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The Corporate Responsibility to Respect Human Rights: Operational Principles IV, Issues of Context (UNGP Principles ¶¶ 23-24)

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16.1 Introduction

The Olympian provisions of the foundational provisions of the corporate responsibility to respect human rights (UNGP Principles 11-15),[1] their manifestation through a transposition into enterprise policy commitment (UNGP Pronciple16),[2] its operationalization as and in human rights due diligence (HRDD) (UNGP Principles 17-21),[3] and its connection to a prioritization of prevention and mitigation but which then must also provide for remediation processes and commitments (UNGP Principle 22)[4] suggest appear to be built on an unstated premise. That premise is that the corporate responsibility, like the State duty to project human rights,[5] can elaborated in a rational universe of single and sequential human rights impacts that can be addressed in some kind of order and which do not other "bump up" against or clash with each other and with non-human rights based fundamental collective goals. In effect, the UNGP, like human rights norms and discourse, sometimes tend to indulge in a reductionism that is necessary to elaborate individual rights and the norms from which they are derived, and the

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[1] Discussed Chapter 12.
[2] Discussed Chapter 13.
[3] Discussed Chapter 14.
[4] Discussed Chapter 15.
[55] Discussed Chapters 7-11.

connection between those rights, one at a time, and the duty/responsibility of actors, the response to the risk of their adverse impact, and the remedial architecture necessary to protect and advance these rights.[6]

The basis for this reductionism is deeply embedded in the post 1945 ideology of human rights that posits, as a first principle, that "all human rights are universal and indivisible and accordingly, a prioritization is not possible."[7] The Office of the High Commissioner for Human Rights reduces the concept for mass consumption in a quite accessible way on its website.[8] Though "[h]uman rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all,"[9] they might be given form in text, even international declarations with purported *international* legal character, starting with the Universal Declaration of Human Rights (UDHR),[10] and then reduced to international legality through the core Covenants that form the key elements of the International Bull of Human Rights.[11] Nonetheless, at their foundational core, human rights are extra-legal, beyond or before law, and proceed the organization of and determine the legitimacy of the constitution of any social collective. Still, it ought to be recalled that even in their first contemporary reduction to principle in the UDHR, the individual human rights are, in turn derived from and grounded in the "just requirements of morality, public order and the general welfare in a democratic society."[12] Indeed, the individual is inherently subordinated, in their rights, to the political community in which the individual may be embedded, communities to which "everyone has duties. . . in which alone the free and full development of his personality is possible."[13] It is only in that collective context that it is possible to rationalize the animating premise of human rights—that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."[14] This sets up the dialectic between States and individuals—States undertaking their duties to protect human rights, and humans obliged to exercise their rights within the just requirements of morality, public order, and the general welfare—that serves as the foundation for human rights as norm and law, its variability across States and communities, and the architectures of its legalities. In the context of business and human rights, these intersections produce both the variegation of State duty in the 1st Pillar, and the spaces necessary to elaborate an autonomous corporate responsibility in the UNGP 2nd Pillar.

It is within this larger framework that the notions of universality , indivisibility, and inter-relatedness of human rights may be better appreciated. At the same time it has sometimes appeared to have been reduced to something of an incantation, one that precludes any discussion about its nature, effect, or elaboration as something more nuanced, at least as discourse.[15] That does serve an important purpose—to bring the fundamental understanding of the core character of human rights to a wider audience. The OHCHR explains these characteristics of human rights (collectively) as a s set of principles in ways that mimic the principles framework of

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[6] Discussed Chapter 6.
[7] Jan Essink, Alberto Quintavalla, and Jeroen Temperman, 'The Indivisibility of Human Rights: An Empirical Analysis,' (2023) 23(3) *Human Rights Law Review* 1-18, 2.
[8] United Nations OHCHR, 'What are Human Rights?' (1996-2025), available https://www.ohchr.org/en/what-are-human-rights, last accessed 12 November 2025.
[9] Ibid.
[10] UN General Assembly, 1948 Universal declaration of human rights, (217 (III) A), available https://www.un.org/en/about-us/universal-declaration-of-human-rights, last accessed 12 November 2025.
[11] Discussed for purposes of the UNGP project in Chapter 12.
[12] UDHR Art 29(2).
[13] Ibid., Art. 29(1).
[14] Ibid., Art. 1.
[15] Consider Nickel, 'Rethinking Indivisibility: Towards a Theory of Supporting Relations between Human Rights' (2008) 30 *Human Rights Quarterly* 984, at 987–991 as against Gilabert, 'The Importance of Linkage Arguments for the Theory and Practice of Human Rights. A Response to James Nickel' (2008) 32 *Human Rights Quarterly* 425.

the UNGP.[16] It starts with the "cornerstone" *principle of universality*, which means that we "are all equally entitled to our human rights."[17] It then adds a *second principle: inalienability*. Rights may not be taken away, however in accord with the foundational principles of human rights in communion with communal rights of public morality, order, and general welfare, it may be restricted or denied, but only in accordance with the principles of the human rights of process.[18] The third principle combines two concepts: *indivisibility and interdependence*. The basic notion is that all rights affect each other positively or negatively. At its limit, the concept suggests that negatively impacting one right affects all of the rest.[19] The fourth *principle is non-discrimination*. The concept is now deeply embedded in the constitutional traditions of most states and in international instruments.[20] At the same time, it is modified, like the others by the *invisible principle of communal morals, stability, and welfare*. Lastly, the OHCHR explains that these basic principles also give rise to a consequential principle—the principle of the connection between rights and obligation. For States that can be divided into the obligation to respect, protect, and fulfill human rights.[21]

As a general matter, these principles, sometimes including the invisible principle, have been embraced as normative guides. Nonetheless, starting from the time of the adoption of the UDHR, though these principles of universality, indivisibility, inalienability, non-discrimination, and inter-relatedness foregrounds the critical nature of human rights that aids in its constitution as a field of rights solidarity, it is also a field against which other needs and expectations mat be considered, ordered, prioritized, and emphasized in ways that add substantial nuance to the simple declaration of basic character principles around which the human rights narrative edifice is built.[22] That produces an analytic challenge that seeks to reconcile pragmatic realities with normative purity.[23] For example, for some State systems, development as a human right is foregrounded in the context of identifying and assessing both positive and adverse impacts.[24] The rights to use indigenous law and custom may produce challenges.[25] More generally States and enterprises usually operate in contexts in which both positive and adverse impacts may attach to a project, transaction, or activity, which produces a context of conflicts of rights, including international human

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[16] United Nations OHCHR, 'What are Human Rights?' (1996-2025), available https://www.ohchr.org/en/what-are-human-rights, last accessed 12 November 2025.
[17] Ibid.
[18] Ibid.
[19] Consider Amnesty International, Universal Declaration of Human Rights (2025), available https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/, last accessed 13 November 2025.
[20] OHCHR, 'What are Human Rights?'.
[21] Ibid.
[22] Cf., Aleardo Zanghellini, 'Raz on Rights: Human Rights, Fundamental Rights, and Balancing,' (2017) 30(1) *Ratio Juris* 25-40.
[23] Başak Cali, 'Balancing Human Rights? Methodological Problems with Weights, Scales and Proportions,' (2007) 29(1) *Human Rights Quarterly* 251-270;
[24] Larry Catá Backer, 'Chinese state-owned companies and investment in Latin America and Europe.' In Judith Schönsteiner and Markus Krajewski (eds.) *Human Rights and Environmental Sustainability in State-Owned Enterprises* (Routledge, 2024), Chp. 9.
[25] Robin Perry, 'Balancing Rights or Building Rights?: Reconciling the Right to Use Customary Systems of Law with Competing Human Rights in Pursuit of Indigenous Sovereignty,' (2011) 23 *Harvard Human Rights Journal* 71-114.

rights law.[26] But principles for engaging with that challenge and the actions undertaken on that basis have been both advanced,[27] and contested.[28]

The issues and conceptual conflicts among human rights in settings of oppositions and conflict, are especially relevant in the context of business and human rights elaborated within the UNGP's Three Pillar framework. Indeed, while the UNGP appears at first blush to be focused on a sequentially encountered set of adverse impacts which can be addressed each in turn and autonomously within the HRDD framework, for example, it is also clear that the UNGP are sensitive to the issues raised. At the same time the UNGP is concerned with the connection of the autonomous but interlinked systems of state duty to protect those international human rights to which they have bound themselves or to which they are bound and the corporate responsibility to respect all internationally recognized human rights. That dialectic itself produces systems in which not all human rights are universal, inalienable, indivisible and interdependent. Those tensions between the prioritization of legal and private sets of human rights and among adverse human rights impacts that must be addressed by both states and enterprises are the concern of UNGP Principles 23 and 24, and the general subject of this chapter.

