

The Guiding Principles on Human Rights and Business – Implementation in conflict-affected countries

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Introduction

The UN Guiding Principles on Business and Human Rights (Guiding Principles) were formally adopted by the UN Human Rights Council in June 2011, which established a Working Group to oversee their dissemination and implementation, including embedding the Principles in global and national governance structures. The current task of the Working Group (WG), and of civil society and policy-making communities which are collaborating with the WG, is to translate the ambition and spirit of the Principles into concrete policy, processes and institutional arrangements to reshape the interaction between business and human rights.

This background paper serves two functions: to reflect on the implications of the Guiding Principles for conflict and peacebuilding, an area highlighted, but not fully developed to date, and to set out some of the challenges involved in integrating business and human rights into European Union policies which address conflict. The paper begins with an overview of the development of the UN Framework, and the provisions covering business in conflict-affected countries.

I Designing a New Normative Era: 'Protect, Respect and Remedy'

The Guiding Principles, often referred to as the Ruggie principles, are the result of six years of work by UN Special Representative John Ruggie, who was appointed by UN Secretary-General Kofi Annan in 2005: 'to identify and clarify standards of corporate responsibility and accountability regarding human rights; elaborate on state roles in regulating and adjudicating corporate activities; clarify concepts such as "complicity" and "sphere of influence"; develop methodologies for human rights impact assessments and consider state and corporate best practices' (SRSG 2009).

Ruggie's interim reports 2005-8 defined this as a governance challenge, meaning that the business impact on human rights is not just a matter of ethical concern, but constitutes a deep and potentially dangerous gap in global politics. The effect of a lack of accountability and redress for business behaviour provokes crises which are felt by individuals. Ruggie's solution was a framework based on three pillars: 'Protect, Respect and Remedy' (SRSG 2008).

1. The state duty to protect against human rights abuses by third parties, including business;
2. The corporate responsibility to respect human rights;
3. Improved access by victims to effective remedy, both judicial and non-judicial.

The UN Human Rights Council unanimously approved this Framework in 2008, and extended Ruggie's mandate until 2011 to cover its implementation and promotion.

The result of the second phase and extended mandate was the publication of the Guiding Principles in June 2011 which were endorsed unanimously by the Council. The bedrock of the Guiding Principles is that they do not attempt to privatize human rights protection, which remains a fundamental duty of States. However they articulate a business responsibility for respecting human rights which should be exercised through due diligence to foresee and deal with the impact of commercial operations. This constitutes an obligation over and above compliance with applicable laws, and is a minimum expectation society has of business conduct (Ruggie 2012). The third pillar requires States and companies to provide judicial remedy (in the case of the state), and non-judicial grievance mechanisms to deal with any abuses at an early opportunity, rather than face campaigns or lawsuits, and damage limitation measures.

Following endorsement of the Principles in 2011, a third phase is now underway which consists of embedding and raising awareness of them among the three core stakeholder constituencies identified – States, businesses and those affected by human rights abuses – as well as a wider public and civil society. This phase will comprise: (i) capacity building at national and local levels; (ii) addressing the challenge posed by the current incomplete and

flawed patchwork of non-judicial mechanisms available to handle claims of harms; and (iii) an annual international stock-taking of the Guiding Principles” functionality (SRSG 2011). The UN Human Rights Council will provide the main sponsor for these initiatives but the third phase is expected to be characterised by its multi-stakeholder dimension. Dissemination and embedding need to move beyond UN circles. The implementation phase creates an obligation on entities such as the European Union to assume responsibilities for both the geographic and thematic adoption and operationalisation of new standards and norms. Civil society will also be closely engaged.

The achievement of the first two phases of development has been to raise a debate about links between business and human rights, and attempt a shared understanding of the challenge of this agenda, and build a broad consensus among multiple stakeholders on the formula behind the Guiding Principles (SRSG 2011). This dialogic and collaborative approach will inform the implementation phase ahead.

Conflict applications of the Guiding Principles

The risk of gross human rights abuses is heightened in conflict-affected areas, and the Guiding Principles set out how States and business enterprises should together ensure that companies are not implicit in abuses in these circumstances. For example:

- Principle 7 details how States should ensure that businesses operating in conflict-affected areas do not commit or contribute to human rights abuses. The emphasis is on early intervention and mitigation, as well as a 'carrot and stick' approach of non-judicial penalties, but also assisting as well as constraining companies.
- The commentaries to Principles 12 and 21 refer to the responsibilities directly applicable to companies. They highlight that companies should be sensitive to human rights risks in conflict-affected areas, and that they have a duty to respect international humanitarian law.
- The commentary to Principle 23 deals with the risk of companies being complicit in gross human rights violations committed by other actors in conflict zones (such as security forces). This should be seen as a legal compliance issue, and companies should seek advice internally and externally.

