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International Cooperation in Business and Human Rights Context: A Lesson from the Right to Development

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ABSTRACT
This article argues that the contemporary Business and Human Rights framework, as crystallized in the United Nations Guiding Principles on Business and Human Rights (UNGPs), rests on a narrowed and depoliticized understanding of international human rights law that obscures the foundational role of international cooperation in development justice. It demonstrates that the earlier BHR project, from the 1970s through the Draft Norms in 2003, was embedded in a Right to Development (RtD)–based vision that conceived transnational corporate regulation as a problem of global economic governance, structural inequality, and popular sovereignty. Employing a doctrinal and historical method, the article reconstructs this trajectory through close analysis of UN documents, human rights instruments, and institutional practice. It shows how this normative horizon was progressively displaced by a managerial, risk-based paradigm centred on territorial state responsibility. The article then advances a systemic reinterpretation of the UNGPs through the RtD and the binding duty of international cooperation, reconfiguring the state duty to protect as a duty of transnational cooperative governance and repositioning corporate due diligence within a people-centred framework of development justice. It argues that this reinterpretation does not reject the UNGPs, but restores their capacity to address the structural and transnational dimensions of corporate power that the BHR project was originally created to confront.

KEYWORDS: Right to Development; Business and Human Rights; International Cooperation; UN Guiding Principles; Corporate Accountability.

1. Introduction

Over the past five decades, the United Nations (hereinafter, 'UN') has played a central role in shaping the legal contours of the Business and Human Rights (hereinafter, 'BHR') framework. Initially focused on regulating the conduct of Transnational Corporations (hereinafter, 'TNCs') through attempts to establish a binding code of conduct in the 1970s,[1] the UN's approach has since evolved through various normative frameworks. These include the proposed 2003 Norms on the Responsibilities of Transnational Corporations (hereinafter, 'Draft Norms'),[2] the adoption of the UN Guiding Principles on Business and Human Rights ('UNGPs') in 2011,[3] and the ongoing efforts to negotiate a legally binding instrument on TNCs

[1] The Commission on Transnational Corporations was subsequently established through Economic and Social Council (ECOSOC), resolution 1913 (LVII) of 5 December 1974 to draft a code of conduct for TNCs.
[2] ECOSOC, Commission on Human Rights, Sub Commission on Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2003/16 (August 2003).
[3] Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', A/HRC/17/31 (21 March 2011).

and other business enterprises.[4] This article argues that the modern BHR framework, crystallized in the UNGPs, represents a decisive retreat from its origins in development-based framework, which later crystallised into the Right to Development (hereinafter, 'RtD'). Taking track of the legal evolution of the BHR framework, which is argued to have started in early 1970s, it is asserted that it was never about corporate responsibility in isolation, but about international cooperation to govern asymmetrical development and economic power in the name of peoples. The central question this article addresses is whether the BHR framework has, over time, abandoned its original juridical foundation in international cooperation and the RtD, and what it would mean to recover that foundation as a structuring principle of the UNGPs.

In this context the article initially posits that the foundational human rights and environmental protection challenges arising from transnational business activities, such as power asymmetries, corporate impunity, and structural impediments to access to justice, were initially addressed through a broad development-oriented framework, which gradually evolved into a more legally articulated approach grounded in the RtD. Early normative instruments, including the UN Draft Code of Conduct for Transnational Corporations[5] and various UN Human Rights Commission's (hereinafter, 'UNHRC') reports from the 1990s,[6] emphasized key RtD principles, including international cooperation. This approach was specifically tailored to address the unique cross-border human rights violations linked to transnational corporate activity, and it relied on the existing international human rights law (hereinafter, 'IHRL'). However, the adoption of the UNGPs in 2011, while normatively influential, decentralized legal responsibility and placed primary emphasis on host state's duty to protect human rights with voluntary assistance from corporations, particularly the TNCs.

This article proceeds in two main parts. Part 3 reconstructs the original development-centred foundations of the BHR project, tracing its evolution from the 1970s through the Draft Norms and the subsequent shift embodied in the UNGPs. It shows how international cooperation and the RtD were progressively displaced by a managerial, state-centric paradigm centred on risk management and territorial responsibility. Part 4 develops the doctrinal core of the argument. It first establishes the binding status of international cooperation in IHRL and shows how the RtD specifies its content in development contexts. It then advances a systemic reinterpretation of the UNGPs through this RtD-based framework, demonstrating how the state duty to protect and corporate due diligence must be reconceived as elements of a transnational, people-centred architecture of cooperative governance.

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4 Human Rights Council, Elaboration of an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with respect to Human Rights A/HRC/RES/26/9 (14 July 2014).

5 ECOSOC, Draft Code of Conduct on Transnational Corporations, E/1990/94, (12 June 1990).

6 See e.g., ECOSOC, Commission on Human Rights, Sub-commission on Prevention of Discrimination and Protection on Minorities Forty-Seventh Session, E/CN.4/Sub.2/1995//11 adopted on 24 July 1995 (hereinafter, 1995 report); ECOSOC, Commission on Human Rights, Sub-commission on Prevention on Discrimination and Protection on Minorities Forty-Eighth Session, E/CN.4/Sub.2/1996/12 adopted on 02 July 1996 (hereinafter, 1996 report); ECOSOC, Commission on Human Rights, Sub-commission on Prevention on Discrimination and Protection on Minorities Fiftieth Session, E/CN.4/Sub.2/1998/6 adopted on 10 June 1998 (hereinafter, 1998 report), Working document on the impact of the activities of transnational corporations on the realization of economic, social and cultural rights, prepared by Mr. El Hadji Guissé, pursuant to Sub Commission resolution 1997/11.

