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Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability

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This article explores the evolution of business and human rights (BHR) from a lawyer's perspective and examines how it is contextually and conceptually different from corporate social responsibility (CSR) in its aims and ambitions. While CSR emphasizes responsible behavior, BHR focuses on a more delineated commitment in the area of human rights. BHR is, in part, a response to CSR and its perceived failure. This has led to a gap with two disciplines or strands of discourse that are diverging rather than converging. This article explores how the quest for accountability shapes a very different narrative for BHR, which takes it more into the realm of binding law, State sponsored oversight, and the importance of access to remedy as a measure of corporate accountability. As a result, at the current juncture, the BHR movement is drifting further away from CSR and the role of companies as voluntary and affirmative contributors to human rights realization. The author argues that BHR can draw from CSR to allow states to create incentives for businesses to promote human rights in their operations.

Corporate Social Responsibility (CSR) and Business and Human Rights (BHR) are like two close cousins—they are intertwined concepts focused on companies engaging in responsible and socially beneficial activities—but both concepts have key differences and hence distinct identities based on their origins. They are in essence two different but overlapping discourses: CSR growing out of scholarship from the business academy and BHR emerging from the work of legal academics and human rights advocates focused on formalistic notions of rights and remedies.

CSR, historically, has focused on corporate voluntarism and expectations of corporations as citizens with responsibilities arising from their role as social partners (Carroll 1999).[1] Companies are encouraged to engage in wide-ranging activities from corporate philanthropy to stepping in to provide aid when governments fail to act, because it is good for business. CSR, however, often emphasizes self-guided decision making rather than the imposition of *new* legally binding requirements and voluntary measures rather than state-sponsored regulation (Buhmann 2006; see also Ronen 2004; McInerney 2007).[2]

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BHR, by contrast, grows out of a quest for corporate accountability to mitigate or prevent the adverse impacts of business activity on individuals and communities and out of expectations grounded in a specific core set of human rights obligations. BHR has, at times, focused more narrowly on holding corporations accountable for harm caused rather than on a positive recognition of the role business might play in protecting and promoting human rights (Bilchitz 2009).

In particular, business and human rights focus companies, states, and civil societies on bench-marking corporate conduct against *universally recognized human rights principles embodied in a key set of treaties* (International Council on Human Rights Policy [ICHRP] 2002; see also Bader 2008: 31). The reason? At its core, BHR focuses on victims or impacted communities and articulates their concerns in terms of a broad swathe of treaty-based rights in an effort to provide a clear basis for remedies and justice.

This article explores the evolution of BHR from a lawyer's perspective and examines how it is contextually and conceptually different from CSR in its aims and ambitions. While CSR emphasizes responsible behavior, BHR focuses on a more delineated commitment in the area of human rights (Wettstein 2012). BHR is, in part, a response to CSR and its perceived failure. This has led to a gap with two disciplines or strands of discourse that are diverging rather than converging.

This article does not contend that the BHR movement is a success nor advocates for the merits of one particular form of state regulation of businesses—indeed many recent initiatives have had their critics. Rather, it explores how the quest for accountability shapes a very different narrative for BHR, which takes it more into the realm of binding law, state-sponsored oversight, and the importance of access to remedy as a measure of corporate accountability. As a result, at the current juncture, the BHR movement is drifting further away from CSR and the role of companies as voluntary and affirmative contributors to human rights realization.

BHR also focuses not only on the role of the private sector but also on the role of states in overseeing company respect for human rights. Thus, BHR while linked to CSR, and in some cases mistaken by newcomers as being identical, is a distinct field with expectations that measure company actions in light of key universal human rights concepts not simply voluntary codes or principles. While there is not a universal consensus as to final outcomes in terms of how much law is necessary to achieve accountability, the emphasis for the movement, and for policymakers, turns towards state commitments and the use, as needed, of binding laws as well as voluntary corporate measures.

For some states and human rights advocates, the quest for accountability is a journey that is not complete. As a result, there is now a process underway at the UN to create a binding treaty with respect to business and human rights, which is a daunting task. As such, BHR is still an iterative process, but it is one that drives companies further away from the purely voluntary and company-driven vision of stakeholder engagement. Indeed, the recent focus on a process to develop a binding international treaty focuses on law and enforcement of the law as a key construct. With the advent of a new discussion for a binding treaty, the BHR discourse has shifted once again to a focus on the legal and political rather than on an underlying assessment of the role companies might play in a larger protection and fulfillment of human rights.

Origins of the Modern Business and Human Rights Movement: Beyond Voluntarism Towards Accountability

CSR refers, in part, to companies taking responsibility for their impact on society. It its earlier stages, CSR was described as business responsibility and grew out of analysis of the

role of the private sector in the aftermath of World War II. CSR, to some extent, has scholarly origins with leading business scholars articulating a vision of an ethical corporation that looked beyond its shareholders and employees when considering its responsibilities.

In 1949, Donald K. David, Dean of the Harvard Business School, also wrote a peace entitled "Business Responsibilities in an Uncertain World" (David 1949). A few months after Dean's article, Bernard Dempsey wrote of the "Roots of Business Responsibility" in the *Harvard Business Review* (Dempsey 1949). In both of these articles, the authors called upon business to contribute to the well-being and progress of individuals and society (History of Corporate Responsibility Project 2005). Business had an obligation to create a just society beyond the boundaries of the business entity. Other key scholars including Morell Heald (1970) have described the history of social responsibility to include philanthropy as well as cooperation and leadership on a range of community issues. Harold Bowen, who authored the book *Social Responsibilities of the Businessmen*, is credited by some as the father of CSR, because his book discussed the concept of businessmen and their obligation to pursue objectives desirable for society (1959/2013).

There is no common definition of CSR. Scherer and Palazzo and have described CSR as an umbrella term for a discussion focused on the "responsibilities of business and its role in society, including categories such as business and society, business ethics, or stakeholder theory" (2007: 1096). CSR scholars have often debated what obligations do fall within CSR—whether it is enough for companies to comply with basic legal and economic obligations (e.g., complying with law) or whether CSR is merely about going above and beyond what is legally required for companies to do (e.g., moving beyond compliance). But the emphasis is still on CSR as a corporate responsibility and responsiveness rather than state-driven regulation or accountability (Center for Ethical Business Cultures 2005: 16).