The relationship between business and human rights is portrayed as part of both the problem and the solution in conflict-affected societies. The Ruggie framework assumes that ‘business enterprises are part of [the] global context and their actions and activities have the potential to contribute positively to global solutions’ (Working Group Report 2012 section II para 8). They can contribute to initiating crises and perpetuating their negative impacts. Respect for human rights is seen as a critical component in establishing sustainable forms of peace, particularly where conflicts are linked to land and the exploitation of scarce natural resources, such as minerals or water. Externally sourced private investment is essential to transition dynamics as countries move from conflict to peace, but can impact negatively on vulnerable people unless it is accompanied by adequate safeguards and checks in line with international human rights standards, such as the Guiding Principles. (UN Working Group Report 2012 Section II para 11).

Conflict applications formed part of the later work of the UN Special Representative. Ruggie has talked of a ‘negative symbiotic relationship’ between company involvement in human rights abuses and conflict zones -for example, mining companies in parts of the Democratic Republic of Congo. The Guiding Principles are intended to present a general normative framework to control this relationship rather than a detailed toolkit. In October 2009 a project on “Business and Human Rights in Conflict-affected Regions: The Role of States” was launched by the Special Representative to provide more concrete guidance, and suggest sector-specific benchmarks.

The decision to extend the Ruggie formula to conflict situations reflected the awareness that violence provides the setting for the most egregious human rights abuses, and that abuses

feed conflict. A focus on conflict settings amounts to a stress test of the Ruggie formula, which may not work as intended, under extreme conditions: States' ability to protect human rights is either undermined or deliberately abrogated in conflict; co-operation between governments, business and civil society is also likely to be more difficult with fewer, or broken, mechanisms for interaction. There will be weak judicial and enforcement capacities for redress. Moreover, even where States are willing and able to protect their citizens, there is a lack of clarity towards innovative and effective ways of dealing with business related abuses in conflict.

At the same time, Ruggie has referred to the financial risks to companies and the disruption to operations when communities oppose commercial operations. The cost/risk factor in conflict environments is likely to escalate, providing a further incentive for companies to examine mitigation strategies (although for some there will also be exploitation gains). Ruggie set up a series of role playing scenarios with States and companies and from these produced a companion report: "Business and human rights in conflict-affected regions: challenges and options towards State responses" submitted to the UN Human Rights Council in 2011 (SRSG 2011c). A key proposal was that, as host States are unable to fulfil their duty to protect citizens in conflict conditions, 'home' States, where companies are domiciled, also need to play an important role. Ruggie's prescription, in contrast to initiatives such as the OECD Guidelines, the Kimberley Process (on conflict diamonds), and the Voluntary Principles on Security and Human Rights, was to encourage constructive interaction between States and businesses, and a 'carrot and stick' approach by States, including rules requiring companies to implement a human rights/conflict sensitivity policy, the provision of public information about the human rights situation in a particular conflict area and 'white listing' cooperative enterprises for State procurement, investment, export credit and other transactions based on their due diligence policies and practices.

In addition to soft law proposals, an emerging aspect of the business and human rights agenda consists of clarifying for businesses and victims international legal standards, including defining where/when gross human rights abuses amount to international crimes. Moves by legislators in the US (The Dodd-Frank Act), the UK (Bribery and Corruption Act 2011) and the European Parliament to force companies to improve transparency, through for example publishing their payments to governments, signal an attempt to establish the principle of extra-territorial jurisdiction, and have done much to raise awareness among companies of new forms of responsibility and normative behaviour. However, there remain significant gaps in international human rights law in terms of creating binding obligations on companies. According to a recent study on legal obligations on European companies: 'targeted or detailed human rights and environmental protection through these areas of law constitutes the exception rather than the norm'. However, the same study notes that the EU and States do not always make full use of opportunities to constrain [] companies' operations beyond the EU (Augenstein 2012). The SRSG has suggested that the UN Human Rights Council might appoint an individual expert or a group of experts to advise or instigate an intergovernmental process to deal with legal implications of the business and human rights agenda and this will further impact on implementation of the Principles (SRSG 2011).

