“Re-righting Business”: John Ruggie and the Struggle to Develop International Human Rights Standards for Transnational Firms

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ABSTRACT

As the major players in globalization, firms often operate in states where human rights may not be respected. Without direct intent, firms may be complicit in human rights violations. In 2008, John Ruggie, the United Nations (UN) Special Representative on business and human rights, developed a framework for policymakers to protect human rights and for executives to respect human rights. On 16 June 2011, the UN Human Rights Council endorsed Ruggie’s “Guiding Principles” (GPs) for implementing this framework. This article describes how firms, states, and to a lesser extent nongovernmental organizations (NGOs), have responded to this delineation of the human rights responsibilities of business. This article makes four key points: 1) the GPs are an important advance in global governance; 2) the process of developing the GPs was a model of transparent, inclusive twenty-first century governance, although the public is generally unaware of the issue or the new policy; 3) the GPs are a creative and broad rethinking of how to evaluate the human rights performance of corporations; and 4) the GPs are unlikely to have much influence unless policymakers educate their public.
national firms and their citizens regarding the human rights responsibilities of business and press these executives to act.

I. INTRODUCTION

Some sixty-seven years after the Holocaust, Guillaume Pepy, the chairman of Société Nationale des Chemins de fer français (SNCF), the French national railway company, apologized for transporting 76,000 people to Nazi death camps during the Second World War.1 Pepy acknowledged that his firm's failure to protect human rights in the past was creating business risks in the present, and he feared that US state legislators would block the company from competing for high-speed rail contracts.2

When businesses violate human rights, executives may create wounds that cannot easily be healed by apologies, time, or new management. As markets, technology, and politics change, many executives have struggled to ensure that their operations do not undermine the human rights of their stakeholders. For example, during the first days of the February 2011 protests in Egypt, Vodafone suspended mobile and Internet service at the behest of the Egyptian government.3 The Mubarak regime then used the service to send pro-government text messages, calling for rallies and actions against democratic protestors.4 Vodafone executives claimed that they were forced to comply with the emergency rules invoked by the Egyptian government and that the company could not contest the authorities.5 However, many

2. Id.
4. Id. Pepy was not the only executive apologizing for his predecessors' failure to respect human rights. Aetna, J.P. Morgan, and Wachovia have all apologized for their financing the slave trade in the United States. Other companies have apologized for their failure to respect human rights in Brazil (slave labor) and China (right to privacy). Universal Declaration of Human Rights (UDHR), adopted 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess, arts. 1, 11, U.N. Doc. A/RES/3/217A (1948). It states: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” And further, “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”
5. Vodafone said it was unwilling to let these text messages be sent in Vodafone's name, and limited their circulation. Vodafone then formally informed the Egyptian authorities in Cairo and London that any future instructions to send SMS messages must clearly show the authority requiring the message to be sent, and the text of the message must make this clear. While taking this position undoubtedly increased risk to its employees, it also stopped short of actual non-compliance, which Vodafone hoped would mitigate that risk to some extent. Press Release, Vodafone, Vodafone Group Plc—Response on Issues

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human rights activists asserted that in doing so, Vodafone was indirectly complicit in violating human rights. As the SNCF and Vodafone examples illustrate, when firms directly or indirectly violate human rights, they can create business risks and increase business costs. Such risks occur when an existing practice, relationship, or situation places the company at risk of involvement in human rights abuse. Firms may incur increased costs such as legal liability, reputational and operational risks (such as work stoppages, boycotts, blackmail, and sabotage), and loss of investor or consumer confidence. Firms should thus seek to prevent actual or perceived human rights risks. In doing so, the firm can meet its human rights responsibilities while reducing potential threats to the company. Some executives, however, may not be aware that their operations can affect human rights. Moreover, not all executives understand how to measure and assess their actual and perceived human rights risks. Executives will need guidance, tools, practice, and time to learn how to ensure that they do not undermine the human rights of their stakeholders.

This article describes how firms, states, and to a lesser extent, NGOs, have responded to the efforts of UN Special Representative John Ruggie to outline the human rights responsibilities of business. In 2008, after three years of research and numerous multi-stakeholder consultations held throughout the globe, Ruggie and his team issued Protect, Respect and Remedy: A Framework for Business and Human Rights. This framework outlined the state duty to protect citizens from human rights abuses, the corporate responsibility to respect human rights, and the need for corporations as well as states to provide access to effective remedies when rights are violated. The forty-seven
members of the UN Human Rights Council (UNHRC) unanimously endorsed *Protect, Respect and Remedy* in 2008, and extended Ruggie’s mandate so that he could report on “operationalizing” the framework.11

From 2008–2011, Ruggie and his team focused on implementation. On 22 November 2010, he released a draft version of the *Guiding Principles for the Implementation of the United Nations “Protect, Respect and Remedy” Framework*.12 The draft was open for public consultation via an online forum until 31 January 2011.13 Ruggie released a final version which incorporated these comments, the *Guiding Principles on Business and Human Rights*, on 21 March 2011.14 The forty-seven members of the UNHRC formally approved the GPs by consensus on 16 June 2011.15

We make four important points about this innovative attempt to flesh out the human rights responsibilities of business. First, the GPs are an important advance in global governance. A growing number of international actors now recognize that states must do more to ensure that firms do not undermine human rights at home and abroad.16 Ruggie made it clear that the failure to promote human rights is not just a business risk problem, but also a public policy problem.17 In doing so, Ruggie helped the global community create a governance hybrid: one that links governments’ international human rights obligations to voluntary (but increasingly required) actions by businesses. Second, the process of developing the GPs was a model of twenty-first century governance: it was transparent, global, and inclusive. However, the broad public and most executives were unaware and uninvolved in this process.18

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13. Id.


Third, the GPs are a creative and broad rethinking of how executives, activists, and policymakers can evaluate, monitor, and mitigate the human rights responsibilities of firms operating across borders. Executives must attempt to monitor and measure their human rights risk “due diligence” and provide injured parties with access to remedies. However, the GPs are voluntary recommendations to business. As we will show, as of December 2012, few firms have actually adopted human rights policies, performed impact assessments or tracked performance, devised means to ensure that they do not undermine human rights, or developed means to remedy human rights problems. Moreover, unless they have already experienced human rights risks, many executives could resist the GPs because they could be costly and time-consuming to implement. Fourth, unless policymakers and corporate stakeholders press these executives to act and government officials educate their national firms regarding their human rights responsibilities, the GPs are unlikely to have much influence. Thus, governments must find ways to incentivize firms to respect human rights and work to make their human rights, trade, investment, and corporate governance policies more coherent.