Wettstein has argued that, while there has been a shift in time towards an examination of labor rights and human rights in CSR literature, "this continuous stream—or perhaps rather trickle—of research in the intersection of CSR and human rights since the mid-1980s cannot hide the fact that, at least up to this current third phase, human rights have not come to play a pivotal role for the general conceptualization of CSR; attempts to make human rights accessible for informing a general conceptual understanding of CSR, that is, attempts to integrate human rights at the very core of the concept have. . . . generally been rare" (2012: 740). Wettstein refers to this as "human rights minimalism" (2012: 740).

The European Union (EU), until recently, defined CSR as "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis" (European Economic and Social Committee 2011: 3). CSR is portrayed as important to the competitiveness of enterprise. The concept is meant to bring benefits in terms of risk management, cost savings, access to capital, customer relationships, human resource management, and innovation capacity (Porter and Kramer 2006; see also Burke and Logsdon 1996). CSR, as defined, may encompass some aspects of human rights—in particular labor and social rights—but the focus of CSR has been broader and not as explicit about human rights as an end goal (Detomasi 2008).

CSR focuses on individual company decision making—what human rights scholars and activists might view as an á la carte view of human rights. Thus, the key ingredient that CSR lacks is a consistent framework focused on businesses and their role with respect to human rights protection or promotion (Bauer 2011: 175). Businesses are, of course, constrained by societal expectations and market forces, but this does not lead to a consistent approach to human rights protections in their operations.

CSR, in time, did intersect with a growing scrutiny of the role of transnational corporations (TNCs) in the developing world. As such, by the 1970s and 1980s, CSR did deal with human rights, in particular antidiscrimination and labor rights, as part of an emerging discourse about the role of TNCs in development and investment. In these debates, the role of the corporation as a global actor was scrutinized, laying the groundwork for the future BHR debate that emerged in the 1990s. Two key sets of voluntary codes, for example, the Sullivan Principles (focused on the conduct of US multinationals in South Africa) and the MacBride Principles (focused on the conduct of multinationals in Northern Ireland), are the precursors to more recent voluntary guidelines relating to businesses and their respect for human rights (McCrudden 1999).

This is where BHR provides an alternative, a focus on establishing a core obligation of companies to respect human rights wherever they operate, to do no harm and when harm is caused to provide a meaningful remedy to victims. Human rights, by definition, are legal or quasi-legal obligations enforced by the state or other international organizations (such as the United Nations) engaged in global governance (J. Smith 2013: 8). To the extent that such an obligation does not exist in the law, BHR proponents would also call upon states to act to require compliance, through regulation, and other measures (Ruggie 2008; see also Mares 2010).[3]

BHR takes human rights as a discrete area of inquiry for company decision making and also is premised upon a notion that voluntary initiatives do not bind all companies—thus allowing the laggards to act with impunity. CSR, in contrast, incorporates human rights, at best, as a component of a larger ethical and value-based set of decisions (Global Reporting Initiative 2008).[4]

The BHR movement has been in existence since the late 1970s, focusing on the human rights impacts of businesses (mostly TNCs) in their global operations (Avery 2010). The fact that BHR literature and advocacy focuses so much on the "legal" as opposed to moral or ethical considerations is not surprising. It grows out of a movement born of negative impacts and a quest to remedy harm already caused rather than an underlying debate over the role of companies alongside states as promoters of positive obligations.

This focus is most acute when businesses operate in so-called "host" states (Sornorajah 2010).[5] In the 1970s, developing countries focused on the overarching power of TNCs in terms of their investment in newly emerging postcolonial states. In the 1980s, a gas leak at Union Carbide's pesticide plant in Bhopal, India, killed and injured thousands of people and highlighted how difficult it is for victims in transnational tort cases to seek a remedy from a TNC (Trotter, Day, and Love 1989).

In "host" state countries, a governance gap often arises when a government is unwilling or unable to provide its citizens with access to remedies for human rights violations caused by businesses, including TNCs (Ratner 2001). Those same states may also lack regulation that would prevent human rights abuses from occurring as well. In many instances, businesses in host States are not direct perpetrators of human rights violations but instead are seen as possible accomplices to such violations. Hence, in the late 1990s the term corporate complicity was termed, and businesses were advised to avoid being "complicit" in the human rights violations of others (Ramasastry 2002: 92; see also Clapham and Jerbi 2001: 341).

Prior to the 1990s, global discourse centered on corporate power and transnational corporations in terms of the adverse impact of transnational investment with benefits going to companies from the North (Kolk, Van Tulder, and Weltjers 1999; see also Sagafi-nejad and Dunning 2008). The concerns of developing countries intensified and, before long, they were taken up at the UN General Assembly as part of a larger trade and development

agenda. The UN created a Center on Transnational Corporations in 1977, and its main task was to draft a code of conduct for TNCs that would focus on responsible and equitable investment practices (UN Intellectual History Project 2009; Sagafi-nejad and Dunning 2008). The debate centered more around investment and economic development—not on human rights.

Home-state governments and TNCs objected to the efforts of the UN. Such concerns eventually led to the demise of the center and the abandonment of the code project in the early 1990s. In short, historical attempts to set forth binding comprehensive international frameworks to regulate TNCs have seen no success (Hedley 1999: 222). In the aftermath, member governments of the Organization for Economic Cooperation and Development (OECD) created the nonbinding OECD Guidelines for Multinational Enterprises, which focused on fair investment activities. The OECD Guidelines, in their first inception, did not address human rights broadly but instead focused exclusively on labor protections.[6]

In the 1990s, there was a resurgence of interest in the role of corporate power in international trade and investment. The business and human rights movement or field and grew out of a series of related events that occurred in the late 1990s. This shift occurred during a period when "globalization" and critiques of globalization became central to political and economic discourse (Stiglitz 2002; see also Klein 2000).