In applying the Guiding Principles to conflict situations, it may also be necessary to cast the responsibility net wider, to reflect a broader set of issues invoked by conflict. These include problems of political authority, where business impacts include support for illegitimate and abusive regimes. Even where companies are not acting egregiously, their intervention in fragile societies can cause unintended consequences, and change political dynamics (see for example Box 1).

These legitimacy issues are not dealt with adequately in either a human rights agenda or by 'conflict sensitivity' approaches.

BOX 1

In 2009 Italian carmaker Fiat completed a €700 million investment to take a majority stake in Serbia's largest industrial conglomerate Zastava, and to become the highest-profile foreign investor in the country. The investment conforms to a classic economic model of global business involvement in post-conflict transition. Fiat's attitude to Zastava plays down any other - social or political - perspective: it sees the investment in Serbia as a case of low-cost car production with collateral challenges such as environmental clean-up. The risk is that this approach understates and ignores implications of its engagement that are not economic. These challenges cannot be captured adequately by a human rights focus, particularly as there are no obvious abuses which Fiat has to deal with. However, one impact of the Fiat deal is that it changed Serbian politics and contributed to Serbia's transition to peace and democracy after the Balkan wars of the 1990s. The Zastava acquisition reinforced a view of Serbia as a normalised European (EU) country and the timing of the deal was engineered by politicians to help the pro-European party win the 2009 elections. The investment also created a powerful sense of expectations, with possible political repercussions on Serb attitudes to market economics and to EU membership, if they are not met. At another level, the investment has also aided the ambitions of local politicians in the city and region where Zastava is located, to push for decentralisation of the Serb constitution and for budgetary autonomy from Belgrade.

The language of 'due diligence' needs to encompass the possibility of causing this type of side effect. Similarly the idea of impact assessments referred to in the GP's could usefully be widened in the case of conflict situations to include specific elements such as legitimacy, and a broader human security, rather than only a human rights, perspective.

II EU Peacebuilding policy and the Ruggie Framework

The impact of the Guiding Principles in changing practices in peacebuilding and conflict resolution can be viewed in three dimensions:

1. In terms of where agency lies in conflict and post-conflict environments: Until now, state/peacebuilding has been dominated by the public sector, as the principal actor, in terms of institutions and process. The Guiding Principles create a 3- legged stool comprising States, commercial entities and individuals. In common with the UN Global Compact, the Principles co-opt all three into discussions about human rights, while also stressing the role of local communities as rights holders and providing them with an enhanced role in holding corporate interests accountable, in requiring transparency and assisting remedies. Conflict applications of the Ruggie formula raise the prospect that peacebuilding will also follow a tripartite dynamic: it opens a space to engage a broader constituency of actors, shift security from a predominantly elite policy domain, controlled by States, and enable more systematic inclusion of business into processes of deterring and preventing violence.
2. The Principles establish a discourse of responsibility and due diligence in preventing and protecting against human rights violations. While the Principles, like the Global Compact and other initiatives, are voluntary, they mandate a greater duty on companies, placing the onus on them to engage more proactively, to build human rights into their core activities, and to be aware of heightened risks of abuses occurring in conflict conditions. The concept of due diligence implies an increased level of activity to guard against adverse commercial impacts, and participate in securing peaceful outcomes. It is still unclear whether corporate responsibility will be framed in minimalist or maximal terms. Expectations of corporate behaviour and the baseline of corporate contributions to peacebuilding are poorly defined. Nonetheless the Principles represent a significant step in reducing the traditional distance between business operations and political violence and social dislocation.
3. The Principles reinforce the emerging paradigm of human security, by emphasising the security of individuals rather than only the interests of States. The discourse proposed by the Ruggie formula mirrors the Responsibility to Protect (R2P) norm, adopted by the UN, which makes the protection of civilians a prime concern in conflict situations, and individuals the key reference point in security debates. The prime relationship of transnational companies has

traditionally been with host country States and governing regimes, rather than with the individual. Recent years have seen confrontations between companies and communities, most visibly in the Niger delta and in Latin America. The 'Protect, Respect and Remedy' framework, and concepts such as responsibility and due diligence make explicit the direct link between local citizens, civil society and global business in conflict-affected societies, while including a State's commercial dealings in its responsibility to protect. This represents a substantive change of emphasis regarding the interactions and power relations between stakeholders in conflict settings. It provides a formal role for individuals through articulating a right of remedy and redress, whereas past initiatives have been largely silent on the position of individuals, and have seen business responsibility as a supply-sided exercise of (voluntary) agency by companies. Victims of abuse are no longer abstracted, they are co-constructors of a new system to administer human rights. In addition, the Principles encourage companies, States and communities to explore more creative possibilities to promote human rights, including being part of positive peacebuilding exercises and human-centred policies, rather than only engaging in damage limitation.