The UNGP's 2nd Pillar approaches issues of conflict in terms of prioritization. That, in itself, is a mechanism that is meant to avoid conflict not by balancing or weighting rights against each other, but by elaborating rules that permit all adverse impacts on rights to be addressed sequentially, where there is no other approach that permits addressing them. This rule of prioritization first appears in the Commentary to UNGP Principle 17.[29] In that context the focus is on prioritizing HRDD systems in areas of enterprise activity that pose the greatest risk of generating adverse impacts. But prioritization does not absolve the enterprise from its overall responsibility to respect human rights. That is made clear in UNGP Principle 14 that permits contextually and capacity relevant shaping of the means through which the responsibility to respect is realized. UNGP Principle 14,[30] then adds the necessary element to rationalizing prioritization—the *principle of severity*. The principles of context and severity, then, provide the framework within which prioritization is permitted, refined by the elaboration of UNGP Principle 17(b) and 19.[31] Prioritization also is embedded in UNGP Principle 21's communication expectation.[32]

UNGP Principles 23 and 24 consider the issues of prioritization (as an alternative to balancing) that embeds the fundamental ordering principles of context, capacity, and severity of impact in two distinct contexts. The first, UNGP Principle 23, focuses on situations where applicable law of domestic legal orders may not be compatible with some or all of the international law and norms specified in UNGP Principle 12.[33] In this context,

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[26] Essays in Stijn Smet and Eva Brems (eds), *When Human Rights Clash at the European Court of Human Rights* (OUP, 2017); Gustavo Arosemena, 'Conflicts of Rights in International Human Rights: A Meta-Rule Analysis,' (2013) 2(1) *Global Constitutionalism* 6-36.

[27] B.J. Wray, Balancing conflicting rights: Towards an analytical framework (Ontario Human Rights Commission, August 2005), Available https://www.ohrc.on.ca/en/book/export/html/2476, last accessed 3 October 2025; Jan R. Sieckmann, 'To Balance or Not to Balance: The Quest for the Essence of Rights,' in Jan R, Sieckmann (ed), *Proportionality, Balancing and Rights* (Springer, 2021), pp. 113-134.

[28] See, generally, Ronald Dworkin, *Taking Rights Seriously Harvard* University Press, 1977), pp. 197-199; Niels Petersen, 'How to Compare the Length of Lines to the Weight of Stones: Balancing and the Resolution of Value Conflicts in Constitutional Law,' (2013) 14(8) *German Law Journal* 1387-1408.

[29] Discussed Chapter 14.

[30] Discussed Chapter 12.

[31] Discussed Chapter 14.

[32] Ibid.

[33] Discussed Chapter 12.

legal compliance, a 1st Pillar obligation of enterprises but also constrained by the limits of a State's international legal obligations, can itself produce adverse human rights impacts arising under the autonomous responsibility of enterprises (UNGP Principle 11) to avoid adverse human rights impacts measured against the normative yardstick of UNGP Principle 12. Or they may produce a system that effectively encases the particularity of State duty with the generality of the corporate responsibility with respect to all internationally recognized human rights. The second, UNGP Principle 24, focuses on the prioritization of an enterprise's responsibility to address al adverse impacts. Where that is impossible, a severity based rule is imposed to sequence addressing impact. In both cases, however, prioritization does not reduce or eliminate the responsibility to address all adverse impacts, whatever their relations are to each other, and however national law may affect the conditions under which such impacts may be addressed.

16.2 UNGP Principle 23

16.2.1. UNGP Principle 23: Text

In all contexts, business enterprises should:

(a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;
(b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;
(c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

16.2.2.UNGP Principle 23: Commentary on Text

UNGP Principle 23 serves as a prioritization device. The Principle creates a hierarchy of compliance that is faithful to the State system, and its international institutional apparatus, within which the UNGP were created and remain situated (UNGP General Principles).[34] It is built on the fundamental principles of both the State duty to protect and the corporate responsibility to respect human rights—reconciling the conceptual and scope gaps that separate them in ways that make it possible for both to be fulfilled from the perspective of the fundamental objective of the UNGP—to prevent, mitigate and if neither is possible to remedy all adverse human rights impacts irrespective of the legal, normative, or other *context* in which such adverse impacts arise. That is, that for purposes of enterprise responsibility, sitting as the enterprise does at the forefront of operational activity that may give rise to impact (whether the enterprise is State owned, controlled, managed or not), context is not relevant to the

[34] Discussed Chapter 6; see also Chapter 5..

analysis—adverse impact is the starting point—and adverse impact (or human rights abuse)[35] is measured by reference to all human rights described in UNGP Principle 12.[36]

Before considering the specific text of UNGP Principle 23, then, it may add clarity to connect its text to the principles on which it is built and which its prioritization expectations are structured. First, is the *principle of compliance hierarchy* (UNGP General Principles). States have existing obligations to respect, protect, and fulfill human rights and fundamental freedoms; business enterprises have a duty to comply with all applicable laws of States.[37] Second, is the *principle of State legal autonomy within international legal frameworks*. States are subject to their own domestic orders (UNGP Principle 1)[38] expressed through law and law based policy (UNGP Principle 3),[39] and "any legal obligations a State may have undertaken or be subject to under international law with regard to human rights" (UNGP General Principles).[40] Third is the *principle of the autonomy of enterprise responsibility*. Enterprises have a duty of legal compliance and also a separate responsibility to respect human rights (UNGP Principle 11)[41] the legal basis of which is grounded in international law and norms (UNGP Principle 12)[42] which exists independently of States' abilities and/or willingness to fulfill their own human rights obligations" (UNGP Principle 11 Commentary). Fourth, is the *principle of the primacy of human right*s within the domestic orders of States (UNGP Principles 7, 8)[43] and in the context of enterprise activity (UNGP Principle 13, 15).[44] Fifth is the *principle of prioritization*. Enterprises must address all adverse impacts with respect to which they have a responsibility to prevent, mitigate or remedy or with respect to which they have an expectation to use their leverage. Enterprises may order their responses (UNGP Principle 17 Commentary; Principles 19, 22),[45] but they may not use regulatory conflicts or context to limit the range of their responsibility to address adverse impacts (UNGP Principle 14).[46] While States may fail in their duty, and communities of States may undertake efforts to nudge States toward the fulfillment of their international legal binding obligations but not force them, enterprises may neither avoid nor waive the expectation of addressing human rights impacts for which they are responsible irrespective of their own context or the legal/political context in which they operate.

Within this framework, UNGP Principle 23 is meant to prioritize *legal* compliance. Its fundamental object is first to establish a hierarchy of law and norms, and then to describe the ways in which the enterprise will undertake its 2nd Pillar responsibilities within that compliance hierarchy. UNGP Principle 23 starts by describing its scope and application. Its expectations are meant to apply "in all contexts." The term context applies in a number of places in the UNGP. In the 1st Pillar State duty operational context of enterprises is meant to help shape State development of a smart mix of measures to fulfill their duty to protect human rights (UNGP Principle 3),[47] and to shape home State measures where enterprises operate in conflict affected areas (UNGP Principle 7).[48] Context, of course, is a central conceptual element in the conceptual and operational structures of the 2nd Pillar

[35] Use of these terms distilled in Chapter 1 and discussed Chapter 14.
[36] Discussed Chapter 12.
[37] Discussed Chapter 6.
[38] Discussed Chapter 7.
[39] Discussed Chapter 8.
[40] Discussed Chapter 6; Chapter 7 Commentary.
[41] Discussed Chapter 12.
[42] Ibid.
[43] Discussed Chapters 10 and 11.
[44] Discussed Chapter 12.
[45] Discussed Chapters 14, 15.
[46] Discussed Chapter 12.
[47] Discussed Chapter 8.
[48] Discussed Chapter 10.

corporate responsibility to respect. *Operational context* shapes the approach to approaching human rights risks across the entire spectrum of human rights (UGP Principle 12);[49] it shapes the complexity and structures of HRDD systems (UNGP Principle 17);[50] it is a factor in developing meaningful communication (UNGP Principle 18); as a function of severity that may arise form operational context it may shape the extent and form of enterprise communication (UNGP Principle 21);[51] and it a factor in determining the severity of impact that then determines the order of addressing adverse impacts (UNGP Principle 24). These contextual factors do not affect the expectations provided in UNGP Principle 23. They are to apply without variation for operational context, capacity, size, and the like.

The compliance expectation applicable in all contexts are divided into three categories of compliance. The fundamental expectation of compliance is set out in UNGP Principle 23(a). Enterprises are expected to two with two distinct sets of law/norms. First the enterprise is expected to comply with all applicable laws of whatever State may assert political authority and subject the enterprise and its activities to its jurisdiction. Here UNGP Principles 1-22[52] are relevant as are the UNGP General Principles.[53] Second enterprises are expected to comply with "internationally recognized human rights, irrespective of the legal compliance requirements of the States under the jurisdiction of which some of their activities or organizations may be subject. Here UNGP Principle 12 is relevant.[54] This initial and foundational compliance obligation of enterprises applies "wherever they operate." The encompass the full range of measures produced by and through the State through the exercise of their authority described in UNGP Principle 3,[55] as well as the full scope of law and norms at the international level which comprises the universe of measures against which adverse impacts are identified and assessed within 2nd Pillar HRDD structures.[56] Beyond UNGP Principle 23(a) there are no relevant measures against which to judge human rights related impacts of enterprise activity across the entirety of its operations.

Nonetheless, in describing the compliance universe of enterprises (Pillars 1 and 2), the UNGP also describe the entirely of the regulatory spaces within which compliance requirements may not be compatible. These are divided into two groups of incompatibility-to-conflict categories. UNGP Principle 23(b) then serves as one of the two provisions dealing with issues of incompatibility or conflict of compliance expectations as between "applicable law" and "internationally recognized human rights." Where the enterprise is faced with "conflicting requirements," it is expected to "seek ways to honor the principles of internationally recognized human rights." The use of the word "honor" is a curious choice. First, the word appears only in UNGP Principle 23(b). Elsewhere the UNGP use only the term "respect" with reference to the expectations of enterprises relating to adverse impacts which they may cause or to which they might contribute. The word respect is defined in the black letter of the UNGP—in UNGP Principle 11.[57] The definition is pragmatic—as a function of effects constrained by limitations of causation and character of impact (adverse).