We begin with an overview of what Ruggie did and how he worked to involve his stakeholders. Next we discuss how governments, civil society groups, private firms, and business associations have responded to the framework and the GPs. We argue that the fate of the GPs rests not solely with executives as outlined in the GPs, but also with policymakers. Members of the UN must find ways to encourage the bulk of the world’s firms to implement these guidelines.

II. WHAT RUGGIE DID AND HOW HE DID IT

In 2005, UN Secretary-General Kofi Annan appointed Harvard Professor John Ruggie to be the Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises. Ruggie was a shrewd choice, as he was close to policymakers, NGOs, and business leaders, and he was also the architect of the UN

19. Due diligence is defined as “a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it.” See Protect, Respect and Remedy, supra note 10.

20. The authors conducted a June 2011 survey of the 275 companies known to have human rights policies, as listed on the Business and Human Rights Resource Centre’s website, available at http://www.business-humanrights.org/Documents/Policies. The Results of this study are published in Section VII of this article.

21. Ruggie, who is one of the world’s leading scholars of globalization, had worked closely with Annan as Assistant Secretary-General for Strategic Planning from 1997–2001. See John Ruggie, Harvard University, available at http://www.hks.harvard.edu/about/faculty-staff-directory/john-ruggie.
Global Compact, an international initiative to promote globally responsible business behavior.\textsuperscript{22}

Ruggie was determined to develop workable human rights norms. He knew that many policymakers and executives viewed an earlier attempt to develop workable standards (the norms) as a “train wreck.”\textsuperscript{23} He also recognized that although some corporations accept some human rights responsibilities (as shown by their human rights policies or codes of conduct), most executives have long opposed imposing mandatory human rights obligations.\textsuperscript{24} Ruggie and his team also wanted to ensure that firms could easily implement these recommendations.

However, the Ruggie team did not find it easy to develop actionable recommendations for several reasons. First, every firm is different, and the human rights that a textile firm may need to implement, for example, labor rights and access to water, may be different from those that an Internet company may adopt, for example, freedom of speech or privacy rights. Second, managers may not be aware that their firms can impact human rights because they may never have had a scandal or seen human rights as creating liability. Third, international law delineates that the advancement of human rights is the exclusive domain of states. Government officials decide whether human rights obligations should be mandates and which “business policies and practices in the area of human rights remain largely voluntary.”\textsuperscript{25} Fourth, it will not be easy to hold firms and their affiliates accountable because many multinational corporations operate globally through subsidiaries and indirect suppliers. Many of these subsidiaries and suppliers are incorporated locally and are corporate citizens of the host country. Therefore, many multinationals could have thousands of suppliers, which make

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\textsuperscript{22}See id.
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it difficult to hold firms and their affiliates accountable. Fifth, firms have different cultures and affinities toward human rights. Executives can shape attitudes towards human rights, but policymakers set the broad context for respecting human rights. Furthermore, Ruggie had to create an internationally acceptable framework for states to hold their firms accountable for human rights. Although the Universal Declaration of Human Rights (UDHR) calls upon all organs of society to protect and promote human rights, whether civic groups, corporations, or governments, it does not distinguish specific responsibilities for business.

Until recently, states were neither empowered by law nor consistently willing to hold their national firms accountable for human rights violations abroad. If one state, country x, ignores the impact of such firms upon its citizens, there was little that another state, country y, could do about it. In 2005, the members of the UN formally declared that they have a responsibility to protect the citizens of country x. They agreed that states should work to address the causes of internal conflicts or man-made crises that put populations at risk; react to such violations with a panoply of tools from sanctions to intervention; and finally, they admitted that they had a responsibility to help states and victims rebuild, achieve recovery, and reconciliation. However, many of the world’s rising powers such as Brazil, China, and South Africa, remain reluctant to intervene in the affairs of other states, even when those states experience human rights abuse. In addition, some states, such as China and India, do not seem greatly concerned with the human rights implications of their firms’ overseas subsidiaries. These


27. UDHR, supra note 4, art. 1.


29. Id.


31. Id.


emerging economies receive large amounts of foreign investment and have increasingly influential international firms (as shown by the most recent Fortune 500 list).34

Despite these challenges, Ruggie began by trying to map out the landscape of the relationship between business and human rights. He wanted to ascertain what firms were doing overseas regarding human rights in the countries that host them, as well as what governments were asking their local (home) country firms to do (their local or national businesses). Ruggie and his team recognized this task would be difficult and complex because the UDHR has some thirty-eight human rights from the right to work to the right to privacy.35

In the postwar era, UN and member states developed two covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) to ensure that governments work to promote these rights.36 Together, the UDHR and the two covenants comprise what activists term “the International Bill of Human Rights.”37 The ICCPR generally delineates rights that a state may not take away from its citizens, such as freedom of speech or freedom of movement.38 In contrast, the ICESCR generally lists the rights that a state, insofar as it is able, should provide for its citizens, such as basic education or health care.39 Thus, under the ICESCR, a state has an active duty to promote some rights, while under the ICCPR, a state is restricted from acting in a manner that jeopardizes or adversely affects other rights. However, not all states have signed onto both covenants. The US, as example, has not signed on to the ICESCR. As a result, the US is unlikely to require US based firms to respect human rights such as the right to health or culture, because the US government does not promote or respect such rights at home.40


35. UDHR, supra note 4.


37. Guiding Principles on Business, supra note 9, ¶ 12; UDHR, supra note 4.

38. ICCPR, supra note 36, arts. 19, 12.

39. ICESCR, supra note 36, arts. 10, 12.

To understand what executives thought and what firms were doing, the Ruggie team did four separate surveys of human rights practices among the world’s firms. The team conducted their first survey in 2005, which focused on the Fortune Global 500; some 102 executives responded (20 percent). Ninety percent of those respondents reported that they had an explicit set of human rights practices or management practices, but fewer than half said they had experienced a significant human rights issue. Almost all of the responding companies said they included human rights in their code; only 40 percent of those polled had a freestanding human rights protocol. Most companies focused their codes on the rights of workers, referring to the International Labour Organization (ILO) conventions. Almost none of the companies referred to the International Bill of Human Rights, although some referred to the UDHR. The respondents had significant regional variations in human rights practices. For example, Canadian and US firms took a narrower spectrum of rights and rights holders than European firms. And more specifically, US firms were less likely to include policies related to economic and social rights such as access to health. Finally the survey addressed how these firms were to be held accountable for human rights. Some 75 percent of respondents said they engaged in external reporting. One-third said they routinely conducted human rights impact assessments; and just under half reported that they did so occasionally. These findings from the first survey seemed to indicate that businesses who responded were relatively active in advancing human rights. Ruggie and his team concluded that this survey was skewed, as it had a relatively low response rate and few of the respondents came from Asia or Latin America.