These aspects of the Guiding Principles resonate with the character of EU security and peacebuilding policies: a comprehensive, multi-stakeholder approach to conflict, encouraging prevention as well as crisis management; and human security. The EU's dialogic approach to peace and security, and creating structured dialogues to manage regional and thematic issues also chimes with the ethos behind the Guiding Principles, which is to co-opt rather than coerce. The EU appears likely to apply a 'smart mix' of voluntary and regulatory policy instruments to its implementation of the GPs, to reflect the double dynamic that businesses can aggravate conflict and social divisions, but can also apply their resources and influence to assist successful transitions from conflict (European Union 2011a).

The EU has taken steps to implement the Principles through co-ordinating them with existing initiatives such as the OECD Guidelines and using the network of Global Compact national contact points as a mechanism for diffusion and public debate. DG Enterprise and Industry and DG Employment, Social Affairs and Inclusion have invited Member States to draw up national plans and is working to develop practical guidance for Small and Medium Sized enterprises (SME's) as well as three 'pilot' business sectors, employment and recruitment companies, ICT and telecoms and oil and gas. Other EU initiatives include:

- The Danish presidency of 2012 organised a conference with stakeholders to examine how the Principles can be put into practice.
- The European Commission has developed a new strategy for Corporate Social Responsibility (2011-14) which commits the European Commission to publish a report on EU priorities for implementation of the Guiding Principles by the end of 2012.
- The Commission instituted a discussion with the other European institutions in 2011 on how to strengthen external policy on human rights and democracy, proposing action on delivery mechanisms, integrating policies, building partnerships, and speaking with one voice (European Union 2011 c). It promised a process of identifying and following best practices, and strengthening human rights, child protection and gender elements of its conflict prevention, crisis management and peace-building efforts.

It is clear however, that current EU policy on business and human rights fall short of an 'all of EU approach'. A preceding paragraph of the Commission's human rights strategy refers to the business and human rights agenda, but there is no attempt to link this aspect to conflict and peacebuilding activities. Similarly, although the human rights proposals include a commitment to embed further human rights dialogues on a country and regional basis, there is no mention of aligning these with discussions with the business community.

Across its institutions, the EU has wide-ranging oversight, regulatory and co-optive powers over European domiciled companies. The 'carrot and stick' array of tools vary in intensity from trade and Single Market issues where the EU is established as a primary collective actor, often with legal powers, to foreign and security policy where Member States retain sovereign

rights and where there is also a minimal footprint in regard to engagement with the private business sector. See Table 1 for (a non-exhaustive) illustration of EU institutional competences. Directorates such as DG Enterprise and Industry and DEVCO appear to be better placed to implement the Guiding Principles, as they possess more obvious entry points and levers over corporate actors. However, there are tensions between EU policy objectives on peacebuilding and policies for promoting economic and corporate interests abroad. Examples include the Raw Materials Initiative (RMI) and food and energy security strategies which are designed to ensure adequate inputs for European business and protection for European consumers. It is not clear how this can be integrated with ethical guidelines on resource exploitation in fragile societies. Another example is the anti-trust/cartel policy of DG Competition which tends to block efforts by firms to co-operate on governance and peacebuilding issues, to remove the competitive (dis)advantage of one firm applying ethical standards while its rivals do not.

