by making international human rights obligations binding on corporations.²⁵

Before the Norms, TNCs were viewed as entities whose sole purpose was limited to economics, but over time people began to approach TNCs as entities with a social, cultural, civil, and political purpose.²⁶ TNCs often interfere with the political, social, cultural, and economic life of countries in which they operate.²⁷ However, instead of eliminating TNC interference, the Norms treat TNCs as virtual state actors for purposes of many normative requirements.²⁸ The Norms would have required TNCs to actively encourage social progress and development, becoming entities whose principal purposes are encompassed in the U.N. Covenant on Economic, Social, and Cultural Rights and the U.N. Covenant on Civil and Political Rights.²⁹ In this way, the Norms sought to hold TNCs liable under international law.

Through recommendations and proposals concerning the working methods and activities of TNCs, the Norms intended to ensure the same economic and social practices of TNCs as their host countries to promote human rights.³⁰ Because the Compact was criticized for lacking an implementation procedure and a monitoring body, the Norms addressed those issues by outlining a six-step process for ensuring that TNCs implemented the policies set forth in the Norms, and created a monitoring body to review their applications.³¹ Furthermore, the Norms also included monitoring by nonstate actors such as nongovernmental organizations (“NGOs”) and TNCs themselves.³² Ultimately, however, the Norms failed to gain approval and were dropped by the U.N. Commission on Human Rights.³³

Several reasons led to the downfall of the Norms. The Norms attempted to establish direct responsibility for TNCs for human rights

24. Pini Pavel Miretski & Sascha-Dominik Oliver Vladimir Bachmann, *Global Business and Human Rights — The UN ‘Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’ — A Requiem*, 17 DEAKIN L. REV. 5, 7 (2012), <http://ssrn.com/abstract=1958537>.

25. Larry Catá Backer, *Multinational Corporations, Transnational Law: The United Nations’ Norms on the Responsibilities of Transnational Corporations as a Harbinger of Corporate Social Responsibility in International Law*, 37 COLUM. HUM. RTS. L. REV. 287, 371 (2006).

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. Miretski & Bachmann, *supra* note 24, at 7–8.

31. Amerson, *supra* note 18, at 899.

32. Miretski & Bachmann, *supra* note 24, at 8.

33. *Id.* at 5.

violations, using existing international law frameworks.³⁴ The nonvoluntary framework purported by the Norms was also much more codified than any voluntary framework.³⁵ However, this framework still failed to constitute hard law.³⁶ In essence, the Norms were just a furtherance of the human rights principles found in the Universal Declaration of Human Rights.³⁷ The Preamble's attempt to codify established principles of international law by listing international treaties and resources produces a problem for corporations whose stakeholders are unfamiliar with the references referred to in the Norms.³⁸ Corporations argued that they would be unable to follow the Norms, causing the Norms to lose credibility and become self-defeating.³⁹ However, and perhaps more importantly, was the fact that the Norms set to "impose binding international human rights obligations directly on corporate actors."⁴⁰ After all, TNCs' primary response to the Norms was to criticize their "binding and legalistic approach."⁴¹ Consequently, TNCs mobilized strongly against the Norms and ultimately were successful in defeating them. Despite the claim that the Norms represented a "definitive and comprehensive set of standards," they caused much division between states, businesses, and human rights groups.⁴² Although the Norms failed, they set the stage towards developing a framework that sets the meaning of human rights obligations of corporations and States.

With the failure of the Norms, John Ruggie was delegated with the task of creating a set of standards that could gain the consensus of business interests. In 2005, U.N. Secretary General Kofi Annan appointed John Ruggie as the U.N. Special Representative for Business and Human Rights ("SRSG").⁴³ A 2007 report, recognized that the expansion of markets had not been matched by an expansion in protection for individuals and communities suffering business-related human rights abuse.⁴⁴ The misalignment between economic forces and the ability of communities to

34. Miretski & Bachmann, *supra* note 24, at 13.

35. *Id.*

36. Miretski & Bachmann, *supra* note 24, at 13.

37. *Id.*

38. *Id.* at 14.

39. *Id.*

40. PENELOPE SIMONS & AUDREY MACKLIN, *THE GOVERNANCE GAP: EXTRACTIVE INDUSTRIES, HUMAN RIGHTS, AND THE HOME STATE ADVANTAGE* 11 (2014).

41. *Id.*

42. HUMAN RIGHTS OBLIGATIONS OF BUSINESS: BEYOND THE CORPORATE SOCIAL RESPONSIBILITY TO RESPECT? 110 (Surya Deva & David Bilchitz eds., 2013).

43. *U.N. Guiding Principles*, *supra* note 12.

44. Patricia Feeney, *Business and Human Rights: The Struggle for Accountability in the UN and the Future Direction of the Advocacy Agenda*, 6 SUR, REV. INT. DIREITOS HUMAN 11 (Dec. 2009), http://www.scielo.br/scielo.php?pid=S1806-64452009000200009&script=sci_artte xt&tlng=en.

handle the consequences of these economic forces created a permissive environment which allows corporations to carry out these blameworthy acts.⁴⁵

In 2008, the SRSG released a report entitled “Protect, Respect and Remedy: A Framework for Business and Human Rights,”⁴⁶ also known as the U.N. Guiding Principles on Business and Human Rights (“GPs”).⁴⁷ In creating the GPs, the SRSG attempted to reconcile the competing interests surrounding this issue for decades. Whereas TNCs criticized the binding and legalistic approach of the Norms, the GPs provided a softer and more private self-regulation.⁴⁸ It was made as a way of creating a broad consensus that everyone could sign on to. Consequently, the GPs were welcomed by business groups.⁴⁹

