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The Protect-Respect-Remedy Framework and the United Nations Global Compact

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I. Introduction

This comment elaborates on the high relevance of the United Nations Protect-Respect-Remedy framework ("Framework") for the UN Global Compact initiative and its approximately 6000 corporate participants in more than 130 countries. Like Professor Backer's paper, this comment focuses on the second pillar of the Framework, namely, the Corporate Responsibility to Respect Human Rights. The comment is written from the perspective of the United Nations Global Compact Office, which is the UN Secretariat office that is primarily responsible for the coordination and support of the Global Compact. The Global Compact is a strategic policy initiative for businesses that commit to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption and to broader action in support of UN goals.

One of my functions at the Global Compact Office is to lead our Human Rights and Labour Work Programmes. As a result, my colleagues and I spend a lot of our time thinking about challenges and opportunities to advance the business and human rights agenda. We focus on devising new and creative ways to raise business' awareness of why human rights are and should be a mainstream business concern. We also focus on what, in concrete and practical terms, businesses can and ought do to respect and support human rights, and what will be most effective in motivating and helping to build the capacity for pro-active responses by businesses along these lines.

As the objectives and nature of the UN Global Compact as a voluntary corporate responsibility initiative are not always well understood by all audiences, I will commence this comment with some background about the UN Global Compact to provide some important


2. The Ten Principles, UN GLOBAL COMPACT, http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html (last visited June 9, 2011). "The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption[.]", The ten principles are:

Human Rights
- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
- Principle 2: make sure that they are not complicit in human rights abuses.

Labour
- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4: the elimination of all forms of forced and compulsory labour;
- Principle 5: the effective abolition of child labour; and
- Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment
- Principle 7: Businesses should support a precautionary approach to environmental challenges;
- Principle 8: undertake initiatives to promote greater environmental responsibility; and
- Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption
- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.
context and to help make clear the complementarity of the initiative and its approach with the Protect-Respect-Remedy framework, especially its second pillar. Importantly, the UN Global Compact also asks businesses to support human rights (as well as respect them), so this comment also elaborates on what the UN Global Compact expects of businesses beyond addressing the actual or potential negative impacts of their business on human rights. Since Professor Backer’s paper explains the Protect-Respect-Remedy framework in depth, this comment assumes familiarity with that framework and does not reiterate its elements.

II. Background on the UN Global Compact

The Global Compact revolves around ten principles for businesses in the areas of human rights, labour, the environment and anti-corruption. At its most fundamental level, the UN Global Compact is an advocacy-based initiative promoting a broad concept of corporate sustainability, with a particular emphasis on concrete action by businesses. We conduct outreach to the business community and other actors in regards to the ten principles, the business case for their implementation, and what, in practical terms, businesses can do to implement them within their spheres of influence. The initiative has two objectives: to promote implementation of the ten principles in business strategy and operations everywhere, and to catalyze business action in support of UN goals. These two objectives are complementary, indeed they are mutually reinforcing. To action them, the initiative specifically asks business leaders and organizations to make two central commitments on joining the Global Compact: to implement the ten principles and to undertake actions in support of broader UN goals and issues.

What this translates to on a day-to-day basis is that the Global Compact Office employs methodologies like learning, dialogue and partnerships and mechanisms aimed at enhanced transparency as a complement to other approaches—regulatory and voluntary approaches undertaken by Governments and others—to promote more responsible corporate behaviour.

More specifically, among other things, we use our communication channels to share information about tools and guidance materials that can help businesses with their implementation efforts and about what are good practice solutions to corporate responsibility dilemmas businesses face. Where there has been a lack of guidance, we have developed it ourselves or teamed up with partners to produce it. In the area of human rights, we have produced a document called Some Key Business and Human Rights Tools and Ways to Use Them to both contextualize the range of guidance materials now available on business and human rights and promote their widespread use. We also coordinate international work-

3. See id.
5. Id. at 2.
6. UN GLOBAL COMPACT, SOME KEY BUSINESS AND HUMAN RIGHTS GUIDANCE MATERIALS AND HOW TO USE THEM (2010), http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/Some_key_business_a
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ing groups and special platforms7 on the issue areas covered by the UN Global Compact, host events at the global level, and support events and other activities at the local and regional levels through our more than ninety country Local Networks around the globe. At both the global and local levels, the initiative emphasizes the value of multi-stakeholder dialogue. Dialogue helps businesses build their capacity to manage corporate responsibility risk and maximize opportunities while promoting the ten principles and UN goals, whether on their own or in collaboration with other partners. We also work with long-term investors, like pension funds, through the Principles for Responsible Investment,8 and with business schools, through the Principles for Responsible Management Education,9 two initiatives that we helped create, to build the affirmative business case for responsible corporate behaviour and engagement on broader UN goals.

