

2 Human Rights Due Diligence in the U.N. Guiding Principles for Business and Human Rights

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Abstract: This chapter seeks to situate the concept of human rights due diligence from its origins in the UN Guiding Principles for Business and Human Rights. The elaboration of the concept is examined with reference to its development between 2006, the start of the mandate of John Ruggie as Special Representative to the UN Secretary General to the unanimous endorsement of the UNGP in 2011 by the Human Rights Council. The transformation of the concept from an operational level mechanism at the core of the corporate responsibility to respect human rights in the UNGP 2nd Pillar to its key role as the embodiment of compliance-based legality respecting the management of global production through layers of “smart mixes” of public regulatory authority is then considered. The shape of plausible approaches and of the debates, especially around mandatory HRDD processes, are dependent, in the first instance, on a better understanding of the possibilities and limits of HRDD built into the UNGPs. The object of this contribution is to provide that more focused consideration of the text of the UNGP and its HRDD principles as a function of the vision for the operation of the UNGP as a whole. This contribution is organized as follows. It first considers the structures and forms of human rights due diligence developed within the UNGP’s 2nd Pillar—the corporate responsibility to respect human rights. It then considers the extent that the UNGP either encourages or suggests a role for the State within the 1st Pillar State duty to protect human rights and the way in which HRDD can be made mandatory within that framework. Lastly, it considers what the remedial Pillar 3 suggests about the inter-relationship between State and enterprise as a function of the overarching objective of the UNGP—to prevent, and if not prevent then to mitigate, and if not to mitigate then to remedy negative or harmful human rights impacts attributable to the economic activity of actors subject to its principles. The flexibility in the transposition of these mechanisms to other regulatory frameworks is then explored.

1 Introduction

On 20 March 2025, the five members of the U.N. Working Group on Business and Human Rights (WGBHR), a techno-political special procedure of the United Nations,¹ created in part to “promote the effective and comprehensive dissemination and implementation of the” UN Guiding Principles for Business and Human Rights (UNGPs),² issued a statement.³ That statement sought to add the weight and authority of the WGBHR to efforts to avoid revising the scope and applicability of what was emerging as a robust European regulatory framework for the creation of a multi-regulatory system of mandatory human rights due diligence that aligned public policy objectives with enterprise operations.⁴ Those revisions, the so-called Omnibus proposals,⁵ had the objective of

¹ Human Rights Council, *Human Rights and Transnational Corporations and Other Business Enterprises*, UN Doc A/HRC/RES/17/4 (6 July 2011) <https://docs.un.org/A/HRC/RES/17/4> accessed 3 April 2025.

² United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations’ Protect, Respect and Remedy” Framework* (United Nations, 2011).

³ UN Working Group on Business and Human Rights, *Statement by the United Nations Working Group on Business and Human Rights on the European Commission’s “Omnibus simplification package”* available [<https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/wgbhr-statement-19-03-2025.pdf>] accessed 2 April 2025 (hereafter WGBHR Statement).

⁴ The centerpiece of the WGBHR Statement was the European Union’s (EU) Corporate Sustainability Due Diligence Directive (CSDDD), Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (Text with EEA relevance).

⁵ European Commission, *Proposal for a Directive on Postponing Requirements on CSRD Transposition and Application of CSDDD*, COM(2025) 801 final <https://finance.ec.europa.eu/document/download/29624c4a->

scaling back a set of integrated regulatory measures that created what might have been considered the first stage of a comprehensive imposition of mandatory measures related to and implemented in part by human rights due diligence (HRDD) that were a “key step in implementing the UNGPs.”⁶

To the WGBHR’s thinking, mandatory measures, including human rights due diligence, constituted an unalterable forward movement along a path toward the appropriate realization of the UNGP⁷ with respect to which further compromise would eviscerate objective.⁸ They are not alone, especially within the UN Geneva apparatus.⁹ That raises the question around which this contribution is organized: the extent to which human rights due diligence is mandated in the UNGP, or put differently, the issue of whether mandatory human rights due diligence (in the form of legal measures) is itself a mandatory element of the UNGP. The answer is that *mandatory public* human rights due diligence measures are themselves not required in the UNGP,¹⁰ but are also not prohibited.¹¹ As a baseline a system grounded in the *expectation* of private mandatory HRDD measures in markets supported by a smart mix (UNGP Principle 3 Commentary) of measures—mandatory, policy, and private.¹²

94e1-4b47-b798-db7883f79c87_en?filename=proposal-postponing-requirements-csrd-transposition-deadline-application-csddd_en.pdf accessed 3 April 2025;
European Commission, *Proposal for a Directive Amending Accounting, Audit, CSRD and CSDDD Directives*, COM(2025) 812 final https://finance.ec.europa.eu/document/download/161070f0-aca7-4b44-b20a-52bd879575bc_en?filename=proposal-directive-amending-accounting-audit-csrd-csddd-directives_en.pdf accessed 3 April 2025.

⁶ WGBHR Statement, p. 1.

⁷ European Commission, *Proposal for a Directive on Postponing Requirements on CSRD Transposition and Application of CSDDD*, COM(2025) 801 final https://finance.ec.europa.eu/document/download/29624c4a-94e1-4b47-b798-db7883f79c87_en?filename=proposal-postponing-requirements-csrd-transposition-deadline-application-csddd_en.pdf accessed 3 April 2025;
European Commission, *Proposal for a Directive Amending Accounting, Audit, CSRD and CSDDD Directives*, COM(2025) 812 final https://finance.ec.europa.eu/document/download/161070f0-aca7-4b44-b20a-52bd879575bc_en?filename=proposal-directive-amending-accounting-audit-csrd-csddd-directives_en.pdf accessed 3 April 2025.

⁸ But see Jack Snyder, *Human Rights for Pragmatists: Social Power in Modern Times* (Princeton University Press, 2022), 22, 68, 71, 126, 134, 141–42, 244 (suggesting a pragmatic turn in the politics of human rights progressive reform).

⁹ The Committee on Economic, Social and Cultural Rights, *General Comment No 24 (2017) on State Obligations under International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, E/C.12/GC/24 (10 August 2017) (“the obligation to protect entails a positive duty to adopt a legal framework requiring business entities to exercise human rights due diligence in order to identify, prevent and mitigate the risks of violations of Covenant rights... and States should adopt measures such as imposing due diligence requirements to prevent abuses of Covenant rights in a business entity’s supply chain and by subcontractors, suppliers, franchisees, or other business partners.” *Ibid.*, ¶ 16).

¹⁰ UNGP Principle 3 describes an expectation that State will meet their duty to protect human rights through enforcement of law, coordination among legal and policy initiatives, effective guidance, and encouragement. *Ibid.*, Principle 3(a)-(d).

¹¹ *Ibid.*, Principle 3(d) (“States should... Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts”).

¹² *Ibid.*, Principle 3 Commentary (“States... should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights”).

A sharp line, then, might be usefully drawn between the broad scope within which actors may develop and apply policy objectives that conform to the UNGP, and what the UNGP actually provides in its text. In that sense, and as a matter of political/policy choices consistent with the UNGP, the WGBHR might indeed assert the view that as a policy matter a system of mandatory public (legal) HRDD objectives might best align with the UNGP. However, that policy declaration, whatever its narrative effect, has no mandatory consequence; it cannot change the underlying framework of the UNGP which itself permits the construction and operation of systems of non-mandatory measures or mandatory measures under private law regimes in markets.¹³ Thus, while the policy positions developed under the aegis of the WGBHR and the U.N. Geneva apparatus may indeed be the better policy/political choice, the UNGP itself does not suggest that it is the only or the best choice consistent with its text.

The object of the chapter is to take a deep dive into human rights due diligence within the framework of the UN Guiding Principles for Business and Human Rights. It helps to understand HRDD as first a normative project (UNGP Principles 11-15); as a governance and governance coordination project (UNGP Principle 16), as a process for the vindication of those whose human rights have been adversely impacted (UNGP Principles 17-21), as a remediation project (UNGP Principle 22), and as a project of prioritization of legal compliance and of addressing impacts (UNGP Principles 23-24). From that deep dive one is better able to understand the framework from which it is possible to understand *mandatory HRDD* from within the UNGP conceptual universe. That understanding brings into the equation the close intertwining of the State duty to protect human rights (UNGP Principles 1-4, 7) and the access to remedy principles (UNGP Principles 15, 28-30) with HRDD. Lastly these provide insights into the plausible pathways to mandatory HRDD systems both as trajectories and relationship between the UNGP project and current conceptualizations of due diligence and of the project of due diligence legalization within national legal orders.

This contribution is organized as follows. It first considers the structures and forms of human rights due diligence developed within the UNGP's 2nd Pillar—the corporate responsibility to respect human rights. It then considers the extent that the UNGP either encourages or suggests a role for the State within the 1st Pillar State duty to protect human rights and the way in which HRDD can be made mandatory within that framework. Lastly, it considers what the remedial Pillar 3 suggests about the inter-relationship between State and enterprise as a function of the overarching objective of the UNGP—to prevent, and if not prevent then to mitigate, and if not to mitigate then to remedy negative or harmful human rights impacts attributable to the economic activity of actors subject to its principles.