Essentially, the U.N. Guiding Principles clarified the roles of states and companies regarding human rights issues. It provided a common framework and language for what the state role is and what standards companies and states should be complying with. The Human Rights Council unanimously endorsed the Guiding Principles, suggesting that Ruggie achieved the consensus he was after in providing a global standard for preventing and addressing human rights risks by businesses.⁵⁰

III. GUIDING PRINCIPLES

Though the GPs do not constitute a legally binding document and do not create any new obligations, they elaborate on the implementation of existing standards and practices for states and businesses, including points covered in international and domestic law.⁵¹ The GPs allocate responsibility for raising human rights standards between states and corporations by stating that states have a duty to protect against human rights abuses by third parties by ensuring they do not infringe on human rights of others.⁵² Meanwhile, corporations have the responsibility to

45. Feeney, *supra* note 44.

46. Feeney, *supra* note 44.

47. *U.N. Guiding Principles*, *supra* note 12.

48. SIMONS & MACKLIN, *supra* note 40.

49. THE U.N. GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS ANALYSIS AND IMPLEMENTATION 6 (Kenan Institute for Ethics, Duke University 2012), <https://kenan.ethics.duke.edu/wp-content/uploads/2012/07/UN-Guiding-Principles-on-Business-and-Human-Rights-Analysis-and-Implementation.pdf> [hereinafter PRINCIPLES ON BUSINESS AND HUMAN RIGHTS].

50. *Id.*

51. Beata Faracik, *The Role of the State in Implementing the UN Guiding Principles on Human Rights and Business with Special Consideration of Poland*, 31 POLISH Y.B. INT'L L. 349, 363 (2011).

52. *Actions Expected of States Under UN Guiding Principles*, GLOBAL POLICY FORUM, <https://www.globalpolicy.org/global-taxes/52691-danish-institute-for-human-rights-explains-actions-expected-of-states-under-un-guiding-principles-.html> (last visited Dec. 12, 2015).

respect human rights by both managing the risk of harm and by trying to avoid harm.⁵³

The Guiding Principles consist of thirty-one principles, each followed by a brief commentary, which together outline steps for states to foster business respect for human rights, give companies a way to manage the risk business has on human rights, and offer a set of benchmarks for stakeholders to assess business respect for human rights.⁵⁴ The thirty-one principles are grounded in the recognition of three pillars.⁵⁵ Each pillar focuses on a particular aspect of the relationship between business, nongovernmental actors, international organizations, and states.⁵⁶ The first pillar, the state's duty to protect against human rights abuses by third parties such as businesses, is founded on the idea that the state has a primary obligation to enforce international standards for such conduct.⁵⁷ The second pillar, the corporate responsibility to respect human rights, is grounded in the belief that corporations have a responsibility to conform to these international standards.⁵⁸ While states have a legal obligation under international law to protect, corporations do not. The third and last pillar, the access to remedy, states a connection between the duty of states, the responsibility of corporations, and their mutual obligation to make their obligations effective by "providing greater access for victims to effective remedy, both judicial and non-judicial."⁵⁹ Through the third pillar, access to remedy, the state's duty to take appropriate steps to ensure those affected have access to effective remedy is reiterated.⁶⁰

IV. ROLE OF CORPORATIONS — RESPONSIBILITY TO RESPECT

The GPs place no binding obligations on corporations, but rather refer to the "responsibility" of corporations to "respect" human rights. The responsibility to respect is different from the duty to protect because where the duty to protect requires the protection of individuals and groups against human rights abuses, the responsibility to respect "indicates that respecting

53. PRINCIPLES ON BUSINESS AND HUMAN RIGHTS, *supra* note 49.

54. UNITED NATIONS, THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS: AN INTERPRETIVE GUIDE 2 (2012), http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf [hereinafter UNITED NATIONS].

55. *Id.* at 1.

56. Lara Cata Backer, *Symposium: The Global Impact and Implementation of Human Rights Norm: From Institutional Misalignments to Socially Sustainable Governance: The Guiding Principles for the Implementation of the United Nations' "Protect, Respect and Remedy" and the Construction of Inter-Systemic Global Governance*, 25 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 69, 76 (2012).

57. *Id.* at 76.

58. *Id.*

59. *Id.*

60. *Actions Expected of States Under UN Guiding Principles*, *supra* note 52.

rights is not an obligation current international human rights law generally imposes directly on companies.”⁶¹

Looking at the Guiding Principles, there are three principles which reflect the expectations of businesses. Guiding Principle 11 states that “business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”⁶² Because enterprises can affect the human rights of their employees, customers, and surrounding communities, it is important that businesses be aware of the impact they have on those affected by their actions. Included in being aware of human rights assessments is the need for corporations to not infringe on human rights.⁶³ Some have argued that corporations must use their sphere of influence to increase CSR and that corporations owe the greatest duties to their sphere of contact, such as workers, consumers, and members of local communities.⁶⁴ Furthermore, corporations also have a duty to prevent human rights abuses when they are in close contact with potential perpetrators, such as business partners.