2. Methodology

This article adopts a normative legal research methodology and is primarily doctrinal and conceptual in nature. It seeks coherence within the international legal system rather than empirical or sociological truth. The analysis is based on the interpretation of international legal materials relevant to BHR and the RtD, including treaties, UN declarations, resolutions, general comments, and other soft-law instruments such as the UNGPs, and is guided by the principle of systemic integration. While the RtD comprises several substantive and procedural dimensions, including equity, public participation, accountability, and international cooperation, this article deliberately focuses on international cooperation as a structuring norm. It is done because of the transnational and systemic character of corporate-related human rights harm and for clarifying the cooperative and extraterritorial dimensions of the state duty to protect, respect, and fulfil human rights. The article does not rely on empirical data but draws on selected institutional practice and illustrative materials only to support its normative and doctrinal analysis.

3. Genealogy of the BHR Project: from Development to Managerialism

This Part traces the normative genealogy of the BHR project in order to show that the contemporary marginalisation of international cooperation in the UNGPs is not accidental, but the result of a long process of conceptual narrowing. It argues that, from its inception, attempts to regulate transnational corporate activity were embedded in broader concerns about development, sovereignty, and the international distribution of economic power, and were therefore conceived as a structural problem of the international economic order rather than as a purely domestic or technical issue. The analysis proceeds in three stages. First, it revisits the 1970s blueprint for regulating transnational corporations, in which international cooperation was articulated as a central mechanism for rebalancing corporate power and advancing a more equitable development order.[7]

Second, it examines the 1990s UNHRC reports and the emergence of the RtD as a framework that translated these structural concerns into the language of human rights, while preserving their emphasis, *inter alia*, on international cooperation. Third, it shows how this trajectory was reversed in the 2000s, as the shift from the Draft Norms to the UNGPs reframed corporate accountability as a matter of managerial risk governance,[8] marginalised the development paradigm, and re-territorialised what had originally been understood as a transnational and cooperative regulatory project. This genealogy is not offered as an exercise in intellectual history, but to establish that international cooperation has always been conceptually central to the BHR agenda, and to prepare the ground for its doctrinal reconstruction in the next section of this article.

3.1. The 1970s Blueprint: A Cooperative, Structural Response to Corporate Power

From the late 1960s onwards, the rapid expansion of TNCs was increasingly perceived, particularly by newly independent states in the Global South, as posing a direct

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7 Anita Ramasastry, 'Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability' (2015) 14 *Journal of Human Rights*, p. 237-259.

8 Karin Buhmann, 'Business and Human Rights: Understanding the UN Guiding Principles from the Perspective of Transnational Business Governance Interactions' (2014) Osgoode Legal Studies Research Paper Series, available <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1051&context=olsrps> accessed 15 January 2026.

challenge to their political autonomy and developmental self-determination.[9] Corporate power was not understood merely as a source of isolated abuses, but as a structural feature of the international economic order, capable of shaping domestic policy space, resource allocation, and development pathways. This concern was given institutional expression in 1973, when the UN Economic and Social Council established the Group of Eminent Persons (hereinafter, 'GEP') to examine the impact of TNCs on development.[10] This initiative culminated in the recommendation to establish a permanent UN Programme and Centre on Transnational Corporations (hereinafter, 'UNCTC'), along with a Commission on TNCs tasked with oversight, policy guidance and drafting a code of conduct for TNCs.[11] The origin of the BHR framework, therefore, is not rooted merely in the rectification of corporate complicity in human rights abuses, but in a broader concern about the systemic and political power of TNCs, power that increasingly challenged the sovereignty and developmental autonomy affecting human rights, particularly in the Global South states.

The report of the GEP framed corporate activity in explicitly developmental and systemic terms.[12] It rejected a narrow understanding of development as economic growth and instead emphasised the importance of sovereignty over natural resources,[13] equitable distribution of wealth,[14] technology transfer,[15] and the preservation of national policy space.[16] Unregulated corporate activity, it warned, could undermine all these objectives. Crucially, these problems were identified as collective action problems inherent in the structure of the global economy, requiring coordinated international responses and international cooperation, specifically regional cooperations, in the service of development.[17]

This diagnosis was embedded in the wider political project of the New International Economic Order (hereinafter, 'NIEO'). The 1974 Declaration on the Establishment of a NIEO[18] along with the Charter of Economic Rights and Duties of States[19] articulated a vision of economic governance grounded in permanent sovereignty over natural resources,[20] fair distribution of global wealth,[21] and the right of peoples to determine their own development

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9 Tagi Sagafi-Nejad and John H. Dunning, *The UN and Transnational Corporations: From Code of Conduct to Global Compact*, (Indiana University Press 2008), p. 27-28.

10 ECOSOC, The impact of multinational corporations on the development process and on international relations, Resolution 1721 of 28 July 1972.

11 ECOSOC, The impact of transnational corporations on the development process and on international relations, Resolution 1913 (LVII) of 05 December 1974.