2. The Framework—HRDD and the UNGP 2nd Pillar

UNGP HRDD is built around a set of foundational¹⁴ and operational¹⁵ principles of the UNGP 2nd Pillar corporate responsibility to respect human rights. The 2nd Pillar, in turn, is grounded in a set of expectations for businesses in their activities in markets, as a “global standard of expected

¹³ Sally Wheeler, Global production, CSR and human rights: the courts of public opinion and the social license to operate,” 19(6) (2015) *The International Journal of Human Rights* 757-778 (“Human rights observance by business it seems is being returned to the marketplace of consumption for adjudication by a range of actors with very different agendas” *ibid.*, p. 771).

¹⁴ UNGP Principles 11-15.

¹⁵ UNGP Principles 16-21

conduct.”¹⁶ The HRDD is elaborated in UNGP Principles 17-21. Guidance principles for the application of HRDD systems for issues of context¹⁷ are remediation.¹⁸ These represent that transposition of the elaboration of the “Protect, Respect and Remedy” framework developed by John Ruggie in the course of his mandate¹⁹ and endorsed by the UN Human Rights Council in 2011.²⁰

2.1 Foundational Principles.

The 2nd Pillar corporate responsibility to respect human rights includes five foundational principles.²¹ These principles, in turn, are to be understood within the broader constraints and presumptions elaborated in the UNGP’s General Principles.²² The General Principles recognize (1) the existing obligations of States under international law,²³ (2) the role of business enterprises as functionally differentiated organs of society required to comply with law and to respect human rights,²⁴ (3) the necessary connection between rights and remedy, (4) the UNGP principles are universally applicable, and (5) a set of unifying standards of interpretation as a function of a fundamental objective: “enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.”²⁵ In addition, the UNGP General Principles also make clear that it does not create new international law obligations, though it leaves it to states and the international community to exercise their regulatory authority as they see fit. Lastly, the UNGP General Principles emphasize international dual principles of general non-discrimination and “due regard to the different risks that may be faced by women and men.”²⁶

These principles provide the context within which it is possible to frame both constraints and possibilities in the operation of HRDD in the 2nd Pillar setting and its possibilities for transposition into and as legal obligations in national and international law. HRDD is tied to the fulfillment of the core objective of the UNGP: (1) enhancing standards and practices, (2) with its focus on international human rights, (3) the effectiveness of which is to be measured through tangible results, (4) these results are sourced in affected individuals and communities (alleviation of adverse human rights impacts), and (5) contributing in the aggregate to the construction and fulfillment of socially sustainable globalization. To be in accord with the UNGP, then, HRDD must

¹⁶ UNGP Principle 11 Commentary.

¹⁷ Ibid., Principles 23-24.

¹⁸ Ibid., Principle 22.

¹⁹ UNHRC Resolution 8/7 2008--Human Rights Council, *Mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, A/HRC/Res/8/7 (18 June 2008) [https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf] last accessed 21 August 2024.

²⁰ Human Rights Council, *Resolution Adopted by the Human Rights Council, Human Rights and Transnational Corporations and Other Business Enterprises* (A/HRC/RES/17/4 (6 July 2011); available [https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/4] last accessed 12 February 2024

²¹ UNGP Principles 11-15.

²² The UNGP General Principles and their relationship to the UNGP’s 31 formative principles is discussed in Larry Catá Backer, *Commentary on the United Nations Guiding Principles for Business and Human Rights* (OUP, forthcoming 2026), chapter 6.

²³ UNGP General Principles (“to respect, protect and fulfil human rights and fundamental freedoms”).

²⁴ Ibid. (“specialized organs of society performing specialized functions”).

²⁵ Ibid.

²⁶ Ibid.

serve as an instrument to fulfill this fundamental objective around which the UNGP Principles were elaborated. What then animates the connection between principle and action is the notion of “principled pragmatism” on which the UNGP are premised.²⁷ Effectively one might approach the concept as grounded in current practice (one starts with what one has) and then moves practice toward the principles (understood as sketching out the framework for the ideal) by using the methodological structures of the UNGP to guide expectation and practice toward the ideal.²⁸

The foundational principles of the 2nd Pillar amplify these core principles within the sphere of economic activity as a set of social structures and behavior expectations that exist autonomously of that of the State and its regulatory apparatus. UNGP Principle 11 provides the grounding expectation, in the form of a “should” standard; in this case business enterprises should respect human rights.²⁹ It then set out the broad definition. First, UNGP Principle 11 defined respect with respect to avoidance principles—that “respect” means avoiding infringement of the human rights of others. Second, UNGP Principle 11 defined respect by reference to action principles—in this case that in the face of unavoidable infringement, the enterprise “should address” adverse human rights impacts with which they are involved.” That forms the two core characteristics of the responsibility to respect human rights—avoidance of adverse impact and addressing such impacts when they occur—and at the same time the framework around which due diligence is constructed.

UNGP Principles 12-15 then flesh out the responsibility to respect as a conceptual matter, providing context, definition, and standards for building institutional and operational structures to fulfill that responsibility. UNGP Principle 12 describes the scope of applicable rights against which adverse human rights impacts are to be measured as “internationally recognized human rights.” Within that broad and changing aggregation of rights, UNGP Principle 12 also sets out what, in its Commentary, it describes as a “core of internationally recognized human rights.”³⁰ UNGP Principle 12 then lists within that core those internationally recognized human rights that are “expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.” UNGP Principle 12’s Commentary notes that the focus on specific rights will depend on specific risk of adverse impact. It also notes that enterprises may need to consider additional factors, especially respecting vulnerable communities “that require particular attention.”

UNGP Principle 13 then elaborates on the meaning of “avoiding” and “addressing” set out in UNGP Principle 11. Avoidance of infringement includes “causing or contributing” to adverse

²⁷ John R. Ruggie, *Just Business: Multinational Corporations and Human Rights* (WW Norton & Co, 2013) (“which means an unflinching commitment to the principle of strengthening the promotion and protection of human rights as it relates to business, coupled with a pragmatic attachment to what works best in creating change where it matters most in the daily lives of people; for a discussion of principled pragmatism” *ibid.*, xlii-xliii); see Backer, Commentary, *supra*, chapter 3.1.

²⁸ Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Addendum 2: Human Rights and Corporate Law: Trends and Observations from a Cross-National Study Conducted by the Special Representative*, UN Doc A/HRC/17/31/Add.2 (23 May 2011) <https://www.ohchr.org/en/special-procedures/wg-business/special-representative-secretary-general-human-rights-and-transnational-corporations-and-other> accessed 1 April 2025.

²⁹ On the difference between mandatory obligations and expectations, see Backer, Commentary, *supra*, Chapters 7-9.

³⁰ UNGP Principle 12 Commentary.

impacts. Those “causing or contributing” actions apply to the enterprise’s own activities. These causing or contributing actions require addressing “when they occur.” In addition, UNGP Principle 13 refines the understanding of “avoidance” by specifying a “prevention and mitigation” standard in two respects. The first is that avoidance now is understood to mean prevent or mitigate adverse impacts, while addressing means remedying those adverse impacts after they occur. Second, prevention and litigation—but not remediation—apply to actions “directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.” The term “directly linked” is a core element of HRDD. It appears as well in UNGP Principles 16, 19, and 22. While the term directly linked is not defined, the term “business relationships” is defined in UNGP Principle 13 Commentary. “For the purpose of these Guiding Principles a business enterprise’s . . . “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.”³¹ Given the language in the Commentary, the terms “directly linked” and “business relationship” appear to encourage a broad rather than a narrow reading.

UNGP Principle 14 then considers the range of enterprises to which the responsibility to respect human rights applies. First, the responsibility to respect “applies to all enterprises regardless of their size, sector, operational context, ownership and structure.” Nonetheless, UNGP Principle 14 also creates something of an exception rounded on the application of principles of “scale and complexity, and also of “severity.” That suggests that while all enterprises bear the responsibility to respect—the way that this responsibility presents will be contextually differentiated.³² In reality, the focus of the exception and the application of the “scale, complexity, severity” principles are in the first instance meant to be of particular significance to small and medium sized enterprises. These enterprises, the UNGP Principle 14 Commentary tells its readers, “may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms.” However, UNGP Principle 14 emphasizes that these “scale, complexity, and severity” principles are “as applied” standards, the overall application of the responsibility to respect remains the same.

Lastly, UNGP Principle 15 then turns attention to the fulfillment of the foundational duty to respect human rights. That is, inherent in the foundational principles of the UNGP responsibility to respect human rights is the expectation that such responsibility is to be fulfilled through institutionalized programs of human rights due diligence. In addition, UNGP Principle 15 specifies the three sub-principles for the constitution of a human rights due diligence system. The first is a policy commitment (UNGP Principle 15(a)). The second is the establishment of a HRDD process. That process, in turn, is expected to include the means to “identify, prevent, mitigate and account for how they address their impacts on human rights (UNGP Principle 15(b)). The third is the institution of processes to enable remediation in those situations where the enterprise is expected to address adverse human rights impacts (UNGP Principle 15(c)). In essence, then, the

³¹ UNGP Principle 13 Commentary.