Companies initiate their involvement in the UN Global Compact by making a written commitment by their Chief Executive Officer, endorsed by their Board or equivalent, to the UN Secretary-General. In it, they express their support for the ten principles, their intention to work towards them and their promise to report on their progress in implementing them to their own stakeholders on an annual basis. These commitment letters are public and are displayed on the Global Compact website. Failure to report on progress by the required deadline ultimately leads to a company being de-listed from the initiative. Around 2000 participants have been de-listed for this reason in the past several years.10 This disclosure element helps to enhance the transparency and accountability of corporate performance on human rights, as well as the other areas covered by the initiative, by making information about how companies are and are not addressing these issues within their businesses more widely available. This includes information on what systems they have in place to identify, address and remediate negative impacts of their businesses on the issues covered by the UN Global Compact, but also how they are taking action to have positive impacts.

More than 6000 companies in more than 135 countries currently participate in the UN Global Compact, which has been operational as an initiative since 2000. Around one hundred more join every month. As such, one of the main contributions of the initiative is building consensus in the corporate sector around the world that the ten principles of the UN Global Compact (including Principle 1: respect and support for human rights) are important areas of business concern. The UN Global Compact celebrated its ten-year anniversary in June 2010.

Before I conclude this brief overview of the UN Global Compact, the legally trained read-

7. Two examples specifically relevant to business and human rights are the collaboration with UN Women on the Women's Empowerment Principles, and the collaboration with UNICEF and Save the Children on the Children's Rights and Business Principles.
er may be interested to learn about the evolution of the legal status of the initiative. While the Global Compact began as an initiative of the previous UN Secretary-General (Secretary-General Kofi Annan created the initiative as an exercise of his authority as Chief Administrator of the Organization to implement instruments that Governments had already agreed to), it—and, importantly, also its ten principles—have since been recognized and endorsed by the UN General Assembly. This has effected the transition of the initiative from a private initiative of the Secretary-General to a UN initiative. Every two years, the General Assembly renews the mandate of the Global Compact Office through its resolution under the agenda item Towards Global Partnerships. Ordinarily, it works the other way around: The General Assembly passes a resolution and then something is created. With the UN Global Compact, it existed first as a Secretariat initiative and was subsequently further legitimized as a UN initiative by a series of General Assembly resolutions.

III. The UN Global Compact, Human Rights and the Relationship with the UN Protect-Respect-Remedy Framework

Against this backdrop, I will now offer some reflections on the relationship between the UN Protect-Respect-Remedy framework and the UN Global Compact. As already indicated, since Professor Backer’s article explains the Framework, this Comment will not repeat this information. Further information about the Framework and its relationship with the UN Global Compact is available on the Global Compact website.

Given that the Special Representative to the Secretary-General (SRSG)’s mandate and the Global Compact are both UN efforts, it should hopefully not be surprising that the Global Compact Office has followed the development of this work closely and throughout the process was in regular contact with members of the team that helped the SRSG to conduct his work. They kept us informed and, for our part, we kept them apprised of, and gave them the opportunity to give input to, relevant developments in our own initiative. The fact that the same staff member from the UN Office of the High Commissioner for Human Rights was part of that team and is the liaison for the UN Global Compact has helped to ensure that alignment is maintained and that the relevant outputs of the work of the SRSG, as endorsed by the UN Human Rights Council, have been reflected within the UN Global Compact.

The Protect-Respect-Remedy Framework is relevant to the UN Global Compact on many levels. In particular, since ”Respect” for human rights is a key concept in Principle 1 of the UN Global Compact (businesses should support and respect the protection of internationally proclaimed human rights), we have followed closely the SRSG’s work on elaborating the corporate responsibility to respect. The SRSG’s earlier work also elaborated the concept of “complicity” which is found in UN Global Compact Principle 2 (businesses should make

12. See Backer, supra, note 1.
sure that they are not complicit in human rights abuses). In doing so, the SRSG's work has helped to provide further operational clarity for the Global Compact's human rights principles. This and other points are made in the information note jointly developed by the UN Global Compact Office and the SRSG's team reprinted in the annex to this comment.

Throughout the period covered by the mandate, the Global Compact Office has helped to raise awareness of the opportunity to give input to the work through our communications channels, such as our website, monthly bulletins to participants, and webinars. And, we have helped to promote the outcomes to UN Global Compact participants, other UN agencies, and, through working with the Office of the UN High Commissioner for Human Rights, to update Global Compact guidance materials to fully align with the developments.