The term "honor" is not defined in the UNGP. Lastly the use of honor adds a potential ambiguity when read against the expectation obligation of UNGP Principle 23(a) which speaks to respect rather than "honor." Honor on the other hand does not carry the same meaning as respect—either generally or as specifically

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[49] Discussed Chapter 12.
[50] Ibid.
[51] Ibid.
[52] Discussed Chapter 7.
[53] Discussed Chapter 6.
[54] Discussed Chapter 7 and with application to HRDD structures discussed at Chapter 14.
[55] Discussed Chapter 8.
[56] Discussed Chapters 12-15.
[57] Discussed Chapter 1.

understood within the UNGPs. It's English language etymology evidences that by the mid 13th century the term that became honor, as a verb had been fully transposed from the Latin *honorare* , the act of conferring dignity or office or acts that affirm positive reputation, via the Old French *onorer*—to show respect to, to esteem, revere or welcome.[58] Though sometimes aligned with the term "respect", that later term derives from the Latin *respectus,* a looking back, acquiring its meaning of treating with deference or regard only from the 1550s.[59] Honor, then, could be said to suggest more the performance or acknowledgement of the respect to which a thing might be accorded; respect is the act that, by the act itself, evidences that esteem in ways that make it so. One can honor something or some principle that one cannot act on; one is expected to act to show that required deference or esteem if one means to respect.

Other language versions of the UNGP do not definitively resolve the potential ambiguity. The Spanish language version aligns the nature of the expectation set out in UNGP Principle 23(a) and 23(b). On both the enterprise expectation is built around the concept of respect. The French language version, on the other hand, mimics the English language version by referencing respect in UNGP Principle 23(a) and honoring in UNGP Principle 23(b). Interestingly the Chinese version might be read as adding an additional twist. That may provide a reasonable way of reading the term "honor" within UNGP Principle 23. Its version of UNGP Principle 23(b) might be translated this way: "When faced with conflicting demands, strive to uphold internationally recognized human rights principles."[60] The term for respect in the Chinese version is 尊重 which is found in both UNGP Principles 11 and 23(a). The term used in UNGP Principle 23(b) is 努力维护. This can be translated as "seek to uphold", or perhaps better, to maintain, protect, defend, or safeguard. That is likely a reasonable way of reading the English term "honor" in perhaps a richer way and one that may be better suited to contain the meaning of the term in context. The difficulty, of course, is that the English term honor (like the French) does not necessarily suggest the positive elements that may be clearer in the Chinese version. At the same time, the Spanish version by carrying over the term "respecter" in both UNGP Principles 23(a) and (b) aligns better with the Chinese version.

The conflict/incompatibility situation might arise in a number of ways. First there may be conflicting requirements within applicable legal orders. For example, across a production chain that includes State A and State B, State A may seek to enforce laws that criminalize the sharing of production information generated in State A outside the country. If State B requires the enterprise to communicate about its operations in ways that require access to and use of data subject to the law of State A, it will not be able to act without violating the law of one of those States. Second, a State may produce inconsistent or incompatible legal and policy requirements (UNGP Principles 8-10).[61] Third, States may either not recognize or adopt any number of "internationally recognized human rights" and develop legal structures incompatible with those international laws that they have rejected or do not recognize. Fourth, new "internationally recognized human rights" may arise with respect to which some States may choose to reject or block in the territories within their jurisdiction or with respect to the conduct of those enterprises over which they may assert control. In all of these situations the result of the conflicting compliance requirements may product, directly or indirectly, adverse human rights impacts, or they may create a situation where the enterprise must violate applicable law. Or the enterprise might find itself in a situation where there is a risk of both consequences. In all of these situations, and others that may result in "conflicting requirements," the enterprise is expected to comply with legal requirements first and simultaneously find ways to "honor the principles of internationally recognized human rights."

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[58] Etymology Online, honor, available https://www.etymonline.com/word/honor, last accessed 12 January 2026.
[59] Etymology Online, respect (v), available https://www.etymonline.com/search?q=respect, last accessed 12 January 2026.
[60] UNGP Principle 23(b) ("）在遇有相互抵触的要求时，设法信守国际公认的人权原则").
[61] Discussed Chapter 11 ("Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved." UNGP Principle 11).

It is important to note that in the context of UNGP Principle 23(b), the focus is on legal compliance. It is not on the adverse human rights impacts that may be produced by these "conflicting requirements." Where one shifts the focus from the conflicting requirements to adverse human rights impacts, then it is possible to better understand what the UNGP principle 23(b) may have in mind when it speaks to "honoring the principles of internationally recognized human rights." The way that one might best honor those principles is not through a focus on legal or regulatory compliance but on actions, including the identification, addressing and taking appropriate actions in the face of adverse impact without regard to the conflicting regulatory environment. That may mean that the enterprise will honor the principles by ensuring that consequential risks of adverse impacts are mitigated, or where that is not possible because of the nature of the compliance environment and the conflict requirements, then the enterprise must ensure remediation under UNGP Principle 22.[62] In any case, while UNGP Principle 23(b) recognizes the primacy of applicable domestic law over conflicting international law/norms, or the resolution of conflicting law within the rules settled for the purpose within the constitutional ordering of State (subject of course to transposed international duties and obligations), it does not speak to the autonomous and continuing obligation of enterprises to undertake their responsibility to prevent, mitigate or remedy adverse impacts throughout their operations. It is the ordering that "honoring" against the unwavering expectation that enterprises will respect human rights, and that such respect for human rights will be manifested in human rights due diligence processes, and that enterprises will address all adverse impacts that UNGP Principle 24 addresses. Again, to be clear, UNGP Principle 23(a) does not provide a waiver from the fundamental responsibility set out in UNGP Principle 11, transposed to the context of the enterprise through UNGP Principles 15 and 16 and then addressed within the framework of HRDD (UNGP Principles 17-21), always in the shadow of the obligation to remedy (UNGP Principle 22). In any case, while UNGP Principle 23(b) recognizes the primacy of applicable domestic law over conflicting international law/norms, or the resolution of conflicting law within the rules settled for the purpose within the constitutional ordering of State (subject of course to transposed international duties and obligations), it does not speak to the autonomous and continuing obligation of enterprises to undertake their responsibility to prevent, mitigate or remedy adverse impacts throughout their operations. It is the ordering of that "honoring" expectation that UNGP Principle 24 addresses.

UNGP Principle 23(c) adds contextual nuance to the more general provisions that precede it. If UNGP Principle 23(a) speaks to the general scope of compliance and UNGP Principle 23(b) speaks to "honoring" applicable international norms/law (UNGP Principle 12), UNGP Principle 23(c) touches on the character of the risk. It focuses specifically on the "risk of causing or contributing to gross human rights abuses." In addition to UNGP Principle 23(c), the term "gross human rights abuses" can be found only in UNGP Principle 7 (conflict affected areas).[63] UNGP Principle 7 is *directed to States*, but affects the way that enterprises approach business conduct in such conflict affected areas. In the case of UNGP Principle 7, these are divided into four categories of expected State action. The first touches on State engagement with enterprises to work with them to identify, assess, and address risk. The second creates an expectation of State provision of "adequate assistance" to enterprises with respect to assessing and addressing risk. The third constructs an expectation of rule or lawmaking, coupled with enforcement respecting access to State services and support for businesses the Ste may determine are involved in gross human rights abuses. And the fourth reenforces the general expectation of UNGP Principles 2 and 3, respecting the adequacy of public law and policy mix of measures to address the "risk of business involvement in gross human rights abuses."[64]

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[62] Discussed Chapter 15.
[63] Discussed Chapter 10.
[64] Ibid.

That linkage between UNGP Principles 7 and 23 (c) provides the operative framework for the specification of the *expectation on business* (recall UNGP Principal 7 is directed to States) in the context of risks of causing or contributing (UNGP Principle 13) gross human rights abuses. UNGP Principle 23(c) directs that such risk be treated as "a legal compliance issue wherever they operate." The Spanish (*cumplimiento de la ley*), French (*respect de la légalité*), and Chinese(*遵守法律的问题*) versions make clear that the tern "legal compliance" refers to compliance with law. Traditionally that would be expected to include obedience to all civil and criminal laws, and relevant regulations.

Legal compliance has also acquired a meaning within the academic literature and as an expression within business management that focuses on the processes and means of ensuring legal compliance, and offering a justification for compliance with law.[65] It focuses, in this sense, on the work of compliance officers, financial control employees, lawyers and others who have a hand in identifying and assessing compliance risks and for developing plans to address them—a process that aligns with HRDD. But it also identifies a broad spectrum of regulation, law and rules that are within the definition of the "law" with respect to which compliance measures are focused. At its broadest it includes not just obedience of all civil and criminal laws, and relevant regulations, but also to common law duties, private law agreements (contracts, and adherence by employees and others bound to them, to the enterprises internal rules, policies, and other requirements.[66]

In the context of UNGP Principle 23(c), it is likely the broader meaning that comports with the implicit understanding of the use of the term. The reason for that is the connection between UNGP Principle 23(c) and UNGP Principle 7. At least on that respect, the breadth of the rule and policy system that is part of the State regulatory expectation suggests that legal compliance in UNGP Principle 23(c), in the context of those actions and relationships described in UNGP Principle 7, would include all measures described in UNGP Principle 7. If that is the case, then the gross violence described in both Principles refer to the same impacts and it would follow that legal compliance would extend to all gross human rights abuses to which UNGP Principle 7 applies.