12 Report of the Group of Eminent Persons to Study the Impact of Multinational Corporations on Development and on International Relations, E/5500/Rev.1 (United Nations, 1974).

13 *Ibid*, p. 44-46, The report emphasizes that operations of multinational corporations (MNCs) challenge national sovereignty, especially in raw material sectors. It also notes that their visibility and control over natural resources raise critical sovereignty issues.

14 *Ibid*, p. 65-66, The report explains how intra-corporation trade and transfer pricing distort market mechanisms and diminish the benefits developing countries gain from trade.

15 *Ibid*, p. 50-51, The report details the lack of access to proprietary know-how and the failure of technology to flow from corporations to local industries.

16 *Ibid*, p. 44-45, The report argues that MNCs influence host government policy space through political and financial leverage.

17 *Ibid*, p. 29, 41-42.

18 United Nations General Assembly (UNGA), Declaration on the Establishment of a New International Economic Order, Resolution 3201 (S-VI), adopted on 01 May,1974 (hereinafter, NIEO declaration).

19 United Nations General Assembly, Charter of Economic Rights and Duties of States, A/RES/3281, adopted on 06 November 1974.

20 United Nations, Charter of the United Nations, 1 UNTS XVI, adopted on 24 October 1945, article 2(1).

21 NIEO declaration, *Op. Cit.,* Preamble.

priorities.[22] It was within this normative and political context that the UNCTC was established and mandated, inter alia, to develop a comprehensive code of conduct for TNCs.[23] The objective was not merely to correct corporate misconduct, but to rebalance structural asymmetries of power between states and corporate actors through collective international regulation.

The resulting Draft UN Code of Conduct on Transnational Corporations (hereinafter, 'Draft CoC'),[24] developed throughout the 1980s and revised in 1990, encapsulated this development-centred legal imagination. Adopted in parallel with the UN Declaration on the RtD,[25] the Draft CoC conceived TNCs not merely as private market actors but as entities whose operations had to be aligned with the development priorities of host states and their populations. It emphasised obligations relating to technology transfer,[26] local equity participation,[27] and respect for socio-cultural integrity,[28] thereby anticipating both the substantive and procedural dimensions associated with the RtD. Most importantly, it treated international cooperation for TNCs regulation as a structural necessity by emphasising upon the non-interference of TNCs in intergovernmental relations.[29] Although the Draft CoC failed to gain political traction amidst shifting global economic priorities and were never adopted,[30] but raised critical awareness of the regulatory needs surrounding international investment and corporate power.[31]

In this early blueprint, therefore, the regulation of TNCs was conceived as an inherently international and cooperative project, grounded in a structural understanding of development and power. Corporate accountability was not imagined as a function of domestic governance capacity alone, but as a matter of reorganising the international economic order itself. This development-centred and cooperation-based vision would later be translated into the language of human rights in the work of the UNHRC in the 1990s.

3.2. The 1990s Pivot: Human Rights Commission Reports

Following the dissolution of the UNCTC, the project of regulating corporate power was left without a dedicated institutional home within the UN system. This vacuum was filled in the mid-1990s by the UNHRC and, in particular, by its Sub-Commission on the Prevention of Discrimination and Protection of Minorities, which initiated a series of studies on the relationship between transnational corporations and human rights.[32] This intervention was both timely and necessary. By this point, concerns about the human rights impacts of transnational business activity, especially in developing countries increasingly dependent on

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22 UN Charter, *Op. Cit.*, article 1, NIEO Declaration, ibid, 4(f).
23 UNCTC, *Loc. Cit.*
24 Draft Code of Conduct, *Loc. Cit.*
25 United Nations General Assembly, Declaration on the Right to Development, A/RES/41/128, adopted on 04 December 1986.
26 Draft Code of Conduct, *Op. Cit.*, para. 36.
27 *Ibid*, paras. 7-9.
28 *Ibid*, para. 13.
29 *Ibid*, paras. 18-20.
30 Tagi Sagafi-Nejad and John H. Dunning, *Op. Cit.*, 122.
31 Karl P. Sauvant, The Negotiations of the United Nations Code of Conduct on Transnational Corporations: Experience and Lessons Learned, (2015) 16 *Journal of World Investment and Trade*, p. 11-87.
32 Human Rights Commission, Sub-Commission on Prevention of Discrimination and Protection of Minorities Forty-sixth session, Res. 1994/37.

foreign investment,[33] had become impossible to ignore, and high-profile disasters[34] and long-running patterns of environmental and social harm had exposed the inadequacy of voluntary and purely domestic regulatory approaches.[35]

These reports marked a conceptual shift in the evolution of the BHR agenda. Rather than treating corporate misconduct as a matter of corporate social responsibility or isolated governance failure, they situated it within a structural analysis of IHRL and global political economy.[36] The reports consistently emphasised the systemic nature of corporate-related human rights harm, drawing attention to asymmetries of economic power, patterns of resource exploitation, and the frequent complicity or structural dependence of host states.[37] In this way, they reconnected the regulation of TNCs to the broader concerns about development, sovereignty, and inequality that had animated the 1970s debates, but now translated those concerns into the language and normative architecture of human rights.