The second foundational principle, Guiding Principle 12, states that “the responsibility of business enterprises to respect human rights refers to internationally recognized human rights — understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s (“ILO”) Declaration on Fundamental Principles and Rights at Work.”⁶⁵ Domestic laws that correspond to international human rights standards, such as ensuring companies do not pollute water or workplace standards in line with the ILO convention, already exist.⁶⁶ Nevertheless, the aim of GPs is to take these standards one step further and apply them globally to all businesses in all situations, making it exist independently of an enterprise’s own commitment to human rights.⁶⁷

Guiding Principle 13 states that “the responsibility to respect human rights requires that business enterprises” not only address adverse human rights impact when they occur, but also avoid causing or contributing to

61. John Ruggie, *The Corporate Responsibility to Respect Human Rights*, HARV. L. SCH. F. ON CORP. GOVERNANCE & FIN. REGS. (May 15, 2010), <http://corpgov.law.harvard.edu/2010/05/15/the-corporate-responsibility-to-respect-human-rights/>.

62. UNITED NATIONS, *supra* note 54, at 9.

63. *Id.* at 13.

64. Kinley & Tadaki, *supra* note 1, at 963.

65. UNITED NATIONS, *supra* note 54, at 9.

66. *Id.* at 13.

67. *Id.* at 14.

them through their own activities.⁶⁸ It also seeks “to prevent or mitigate adverse human rights impacts that are directly linked to [business enterprises] operations, products or services by their business relationships, even if they have not contributed to those impacts.”⁶⁹ In order to avoid causing human rights violations, Guiding Principle 15 states that “business enterprises should have in place policies and processes appropriate to their size and circumstances” to meet their responsibility to respect human rights.⁷⁰

Again, these are standards expected at the international level that have been affirmed by the Council’s approval of the U.N. Framework.⁷¹ These standards apply to all companies in all situations and, as made clear by leading business associations and the International Chamber of Commerce, they exist even if national laws are poorly enforced or not at all.⁷²

V. ROLE OF STATE — DUTY TO PROTECT

A state’s duty to protect human rights is deeply rooted in international law, and the GPs reiterate this principle. Since the creation of the International Bill of Human Rights, it has been widely accepted that it is the state’s duty to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁷³ The Universal Declaration of Human Rights, founded under the International Bill of Human Rights, has provided rights and protections to human rights defenders, and has defined the duties of the state, the responsibilities that humans hold as a whole, and the role of national law.⁷⁴ These duties have transferred over to the GPs where Foundational Principles 1 and 2 reiterate that states “must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises,” which requires them to take steps to prevent, investigate, punish, and redress abuses through effective policies, legislation, regulations, and adjudication.⁷⁵ However, where the conscious decision to give states the locus of responsibility under international law for

68. UNITED NATIONS, *supra* note 54, at 15.

69. UNITED NATIONS, *supra* note 54, at 15.

70. *Id.* at 23.

71. *Id.* at 9.

72. *Id.* at 10.

73. *The Universal Declaration of Human Rights*, UNITED NATIONS, <http://www.un.org/en/universal-declaration-human-rights/index.html> (last visited Dec 12, 2015).

74. *Declaration on Human Rights Defenders*, OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx> (last visited Dec. 12, 2015).

75. Faracik, *supra* note 51, at 370–71.

corporate conduct truly shows is Principle 3a. Principle 3a states that while fulfilling their general regulatory and policy functions, states should ensure that laws aimed at, or have the effect of, requiring business enterprises to respect human rights, are enforced.⁷⁶ Additionally, the adequacy of laws aimed at regulating businesses should be periodically assessed, and any gaps addressed.⁷⁷

VI. CHALLENGES STATES FACE IN REGULATING HUMAN RIGHTS CONDUCT OF BUSINESS

Unfortunately, there is much skepticism that states can effectively live up to their binding obligations under the GPs. While the duties are “binding” international law, there are two main reasons to question whether states will follow through with their duty to protect. First, states that fail to uphold the duty face few consequences. Second, even states that wish to comply with their duties to ensure corporate compliance with human rights standards may have limited power to do so.

First, international law has no set mechanism for enforcement and is not easily enforceable. Unlike domestic law which has a government to enforce law, there is no government to enforce international law.⁷⁸ Domestic legal vehicles for enforcing international law, like the Alien Tort Statute, do not apply to states.⁷⁹ In a world where enforcement comes through power, the closest to government enforcement that one would get is if a powerful country saw it in their interest to do so.⁸⁰ For example, countries like the United States are at the top of the food chain and therefore have the greatest flexibility in shaping international law. In the end, states cannot be coerced and therefore have less reason to ensure compliance. Furthermore, international law is often as much a source of conflict as it is a solution.⁸¹ Most forms of international law are contested, and rarely agreed upon universally.⁸² Cross-cultural differences also makes its interpretation and implementation difficult.⁸³

Second, the influence of states in an era of globalization is decreasing.

76. Faracik, *supra* note 51, at 370–71.

77. *Id.*

78. *International Law*, HG.ORG LEGAL SOURCES, <http://www.hg.org/international-law.html> (last visited Dec. 12, 2015).

79. Julian Ku, *Online Kiobel Symposium: The Alien Tort Statute as a Species of Extraterritorial U.S. Law*, SCOTUS BLOG (July 16, 2012, 1:50 PM), <http://www.scotusblog.com/2012/07/online-kiobel-symposium-the-alien-tort-statute-as-a-species-of-extraterritorial-u-s-law/>.

80. Eric Brahm, *International Law*, BEYOND INTRACTABILITY, <http://www.beyondintractability.org/essay/international-law> (last visited Dec. 12, 2015).