42. Id. ¶¶ 72–74.
46. Id. at 5.
47. Id. ¶¶ 67–70.
found most companies include labor rights in their code, but fewer firms recognize non-labor rights, such as the right to privacy.49

The third survey, administered in 2007, focused on twenty-five Chinese companies. The surveyors found that Chinese firms recognized fewer rights than European or North American companies, but were “slightly more likely to recognize social and economic rights,” reflecting Chinese government activism related to some rights, such as access to education.50

Ruggie’s team completed a final survey on the scope and patterns of alleged corporate-related human rights abuse. The author, Michael Wright, set out to ascertain which human rights were most affected by business operations as well as which stakeholders were affected by these activities. He found that companies admitted that they had a deep human rights footprint, affecting not just one, but multiple human rights under the UDHR. Moreover, he reported that nearly 60 percent of human rights abuses were directly caused by the company, while 40 percent of the cases involved indirect complicity (e.g., a government using a company’s products to abuse its citizens). Some 45 percent of cases affected workers; while some 45 percent of other cases affected a larger community. Wright also found that firms involved in human rights abuses came from a wide range of sectors, including financial, extractive, and manufacturing. He concluded, “[T]he alleged abuses also appear to have domino effects and point to the dangers of business taking a narrow look into impacts.”51 In short, the fourth survey illustrated that many firms affect many different human rights and firms need to become more aware of these broad and often indirect effects to avoid human rights risk.

With this information, Ruggie and his team were able to create a framework that clearly defined the responsibilities of states and business.52 Ruggie found “little evidence to support the claim that companies have direct human rights obligations under international law.”53 However, he argued that this finding offered limited comfort to companies as they found themselves “tried in the court of public opinion.”54 Ruggie added that where national legal systems already provide for the criminal punishment of companies,

49. Id. at ii, 30, 36–37.
53. Id. at 4.
54. Id.
international standards meant to apply to individuals could also apply to business enterprises that are persons in the legal sense.55

Ruggie’s team next turned to the role of governments; his team conducted eight studies of how governments interpret the state duty to protect against human rights violations. They found that “not all states appear to have internalized the full meaning of the state duty to protect and its implications with regard to preventing and punishing abuses by business enterprises.”56 The team also discovered that policymakers were confused as to when and how they should protect citizens from corporate human rights abuse as part of the state duty to protect.57 Finally, while no treaty bans extraterritorial actions, Ruggie argued that states do not take full advantage of available legal and policy tools to exercise extraterritorial jurisdiction over companies.58

Ruggie concluded that states should take steps to “prevent, investigate, punish and redress” human rights abuses.59 In doing so, policymakers will “foster a corporate culture respectful of human rights.”60 To achieve this goal, he asserted, policymakers can provide assistance and guidance to the businesses domiciled within their borders, enforce existing laws, and create greater coherence among policies, such as trade and investment, that can have unanticipated human rights spillover effects. To put it differently, Ruggie was not calling on government to directly regulate business. However, he also acknowledged that there will be times when governments may need to forbid certain types of behavior or provide incentives to other types of behavior to ensure that firms respect and remedy human rights abuses caused by their practices.61

By 2008, Ruggie had created a framework for governments to hold their firms accountable and for firms to manage their human rights responsibilities. In Ruggie’s vision, firms must have a means of due diligence, which is “the steps a company must take to become aware of, prevent and address adverse human rights impacts.”62 The framework included four components of due diligence. First, firms should adopt a human rights policy. Second, to determine their potential human rights footprint, firms should conduct impact assessments by taking “proactive steps to understand how existing and proposed activities may affect human rights.”63 Third, firms should integrate their human rights policies throughout the company. Thus, all corporate employees should be aware of their human rights responsibilities and receive training in how to

55. Id. at 2.
56. Id. at 6.
57. Id. at 6.
59. Protect, Respect and Remedy, supra note 10, ¶ 27.
60. Guiding Principles on Business, supra note 9, at 8.
61. Protect, Respect and Remedy, supra note 10, ¶ 56.
62. Id. ¶ 61.
do their jobs without undermining human rights. Fourth, firms should track performance, which Ruggie defines as “monitoring and auditing processes” to which “regular updates of human rights impact and performance are crucial.” Ruggie also noted that a firm’s due diligence process should apply to its business partners and suppliers. In so doing, he was arguing that firms would have to hold their affiliates responsible for human rights.

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

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

Once the framework was approved in 2008, Ruggie focused his efforts on implementation. He tried to encourage firms to adopt the framework. To show the actions that some firms had already taken, he cited five corporate grievance mechanism pilot projects and four states’ references to the framework in policy assessments. He also referenced an article from the Financial Times, praising his initiatives for winning the support of different stakeholders. However, the numbers of implementing firms, as well as policymaker actions, remained relatively small.

64. Id. ¶ 63.
65. Id.
66. Guiding Principles on Business, supra note 9, at 19.
67. Id. at 20
68. Id.
69. Id. at 24.
70. Id. at 26.
72. Id. at 5.
On 15 December 2010, Ruggie released a paper called “Applications of the UN ‘Protect, Respect and Remedy’ Framework.” This document lists states and companies that have utilized the Guiding Principles. The article also includes examples of applications from NGOs, national human rights institutions, business associations, multi-stakeholder initiatives, investors, academics, multilateral organizations, and legal organizations. Ruggie’s staff updated the list monthly until June 2011 and included an email address to which interested parties could send additional examples. However, in a cursory review of companies based on their website, we found that many of the companies supposedly implementing the GPs were in fact simply noting that they existed. We could find little evidence that these firms were actually altering their policies or business practices to advance human rights.

In sum, over a relatively short period, Ruggie and his team created a workable approach for firms to evaluate, monitor, and address human rights that gained international approval. Ruggie’s team also developed a process that was inclusive (multi-sectoral), transparent, and multinational. His team held forty-one multi-stakeholder meetings on every continent during the six-year mandate. Every document, comment, and meeting report was posted on the website of the Business and Human Rights Resource Centre (BHRRC). The team also asked for public comments on the GPs as commentaries could be submitted either by posting on BHRRC or via the online forum from 22 November 2010 to 31 January 2011. Despite the team’s efforts to make this information accessible to the public and solicit feedback, they received only ninety submissions by the deadline, and the bulk of the submissions came from academics and activists, rather than executives and policymakers.