³² See, Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, *Business and human rights: Towards operationalizing the “protect, respect and remedy” framework* A/HRC/11/13 (22 April 2009); available [<https://undocs.org/en/A/HRC/11/13>]; last accessed 25 February 2025 (“The scale and complexity of dedicated mechanisms will depend on the extent of the companies’ likely impacts. They need not be cumbersome to be effective and they may be partially outsourced or shared with other companies.” ¶ 101)

fundamental principle of the corporate responsibility to respect human rights is HRDD; conversely, then, human rights due diligence is the corporate responsibility to respect human rights.

2.2 The Operational Principles of HRDD.

The greater part of the 2nd Pillar corporate responsibility to respect human rights is taken up with the elaboration of the basic rules for setting up and operating an HRDD system that complies with the expectations of the UNGP generally. It follows the template set out in UNGP Principle 15—first the elaboration of a proper policy commitment; second the detailed specifications of process and expectations for the HRDD system built on the objectives/process of identification, prevention, mitigation, and accounting in relation to adverse human rights impacts; and third the structures and processes for remediation. These are elaborated in UNGP Principles 16-24.

2.2.1. Operational Principles: Policy Commitment. UNGP Principle 16 provides the instructions for producing a UNGP compliant statement of policy commitment. That statement is understood as “the basis for embedding their responsibility to respect human rights.” UNGP Principle 16 Commentary notes that the use of the word Statement is meant to refer generically to the means that an enterprise uses to publicly set out its “responsibilities, commitments, and expectations.” The Statement consists of five parts.

First, UNGP Principle 16(a) provides that any policy commitment statement must be approved “at the most senior level” of the enterprise. That requirements builds on insights developed by John Ruggie during his mandate. In his 2010 Report,³³ John Ruggie underscored the importance of tone at the top for the UNGP project.³⁴ The Commentary to UNGP Principle 16 underscores its importance by emphasizing that “the policy statement should be embedded from the top of the business enterprise through all its functions, which otherwise may act without awareness or regard for human rights.”

Second, UNGP Principle 16(b) specifies that the statement, though emerging from the leadership core of the enterprise, ought to be a techno-bureaucratic product.³⁵ That is, that the statement itself ought to be “informed by relevant internal and/or external expertise.” The extent that expertise is critical to the development of the commitment is a function of the complexity of the business and its operations. The UNGP Principle 16 Commentary notes that “Expertise can be drawn from various sources;” expertise can be rented or bought; it can be acquired prepackaged, online or from experts. The Commentary reminds enterprises that the only requirement is contextually relevant credibility.

³³ Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, *Business and human rights: further steps toward the operationalization of the “protect, respect and remedy” framework* A/HRC/14/27 (9 April 2010); available [https://undocs.org/en/A/HRC/14/27]; last accessed 25 March 2025.

³⁴ *Ibid.*, ¶ 39 (“A third policy tool is the specification of directors’ duties. Directors can set the right tone at the top and play vital oversight roles. The Special Representative’s corporate law project examined to what extent directors’ duties currently facilitate corporate respect for human rights.”).

³⁵ Cf., Anders Esmark, *The New Technocracy* (OUP, 2020), “The Technocratic Regime: Technocracy, Bureaucracy and Democracy,” pp. 79-110.

Third, UNGP Principle 16(c) suggests the minimum expected level of specificity in the policy commitment. The commitment is to “stipulate” (in the sense of requiring) expectations of “personnel, business partners, and other parties directly linked” to the enterprise’s operations, or its products, or its services. That requires, in turn, an understanding of the plausible ranges of meaning of these terms. The Commentary to UNGP Principle 16 picks up the definition of “directly linked” from UNGP Principle 13 as one founded on the contractual relations of the enterprise.³⁶ The term “directly linked” also appears in two other 2nd Pillar Operational Principles. It appears in UNGP Principle 19 (b) (on prevention and mitigation) respecting the character and extent of appropriate action in the face of adverse human rights impacts.³⁷ It also appears in the Commentary to UNGP Principle 22 (on remediation).³⁸ In all cases the “business relationship” standard of UNGP Principle 13 is reproduced.

Fourth, UNGP Principle 16(d) creates an expectation of transparency. The Policy produced under UNGP Principle 16 is expected to be made available and communicated. That is, the Policy includes a passive obligation (to make available to those who seek it out), and a positive obligation to ensure that the Policy is received. The objects of these expectations are “all personnel, business partners and other relevant parties.” The Commentary to UNGP Principle 16 also suggests that the obligation to communicate the policy is broader than the range of actors included in the “directly linked” standard by reason of “contractual relationships” but also includes “in the case of operations with significant human rights risks, . . . potentially affected stakeholders.”³⁹ Nonetheless there also appears to be a distinction in the scope of transparency between internal and external actors. The UNGP Principle 16 Commentary notes that internal communication of the Policy ought to include as well a statement of related company policies and procedures which may be impacted by the Policy and should make clear what the lines and systems of accountability will be, and should be supported by any necessary training for personnel in relevant business functions.”⁴⁰

Lastly, UNGP Principle 16(e) creates an expectation that the Policy Commitment be “reflected in operational policies and procedures.” That expectation extends to those policies and procedures but only to the extent “necessary to embed it throughout the business enterprise.” UNGP Principle 16 Commentary connects this expectation to the UNGP 1st Pillar (State Duty) expectation of the development of policy coherence.⁴¹ Within the Policy expectations in UNGP Principle 16, coherence should focus on coordination within an enterprise’s “wider business activities and relationships.”⁴² The UNGP Principle 16 Commentary identifies some of these as including “policies

³⁶ See UNGP Principle 13 and 13 Commentary discussed in Section 2.2.

³⁷ UNGP Principle 19 Commentary (“directly linked to its operations, products or services by its business relationship with another entity”).

³⁸ UNGP Principle 22 Commentary (“but which are directly linked to its operations, products or services by a business relationship”).

³⁹ UNGP Principle 16) Commentary.

⁴⁰ Ibid.

⁴¹ UNGP Principle 8 (describing principles of vertical and horizontal policy coherence, the former connecting internal policies to external obligations, and the latter ensuring that all internal operations embed the same policies and practices to avoiding inconsistencies). See also UNGP Principle 10 (on policy coherence when States act as members of multilateral institutions); and UNGP Principle 7 (on aiding enterprises in conflict affected areas).

⁴² UNGP Principle 16 Commentary.

and procedures that set financial and other performance incentives for personnel; procurement practices; and lobbying activities where human rights are at stake.”⁴³ The object is to ensure that the Policy Commitment does not remain at the top of the enterprise’s governance structures, but rather “should be embedded from the top of the business enterprise through all its functions, which otherwise may act without awareness or regard for human rights.”⁴⁴

2.2.2. Human Rights Due Diligence. There are five principles that make up the core of the concept of HRDD in the UNGP’s 2nd Pillar. UNGP Principle 17 sets out the framework as a whole. UNGP Principle 18 describes the way in which human rights impacts are to be gauged. UNGP Principle 19 elaborates measures to prevent and mitigate identified adverse human rights impacts. UNGP Principle 10 addresses focuses on the verification the effectiveness of means chosen to address adverse human rights impacts. Principle 21 elaborates the structures of transparency. Each is discussed in turn.

UNGP Principle 17 sets out the framework of HRDD. The object of HRDD is to provide a process for identifying, preventing mitigating and accounting for how enterprises address their adverse human rights impacts. UNGP Principle 17 identifies the four critical elements of the process. “The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.” Each of these is elaborated in UNGP Principles 18-21.⁴⁵ The fundamental element of HRDD is risk. “Human rights risks are understood to be the business enterprise’s potential adverse human rights impacts.”⁴⁶ Enterprises use HRDD processes to prevent and mitigate potential risks, and to address and remedy risks that have already occurred. The focus on prevention and mitigation as first order priorities determines the timing of initiation of the HRDD process.⁴⁷ Because of essentially risk based character, the UNGP suggest that HRDD can “be included within broader enterprise risk-management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders.”⁴⁸

UNGP Principle 17 then describes the general presumptions about the application of the HRDD process. First, UNGP Principle 17(a) describes the foundational trigger of human rights risk in relation to an enterprise’s activities. It elaborates a two part standard for determining those adverse human rights impacts to which the responsibility to respect applies. The first is a “cause of contribute” standard for adverse human rights impacts attributable to the enterprises own activities. Second is a “directly linked by its business relationships” standard for adverse human rights impacts attributable to operations, products, or services. The “directly linked standard ties into the concept first elaborated in UNGP Principle 13. UNGP Principle 17 Commentary introduces

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ UNGP Principle 17 Commentary (“This Principle defines the parameters for human rights due diligence, while Principles 18 through 21 elaborate its essential components.”).

⁴⁶ Ibid.

⁴⁷ Ibid. (“Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited through mergers or acquisitions.”).