81. *Id.*

82. *Id.*

83. *Id.*

As of 2000, the combined sales of the world's top two-hundred corporations are far greater than a quarter of the world's economic activity.⁸⁴ The combined sales of these companies are bigger than the combined economies of 182 countries.⁸⁵ In 2014, a research report by the Transnational Institute showed that thirty-seven of the world's hundred largest economies are corporations.⁸⁶ Less than one percent, mainly banks, control the shares of forty percent of global businesses.⁸⁷ This level of wealth enables companies to lobby to get rid of laws which prove unfavorable to them, to fund studies on greenhouse gas emitters that create doubt in the public's mind, and even to set up grassroots organizations that defend their ideas.⁸⁸ This clearly shows TNCs' abilities to undermine or avoid government regulation and their rising strength relative to national governments.⁸⁹

Furthermore, the easy flow of capital across national borders leaves governments in a weaker bargaining position in their efforts to exert influence over their nation's development.⁹⁰ Eager to attract or retain capital, governments often drain the public treasury or dampen regulatory enforcement as they bid for TNC investment, despite devastating social costs.⁹¹ Poorly paid workers, cramped working conditions, attacks on labor organizing, and environmental degradation are among the common results.⁹² TNCs maximize profits globally by pitting worker's rights, wages, and environmental protections in one country against those in other countries, resulting in a destructive downward spiral into the abyss of rights and standards.⁹³ In the end, governments establish conditions favorable to the country's leading global firms.⁹⁴

These factors all make it seem counterproductive to have states carry the weight of enforcement. In a globalized economy, it is not clear that states have adequate power over TNCs to meaningfully influence their human rights practices.

84. Sarah Anderson & John Cavanagh, *Top 200: The Rise of Global Corporate Power*, GLOBAL POLICY FORUM (2000), <https://www.globalpolicy.org/component/content/article/221/47211.html>.

85. *Id.*

86. Koert van Mensvoort, *Top 100 Economies: 37 are Corporations*, NEXT NATURE (Feb. 10, 2014), <https://www.nextnature.net/2014/02/top-100-economies-37-are-corporations/>.

87. Nick Buxton, *State of Power 2014 Exposing the Davos Class*, TNI 1, 12 (2014), https://www.tni.org/sites/www.tni.org/files/download/state_of_power_hyperlinked_0.pdf.

88. *Id.* at 11.

89. Erik Leaver & John Cavanagh, *Controlling Transnational Corporations*, FOREIGN POLICY IN FOCUS (Nov. 1, 1996), http://fpif.org/controlling_transnational_corporations/.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

VII. IMPLEMENTING THE STATE DUTY TO PROTECT ON THE GROUND

Despite these challenges, states have taken a number of concrete measures towards fulfilling their duties under the GPs and towards showing their commitment to implementing their duty to protect by ensuring that their corporations respect human rights. On the federal side, there have been best practices, stakeholder engagements, transparency, and bilateral agreements. State side, states have been encouraging benefit corporations, making companies engage in more CSR than previously. By taking a holistic approach that focuses on making the GPs part of the norm of everyday business rather than a mere conversational piece, the GPs are being more effectively implemented.

Hillary Clinton stated that the “United States Government wants to be your ally and your partner — so we are all working together to make human rights a reality in the places where you do business.”⁹⁵ Consequently, the Department of State has played a large role in not only the promotion of best practices, but also in supporting and guiding of corporate conduct.⁹⁶ With regards to corporate citizenship and human rights, the Bureau of Economic and Business Affairs provides guidance and support for U.S. companies to undertake socially responsible corporate activities and ethical business practices that promote sustainable development.⁹⁷ Furthermore, it also engages with businesses, trade unions, and civil society to adopt and implement corporate policies.⁹⁸ When a company does exceptionally well in CSR practices, they are recognized through the annual Secretary of State’s Award for Corporate Excellence.⁹⁹

The State Department not only works on promoting CSR, but has also increased its involvement and interactions with stakeholders to help implement CSR friendly policies. Within the Bureau of Democracy, Human Rights, and Labor, the Office of International Labor Affairs, Internet Freedom and Business Human Rights works with companies, civil society, and governments to implement policies that respect human and

95. Gregory Maggio, Special Advisor, U.S. OECD National Contact Point Team, The Contribution of National Contact Points in furthering the Responsibility of Business to Respect Human Rights (Mar. 23, 2012), available at <http://www.state.gov/e/eb/rls/rm/2012/193511.htm>.

96. See generally, U.S. Department of State, Corporate Social Responsibility 1, 2 (Aug. 23, 2012), <http://www.state.gov/documents/organization/197790.pdf> [hereinafter CORPORATE SOCIAL RESPONSIBILITY].

97. *Id.* at 1.

98. *Id.*

99. *Id.*

labor rights and maximize positive contributions to global development.¹⁰⁰ More specifically, the Business and Human Rights team focuses on engaging stakeholders on practical challenges where business meets human rights and on spearheading U.S. government efforts to implement the GPs.¹⁰¹ Work in this area includes cementing emerging norms on business and human rights; demonstrating the value of credible multi-stakeholder systems; encouraging companies to implement human rights and internationally recognized labor rights at every stage of their supply chain; and contributing solutions to urgent policy challenges that implicate business respect for human rights.¹⁰²