74. Id.
75. Id.
79. Id.
III. AMBIGUOUS ACTIVISTS: THE NGO RESPONSE TO RUGGIE

As Ruggie worked, policymakers, human rights and labor NGOs, and executives were quietly trying to shape his findings and the GPs. These groups were important sources of information, as well as potential supporters and opponents. Ruggie was a good listener and reports revealed that he and his team consulted with NGOs and businesses before making his findings accessible and transparent.91 He constantly asked for feedback and by doing so, he gained considerable goodwill among his constituents.82

However, human rights and development groups were ambivalent about Ruggie’s efforts.83 On one hand, they supported his objectives and wanted clear human rights standards. On the other hand, they were afraid that any standards that could win the approval of the world’s governments would be the lowest common denominator and ultimately ineffective.84

Although many NGOs agreed with Ruggie that states should be doing more to ensure that companies respected human rights, they also feared that “an over-reliance on voluntary initiatives . . . would be both inappropriate and inadequate.”85 In the end, many NGOs went public with their concerns about the GPs.86 For example, Civicus, the World Alliance of Citizen Participation, stressed that Ruggie “fails to articulate the duty of states to regulate the overseas activities of businesses domiciled within their own jurisdiction.”87 In a joint statement, some twenty-seven European, African, and US human rights organizations complained that the GPs “do not articulate measures that States should undertake to ensure the primacy of human rights law, particularly when engaging in international trade and investment negotiations and in addressing the human rights impact of such

82. Aaronson, Ruggie Tells States to Mind Their Businesses, supra note 81.
83. Id.
84. Id.; Senser, supra note 81.
86. See, e.g., Joint Note from the Business and Human Rights Resource Centre et al. to the SRSG (Business & Human Rights), Follow-Up Action in South-East Asia (1 June 2011), available at http://www.business-humanrights.org/Links/Repository/1006456.
agreements.” Finally, some fifty prominent human rights and development NGOs, including Amnesty International, Action Aid, Human Rights Watch, Pax Christi, and Oxfam International praised the Protect, Respect and Remedy framework, but worried that the Council needed greater clarity and more specific recommendations on operationalization, as well as “a strong follow-on mechanism.” Many NGOs saw the GPs as inadequate, as they wanted binding international law and an enforcement process to hold firms accountable.

IV. THE VIEW FROM GOVERNMENT CAPITALS

Throughout most of the period that Ruggie worked, policymakers were relatively silent about his objectives, strategy, and guidelines. Many policymakers seemed torn. On one hand, officials from many governments were concerned about the foreign policy implications of business failure to respect human rights. For example, the United States was worried about allegations that Pfizer tried to blackmail judicial officials in Nigeria regarding allegations of human rights violations; Norway was concerned about allegations of corruption related to Statoil in Ghana; and US, Canadian, Australian, and EU officials were concerned about drug and human trafficking in areas where mining companies operated in Peru. On the other hand, many of the same officials worried about economic and foreign policy spillovers from any attempt to regulate business, even with voluntary initiatives. The global economy was recovering from two strong shocks: the 11 September 2001 attacks and the Great Recession which began after the 2007-2008 mortgage meltdown in


90. See, e.g., Joint Note from the Business and Human Rights Resource Centre et al. to the SRSG (Business & Human Rights), supra note 86; Group Urges International Community to Address Human Rights Abuses by Corporations, supra note 87.


the US and EU. Not surprisingly, many officials did not want to add new burdens to business in a time of high unemployment.93

Ruggie’s team found government ambivalence about his work made it harder to map out what states were doing. In 2006, his team sent a survey to each of the 192 UN member states, but only twenty-nine responded.94 Moreover, many of those twenty-nine governments did not respond to all of his questions.95 As a result, the survey provided an incomplete picture of the role of states. The team found that most of the responding governments do very little to monitor the human rights practices of national or host firms or to educate national firms as to their human rights responsibilities.96 Moreover, most states did little to inform firms of their human rights responsibilities or to coordinate their foreign economic and human rights policies.97 Some 30 percent of the states replying did allow the prosecution of firms as legal persons and enabled extraterritorial jurisdiction over human rights violations committed overseas.98 For example, Australia, Belgium, Canada, France, the United States, and the United Kingdom allow individuals to sue companies for human rights violations.99

Ruggie’s team also asked policymakers why they found it so difficult to encourage multinationals to advance human rights. Policymakers cited the nonexistence of an international framework, the absence of an internationally recognized body to monitor violations, the lack of information between states, and “the uneven playing field in this area, resulting in very different national laws and regulations.”100 The team also asked what governments should do to ensure that firms did not undermine human rights. Eleven states responded they should promote corporate social responsibility (CSR), fourteen said states should enforce human rights norms for business, and two

93. According to the ILO, although the economy has recovered in many countries, jobs have not. Some scholars call this the jobless recovery. The global jobless rate in 2007 was 5.6 percent, in 2007, 6.3 percent, and in 2010, 6.2 percent. This may seem low, but unemployment has affected the young in many countries. Unemployment is highest in Europe and the Middle East. See ILO, GLOBAL EMPLOYMENT TRENDS 2011: THE CHALLENGE OF A JOBS RECOVERY (2011), available at http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_150440.pdf.
95. Id. ¶¶ 4–10 The respondents were a good mix: Bahrain, Belgium, Bosnia-Herzegovina, Canada, Chile, Colombia, Croatia, Cyprus, Ecuador, Finland, France, Germany, Guatemala, Honduras, Italy, Japan, Jordan, Lebanon, Mexico, Netherlands, Poland, Portugal, Romania, Rwanda, Spain, Sweden, Switzerland, Tunisia, and United Kingdom. Interestingly Norway, which has played a prominent role in assisting Ruggie, did not respond and neither did the United States, home to a large percentage of the world’s multinational corporations.
96. Id. ¶¶ 61–64.
97. Id. ¶¶ 45–53.
98. Id. ¶ 35.
states argued that governments should mediate disputes between firms and alleged victims of human rights abuse.\textsuperscript{101} Governments were clearly divided as to how to encourage business-human rights responsibility.

Ruggie’s team also looked at how governments use corporate and securities law to affect business human rights practices. In a 2009 survey, the team found virtually no jurisdiction that explicitly regulates corporations on the issue of human rights through corporate and securities law.\textsuperscript{102}

Governments seemed to become more receptive after Ruggie presented his framework and then the GPs. The framework, as noted above, stressed that under international law governments have the principal responsibility to protect human rights. However, only three countries and the EU provided explicit public comments on the draft GPs.\textsuperscript{103} The EU called for clarification on some vague components of the GPs but was otherwise supportive. The EU also claimed the framework was “already influencing policy development in the EU, with initiatives taken both by EU Member States and EU institutions.”\textsuperscript{104} Norway was fully supportive of the draft GPs.\textsuperscript{105} France evaluated each principle and offered “constructive recommendations” for improvement, although the French government expressed its agreement with the GPs.\textsuperscript{106} The British government, however, expressed reservations. In 2009, the British Foreign and Commonwealth Office said that “the [United Kingdom] does not consider that there is a general State duty to protect under the core UN human rights treaties.”\textsuperscript{107} The government added some human rights are not amenable to the establishment of a duty to protect against non-state abuses.\textsuperscript{108}

\textsuperscript{101.} Id. ¶¶ 55–56.
\textsuperscript{103.} See BHRRC, supra note 77.
\textsuperscript{108.} Id. at 2.
Despite all this effort and concern among business, policymakers, and civil society, the response to the UNHRC approval of the GPs were muted. Immediately after the consensus vote, Norway, Argentina, the United States, Ecuador, Hungary, and the United Kingdom made public statements. Some thirty-five governments made generally positive comments in the weeks that followed.\textsuperscript{109} But the bulk of the members of the UN have said nothing about what they think of the GPs and whether or how they will encourage firms to implement them.\textsuperscript{110} Therefore, it is unclear what role these states will play in pushing their firms to implement the GPs.