The UN Global Compact's work on business and human rights has always been focused on giving practical relevance to the first two Global Compact principles, i.e., respect and support for human rights, and the avoidance of complicity in human rights abuse. In the area of human rights, surveys of participants have shown that corporate participants want the initiative to focus on raising awareness of tools and resources that exist to help companies with the process of implementing human rights, and on providing platforms for the sharing of good practices on business and human rights. Responding to these needs are key priorities, together with our ongoing efforts to emphasize the universality and relevance of human rights for businesses all over the world and to inspire proactive action to support human rights. The Global Compact Office coordinates with the Office of the UN High Commissioner for Human Rights and other UN agencies (such as the International Labour Organization (ILO), UN Women, UN.Gift and UNICEF) that seek to advance human rights to strive to ensure that the Global Compact's efforts reinforce the broader UN human rights agenda and accurately reflect the results of the work that has been undertaken by the SRSG on business and human rights.

The UN Global Compact is thus a good complement to the articulation of the Corporate Responsibility to Respect within the Protect-Respect-Remedy framework because we focus on what, in practical terms, businesses can do to respect and support human rights, what

15. See UN GLOBAL COMPACT, supra note 13; see also Engagement Opportunities, UN GLOBAL COMPACT, http://www.unglobalcompact.org/HowToParticipate/Engagement_Opportunities/index.html (last visited June 8, 2011).
18. See, for example, id. (offering the Human Rights Management Framework poster, the forthcoming Guide on How to Develop a Human Rights Policy, and the Human Rights and Business Learning Tool).
resources exist to help them, and what practical solutions might be applied to dilemmas that businesses face in striving to respect and support human rights. A specific example of this is the Women's Empowerment Principles—Equality Means Business—that the UN Global Compact and UNIFEM (the UN Development Fund for Women, now part of UN Women) launched on International Women's Day in March 2010.\(^\text{20}\) They endeavour to provide a comprehensive perspective of what businesses can and ought do to respect and support women's human rights in the workplace, marketplace and community.\(^\text{21}\) As such, they also complement the task that the SRSG was given to consider the gender dimension of business and human rights.

Another example is detailed practical guidance on how to prepare a human rights policy, which the Global Compact Human Rights Working Group\(^\text{22}\) developed and launched at the Global Compact Leaders Summit in June 2010.\(^\text{23}\) The existence and dissemination of such guidance will help to operationalize the requirement emphasized by the Framework that companies have an explicit policy statement on human rights.\(^\text{24}\) This guidance was recently updated with the latest developments concerning the UN Protect-Respect-Remedy framework and will be re-launched in late June 2011.

A further example relates to the emphasis that the SRSG has placed on the importance of businesses knowing and showing that they respect human rights.\(^\text{25}\) The fact that participation in the UN Global Compact requires businesses to disclose their progress in implementing the ten principles—including the policies and processes that they have in place to manage related risks and opportunities\(^\text{26}\)—is thus also an important driver of the kinds of due diligence steps prescribed by the Protect-Respect-Remedy framework. Businesses that do not meet the requirement face delisting from the initiative.\(^\text{27}\)

As I already mentioned, the UN Global Compact overall is positioned as a complement to

\begin{itemize}
  \item \textbf{20.} \textit{Equality Means Business}, \textsc{UN Global Compact}, \url{http://www.unglobalcompact.org/Issues/human_rights/equality_means_business.html} (June 8, 2011).
  \item \textbf{21.} A similar initiative is now underway together with UNICEF and Save the Children to develop a set of principles for business relating to respect and support of children's rights.
  \item \textbf{26.} For more information on the details of this requirement, see \textit{Progress and Disclosure}, \textsc{UN Global Compact}, \url{http://www.unglobalcompact.org/COP/index.html} (last visited June 8, 2011).
  \item \textbf{27.} For rules governing when a business can be delisted from the initiative, see \textit{Integrity Measures}, \textsc{UN Global Compact}, \url{http://www.unglobalcompact.org/AboutTheGC/IntegrityMeasures/index.html} (last visited June 8, 2011).
\end{itemize}
and not substitute for other approaches, including regulatory approaches, to advancing corporate responsibility. Indeed, since achieving a measure of consensus is an important prerequisite for the development of international law, whether by treaty or by custom, even though we are a voluntary initiative, our voluntary approach and global uptake is laying the groundwork for possible future international law designed to level the playing field in this area. The law firm Latham & Watkins recently completed a paper exploring the complementary contribution of voluntary corporate responsibility initiatives, such as the UN Global Compact.\textsuperscript{28} It explains how voluntary initiatives can create value not only for the corporations that participate in them, but also for society as a whole.\textsuperscript{29}