That leaves the question of whether adverse impacts identified within UNGP Principles 23(a) and (b) would also have to be treated as a matter of legal compliance. The answer would seem to be a strong is for UNGP Principle 23(a) impacts. That is straightforward with respect to obedience to applicable law. It is less clear with respect to compliance with internationally recognized human rights. The reason is that UNGP Principle 11 makes clear that the corporate responsibility to respect is autonomous of State regulatory mandates. In that case a narrow or traditional application of legal compliance would seem appropriate. However, to the extent that compliance with expectations under the 3nd Pillar are grounded in binding private law (contracts, employee policies and employment agreements and the like), it can also be argued that to the extent of the reach of private law, all such violations would also constitute and must be treated as a matter of legal compliance, the effects of which might affect the enterprises practice of HRDD, by changing the character and severity of the risk of adverse impact.

16.2.3 UNGP Principle 23: Official Commentary

The Official Commentary adds a little bit of nuance to a reading of the text, and offers guidance about preferences for reading and applying UNGP Principle 23 within the broader context of the 2nd Pillar. Much of the Commentary restates the text of the Principle. Nonetheless, the Commentary adds some important guidance in the restating.

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[65] See, e.g., Theodore L. Banks and Frederick Z. Banks, Corporate Legal Compliance (2nd ed.) Wolters, Klower Law & Business, 2020).
[66] See, Banks and Banks, Corporate Legal Compliance at §1.1.

The Commentary starts with an interpretive transposition of the normative premises of UNGP Principle 14's expectation that while the corporate responsibility of UNGP Principle 11 applies to all enterprises, scale and complexity may affect the means of complying with the expectation.[67] UNGP Principle 23 Commentary applies UNGP Principle 14's context based means versus expectation split to legal compliance. "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."[68] The enterprise, in that context must also "be able to demonstrate their efforts in this regard." One assumes that this proof is built into the HRDD systems that the enterprise has in place.[69] That is, that the operational principles of UNGP Principles 20 and 21[70] to guide them on communication, consultation, verification, and effectiveness. That is emphasized on the UNGP Principle 23 Commentary's suggestion that for "assessing how best to respond, they will often be well advised to draw on not only expertise and cross-functional consultation within the enterprise, but also to consult externally with credible, independent experts, including from Governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives."

The Commentary also underscores and elaborates the expectations of UNGP Principle 23(c). First the Commentary notes that certain operating environments , such as conflict affected areas, have the potential to increase the risk of complicity in gross human rights violations. These are expected to be treated as legal compliance issues. They also implicate and may intersect with State duty expectations set out in UNGP Principle 7.[71] In this context it would be expected that the determinations of legal compliance will likely be intertwined with consultation with home and perhaps host states and as a function of home state policy and other actions around conflict affected areas. The UNGP Principle 23 Commentary also reminds that " In addition, corporate directors, officers and employees may be subject to individual liability for acts that amount to gross human rights abuses."

Indeed, the UNGP Principle 23 Commentary underscores the expectation of consultation. Consultation is not limited to internal expertise but also includes consultation "externally with credible, independent experts, including from Governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives." The consultation expectation aligns with similar consultation expectations in UNGP Principle 16 (enterprise policy commitment); UNGP Principle 18 (gauging human rights risks); UNGP Principle 21 (communication related consultation); and UNGP Principle 31 (operational level grievance mechanisms).

16.2.4 UNGP Principle 23: Other Authoritative Interpretation/Commentary

16.2.4.1 The 2010 Draft. The draft version of UNGP Principle 23, circulated from the end of 2010 as Daft Principle 21,[72] diverged from the text of the final version in interesting ways that help understand the scope and focus of the final version in important respects.

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[67] Discussed Chapter 12.UNGP Principle 23 Commentary provides: "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."
[68] UNGP Principle 14 Commentary
[69] Discussed UNGP Chapter 14.
[70] Discussed Chapter 14.
[71] Discussed Chapter 10.
[72] Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John G. Ruggie, Draft Guiding Principles for the Implementation of United Nations "Protect, Respect, and Remedy" Framework, A/HRC/--- (N.D. circulated from November 2010) available [https://media.business-

First, Draft Principle 21 starts with language that eventually found its way into the final version of UNGP Principle 14 and19.[73] It contextualized the compliance obligation by reference to the scale and complexity of the processes and policies of the enterprise varying as a function of size and severity of their human rights impacts. That language disappears from the black letter of the final version UNGP Principle 23, which starts simply with the phrase, "in all contexts, business enterprises should." This does not suggest that the language of scale and complexity disappear or that the importance of enterprise size and severity of impact does not have effects. The concepts of scale and complexity now finds its way into UNGP Principle 14 as the basis for determining the means thorough which enterprises meet their responsibility to respect. That includes the responsibility with respect to compliance in UNGP Principle 23.[74] The role of size is elaborated in Principle 14, as well as in the operational provisions of UNGP Principles 15, and the HRDD principles UNGP Principles 17, and 18. The basic expectation is that the responsibility to respect does not vary by size, sector, operational context, ownership and structure of the enterprise,[75] but that these factors affect the means through which the responsibility is met, including the compliance obligation of UNGP Principle 23. The same applied to the notion of severity in UNGP Principle 14 and 19. What changes from the draft Principle 21 to UNGP Principle 23 in this respect is that its expectations apply in all contexts, but the means and form may be informed by size, severity, and scale as elaborated elsewhere in the 2nd Pillar.[76]

In addition, the three subsections of UNGP 23 were originally four provisions in Draft Principle21. In the Draft Principle 21 (a) – (d), however both the text and the focus was substantially different than in the final version. The focus of Draft Principle 21(a) focused on the question of the general rules obligations of the enterprise, but more specifically on the question of the expectations on enterprises where State's fail to meet their duty to protect human rights. It provides that enterprises should "Observe internationally recognized human rights also where national law is weak, absent or not enforced." The focus is on two distinct elements of compliance. The first is on the principle sources of rules against which the enterprise will build and operate its HRDD systems—that is the rules and norms against which it is possible to identity, assess, and address adverse human rights impacts. These bring the abstract propositions of UNGP Principle 12 into an operational level that reinforces the structuring of HRDD and remedial systems required to be provided under UNGP Principle 15,[77] and then set out as entity private law in UNGP Principle 16.[78] What had been the contextualizing language at the start of Draft Principle 21(a) then moves to UNGP Principle 23's Official Commentary.

The second is equally important and perhaps more telling—it creates the expectation that where states fail to fulfill their duty to protect human rights under Pillar 1, the corporation will fill the void by substituting its 2nd Pillar expectations built around HRDD for the absent state. It does more than that. Draft Principle 23(a) also implies that the determination of State failure—of the determination that national law is weak, absent, or not

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humanrights.org/media/documents/files/reports-and-materials/Ruggie-UN-draft-Guiding-Principles-22-Nov-2010.pdf'; or "https://menschenrechte-durchsetzen.dgvn.de/fileadmin/user_upload/menschenr_durchsetzen/bilder/Menschenrechtsdokumente/Ruggie-UN-draft-Guiding-Principles-22-Nov-2010.pdf], last accessed 25 February 2024. Discussed Chapter 2.3.4.

[73] Discussed Chapters 12 and 14.

[74] Discussed Chapter 12.

[75] A concept drawn from the UNGP's General Principles, discussed Chapter 6, and applied as well to State regulation of corporate communication in UNGP Principle 3.

[76] Substantially all of the Commentary accompanying Draft Principle 21 survives to form the UNGP Principle 23 Commentary. The exception ae the first two paragraphs' of the Draft Principle Commentary that are modified to take into account the changes made to the Draft Principle in the final version. o

[77] Discussed UNGP Principle 12

[78] Discussed UNGP Principle 13.

enforced, is to be made in the first instance by the enterprise. That determination, of course, is not to be made in a vacuum. The relationships between States and enterprises posited in the 1st Pillar suggests that, at a minimum, those determinations would be made in consultation with, and perhaps subject to guidance from, the home state of the enterprise to which this portion of Draft Principle 21(a) would have applied, following the provisions of UNGP Principle 2[79] and UNGP Principles 3 and 7.[80] This provision disappears from the UNGP between the Draft and final versions of what becomes UNGP Principle 23. And with that, the UNGP falls silent on the question of State incapacity, except in the narrow circumstances outlined in UNGP Principle 7.

Draft Principle 21(b), then moves from the question of State absence, to one of State action that undermines the ability of an enterprise to respect human rights as elaborated in the 2nd Pillar. This section provides that the enterprise should "Seek ways to honor the principles of internationally recognized human rights where domestic legal compliance may undermine their responsibility to respect." This section survives as UNGP Principle 23(b) but in perhaps significantly modified form. The "seek ways to honor" language survives. But the context in which that expectation arises changes. In the Draft Principle this is triggered where domestic legal compliance "undermines" the enterprise's UNGP Principle 12 compliance. In the final version that changes to "when faced with conflicting requirements." The object, of course, was to excise judgment about the character of domestic law in relation to internal law and norms specified in UNGP Principle 12. While the two provisions' text may be read as producing equivalent results. The emphasis, however, shifts, from ne grounded in a determination State opposition to one grounded in the much more neutral context of "conflicting requirements."