Nonetheless, some states have worked multilaterally to reinforce Ruggie’s work.\textsuperscript{111} In May 2011, forty-two countries (the thirty-four members of the Organisation for Economic Co-operation and Development (OECD), as well as many other middle income countries) endorsed the revised OECD Guidelines for Multinational Enterprises.\textsuperscript{112} These guidelines are voluntary recommendations that governments make to their firms. They state that multinational corporations should respect human rights in every country in which they operate. Building on Ruggie’s work, the revisions state that firms should have appropriate due diligence processes in place.\textsuperscript{113} The OECD Guidelines also include a new, tougher process for complaints and mediation.\textsuperscript{114}

The members of the OECD and Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru, and Romania also approved a “Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.”\textsuperscript{115} This 2011 recommendation was developed to provide guidance to firms that rely on conflict minerals, which are minerals mined in situations of conflict and human rights abuse. The recommendation discusses how to identify and reduce use of these conflict


\textsuperscript{112} Id. at 11.

\textsuperscript{113} Id. at 10.


\textsuperscript{115} OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, available at http://www.oecd.org/document/36/0,3343,en_2649_34889_44307940_1_1_1_34529562,00.html.
minerals to ensure that mineral trade does not encourage human rights abuse or further conflict.116

As a follow up to Ruggie’s mandate, the UNHRC created the Working Group on Business and Human Rights to guide implementation of the GPs.117 The Working Group issued a call for recommendations from states, NGOs, corporations, and other stakeholders on 4 November 2011.118 However, they only received responses from fourteen firms and thirteen governments: Colombia, Costa Rica, France, Guatemala, Iraq, Japan, Norway, Oman, Russia, Sweden, Switzerland, United Kingdom, and Uruguay, as well as the European Union.119 While no respondent expressed hostility to the Working Group or its mission, most states did not specifically call for guidance on regulatory policies. Only Sweden and the United Kingdom made such a request. Sweden said that priority focus areas of the Working Group should include providing, “advice and recommendations regarding the development of domestic legislation and policies relating to business and human rights.”120 The United Kingdom called for work on Principle 3 “in order to assist states in their efforts to regulate the activities of businesses operating in their territory.”121 Thus, the response from governments remains limited and shows that policymakers are not ready yet to bolster the GPs.

However, some governments are taking steps to encourage their firms to respect human rights. In 2010, the US Congress passed the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act).122 It requires companies to file annual reports delineating if the company used certain conflict minerals which originated in the Democratic Republic of the Congo or adjoining countries. The report must also describe the measures taken to exercise due diligence as to the source and chain of custody of the minerals.123 Such transparency would help the firm determine “whether the minerals used by the company financed or benefited armed groups identi-
fied as perpetrating serious human rights abuses in certain US government reports.” In addition, the SEC formally adopted a rule regulating conflict mineral reporting on 22 August 2012. Companies are now required to submit this disclosure to the SEC using a new “Form SD.” As of July 2012, the United States has also developed reporting requirements for national firms investing in Burma. This new rule requires US firms with operations or suppliers in Burma to report on, amongst other anti-corruption and environmental issues, their due diligence policies and procedures that address operational impacts on human rights and worker rights. Finally, the SEC also requires firms to disclose cyber-risk, including possible violations of consumers’ privacy rights or personal information.

In March 2010, the US Department of State convened the first meeting of information technology companies to discuss ways in which the private sector and government can work together to advance Internet freedom. State Department officials hoped to expand access to information and freedom of speech, while protecting citizens’ rights to privacy. The United States also announced it would ban sale of goods and services that could be used to censor the internet in Syria or enable human rights abuse. Soon thereafter, the EU announced a similar ban.

In April 2011, the British Government announced that it would work with Colombian NGOs to demonstrate to the Colombian government and private firms, “that taking human rights into account . . . makes economic sense.” It will also research the costs to business of ignoring their human


rights impact. In May 2012, lawmakers in Brazil passed a constitutional amendment that strengthened punishments for landowners forcing people into slavery, allowing the government to confiscate, without compensation, the property of anyone found to be using slave labor. Building on the GPs, the European Commission is developing sector-specific human rights guidance for employment and recruitment agencies, ICT and Telecommunications firms, and oil and gas firms by the of April 2013. However, the guidance will be nonbinding.

Taken in sum, these initiatives send a message that some governments want firms to take greater responsibility for their human rights impact. But most of these initiatives remain voluntary. More importantly, relatively few firms are making human rights or adopting the GPs a top priority.

V. THE VIEW FROM BUSINESS ASSOCIATIONS AND THE CORNER OFFICE

Executives, like policymakers, were initially deeply concerned about this UN sponsored attempt to delineate the human rights responsibilities of business. They feared explicit international regulation that would require executives to take specific steps to respect and remedy human rights violations, including past violations. But major international business associations such as the International Chamber of Commerce, International Organisation of Employers, and the Business Industry Advisory Committee to the OECD fully participated in Ruggie’s process and ultimately were supportive of the GPs, calling on the UNHRC to endorse them.