The SRSG has himself spoken about the complementary contributions of voluntary initiatives in this domain. For example, in May 2008 he addressed the International Law Association at an event in London hosted by Clifford Chance.\textsuperscript{30} He titled his paper "A Political Scientist’s Guide to Survival in a Domain Where Lawyers and Activists Reign" and spoke, among other things, to the false dichotomy of voluntary and regulatory approaches and how a shortage of laws is not the principal problem in business and human rights.\textsuperscript{31} The need for a mix of approaches to address the problem of corporate human rights abuse has remained a theme in the SRSG’s work. For example, in Geneva in October 2009 he elaborated further on the pitfalls of an either/or approach in his opening remarks at the multi-stakeholder consultation on operationalizing the Framework for business and human rights.\textsuperscript{32} In addition, in the published draft of his next report, he wrote that "there is no single silver bullet solution to the multi-faceted challenges of business and human rights."\textsuperscript{33}

The integration of the Global Compact principles into strategy and operations everywhere—the first objective of the Global Compact initiative—requires a systematic management approach, including robust policies and procedures for their implementation.\textsuperscript{34} This includes having in place policies and procedures to become aware of, prevent and address adverse human rights impacts, but also to enable companies to demonstrate to themselves and their stakeholders that they have the systems in place to do so. Thus, the SRSG’s emphasis on the requirement of due diligence is very much in line with the ap-


\textsuperscript{29} Id.


\textsuperscript{31} Id.


\textsuperscript{34} See, for example, UN GLOBAL COMPACT, supra note 2; see also UN GLOBAL COMPACT \\& DELOITTE, UN GLOBAL COMPACT MANAGEMENT MODEL, http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2010_06_17/UN_Global_Compact_Management_Model.pdf.
proach to corporate sustainability, including human rights, that is promoted by the UN Global Compact.

The content of the corporate responsibility to respect, as defined by the Protect-Respect-Remedy framework, is also very much consistent with the UN Global Compact. Because the SRSG’s research showed that companies have the potential to impact virtually all human rights, the SRSG urges companies to consider all human rights, especially those contained in the International Bill of Human Rights and the ILO Declaration on the Fundamental Principles and Rights at Work. Global Compact principle 1 asks businesses to respect and support the protection of internationally proclaimed human rights—that is, all internationally proclaimed human rights and not just a subset of them. In addition, principles 3 through 6 of the Global Compact are the ILO Fundamental Principles and Rights at Work.

As Professor Backer explains in detail, the SRSG has emphasized certain core elements of due diligence to ensure and demonstrate respect for human rights. These include:

- Assessing human rights risks and impacts;

- Integrating human rights throughout a company (including through commitment from corporate leadership, training, allocating responsibility for implementation and then evaluating staff on their efforts);

- Having a mechanism to handle grievances;

- Tracking as well as reporting on performance.

These elements, and others, are all reflected in human rights guidance materials that the Global Compact has long promoted to corporate participants, including in the Guide to Integrating Human Rights into Business Management, developed with the Business Leaders Initiative on Human Rights and the Office of the UN High Commissioner for Human Rights, and the poster on which it is based, entitled A Human Rights Management Framework, which advocates a continuous improvement management approach to respect and support

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36. In considering the scope of the due diligence process that a business should conduct, or put differently the level of risk that a particular company might adversely impact on human rights, the SRSG has said that companies must consider three factors: the country and local context in which the company is operating (this includes the country’s human rights commitments and practices, the public sector’s institutional capacity, ethnic tensions, migration patterns, and scarcity of critical resources); the impacts of the company’s own activities in its capacity as producer, service provider, employer and neighbour; and whether and how the company might contribute to abuse through the relationships connected to its activities such as with business partners, entities in its value chain, or other non-State and State actors. See 2009 Report, supra note 24, ¶ 50. The UN Global Compact Office thoroughly agrees with the relevance of these factors for assessing both a company’s risks and opportunities with regard to human rights.
for human rights. Other tools promoted by the UN Global Compact provide practical guidance on how to undertake other elements of due diligence, such as how to conduct risk and impact assessments, and what to disclose and report on human rights.