⁴⁸ Ibid.

the concept of “complicity” as embedded in the meaning of the term “contribute to.”⁴⁹ Complicity is understood in the UNGP in two senses. First, complicity has a meaning embedded in the expectations of market and social behaviors.⁵⁰ Second, complicity is also understood as a legal concept under the domestic legal orders of some States, either as a criminal⁵¹ or civil matter.⁵² Complicity, in the form of an “aiding and abetting” criminal standard may also be recognized in international forums.⁵³ The Commentary suggests that HRDD in this context, can add a layer of protection to enterprises undertaking the process by creating facts negating an intent to harm. At the same time, HRDD can have the opposite effect—providing the evidence necessary to show both causation and the existence of negative human rights impacts. The UNGP offer no guidance on mediating between these two poles.

Second, UNGP Principle 17(b) provides that the processes of HRDD is contextually determined. UNGP Principle 17(b) that context is defined by the application of several factors. These include the size of the business, the severity of the human rights impact, and the nature and context of operations. The Commentary to UNGP Principle 17 explains that where the business and its supply chains are large and complex, HRDD should be undertaken as a function of identified “general areas where the risk of adverse human rights impacts is most significant.”⁵⁴ The severity standard was introduced in UNGP Principle 14; it is based on a calculus driven by “their scale, scope and irremediable character.”⁵⁵ The principle of *severity* is also relevant to UNGP Principle 19 (addressing impacts) and 24 (prioritization of addressing actions).

Third, UNGP Principle 17(c) develops a principle of constant monitoring and assessment of all activities to which HRDD. HRDD, as undertaken within the framework of UNGP Principles 18-21, is expected to be ongoing. It is also expected to change as the nature of the risk of negative impact might change over time. HRDD, then, is a constantly moving target. Its reporting and transparency might be analogized to a corporate balance sheet, but its fundamental operations are sourced in its “human rights” ledger entries, the “impacts statement” (the analogy to the corporate income statement) describes the reasons for movement from one report to another, but that movement is itself a product of the identification and addressing of every discrete activity to which HRDD processes on the ground must be addressed.

Taken as a whole, then, UNGP Principle 17 provides the framework for realizing the foundational principles elaborated in UNGP Principles 11-5, and then articulated, as a general matter in UNGP Principle 16’s Policy commitment. The structure is meant to combine two models of rule system construction—both built into and expressed by SRS Ruggie as principled

⁴⁹ UNGP Principle 17 Commentary.

⁵⁰ Ibid. (“As a non-legal matter, business enterprises may be perceived as being “complicit” in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party.”).

⁵¹ Ibid. (“As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases.”).

⁵² Ibid. (“Typically, civil actions can also be based on an enterprise’s alleged contribution to a harm, although these may not be framed in human rights terms.”).

⁵³ Ibid.

⁵⁴ UNGP Principle 17 Commentary (“whether due to certain suppliers’ or clients’ operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence”).

⁵⁵ UNGP Principle 14 Commentary.

pragmatism.⁵⁶ These, then, are combined in the form of pragmatic action guided by normative principles engaged in an iterative dialectic—norms change as they are applied to human rights impacts, and the nature of impacts change as the normative basis for assessment changes.

The first revolves around a principles (norms) based construction of regulatory systems, the *Konstruktionsjurisprudenz* (conceptual jurisprudence) of deductive systems (from broadest principle to the most granular application within the framework provided by the principles within a self-contained system).⁵⁷ These are manifested in the interactions between the broad conceptual operational coding framework of UNGP Principles 11-15, textualized in UNGP Principle 16's policy statements, and realized through the operational principles of HRDD described in UNGP Principle 17. They are grounded in the core normative principle—to promote and protect human rights in economic activity.⁵⁸ These are then refined and elaborated as a normative system in the foundational principles of the State duty to protect (UNGP Principles 1-2) and in those of the corporate responsibility to respect (UNGP Principles 11-15).

The second revolves around the pragmatic operational principles of HRDD itself. These are manifestation of the pragmatic realization of practical means to and ends.⁵⁹ In this case the ends consist of preventing, mitigation or remedying negative human rights impacts. That, in turn, is undertaken by developing a pragmatic identification of the object (negative impacts), and by assigning risk bearers (the enterprise) and risk controlling mechanisms (HRDD). These are elaborated in UNGP Principles 18-21, and then situated within a remedial and systems choice process in UNGP Principles 22-24. It is in this context that one can usefully consider the specific elaboration principles UNGP Principles 18-21 as a function of the application of the foundational principles of UNGP Principles 11-15.

⁵⁶ See, e.g., John G. Ruggie, *Interim report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, E/CN.4/2006/97 (22 February 2006) (hereafter Ruggie 2006 Report) ¶¶ 70-81; see generally Backer, *Commentary*, supra, Chapter 3.1; Cf. Larry Catá Backer, "Principled Pragmatism in the Elaboration of a Comprehensive Treaty on Business and Human Rights," in Surya Deva and David Bilchitz (eds), *Building a Treaty on Business and Human Rights: Content and Contours* (CUP, 2017), pp. 105-130.

⁵⁷ See, e.g., Kenneth Einar Himma, 'Conceptual Jurisprudence: An Introduction to Conceptual Analysis and Methodology in Legal Theory' (2015) 26 *Journal for Constitutional Theory and Philosophy of Law* 65-92, <https://doi.org/10.4000/revus.3351>; Howard Schweber, 'The "Science" of Legal Science: The Model of the Natural Sciences in Nineteenth-Century American Legal Education' (12999) 17(3) *Law and History Review* <http://www.historycooperative.org/journals/lhr/17.3/schweber.html>.

⁵⁸ In the words of John Ruggie:

As indicated at the outset, the Special Representative of the Secretary-General takes his mandate to be primarily evidence-based. But insofar as it involves assessing difficult situations that are themselves in flux, it inevitably will also entail making normative judgements. In the Special Representative's case, the basis for those judgements might best be described as a principled form of pragmatism: an unflinching commitment to the principle of strengthening the promotion and protection of human rights as it relates to business, coupled with a pragmatic attachment to what works best in creating change where it matters most - in the daily lives of people. (Ruggie 2006 Report, supra, ¶ 81)

⁵⁹ See, e.g., Oliver Wendell Holmes Jr, *The Common Law* (Little, Brown and Company, 1881) ("The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men. . . " *ibid.*, p. 3).

UNGP Principle 18 elaborates the method for gauging human rights *risks*; note that the focus is on risks and not impacts. The Commentary to UNGP Principle 18 emphasizes that the “assessment of human rights impacts informs subsequent steps in the human rights due diligence process.” The idea appears to be that risk is broader than impact and that risk embeds the prevent/mitigate objectives of HRDD, the object of which is to “catch” impact before it occurs.⁶⁰ The focus of this gauging is on identification and assessment of “actual and potential adverse human rights impacts.”⁶¹ Identification and assessment, in turn, is a function of severity, context, and relationship to which human rights risk relates.⁶² UNGP Principle 18 extends human rights risk assessment and identification to the risk of impact “with which they may be involved either through their own activities or as a result of their business relationships.”

The operative provisions of UNGP Principle 18 then elaborate the process by which enterprises identify and assess to gauge human rights risk. First, UNGP Principle 18(a) explains that the enterprise is expected to draw on internal or external expertise” in operating their risk identification and assessment processes. Second, the process of identification is expected to be collaborative. That includes the State, whose duty to protect human rights permits guidance and capacity building for HRDD systems.⁶³ That is that human rights risks impacts identification/assessment processes is to be expert driven (in a sense, Principle 18(a)) but also is expected to involve meaningful consultation with potentially affected groups and other relevant stakeholders.⁶⁴ The Commentary to UNGP Principle 18 explains that the HRDD process does not have to be stand-alone but can be incorporated into other risk assessment processes—as long as the HRDD process includes “all internationally recognized human rights as a reference point.” The Commentary also suggests triggering events for identification/assessment processes. Beyond the conduct of the process at regular intervals, these triggering events include (1) prior to undertaking a new activity or relationship, (2) prior to significant changes in business focus or operations; and (3) in response to changes in the operating environment. All of these are both broad and open ended.

UNGP Principle 19 then focuses on prevention and mitigation strategies and decision analysis. Again the Commentary underscores the basic general principle that such identification and

⁶⁰ The Commentary to UNGP Principle 18 describes the process as being operating to permit assessment before an anticipated economic activity with human rights risk affecting potential. The heart of the process involves identifying affected individuals or groups, matching the risk to relevant human rights, and determining the character of the impacts on that basis.

⁶¹ UNGP Principle 18.

⁶² The Commentary to UNGP Principle 18 notes that “The purpose is to understand the specific impacts on specific people, given a specific context of operations.

⁶³ See below Section 3.1. UNGP Principle 2 focuses on guidance by a home State for enterprises throughout their supply chains. UNGP Principle 3 Commentary notes that States, in developing a smart mix of measures can provide “[g]uidance to business enterprises on respecting human rights should indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence.”).