Table 1: Corporate Controls. European Union oversight of business: sample sticks and carrots

DG Enterprise and Industry

- CSR – guidelines for responsible and sustainable business
- 'Europe 2020' – common strategies for economic growth
- Competitiveness and innovation measures
- R & D including research on protection of EU citizens against natural and man-made disasters
- Raw materials initiative (RMI)

DG Internal Market

- Single Market Act – customs, fraud, taxation
- Standardisation
- Financial regulations – corporate reporting requirements
- European Securities Market Agency - functioning of securities markets, and investor protection. E.g. Mineral company disclosure in prospectuses
- Information and statistics

DG Competition

- Merger approval
- Anti-trust

DG Environment

- EU law and penalties; Climate Change

DG Development

- Country reporting
- Privatisation
- Contracts for infrastructure and investments
- Food and energy security initiatives
- Instrument for Democracy and Human Rights

DG Agriculture, Fisheries, Food

- Pricing and standards
- Food safety

External Relations /Foreign and Security Policy

- **Regional Dialogues e.g.**
 - Joint Africa-EU Strategy -Conflict minerals initiatives; African Peer Review Mechanism
 - European Neighbourhood Policy
- **Comprehensive approach** e.g. Piracy off Horn of Africa
- **European Defence Agency** – defence contractors

DG Trade

- Sanctions
- Liberalisation agreements

The European External Action Service is the obvious EU institution to build integration and co-ordination between business and human rights and peacebuilding, yet the EEAS recently admitted that it has no structured dialogue and little sense of who exactly to engage with among businesses. Typically its interlocutors are industry federations, and its links with individual companies are less established. Guidance is also required as to what scale of enterprise it should aim discussions at – small, medium, large, or all three. Large European companies have been actively involved in testing some of the Ruggie proposals. For example, Unilever and Shell trialed the idea of “human rights due diligence” processes. Tesco set up a pilot site-level grievance mechanism in the Western Cape of South Africa for a network of fruit supplier farms. One avenue for further work is to replicate these co-operations between the EU and European business, both at policy-making level and in external missions.

III Challenges of integrating the GPs into EU conflict and peacebuilding policy

As the Danish presidency of 2012 remarked: 'the (Guiding) (P)rinciples will remain declarations of good intent unless proper and targeted implementation efforts are undertaken'.

Discussions about implementation focus mainly on mechanisms for accountability and transparency, and how to institutionalise the Ruggie framework at national, transnational and sub-national levels. However, a preliminary step is required to cement a shared understanding of the new agenda. Transparency is not a substitute for trust. The limited success of past initiatives in managing corporate impact in conflict zones, suggests that constituencies approach the issue in starkly different ways. Many corporate actors envisage the concept of 'responsibility to protect/respect' differently from civil society. Business tends to speak about corporate social responsibility (CSR) in terms of an optional adjunct to its commercial activities, and a form of voluntary philanthropy. The term 'risk' raises the question of 'to whom?'

The UN Special Representative introduced the idea of due diligence in an effort to move human rights to the mainstream of companies' core operations, and to incorporate a new notion of risk into commercially motivated actors. However, this requires further clarification as to what it means and how due diligence would operate specifically under conflict conditions. Without agreement on appropriate terminology and essential concepts, actors will simply talk past each other without reaching common understandings. For example, due diligence processes are described by Ruggie as including assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. (Principle 17). Due diligence processes are also intended to: 'empower () companies to understand the nature and extent of their impacts and to work proactively in mitigating ... risks', (de la Vega et al 2012). Thus understanding and awareness are crucial components in developing effective due diligence mechanisms and require efforts to promote a rigorous articulation of concepts such as risk, responsibility and mitigation.

The key to the Ruggie proposals is interaction and mutual engagement by various actor groups – businesses, States and those affected by human rights abuses as well as human rights defenders and other members of civil society. The success of the Guiding Principles requires an effective dialogue between these stakeholders and the creation of a common discourse on human rights, firstly through reframing the language and articulation of responsibility for human rights, and secondly conducting an honest and open discussion about State-business relations. In conflict settings, companies often play down rather than expose the extent of their relationships with host country States, preferring to be seen as steering clear of politics. This is disingenuous as the political dimension of their presence is likely to be exaggerated under conflict conditions.

Civil society also needs to review its attitudes to working with business and develop an appropriate view of corporate responsibility and accountability. The gulf in mindsets and operating methods between these potential collaborators remains as wide as that between civilian activists and military personnel at the beginning of the expansion phase of common European security and defence policies in 2003. On the one hand, many NGOs remain suspicious of, and hostile towards business, and adopt confrontational methods in dealing with companies. On the other hand, populations in societies weakened by conflict and under-development are used to a subservient role *vis-à-vis* powerful global investors. Local populations are overly dependent on the 'benefits' in terms of jobs and investment that big corporations bring and loathe to hold them accountable for human rights behaviour. There is often no local culture of corporate social responsibility, which further limits the possibilities for redress and remedy under the Ruggie formula (see example Box 1).