Despite this international support, most firms have said little about the GPs. Some firms were critical. Talisman Energy generally opposed the principles, describing their comments as “largely in the nature of caution or objection.” Other firms were supportive but cautious. Control Risks expressed appreciation for Ruggie’s work, but stressed “without clearer guide-

132. Id. at 1.
137. Joe Cyr, Talisman Energy’s Comments, 1.
lines for States, we fear that these principles may remain aspirational when they deserve to be operational.” 138 BASF called for greater clarity regarding “the effective limits of this extended scope for human rights diligence.” 139

A few executives appeared enthusiastic. Susanne Stormer, Vice President of Global Triple Bottom Line Management at Novo Nordisk, stated, “We welcome the guidelines.” 140 A. P. Galaev, CEO of Sakhalin Energy, a joint venture among several oil companies, wrote, “It is my sincere hope that the Human Rights Council will endorse the GPs at its forthcoming session in June, helping to establish them as the authoritative reference point for states, companies and civil society.” 141 Sime Darby, a Malaysian firm, also expressed its support for the framework and GPs. 142

Many, but not all, of the firms that expressed support for the GPs were motivated by experience; they had previously been accused of directly or indirectly undermining human rights. These firms wanted clarity regarding what human rights to respect and how to remedy alleged violations. According to Novo Nordisk, “[C]ommon standards for business would help to provide a level playing field and prevent human rights violations.” 143 Likewise, BP called the framework “a unique chance to lay to rest a long-standing international debate about whether mandatory norms are required.” 144 BP asserted that common standards will “help to clarify some of the more challenging human rights issues businesses face.” 145 The firm promised to align its human rights policies with the GPs. 146

These comments reveal that some firms were prepared to move quickly to adopt the GPs, but most firms will need greater understanding about the

142. Letter from Puvan J. Selvanathan, Group Chief Sustainability Officer, Sime Darby to John Ruggie (20 May 2011).
145. Id.
GPs and how to implement them. Moreover, unless the majority of firms take action, early adaptors could face an uneven playing field, where some firms establish due diligence mechanisms at considerable cost and others do nothing. But as of year-end 2012, few firms are doing anything to implement the GPs.

VI. CORPORATE UPTAKE

Although a growing number of executives acknowledge human rights responsibilities, most firms do not. In 2005, Ruggie found 102 of the Fortune Global 500 firms had human rights policies, and by May 2011, the BHRRC\textsuperscript{147} listed 275 companies that have explicit policies on human rights. Of that 275, only 21 (7.6 percent) refer to Ruggie’s work in their policies.\textsuperscript{148} The Ruggie team asserts that fifteen companies are trying to align their business policies with the GPs.\textsuperscript{149}

To test firm interest in the GPs, we drilled down into the practices of some 275 companies with human rights policies listed on the BHRRC’s website.\textsuperscript{150} The site does not include all companies with strong human rights records, because such companies may not have formal policies or made such policies public.\textsuperscript{151} Hence this list, like Ruggie’s surveys, is incomplete. Although each of these 275 companies (only 0.34 percent of all 80,000 multinational corporations) has a policy, most of them do not meet the minimum criteria of Ruggie’s framework for the GPs, which is a publicly available human rights policy and operational policies and procedures that embed such policies throughout the enterprise.\textsuperscript{152}

Moreover, many of the companies with human rights policies do not address the full range of human rights put forward in the GPs. Ruggie sug-

\textsuperscript{147.} Human Rights Policies and Management Practices, supra note 25.
\textsuperscript{148.} BHRRC, Company Policy Statements on Human Rights, available at http://www.businesshumanrights.org/Documents/Policies. All of the human rights policies on this list were surveyed when looking for certain criteria and documenting the findings.
\textsuperscript{150.} Susan Ariel Aaronson is an advisor to BHRRC.
\textsuperscript{151.} The site does not include companies that supported the GPs, such as Sime Darby; those that road tested the grievance mechanisms, such as Sakhalin; or firms with a strong commitment to human rights, such as PVH 2010. PVH, Corporate Social Responsibility Report, available at http://www.pvhcsr.com/csr2010/Default.aspx; see also Yahoo! Business & Human Rights Program, Business & Human Rights at Yahoo!, available at http://www.yhumanrightsblog.com/.
\textsuperscript{152.} Guiding Principles on Business, supra note 9, at 15.
gested that “companies should look, at a minimum, to the International Bill of Human Rights and the core conventions of the ILO” when determining their human rights responsibilities.153 Only ten companies expressed a formal commitment to the complete International Bill of Rights.154 Furthermore, only 35.3 percent of companies with human rights policies reference the core conventions of the ILO. Of the companies with policies that reference ILO’s core conventions, only eight companies (or 3 percent) are fully aligned with Ruggie’s criteria for human rights compliance, which includes signing onto the International Bill of Human Rights and the ILO core conventions.155

We found significant regional variation among companies regarding human rights policies and compliance. European companies are more likely than those from other continents to delineate their human rights policies (159 out of 275 or 57.8 percent of companies with human rights policies are incorporated in Europe);156 144 of those companies are headquartered in EU member states, and sixty-two of them are in the United Kingdom.157 Only fifty-two companies with human rights policies are headquartered in the United States, along with eight in Canada.158 Thirty-three of the companies are based in Asia, and twenty-eight of those are Japanese; five companies are African; seven are from Latin America; and four are from the Middle East, all of which are in Egypt and Jordan.159 These regional variations may reflect national human rights cultures and priorities, as well as policymaker ambivalence about business’ human rights responsibilities.

In addition to regional variation, some sectors are more likely than others to develop human rights policies. Extractive companies alone comprised forty-six companies on the BHRRC list (16.7 percent); banking and financial sector companies comprise 15.3 percent, with 42 companies; telecommunications (sixteen companies, or 5.8 percent) and energy (fifteen companies, or 5.5 percent) are next on the list, followed by the pharmaceuticals, food, and construction industries, represented by eleven companies each.160 Only five companies with human rights policies are in the apparel industry, and there are only seven consumer products companies with human rights policies.161 Interestingly, we found that companies that have experienced human rights

153. Protect, Respect and Remedy, supra note 10, ¶ 58.
154. Id.; UDHR, supra note 4; ICCPR, supra note 36; ICESCR, supra note 36.
155. Protect, Respect and Remedy, supra note 10, ¶ 57; UDHR, supra note 4; ICCPR, supra note 36; ICESCR, supra note 36.
157. Id.
158. Id.
159. Id.
160. Id.
161. Id.
problems were more likely to develop policies and procedures to prevent and mitigate human rights risk.

In February 2013, we updated our findings and discovered twenty-seven additional firms now posted their human rights policies on the BHRRC website (for a total of 302). Although the total number of firms increased some 8 percent from in this twenty month period, 302 firms comprise a very small percentage of global business. We believe the firms posting on the website want to send a message that they care about human rights. Of these new firms, only two expressed a commitment to Ruggie’s work in their human rights policies: Johnson Controls and Maersk. Maersk goes further than most other companies in explicitly committing itself to implementing the GPs: “After conducting a gap analysis, we undertook several initiatives to align with the principles, including alignment on due diligence regarding human rights screening in connection with mergers and acquisitions.” The firm has also set out an action plan for 2012–13 for implementing the GPs to prevent human rights risk and establish operation-level grievance mechanisms.

