The UN Guiding Principles for the Corporate Legal Advisor:
Corporate Governance, Risk Management, and Professional Responsibility

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This paper discusses the practical implications of the United Nations Guiding Principles on Business and Human Rights²—particularly the business responsibility to respect human rights—for lawyers who advise companies on corporate governance and risk management. I was a member of the UN mandate team of Prof. John Ruggie, UN Special Representative of the Secretary-General for Business and Human Rights (“SRSG”). Along with my former teammates—including my colleagues at Shift, the nonprofit business and human rights practice that Prof. Ruggie now chairs—I helped the SRSG draft and shape his Guiding Principles on Business and Human Rights, endorsed last year by the UN Human Rights Council. I cannot speak for the SRSG, but as a former in-house corporate counsel,³ I want to share my insights on what the Guiding Principles mean for corporate lawyers.

The core responsibility of business under the UN Guiding Principles on Business and Human Rights is to respect human rights—i.e., to avoid infringing upon human rights and to address adverse human rights impacts with which they are involved, in their own activities and through their business relationships—and to adopt policies, processes, and systems that enable them to know and show that they are doing so. It has become an authoritative soft law standard based on a global consensus on the steps that

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¹ Shift is an independent, nonprofit center for business and human rights practice, staffed by a team that was centrally involved in shaping and writing the UN Guiding Principles on Business and Human Rights. See: www.shiftproject.org.
³ I retired as Deputy General Counsel for National Grid, an international electric and gas transmission and distribution company, in 2008.
business should take to respect internationally recognized human rights. However, this business responsibility does not exist in a law free zone, either, since many countries have already legislated compliance with human rights standards in such areas as labor, environment, antidiscrimination, etc. Moreover, managing a company’s risks of adverse human rights impacts is required as a matter of prudent corporate governance.⁴

To understand why this is so, it is first necessary to review the history and content of the Guiding Principles, which the SRSG has recounted in his various reports to the UN Human Rights Council.⁵

**History of the UN Guiding Principles**

The UN Human Rights Council’s unanimous endorsement of the Guiding Principles in June 2011 had its origins in a debate in the UN over the issue of corporate social responsibility, which had previously failed to achieve consensus. Early efforts extending from the 1970s to the early 1990s to devise a UN “code of conduct” for transnational corporations were ultimately unsuccessful for a range of political reasons.

Then in 2003, a UN subcommittee of experts drafted a set of “Norms on the Responsibilities of Transnational Companies.”⁶ Even though the subcommittee had no mandate to promulgate legally binding standards, the Norms were cast in the language of a human rights treaty and purported to restate existing international law. The Norms said that such law imposed legal duties directly on companies for the violations of human rights, and that businesses have essentially the same obligations as governments, not just to respect human rights, but also to promote and fulfill them. The Norms generated a bitter and divisive debate; a number of NGOs liked the Norms, business groups did not, governments did not support them, and ultimately the Commission on Human Rights (the predecessor of today’s Human Rights Council) did not accept them. In order to break the logjam, the

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Commission asked Secretary-General Kofi Annan to appoint a Special Representative to clarify standards and responsibilities with regard to business and human rights. He asked Prof. John Ruggie, his former Strategic Advisor at the UN, by then back in academia at Harvard Kennedy School, to take on the job.

The SRSG rejected the Norms as a basis for going forward. He did not agree that they constituted an accurate statement of international human rights law given that the Universal Declaration of Human Rights and other international conventions do not generally impose direct legal duties on companies.

**The “Protect, Respect, and Remedy” Framework and the Guiding Principles**

The SRSG and his team then engaged in extensive research and consultation, leading to his submission to the UN Human Rights Council in 2008 of the “Protect, Respect, and Remedy” Framework, and the submission of his implementing Guiding Principles in 2011. Throughout, the SRSG guided the process with a philosophy of “principled pragmatism”, which recognized that an authoritative framework on how to identify, prevent and address adverse human rights impacts by businesses could not await the decades that it typically takes for UN treaties on human rights to be negotiated, drafted, signed, ratified and become legally binding.

The SRSG’s work was grounded upon evidence-based research (legal and otherwise) on numerous subjects, and on feedback from multistakeholder consultations (nearly 50 were held around the world). Consensus was achieved in increments. There were no surprises, which created a sense of inevitability. To the greatest practical extent, the SRSG built upon known and accepted concepts and legal standards.