⁶⁴ UNGP Principle 18(b) (the consultations are expected to be tailored, as “appropriate to the size of the business enterprise and the nature and context of the operation” *ibid*). The object of consultation is to aid in the accurate assessment of potential human rights impacts (UNGP Principle 18 Commentary). Where that is not possible, the UNGP Principle 18 Commentary suggests consulting outside expert resources (people or things) including civil society actors.

assessment applies to both potential and actual impact (that is it is risk driven).⁶⁵ The basic expectation to that end is that the findings of any identification and assessment exercise be integrated “across relevant internal functions and processes” and that the findings serve as the basis for taking “appropriate action.” UNGP Principle 19 then elaborates sub-principles of “effective integration,” and “appropriate action.”

“Effective integration” is defined in UNGP Principle 19(a) as consisting of the assignment of responsibility for addressing impacts to an appropriate organ of the enterprise, and that responsibility ought to be broadly distributed among internal decision making, budget allocating, and oversight organs which embed the finding of assessment in their own processes. The object is to ensure horizontal integration of the HRDD process and its findings throughout the enterprise.⁶⁶

“Appropriate action” is a more complex subject. It is divided into two distinct categories. Impacts produced where the enterprise “causes or contributes” to the actual or potential adverse impact are to be distinguished from those in which its connection to the actual or adverse impact is indirectly connected through direct links between the enterprise or others through business relationships touching on the enterprise’s operations, products or services.⁶⁷ In both cases, appropriate action may vary as a function of the leverage that the enterprise may have in addressing the actual or potential impact. The ultimate object of “appropriate action” where the enterprise comes within the “cause of contribute” standard is “to take the necessary steps to cease or prevent the impact.”⁶⁸ Where an adverse impact in relation to the enterprise falls within the “directly linked” standard, the appropriate course of action will depend on the balancing of a number of factors identified in the UNGP Principle 19 Commentary. These factors can include the enterprise’s leverage with the business relationships that caused or contributed to the adverse impacts, with which the enterprise is directly linked. But it also includes the extent of the enterprise’s leverage, and the balancing of human rights harms as a function of the relative importance of the offending form and the human rights costs of terminating a relationship. This has been most acutely felt in the aftermath of the 2022 invasion of Ukraine by Russia.⁶⁹

Both “effective integration” and “appropriate action” may require the enterprise to draw on expert advice, in the form addressed in UNGP Principle 18.⁷⁰ The concept of severity clearly is a function of ordering the timing and sequence of addressing negative human rights impacts (potential or actual). It does not serve to waive or excuse failures to address impacts or responsibility with respect to all impacts attributable directly or indirectly to the enterprise.⁷¹ The

⁶⁵ UNGP Principle 19 Commentary (“Potential impacts should be prevented or mitigated through the horizontal integration of findings across the business enterprise, while actual impacts—those that have already occurred – should be a subject for remediation (Principle 22)”).

⁶⁶ UNGP Principle 19 Commentary (“embedded in all relevant business functions.”)

⁶⁷ UNGP Principle 19(b)(i). The *concept* of directly linked was introduced in UNGP Principle 13, and forms a part of UNGP Principles 16, 19 and 22.

⁶⁸ UNGP Principle 19 Commentary.

⁶⁹ See Larry Catá Backer, ‘The Russian Invasion of Ukraine and Business: Responsibility, Complicity and the Responsibility to Respect Human Rights Under the UN Guiding Principles for Business and Human Rights’, *Law at the End of the Day* (26 February 2022), available <https://lcbackerblog.blogspot.com/2022/02/the-russian-invasiooon-of-ukraine-and.html>, last accessed 12 April 2025.

⁷⁰ UNGP Principle 19 Commentary.

⁷¹ *Ibid.* (“the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship”). See also UNGP Principle 24.

concept of *leverage* is a critical element to the mechanics of “appropriate action.” The leverage concept appears only in UNGP 19. Leverage might best be understood as influence that may be actualized in some measurable way, quantitative or qualitative.⁷² It draws from but is distinguishable from the concept of “sphere of influence” considered by the SRS in a 2008 Report.⁷³ The Commentary to UNGP Principle 19 notes that leverage is especially useful in two contexts. First where the enterprise is the primary driver of negative impact, leverage can be used to “mitigate any remaining impact to the greatest extent possible.”⁷⁴ Where the enterprise is directly linked to a negative impact through its business relationships leverage becomes a more important technique. In this context it is the enterprise’s use of leverage that will serve as a critical factor for evaluating the appropriateness of action taken.⁷⁵ More generally, the UNGP Principle 19 Commentary declares that where an enterprise has leverage in either context it ought to use it. Where the enterprise lacks leverage it appears to have a positive obligation to create or increase leverage.⁷⁶ Where there is neither leverage nor the possibility of creating it, the enterprise is encouraged to assess the human rights impacts of terminating the business relationship.⁷⁷ It is not clear exactly how effective use of leverage can be measured.

UNGP Principle 20 moves from prevention and mitigation strategies to the more technical issues of verification. Verification, according to UNGP Principle 20, is to be a function of tracking “the effectiveness of their response.” The UNGP Principle 20 offers two elements to effective tracking. The first is that it be based on “appropriate qualitative and quantitative indicators.”⁷⁸ The second is that it ought to “draw on feedback from both internal and external sources.”⁷⁹ Those sources ought to include “affected stakeholders.”⁸⁰ Tracking is understood to be an assessment tool;⁸¹ but one that can be shaped to focus on particular groups, especially traditionally vulnerable groups. Following the model of UNGP Principle 18, UNGP Principle 20 Commentary emphasizes the need to integrate the tracking function “into relevant internal reporting processes.”⁸² The Commentary suggests methods for undertaking this integrated approach, including developing

⁷² UNGP Principle 19 (“Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.”). See, e.g., John G. Ruggie, ‘Business and Human Rights: The Evolving International Agenda’ (2007) 101 *American Journal of International Law* 819–40; Stepan Wood, ‘The Case for Leverage-Based Corporate Human Rights Responsibility’ (2012) 22(a) *Business Ethics Quarterly* 63–98.

⁷³ Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, *Clarifying the Concepts of “Sphere of influence” and “Complicity”* A/HRC/8/16 (15 May 2008); available [<https://undocs.org/en/A/HRC/8/16>]; last accessed 25 February 2025.

⁷⁴ UNGP Principle 19 Commentary.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.* (“Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors.”).

⁷⁷ *Ibid.* The Commentary to UNGP Principle 19 suggests that this determination is a function of the extent to which the relationship is crucial to the enterprise.

⁷⁸ UNGP Principle 20(a).

⁷⁹ *Ibid.*, Principle 20(b).

⁸⁰ *Ibid.*

⁸¹ UNGP Principle 20 Commentary.

⁸² *Ibid.*

appropriate outsourcing mechanisms.⁸³ Here UNGP Principle 20 ties its tracking function to the remedial function of the UNGP, noting that effectiveness might be tracked by harvesting information from the enterprise's internal grievance mechanisms (UNGP Principle 29).⁸⁴

UNGP Principle 21, the last of the operational principles for the development of an effective HRDD mechanism, focuses on communication and transparency. These serve as a tool for accountability, and perhaps, as well, as a means for capacity building among the community of enterprises subject to the responsibility to respect human rights. In this latter sense, of course, communication swerves as a driver for change within the fundamental dialectic of principled pragmatism. The focus of UNGP Principle 21 is external communication, "particularly when concerns are raised by or on behalf of affected stakeholders." This is understood as a basic element of appropriate addressing of negative human rights impacts at the heart of the HRDD process, and, more generally, as a means of deepening the foundational framework geared toward the avoidance of impact. It also introduces the concept of "severe human rights impacts."⁸⁵

UNGP Principle 21 then sets out three expectations for communications. The first goes to frequency and target audience. Accessibility for intended audiences, and timeliness are the keys.⁸⁶ Accessibility is realized through a substantial flexibility in the forms of presentation of communication, which can include "in person meetings, dialogues, consultation. . . and formal public reports."⁸⁷ The second covers the sufficiency and form of the information communicated.⁸⁸ The third goes to the limits of disclosure as a function of avoiding further negative human rights impacts.⁸⁹ The principle of communication is understood as the means of connection the norms of the policy commitment of UNGP Principle 16 with its fulfillment through the processes of HRDD.⁹⁰ The Commentary to UNGP Principle 21 suggests the value, in appropriate cases, of independent verification, and sector specific indicators.

2.3 HRDD Remediation, Compliance and Prioritization Principles Within the 2nd Pillar HRDD Process.

⁸³ Ibid. ("Business enterprises might employ tools they already use in relation to other issues. This could include performance contracts and reviews as well as surveys and audits, using gender-disaggregated data where relevant.").

⁸⁴ Ibid.

⁸⁵ The notion of severe human rights impacts appears first in the Commentary to UNGP Principle 14. It is bound up in the concept of severity as addressed in UNGP Principle 17, and in the factor analysis in UNGP Principle 19. It appears again in UNGP Principle 24 as a factor in determining the hierarchies of response where systems of prioritization are required.

⁸⁶ UNGP Principle 21(a).

⁸⁷ UNGP Principle 21 Commentary.

⁸⁸ UNGP Principle 21(b). The UNGP Principle 21 Commentary explained: "The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights."

⁸⁹ Ibid., Principle 21 (c).

⁹⁰ UNGP Principle 21 Comment ("The responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know and show that they respect human rights in practice. Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors").