Currently neither transnational companies (TNCs) nor local business actors are a systematic part of crisis management or conflict resolution. European foreign policy focuses on the

deployment of lawyers, administrators, as well as soldiers and policemen. TNC engagement in contemporary conflicts is instead often highly contested, with companies and investors pressured to withdraw altogether from conflict environments by NGO activism. If the Ruggie framework is to succeed, business needs to be brought into peacebuilding processes. The public sector dominance of crisis management and conflict resolution undermines the ability of conflict-affected regions to transition from violence and dependency. It ignores the potential of business to assist in that transition, and at the same time it makes it more difficult to implement the corporate responsibility functions of the Ruggie framework.

BOX 2

Veolia, the giant French environment and transport group has a number of operations in the Middle East. Although the company is a participant in and promoter of the UN Global Compact on corporate behaviour, its commitment is undermined by a disconnect between policy made at headquarters and what is done on the ground. The company's relationship with the Lebanese government is as a contractor rather than an employer or investor. Similarly a highly controversial building project in the West Bank has been defended by the company on the grounds that it is 'only' a sub-contractor. This coupled with the fact that the group's commitment to ethical norms is filtered through multiple management and organisational layers before they are operationalised, weakens its due diligence on human rights and other conflict issues, and the degree to which it is held accountable. Although Veolia staff receive occasional training in issues such as environmental standards, they are unaware of the UN Global Compact, to which the parent subscribes. In addition, the notion of corporate social responsibility (CSR) has no resonance in local culture. Civil society is not used to acting as a brake on corporate power, or to mobilising its resources for public good. There is a similar situation in Serbia with Fiat (see Box 2). The local population, with few exceptions, is conditioned to seeing outside investment as only a positive benefit and cannot contemplate the company acting wrongly, much less challenging its actions. In these circumstances, the feasibility of a regime of voluntary self-regulation, which is implicit in the Guiding Principles, is questionable.

In its discussions on implementing the Guiding Principles, the EU needs to underline its distinctive perspective on foreign and security policy which combines *inter alia* comprehensive strategies, multi-stakeholder forums, regionalism and a bottom-up approach.

It should align the Protect Respect and Remedy Framework with its constitutive values as a normative power in changing the nature of external relations. It has already taken a step in this direction with its statement redefining CSR in 2011. For example, its claim that: 'CSR offers a set of values on which to build a more cohesive society and on which to base the transition to a sustainable economic system', is also relevant in the case of conflict-affected societies (European Union 2011c). The EU needs to elaborate its security and peacebuilding policies in terms of shared values and interests which resonate with corporate actors. At present businesses do not see it as their role to contribute to foreign and security policy.

Conceptual coherence is one challenge. Another is delivering a consistent and coherent policy response, incorporating the GPs across different EU institutions and processes that are engaged in peacebuilding. Here there are immediate uncertainties about relevant competences: national authorities, intergovernmental institutions or the EU institutions? Only 15 out of 27 EU Member States have national policy frameworks to promote CSR for example.

Implementation of the Principles will need to take account of the EU as a legal space, including in the area of conflict and crisis management. Variations in the codification of human rights across different jurisdictions raise the need to accompany the Principles with extensive discussions about how they will function within international, national and EU law. Law firms are increasingly aware of the implications of the Guiding Principles and are likely to become an important resource for encouraging companies to engage with their provisions.

A joint civil society statement on the Guiding Principles in 2011 called on the UN to establish supporting legal instruments and a facility for the Special Representative to act as a standards regulator, checking on the implementation of the principles among States and businesses, and issuing regular reports. This type of provision could conceivably create a role for a human rights policeman, or Commissioner, something the EU may also consider. Punishments and remedial actions will also require non- and quasi- legal measures (Joint Civil Society Statement May 2011).