VII. CORPORATE ADOPTION OF DUE DILIGENCE POLICIES

Although a small, but sizeable number of companies have human rights policies, few go beyond issuing these policies to monitoring, evaluating, and fine-tuning them. Thus, we believe these firms are not meeting the GPs. After all, human rights due diligence includes performing human rights impact assessments on an ongoing basis, integrating human rights into corporate practice, tracking performance in a credible manner, and adopting grievance mechanisms as a means of preventing human rights abuse.

Only twenty-six of the 275 companies on BHRRC’s list as of June 2011 have performed human rights impact assessments, either by explicitly including human rights in their risk assessments or conducting stand-alone human rights impact assessments. Some firms, such as BP, Barclays, 

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162. Id.
164. Id.
165. Id.
166. Protect, Respect and Remedy, supra note 10, ¶ 61.
Credit Suisse,169 and Control Risks, have considerable experience with such assessments.170 Disney and Maersk (discussed above) outline a commitment to human rights due diligence as Ruggie demands, and Kumba Iron Ore includes impact assessments in its policy on human rights.171

In addition, eleven companies assess human rights impacts through country specific or product specific reviews.172 However, most firms have yet to examine how their practices may affect specific human rights.

The right to water provides an interesting example of how firms might use human rights impact assessments. The right to water is a key component of the right to life and the right of everyone to an adequate standard of living for himself and his family. States are obligated to provide access to safe and clean drinking water and sanitation, but the right is not legally binding on states or corporations.173 After engaging in community dialogue, human rights methodology, and impact assessments, human rights experts now assert that corporations must ensure that they do not over-consume or deplete community groundwater. Under the GPs, companies should examine if their activities undermine access to individuals or communities for safe, sufficient, acceptable, accessible, and affordable water.174 Such examination will necessitate training executives in how to do human rights assessments for the thirty-eight human rights in the International Bill of Rights.175

We found that few firms are integrating human rights policies throughout their company, as described in the GPs.176 The framework lists three essential criteria for integration: 1) leadership from the top, 2) training employees, and 3) building capacity to respond when unforeseen situations arise.177 Of the 275 companies listed on BHRRC, thirty-seven (13.5 percent of companies

173. On 28 July 2010, the UN General Assembly declared “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.” G.A. Res. 64/292, ¶ 1–2, U.N. Doc. A/RES/64/292 (2010).
175. UDHR, supra note 4; ICCPR, supra note 36; ICESCR, supra note 36.
176. Protect, Respect and Remedy, supra note 10, ¶ 62.
177. Id.
with a human rights policy) explicitly commit themselves to integrating human rights. 178 Shell provides a model of what firms can do. The company trains all staff on compliance with their Code of Conduct and requires online human rights training, with more intensive training for employees working in areas with poor human rights records. 179 Barclays also uses online tools to train lending and relationship managers on how to incorporate human rights issues into their assessment of financial transactions. Barclays’ training provides guidance on “identifying potential human rights risk in lending and investing; assessing the materiality of the risk; identifying possible risk mitigation opportunities.” 180

Finally, under the GPs, firms are supposed to monitor their performance. However, the GPs did not explain how firms should evaluate their performance. 181 Like other organizations, private business will need to rely on metrics (means or indicators to understand social phenomena) so they can monitor their performance over time. Such metrics can help firms link the conceptual discussion about human rights to actual implementation. However, for metrics to be useful, they must be comparable across companies and accepted by stakeholders as trustworthy. 182

Today’s human rights metrics, however, are not widely accepted by human rights organizations as accurately and effectively conveying human rights conditions. There are several sources of human rights metrics widely used by scholars, such as the CIRI Human Rights Dataset (funded by the US National Science Foundation (NSF) and for a time by the World Bank) and the New School/University of Connecticut Economic and Social Rights Empowerment Initiative. 183 For example, The George Washington University recently organized a conference on the utility of human rights and governance metrics, and we could find no examples of companies that used any of the existing human rights metrics. 184 Clearly, policymakers will need to work


with scholars, activists, and executives to find common ground on metrics and on strategies for evaluation.

Executives may be reluctant to measure their human rights performance because they fear legal or reputation consequences.\textsuperscript{185} For this reason, the GPs recommend that companies adopt strategies that can help managers avoid human rights violations, such as grievance mechanisms.\textsuperscript{186} Many companies have a hotline or some other reporting service for employees who notice violations of the companies’ code. Nevertheless, few companies have grievance mechanisms that cover non-labor rights and the rights of external stakeholders, such as access to water or property rights.\textsuperscript{187} Five companies—HP, Cerrejón Coal (a joint-venture of Anglo America, BHP Billiton, and Xstrata), Esquel Group, and Sakhalin II (a joint-venture of Gazprom, Shell, Mitsui, and Mitsubishi)—road tested grievance mechanisms in 2009-2010 as part of a research project for the CSR Initiative at Harvard’s Kennedy School of Government.\textsuperscript{188} Maersk has developed an action plan for 2012–2013 that includes setting up operational grievance mechanisms, but it is unclear when or whether this program will be operationalized or what it will look like.\textsuperscript{189} Managers will need more information about these grievance mechanisms to encourage broader adoption.

\section*{CONCLUSION}

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

If executives at many firms see risk and high costs in the failure to respect human rights, why are more firms not following the GPs or even adopting human rights policies? There may be several reasons. First, human rights are relatively new on the business agenda. Second, governments have long struggled to respect human rights. Executives are in an early phase of the learning curve. Early adapters may be better positioned to amortize the costs of adhering to human rights and could use their support of human rights as a marketing and public relations tool. Unfortunately, we found early adopters are rare. Those companies that have not acted may not perceive that their

\begin{itemize}
\item \textsuperscript{185} Institute for Human Rights and Business, supra note 172, at 29.
\item \textsuperscript{186} Guiding Principles on Business, supra note 9, ¶ 6.
\item \textsuperscript{187} Id. at 30.
\item \textsuperscript{188} Harvard Kennedy School of Government, Governance and Accountability Program: Access to Remedy, available at http://www.hks.harvard.edu/m-rcbg/CSRI/ga/access_to_remedy.html.
\item \textsuperscript{189} Maersk, supra note 163.
\end{itemize}
firm is at risk for directly or indirectly violating human rights or they may not be aware of the Guiding Principles. Third, implementing the GPs will be expensive and time consuming. Many executives are not yet convinced they need to do more than the little they are already doing.

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

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

We found several areas where policymakers will need to clarify the GPs. For example, governments such as the United States, South Africa, and Malaysia that have not ratified all components of the International Bill of Human Rights, will need to decide if they will encourage implementation of the GPs, which are based on the International Bill as a whole. US officials, as an example, may find it difficult to encourage US companies to respect and remedy human rights, (such as the right to health, access to affordable medicines, and access to water) which are not reflected in national law.