The SRSG’s first major product was the “Protect, Respect, and Remedy” Framework that the Human Rights Council welcomed in 2008. Its name signifies the Framework’s three independent yet mutually supporting pillars, which explained what government and business must do to meet their respective obligations and responsibilities. The SRSG’s second major product was the Guiding Principles, unanimously endorsed in 2011, which explained how businesses and governments should implement the Framework and provided a benchmark against which stakeholders could hold them to account.

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State Duty to Protect Human Rights

Under the first pillar of the Framework, the state duty to protect human rights, states have the legal obligation under existing international instruments—such as the Universal Declaration of Human Rights and the 1966 UN human rights Covenants, and subsequent UN human rights treaties—to protect human rights from infringements by third party actors, including businesses. States are to discharge this duty through policy, regulation, and adjudication. (Guiding Principles 1-10).

Corporate Responsibility to Respect Human Rights

Under the second pillar, the corporate responsibility to respect human rights (Guiding Principles 11-24), businesses have the responsibility not to infringe on human rights, either through their direct operations or through their business relationships, and to address negative impacts with which they are involved. Although generally, this is not a responsibility that international human rights conventions impose on companies directly, it draws upon the conventions for its content and does not replace them. Rather, the responsibility to respect provides process guidance on how companies can achieve the goals of these instruments.

The scope of the responsibility to respect covers all internationally recognized human rights, not just a preselected few, because the SRSG’s research revealed that there are no human rights that business cannot infringe upon. The responsibility requires businesses to know and show that they are respecting human rights through a process of due diligence, a familiar term to lawyers.

As will be discussed in more detail later, human rights due diligence is not a one-shot transactional process, but a dynamic, iterative, and ongoing process that draws upon established concepts of corporate governance and risk management, which are also familiar to corporate lawyers. It requires a high-level policy commitment to respect human rights, supported by operational level policies, training and incentive structures that embed the company’s commitment from the top of the organization to the bottom. It requires the assessment of company impacts on human rights,
including assessing them from the perspective of external stakeholders as well as the company. It requires integrated and coordinated actions in response to the findings from assessments to ensure that the company is addressing them coherently, across corporate silos. It requires monitoring of the effectiveness of the company’s efforts to address its human rights impacts. And it requires the company to communicate these efforts to affected stakeholders, and where appropriate, to report on them publicly, particularly where the impacts are severe.

Finally, the responsibility to respect requires businesses to cooperate in legitimate processes, including non-judicial grievance mechanisms, to remedy human rights harms that they caused or contributed to.

**Access to Effective Remedy**

Under the third pillar, the need for greater access to effective remedy (Guiding Principles 25-31), there are both state and business components. The obligation of states to provide a remedy follows naturally from their duty to protect human rights; they must take appropriate steps to ensure that victims of business-related human rights violations have access to adequate remedy, through judicial, administrative and legislative means, as appropriate. This means that, in addition to judicial mechanisms, states should provide for, or support, the use of non-judicial grievance mechanisms that meet specific effectiveness criteria, in order to provide a comprehensive state-based system to remedy business-related human rights abuse. These criteria require that such mechanisms be: legitimate, accessible, equitable, predictable, transparent, rights-compatible and a source of continuous learning.

Businesses also have a role to play in providing access to remedy as part of their responsibility to respect, as noted above. As part of this, they should provide for, or participate in, operational-level grievance mechanisms intended to identify and resolve issues promptly and to act as a feedback mechanism on the effectiveness of the company’s efforts to address its human rights impacts. Operational-level grievance mechanisms should meet the same effectiveness criteria as state-based non-judicial grievance mechanisms, but in addition, should be based on dialogue and engagement.

**Uptake of the Guiding Principles**
The Guiding Principles have received wide uptake, and are being used by governments, companies, investors, international standard-setting organizations, and in the advocacy of civil society. They are now reflected in the updated OECD Guidelines for Multinational Enterprises, the new ISO 26000 Guidance on Social Responsibility for companies, and the revised International Finance Committee Sustainability Framework and Performance Standards. They have received significant support from the international legal community, including the American Bar Association, which formally endorsed them.

In addition, governments are promulgating regulations and policies that incentivize and require companies to adopt systems and processes to enable them to respect human rights, as recent developments in the US demonstrate. For example, Section 1502 of the Dodd-Frank Act requires companies to conduct due diligence on their supply chain for products containing certain minerals from the Democratic Republic of the Congo, where mining has fueled armed conflict resulting in the deaths of millions. Section 1502 in turn has spawned California legislation regulating state procurement of products containing conflict minerals from companies in violation of Section 1502. The California Transparency in Supply Chains Act of 2010 requires large retail and manufacturing companies doing business in California to disclose the efforts they have taken to eliminate slavery and human trafficking from their supply chains.