The World Trade Organization (WTO) Ministerial meeting in Seattle, referred to as the Battle in Seattle, was meant to launch a new millennial round of trade negotiations. Instead, it was a marker of different groups' discontent with globalization as well as the role of states in promoting trade at the perceived expense of labor, social, and environmental rights (Starr 2000; see also Summers 2001). The 1998 protests also coincided with the failure of the OECD to generate support for a new Multilateral Agreement on Investment (Piciotto and Mayne 1999; see also Kurtz 2002). At this time, David Korten (2001) published his bestselling book, *When Corporations Rule the World*, warning the public of the challenges of multinationals that were more powerful than nation states.

In the late 1990s, human rights and civil rights lawyers began to challenge corporate involvement in human rights violations, using the federal Alien Tort Statute to mount cases in US courts, challenging the conduct of multinationals in their overseas investments (Ramasastry 2002). Three key lawsuits were brought against extractive firms: Royal-Dutch Shell, Unocal, and Texaco (Gallagher 2010). Each lawsuit alleged that multinational corporations had been complicit in human rights abuses of partner governments in relation to a key investment. In the United Kingdom, a private law firm mounted similar cases using a theory of direct parent liability and traditional tort claims. These lawsuits highlighted the challenge of access to remedy for victims of human rights abuses in states that were either unwilling or unable to protect their citizens and provide them with a viable avenue for access to a judicial remedy (Meeran 2000).

At the same time that human rights lawyers focused on contemporary human rights problems, a separate group of lawyers (mainly from plaintiff-side tort litigation firms) brought claims against Swiss banks, European insurers, and German corporations with respect to their involvement in World War II (Bazyler 2000, 2003). Holocaust victims and heirs of those who were killed sought restitution for their labor, compensation for unpaid insurance claims, or access to dormant Swiss bank accounts.

The Holocaust-era cases were brought at the same time as the other corporate Alien Tort Statute (ATS) cases but were litigated by lawyers with no expertise in international human litigation. These cases were significant because they highlighted the role of corporations in World War II. While individuals were prosecuted at Nuremberg, this reminded the public that the individuals included German industrialists. There was also parallel litigation

focused on Japanese companies brought by prisoners of war relating to forced labor in Japanese mines (Ramasastry 2002).

At the same time that lawyers were battling in court for access to remedy, other human rights nongovernmental organizations (NGOs) drew attention to the role of companies in conflict zones. Global Witness and Amnesty International, for example, highlighted the role of the diamond industry in fueling a bloody armed conflict in Sierra Leone through the purchase of so-called conflict diamonds (UN General Assembly 2001). This led to the creation of the Kimberley Process, a multistakeholder process involving governments and the diamond industry meant to create clean supply chains.

During this same period, the apparel and footwear industry also came under public scrutiny. Nike and Wal-Mart, for example, were revealed to have child labor in their supply chains (Hemphill 1999; see also Bartley and Child 2011). Nike was also reported to use factories in Southeast Asia with very poor health and safety conditions (Greenhouse 1997). The GAP was revealed to have contracted with factories in the Mariana Islands where adults toiled in deplorable sweatshop conditions (E. G. Smith 2004). President Clinton convened the Apparel Industry Partnership with major apparel companies at the table in reaction to the growing controversy over sweatshops in global supply chains. From this convening, the Fair Labor Association (FLA) was created to monitor factory standards and worker rights. The FLA was yet another multistakeholder initiative, bringing together industry and human rights groups to administer a code of conduct relating to worker health and safety in factories in the supply chain (O'Rourke 2003).

The tech sector was also under scrutiny. Yahoo and other Internet giants were linked to human rights abuses in China. Yahoo, in particular, was sued under the Alien Tort Statute when it was revealed that it had handed over subscriber information to the Chinese government, which led to the imprisonment and torture of prominent Chinese dissidents (Poe 2009). Three major Internet companies—Google, Microsoft, and Yahoo—banded together to form the Global Network Initiative (GNI), yet another multistakeholder initiative (MSI) that brought together members of civil society and industry to administer a code of conduct focused on how companies should address government requests for customer data or censorship that violate human rights including rights of privacy and free expression (Brown and Korff 2012).

Scholars began to write about this, focusing on business and human rights as a new field of inquiry. The first edited volumes and law review articles appeared in the late 1990s, heralding a new trend in human rights legal scholarship (Ratner 2001; see also Kamminga and Zia-Zarifi 2000; Addo 1999). The first generation of BHR scholarship was generated by human rights legal scholars rather than business ethicists or scholars within the CSR field.

None of these actions by itself was the catalyst of the business and human rights movement but these events all coalesced to provide a consistent image: victims in the Global South suffering as a result of corporate involvement with repressive regimes, conflict zones, or states with weak governance. In many of these cases, the US government or the EU stepped in to encourage companies and human rights organizations to band together to form a sector-specific MSI to address a particular human rights dilemma in lieu of government regulation (Utting 2002; see also O'Rourke 2006).

BHR at this stage was not a true "movement" but more a set of emerging crises where companies and governments scrambled to respond once their connections to human rights abuses were made public. The focus on the human rights governance gaps provided an impetus to scholars and policymakers to turn their attention to more universal approaches

to corporate conduct and to ways to hold corporations accountable and legally responsible for the negative impacts they created or to which they contributed.

BHR and the Move Towards a Universal Yardstick

In each of the above situations, governments and companies tried to craft solutions to specific conflicts or problems, settling lawsuits, forming commissions, or multistakeholder initiatives within a sector. Each crisis bespoke a partial solution rather than a larger effort to address the issue of business impact on human rights.

The UN Global Compact was the first initiative to try and address corporate responsibility in a broader context. The Global Compact was initiated by UN Secretary General Kofi Annan at the Davos World Economic Forum in January 1999. Annan challenged the international business community to help the United Nations implement universal values in the areas of human rights, environment, and labor.

Georg Kell, the Executive Director of the Compact, noted in 1999 that "[c]ivil society actors are increasingly targeting TNCs and the trading system as leverage by means of which to pursue broader social and environmental concerns. We contend that this dynamic interplay provides great potential for attempts to bridge the imbalance between economic globalization and the governance structures that it has left behind" (Kell and Ruggie 1999: para. 7). As such, the Global Compact represented a concrete move in response to critiques of globalization and corporate influence in international markets.