Draft Principle 21(c) then considers the nature of the responsibility to respect human rights in conflict affected areas. It provides that enterprises are expected to "Respect the principles of international humanitarian law when operating in conflict-affected areas." This provision does not survive the transition to the final version of what becomes UNGP Principle 23. Instead, its thrust is embedded into the revised language, as discussed above, by shifting the nature and extent of compliance in conflict affected areas to the provisions of UNGP Principle 7. It also eliminates the potential confusion of a direct reference to international humanitarian law her for its effects on the scope of UNGP Principle 12. The thrust of the provision, however, remains substantially the same, though its emphasis shifts from creating a direct connection between enterprises and the fulfillment of internal law obligations, to one where that fulfillment is mediated through the State under UNGP Principle 7 and the understanding of "gross human rights abuses in what becomes UNGP Principle 23(c).

Lastly, Draft Principle 23(d) merges normative compliance under the 2ndPillar responsibility with legal requirements grounded in the 1st Pillar State smart mix of measures in fulfillment of their duty to protect human rights (UNGP Principles 2-3).[81] It provides that enterprises should "Treat the risk of causing or contributing to international crimes as though it were a legal compliance issue." The language differs from UNGP Principle 23(c) in important respects. First it speaks to "international crimes." The language of UNGP Principle 23(c) speaks to "gross human rights abuses. " Second, it is silent on the extent of the risk. The language of UNGP Principle 23(c) speaks broadly to "wherever [the enterprise] operates." One of the principal reasons for the changes were built into the decision to merge Draft Principles 21(c) and (d) into UNGP Principle 23(c). Nonetheless the modification also produced substantive consequences. The narrowing reference to international crimes was eliminated by substituting the key term "gross human rights abuses" that appears only in UNGP Principle 7. Second it eliminated the suggestion that these were not matters of legal compliance (the language in Draft Principle 21(d), "as though it were") to an affirmation ("as a legal compliance issue") in the final version. In so doing, it shifted the relationship between autonomous responsibility and compliance to one in which the superior

[79] Discussed Chapter 7.
[80] Discussed Chapters 8, 10.
[81] Discussed Chapters 7-8.

obligation was compliance with national law. That this could be undertaken without affecting the fundamental premises of the UNGP perhaps lay in the fundamental premise of the UNGP itself as set out in its General Principles,[82] that States were with respect to "legal obligations a State may have undertaken or be subject to under international law with regard to human rights" (UNGP General Principles) essentially a conduit of international law frame within their domestic legal orders and to that extent one might posit no conflict between the 1st and 2nd Pillar obligations.

The fundamental difference, then, between Draft Principle 21 and UNGP Principle 23 is built around approaches to the centrality of legal compliance as the driving element of the Principle. Where the final version of UNGP Principle 23 was built around legal compliance, with the compliance elements of the second Pillar (built around UNGP Principles 11-12)[83] as complementary or supplementary, in Draft Principle 21(a) - (d) the opposite textual approach was adopted. That is Draft Principle 21(a)-(d) emphasized, *for purposes of the corporate responsibility to respect human rights*, and within its terrain of operationalization (UNGP Principles 17-22),[84] the centrality of international law (as elaborated in UNGP Principle 12) and its relationship to national law, even in the context of conflict affected areas (UNGP Principle 7).[85] The gap between Draft Principle 21 and UNGP Principle 23, then, suggests an interpretive focus that starts from the centrality of state legal orders, and then builds corporate responsibility around notions of legal compliance first, only then, and at the edges, focused directly on international law and norms. While the autonomy of the 2nd Pillar is preserved, its scope and extent is now firmly a function of the exercise by States of their regulatory authority (UNGP Principle 3) [86] to fulfill their duty to protect human rights (UNGP Principle 1)[87] and then only to the extent, at its minimum, of the limits of a state's binding international law obligations. That is not to say that the autonomous expectations of the 2nd Pillar corporate responsibility disappear, only that they are satisfied in the shadow of and shaped by (to the extent of the scope and severity of adverse impacts under a HRDD analysis) an entity's primary obligation of legal compliance across its production chains. That hierarchy of compliance, then, also shapes the analysis of addressing adverse impacts under HRDD systems,[88] and the extent and use of remediation under UNGP Principle 22.[89]

16.2.4.2 The Travaux Préparatoires and Pre-Mandate Text. UNGP Principle 23 represents the articulation of the operational framework for the management of human rights in economic activity through markets and private law, written against and in the shadow of nearly a generation of efforts to manage international economic activity through legal measures targeting some form or another of economic actors.[90] The Travaux Préparatoire are particularly relevant for issues of legal compliance. Of particular note are the SRSG's 2007 reports on mapping.[91]

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[82] Discussed Chapter 6.
[83] Discussed Chapter 12.
[84] Discussed Chapter 14.
[85] Discussed Chapter 10.
[86] Discussed Chapter 8.
[87] Discussed Chapter 7.
[88] Discussed Chapter 14.
[89] Discussed Chapter 15.
[90] Chapter 4.
[91] Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, Business and human rights: mapping international standards of responsibility and accountability for corporate acts, A/HRC/4/35 (19 February 2007); available [https://undocs.org/en/A/HRC/4/35]; last accessed 25 February 2024; Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, Human rights

16.2.5 Other Glosses

In interpreting other UNGP Principles, one must distinguish between glosses on the UNGP, and efforts to argue for one or another best reading among the range of plausible approaches to an interpretation and application of the UNGP. Arguments toward a "best" or "sound" interpretation do not go to the meaning or understanding of the UNGP itself but rather to debates about its application in specific times, places, and spaces. It is with that in mind that it is worth exploring what others have contributed to the meaning of Text and Commentary. This is not to fault such efforts—they represent the manifestation of the sort of engagement that moves both principle and pragmatism forward, shaping the UNGP as groups engage in debates and shape their practice in desired ways that hep (re)shape the expectations at the foundation of the UNGP, especially but not entirely focused on the 2nd Pillar responsibility to respect. But it is important to understand that they do not interpret and comment on the UNGP as much as they seek to utilize them (as intended) to move their own political and normative agendas forward (what is best, how might one best do this or that) in ways that seek to draw on and which adopt the language of the UNGP but for some other purpose. It in thin this sense that what may appear to be important element s of post UNGP endorsement engagement with the UNGP, they are not Commentaries on the UNGP and are thus excluded from this Commentary, without in any way judging the value of that work for its own purposes.[92] Beyond that some glosses have been produced that may prove useful for approaching the meaning of the UNGP.

The OHCHR *Interpretive Guide*[93] includes guidance on the corporate responsibility to respect human rights that adds a layer of interpretive context because it was prepared shortly after the endorsement of the UNGP and was undertaken with the involvement of SRSG Ruggie. "The Guide's content was the subject of numerous consultations during the six years of Professor Ruggie's mandate and was reflected in his many public reports and speeches, but has not previously been brought together."[94] In its preface, SRSG Ruggie explained that the Interpretive Guide was intended to provide "further explanation" of the UNGP as they relate to the corporate responsibility to respect human rights.[95] To those ends, the *Interpretive Guide* was structured in question and answer format. It was intended to complement the guidance provided in the UNGP Text and its official commentary. "The questions and answers provided here go beyond that commentary to provide additional detail and assistance in understanding the Guiding Principles. As such, they complement the commentary but do not replace or supersede it."[96] The Interpretive Guide was meant to be forward looking—to help guide decisions about the appropriate construction and application of UNGP principles as States and enterprises attempt to transpose Principles and guidance into contextually relevant and temporally dynamic processes and structures, framed within the "original meaning and intent" of the UNGP. [97]

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impact assessments - resolving key methodological questions Addendum 2: Corporate responsibility under international law and issues in extraterritorial regulation: summary of legal workshops A/HRC/4/35/Add.2 (15 February 2007); available [https://undocs.org/en/A/HRC/4/35/Add.2]; last accessed 25 February 2024.

[92] Discussed Chapter 1.

[93] OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (Geneva & NY, 2012).

[94] Ibid., p. 3.

[95] John Ruggie, 'Preface to *Interpretive Guide*,' in OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, p. iv.

[96] *Interpretive Guide*, p. 4

[97] John Ruggie, 'Preface to *Interpretive Guide*,' p. iv ("As work continues to elaborate the implications of this responsibility for different sectors, issues and situations, I hope that this Guide will help ground those efforts soundly and squarely on the original meaning and intent of the Guiding Principles themselves.").