The UNGP Principles that together elaborate the *process* of HRDD do not exist in a vacuum. One has already explored the way that the HRDD process is meant as a means of operationalizing and fulfilling the normative framework of the UNGP 2nd Pillar corporate responsibility to respect human rights. One also understands that the fundamental character of that normative starting point is considerably different from that of the 1st Pillar State duty to protect human rights. That was made clear in SRSR Ruggie's 2008 Report.⁹¹ UNGP Principle 22 speaks to remediation and situates it at the end of a hierarchy of "addressing" actions contemplated as the heart of enterprise responses to adverse impact with respect to which the responsibility to respect extends. UNGP Principles 23 and 24 are best read together as inter-related rules of compliance priority and impacts addressing priority. They speak to both the ordering of compliance privileging local and legal compliance, and the expectations for the ordering of responses, grounded in a severity-risk hierarchy.

2.3.1 Remediation. UNGP Principle 22 focuses on the nature of remediation with respect to those adverse human rights impacts identified through HRDD but which could not either be prevented or mitigated. UNGP Principle 22 is closely aligned with the Remedial 3rd Pillar of the UNGP (Principles 25-31). The principal is straightforward. Enterprises are expected to "provide for or cooperate in" the remediation adverse impacts that they have caused or contributed to. There are a number of issues related to this expectation.

The first is that the remediation obligation applies only to adverse human rights impacts which they caused or contributed to, but not those with respect to which they are directly linked.⁹² The second is that the fundamental expectation is that the need for remediation is in some respects a mark of the failure of the HRDD process, or at least a deviation from its core objective of preventing and mitigating adverse impacts.⁹³ Third, remediation obligations are expected to apply to all negative impacts, whether or not they were identified through application of the HRDD process.⁹⁴ The fourth is that remediation is intimately tied to the 3rd Pillar Remedial obligation of the UNGP.⁹⁵ However, where the nature of the negative impacts touches on international criminality, remediation may have to be undertaken as a complement to the operation of judicial mechanisms.⁹⁶

2.3.2 Issues of Context. The HRDD operational process is bounded by two contextual principles. UNGP Principle 23 focuses on issues of legal compliance and its coordination with the normative expectations under the 2nd Pillar framework. UNGP Principle 24 considers issues of prioritization. Each is considered in turn.

⁹¹ Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, Protect, Respect and Remedy: a Framework for Business and Human Rights A/HRC/8/5 Addendum 1 A/HRC/8/5/Add.1 (23 April 2008); available [<https://undocs.org/en/A/HRC/8/5/Add.1>]; last accessed 25 February 2024.

⁹² UNGP Principle 21 Commentary ("Where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations, products or services by a business relationship, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so.").

⁹³ Ibid. ("Even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent.").

⁹⁴ Ibid.

⁹⁵ Ibid. ("Operational-level grievance mechanisms for those potentially impacted by the business enterprise's activities can be one effective means of enabling remediation when they meet certain core criteria, as set out in Principle 31.").

⁹⁶ Ibid.

UNGP Principle 23 is meant to describe something like a hierarchy of compliance around which an HRDD process must be fashioned. It is necessary to read UNGP Principle 23 with UNGP Principle 24's prioritization rules. Together they suggest both the legal prioritization and the "addressing" prioritization that is required to fully operationalize HRDD processes. It is worth noting that the UNGP Principles do not provide any sort of waiver for identifying and addressing adverse human rights impacts as measured against either the *full range of international human rights* which form the normative element of the responsibility to respect as specified especially in UNGP Principle 12. Rather, both UNGP Principles 23 and 24 provide a framework for compliance and for responding to adverse impacts, irrespective of whatever legal or operational constraints an enterprise may encounter within the territories of states (or other actors)⁹⁷ in which they operate directly or with respect to which they are directly linked by way of business relationships to the operations of other enterprises.

UNGP Principle 23 applies to all businesses and in all contexts. It provides a three compliance-based rules. The first, UNGP Principle 23(a) sets out the primary rule of legal compliance with local law. But it also specifies that such compliance with local law does not affect the extent to which the enterprise, in fulfilling its expectation to respect human rights, must also comply with internationally recognized human rights. In this sense, the compliance rule sets up the fundamental tension within the Protect, Respect, and Remedy framework noted in the SRSG's 2008 Report,⁹⁸ that while *legal requirements* are specifically state based, market based expectations are derived from the application of *international human rights norms*, norms that might be legally binding in some states, but which do not apply directly as law to enterprises in fulfilling their responsibility (rather than duty) to respect (rather than protect) human rights.⁹⁹ The Commentary to UNGP Principle 23 makes this double compliance obligation clear as the baseline for fulfilling HRDD within the 2nd Pillar.¹⁰⁰ The Commentary also clarifies that the principle object of the compliance hierarchy and its conflict resolution (conceptual) mechanism is to provide a means for enterprises to avoid exacerbating a situation by rationalizing the decision making. To that end, enterprises are urged to consult with relevant State actors and employ experts. "including from Governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives."¹⁰¹

The resolution of the conflict inherent in the double normative character of the responsibility to respect in UNGP Principle 23(a) is specified in Principle 23(b). The Principle

⁹⁷ In this case the reference are to the provisions specified for conflict affected areas in UNGP Principle 7. See, Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John G Ruggie, *Business and Human Rights in Conflict-Affected Regions: Challenges and Options Towards State Responses* UN Doc A/HRC/17/32 (27 May 2011) <https://www.ohchr.org/en/special-procedures/wg-business/special-representative-secretary-general-human-rights-and-transnational-corporations-and-other> accessed 25 February 2025.. Discussed Backer, Commentary, *supra*, chapter 10, see also chapters 2.3.3, and 5.2.5

⁹⁸ Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, *Protect, Respect and Remedy: a Framework for Business and Human Rights* A/HRC/8/5 (7 April 2008); available [<https://undocs.org/en/A/HRC/8/5>]; last accessed 25 February 2025.

⁹⁹ Discussed, Backer, Commentary, *supra*, at chapter 5.4.

¹⁰⁰ UNGP Principle 23 Commentary ("Although particular country and local contexts may affect the human rights risks of an enterprise's activities and business relationships, all business enterprises have the same responsibility to respect human rights wherever they operate.").

¹⁰¹ *Ibid.*

provides that in cases of conflict the enterprise is expected to affirmatively seek “to honor the principles of internationally recognized human rights”¹⁰² within the framework of UNGP Principle 12.¹⁰³ *That resolution is not an absolution* with respect to adverse impacts that may be produced by the resolution of the conflict as specified in UNGP Principle 23(b). Instead it merely suggests the order of deference to normative compliance. The enterprise responsibility to identify and address adverse impact does not change irrespective of the reasons for the existence of that adverse impact.

Lastly, UNGP Principle 23(c) provides a caution of extra care in conflict affected areas and where the rights of traditionally vulnerable groups may be an issue.¹⁰⁴ The Commentary to UNGP Principle 23 provides further context. It serves as a reminder that the HRDD process is a heart a risk-response based approach geared to identifying potential and actual risk and then first seeking to prevent, then mitigate, and if all else fails, providing remedy for adverse human rights impacts. In that context, the Commentary, for example, cautions that situations like those in conflict affected areas may “increase risks of enterprises being complicit in gross human rights abuses committed by other actors.”¹⁰⁵ Here the principles of “severity” and of “complicity” help shape the nature of risk and recalls the standards of care specified in UNGP Principle 19.

UNGP Principle 24 then, in a sense, considers the consequences of compliance prioritization in the form of the prioritization of adverse impacts. The object is to order the queue for addressing identified adverse human rights impacts to which the enterprise has a responsibility to respect under the HRDD process. Prioritization applies both to potential and actual adverse human rights impacts. In those contexts, UNGP Principle 24 specifies that “business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.” The Commentary to UNGP Principle 24 underscores that prioritization organizes timing not expectation for addressing adverse impacts. Severity is the core organizing principle and its chief consequence may be that potential impacts may become actual impacts, and that prevention may slip to mitigation, and mitigation measures may slip to remediation. “Severity is not an absolute concept in this context, but is relative to the other human rights impacts the business enterprise has identified.”¹⁰⁶

3. HRDD and the 1st Pillar State Duty to Protect Human Rights and the Remedial 3rd Pillar

The 2nd Pillar of the UNGP can effectively be reduced to *an expectation*. That expectation, however, is built on the union of principle with pragmatism—the principle being the foundational premises of UNGP Principles 11.-15, and the pragmatism being its realization through its incarnation as policy (UNGP Principle 16), process (UNGP Principles 17-21), and contextual and prioritized remediation (UNGP Principles 22-24). Stated another way, the dialectical relationship between principle,

¹⁰² UNGP Principle 23(b).

¹⁰³ See UNGP Principle 23 Commentary (“Where the domestic context renders it impossible to meet this responsibility fully, business enterprises are expected to respect the principles of internationally recognized human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard.”).

¹⁰⁴ UNGP Principle 23(c) (“Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.”).

¹⁰⁵ UNGP Principle 23 Commentary (“Business enterprises should treat this risk as a legal compliance issue, given the expanding web of potential corporate legal liability”).