While due diligence may be required to ensure respect for human rights and for a business to demonstrate to itself and others that the company is systematically identifying, addressing and remediating the risk of adverse human rights impacts, the failure to undertake any one or more elements of due diligence does not mean, by definition, that the company is failing to respect human rights. The sole factor in determining whether a company is failing to respect human rights is whether the company is actually infringing or contributing to the infringement of anyone's human rights. Were it otherwise, virtually all companies in the world would be failing to respect human rights. This is important for the UN Global Compact because while we strongly advocate that businesses should have robust policies and procedures in place to manage human rights risk and opportunities, we do not consider there to be an abuse of the Global Compact's human rights principles simply because a particular company has not taken one or more due diligence steps.

The Global Compact's more than ninety Local Networks around the world also play a key role in helping to advance the Global Compact principles, including corporate respect and support for human rights. The SRSG's work, which has helped to raise awareness and interest in business and human rights, has also assisted our Local Networks in engaging more of their participants on business and human rights and helped to drive greater interest in the Global Compact itself as the only truly global mechanism for businesses to record their explicit commitment to respect (and support) human rights and communicate their progress. Many of our Local Networks have been undertaking activities to advance business and human rights, including to enhance understanding of the corporate responsibility to respect human rights. These activities have ranged from hosting seminars and workshops, collaborating on SRSG consultations, introducing human rights working groups, launching or participating in advocacy campaigns, developing and/or translating human rights tools for businesses, and engagement on specific human rights issues such as women, children, peace and conflict, and human trafficking. An exciting, recently concluded Global Compact project relevant to the relationship between the UN Global Compact and the Protect-Respect-Remedy framework was conducted by the Global Compact Network Netherlands. The output of the project included a report, How to Do Business with Respect for Human Rights. This publication builds on the Protect, Respect and Remedy framework with descriptions, learnings and guidance points, based on the experiences of ten multinational companies within the Global Compact Network Netherlands, with a view to help these and other companies implement their commitment to respect human rights in line with the Framework. Among other things, the guidance juxtaposes the Framework and

37. These and other guidance materials are available for download. UN GLOBAL COMPACT, supra note 17.
38. See generally id.
39. For the latest articulation of this, see UN GLOBAL COMPACT, supra note 4.
the UN Global Compact's human rights principles, demonstrating their complementarity.

In order to enhance business' understanding of the corporate responsibility to respect human rights, additional specificity—geographic, sectoral and issue—is needed so that businesses can more easily see the potential negative impacts that they may have and what to do to address and remediate them. Greater specificity also helps to make clearer the opportunities businesses have within their spheres of influence to support or promote human rights. Local Networks, and the learning and dialogue activities that they undertake, help to provide this greater specificity. Good practice notes and case studies developed under the auspices of the Global Compact Human Rights Working Group also assist in this regard, as does the Human Rights and Business Dilemmas Forum. Both situate human rights within a variety of business contexts and offer good practice responses to some of the principal challenges that businesses may encounter in striving to avoid or remediate negative human rights impacts of their business.

Efforts undertaken by the UN Global Compact over the past ten years in directly engaging businesses on human rights have helped to make the corporate responsibility to respect the "well-established and institutionalized social norm" that it has become today and driven demand for business and human rights tools and disclosure. The consensus-building extends beyond adding new participants to the initiative to direct efforts to combat cultural relativism by demonstrating the universal relevance of the principles and attainability of good business practices all around the world, across all industrial sectors and company sizes. Some examples relevant in the current context include a CEO Statement, developed for the 60th anniversary of the Universal Declaration of Human Rights, calling on Governments to implement their own human rights obligations and reiterated the corporate responsibility to respect human rights, and the explicit reference to the SRSG framework in the Global Compact's New York Declaration, which was adopted at the Global Compact Leaders Summit on 24–25 June 2010, an event attended by over 1000 participants.

An important function of the UN Global Compact, which helps to reinforce the Protect-Respect-Remedy framework, is the initiative's comprehensive and coherent vision of corporate sustainability and its efforts to mainstream this broad concept around the world. Globalization and weak governance give rise to a confluence of interconnected challenges, including for businesses. All these challenges need to be simultaneously addressed—they cannot be viewed in isolation. The Global Compact advances all corporate sustainability

41. UN GLOBAL COMPACT, supra note 22.
45. The UN Global Compact uses the terms corporate sustainability and corporate responsibility interchangeably. The Global Compact defines corporate sustainability as a company's delivery of long-term value in financial, social, environmental and ethical terms—covering all ten principles of the UN Global Compact.
issues, including, but not limited to, human rights. Thus, its work on anti-corruption, environmental challenges and labour issues also helps businesses to effectively uphold the corporate responsibility to respect.