Additionally, the State Department is implementing the Organization for Economic Cooperation and Development (“OECD”) National Contact Point (“NCP”) program with renewed vigor in an attempt to encourage U.S. businesses observe human rights norms. Under the OECD, Guidelines for Multinational Enterprises (“the Guidelines”) were formed.¹⁰³ The Guidelines require adhering governments to set up NCPs tasked with furthering the effectiveness of the Guidelines by undertaking promotional activities, handling inquiries, and providing a mediation and conciliation platform for resolving issues that arise from the alleged non-observance of the Guidelines.¹⁰⁴ NCPs provide resources to help stakeholders implement the Guidelines, to promote awareness and encourage implementation of the Guidelines, and to provide a vehicle through which parties may bring complaints about corporate violations of human rights.¹⁰⁵ NCPs aim to bring business and civil society together to identify potential and emerging responsible business conduct (“RBC”) related risks for TNCs and discuss appropriate actions and responses regarding the Guidelines.¹⁰⁶ If an allegation against a corporation is raised, NCP uses a “specific instance” mediation process to find a resolution between the parties.¹⁰⁷ These avenues the state has implemented provide a platform for businesses when they need guidance, making following CSR practices not only less daunting, but also encouraging since businesses know they have a support system.

The government has also focused on transparency. On a less

100. CORPORATE SOCIAL RESPONSIBILITY, *supra* note 96.

101. CORPORATE SOCIAL RESPONSIBILITY, *supra* note 96.

102. *Id.*

103. *Guide to the U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises*, U.S. STATE DEPARTMENT OF STATE, <http://www.state.gov/e/eb/oeecd/usncp/usncpguide/248956.htm> (last visited Dec. 12, 2015).

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

business-guided front, the Office to Monitor and Combat Trafficking in Persons works to combat human trafficking by partnering and engaging with business leaders, coalitions, and investor groups to raise awareness and advance implementation of the Luxor Guidelines.¹⁰⁸ The Luxor Guidelines focus on corporate policy, strategic planning, public awareness, supply chain tracing, government advocacy, and transparency to reduce forced labor in supply chains.¹⁰⁹ Congress has also passed laws requiring transparency in payments that extractive companies make to governments and requiring due diligence when sourcing metals from areas of Eastern Congo.¹¹⁰ Human rights reporting requirements for companies investing in Burma have been made, a pledge to implement the Extractive Industries Transparency Initiative has been put into effect, and money and manpower has been put into the Voluntary Principles on Security and Human Rights.¹¹¹

States have also begun implementing laws that make it easier for corporations to structure themselves in a way where they can observe human rights obligations. As mentioned earlier, where corporations were once seen as entities whose sole purpose was to make a profit, the evolving views of corporations has led them to be seen as entities with a social, cultural, civil, and political purpose.¹¹² This evolving view is epitomized by the move in many states to facilitate the creation of social enterprises, like social benefit corporations and limited liability companies (“L3Cs”). Social enterprises address two main problems in U.S. corporate law: the inability of managers to consider objectives other than shareholder profit when making decisions, and the lack of distinction between a genuinely good company and one that merely has good marketing.¹¹³

Beginning in 2008, state legislatures began authorizing a new class of corporations collectively known as social enterprises.¹¹⁴ These corporate forms are designed for businesses that seek to create positive social and environmental impacts in addition to financial returns.¹¹⁵ The formation of (“L3C”) and benefit corporations modify traditional business legal

108. CORPORATE SOCIAL RESPONSIBILITY, *supra* note 96, at 1.

109. *Id.*

110. Johnathan Kaufman, *U.S. “Approach on Business and Human Rights” Neglects Remedies for Victims*, EARTHRIGHTS INTERNATIONAL (May 3, 2013), <http://www.earthrights.org/blog/us-approach-business-and-human-rights-neglects-remedies-victims>.

111. Kaufman, *supra* note 110.

112. Backer, *supra* note 25, at 371.

113. Claire Achermann et al., *Benefit Corporations — A Case Study of the US and Lessons for Australia*, SOCIAL IMPACT HUB 1, 5 (Oct. 2014), <http://www.socialimpacthub.org/wp-content/uploads/2015/01/2014-B-Lab-Report.pdf>.

114. SOCIAL ENTERPRISE LAW TRACKER, <http://www.socentlawtracker.org/#/bcorps> (last visited Dec. 12, 2015).

115. *Id.*

structures to clearly enable and mandate the pursuit of social and environmental goals as a for-profit business enterprise.¹¹⁶ Jack Markell, the governor of Delaware (which has long been considered the center for leading development of corporate law) was quick to voice his support concerning these new enterprises.¹¹⁷ When enacting new legislation that would allow corporations to have CSR drive their decisions rather than profit, Markell described the new legislation as a way for corporations to “also fill a societal need.”¹¹⁸

L3Cs are emerging business entities that were created to bridge the gap between nonprofit and for-profit investing. They do this by providing a structure that facilitates investments in socially beneficial, for-profit ventures by simplifying compliance with Internal Revenue Service rules for program-related investments (“PRI”), a type of investment that private foundations are allowed to make.¹¹⁹ As of September 2015, nine states and the Oglala Sioux Tribe allow L3Cs.¹²⁰ Like an L3C, a benefit corporation is also structured to facilitate socially responsible practices. A benefit corporation is “required to create a material impact on society and the environment and to meet higher standards of accountability and transparency.”¹²¹ For those for-profit companies who wish to pursue a social mission, a benefit corporation gives directors a chance to act on more than mere shareholder profits when executing their fiduciary duties.¹²² As of September 2015, thirty states, along with Washington DC, permit businesses to become benefit corporations.¹²³ When asked why the spread of benefit corporations has been so intense, Andrew Greenblatt, a prime mover behind getting the necessary L3C legislation adopted in New York, said that it appeals to the left and the right, with the left saying “let’s get corporations to do more to make the world a better place.”¹²⁴ This new

116. Kate Cooney et. al, *Benefit Corporation and L3C Adoption: A Survey*, STAN. SOC. INNOVATION REV. (Dec. 4, 2015), http://ssir.org/articles/entry/benefit_corporation_and_l3c_adoption_a_survey.