¹⁰⁶ UNGP Principle 24 Commentary.

process, and prioritized remediation provides a closed circuit within which each of these parts is developed through its engagement with the other two. Together the three elements of the corporate responsibility to respect human rights, then, acquires an altogether autonomous character that engages with, but is quite apart from, the domestic legal orders of the States within which economic action may find itself being undertaken in whole or in part. That lack of dependency on the State neither for its generative principles, nor for its process, along with its autonomy as an instrument of international human rights—as law, norm, principle, policy, or expectation mark it as a rules based system in markets and linked with the State and its domestic legal orders, while serving the ends of international obligations that are legally binding on States.

Nonetheless, *expectation is not compulsion*. And UNGP Principles 11-24 make it quite clear that HRDD and the principles on which it is based is not required to have a mandatory application either within States or in the transnational sphere. At the same time, while HRDD serves as the principal expectation of the 2nd Pillar corporate responsibility to respect, its methods and sensibilities, its processes and presumptions for fulfilling such responsibilities, *may also be transposed* into and as a mandatory obligation where it is transposed from out of the international sphere and into the domestic order of States seeking to use its forms and processes as part of its basis for complying with its own duty to protect human rights. Indeed, the 1st Pillar obligations of and expectations about State duty are grounded in that possibility. In addition, HRDD is integrated into the remedial mechanisms that form a critical part of the 3rd Pillar remedial obligations of States and enterprises. Each of these is considered in turn.

3.1 HRDD and the State Duty to Protect Human Rights.

That the authority of States to impose some form of HRDD is well recognized within the UNGP's 1st Pillar. UNGP Principle 1 recognizes the duty of States to protect against human rights abuse in their territory (as that term is defined in the UNGP) by third parties, including economic enterprises. That duty is described in terms that mimic the fundamental process characteristics of human rights due diligence: "taking appropriate steps to prevent, investigate, punish and redress such abuse."¹⁰⁷ To those ends, States are *required* to develop and apply *effective* "policies, legislation, regulation, and adjudication."¹⁰⁸ In addition, again mimicking what will be specified in more detail in UNGP Principle 16, UNGP Principle 2 elaborates an expectation that States will clearly set out the behavior expectations for entities engaged in economic activity, especially across their supply chains wherever located.

These foundational, or normative, premises, are then paired with a key operational premise—the use by the State of the full array of regulatory measures with which it is empowered to fulfill its duty and comply with its normative expectations.¹⁰⁹ In this respect, the Commentary to UNGP Principle 3 speaks to State consideration of "a smart mix of measures – national

¹⁰⁷ UNGP Principle 1.

¹⁰⁸ Ibid. ("While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures").

¹⁰⁹ UNGP Principle 3.

and international, mandatory and voluntary – to foster business respect for human rights.”¹¹⁰ The Commentary to UNGP Principle 3 notes the role for the State in providing guidance and direction for implementing HRDD systems. And it can empower States to work with enterprises on developing joint and inter-locking compliance level bureaucracies for coordinated fulfillment of State duty and corporate responsibility.¹¹¹

Embedded in a broad interpretation of that expectation is the possibility that the State could both transpose and make mandatory some form of HRDD that suits its policy objectives and is built into its legal order in some way—as law, policy, regulation, or otherwise. Indeed, UNGP Principle 4 makes clear that the broad range of those possibilities, and the expectation that some form of it will be undertaken as part of this “smart mix” can include, “where appropriate, by requiring human rights due diligence.”¹¹² The Commentary to UNGP Principle 4 suggests a minimum expectation that States will, as part of their “smart mix” encourage HRDD by “those business enterprises and projects receiving their support.”¹¹³ However, the Commentary also makes a suggestion that a “requirement for human rights due diligence is most likely to be appropriate where the nature of business operations or operating contexts pose significant risk to human rights.”¹¹⁴ That suggestion would appear to align the decision about transposing HRDD from the 2nd to the 1st Pillar with the risk-severity calculus in UNGP Principles 17-24. The premise is carried forward to expectations of States with respect to business enterprises they may control in the context of operations in conflict affected areas under UNGP Principle 7.¹¹⁵

What emerges from the 1st Pillar State duty to protect human rights, then, can be summarized this way: First, has no mandatory legal character within State domestic legal orders. That follows from the UNGP’s General Principles,¹¹⁶ which emphasize that the UNGP neither create new international legal obligations (for States) nor do they limit or undermine any legal obligations a State may have undertaken under international law. Presumably that also applies to all other legal obligations a State may undertake consistent with their international legal obligations—including enacting some form of mandatory HRDD. Second, it is also clear that the 1st Pillar Principles build a close connection between the adoption of an effective regulatory mix by the State under the 1st Pillar, and the development and deployment of HRDD as developed and deployed by enterprises under the 2nd Pillar. HRDD ought to be very much on the minds of States and their political stakeholders as they approach the design and operation of its regulatory and policy projects. Third, the 1st Pillar may permit the transposition of HRDD as a mandatory measure by States but does not compel that transposition. Nor do the UNGP mandate the specific way in which such transposition is to be accomplished—through law, regulation, by way of incentives or as policy. That choice, like

¹¹⁰ UNGP Principle 3 Commentary. The Commentary also notes that “Guidance to business enterprises on respecting human rights should indicate expected outcomes and . . . advise on appropriate methods, including human rights due diligence.”).

¹¹¹ See, Sharon Yadin, ‘The Hidden Nature of Regulation’ (2025) 31(1) *Harvard Negotiation Law Review* – (forthcoming 2025) <https://dx.doi.org/10.2139/ssrn.5211248>.

¹¹² UNGP Principle 4.

¹¹³ UNGP Principle 4 Commentary.

¹¹⁴ Ibid.

¹¹⁵ UNGP Principle 7 Commentary explains the expectations that States review their smart mix of measures to effectively the heightened risk of adverse human rights impact in conflict affected areas, “including through provisions for human rights due diligence by business.”).

¹¹⁶ Discussed Backer, Commentary, *supra*, Chapter 6.

the content of smart mix of measures, is left to the State as a function of its overall obligation to protect human rights.¹¹⁷ Fourth, even if HRDD is transposed by a State into its law as a mandatory measure, the UNGP does not specify either the content or the administration of such a set of measures. Mandatory HRDD may be transposed as identical to the framework elaborated in UNGP Principles 11-24. Or, the UNGP permit such transposition of HRDD to take any other form the State might desire (for example in keeping with its legal culture and policy exceptions). The UNGP focus on duty and outcome as a function of adverse human rights impact, but it does not suggest the form or content of mandatory HRDD other than to provide the form and operations of the 2nd Pillar HRDD system as both mode and as operating system for companies already in place. Fifth, what the UNGP do suggest, however, are the factors that States ought to weigh in determining whether HRDD is to be embedded in their smart mix, the character of that embedding, and the form that its HRDD is to take, and all be reference to risk-severity factors.

3.2. HRDD and the Remedial Pillar

HRDD finds its way into the Remedial “Access to Remedy” measures principles of the UNGP (UNGP Principles 25-31), though not to the same extent as it appears in the 1st Pillar State duty to protect human rights. The remedial pillar The intertwining of HRDD and the remedial pillar can be divided into two parts. The first touches on legal consequences related to the “quality” of the actions that produce adverse impacts. The second focuses on the entanglement of 2nd Pillar HRDD processes and the enterprise’s non-state based grievance mechanisms.

The UNGP suggest a number of ways in which state based effective remedy mechanisms may intersect with HRDD process and its foundational principles. UNGP Principle 7 Commentary notes that States are encouraged to consider civil, administrative, or criminal liability for enterprise conduct in conflict affected areas where they contribute to gross human rights abuses. UNGP Principle 17 also notes the possibility of criminal liability for complicity related acts under the domestic legal orders of affected States. But it also notes that HRDD may be guarantee a safe harbor against liability.¹¹⁸ This is echoed as well in UNGP Principle 12’s reminder that the “responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement,”¹¹⁹ including liability where States assert extraterritorial authority.¹²⁰ The reach of liability may extent to corporate directors, officers and others in their individual capacities.¹²¹

The UNGP’s Non-State Based Grievance Mechanisms (UNGP Principles 28-30) flesh out both the prevention and mitigation measures of HRDD as well as play a critical role in the remedial expectations of HRDD. UNGP Principle 28 create an expectation that enterprises will consider, as part of their HRDD architecture, “ways to facilitate access to effective non-State-based grievance mechanisms.” The Commentary to UNGP Principle 28 emphasizes that these mechanisms can take

¹¹⁷ Consider Cecilia Barral Diego, “The Legal Case for Human Rights Due Diligence (HRDD) – Beyond the Omnibus’ Core: *The Human Side of Business* (25 April 2025), <https://peopleatcore.com/human-rights-due-diligence-laws-beyond-omnibus/>.

¹¹⁸ UNGP Principle 7 Commentary (“business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuse”).

¹¹⁹ UNGP Principle 12 Commentary.

¹²⁰ UNGP Principle 23 Commentary.