Outside of the US, the European Commission has asked Shift and the Institute for Business and Human Rights to develop guidance on how three industries—employment and recruitment agencies, information and communication technologies (ICT), and oil and gas—can align their business with the UN Guiding Principles, pursuant to a recent communication from the EC on corporate social responsibility. Finally, one of the first tasks of the new Association of Southeast Asian Nations’

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13 European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A renewed EU strategy 2011-14 for Corporate Social
(ASEAN) Intergovernmental Commission on Human Rights is to conduct a baseline thematic study on business and human rights in the ASEAN region.\(^{14}\)

**The Responsibility to Respect as a Basic Tool of Corporate Governance and Risk Management**

The overall contours of the processes that enable a company to respect human rights should be familiar to lawyers who advise companies and their boards on corporate governance. As the UN Global Compact, Global Corporation Governance Forum and International Finance Corporation described in a 2009 report entitled *Corporate Governance: The Foundation for Corporate Citizenship and Sustainable Business*, the basic corporate governance responsibilities of corporate boards are: to ensure that stakeholder rights and interests are protected, that risks are managed, and that long-term business value is created. Meeting these goals requires, among other things, that a company develop effective internal processes to identify and address the risks of its impacts on human rights.\(^{15}\)

Since the risks of business-related human rights impacts can prevent achievement of these goals, businesses must manage them properly as a matter of corporate governance. Marty Lipton, of the leading US law firm Wachtel, Lipton, Rosen & Katz, has applauded the UN Guiding Principles as “sensible guidance” that “marries aspirations with practicability”, which “mobilizes the U.N.’s unique position to assure a level playing field, calling on every corporation in the world—regardless of size, location, or line of business, and whether public or private—to declare its business interest in preventing violations of human rights by the corporation.”\(^{16}\)

The responsibility to respect has antecedents in company internal controls and risk management systems, which have emerged as best company practices or which have been imposed externally, often by national law. Over time, those processes and programs have evolved to serve the dual purpose of managing risks to the company and risks to society.

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\(^{14}\) See official announcement at: [http://www.aseansec.org/26208.htm](http://www.aseansec.org/26208.htm).


This evolution occurred following a trio of business-related financial, environmental, and human rights crises in 1995. The first two were the Barings Bank collapse and Shell’s proposed sinking of the Brent Spar oil storage facility in the North Sea. Notably, the third was the execution by a military government of Ken Saro-Wiwa and other community and tribal leaders protesting the environmental impacts of Shell’s oil exploration in the Niger Delta; Shell’s alleged involvement in human rights abuses by the Nigerian military at this time is at issue in the Kiobel v. Shell case recently argued before the Supreme Court of the United States, discussed later. These crises, among others, elevated the importance of enterprise risk management within companies from the work of lower level risk analysts to the oversight of boards of directors.¹⁷

Enterprise risk management is a core feature of corporate governance standards that that have found their way into a variety of hard and soft law principles in different countries, including:

- The Committee of Sponsoring Organizations of the Treadway Commission (“COSO”), a private sector initiative of the accounting and auditor industry in the U.S., developed in 1992 what became a widely used system of internal controls to prevent financial fraud.¹⁸ The internal controls require an appropriate “tone at the top” of the organization, risk assessment, policies and procedures, information and communication, and measurement and monitoring. In 2004, COSO developed an Enterprise Risk Management System to enable companies to better assess and manage their risks.¹⁹
- Section 404 of the US Sarbanes-Oxley Act of 2002 (codified at 15 U.S.C. § 7262), which requires companies to use a recognized framework to provide assurance that they have an effective internal control system over financial reporting, and the recognition by US regulators that the COSO Enterprise Risk Management System provides such a framework.²⁰
- The French Autorité Des Marchés Financiers (AMF, the French counterpart to the US SEC), which requires publicly listed companies to include in their annual reports descriptions of their internal control and risk management systems.²¹
- The Dutch Corporate Governance Code of 2009, which identifies the maintenance of a suitable internal risk management and control system as a core responsibility of the company’s management board.²²

• The UK 1992 Cadbury Report, entitled Financial Aspects of Corporate Governance, and in particular the 1999 Turnbull Report on Internal Governance, which requires companies to state in their annual reports that they have an ongoing process to identify, evaluate, and manage risk, to summarize the effectiveness of their internal controls, and confirm that they have taken necessary actions to remedy any significant failings or weaknesses. If a company cannot make such disclosures, it must state that and explain why.  