117. *Governor Markell Signs Public Benefit Corporation Legislation*, DELAWARE HOUSE DEMOCRATS, <http://www.dehousedems.com/press/governor-markell-signs-public-benefit-corporation-legislation> (last visited Dec. 12, 2015).

118. *Id.*

119. *Low-Profit Limited Liability Company*, WIKIPEDIA, https://en.wikipedia.org/wiki/Low-profit_limited_liability_company (last visited Dec. 12, 2015).

120. INTERSECTOR PARTNERS, L3C, http://www.intersectorl3c.com/l3c_tally.html (last visited Dec. 12, 2015).

121. BENEFIT CORPORATION, <http://benefitcorp.net/faq> (last visited Dec. 12, 2015).

122. Doug Bend & Alex King, *Why Consider a Benefit Corporation*, FORBES (May 30, 2014), <http://www.forbes.com/sites/theyec/2014/05/30/why-consider-a-benefit-corporation/>.

123. *Governor Markell Signs Public Benefit Corporation Legislation*, *supra* note 117.

124. Francesca Rheannon, *The Benefit Corporation: Transforming Corporations from Psychopaths to Good Citizens*, FRANCESCA RHEANNON, JOURNALIST (Feb. 16, 2012), <http://www.francescarheannon.com/2012/02/benefit-corporation-transforming.html>.

emergence allows companies to not fear repercussions from shareholders and to make decisions in a way that benefits the main purpose of the corporation. By making social mission oriented companies more favorable, the government is encouraging CSR and making it the norm as opposed to an oddity.

Along with new legislation involving more socially friendly business practices, states have also worked on increasing transparency. California passed the California Transparency in Supply Chains Act, which requires large retailers and manufacturers doing business in California to disclose on their websites their “efforts to eradicate slavery and human trafficking from [their] direct supply chain for tangible goods offered for sale.”¹²⁵ It was enacted as a way to provide consumers with critical information about the efforts companies are undertaking to prevent and root out human trafficking and slavery in their product supply chains.¹²⁶

Bilateral trade agreements have also come to play a role in state actions towards protecting human rights. Under authority delegated by the Office of the United States Trade Representative (“USTR”), the Office of Labor Affairs negotiates labor provisions in bilateral Free Trade Agreements (“FTAs”).¹²⁷ Although the specific details differ among different FTAs, they generally include commitments to respect fundamental labor rights and enforce labor laws.¹²⁸ For instance, a new trade agreement called the Trans-Pacific Partnership (“TPP”) is designed to lower barriers, raise labor standards, and drive long-term growth across the region.¹²⁹ It will cover forty percent of the world’s total trade and establish strong protections for workers and the environment, giving people better jobs with higher wages and safer working conditions.¹³⁰ Several places in the treaty highlight these goals. Chapter 19, “Labor,” requires all nations to adopt and maintain laws consistent with the ILO Declaration on Fundamental Principles and Rights at Work and the follow up report.¹³¹ It also encourages signing parties to adopt CSR initiatives on labor issues, at times even mandating specific changes to particular states’ domestic national laws.¹³² These protections will extend to women, migrant workers

125. Kamala D. Harris, *The California Transparency in Supply Chains Act: A Resource Guide* i, i (2015), <https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf>.

126. *Id.*

127. *Bilateral and Regional Trade Agreements*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/issue-areas/labor/bilateral-and-regional-trade-agreements> (last visited Dec. 12, 2015).

128. *Id.*

129. *Delivering on the Promise of Economic Statecraft*, U.S. DEP’T OF STATE (Nov. 17, 2012), <http://www.state.gov/secretary/20092013clinton/rm/2012/11/200664.htm>.

130. *Id.*

131. Jeremy S. Goldstein, *3 Ways the TPP Advances Human Rights Protections*, THE VIEW FROM ABOVE (Nov. 10, 2015), <http://djilp.org/6149/3-ways-the-tpp-advances-human-rights-protections/>.

132. *Id.*

and others who have often been excluded from the formal economy.¹³³ In Chapter 23, “Development,” commitments must be made to strengthen an open trade environment that seeks to improve welfare, reduce poverty, and raise living standards.¹³⁴ For example, using Burma as a hub to improve an Indo-Pacific trading relationship could lead to jobs which would lift millions out of poverty.¹³⁵ It could also promote stability and drive cooperation on shared challenges like narcotics, human trafficking, and refugees.¹³⁶

As one can see, the U.S. is actively participating in this emerging field of government and best business practices. By promoting best practices, engaging with stakeholders, and encouraging transparency, the government is able to increase the likelihood of companies following responsible CSR. In doing so, this new heightened standard becomes the norm across the board for various companies. The GPs then work to restructure international conduct and contribute to the formation of customary or treaty law.¹³⁷

VIII. WHAT IS MOTIVATING THE U.S. GOVERNMENT TO IMPLEMENT ITS DUTY TO PROTECT?

One would wonder what the government has to gain by devoting resources to essentially voluntary principles. So why would the US devote so much effort to its duty to protect? Those following the Guiding Principles believe they have reduced their risks in terms of reputation, legal liability, access to capital, and other factors.¹³⁸ When the United States participates in encouraging CSR, it is forming an emerging field of the government working with best practices. Many times, these voluntary initiatives that companies choose to follow not only align with the law, but also go above and beyond.¹³⁹ By implementing an even stricter standard, the government and corporations are able to collaborate together to gather information on what works and what does not.