The UN Global Compact with its nine (now 10) principles asked companies to measure their conduct against key international human rights law, namely, the Universal Declaration of Human Rights, International Labor Organization (ILO) Core Labor Standards, and the two major covenants—the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Cultural and Social Rights (ICECSR) (UN Global Compact 2004). Companies were asked via Principle 1 to avoid being complicit in human rights violations. And so a new standard emerged of companies benchmarking their conduct against international law—no longer just local law or by codes of conduct.

The UN Global Compact was a first cautious step; it asked companies to make a public pledge in a program administered by the United Nations. The Global Compact is an example an initiative where CSR and BHR have overlapped like two concentric circles. The compact, of course, was voluntary and is typically categorized as a CSR initiative. Companies were and are asked to report on their progress in terms of adherence to the principles by filing an annual Communications on Progress (COP) report. As part of a COP, participating companies must self-report on their adherence to various best practices, but these reports are not audited (UN Global Compact FAQs 2015).

But beyond that, the Global Compact has no real "teeth"; companies are not kicked out if they are sued, found liable or in other ways implicated in human rights violations. They could be delisted for failing to submit a COP but can easily be reinstated by filing. The Global Compact, nonetheless, has shifted the normative landscape in a significant way by creating a universal measurement tool for corporate conduct—international human rights treaties. As such, it forms an integral part of the history of BHR.

At the same time that the UN launched the Global Compact, Professor David Weissbrodt, a noted human rights professor from the University of Minnesota, led a separate effort at the UN Human Rights Commission to create a set of "Norms" that would govern the conduct of transnational corporations with respect to human rights. In 2003, the UN Sub-Commission on the Promotion and Protection of Human Rights (the precursor to the UN Human Rights Council) issued for comment its *Draft Norms on the Responsibilities of*

Transnational Corporations and Other Business Enterprises with Regard to Human Rights (Draft Norms) (2003). The Draft Norms represented a restatement of existing human rights obligations, found in diverse treaties, and an application of those principles to corporations (Weissbrodt and Kruger 2003). Some scholars and commentators have described the Norms as a first attempt at one united document, rather than a piecemeal approach to CSR and human rights (Kinley, Nolan, and Zerial 2007: 33).

The Draft Norms stated that virtually every human right gives rise to a wide range of duties on virtually every corporation. Although neither the Sub-Commission nor the Commission had the authority to make the Draft Norms legally binding, if adopted by the Commission, they were meant to become the basis for a later binding instrument or to become a restatement of customary international law in the making (Gelfland 2005; see also Weissbrodt and Kruger 2003: 913–914). The Draft Norms were controversial. They had not been "negotiated" by states but rather represented a document prepared by academic experts. As such, the private sector viewed this as a disguised treaty process. The Draft Norms also referred to a large and daunting list of treaties by which companies were meant to assess their conduct.[7]

The Norms were eventually tabled after drawing criticism from business and from developing states (Sutherland 2010).[8] But with the Global Compact, the Norms, while not explicitly binding, measured corporate conduct against a set of international treaties. One again, the focus was on the law rather than purely voluntary and self-regulatory principles. Critics of the Norms viewed them as too prescriptive.

The Draft Norms, while nonbinding, were crafted with the aspiration that they aim to extend human rights obligations to companies as well as states. The preamble recognized that "even though States have the primary responsibility to promote, secure the fulfillment of, respect, ensure respect of and protect human rights, transnational corporations and other business enterprises, as organs of society, are also responsible for promoting and securing the human rights set forth in the [UN] Universal Declaration of Human Rights" (Draft Norms 2003: Preamble para. 3). The Draft Norms also stated as an objective that every effort be made that the norms be generally known and respected.

With the demise of the Draft Norms, in 2005, the UN Secretary General tapped Professor John Ruggie, the architect of the Global Compact, to serve as the Special Representative to the Secretary General on Business and Human Rights, to map the existing landscape of business obligations in terms of human rights.[11] His extensive and multiyear consultations led in 2011 to the UN Human Rights Council unanimously endorsing a new document, the *UN Guiding Principles on Business and Human Rights and its Three Pillars of Protect, Respect and Remedy*.

The UN Guiding Principles for Business and Human Rights (UNGPs) are an important articulation of the essence of business and human rights. It is striking, however, that the UNGPs make no reference to CSR or social responsibility. The introduction states: "The root cause of the business and human rights predicament today lies in the governance gaps created by globalization—between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge" (Ruggie 2008: 3).

The framework rests on differentiated but complementary responsibilities. The UNGPs provide a useful architecture for BHR. It has three pillars that represent key precepts: Pillar I is the state duty to protect against human rights abuses by third parties, including business; Pillar II is the corporate responsibility to respect human rights; and Pillar III calls for states

and the private sector to provide victims with access to effective remedies, judicial and nonjudicial (Ruggie 2011).

There are various aspects of the UNGPs that are grounded in law and the need for states to use both coercive power as well as incentives to promote corporate respect for human rights. The state duty to protect lies at the very core of the international human rights regime and underscores the state role as a duty bearer. States, as the UNGPs set forth, have "strong policy reasons to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State's own reputation" (Ruggie 2011: para. 2).

The UNGPs focus on the state's duty to include enforcing existing laws but, as appropriate, to update legislation and to regulate in new areas as required. The Commentary to Principle 3 (General state and Regulatory Functions) states that:

> States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider *a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights.*
>
> The failure to enforce existing laws that directly or indirectly regulate business respect for human rights is often a significant legal gap in State practice. Such laws might range from non-discrimination and labor laws to environmental, property, privacy and anti-bribery laws. Therefore, it is important for States to consider whether such laws are currently being enforced effectively, and if not, why this is the case and what measures may reasonably correct the situation.
>
> It is equally important for States to review whether these laws provide the necessary coverage in light of evolving circumstances and whether, together with relevant policies, they provide an environment conducive to business respect for human rights. For example, greater clarity in some areas of law and policy, such as those governing access to land, including entitlements in relation to ownership or use of land, is often necessary to protect both rights-holders and business enterprises. (Ruggie 2011: para. 3, emphasis added)

Thus, the UNGPs are an important articulation of BHR because they underscore the role of the state as a regulator and enforcer of laws. BHR is a broader construct than CSR as it contemplates an explicit and essential role for the state. BHR focuses first and foremost on the role of governments in supervising their corporate citizens—not just lauding them —both at home and, as appropriate, abroad. Thus, the State Duty, calls for governments to use a smart mix of incentives, regulation, and other voluntary initiatives as a means to ensure that companies which operate under a particular national flag (e.g., through domicile, headquartering, or licensing) respect human rights (Mares 2010).