• The Japanese Financial Instrument and Exchange Law of 2008, also known as “J-SOX”, which is that country’s legislation on internal control and financial reporting, draws upon COSO principles of corporate governance.

• The US Sentencing Guidelines for Organizational Defendants, created in 1993 and amended in 2004, which requires companies to exercise due diligence to prevent corporate crime and ensure the existence of ethical and legally compliant cultures in order to be eligible for more lenient sentences following criminal conviction.

• The Chancery Court of Delaware (the home incorporation state of most major US corporations), which in its 1996 Caremark decision, used the Sentencing Guidelines as the benchmark for determining whether a Board of Directors has met its fiduciary duty to its shareholders to have an effective compliance program to detect and prevent crime.

Other examples of measures in the business and human rights area have been identified through the SRSG’s corporate law tools mapping project, which involved over 20 leading law firms from around the world in exploring the implications of corporate and securities law in over 40 jurisdictions for the corporate responsibility to respect human rights.

The history of these corporate governance standards for risk management may predict the future arc of travel of the UN Guiding Principles, since many of those earlier standards subsequently transcended their original contexts to have wider reach. For example, the due diligence process set forth in the US Sentencing Guidelines, originally enacted as a guide for judges in sentencing corporate defendants, evolved by judicial decision-making into a fiduciary duty standard for corporate directors. Similarly, the COSO recommendations with respect to enterprise risk management, originally developed by private industry groups, were legislatively acknowledged as a standard to be followed by industries

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under Section 404 of the Sarbanes-Oxley Act. And in updating its Guidelines for Multinational Enterprises in 2011, the OECD not only mirrored the Guiding Principles’ concept of human rights due diligence in its new human rights chapter, but also applied it more broadly to its other chapters ranging from taxation to environment, to anticorruption, and to consumer protection. Given the extensive consultation and research that led to the UN Guiding Principles, their unanimous endorsement by the UN Human Rights Council, and their wide uptake, it is not unreasonable to assume that they will be increasingly reflected in the policies and laws of governments and judicial decision-making around the world.

Risk Management and External Stakeholder Impact

A critical feature of modern enterprise risk management is its focus on the need for companies to manage the impact of the business on external stakeholders. 28 For example, in 2009, the International Standards Organization promulgated a global risk management standard called ISO 31000 Risk Management—Principles and Guidelines. 29 It was created through the same international consultative process that led to the development of ISO 26000 in 2010, the new CSR guidance standard referred to earlier that reflects the UN “Protect, Respect, and Remedy” Framework. ISO 31000 provides that:

- Companies should understand both the internal and external context in which they must manage risk, including the company’s “relationships with, and perceptions and values of, external stakeholders.”
- In making risk decisions, companies should appreciate the “tolerance of the risks borne by parties other than the organization that benefits from the risk”.
- In assessing its risks, companies should take into account “social responsibility and the protection of the natural environment” as well as legal and regulatory requirements.”

Enterprise risk management has therefore been characterized as a “‘moral technology’” that embodies the potentials of “greater efficiency and coordination on the one hand, and of greater sensitivity to

Assessing The Costs of Adverse Human Rights Impacts

Yet despite the requirement that companies manage the risks of their external stakeholder impacts, they do not always appreciate the full scope of their risks. For example, in his 2010 Report to the UN Human Rights Council, the SRSG identified the risk that companies in the extractive sector were not fully accounting for, and therefore were not adequately managing, or disclosing to investors, the costs of conflict with local communities arising from exploration and production activities. Such activities have a potential for huge impacts on local environments, communities and economies, with consequent adverse human rights impacts. The SRSG identified a 2008 study of 190 oil and gas projects showing that the time to bring such projects on line had doubled in 10 years, causing significant delay costs. He highlighted a confidential follow-up study showing that non-technical risks accounted for more than half of the delay, of which external stakeholder risks constituted the largest category.31 Recently, Newmont Mining Company, the majority owner of the $4.8 billion Conga gold mine project in the Cajamarca region of northern Peru, calculated a USD $2.1 million per day initial cost impact resulting from the project’s suspension due to protests about water pollution by local residents in November of 2011.32

A 2011 study of the costs to extractive companies arising from community conflict, based on 40 in-depth, confidential interviews with mining executives and others involved in the industry, found further evidence that such costs were being incurred but not fully appreciated. According to the authors:

The most frequent costs identified by interviewees were the costs arising from lost productivity due to delay. The greatest costs were seen as the opportunity costs arising from the inability to pursue future projects and/or opportunities for expansion or for sale, as a result of company-

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30 Boatright, John, The Ethics of Risk Management in the Information Age, Bentley University Center for Business Ethics, Verizon Series Lecture, February 8, 2010.
community conflict. The costs cited by interviewees as the most often overlooked were those resulting from the additional staff time needed when conflicts arise or escalate.