By supporting these initiatives, the U.S. government is able to promote best practices. When a company or government asks what is

133. *Delivering on the Promise of Economic Statecraft*, *supra* note 129.

134. Goldstein, *supra* note 131.

135. *Delivering on the Promise of Economic Statecraft*, *supra* note 129.

136. *Id.*

137. Faricik, *supra* note 51, at 369.

138. *Overview of Company Efforts to Implement the Voluntary Principles*, VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS, 1, 2 (Mar. 10, 2016), http://voluntaryprinciples.org/files/vp_company_efforts.pdf.

139. *Corporate Social Responsibility and Related Terms*, SAGE 1, 8 https://us.sagepub.com/sites/default/files/upm-binaries/41167_1.pdf (last visited Apr. 7, 2016).

expected of them, the U.S. will have a list of standards that it can point to and say must be met, whether it be the GPs, OECDs, Extractive Industries Transparency Initiative, or something else. Furthermore, the fact that these are international standards makes it easy for the U.S. to say that following these regulations is not something that only the U.S. wants, it is something that has been decided on globally. It gives the U.S. support and validity in their actions towards certain practices it engages in with businesses.

Moreover, having this mixture of engagement and reporting allows a chance for the government to advise organizations and companies. If a company is looking to do business in a certain region, it can go to the State Department or to published reports and learn about what it should be considering. One example is the Direct Line Program, which gives American businesses abroad a chance to engage with United States Ambassadors overseas via teleconference.¹⁴⁰ Meetings and conference calls between American companies and the American government to discuss challenges and how stakeholders can work together to draw attention to current and emerging human rights issues and address common challenges are also regularly held.¹⁴¹ Government involvement, once again, allows for a communicative platform which can help companies be more successful abroad while also giving the United States more leverage abroad. The State Department takes on the role of an engager rather than an enforcer. Not only that, but the government can get a better handle on issues it may be facing and on solutions for those problems by having information on current issues happening abroad.

Reputation and public diplomacy are also motivation for the government to promote CSR. American companies represent the United States, so there is a desire for companies to uphold U.S. values, both for themselves and the government. By having this communicative platform, the government is able to express to companies the government's position and what is expected of them. If companies are not doing what is expected of them, the government can work with stakeholders collaboratively to help them reach governmental standards. In essence, this ends up advancing the public diplomacy side of engagement to ensure that there is proper brand representation.

There is also a strong economic benefit for states to implement their duty to protect and encourage TNCs to follow the GPs. While in office, Secretary of State Hillary Clinton argued that "commercial diplomacy and the promotion of trade, long the neglected stepchildren of the foreign

140. *Direct Line Program*, U.S. DEP'T. OF DEF., <http://www.state.gov/e/eb/directline/> (last visited Dec. 12, 2015).

141. *Id.*

policy establishment, are central to United States strategic interests.”¹⁴² During her time, she worked towards emphasizing “Economic Statecraft,” where companies were able to fairly compete with one another, both locally and abroad.¹⁴³ Whether it be opening markets in new parts of the world, drafting trade agreements, or giving U.S. embassies abroad more business oriented tasks, she worked towards reorienting the Department of State’s priorities towards business. Her goal was for the U.S. government to work towards making it a priority to help U.S. businesses abroad win contracts.¹⁴⁴

Additionally, the consumer trend has been largely focused on environmentally and socially friendly business. Research has shown that selling a good product or service is no longer enough to attract today’s socially conscious shoppers.¹⁴⁵ A study by public relations and marketing firm Cone Communications and Echo Research revealed corporate social responsibility has become a reputational imperative, with ninety percent of shoppers worldwide likely to switch brands that support a good cause, given similar price and quality.¹⁴⁶ Ninety percent of the shoppers surveyed would boycott companies if they found the firms engaged in irresponsible business practices, with fifty-five percent of the respondents having already done so in the past year.¹⁴⁷ Consumers want products from businesses who are addressing economic development, the environment, human rights, poverty and hunger.¹⁴⁸ These are all factors which the GPs aim to improve. When TNCs follow the duties outlined in the GPs, they are adhering to the largely popular consumer opinion, thereby increasing their business. When TNCs increase their business, the state also benefits. Economic forces are transforming foreign policy realities, and a growth in economy means an increase in influence.¹⁴⁹ Whereas power used to be determined in military strength, power in today’s day is more often measured in economic terms.¹⁵⁰ Much like Clinton acknowledged with her Economic Statecraft agenda, economics have become a foreign policy tool.¹⁵¹ As a result, it

142. Elizabeth Dwoskin, *Hillary Clinton's Business Legacy at the State Department*, BLOOMBERG BUS. (Jan. 10, 2013), <http://www.businessweek.com/articles/2013-01-10/hillary-clintons-business-legacy-at-the-state-department>.

143. *Id.*

144. *Id.*

145. Chad Brooks, *Social Responsibility No Longer Optional*, BUS. NEWS DAILY (May 22, 2013, 7:17 PM), <http://www.businessnewsdaily.com/4528-social-responsibility-not-optional.html>.

146. *Id.*

147. *Id.*

148. *Id.*

149. Hillary Rodham Clinton, *Economic Statecraft*, U.S. DEP’T OF DEF. (Oct. 11, 2014), <http://www.state.gov/secretary/20092013clinton/rm/2011/10/175552.htm>.