Our experience, borne out by our annual implementation surveys of corporate participants, reveals that human rights (and corruption) remains the most challenging corporate responsibility issues for businesses. In the area of human rights, a number of factors seem to be at play. There are significant knowledge gaps and management system inadequacies that the Global Compact can help to address. Among other things, many businesses still do not understand fully how human rights—particularly beyond labour rights—is an issue for their businesses. Even those that have some awareness often do not know where to get started to address the risk of infringing human rights or what would be good practice responses to dilemmas businesses face in endeavouring to respect and support human rights. Many companies have some kind of policy, procedure or practice that is relevant to the management of human rights risk, but very few yet have comprehensive systems in place addressing all the human rights that may be particularly pertinent to their operating context, activities and relationships. There is also a lack of awareness about the resources that exist to help businesses with the task of identifying and mitigating negative human rights impacts and/or a confusion about which guidance materials may assist in which ways. Our 2009 and 2010 implementation surveys of participants asked explicitly about awareness of certain business and human rights tools: Forty-five percent of the more than 1000 respondents were not yet aware of any of the guidance materials we listed (at least until we asked them the question).46

As more major corporations have started to hire staff with backgrounds in human rights, it is interesting to speak with these experts about what they spend most of their time doing. We are regularly told that much of their work entails translation or interpretation—that is, explaining to their colleagues what human rights are and why they are an issue for the company and trying to help them to understand what they should and could be doing differently. We thus see voluntary initiatives, such as the UN Global Compact, as also playing a key role in helping to address such knowledge gaps and to build capacity to address management system inadequacies.

IV. The UN Global Compact and Going Beyond Respect for Human Rights

A key point of departure between the Global Compact and the Protect-Respect-Remedy framework is that the latter focuses on the baseline, or business’ minimum responsibility for human rights, namely “respect” for human rights.47 By contrast, participants in the UN Global Compact have made a greater commitment on human rights, that is, beyond the corporate responsibility to respect human rights, to also “support” (or, in other words,
promote or make a positive contribution to) human rights. Importantly, as emphasized by both the Protect-Respect-Remedy framework and the UN Global Compact, support or promotion of human rights cannot be a substitute for respect for human rights. Reinforcing this is that the Global Compact's first principle is "support and respect" for human rights, not "support or respect" for human rights. In doing so, the Global Compact complements the second pillar of the Framework by encompassing it and going beyond it.

When the Global Compact speaks of support or promotion of human rights, we generally mean the mostly outwardly oriented actions that increase the business' positive impacts on stakeholders and society more generally. However, employees are a core group of stakeholders whose human rights businesses typically want to support as well as respect. Within the Global Compact, we see a trend in the growing number of companies that deliberately and explicitly are taking these kinds of supportive actions. From a UN perspective, engaging businesses in this way is seen as crucial to the achievement of UN goals. The SRSG himself noted in his first interim report: "It is generally believed that economic development coupled with the rule of law is the best guarantor for the entire spectrum of human rights from civil and political, to economic, social, and cultural rights."49

Since Global Compact participants have already made a voluntary commitment to respect and support human rights (as well as to taking action in support of broader UN goals and issues), the Global Compact avoids the need to focus on the origin of the corporate responsibility to respect or questions about whether the responsibility is legal or moral in nature and where the precise line between respect and support for human rights might be. By contrast, in focusing on defining the nature of the corporate responsibility to respect, the SRSG has had to look more closely at such questions. While initially the SRSG focused on societal expectations as defining the corporate responsibility to respect, more recently he has placed more emphasis on the widespread acknowledgement of the corporate responsibility to respect in company and industry CSR initiatives, in soft law instruments, and by the largest business associations as well as the fact that violations of the corporate responsibility to respect are routinely brought to public attention by a variety of groups.50 In other words, the focus is now more on the corporate responsibility to respect as a "well-established" and "institutionalized" social norm.51 Given that respect for human rights is an explicit commitment that Global Compact participants have made and the level of support

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48. See, for example, Human Rights and Business Learning Tool, UN GLOBAL COMPACT, http://www2.ohchr.org/training/ungchr_demo/ungchr_demo/about.html (last visited June 8, 2011), and the commentary to draft Guiding principle 12, Draft Guiding Principles, supra note 33.


that the initiative has attracted over the past ten years from business, governments and other stakeholders around the world, the Global Compact can claim credit for helping to institutionalize the corporate responsibility to respect.