This translation found its clearest expression in the 1998 working document prepared by *El Hadji Guissé*, which explicitly proposed the RtD as the normative framework for analysing the relationship between transnational corporate activity and the enjoyment of human rights.[38] Drawing on the 1986 UN Declaration on the RtD, *Guissé* argued that development could not be reduced to economic growth or investment flows, but had to be understood as a process aimed at the constant improvement of the well-being of the entire population, grounded in equality, social justice, and respect for human dignity.[39] This move was not arbitrary. It built on the analytical groundwork laid in earlier reports, which had already criticised the narrow, economistic conception of development often advanced by corporate actors and highlighted the broader social, cultural, environmental, and political consequences of transnational business operations.[40]

Within this framework, the reports identified a series of interlocking structural problems: the erosion of states' bargaining power vis-à-vis large corporations,[41] persistent technological and informational asymmetries, and the resulting downward pressure on labour, environmental, and human rights standards.[42] They also drew attention to the way in which corporate mobility and relocation threats could distort domestic labour markets and development strategies, reinforcing patterns of dependency and inequality.[43] These dynamics made clear that corporate-related human rights harm could not be adequately addressed through national regulation alone, even where states were formally committed to international human rights obligations.

In response, the reports articulated a set of normative and procedural requirements grounded in a people-centred conception of development. Central among these was the

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[33] Report of the Working Group of the Capital Markets Consultative Group, Foreign Direct Investment in Emerging Market Countries (September 2023), p. 3. available <https://www.imf.org/external/np/cmcg/2003/eng/091803.pdf> accessed 15 January 2026.

[34] See e.g. Mark Dummett, Bhopal Gas Tragedy: 40 Years of Injustice, (Amnesty International 02 December 2024), available <https://www.amnesty.org/en/latest/news/2024/12/bhopal-gas-tragedy-40-years-of-injustice/> accessed 15 January 2026.

[35] David Kinley and Rachel Chambers, 'The UN Human Rights Norms for Corporations: The Private Implications of Public International Law' (2006) 6 Human Rights Law Review, p. 447–497.

[36] 1998 Report, *Op. Cit.*, para. 9.

[37] 1995 Report, *Op. Cit.*, para. 91; 1996 Report, *Op. Cit.*, para. 109; ibid, para. 13.

[38] *El Hadji Guissé, Op. Cit.,* clause 20.

[39] Ibid.

[40] 1995 Report, *Op. Cit.,* para. 90; 1996 Report, *Op. Cit.,* para. 55.

[41] 1995 Report, *Op. Cit.,* para. 143(c); 1996 Report, *Op. Cit.,* paras. 27 and 46.

[42] 1995 Report, ibid, paras. 89 and 98.

[43] 1996 Report, *Op. Cit.*, para. 58-59.

insistence on meaningful public participation in development and investment-related decision-making, supported by transparency and access to information, without which participation would remain purely formal.[44] At the same time, the reports acknowledged a deeper institutional dilemma: in many contexts, states lacked either the capacity or the political will to prioritise the rights and interests of their populations in the face of transnational economic pressures.[45] This persistent gap between legal commitments and domestic enforcement exposed the limits of any regulatory strategy that remained confined within territorial boundaries.

It was against this background that the reports identified international cooperation as an indispensable structural response.[46] Their recommendations were not presented as innovations external to IHRL, but as contextual applications of its existing principles and obligations. As the 1998 report put it, "individuals should come first and last in action for development, that is to say, they should benefit from it as well as participating in it."[47] Realising this people-centred vision of development, the reports argued, required a reorientation of the international economic order around the human person, one in which coordinated action among states and international institutions would serve not merely to facilitate investment, but to correct structural asymmetries and to ensure that transnational economic activity advanced, rather than undermine, the enjoyment of human rights.[48]

3.3. The 2000s Regression: Avoiding RtD in Development Agenda

Building on the analytical groundwork laid by the UNHRC in the 1990s, the Sub-Commission on the Promotion and Protection of Human Rights established a sessional working group in 1998 to further examine the activities of TNCs.[49] This process culminated in the Draft Norms, which explicitly incorporated the RtD as a central normative reference point and reaffirmed core principles that had structured earlier debates,[50] including the right of peoples to self-determination,[51] permanent sovereignty over natural resources,[52] and the right to free, active, and meaningful participation in development processes.[53] They also echoed earlier concerns about the dominance of TNCs in the international economic order and the structural obstacles this posed to the realization of development and human rights.[54] More importantly, it also relied heavily on state cooperation to establish necessary framework for enforcement.[55]

What distinguished the Draft Norms was not merely their substantive ambition, but their legal form. Dissatisfied with the limited efficacy of voluntary and purely self-regulatory approaches, the working group proposed a framework of binding standards for corporate

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44 1996 Report, ibid, para. 116; 1998 Report para. 40.
45 1995 Report, *Op. Cit.*, para. 102.
46 1995 Report, ibid, paras. 139-141, 1996 Report, *Op. Cit.*, paras. 89 and 123; 1998 Report, *Op. Cit.*, para. 45.
47 1998 Report, ibid, para. 18.
48 1996 Report, *Op. Cit.*, para. 88.
49 ECOSOC, Human Rights Commission, Sub Commission on Promotion and Protection of Human Rights, Resolution 1998/8 of 20 August 1998. The mandate was further extended after three years through resolution 2001/3 of 27 April 2001.
50 See e.g. ECOSOC, Commission on Human Rights, Sub-commission on Promotion and Protection of Human Rights E/CN.4/Sub.2/2000/12 adopted on 28 August 2000, para. 11 and 13.
51 *Ibid*.
52 *Ibid*.
53 *Ibid*, para. 12.
54 *Ibid*, para. 13.
55 *Ibid*, para. 17.

conduct, articulated in terms analogous to the tripartite duties to respect, protect, and fulfil familiar from IHRL.[56] This move represented a significant normative escalation: it challenged the prevailing orthodoxy that corporate responsibility in the international sphere must remain confined to soft law and voluntary compliance. At the same time, it also exposed the project to intense political resistance.[57] The attempt to articulate binding obligations for TNCs without a sustained intergovernmental negotiating process ultimately contributed to the Draft Norms' marginalisation, and in 2005 they were formally set aside.