CSR is focused, by contrast, on company decision making, making corporations actors which need to address their role in society and on engagement with communities and stakeholders. CSR, hence, focuses on corporate governance and decision making. Governments can nudge companies to engage in CSR by lauding their efforts, or giving them special commendations for good works. The UNGPs also see a role for states in regulating how companies engage in CSR through regulations aimed at reporting and disclosure of human rights due diligence and of their findings. The Commentary to Principle 3 states:

> Communication by business enterprises on how they address their human rights impacts can range from informal engagement with affected stakeholders to formal public reporting. *State encouragement of, or where appropriate requirements for, such communications are important in fostering respect for human rights by business enterprises.* Incentives to communicate adequate information could include provisions to give weight to such self-reporting in the event of any judicial or administrative proceeding. *A requirement to communicate can be particularly appropriate where the nature of business operations or operating contexts pose a significant risk to human rights. Policies or laws in this area can usefully clarify what and how businesses should communicate, helping to ensure both the accessibility and accuracy of communications.*
>
> Any stipulation of what would constitute adequate communication should take into account risks that it may pose to the safety and security of individuals and facilities; legitimate requirements of commercial confidentiality; and variations in companies' size and structures.
>
> Financial reporting requirements should clarify that human rights impacts in some instances may be "material" or "significant" to the economic performance of the business enterprise. (Ruggie 2011: para. 3, emphasis added)

While the UNGPs do call for states to remain active as lawmakers and law enforcers, the framework stops short of saying that states have a right to legislate with extraterritorial effect. Professor Ruggie's preliminary 2007 report suggests that international human rights law is ambiguous in this regard. The report notes that human rights treaties neither require states to exercise extraterritorial jurisdiction over corporate human rights abuses nor prohibit them from doing so (Ruggie 2007: 822).

That is, a state may choose to require corporations (domiciled in the state's jurisdiction) to abide by certain standards regardless of the country in which the corporation is operating. For example, the antibribery provisions of the United States' Foreign Corrupt Practices Act of 1977 make it unlawful for a US national, and certain foreign issuers of securities, to make a payment to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person whether such action occurs within or outside of the United States.

The second aspect of the UNGPs grounded in law is Pillar II and the corporate responsibility to respect human rights. It is true that Pillar II is nonbinding; companies are meant to respect human rights in their worldwide operations. *But Pillar I is meant to ensure that governments act to reinforce this corporate respect.* This is a core distinction between CSR and BHR, with the focus on the state as the enforcer and promoter of human rights.

Corporate respect is meant to also focus on a key set of human rights treaties—those same treaties identified in the UN Global Compact. These key treaties are meant to guide company action and, as such, raise the standard. Before, the standard for transnational conduct is often compliance with local law. The UNGPs ask companies to adhere to a universal standard in their operations—thus moving beyond local law—hence a theoretical race to the top (Ruggie 2011: para. 17).

Principle 12, the responsibility of business enterprises to respect human rights, refers to "internationally recognized human rights—understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labor Organization" (Ruggie 2011: para. 12). The Commentary

further states that an authoritative list of relevant human rights is set forth in the ILO Conventions as well as the ICCPR and the ICECSR—the two treaties that embody the rights in the Universal Bill of Human Rights.

The third innovation in the UNGPs related to the legal is the focus on human rights due diligence. The UNGPs ask companies to manifest their respect via risk assessment in the form of an ongoing process referred to as human rights due diligence. This process is not meant to be a one-time look at company operations but a continuous process of identifying risks of companies that may cause or contribute to adverse human rights impacts. Due diligence helps them to identify and prevent harms but, more importantly, to provide access to remedy. Human Rights due diligence provides companies with a process by which to assess corporate conduct against a universal set of rights. This takes us out of a more á la carte framework or piecemeal approach. Companies are meant to engage in an ongoing and iterative process to assess conduct against a common set of rights. Human rights due diligence is not without its critics, however, as some see it as too weak of a measure to hold companies accountable for their wrongdoings.

Finally, the third pillar—access to remedy—brings us to the key issue raised in the 1990s, that victims in developing countries may lack access to remedy. Pillar III calls for states to provide robust access to judicial remedy and for companies and states to also provide for nonjudicial mechanisms as well. The Commentary to Principle 25 makes it clear that "Unless States take appropriate steps to investigate, punish and redress business-related human rights abuses when they do occur, the State duty to protect can be rendered weak or even meaningless" (Ruggie 2011: para. 25).

In sum, the UNGPs, as a current articulation of BHR theory, provides a common language and baseline. States commit to act; fostering corporate respect is an obligation for governments. Second, businesses are exhorted not to just do the right thing—or even to focus on labor or social rights—but instead are asked to assess business operations in light of key human rights treaties. Finally, the emphasis of the UNGPs and BHR more broadly is not on companies behaving well but on companies doing no harm (as measured by universal treaties, not by local laws). When companies have contributed to or caused harm, the UNGPs and BHR ensure that victims have access to a proper remedy.

The UNGPs, while not law, are squarely grounded in law. State duties, respecting key human rights treaties, and providing access to state-sponsored judicial and nonjudicial remedy all relate to use of formal law and of formal institutions as a key part of closing the gap.[10] Commentators have taken issue with the UNGPs in terms of achieving key objectives in closing governance gaps or in providing greater accountability, but the impetus for the initiative was corporate accountability—albeit through a mixture of public and private governance measures (Ruggie 2013). BHR differs from CSR in its aim of (1) a universal human rights yardstick for all business concerns, (2) a renewed emphasis of a proactive role for the state, and (3) enhanced access to remedy for victims of human rights abuses linked to corporate conduct.