Second, policymakers should do their own due diligence and examine the signals domestic laws and regulations send to market actors about protecting human rights. If trade, investment, tax, and corporate governance rules send confusing messages, policymakers should find ways to foster greater coherence among these different policies. Additionally, they should develop a regular channel for human rights concerns to enter into the policymaking process. The US and the EU already examine the labor and environmental impacts of their trade agreements; they and other countries could broaden that analysis to include other human rights. While we understand governments that adopt these reforms may slow down the policymaking process, over time state policy will become more coherent and firms may make human rights more of a priority.

190. UDHR, supra note 4; ICCPR, supra note 36; ICESCR, supra note 36.
In addition to educational and legal avenues, states should also take advantage of the leverage they have with taxpayer-funded programs, such as export finance, to encourage responsible business practices. When companies benefit from taxpayer largesse, they should be expected to adhere to the human rights standards espoused by their governments such as fully implementing the GPs.

At the same time, policymakers will have to offer incentives for firms to comply with the GPs. One possible route is procurement policies: many states use such policies not only to buy needed goods and services, but also to achieve other important policy objectives, such as energy efficiency. The international system of rules governing trade administered by the World Trade Organization (WTO), which regulates trade among 158 member states, requires governments to use procurement policies in a manner that does not distort trade among WTO members.\footnote{See World Trade Organization, What is the WTO?, available at http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm.} These governments could give firms that adhere to the GPs bonus points in procurement bids, but these states must also ensure that they do not discriminate among foreign and domestic firms. Policymakers may struggle with questions such as who will decide if firms are adhering to the GPs, and how can such performance be measured and validated? Finally, in order for procurement policies to serve as a sufficient incentive, likeminded countries and customs areas such as the US, EU, and Canada, might have to find ways to collaborate on procurement.\footnote{\textsc{Susan Ariel Aaronson} & \textsc{Jamie M. Zimmerman}, \textsc{Trade Imbalance: The Struggle to Weigh Human Rights in Trade Policymaking} 204 (2007).}

In sum, Ruggie and his team effectively altered the debate over business and human rights. They made it clear why firms and states needed to act.\footnote{UN Office of the High Commissioner for Human Rights, Council Holds Dialogue with Experts on Summary Executions, Independence of Judges and Lawyers, Transnational Corporations, available at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11082&LangID=E.} However, if only a few firms from some countries implement the GPs, the GPs will have minimal impact.

Finally, we note two key gaps in the GPs. First, the GPs say little about the political responsibilities of business to pay taxes to ensure that citizens have access to affordable healthcare, education, water, etc., which are basic human rights according to the International Bill of Human Rights.\footnote{UDHR, supra note 4; ICCPR, supra note 36; ICESCR, supra note 36.} Hence, the corporate responsibility to pay taxes, which essentially are investments in public goods, is a key, albeit missing, element of the GPs.

In an influential article published in 1982, Ruggie argued that many industrialized countries found a compromise to make globalization accept-
able, which became known as embedded liberalism.\textsuperscript{196} These countries put in place a social compact: workers would pay higher taxes, but in return they would be cushioned from the vagaries of globalization with programs such as unemployment, retraining, and in many countries, healthcare.\textsuperscript{197}

However, in recent years, policymakers have been battered by conflicting demands from business and their citizens. On one hand, many corporate leaders have signaled less willingness to accept this grand bargain. Executives can move to lower tax venues or shelter income so they don’t pay as much in taxes.\textsuperscript{198} As a result, many industrialized countries are under business pressure to lower taxes. These officials recognize that if they cannot establish an environment conducive to generating private sector jobs, their country may experience stalled economic growth, less investment, increased poverty, and greater social tension.\textsuperscript{199} In response to this pressure many industrialized states have gradually lowered their taxes on multinational corporations. Meanwhile, many of these same countries are under

\textsuperscript{196} This article was published when Ruggie was an Associate Professor of Political Science at Columbia University. John Gerard Ruggie, \textit{International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order}, 36 Int’l Org., 379, 390 (1982); \textit{Theory and Structure in International Political Economy} (Charles Lipson & Benjamin J. Cohen eds., 1999); \textit{International Political Economy} (Benjamin J. Cohen ed., forthcoming).

\textsuperscript{197} Countries with a generous social compact include Sweden, Denmark, and Germany. Countries with a less generous social compact include the United States and China. For a good overview of the social compact see \textsc{Dani Rodrik, Has Globalization Gone Too Far?} (1997).


\textsuperscript{199} “The U.S. statutory corporate tax rate has changed little since 1986. Meanwhile most other advanced industrial countries have lowered their tax rates, with the result that the U.S. rate is now substantially higher than the average tax rate among member countries of the Organization for Economic Cooperation and Development.” Tax Policy Center: Urban Institute and Brookings Institution, How Does the Current System of International Taxation Work?, \textit{available at} http://www.taxpolicycenter.org/briefing-book/key-elements/international/international-work.cfm; “US multinationals paid 26 percent on average, slightly more than the global average of 25 percent. Companies without major overseas units, such as retailers, often have higher effective rates.” \textit{The Multinational Tax Advantage}, \textsc{Bloomberg Bus. W.}, \textit{available at} http://www.businessweek.com/magazine/content/11_05/b4213031803349.htm; Larry Elliott, \textsc{Global Unemployment has Reached Dangerous Levels, ILO Report Shows}, \textsc{Guardian—Poverty Matters Blog}, 25 Jan. 2010, \textit{available at} http://www.guardian.co.uk/global-development/poverty-matters/2011/jan/25/ilo-high-unemployment-young-global-recession.
pressure to reduce their government spending. They have lower growth and tax revenues and declining unemployment. Hence, countries such as the United States, United Kingdom, Greece, and Spain have reduced access to essential public services (from education to health care) in the interest of shrinking deficits at the very time their citizens need that cushion.\textsuperscript{200} Also, the public has been sending contradictory signals to policymakers. While many people want policymakers to reduce these deficits, they also want governments to take care of the needy. A 2010 poll of 22,000 people in twenty-two countries found a global consensus for increased government action. Nearly four in five around the world (78 percent), and majorities in all but one of twenty-two countries polled, think that government should subsidize food. “Two-thirds overall (67 percent), and majorities in nineteen out of twenty-two countries, think that government regulation and oversight of their national economy needs to be increased.”\textsuperscript{201}

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


\textsuperscript{201} BBC WORLD SERVICE POLL, \textbf{GOVERNMENTS MISSPEND MORE THAN HALF OUR TAXES—GLOBAL POLL} (27 Sept. 2010), available at \url{http://www.worldpublicopinion.org/pipa/articles/btglobalizationtradera/668.php?lb=btgl&pnt=668&nid=&id}. 