The abandonment of the Draft Norms marked not merely a change of strategy, but a deeper reorientation of the BHR project. The task of developing a new framework was entrusted to the Special Representative of the Secretary-General (hereinafter, 'SRSG'), *John Ruggie*, whose mandate was explicitly framed in terms of pragmatism, consensus-building, and political feasibility.[58] Rejecting the prospect of a comprehensive binding instrument, the SRSG argued that the legal and institutional complexity of the field, combined with divergent state interests, rendered such an approach impractical.[59] Instead, he advanced a non-binding framework aimed at clarifying existing responsibilities and improving governance through incremental and managerial reforms.[60]

This approach eventually crystallised in the UNGPs, which secured unprecedented political endorsement, but arguably came at a significant normative cost. In presenting themselves as a mere clarification of existing IHRL, the UNGPs adopted a distinctly selective reading of that legal framework. They reaffirmed its state-centric architecture, but largely bracketed those dimensions of IHRL that are structurally indispensable for addressing transnational and systemic forms of harm, most notably, the duty of international cooperation in securing the RtD of the people. In doing so, they effectively re-territorialised a problem that earlier phases of the BHR project had treated as inherently international and structural.

This narrowing of the legal horizon had two interrelated consequences. First, it reinstated a model of governance in which the protection of rights remains overwhelmingly dependent on the regulatory capacity and political will of host states, even in contexts marked by structural dependency or complicity. Second, it sidelined the legal innovations embodied in earlier initiatives, including the Draft Norms, which—whatever their political shortcomings—had sought to articulate a more explicitly transnational and structurally oriented conception of corporate-related obligations. The UNGPs thus came to interpret IHRL through a predominantly territorial and managerial lens, treating international cooperation primarily as a matter of policy coordination rather than as a legal obligation.

This reorientation was accompanied by a parallel conceptual shift in the understanding of development. Under the SRSG's approach, economic growth and private investment were

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[56] *Ibid*, para. 30.

[57] See e.g. Emeka Duruigbo, 'Corporate Accountability and Liability for International Human Rights Abuses: Recent Changes and Recurring Challenges' (2008) 6 *Northwestern University Journal of International Human Rights*, p. 233–235; Upendra Baxi, 'Market Fundamentalisms: Business Ethics at the Altar of Human Rights' (2005) 5 *Human Rights Law Review*, p.14.

[58] United Nations Commission on Human Rights, Human Rights and Transnational Corporations and Other Business Enterprises, E/CN.4/RES/2005/69 adopted on 20 April 2005.

[59] Robert C. Blitt, 'Beyond Ruggie's Guiding Principles on Business and Human Rights: Charting an Embracive Approach to Corporate Human Rights Compliance' (2012) 48 *Texas International Law Journal*, p. 44.

[60] John G. Ruggie, The Past as Prologue? A Moment of Truth for UN Business and Human Rights Treaty. Institute for Human Rights and Business (8 July 2014), available <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/Treaty_Final.pdf > accessed on 15 January 2026.

increasingly presented as the primary enablers of all other human rights,[61] a position that sits in clear tension with the declaration on the RtD's insistence on the integrated and simultaneous realization of all human rights. The SRSG over the time presented the RtD in the idiom of voluntary corporate initiatives and corporate social responsibility,[62] rather than as a framework of legal and institutional obligations grounded in participation, equity, and international cooperation. This move sat uneasily with the claim that the UNGPs merely clarify existing law, for it effectively bracketed out precisely those developments within IHRL that had given the RtD both substantive and procedural content.

The resulting tension is visible even within the SRSG's own diagnosis. While he correctly identified "governance gaps" created by globalization as the root cause of corporate-related human rights abuse,[63] the UNGPs ultimately offered no legal architecture capable of closing those gaps in transboundary contexts—particularly where foreign corporate actors operate in environments characterised by the exclusion of rightsholders or by host-state complicity. In this respect, the UNGPs fall short not because they are insufficiently ambitious, but because they fail to engage the cooperative and procedural dimensions of the RtD that would be necessary to render the BHR framework structurally responsive to the problem it seeks to address.

4. The Doctrinal Recovery: Re-animating Cooperation Through a RtD Lens

The preceding analysis has shown that the BHR project originated in a people-centred, development-justice framework, later grounded in the RtD, but was progressively reconstituted under the UNGPs into a state-centred and managerial paradigm. This shift did not merely alter regulatory technique; it narrowed the normative horizon of the field by severing corporate accountability from its original foundations in international cooperation and structural justice. This Part argues that the way forward is neither to abandon the UNGPs nor to supplement them with ad hoc reforms, but to recover their latent legal potential through a doctrinal re-centring of the RtD. This change is possible through realising the state duty to cooperate in realising the RtD.