Scholars have critiqued this dichotomy between Pillar I and Pillar II, noting that Ruggie has focused the domain of corporate involvement with human rights on the negative obligation to refrain from human rights harms rather than on the positive obligation to facilitate and promote the realization of human rights (Wettstein 2012). States are often ill placed, some argue, to be the primary enforcers and protectors, and companies can play an important role in doing so as well (Bradford 2012: 271–272).[11] Companies, in some places, supplant the state in terms of dominance and impact or, at least, have influence over the state that can lead to advocacy and change.

And this is where, Wettstein argues, BHR could actually borrow from CSR in terms of creating obligations or expectations that companies play a stronger role in the promotion of

human rights—in positive obligations. But, for the time being, BHR in its dominant form focuses on the negative formulation of companies doing no harm.

The Road to Accountability and the Quest for a Treaty

By 2013, a debate was underway among governments and within the human rights community (International Commission of Jurists 2014).[12] While some governments, businesses, and civil society representatives contend that implementation of the UNGPs is still in its infancy, critics have argued that the UNGPs are inherently weak and will not provide meaningful accountability and access to remedy (Blitt 2012). A more effective tool, they argued, was needed in the form of binding global regulation.

There is, for example, widespread recognition that Pillar III of the Guiding Principles—access to effective judicial and nonjudicial remedies—does not seem to have made meaningful progress. Daunting legal and practical obstacles continue to thwart access to justice for parties impacted by corporate involvement in human rights abuses, especially in the transnational context (Zerk 2014; see also Skinner, McCorquodale, and De Schutter 2013).[13] Indeed, in some respects, notably in the United States and Britain, access to judicial remedies for human rights violations involving business has actually been cut back since the adoption of the Guiding Principles.[14]

In September 2013, Ecuador, claiming the support of some 85 countries, urged the UN Human Rights Council to take up the issue of a legally binding treaty on business and human rights (Business and Human Rights Resource Centre 2014). In November 2013, civil society groups meeting in Bangkok, Thailand, issued a Joint Statement echoing the call (People's Forum on Human Rights and Business 2013). More than 600 civil society groups have now reportedly joined the statement (International Federation of Human Rights and ESCR-Net 2015).

In June 2014, as noted above, the UN Human Rights Council decided to establish an Intergovernmental Working Group "to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises" (UN Human Rights Council 2014a: para. 9; see also Business and Human Rights Resource Center 2014). Led by Ecuador and South Africa, the initiative was supported by a plurality of only 20 of the 47 member states of the Council. Fourteen States opposed and 13 abstained. All states voting in favor were from Africa or Asia, except for Russia, Cuba, and Venezuela. The opposing states included all European States on the Council (except Russia), plus the United States, Japan, and the Republic of Korea. The abstentions included four major Latin American economies (Brazil, Mexico, Argentina, and Peru), three African States, three Gulf States, and one Asian State. The new treaty process is meant to commence in July 2015.

Meanwhile, the process of implementing the UN Guiding Principles continues. In June 2014, a few days after voting on the controversial resolution on a treaty, the Council adopted a second resolution by consensus (UN Human Rights Council 2014a). This resolution extends the mandate of the expert Working Group and urges states to adopt National Action Plans (NAPs) or similar frameworks. It also asks the UN High Commissioner on Human Rights to continue research on "domestic law remedies to address corporate involvement in gross human rights abuses" and calls upon businesses to continue to meet their responsibility to respect human rights. Thus, as the quest for accountability continues, the BHR movement has still defined itself as one focused on corporate accountability and an active role for states in regulating and overseeing their corporate citizens—be it in the form of NAPs or the alternative of a binding international treaty.

The BHR movement now has two key strands. The new treaty initiative marks a square focus on accountability and binding regulation. As the treaty process begins, the UNGPs currently remain the key framework by which states, businesses, and civil society are meant to act with respect to a quest for closing governance gaps and remedying corporate harms. For some, this framework is flawed and does not serve as a substitute for a larger treaty-based requirement, as discussed above (Human Rights Watch 2011; see also Shetty 2015).

The BHR movement is still relatively young, and the implementation of the UNGPs is in an early phase. With the advent of the UNGPs, states are starting to examine discrete human rights impacts caused by business activity. As such, two phenomena are occurring. First, home states are starting to enact legislation addressing the human rights impacts of their corporations, including their TNCs (Ramasastry 2013). Secondly, other states are then looking to states that are "first movers" and attempting to replicate their regulation. Policymakers are beginning to see the evolution of governance norms in the business and human rights arena. These norms are focused on regulations that prohibit specific corporate conduct as a means of preventing harm in areas such as illegal logging, conflict minerals, and human trafficking. Thus, these examples mainly offer regulatory prescriptions to address harm, focused on either human rights due diligence and/or disclosure and transparency of how companies policy their supply chains to prevent specific human rights abuses (Ramasastry 2013).

NGOs are playing a key role in these new legislative campaigns. By forging coalitions and working across jurisdictions, such NGOs become norm entrepreneurs, moving from one state to the next to try and close the human rights governance gap. NGOs have had an opportunity to move a legislative/regulatory agenda forward in multiple jurisdictions connected to the focus on Pillar I and the State Duty to Protect (Ruggie 2015, forthcoming; see also Shawki 2011).[15]

The UNGPs have provided a focal point by which civil society has campaigned for national action in the BHR arena. Such national regulation may provide the state practice that will provide the basis for future treaty-based requirements. The UN Human Rights Council has encouraged all states to adopt NAPs to implement the UNGPs (UN Human Rights Council 2014b). To date only a handful of states have done so,[16] although another dozen or more are currently in the process of developing Plans (OHCHR, 2015b), including the United States (US Department of State 2015). In addition, the UN Working Group on Business and Human Rights, which consists of five experts, has published detailed guidance on both the content of NAPs and the process by which they should be developed (UN Working Group on Business and Human Rights 2014).