The *Interpretive Guide* provides commentary on UNGP Principle 23[98] notes the foundational tension in UNGP 23 between the uniform standard of the corporate responsibility to respect human rights, and the variation in State systems of law and therefore of legal compliance, variations that may differ not just from each other but from the uniform and predictable standard crafted in and for the corporate responsibility. [99] At the same time the *Interpretive Guide* insinuates that implicit in UNGP Principle 23 is a hierarchy of compliance. First there is legal compliance: "Enterprises recognize that their social responsibilities begin with legal compliance. The responsibility to respect human rights is itself often reflected—at least in part—in laws and regulations."[100] Then the 2nd pillar responsibility kicks in. These, the Interpretive Guide recognizes extends beyond compliance with domestic law to include all internationally recognized human rights. And even in this there is a hierarchy. First the 2nd Pillar is sort of a gap filler. The *Interpretive Guide* suggests its scope: "It therefore also applies where there are no national laws and regulations to protect these rights."[101] The purpose of this is intentional—it is meant to reinforce the idea that, if enterprises reduce the scope of their compliance solely to legal compliance, then they would be able to take advantage of the situation in states that avoided their duty to protect human rights; that is that "enterprises should not take advantage of operating environments that provide insufficient protection for human rights to lower their own standard of conduct."[102]

Beyond the gap filer roll is the compliance mediator role. These are situations where there is no gap, instead there is a positive legal compliance oriented obligation to act inconsistently with enterprise responsibility to respect internationally recognized human rights, including those explicitly rejected by the State, or interpreted in ways that run counter to the interpretation of UN bodies. The last point is troublesome. It suggests that States cede sovereignty to UN bodies beyond traditional limits, at least with respect to the interpretation and application of human rights. It is possible that such a position itself runs counter to .the UNGP General Principles.[103] These conflicts, the Interpretive Guide, in line with the text of the Principle itself, that such conflicts are likely best exposed through the application of the enterprise's HRDD processes.[104] The HRDD process might also be used to prevent and mitigate these conflicts in some situations. The *Interpretive Guide* then suggests approaches to prevention and mitigation.[105] First it suggests rigorous analysis to ensure that a conflict exists and is significant. Second it suggests that engaging with the local Government might help resolve the conflict through agreement on an interpretation of the provisions that are consonant with the responsibility to respect. And third there may already be "work arounds" applied by other enterprises operating in the field. Where conflict is unavoidable, the Interpretive Guide suggests that the enterprise engage with relevant expert stakeholders, along the lines outlined in UNGP Principle 18.[106] That serves the added purpose of developing evidence of compliance. It is only in the context of gross human rights abuses that an enterprise ought to consider ending operations, though the human rights impacts of ceasing operations will also have to be considered.[107] The Interpretive Guidelines also suggests the cases of organizations from which consultation might be usefully sought.[108]

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[98] *Interpretive Guide*, pp. 76-82.
[99] Ibid., p. 77.
[100] Ibid.
[101] Ibid.
[102] Ibid.
[103] Discussed Chapter 6.
[104] *Interpretive Guide*, p. 78.
[105] Ibid.
[106] Discussed Chapter 14.
[107] Ibid., pp. 78-79.
[108] Ibid., p. 81 (governments, national human rights institutions, and experts in public and private organizations).

The Interpretive Guide draws on UNGP Principle 17 for a justification of the principle that risk of gross human rights abuse ought to be considered a matter of legal compliance.[109] These draw on the expand the text of UNGP Principle 23 Commentary. I have suggested that UNGP Principle 23 suggests that all enterprise compliance ought to be understood as legal compliance. More importantly, the *Interpretive Guide* usefully suggests that the scope and nature of legal compliance might be best understood as a function of the changing chape and scope of human rights related litigation. The connection with international legal regimes—for example those tied to the International Criminal Court are also stressed.

The *Interpretive Guide*, though makes the point that the UNGP indicates that gross human rights abuse merit special consideration. The *Interpretive Guide* offers a two factor approach to recognizing situations where the risk of gross human rights abuses are more likely. "The risks of involvement in gross human rights abuse tend to be most prevalent in contexts where there are no effective government institutions and legal protection or where there are entrenched patterns of severe discrimination."[110] It notes that while such risks are most likely to be present in conflict affected areas they are not limited to those context. The Interpretive Guide notes special caution in countries subject to UN sanctions of those of other intergovernmental organizations.[111] Left unsaid but also evident are those situations where operations are in States that may be subject to sanctions by other countries. That has particular relevance to sanctions by the Unted States, the EU, and China. Other OHCHR special procedures have sought to develop guiding principles in this respect.[112]

The *Interpretive Guide* also seeks to gloss the term "gross human rights abuses" that appear in both UNGP Principle 7 and UNGP Principle 23.[113] The *Interpretive Guide* notes that the term is not defined in the UNGP, nor that there exists consensus on its meaning in international law. Instead it offers a list of practices that likely fall within that category: "genocide, slavery and slavery-like practices, summary or arbitrary executions, torture, enforced disappearances, arbitrary and prolonged detention, and systematic discrimination."[114] Whether those terms are meant to be understood in their legal sense under international law, in their sense within the laws of domestic legal orders, or in a more colloquial (social, moral, etc.) sense remains unclear. The broader sense of the meaning, though, appears to be embraced especially in the context of other human rights violations. The Interpretive Guide, for example considers economic, social and cultural rights violations with respect to which gross human rights abuses may be measured by a "grave and systematic standard."[115] These would likely draw on strands of international law. For example the "grave" part of the standard might be aligned with the notions of "severity in the UNGP. Systematic elements include patterns, plans and policies that suggest both intent and execution or movement toward execution. More likely, the reference is to the common practice of the UN Human Rights Council and the UN General Assembly that pass resolutions condemning "gross and systematic" violations

[109] Ibid., pp. 79-80.
[110] Ibid., p. 80.
[111] Ibid.
[112] Alena Douhan, United Nations Special Rapporteur on Unilateral Coercive Measures and Human Rights, Guiding Principles on Sanctions, Business and Human Rights (6 February 2025), available https://www.ohchr.org/sites/default/files/documents/issues/ucm/events/international-conf-sanctions-business-hr/gps-sanctions-business-hr.pdf, last accessed 2 January 2026; see also Martin Amiri, "Balancing Sanctions and Human Rights: The Significance of the UN Guiding Principles on Sanctions, Business, and Human Rights," *Opinio Juris* (11 Aug 2025).
[113] *Interpretive Guide*, p. 6.
[114] Ibid.
[115] Ibid.

in named States from time to time.[116] The term is sometimes used in the jurisprudence of the European Court of Justice.[117]

Simon Baughen provide a gloss on UNGP Principle 23[118] in which he stresses the law's function in imposing rights obligations on enterprises. That certainty, picks up the sub-text of UNGP 23 and foregrounds it in ways that are more accessible. He suggests that the foundation of UNGP Principle 23 are its two critical elements, the balancing of which then serves as its substance. The first is the expectation that enterprises comply with law; the second is that enterprises respect human rights.[119]

With respect to compliance, Braughen reads the provision not aligned with but in a way that rejects the Draft Principle 21 version. He suggests that enterprises must comply with law even where State enforcement is weak. That is, the enterprise must step in for the State where the State in incapable.[120] He also suggests that enterprises must respect human rights even in the face of an absence of corresponding State regulation. Of course that is an obvious point but one that needs underscoring as was done here. The normative essence of the 2nd Pillar was, in fact, its autonomy of and from States and national legal orders, none of which fully encompassed the full range of international law and norms, but only those laws to which States bound themselves or were bound.[121] The reason the point was emphasized, then, was to make clear that failures of State domestic legal orders cannot be used to reduce the scope of the corporate responsibility; that is, that the corporate responsibility cannot be reduced merely to corporate compliance.

Braughen then suggests the nature of "honoring" by focusing on enterprise obligation to "demonstrate their efforts in that regard."[122] He first focuses on the critical role of assessment of conflicting requirements, which requires close examination of the legal environment, presumably under the guidance of experts. He then suggests pragmatic means of honoring, for example in the context of labor relations of engaging effectively with workers where trade unions are suppressed by law.[123] He notes that the essence of balancing inherent in UNGP Principle 23 may reach its limits where the extent of negative impact may counsel the enterprise to cease operations within the territory of the offending State. Yet even there an HRDD analysis ought to be undertaken to ensure that ceasing operations do not create or augment adverse impact.[124] Braughen notes the underlying problem of legal compliance in many contexts—that while rights holders tend to be situated in host states, legal compliance tends to center in home states.[125] That produces not just a multi-vector analysis of compliance (and of the nature of honoring), but also of access to justice and the way that enterprises undertake mitigation and

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[116] See, e.g., Navenethem Pillay, "Strengthening the United Nations Human Rights Treaty Body System (UN Geneva, June 2012), available https://www.ohchr.org/sites/default/files/english/bodies/HRTD/docs/HCReportTBStrengthening.pdf, last accessed 1 January 2026, p. 69; Evan J. Criddle and Evan Fox-Decent, "Human Rights, Emergencies, and the Rule of Law" (2012) 34 *Human Rights Quarterly* 39-87.
https://scholarship.law.wm.edu/facpubs/1531.
[117] See, e.g., A.R. v Poland (Application no. 6030/21) 13 November 2025, available https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-245820%22]}.
[118] Simon Baughen , 'Guiding Principle 23: Legal Compliance Issues of Business Enterprises,,' in Barnali Choudhury (ed), *The UN Guiding Principles on Business and Human Rights: A Commentary* (Cheltenham, UK: Edward Elgar, 2023), pp 178-185.
[119] Ibid., p. 178.
[120] Ibid., p. 179.
[121] UNGP Principles 1-2 discussed Chapter 12.
[122] UNGP Principle 23 Commentary.
[123] Braughen, p. 179.
[124] Ibid.
[125] Braughen, p. 179.

remedial responses. That unevenness, Braughen notes, is particularly evident in the context of gross human rights abuses, contemporary classes of which he describes.[126] He focuses, though, on the difficulties of cross state litigation grounded in issues of legal compliance, focusing on national legal measures in the U.S., Canada, and Europe.