A reinterpretation of the UNGPs' foundational pillar of the state duty to protect is necessary for this purpose. Read through this lens, the duty to protect can no longer be understood as a merely territorial obligation, but must be reconstructed as a duty of transnational solidarity and cooperative governance. This recalibration, in turn, reconfigures the architecture of corporate accountability, transforming the corporate responsibility to respect from a largely voluntary social expectation into the regulatory expression of a coherent international legal order.

4.1. The Normative Foundations: International Cooperation in IHRL and its RtD Specification

International cooperation is not a peripheral aspiration of the post-war legal order, but one of its structural organizing principles. Its foundational expression lies in the UN Charter, which commits states to achieving international cooperation in solving economic, social,

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61 ECOSOC, Commission on Human Rights, E/CN.4/2006/97 adopted on 22 February 2006.

62 ECOSOC, Human Rights Council, A/HRC/4/35/Add.4 adopted on 8 February 2007, paras. 53-56, 146 and 188.

63 John G. Ruggie, Protect Respect and Remedy: A Framework for Business and Human Rights, Human Rights Council (2008) A/HRC/8/5, para. 3.

cultural, and humanitarian problems, and to promoting universal respect for human rights.[64] This commitment was subsequently reaffirmed in the Friendly Relations Declaration and operationalized across the IHRL treaty corpus.[65] Most prominently, the International Covenant on Economic, Social and Cultural Rights obliges states to realize rights "individually and through international assistance and cooperation,"[66] while other instruments, including the Convention on the Rights of the Child,[67] similarly embed cooperation as a legal obligation rather than a matter of discretion. The Universal Declaration of Human Rights goes further still, framing a "just social and international order" as itself an entitlement.[68]

This textual architecture reflects a deeper structural premise: that the effective protection of human rights, particularly in conditions of global economic interdependence, cannot be achieved by states acting in isolation. This understanding has been repeatedly reaffirmed in political and judicial practice, including in the 2005 World Summit Outcome and,[69] more recently, in the jurisprudence of the International Court of Justice (hereinafter, **'ICJ'**), which has recognized the duty of cooperation as a legal obligation grounded in the interdependence of states and the need for solidarity among peoples.[70] Contemporary legal theory has therefore moved beyond questioning the existence of the duty to cooperate and has instead focused on specifying its content and normative force.[71]

That content operates along a dual axis.[72] On the one hand, international cooperation entails positive duties: to provide assistance, facilitate technology transfer, and build institutional capacity where necessary to enable the realization of human rights.[73] The long-standing commitment of developed states to allocate 0.7 per cent of gross national income as official development assistance (hereinafter, 'ODA'), first articulated in a 1970 UN General Assembly resolution,[74] represents an early, but often unmet,[75] attempt to give this dimension

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64 Charter of the United Nations, 892 UNTS 119, adopted 26 June 1945, entered into force 24 October 1945, article 1. See also articles 11, 13, 55 and 56.

65 UN General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, A/RES/2625(XXV) adopted on 24 October 1970, Para. 4(2)(b).

66 International Covenant on Economic, Social and Cultural Rights, GA res. 2200A (XXI), 16 December 1966, entered into force on January 3, 1976, article 2(1), 11(1) and 11(2).

67 Convention on the Rights of the Child, GA res. 44/25 of November 20, 1989, entered into force on September 2, 1990, art. 4.

68 UN General Assembly, Universal Declaration of Human Rights, 217 A (III), 10 December 1948, articles 22 and 28.

69 World Summit Outcome, Resolution adopted by the UNGA Res/60/1 (24 October 2005), paras. 38 and 48.

70 International Court of Justice, Advisory Opinion on Obligations of States in respect of Climate Change (23 July 2025), Paras. 308 and 364.

71 Prisca Feihle, *An International Human Rights Law of Cooperation*, (Edward Elgar Publishing 2025), p. 5.

72 Heike Krieger, 'Rights and Obligations of Third Parties in Armed Conflicts' in Eyal Benvenisti and Georg Nolte (eds), *Community Interests Across International Law* (Oxford University Press 2018) p. 450-451.

73 UN Economic and Social Council, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), E/1991/23, UN Committee on Economic, Social and Cultural Rights (CESCR), 14 December 1990, para. 14; See also CESCR, General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, para. 30.

74 UN General Assembly, International Development Strategy for the Second United Nations Development Decade, A/RES/2626(XXV) (24 October 1970), para. 43.