The Working Group's Guidance focuses on Pillar I and the State Duty to Protect and provides a nonexhaustive list of issues that states should evaluate and act on, focusing on how states can use a smart mix of voluntary and regulatory measures to ensure that companies within their jurisdiction respect human rights, and also that victims have better access to remedies (UN Working Group 2014). The Danish Institute for Human Rights (a national human rights institution) and the International Corporate Accountability Roundtable have developed a toolkit to aid states and civil society with the development of NAPs (Danish Institute For Human Rights and International Corporate Accountability Roundtable 2014).

CSR and BHR—Convergence or Divergence?

When it comes to the large frames of public discourse, CSR and BHR appear to present divergent paths of discourse. This relates, as Wettstein indicates, to the differing theories

and foci of each discipline (2012). CSR can and does highlight the aspirational notions of corporate behavior and how companies can positively contribute to society. BHR, it seems, focuses more on the issue of negative rights—and corporations doing no harm—with the state acting as a watchdog to hold them accountable if they engage in egregious behavior and providing access to remedies for human rights harms. One human rights advocate call the current BHR a "caravan towards business respect for human rights," suggesting that the movement is one focused on accountability but also a journey now underway (Mehra 2015: para. 11). This is an important journey and an essential piece of closing the governance gap.

But there still remains an open question as to whether and how we can channel the strength of the CSR movement to encourage stronger corporate promotion and fulfillment of human rights. BHR, in its current form, does not encourage discussion of this objective. Wettstein has suggested a way forward where both CSR and BHR can learn from one another. The treaty-making process underway may be an opportunity for some vision of Wettstein's proposal where the two discourses can be merged so that "*such a conception does not stop with corporate obligations 'merely' to respect human rights, but includes an extended focus on proactive company involvement in the protection and realization of human rights. In other words, the integration of the two debates provides the space within which to formulate positive human rights obligations for corporations*" (Wettstein 2012: 739). Scholars such as David Bilchitz (2014) have also noted this possibility with reference to the treaty-making process in particular.

And indeed the UNGPs encourage states to use voluntary incentives as part of the smart mix to change corporate behavior but limits the discussion solely to generating more corporate respect for human rights (Ruggie 2011: Commentary para. 3). But can the state do more to recognize, to encourage, and possibly to reward companies that engage in positive human rights promotion and fulfillment? In the domestic context, we have ample examples of governments that enact legislation that provides incentives of benefits for companies that engage in positive investment in rights promotion. In the financial sector, community reinvestment legislation requires banks to provide access to financial services in areas that are historically underserved, revealing that access to credit and banking is an essential part of a right to life and economic well-being (Feltner and Bush 2004). Similarly, a government may link approval of construction permits to whether a business will build affordable housing as part of a major project (McKinsey Global Institute 2014).

India has recently engaged legislation to require companies to spend on CSR. The government's suggested CSR activities include measures to eradicate hunger, to promote education, environmental sustainability, protection of national heritage, and rural sports, and to contribute to the prime minister's relief fund. An estimated 6,000 companies will be required to participate. While this law may be a crude instrument, it illustrates the ability of states to think about the ways in which the private sector can engage in positive rights enhancement (Prasad 2014).

Such types of requirements focus on companies as having obligations that extend beyond doing no harm—but seeking affirmative solutions to promoting rights (in particular socioeconomic rights). These domestic requirements can become ones that transcend borders, such that companies may be asked to provide similar commitments in their operations in multiple jurisdictions, so that, for example, the right to housing would be addressed wherever a company secured a major contract—be it at home or in a host country.

If some scholars are correct, and we are experiencing the wane of state power, then policymakers and human rights advocates need to consider the role of corporations in lieu of the state in the area of human rights fulfillment (Backer 2005). This may be particularly

relevant in conflict zones, where states may be unable to govern or are not present in particular areas, leaving companies as critical actors in relation to human rights (Bennett 2002; see also Hansson 2013).

There are also some indications that governments will redefine CSR to encompass a more limited vision of BHR—in essence, constraining the corporate obligation to be one of respecting human rights but nothing more. The EU, for example, has redefined CSR in a way that moves the concept much closer to BHR. In its new communication, the European Commission has put forward a simpler definition of CSR as "*the responsibility of enterprises for their impacts on society*" (European Commission 2011b: 6) and outlines what an enterprise should do to meet that responsibility.

The Commission, in its recent CSR Report notes:

> Although there is no "one-size-fits-all" and for most small and medium-sized enterprises the CSR process remains informal, complying with legislation and collective agreements negotiated between social partners is the basic requirement for an enterprise to meet its social responsibility. Beyond that, enterprises should, in the Commission's view, have *a process in place to integrate social, environmental, ethical human rights and consumer concerns into their business operations and core strategy* in close cooperation with their stakeholders. (European Commission 2011a: para. 3, emphasis added)

This is the first time that the EU has made explicit recognition of *human rights and ethical considerations* in addition to social, environmental, and consumer considerations. As such the EU notes that governments can use regulation "to create an environment more conducive to enterprises voluntarily meeting their social responsibility" (European Commission 2011b: para. 5). This might be seen as invoking Pillar I and the State Duty to Protect.

The EU vision of CSR now incorporates human rights due diligence as part of a CSR strategy. Companies are meant "to identify, prevent and mitigate possible adverse impacts which enterprises may have on society" (European Commission 2011b: para. 8). The EU's new definition is consistent with internationally recognized CSR principles and guidelines, such as the OECD Guidelines for Multinational Enterprises, the International Standards Organization (ISO) 26000 Guidance Standard on Social Responsibility as well as the UNGPs. It should provide greater clarity for enterprises and contribute to greater global consistency in the expectations on business, regardless of where they operate.

As part of the EU's new CSR policy, the EU and its member states are engaging in activity that focuses on the state's role in *promoting respect for human rights.*

The new CSR policy put forward an action agenda for the period 2011–2014 that includes a better alignment of European and global approaches to CSR. The Commission highlights the OECD Guidelines for Multinational Enterprises, the ten principles of the UNGPs, the ILO Tri-Partite Declaration of Principles on Multinational Enterprises and Social Policy, and the ISO 26000 Standard. The Commission aims to monitor the commitments of large European enterprises to take account of internationally recognized guidelines and principles. It will also present a report on EU priorities for the implementation of the UN Guiding Principles on Business and Human Rights and develop human rights guidance for a limited number of industrial sectors and for small businesses.