150. *Id.*

151. Dwoskin, *supra* note 142.

only makes sense for states to encourage companies to act in such a way where the population will prioritize their products and services over others.

IX. FOREIGN GOVERNMENTS INTERPRETING THEIR “DUTY TO PROTECT”

Other countries have also taken an active approach in the government’s role in furthering corporate social responsibility. While the U.S. has set forth regulatory programs, advisory committees, and legislative encouragement, other countries have taken a more stringent approach. The European Parliament has mandated binding codes of conduct for corporations and set up a monitoring system, requiring corporations to be more transparent in regards to company activity, and also taking an active approach in monitoring business practices of certain sized corporations. In India, there have been mandates that require companies to devote a portion of their revenues to CSR and penalize those who fail to comply.

For example, in an attempt to avoid accusations that European companies cause human rights abuses in developing countries, and realizing that intense competition for investment has led to corporate abuse, the European Parliament has called on the European Commission to develop a “multilateral framework governing companies’ operations worldwide” and include in it a binding code of conduct.¹⁵² The European Commission stated that it intends to “monitor the communities made by European enterprises with more than 1,000 employees to take account of internationally recognized CSR principles and guidelines.”¹⁵³ Furthermore, it refers to CSR as compliance rooted in respect for applicable legislation, and for collective agreements between social partners, as opposed to voluntary action beyond compliance.¹⁵⁴ By expecting all European enterprises to meet the corporate responsibility to protect human rights, it allows for an all-encompassing framework, covering not only traditional human rights, but also what tends to be viewed as labor rights in CSR dialogue.¹⁵⁵

Overall, all European governments have adopted endorsement policies in the form of political support and affirmation, educational activities,

152. *Resolution on EU Standards for European Enterprises Operating in Developing Countries: Towards a European Code of Conduct*, INVESTMENT POLICY HUB 1, 4 (1999), <http://investmentpolicyhub.unctad.org/Download/TreatyFile/2900>.

153. Faricik, *supra* note 51, at 353.

154. *Id.*

155. *Id.* at 358.

awareness campaigns and guidelines.¹⁵⁶ Facilitation policies, including subsidies and tax expenditures for contributions to charities, the adoption of clean technologies, and the employment of disadvantaged workers in public procurement policies.¹⁵⁷ When looking at partnership policies, Austria, Germany, Italy, and Sweden have all introduced CSR multi-stakeholder forums.¹⁵⁸ In the United Kingdom and Denmark, alliances of companies, trade unions, and NGOs committed to improving working conditions in global supply chains.¹⁵⁹ When looking at mandating policies, the most definitive role in CSR through regulations and decrees, France has regulations regarding senior management reporting on financial risks, along with pension fund reporting requirements.¹⁶⁰

Recognizing that it is one of the countries most affected by CSR, India passed a mandatory CSR Bill in 2009.¹⁶¹ Among its requirements are that firms who make profits over a certain amount are required to spend at least two percent of their average net profit on CSR activities.¹⁶² Companies failing to disclose this information would be met with a penalty.¹⁶³ Furthermore, compensation for directors of companies should not exceed five percent of the company's net profit.¹⁶⁴ In August 2013, India passed another bill entitled the Companies Act 2013, which aimed to improve and simplify corporate governance norms and legislate the role of whistleblowers.¹⁶⁵ Section 135 in the Act states that every company with the prescribed net worth or turnover must necessarily create a CSR Committee, with clearly defined composition, activities to be undertaken, budgets and responsibilities of the Committee.¹⁶⁶

As one can see, incorporating CSR into the role of corporations is a global concern that has far reaching implications for all actors involved. Where governments may have once thought they had no role in the affairs of corporations, globalization is causing an increase in overlap of states' duties, and a corporations' responsibilities.

156. Jette Steen Knudsen, Jeremy Moon, & Rieneke Slager, *Government Policies for Corporate Social Responsibility in Europe: A Comparative Analysis of Institutionalization*, 43 POL'Y & POL. 81, 94 (2013).

157. Knudsen, *supra* note 156.

158. *Id.* at 9.

159. *Id.*

160. *Id.*

161. Arup Mukherjee, *From CSR To MCSR: The Journey Towards Mandatory Corporate Social Responsibility In India*, 3 GOLDEN RES. THOUGHTS, Issue-2, 1 (Aug. 15, 2013), available at <http://ssrn.com/abstract=2467466>.

162. *Id.* at 2.

163. *Id.*

164. *Id.*

165. Vanya Rakesh, *Corporate Social Responsibility under Companies Act 2013: an Overview*, L. MANTRA ONLINE J. (Apr. 5, 2015), <http://journal.lawmantra.co.in/?p=163>.

166. *Id.*

X. CONCLUSION

This paper demonstrates that, despite the GPs lack of meaningful legal enforcement mechanisms, they have prompted states to undertake extensive actions designed to raise human rights standards. While states were once seen as the reigning powers who oversaw the implementation of law, globalization has caused economic growth to go beyond a state's control. When governments began including the principles of the GPs into routine business practices, governments created a social norm that benefited them economically and politically. By promoting best practices, engaging stakeholders, and taking active steps towards CSR friendly policies in their management, governments developed a new relationship between corporations and states which allowed them to empower one another.

With a common framework that has become widely accepted, these best practices allow us to further the implementation of CSR by providing a chance to engage, at an international level, with maintaining and furthering dialogue developed by the GPs. By continuing to maintain conversation and affirm principles internationally, corporations and governments can work together to keep improving the standard for corporate social responsibility.