75 UNCTAD, Aid at the Crossroads: Trends in Official Development Assistance, available <https://unctad.org/publication/aid-crossroads-trends-official-development-

concrete operational form. On the other hand, the duty of cooperation also entails duties of restraint: obligations to refrain from conduct that foreseeably undermines the capacity of other states to fulfil their human rights obligations.[76] This negative dimension is of particular relevance in transnational regulatory contexts. The ICJ's reasoning in the *Bosnian Genocide case*, which held that states must employ all means reasonably available to prevent foreseeable, grave harm by actors within their jurisdiction, reflects this logic.[77] Transposed to the BHR's context, it implies a duty on home states to prevent their corporate nationals from causing or contributing to serious human rights harm abroad.[78] The *Maastricht Principles* crystallize this link, stating that the duty to cooperate includes an obligation to "refrain from any conduct which impairs the ability of another State to comply with its international human rights obligations."[79]

This dual structure is given especially sharp normative articulation in the RtD framework. From its origins in the debates on the NIEO declaration[80] and the Charter of Economic Rights and Duties of States,[81] through the Declaration on the RtD[82] and into the recent Draft Covenant on the RtD (hereinafter, 'Draft Covenant'),[83] the RtD has consistently treated international cooperation not as an ancillary commitment, but as a constitutive legal requirement. It defines development as a comprehensive economic, social, cultural, and political process aimed at the constant improvement of the well-being of the entire population,[84] and insists that states have duties to realize this right both individually and jointly.[85] Also, the focus is not merely about a state's duties to its own nationals but "realization of the right to development for all".[86] In this way, the RtD specifies and intensifies the general duty of cooperation under IHRL, transforming it from a broad obligation of assistance into a targeted duty to enable rights-based development.

Crucially, this framework reorients the purpose of development itself. Development cooperation whether through aid, investment, technology transfer, or trade, must be designed and assessed in light the of public participation, equity, and the safeguard of the right to self-determination of the affected people.[87] The obligation of a state to cooperate is therefore not exhausted by resource transfer. It requires states to leverage their regulatory, economic, and political influence to ensure that transnational economic activity does not undermine, but rather

assistance#:~:text=For%20millions%20of%20people%2C%20official,supplement%20domestic%20resource%20mobilization%20efforts> accessed on 15 January 2026.

76 Human Rights Committee, General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, para 22.

77 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, I.C.J. Reports 2007, p. 43, para. 430.

78 Human Rights Committee, General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, para 22.

79 Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights. (2017). *Netherlands Quarterly of Human Rights*, *29*(4), Principle 27.

80 NIEO declaration, *Op. Cit.,* preamble.

81 Charter of Economic Rights and Duties of States, *Op. Cit.,* preamble, 'Reiterating that the responsibility for the development of every country rests primarily upon itself but that concomitant and effective international cooperation is an essential factor for the full achievement of its own development goals'.

82 Declaration on the RtD, *Op. Cit.*, article 3(3), 4(1), 4(2), 6(1) and 10.

83 United Nations Human Rights Council, Draft International Covenant on the Right to Development, with commentaries A/HRC/54/50/Add.1 (4 September 2023).

84 Declaration on the RtD, *Op. Cit.*, article 1-2, Draft Covenant, *Op. Cit.*, article 3(a).

85 *Ibid*, article 3(3), 4(1), 4(2), 6(1) and 10.

86 Draft Covenant, *Op. Cit.,* article 13(2).

87 *Ibid*, Article 13(f).

advances, the conditions for self-determined and equitable development. In this sense, the RtD supplies a people-centred and structurally informed account of international cooperation that is uniquely suited to addressing the governance deficits at the heart of the BHR agenda.

4.2. The UNGPs' Interpretive Failure: The Neutering of a Binding Duty

The preceding analysis shows that the UNGPs are not normatively exhausted by their prevailing, managerial interpretation. Because the UNGPs present themselves as a "clarification" of existing state obligations under IHRL,[88] their content must be interpreted in accordance with the principle of systemic integration,[89] and therefore in light of the binding duty of international cooperation and its specification through the RtD. When this is done, the architecture and practical operation of the UNGPs change in legally significant ways.

The most immediate consequence concerns the scope and meaning of the state duty to protect.[90] Under the dominant reading, this duty is treated as largely territorial and institutionally modest: states are expected to regulate corporate conduct within their own jurisdiction and to encourage responsible business behaviour abroad.[91] Guiding Principle 10(c), presents international cooperation in a very narrow sense when it calls on states, as members of multilateral institutions, to cooperate in management of BHR challenges. The IHRL and RtD requirement for international cooperation is applicable not only as members of multilateral institutions, but to the whole duty to protect.

Through this approach, the duty to protect is no longer exhausted by domestic regulation. States must refrain from designing or maintaining trade, investment, aid, and financial regimes that foreseeably impair the ability of other states or peoples to realize their RtD. At the same time, they are required to take reasonable measures to regulate corporate actors domiciled or operating under their jurisdiction where those actors pose foreseeable risks to human rights and development abroad. Extraterritorial due diligence obligations, supply chain regulation, and parent-company liability regimes thus appear not as policy innovations external to the UNGPs, but as legal expressions of the duty of international cooperation as specified by the RtD.

This reconstruction also transforms the place of "leverage" within the UNGP framework, which restricts leverage only to corporate will.[92] Under an RtD-informed reading, leverage becomes a legal technique for discharging the duty of international cooperation by states. This is particularly clear in the context of development assistance, export credit, and development finance. Because the international cooperation dimension of the RtD is oriented toward the protection of peoples rather than the promotion of abstract growth, states cannot treat ODA, investment support, or trade preferences as politically neutral instruments.[93] Where development pathways or investment projects foreseeably exclude affected populations, undermine self-determination, or entrench structural dependency, the duty to cooperate requires states to condition, redirect, or withdraw such support.

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88 John G. Ruggie, *Loc. Cit.*

89 United Nations, Vienna Convention on the Law of Treaties, United Nations Treaty Series, vol. 1155, 23 May 1969, article 31(3)(c).