Braughen then considers issues of corporate legal liability, focusing on tort claims,[127]and claims for violations of norms of customary international law.[128] With respect to the former, the issues revolve around access to justice as a function of the old and deeply embedded rules of process in States that serve as important sites for litigation. He also examines the vagaries of tort law application as a function of different national systems. With respect to the latter, Braughen considered the rise and fall of litigation under the U.S. Alien Tort Claims statute. Elsewhere, Braughen noted the difficulty (and thus the rarity) of claims based on violations of customary international law. On the other hand, the increase in corporate criminality prosecutions was of some interest.[129]

16.3 UNGP Principle 24

16.3.1. UNGP Principle 24: Text

> Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

16.3.2.UNGP Principle 24: Commentary on Text

The issue of the prioritization is considered in two parts of the UNGP. It is a central element of the processes of human rights due diligence (HRDD). UNGP Principle 17 speaks to the prioritization of due diligence.[130] Prioritization is also a critical element in helping enterprises with the ordering, perhaps better, the timing, for addressing adverse impacts identified through their HRDD processes. That is the object of UNGP Principle 24.

Its provisions are straightforward. The first element in prioritization is the development of a calculus of necessity. Prioritization is only permitted where it is necessary. Necessary is understood in its common sense of needed, essential, urgent or compelling. Its etymology underscores this sense of the term, "directly from Latin *necessarius* "unavoidable, indispensable, necessary," from *necesse* "unavoidable, indispensable," originally "no backing away."[131] The sense is that prioritization is utilized only when the enterprise has no other alternative that would not augment adverse impacts or avoid addressing those impacts. The

[126] Ibid., p. 180.
[127] Ibid., pp. 180-182.
[128] Ibid., pp. 182185.
[129] Ibid., pp. 184-185.
[130] UNGP Principle 17 Commentary, discussed chapter 14.
[131] Etymology Online, necessary, available https://www.etymonline.com/search?q=necessary, last accessed 2 January 2026.

prioritization is limited to "actions to address actual and potential" adverse impacts. The prioritization contemplated in UNGP Principle 24 extends no farther.

The rule for prioritization then follows. It is essentially a rule of severity. The concept of severity derives from UNGP Principle 14,[132] is embedded in the structures of HRDD with respect to the severity of human rights impacts in UNGP Principle 17(b) and 19, and 21.[133] UNGP Principle 24 provides that "business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable." First the essence of prioritization focuses on adverse impacts that may be prevented and mitigated. Of those adverse impacts to be addressed where the impacts may be prevented or mitigated, the enterprise must prioritize addressing these impacts as a function of severity. And lastly, severity can also be prioritized by reference to the irremediability of adverse impacts if the enterprise delayed.

One last point, prioritization is not the same as waiver. All enterprises must address all adverse human rights impacts that they may have caused or contributed to. Enterprises still are expected to prioritize prevention and mitigation over remediation in addressing such impacts for which they are responsible under the UNGP. What UNGP 24 permits is ordering such addressing ad adverse impact sequentially. The enterprise must still address all of its adverse impacts.

16.3.3 UNGP Principle 24: Official Commentary

The Official Commentary adds a little bit of nuance to a reading of the text. It emphasizes the fundamental principle of unavoidability. It emphasizes as well that the provisions of UNGP Principle 24 are triggered only where the enterprise may not address these adverse impacts simultaneously. It then suggests the order of priority: "if prioritization is necessary business enterprises should begin with those human rights impacts that would be most severe, recognizing that a delayed response may affect remendability." Lastly, it re-emphasizes the definition of severity from UNGP Principle 14.

One last point that the UNGP Principle 24 Commentary raises almost in passing. It is a reminder that the ordering of prioritization, and its availability, may be subject to mandatory measures under the law of States. That draws the 1st Pillar Principles, especially UNGP Principles 2, 3, and 7, into the determination of prioritization under UNGP Principle 24, While the State need not act, it is clear that States can—within the scope of their jurisdiction, guide prioritization. In that sense, prioritization under UNGP Principle 24 may also be understood as an issue of legal compliance.

14.3.4 UNGP Principle 18: Other Authoritative Interpretation/Commentary

14.3.4.1 The 2010 Draft. The draft version of UNGP Principle 24, circulated from the end of 2010 as Draft Principle 22,[134] and its Commentary, did not diverge from the final text in important respects. The text of

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[132] Discussed Chapter 12.
[133] Discussed Chapter 14.
[134] Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John G. Ruggie, Draft Guiding Principles for the Implementation of United Nations "Protect, Respect, and Remedy" Framework, A/HRC/--- (N.D. circulated from November 2010) available [https://media.business-humanrights.org/media/documents/files/reports-and-materials/Ruggie-UN-draft-Guiding-Principles-22-Nov-2010.pdf'; or "https://menschenrechte-

the principle survived intact from Draft to final version of UNGP Principle 24. The Commentary changed in two respects. The first was to add the reminder that prioritization was not waiver that appeared as the first clause of the first sentence of the final version of UNGP Principle 24 Commentary. The second changed the standard for determining severity in the sense that it include a recognition that delayed response may "affect remendability." In the Draft UNGP Principle 22 Commentary, the provision read "or where the risk of irremediable impact is high." The effect was to broaden the consideration of irremediability as a factor. That, in turn, reinforces the core expectation of the corporate responsibility that focuses on prevention and mitigation, and understands remediation as a last resort (UNGP Principles 11, 13 Commentary, 15).[135] It is built into the structures of HRDD in UNGP Principle 17.[136]

1432.4.2 The Travaux Préparatoires and Pre-Mandate Text. [137]UNGP Principles 24 were written against and in the shadow of nearly a generation of efforts to manage international economic activity,[138] but was principally directed as a key element that distinguished the approach of the UNGP from its failed predecessor, the *Norms*.[139] The Travaux Préparatoire are relevant for better situating the identification-assessment function within HRDD processes.[140] Of particular relevance are the SRSG's 2011 Reports.[141] The General Report and the four Addenda considered a number of key issues around prioritization. These provided the pragmatic baseline against which the identification and assessment criteria were eventually refined in the final version of the UNGP. Also of value are the 2009 and 2010 SRSG Reports on operationalization issues.[142]

14.3.5 Other Glosses

The OHCHR *Interpretive Guide*[143] includes guidance on the corporate responsibility to respect human rights that adds a layer of interpretive context because it was prepared shortly after the endorsement of the UNGP and was undertaken with the involvement of SRSG Ruggie.[144] "The Guide's content was the subject of numerous consultations during the six years of Professor Ruggie's mandate and was reflected in his many public reports and

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durchsetzen.dgvn.de/fileadmin/user_upload/menschenr_durchsetzen/bilder/Menschenrechtsdokumente/Ruggie-UN-draft-Guiding-Principles-22-Nov-2010.pdf], last accessed 25 February 2024. Discussed Chapter 2.3.4.

[135] Discussed Chapter 12.

[136] Discussed Chapter 14.

[137] The Travaux Préparatoire are discussed Chapter 3.

[138] Chapter 4.

[139] Sub-Commission on the Promotion and Protection of Human Rights, 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights', UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003) See, David Weissbrodt and Maria Kruger, 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights' *American Journal of International Law* 97 (2003) 901-922; available <https://scholarship.law.umn.edu/faculty_articles/243> accessed 15 February 2022.

[140] Discussed Chapters 2 and 3

[141] Discussed Chapter 3.

[142] 2009 SRSG GA Report 64/216-- Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, Report to the UN General Assembly: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises A/64/216 (3 August 2009); available [https://undocs.org/en/A/64/216]; last accessed 25 February 2024. 2010 SRSG Report 14/27-- 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 February 2024.

[143] OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (Geneva & NY, 2012).

[144] Further discussion of the *Interpretive Guide* at Chapter 14.2.5.

speeches, but has not previously been brought together."[145] SRSG Ruggie expressed the wish in his Preface to the Interpretive Guide, that it "will help ground those efforts soundly and squarely on the original meaning and intent of the Guiding Principles themselves."[146] It is in that spirit that one ought to approach the Interpretive Guide with respect to the UNGPs, wherever that guidance might then lead those who seek to use it and however far it takes them from the UNGP's original meaning and intent.

The *Interpretive* Guide's commentary on UNGP Principle 24 [147] are useful commentary to the UNGP Principle 24 text and its Commentary. The Interpretive Guide starts with a reminder of the orthodox consensus about the nature of international human rights law—indivisible, interdependent, and interrelated. That orthodox consensus does not appear in the text or Commentary of the UNGP but is read into them, perhaps not unreasonably, as a set of common presumption held by the United Nations apparatus and those in solidarity with them.[148] Such a reading would be consistent with the UNGP's General Principles.[149] However, it does leave room for those who might have a different view of the divisibility, relatedness, and independence of human rights. For example, States that adhere to the view that development must be accorded a privileged place or serve as the lens for understanding, valuing and applying human might have a different sense on the construction of human rights coherence.