IV Recommendations

The EU has natural advantages in seeking to implement the Guiding Principles in regard to peacebuilding. As a space for dialogue and consensus, for multi-level and multi-stakeholder initiatives and the ability to combine different forms of persuasive and regulatory power, the EU can facilitate the embedding of the Principles among global, and particularly among European domiciled companies, and States who do business with them. Conflict applications remain the toughest test of the workability of the Principles, and despite its strong presence in conflict situations, the EU's lack of institutional coherence – particularly during the start-up of the post-Lisbon arrangements – will make introducing business and human rights standards to its conflict toolkit, a particularly challenging agenda. The following are some recommendations for discussion:

- Responsibility for the business and human rights agenda to be assigned to a sponsoring unit within the EEAS with a brief to co-ordinate with DG DEVCO (especially DEVCO Directorate C and D), DG Enterprise and Industry and DG Employment, Social Affairs and Inclusion on both business and human rights dossiers and CSR dossiers. Each geographic division of the EEAS should be tasked with this as an issue area. It should also be dealt with horizontally in Global and Multilateral Issues, with CPCC and CMPD division which answer to the High Representative for Foreign Affairs and Security Policy, including Integrated Strategic Planning and Mission Support, as well as the Division for Conflict Prevention, Peacebuilding and Mediation Instruments (K2).
- These units should take active steps in to involve business at dialogic, strategic and tactical levels, to ensure that conflict resolution programmes are not unwittingly undermined by TNCs.
- Information and resources, aimed at encouraging businesses to adopt best practices in human rights observance – including lessons learned, should be systematically provided by a units dedicated to lessons learning such as CMPD.A2.
- Training in conflict sensitivity, human rights and human security should be developed for senior managements as well as operatives on the ground, available through the European Security and Defence College programme. To enhance comprehensive and multilateral approaches, TNCs should be trained alongside other civilian and military actors in conflict zones. Business secondment as part of civilian response teams could be considered.
- Capacity building should be available to encourage companies to undertake impact audits based on the Guiding Principles and including human security ideas in conflict zones. This could also include research under the Commission's Framework funding programme, into conflict risk modelling and methods for impact assessments.
- Programmes to help civil society and local community awareness of the business and human rights agenda; to assist them cognitively as well as financially and legally in holding TNCs to account. This could be part of mission operations but also the European Neighbourhood Programme, country programming and the EU-Africa Strategy.
- Civil society also needs to organise its response to the Guiding Principles to provide transmission channels and points of contact with the EU peacebuilding institutions for implementing business-human rights standards.

Annex: References

Business Ethics 'Interview with John Ruggie', October 30 2011 <http://business-ethics.com/2011/10/30/8127-un-principles-on-business-and-human-rights-interview-with-john-ruggie/>

De la Vega, Connie, Amol Mehra, Alexandra Wong (2011) 'Holding Businesses Accountable for Human Rights Violations .Recent Developments and Next Steps', *Friedrich Ebert Stiftung International Policy Analysis*, July 2011

Augenstein, Daniel (2012) Study on the Legal Framework on Human Rights and the Environment applicable to European enterprises operating outside the European Union, Edinburgh University http://ec.europa.eu/enterprise/policies/sustainable-business/files/business-human-rights/101025_ec_study_final_report_en.pdf

European Union (2011a) 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' Brussels, 25 October, 2011 COM(2011) 681 final
(2011 c) Joint Communication To The European Parliament And The Council, 'Human Rights And Democracy At The Heart Of EU External Action –Towards A More Effective Approach', Brussels, 12 December 2011 COM(2011) 886 final

Joint civil society statement (2011) 'Advancing the global business and human rights agenda: Follow-up to the work of the Special Representative of the Secretary-General (SRSG) on human rights and transnational corporations and other business enterprises
May 2011 <http://www.business-humanrights.org/SpecialRepPortal/Home/UNactionfollowingendofmandate>

SRSG (2008) ' Protect, Respect and Remedy: a Framework for Business and Human Rights', 7 April 2008 <http://www.business-humanrights.org/SpecialRepPortal/Home/ReportstoUNHumanRightsCouncil/2008>
(2009) Introduction by the Special Representative, July 2009 <http://www.business-humanrights.org/SpecialRepPortal/Home/Introduction>

(2011a) Guiding Principles on Business and Human Rights <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples>

- (2011 b) Mandate of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises .Recommendations on Follow-up to the Mandate, 11 February 2011 <http://www.business-humanrights.org/SpecialRepPortal/Home/UNactionfollowingendofmandate>
- (2011c) Business and human rights in conflict-affected regions: challenges and options towards State responses

UNHRC [United Nations Human Rights Council] (2012a) Report of Working Group, 10 April 2012 <http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx>
(2012b) Twenty-first session

Agenda item 3 : 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development' , 21 September 2012