In terms of lost productivity, the interviews confirmed that a major, world-class mining project with capital expenditure of between US$3-5 billion will suffer roughly US$20 million per week of delayed production in Net Present Value (NPV) terms. Even at the exploration stage, costs can accrue. In the case of a serious exploration project for a new mine, around US$10,000 will be lost every day of delay in terms of wages, idle machinery and so on.33 Although the study was confined to the extractive sector, it is not unreasonable to conclude that other large infrastructure projects outside the extractive industry have a similar potential to generate community conflict and costs.

The failure of companies to appreciate their risks of stakeholder impacts may result from the natural tendency of persons—confirmed by experiments and empirical studies—to overestimate their ability to accurately predict risk.34 For example, this bias might lead a mining company executive to assume that the chances of a several month long blockade of his or her plant by community members protesting environmental pollution of their water supply in a remote region are low because it hasn’t happened before.

**Risk Perspective and Risk Prioritization**

As the authors of the “Costs of Conflict” article cited above note, calculating the full cost of community conflict is not a simple cost-benefit analysis for the company. It also requires looking at costs from the perspective of affected stakeholders. This is why Guiding Principle 18 provides that the assessment of a company’s human rights impacts—the first step in human rights due diligence—must “[i]nvolve meaningful consultation with potentially affected groups and stakeholders”. It is not enough for companies to look at the negative impact on human rights solely from the company’s perspective. To do so assumes, incorrectly, that potential victims have the same tolerance for negative human rights

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impacts as the company. This is the so-called Ford Pinto fallacy; i.e., a company’s shareholders may be able to “tolerate” the economic consequences of a wrongful death suit from a poorly designed gas tank that explodes in a collision. But from the perspective of the driver and her children in the car, the consequences are intolerable. And this is the perspective from which a human rights impact must be assessed.

In addition, Guiding Principle 24 provides that prioritization of responses to actual and potential human rights impacts, where necessary, should be driven in the absence of specific legal guidance by the severity (including the irremediability) of those impacts. The purpose of such prioritization is to avoid the temptation for companies to place on the back-burner what are seen as low-probability, high-impact risks. A trio of recent corporate disasters—the global liquidity crisis of 2008, the Deepwater Horizon pipeline leak in the Gulf of Mexico in 2010, and the Fukushima nuclear power plant accident in 2011—highlights the dangers of that approach. Each had severe human rights impacts, and each was thought virtually impossible the year before it happened.

The Lawyer’s Role in Managing the Risk of Involvement in Gross Human Rights Abuses

The Guiding Principles provide specific guidance on how companies should manage the risks of the most severe impacts. Guiding Principle 23(c) says that companies should treat the risk of causing or contributing to gross human rights abuses—e.g., torture, death, slavery—as a legal compliance issue wherever they operate, even if the applicable legal standards may be unclear. In other words, a company should act on the prudent assumption that it may be held legally liable if it causes or contributes to such abuses, even if the applicable law is unclear.

For example, in Kiobel v. Shell, which was argued before the US Supreme Court on March 7, 2012, plaintiffs alleged that in the early 1990s, the defendant oil companies had enlisted the support of the Nigerian government to suppress environmental protests by residents against defendants’ oil and gas exploration and production activities in the Ogoni Region of Nigeria, and that members of the Nigerian military “shot and killed Ogoni residents and attacked Ogoni villages—beating, raping, and arresting residents and destroying or looting property—all with the assistance of defendants.” The case was argued before the US Supreme Court on March 7, 2012, on the question of whether corporations—as

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distinct from their directors, officers, and employees—could be sued in US Courts under the Alien Tort Statute, or “ATS” (codified at 28 U.S.C. § 1350) for their involvement in gross human rights abuses outside the US. Afterwards, the Court requested additional briefing and argument on the Statute’s extraterritorial reach.\(^{37}\)