Societal expectations of businesses frequently extend beyond the avoidance of infringing human rights to demand that businesses do more to support and promote human rights. Stakeholder expectations often extend to the belief that companies can and should make a positive contribution to the realization of human rights where they are in a position to do so. While observing that power, influence, capacity and the notion of companies as societal organs are all highly problematic bases for assigning responsibilities to corporations, the SRSG himself has acknowledged that such factors may impose certain moral obligations on persons or entities, including businesses.52

It is notable that businesses themselves often sees their role in society in more expansive terms. As an example, pharmaceutical companies typically see their role as making a positive contribution to health, not just avoiding harming people. Thus, most have programmes designed to enhance the accessibility of essential medicines. Socially responsible companies typically have a broader capability and often desire to support the promotion of human rights within their sphere of influence.53 In our experience, virtually all Global Compact participants are keen to go beyond the avoidance of harm. Apart from the moral case, or stakeholder or societal expectations, the reason is that businesses increasingly realize that making progress on broader societal objectives is necessary to ensuring the growth and sustainability of their own operations. Many companies are thus involved in efforts to support human rights at the local, or global and local, levels. This is explicitly encouraged by the UN Global Compact. Sometimes the business case for making a positive contribution to human rights is as strong or stronger than the case for managing risk of negative human rights impacts, especially where it is strategically linked to the firm’s core business.

Supporting or promoting human rights is rarely “required,” at least in a legal sense, more usually it may be “expected” by stakeholders or “desired.” An example of where it might be required is law firms in some countries that are required to provide a certain number of pro bono hours of service. Another example might be where the State is seeking to overcome a situation of systemic inequality and mandates specific affirmative actions. Yet another example might be where a business has a contract with a State and the contract requires it.

52. Id. ¶ 65.
53. For the UN Global Compact, “sphere of influence” is a convenient short hand expression for referring to the realms, particularly beyond its own operations, in which a company might be able to act to advance one or more of the ten principles and UN goals. In the human rights context, we have said that the concept can help to map the scope of a company’s opportunities to support human rights and have the greatest positive impact. It is interesting to note that in the draft Guiding Principles, which the SRSG released on 22 November, the SRSG stated that: “[A] business enterprise’s leverage over third parties becomes relevant in identifying what it can reasonably do to prevent and mitigate its potential human rights impacts or help remediate any actual impacts for which it is responsible.” Draft Guiding Principles, supra note 33. Such leverage, influence or capacity is also highly relevant to determining what a business can reasonably do to make a positive contribution to human rights and, as the SRSG has noted, to perceptions of a business’ moral obligations.
However, since it is usually not legally required, the extent of the business' positive contribution to human rights will in most situations be determined by the business itself. Although other stakeholders, such as employees, civil society or the government may make moral calls on the business to take specific actions to support or promote human rights, especially where the business is operating in an area where human rights are routinely abused or where there is extensive poverty and the business is seen as having capacity to contribute to the alleviation of the situation. And for some social enterprises, support or promotion of human rights is their core business.

At the UN, we recognize that goals like peace, security, development and human rights cannot and will not be realized without business' active cooperation and involvement, not just as responsible businesses, but as drivers of sustainable development. Businesses have resources, ideas, expertise and reach that are absolutely crucial to help bring half the world out of poverty and realize human rights. In the words of the former UN Secretary-General: "It is the absence of broad-based business activity, not its presence, that condemns much of humanity to suffering."54

Businesses can support or promote human rights in at least four ways. Through their:

- core business activities in support of UN goals and issues;
- strategic social investment and philanthropy;
- advocacy and public policy engagement; and
- partnerships and collective action.

These are elaborated in the Global Compact Blueprint for Corporate Sustainability Leadership, among other places.55 The Blueprint lays out a comprehensive definition of corporate sustainability that embraces all aspects of corporate responsibility and acknowledges their interconnectivity. It makes clear that to be a corporate leader on sustainability, businesses must not only avoid having negative social, environment and governance impacts. Along with all other societal actors, businesses are also called on to also make a positive contribution to society and do their part in helping to overcome the most acute and chronic global challenges. And business' case for doing so is growing stronger and is increasingly understood.


The main responsibility for meeting this challenge rests with Governments. But business has a central role to play. Business generates employment and wealth. Your tremendous human, technical and organizational capacities have direct applications in virtually all realms of development. These capacities are every bit as important as capital. It is the absence of broad-based business activity, not its presence, that condemns much of humanity to suffering. Indeed, what is utopian is the notion that poverty can be overcome without the active engagement of business.

Id.