The *Interpretive Guide* also follows a consensus view that UNGP Principle 24 is triggered only in those circumstances where adverse "impacts cannot reasonably be addressed all at once."[150] And it also affirms the view that prioritization is grounded in severity, but that prioritization does not permit waiver of addressing adverse impacts. "As soon as the most severe impacts are addressed, the enterprise should turn to those with the next greatest severity and so on until it has addressed all its actual and potential impacts on human rights (bearing in mind that this is likely to be an ongoing exercise that adjusts to changing circumstances)."[151] The *Interpretive Guide* also draws on UNGP Principle 14 as the source for understanding severity, which in turn is a function of scale, scope, and irremediable character. [152] In that respect the *Interpretive Guide* offers as factors the gravity of the impact and the number of people affected, as well as the adequacy of financial compensation where prevention and mitigation are unavailable.[153] The *Interpretive Guide* usefully emphasizes that the severity factors are just that—factors. An impact did not exhibit all three, the context in which the impacts arise are significant factors in assessing the "value" of scope, scale, and irremediability factors, and prioritization itself may augment the adverse impact of an event or condition the addressing of which is delayed.[154] Lastly the Interpretive Guide notes the augmenting effect for persons at higher risk of vulnerability and marginalization—"children, women, indigenous peoples, or people belonging to ethnic or other minorities."[155] That also rejects the UNGP's General

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[145] Ibid., p. 3.
[146] John G. Ruggie, Preface, *Interpretative Guide*, p. iv.
[147] *Interpretive Guide*, pp. 82-85.
[148] For a useful discussion with cites to some primary sources, see, Jan Essink, Alberto Quintavalla, and Jeroen Temperman, 'The Indivisibility of Human Rights: An Empirical Analysis,' (2023) 23 *Human Rights Law Review* 1-18.
[149] Discussed Chapter 6.
[150] *Interpretive Guide*, p. 82.
[151] Ibid.
[152] Ibid., UNGP Principle 14 is discussed Chapter 12.
[153] *Interpretive Guide*, p. 82.
[154] Ibid., p. 83.
[155] Ibid., pp. 83-84.

Principles.[156] Finally the Interpretive Guide also emphasizes that UNGP Principle 24 focuses on sequencing; an enterprise remains fully accountable for addressing all impacts for which they are responsible.[157]

Salvador Herencia-Carrasco provided a gloss on UNGP Principle 24[158] that adds some nuances to any UNGP Principle 24 analysis. He first summarizes both the text and Commentary of UNGP Principle 24 and the insights from the *Interpretive Guide*.[159] He then considers to aspects of UNGP 24 operationalization, The first touches on elements of prioritization.[160] The second focuses on prioritization consideration and severity.[161]

With respect to the first, Herencia-Carrasco draws on the UNGP Principle 24 Commentary and the Interpretive Guide to consider the inter-relationship of the key severity factors for prioritization. Helpful here is Herencia-Carrasco's foregrounding of the time element. Delay in addressing augments impacts, but the relative effect of delay among a larger set of adverse impacts not all of which can be addressed simultaneously may make a difference. Also important is the role of consultation in assessing the elements of prioritization. This can have legal compliance effects (thus also touching on UNGP Principle23's expectations. Herencia-Carrasco considered the example of Srayaku v. Ecuador,[162] in which failure to consult produced a prioritization of human rights that did not take into account the irremediability of the impacts from the perspective of the Kichwa Indigenous People. [163]

With respect to prioritization considerations, Herencia-Carrasco notes that neither severity nor prioritization have received much attention in other institutions. Interesting in that respect is the absence of prioritization from most National Action Plans on Business and Human Rights.[164] Only the Norwegian BAP considered UNGP Principle 24 directly, adding a, expectation of transparency—that is that enterprises ought to explain their prioritization plans and justify their choices. That is a plausible though not necessarily the only approach. It is, however, consistent with the transparency and communication expectations of HRDD in UNGP Principles 20 and 21.[165] Herencia-Carrasco also points to the advice provided by the UN Working Group for Business and Human Rights in the context of conflict affected areas.[166] Guidance from the OECD and Shift are also described.[167] These add the insights, also useful, that severity is to be assessed from the point of view of those impacted, rather than from their effect on the business of the enterprise, and that resources for addressing such impacts may be a factor. They also counsel against creating rigid pre-determined prioritization lists because context matters.

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[156] Discussed Chapter 6.
[157] Ibid., p. 84.
[158] Salvador Herencia-Carrasco, 'Guiding Principle 24: Prioritization of Severe Human Rights Impacts by Businesses,' in Barnali Choudhury (ed), *The UN Guiding Principles on Business and Human Rights: A Commentary* (Cheltenham, UK: Edward Elgar, 2023), pp 186-190.
[159] Ibid., pp. 186-187.
[160] Ibid., pp. 187-188.
[161] Ibid., pp. 188-189.
[162] Case of the Kichwa Indigenous People of Sarayaku (Ecuador), Merits and Reparations, Inter-American Court of Human Rights Series C No 245 (27 June 2012).
[163] Herencia-Carrasco, p. 188.
[164] Ibid., p. 188.
[165] Discussed Chapter 14.
[166] Herencia-Carrasco, p. 188-189. He also notes the Working Group's assertions that sexual and gender based harassment were ipso facto sever as well as acquisition or exploitation of the lands of indigenous people. These conclusions, of course, are subject to debate, and though permitted within the UNGP, they are not mandatory,
[167] Ibid.

16.4 Conclusion

UNGP Principles 23 and 24 are, together, described in the UNGP 2nd Pillar as directed toward "issues of context," do far more than touch on context. They serve, to different effect, to rationalize the operation of the 2nd Pillar corporate responsibility to respect human rights, as manifested in enterprise HRDD systems, and to tie that rationalization to the legal domains of the 1st Pillar State duty to protect human rights with its own overlapping engagement with human rights and their adverse impacts. In that sense, there is no sense to HRDD, or to the bridging of the autonomous 2nd Pillar from the variegated world of public law and policy State-based duty to protect international human rights through those portions of which an individual State might have bound itself or be bound. In that way, and from the starting point of the internationalized normative framework of the 2nd Pillar, these "contextualizing" Principles suggest a means of rationalizing the State duty in a way that better aligns it with the global standard of the 2nd Pillar corporate responsibility. It also serves to rationalize the operation of HRDD systems themselves, by providing a way of ordering the sequencing of corporate systems for addressing adverse human rights impacts.

UNGP Principle 23 focuses on compliance within and between 1st and 2nd Pillar human rights ordering systems. In that sense it provides an orderliness to the relationship between UNGP Principles 2-3 (State should set expectations for business respect to human rights in their territories; States use of smart mix of public law measures to fulfill their duty) and the HRDD system (UNGP Principles 17-21) at the operational heart of the 2nd Pillar corporate responsibility (UNGP Principles 11-15). This is accomplished through the medium of legal compliance. Legal compliance embeds the hierarchies of the State system within the autonomous structures of the corporate responsibility. At the same time, it serves as a means of augmenting the State system rule basis, in all of its sometimes contradictory and irrational variability, by the homogenizing superstructures of UNGP Principle 12 based normative regimes built around the State through the 2nd Pillar. That overstructuring survives mandatory HRDD and efforts to "reign in" the corporate responsibility within law. By definition, everything that is law is NOT the 2nd Pillar, and the 2nd Pillar cannot be extinguished by State law making or the use of other mechanisms available through UNGP Principle 3, or in concert under UNGP Principles 8-10. The dialectics of legal compliance serves to mediate the parallel but distinct fulfillment of the State duty and the corporate responsibility, giving primary place to the mechanisms of the State. All of this is centered on the template for multi-Pillar dialectics—UNGP Principle 7 and the coordination of corporate and State activity in conflict affected areas, and through that around the concept of gross human rights abuse. But taken to its ends, UNGP 24 effectively treats all 2nd Pillar actions, and especially those of HRDD (and remediation through UNGP Principle 22) as matters of legal compliance. That becomes inevitable where the primary obligation of UNGP Principle 12 and HRDD is to undertake their fulfillment against the imperative of legal compliance—and around it.

UNGP Principle 24, on the other hand, speaks to sequencing action. All administrative organs sequence the provision of their services. Some engage in this process in accordance with law; others as a function of capacity or budgets. The UNGP Principle 24 creates the same expectations for enterprises with respect to the adverse interests for which they are responsible. But UNGP Principle 24 also does more than that. It reaffirms UNGP Principle 11's foundational premise that the 2nd Pillar responsibility does not permit waivers or avoidance of the responsibility to address adverse impacts. It reinforces the fundamental approach to human rights impacts that is fundamentally risk averse. That risk aversion is written into the normative framework of the 2nd Pillar and the legal framework of the 1st Pillar—that the primary objective of enterprises is to prevent and then mitigate adverse impacts, that is avoid or lesson their effects. That requires the ability to anticipate and act. Remediation, once the starting point for rights vindication becomes a sign of the failures or the marginal detritus of a system designed to minimize remediation. But it also leaves open the exact framework for mediating between these approaches. Systems that value development and that analysis human rights impacts as a function of development may still

embrace this fundamental operating framework, and yet operationalize a system in which remediation plays a more robust role. And that is the last echo framed within UNGP Principle 24, the echo of context as the fundamental starting point for analysis. It is in context that severity may be understood and "valued." It is in context that the idea and scale of remediation or irremediability can be assessed. And it is in context that the value of all of these factors, not to the enterprise, but to rights holders, may be recognized and applied.

It is only within the context of the insights embedded in UNGP Principles 23 and 24 that the understanding of the universality , indivisibility, and inter-relatedness of human rights may be better appreciated of human rights may be understood, not as principle but as pragmatics. It is within those principles that the dialectic between 1st Pillar legal and 2nd pillar coherence, one grounded in contextually relevant international law, the other in all generally recognized international human rights, may be rationalized. It provides the pragmatic structures for recognizing and working through the realities of hierarchies of international human rights law on the ground, and of honoring the ideal of the universal system as norm and law through operational efforts that are meant to move toward whatever the version of the embraced ideal appears in the context of relations between enterprise, state, and specific holders of human rights.