90 UNGPs, *Op. Cit.,* principles 1-10.

91 *Ibid,* principle 1.

92 *Ibid*, principle 19.

93 Beate Rudolf, 'The Relation of the Right to Development to Existing Substantive Treaty Regimes' in Stephen P. Marks (ed), *Implementing the Right to Development: The Role of International Law* (Friedrich-Ebert-Stiftung 2008), p. 110.

The implications for the corporate responsibility to respect are equally significant. Within the prevailing UNGP discourse, this responsibility is often presented as a largely autonomous, non-binding social expectation, grounded in reputational risk or social licence.[94] An RtD-informed architecture changes this legal standing, corporate responsibility to respect becomes the regulatory reflex of states' cooperative obligations. Corporations are subjected to binding human rights and development-related constraints not because they are moral actors in global society, but because states are under a duty to ensure that economic activity under their jurisdiction does not impair the ability of other states and peoples to realize the RtD. In this way, the enforcement of the corporate responsibility to respect becomes part of the legal content of the state duty to protect, rather than a matter of voluntary corporate virtue.

This reinterpretation also changes the internal logic of the requirement of human rights due diligence itself.[95] Under the UNGP-model, due diligence is primarily a technical exercise in risk identification and mitigation. The RtD-based approach changes the due diligence requirement adds a political dimension. Because the RtD is constitutively grounded in public participation and self-determination, human rights due diligence cannot be satisfied by expert-driven, company-controlled processes alone. It must include meaningful participation by affected communities, access to information, and the ability of those communities to influence, reshape, or reject development projects that determine their life chances. International cooperation, in turn, requires states to create transnational legal and institutional conditions in which such participation is not merely invited but structurally guaranteed.

This shift is therefore not merely one of emphasis, but of legal structure. The UNGPs move from a framework of managerial risk management to a framework of cooperative governance. The State duty to protect becomes a duty to organize international economic power in accordance with the RtD. The corporate responsibility to respect becomes the object of mandatory regulation grounded in inter-State obligations. And due diligence becomes not only a tool of harm prevention, but a vehicle for realizing participation and self-determination in development itself. To make the legal consequences of this reinterpretation concrete, consider the following paradigmatic contemporary scenario.

A corporation headquartered in a developed state operates, through subsidiaries and contractors, a large-scale mining project in a low-income host State. The project is supported by development finance and export credit guarantees from the home state. The host State, heavily dependent on foreign investment and facing fiscal constraints, grants the necessary concessions. Local communities are displaced, environmental harm follows, and affected populations are systematically excluded from decision-making processes concerning the project's design, operation, and long-term developmental impact.

Under the prevailing interpretation of the UNGPs, a positive obligation for preventing and remedying these harms lies primarily with the host state. The home state may encourage responsible business conduct, and the corporation is expected to conduct human rights due diligence, but there is no clear legal obligation on the home state to regulate the project's transnational impacts or to condition its financial and political support on the inclusion and protection of affected communities. Guiding Principle 10(c) would, at most, counsel policy coherence in the design of investment and development instruments.

When the same scenario is read through the RtD-based understanding of the UNGPs, especially the binding duty of international cooperation, the legal landscape changes

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[94] Peter Muchlinski, 'The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights' (2021) 6 *Business and Human Rights Journal*, p. 212-226.

[95] UNGPs, *Op. Cit.,* principle 15.

fundamentally. The home state's provision of development finance and political support is no longer a neutral economic act; it is an exercise of public power that directly engages its obligation to cooperate in the realization of the RtD of the affected population. If the project's governance structure foreseeably excludes rightsholders from participation, undermines self-determination, or entrenches structural dependency, the home state is under a duty to withhold, condition, or restructure its support.

This duty is not discharged by *post hoc* remediation alone. It requires *ex ante* regulation of the corporate actor, mandatory and participatory human rights and development due diligence, and the use of legal leverage to ensure that the development pathway itself is compatible with the RtD. In this setting, the corporate responsibility to respect is no longer a matter of voluntary risk management. It becomes the regulatory corollary of the home state's duty of international cooperation, enforced through binding domestic law and transnational oversight mechanisms.

What this example illustrates is that an RtD-informed interpretation of the UNGPs does not merely expand the list of policy tools available to states. It reconstructs the legal allocation of responsibility in situations of transnational corporate power: from a host-State-centred model of containment to a cooperative, people-centred model of shared and differentiated obligation.

5. Conclusion

This article makes a simple claim that the UNGPs will remain structurally weak as long as they are read without the RtD and the binding state duty of international cooperation. The early BHR project treated corporate power as a problem of global economic governance. The UNGPs recast it as a problem of domestic regulation and risk management. That shift explains their limits. Reading the UNGPs through systemic integration changes their legal effect. The state duty to protect becomes a transnational duty to regulate, restrain, and use leverage. The corporate responsibility to respect becomes a legally enforced obligation, not a voluntary standard. Due diligence becomes a participatory and people-centred process, not a technocratic exercise. This does not require a single model. As the 1995 report noted, there is "no ready-made model" applicable to all States.[96] But it does require a common direction: development must be governed in the interest of peoples, not only markets. Without this shift, BHR will remain a framework for managing harm. With it, it can become a framework for preventing structural injustice.

[96] 1995 Report, *Op. Cit.,* para. 96.

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