The ATS has been a significant legal tool for victims seeking to hold international companies legally accountable for gross human rights abuses, but a discussion of the merits of the issues before the Court in \textit{Kiobel} is beyond the scope of this paper. However, ATS is not the only game in town. For example, in 2007, the SRSG’s identified an “expanding web of potential corporate liability for international crimes – imposed through national courts.”\(^{38}\) Countries forming part of this “emerging web” include the United Kingdom and The Netherlands, where the interaction between domestic law and those countries’ ratification of the Statute of the International Criminal Court leads to the potential imposition of criminal liability for genocide, crimes against humanity, and war crimes on corporate actors. “In this fluid setting,” the SRSG wrote, “simple laws of probability alone suggest that corporations will be subject to increased liability for international crimes in the future.”\(^{39}\)

This does not mean that a company’s responsibility for respecting \textit{all} human rights should be vested in a company’s legal department and made a matter solely of legal compliance and legal risk, since the challenge for companies is also about improving relationships and changing ways of doing business. Guiding Principle 23(c) simply recognizes that, regardless of the uncertainty of the law in particular jurisdictions, a company’s involvement in \textit{gross} human rights abuses would be such an egregious calamity for the company and society that its lawyers should be proactively engaged in preventing it, as they would be engaged in the prevention of any serious corporate crime.

\textbf{A Lawyer’s Professional Ethical Responsibility to Advise Corporate Clients on Human Rights Risks}

Last, I want to address the emerging recognition that lawyers must advise their corporate clients on human rights risks, not solely because it is relevant to proper corporate governance, but also because it


\(^{39}\) \textit{Id.}, para 27.
Law firms have very significant abilities to influence their clients’ impacts on human rights, which is critically important to the response that they should take, as independent businesses, under the UN Guiding Principles to adverse human rights impacts with which they may be involved through their relationships with clients.

The commentary to Guiding Principle 19(b) addresses the actions that a business must take where it causes or contributes to adverse impacts, or where it is involved solely because the impact is directly linked to its services through a business relationship:

Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist

where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.

Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the situation is more complex. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise’s leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences.  

As applied to law firms, this requires a number of steps, including determining the impact of the corporate client’s actions on human rights as a result of the law firm’s services, providing appropriate advice, and determining whether to withdraw from representation. These steps are not necessarily easy, given the potential reluctance of some clients to provide more than the minimum amount of information necessary to enable the firm to render service, the requirement that lawyers represent their clients’ interests zealously, and restrictions upon withdrawing from legal representation in a way that would prejudice the client’s interests. The steps are made even more difficult if the firm does not have a high level policy commitment, supported by operational level policies, that commit it to respect human rights, or a human rights due diligence process to ensure implementation of those policies, which very few, if any, appear to have at this point.

Things are changing, however, in light of the American Bar Association’s endorsement of the UN Guiding Principles on February 6, 2012 and its acknowledgement that they apply to the professional responsibility of lawyers. In its supporting report, the ABA Human Rights Committee noted that the Guiding Principles pour content into the independent and candid advice that lawyers must provide corporate clients under ABA Model Rule 2.1; the rule’s commentary notes that “moral and ethical factors impinge on most legal questions and may decisively influence how the law will be applied.”

This resonates with professional codes of responsibility in Japan, Europe, and Canada, among others, which acknowledge that lawyers must balance their dual roles as guardians of and advocates for the

44 Supra, n. 9.
45 Available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_2_1_advisor.html.
interests their clients, and as gatekeepers for the interests of courts and society.\textsuperscript{46} UN Guiding Principle 19 and ABA Model Rule 2.1 should be read in harmony. Both require lawyers’ advice to be more than a determination of the letter of the law; the advice should encompass potential impacts on human rights and the full range of other legal and business consequences that may likely result, and should suggest how to achieve the client’s goals in a way that respects human rights.

Conclusion

Lawyers who advise companies must become familiar with the UN Guiding Principles, in order to help their corporate clients achieve their business goals without adversely infringing on human rights. Without in any way derogating from the primary role of states in protecting individuals against human rights abuse by private actors, the corporate responsibility to respect human rights establishes a globally authoritative process standard on how companies should manage their business with respect for human rights, and requires companies to know and show that they are doing so. It may be a soft law standard, but it is one with hard consequences. Given the consultative and evidence-based foundation of the UN Guiding Principles, and their wide uptake, corporate lawyers have a critical and essential role to play in helping their clients to respect human rights, in order to comply with fundamental, and legally consequential, principles of corporate governance and risk management, as well as their own professional legal responsibility.

\[\textit{Supra}, \text{n. 40.}\]