While the EU references other standards in addition to the UNGPs, it appears that CSR now includes an explicit BHR component. Thus, CSR to some extent has become an umbrella for both voluntary company initiatives focused on environmental and social

issues *and a newfound obligation to respect human rights*. But, as Wettstein suggests, can advocates ask for more? For example, the same EU Guidance also notes that the EU will engage in the following:

- Improving self- and co-regulation processes: The Commission proposes work with business and other organizations to develop a code of good practice to guide the development of future self- and co-regulation initiatives;
- Enhancing market reward for CSR: This means leveraging EU policies in the fields of consumption, investment, and public procurement in order to promote market reward for responsible business conduct.

As the latter notes, the EU and other states where large corporations are headquartered could well consider enhancing market reward as a way of partnering with the private sector on moving beyond respect and actually encouraging or rewarding the protection and fulfillment of human rights.

CSR may remain focused on voluntarism and aspirational notions of how companies should engage with stakeholders. BHR may focus on the urgent need for victims to have accountability from corporations implicated in serious human rights abuses. But as Wettstein and others argue, there is still room for a larger connection and conversation. Companies have an important role to play that extends beyond respect for human rights, and we can see examples of this in both CSR initiatives as well as in state regulations that encourage, reward or require positive engagement in rights fulfillment by corporate actors.

Notes

1. The Government of Canada states that CSR is "is defined as the voluntary activities undertaken by a company to operate in an economic, social and environmentally sustainable manner" (Department of Foreign Affairs, Trade and Development Canada 2014: para. 1).
2. Buhmann argues that CSR itself may create soft law and that CSR may be understood to require companies to do more than the law requires. The focus, however, still remains on voluntarism.
3. Ruggie notes that "The second principle is the corporate responsibility to respect human rights—put simply, to do no harm" (2008: para. 25).
4. CSR codes often focus on a specific issue and even the Global Reporting initiative, the most widely adopted system for companies, is to report on their compliance in the area of social responsibility, leading to a focus only on labor rights and worker health and safety as part of its analysis.
5. The law of international investment refers to "home states" and "host states." Home states, refer to the state where an investor (often a TNC) is domiciled and has its legal place of incorporation, and a "host" state is the state where the investor has made its investment. See generally, Sornorajah (2010).
6. When the Guidelines were updated in 2011, a new chapter on human rights was added. It is consistent with the UN Guiding Principles and it reinforced procedures for addressing human rights violations.
7. The preamble stated:

   Realizing that transnational corporations and other business enterprises, their officers, and their workers are further obligated to respect generally recognized responsibilities and norms in United Nations treaties and other international instruments such as the Convention on the Prevention and Punishment of Genocide; the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment; the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the International

Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Rights of the Child; the four Geneva Conventions of 12 August 1949 and two Additional Protocols for the protection of victims of war; the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; the Rome Statute of the International Criminal Court; the United Nations Convention Against Transnational Organized Crime; the Convention on Biological Diversity; the International Convention on Civil Liability for Oil Pollution Damage; the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment; the Rio Declaration on the Environment and Development; the World Summit on Sustainable Development Plan of Implementation; the International Code of Marketing of Breast-milk Substitutes of the World Health Assembly (WHA); the Ethical Criteria for Medical Drug Promotion, and Health for All Policy for the twenty-first century of the World Health Organization (WHO); the United Nations Education, Scientific, and Cultural Organization Convention Against Discrimination in Education; conventions and recommendations of the International Labour Organization (ILO); the Convention and Protocol relating to the Status of Refugees; the African Charter on Human and Peoples' Rights; the American Convention on Human Rights; the European Convention on Human Rights; the Charter on Fundamental Rights of the European Union; the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development (OECD); and other instruments (UN Draft Norms 2003: preamble para. 4).

8. For a general discussion of critiques, see Philip Sutherland (2010: 309).
9. In 2005, the UN Commission on Human Rights adopted resolution E/CN.4/RES/2005/69 requesting the "Secretary-General to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises" (UN Human Rights Commission 2005: para. 1). The resolution mandated the Special Representative to do the following:

   1. To identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights;
   2. To elaborate on the role of states in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation;
   3. To research and clarify the implications for transnational corporations and other business enterprises of concepts such as "complicity" and "sphere of influence";
   4. To develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises;
   5. To compile a compendium of best practices of states and transnational corporations and other business enterprises.

10. "International human rights law provides a hard legal benchmark against which all companies can be judged and in accordance with they must act, regardless of whether it is convenient, profitable, or improve [sic] the company's reputation" (Bauer 2013).
11. "Both NGOs and corporations should view state regulatory regimes and law more generally as a backstop to their strategies: self-regulation has the potential to be much more effective at lower cost" (Bradford 2012: 271–272).
12. For a wide-ranging analysis of whether a treaty is needed, see International Commission of Jurists (2014).
13. The Office of the High Commissioner for Human Rights has commenced a large work plan focused on the access to remedy for gross human rights abuse (OHCHR 2015a).
14. In the 2013, the US Supreme Court ruled that overseas human rights violations may not be litigated in federal courts under the Alien Tort Statute except where they sufficiently "touch and concern" the United States (*Kiobel v. Royal Dutch Petroleum* 2013). Cutbacks in UK legal aid funding likewise threaten the ability of British law firms to pursue overseas human rights violations. See Michael Goldhaber (2013).

15. The International Corporate Accountability Roundtable (ICAR) is a coalition of leading global human rights organizations; its Steering Committee includes EarthRights International, Human Rights Watch, Human Rights First, Global Witness, and Amnesty International and has undertaken a variety of campaigns and initiatives to support national regulation of corporations in furtherance of the UNGPs. Another example of civil society coordination is found in the illegal logging area. See Forest Law Enforcement, Governance and Trade (2012).
16. The United Kingdom, Denmark, Finland, and the Netherlands. For an assessment of the initial four National Action Plans, see ICAR and ECCJ, Assessments of Existing National Action Plans on Business and Human Rights (2014).

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