¹²¹ Ibid (“for acts that amount to gross human rights abuses”).

many forms.¹²² The Commentary also suggests that States can, as part of their “smart mix” strategies, also raise awareness of and facilitate these non-state grievance options. UNGP Principle 30 extends the range of operational frameworks to include multi-stakeholder and “other collaborative initiatives” where these are “based on respect for human rights-related standards.” The Commentary underscores the UNGP’s flexibility in designing and implementing HRDD processes (both identifying and addressing functions) to extend to third party providers or other multi-stakeholder efforts that include non-grievance mechanisms.

UNGP Principle 29 directly connects non-state grievance mechanisms with the expectation that HRDD processes are to be designed to enhance the likelihood of preventing and mitigating actual or potential adverse impacts. These non-state grievance mechanisms, however designed and operated, are expected to have as their object to “make it possible for grievances to be addressed early and remediated directly.”¹²³ The Commentary to UNGP Principle 29 emphasizes that these operational grievance mechanisms perform two key functions. The first is that they can support the identification process of UNGP Principle 18 “as part of an enterprise’s ongoing human rights due diligence,” and therefore ought to be integrated into the HRDD process itself.¹²⁴ The second is that, Second, these mechanisms make it possible for earlier remediation directly by the enterprise with the responsibility to respect.¹²⁵ Because HRDD focuses on potential as well as actual adverse impacts, grievance mechanisms are expected to take that into account in their structure—serving not just to remedy actual harm but to receive complaints and concerns before they mature to remediable impacts.¹²⁶

It is in this aggregation of the layered relationship between State duty, corporate responsibility, access to effective remedy principle, on the one hand, and in the similarly layered systems of legality to are the province of States and those of market actors, that the possibilities, trajectories, and consequences of compliance based multi-layered systems embedded in HRDD emerge more clearly. The transformation of the concept from an operational level mechanism at the core of the corporate responsibility to respect human rights in the UNGP 2nd Pillar to its key role as the embodiment of compliance-based legality respecting the management of global production is a central element of consequence, though hardly central to the HRDD project specifically or that of the UNGP more generally. HRDD has become more than a method for more efficient operation of markets driven nudging (and thus disciplining) of economic behaviors.¹²⁷ In the UNGP it has assumed both a normative and a methodological role. It serves as the means through which economic actors may become embedded in complex webs of interlinked administrative legalities that start with international *normative projects*, the possibilities of their transposition into domestic (or multilateral) *legal orders*, and their delegation first to the national administrative apparatus and then in its operational elements to the private actors who are expected to serve as the front line

¹²² UNGP Principle 28 Commentary (“administered by a business enterprise alone or with stakeholders, by an industry association or a multi-stakeholder group. They are non-judicial, but may use adjudicative, dialogue-based or other culturally appropriate and rights-compatible processes.”).

¹²³ UNGP Principle 29.

¹²⁴ UNGP Principle 29 Commentary (“By analyzing trends and patterns in complaints, business enterprises can also identify systemic problems and adapt their practices accordingly”).

¹²⁵ Ibid. (“thereby preventing harms from compounding and grievances from escalating”).

¹²⁶ Ibid.

¹²⁷ See, generally, Oscar L Larsson, ‘Technocracy, Governmentality, and Post-Structuralism’ (2020) 32(1-3) *Critical Review* 103-123.

administrators of a global multi-layered system.¹²⁸ Technological advances may reshape even the human element of human rights compliance.¹²⁹ And for some it begs the more traditional framing of a legally binding international instrument.

4. Conclusion

What emerges from a close reading of the UNGP with respect to HRDD may be summarized this way. *First*, HRDD is to be distinguished from State efforts to create a legal basis for HRDD within their domestic legal orders. HRDD was designed as an expectation, routed in core behaviors of enterprises in markets and relating to their economic activities. *Second*, HRDD exists autonomously of whatever legal frameworks a State may should to embrace or ignore with respect to a State's binding obligations under international law, or which may be absent from or an element of a State's domestic legal order. *Third*, HRDD in the 2nd Pillar is put forward as a flexible framework. It was not written as or in substitution of legislation. It is not meant to be read as law, but rather as operating instructions that are grounded in discretionary decision making, in flexible processes, and in contextual variation. These variations revolve around the organizing core of the HRDD process—the foundational objectives of UNGP Principles 11-15. But a simple transposition of the UNGP HRDD Principles into and as law is unrealistic. *Fourth*, States are free to transpose whatever parts or forms of HRDD that they, in accordance with their democratic processes, deem worthy of inclusion in their domestic orders. That transposition can take a variety of forms and be manifested as law, regulation, policy, or encouragement. The transposition may be limited to the spirit of HRDD as manifested in the UNGP's 2nd Pillar, or it may be a faithful transposition of its terms and operating rules. One would necessarily expect that national mandatory HRDD regimes would vary, and sometimes vary widely, as a function of the political-economic system of the legislating State. *Fifth*, whether to not transposed into law as a mandatory measure of some kind, HRDD is intimately connected with the State duty to protect human rights. The State duty exists autonomously of, and is grounded in norms and expectations that may vary widely from, the uniform rules, norms, and expectations on which HRDD processes and objectives are grounded. But with respect to States HRDD serves as a critical instrument for fulfilling its duty in contextually relevant ways. Whatever that may be, what clearly emerges is that HRDD constitutes a critical element of a State's smart mix of measures, and that those smart mixes may vary widely from State to State and still adhere to the spirit of the UNGP. *Sixth*, HRDD is also intimately connected to the Access to Remedy provisions of UNGP Principles 25-31. The remedial provisions are an integral part of the critical objective of HRDD to prevent and mitigate actual or potential adverse impacts where possible, and to provide remedy as quickly, fairly, and directly as possible in the circumstances.

It is with that in mind, that, in approaching issues of HRDD as market behaviors/expectations systematized and rationalized, as an element of the governance architecture of States or of international organizations, and as an element of prevention, mitigation and remedy, one must distinguish between the broad range of options and actions permitted under the UNGP, and the political choices that collectives may make and that politically infused

¹²⁸ David Hess, 'The Management and Oversight of Human Rights Due Diligence' (2021) 58(4) *American Business Law Journal* 751-798; Rachel Chambers and David Birchall, 'How European Human Rights Law Will Reshape U.S. Business' (2024) 20 *UC L SF Bus J* 3.

¹²⁹ **xxx**

stakeholders may desire in accordance with their own views of the “best” approach.¹³⁰ That distinction between political determinations of best courses to follow (always contextually driven and inherently temporally mutable), is sometimes less remembered than it ought to be as critical stakeholders devote their resources, passions, and ideals to what they each, in their own way, view as the path to the perfection of the UNGP. That brings one back to where one started—the WGBHR statement regretting the efforts of European stakeholders to revise the breadth and application of three critical regulations that sought to transpose a European vision for a mandatory HRDD regime in the form of the Omnibus.¹³¹ There was, of course, nothing wrong with that. And one would expect the WGBHR, as a quasi-official organ, to advocate as they like for whatever vision of the UNGP and their transposition to the legal regimes of States or in the market, as they think best aligns with their beliefs about the way things ought to work.¹³² But there is a vast difference between a robust engagement in the politics of the UNGP and its applications, and the UNGP itself. The careful reading suggested in this essay appears to support both the WGBHR and their political opponents with respect to what the UNGP compels and what it permits.

And that, perhaps is the more fundamental lesson of the framework developed within the UNGP for HRDD, and its relation to both the duties of States and the obligation of States and others to facilitate effective remedial access: *context matters* and the UNGP, focused on a context specific objective to prevent and mitigate where possible and otherwise to remedy adverse human rights impacts, by assigning to both risk/severity based risk-bearing and risk-controlling functions, to States under the 1st Pillar and enterprises under the 2nd Pillar, was fashioned flexibly enough to provide many pathways to that singular perfection, the avoidance, mitigation or remedy of adverse human rights impacts in economic activity. Beyond that one reverts to the world of politics, ideology, and the values that make possible the belief in and politics of perfection, and with it to the peculiarities and the pragmatic part of SRSR Ruggie’s principled pragmatism.¹³³

¹³⁰ Consider Rachel Legislating for Human Rights Due Diligence: How Outcomes for People Connect to the Standard of Conduct (Shift August 2021), <https://shiftproject.org/hrdd-outcomes-standard/>; Barral Diego, The Legal Case for Human Rights Due Diligence, *supra*.

¹³¹ Text and notes 1-11.

¹³² This is a project that appears to have the support of the Office of the High Commissioner for Human Rights. See, UN Office of the High Commissioner for Human Rights, ‘Mandatory Human Rights Due Diligence (mHRDD): OHCHR and Business and Human Rights’ <https://www.ohchr.org/en/business-and-human-rights/mandatory-human-rights-due-diligence-mhrdd> (“Mandatory human rights due diligence regimes have a potentially vital role to play as part of a “smart mix” of measures to effectively foster business respect for human rights”).

¹³³ Cf., Surya Deva, ‘Mandatory human rights due diligence laws in Europe: A mirage for rightsholders?’ (2023) 36 *Leiden Journal of International Law* 389–414.