55. UN Global Compact, supra note 4.
Some specific examples of corporate actions to support human rights and their relevance for businesses include:

- Utilizing differential pricing or small packages that enable the poor to gain access to goods and services that they otherwise could not afford as well as creating new markets for the firm

- Thoroughly embracing fair trade and the social marketing benefits it entails

- Fostering opportunities for girls to be educated, which helps to empower them and also helps a company to have a broader, more skilled pool of workers in the future

- Helping through conflict sensitive business practices to contribute to peace, as well as to build a more stable business environment

- Integrating vulnerable groups into a company’s supply chain which helps improve their living standards as well as creates reliable and motivated suppliers

- Having an affirmative action programme to hire survivors of domestic violence, which advances women’s human rights and also creates loyal employees

- Introducing an employee volunteer programme focused on human rights issues, which may also help employees to build new skills as well as retain skilled talent who might otherwise leave the firm

- Running public awareness campaigns such as alerting people to the risks of being a victim of human trafficking, on health issues, or how to seek help to get out of abusive domestic situations

Most importantly, though, being a successful business that provides decent work opportunities, produces quality goods or services that improve lives (especially of the poor or other vulnerable groups) is an essential contribution to sustainable development, including human rights, and building and maintaining peace.

A key question that arises is: How can a company know the best contribution for it to make to support and promote human rights? To have the greatest impact and ensure that actions with good intentions contribute to human rights and do not undermine them there are several factors that a business should bear in mind.

- They should be strategic. This means looking for opportunities that are aligned with the company’s own mission and values, core business, expertise, leverage and the specific human rights challenges of the locations where it operates. Doing so increases the chances that the company will understand the challenges
that it seeks to help address, make better-informed decisions, make higher-quality contributions and have more sustainable results.

- They should take a rights aware approach and seek advice and guidance if needed. It is important to be aware that actions with the best intentions can sometimes not be as helpful as envisaged or worse have unintended negative consequences for human rights. For example, engaging in social investment or philanthropy in a local community in the vicinity of the company's operations might create conflict with other communities nearby or reinforce existing inequalities if not thoughtfully carried out. Thus, taking a systematic, rights-aware approach to actions to support human rights is very important. Reaching out for robust advice and guidance at an early stage is a key way to help ensure that the positive impact on human rights is maximized.

- One approach to help ensure that corporate actions to support human rights actually meet their mark is to get involved in public-private partnerships with the UN or civil society where each partner brings their comparative advantages to the table. A multitude of guidance material exists on how to effectively engage in partnerships for development.56

- Before deciding to take action on their own, business should at least consider joining existing collective action initiatives to help scale them up. Joining already existing and well-regarded collective approaches is a terrific way to help to scale up positive impacts as well as benefit from human rights expertise that they have acquired. Doing so saves investment in having to create a new initiative from scratch. Across the spectrum of human rights, many initiatives already exist that invite corporate engagement. Many address both respect and support for human rights.57

- Even for businesses preferring to go it alone to undertake actions to support human rights, they should be aware that resources exist to help guide businesses in making impactful positive contributions to support human rights. Some general examples include the Principles for Social Investment (PSI),58 and a good


57. See, for example, VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS, http://www.voluntaryprinciples.org (last visited June 8, 2011), and GLOBAL NETWORK INITIATIVE, www.globalnetworkinitiative.org (last visited June 8, 2011).

58. UN GLOBAL COMPACT, PRINCIPLES FOR SOCIAL INVESTMENT (PSI), http://www.unglobalcompact.org/docs/issues_doc/development/PSI.pdf.
practice note entitled *How Business Can Encourage Governments to Fulfil Their Human Rights Obligations*.

Guidance also exists suggesting concrete actions that businesses can take to support specific human rights. For example, on women’s empowerment, there is the Women’s Empowerment Principles, which contain specific ideas for actions for how to help empower women as well as how to avoid infringing their rights.

A similar initiative has recently been underway on children’s rights and business focusing on what businesses can do to respect and support children’s rights. Another specific example is the Framework for Responsible Business Engagement with Water Policy.

- The commitment to support human rights provides yet another reason to undertake the kind of due diligence that is prescribed by the Protect-Respect-Remedy framework. The same policies and processes that help a business to know and show that it is respecting human rights can and are being used to identify and utilize opportunities to support human rights. As already noted, many companies already make or aspire to make a positive contribution to the societies in which they operate and not just to avoid harming human rights. Such aspirations and commitments are increasingly being built into corporate mission statements and policies. Risk and impact assessments are also likely to reveal opportunities to have positive impacts on human rights as well as identifying potential negative impacts to avoid. Engagement with stakeholders and disclosure of challenges may produce innovative solutions and give rise to new partnerships.

In conclusion, the Global Compact and the UN Protect-Respect-Remedy framework are highly complementary and reinforcing of each other. The Global Compact Office stands ready to continue to work with the Office of the UN High Commissioner for Human Rights and other actors to advance business’ respect (and support) for human rights around the world.

**V. Annex**


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60. UN GLOBAL COMPACT, supra note 20.


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