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**Implementation of the United Nations Guiding Principles on Business and Human Rights: Russian perspective**

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# **INTRODUCTION**

**Relevance of the research topic.** The issue of business and human rights became permanently implanted on the global policy agenda in the 1990s, reflecting the dramatic worldwide expansion of the private sector at the time, coupled with
a corresponding rise in transnational economic activity[[1]](#footnote-1). There is no doubt that
in today's globalized world, business activity has complex and significant impact
on society and therefore on human rights. Such impact can be positive and negative, direct and indirect, singular and cumulative, highly specific to local circumstances, and have multiple interrelated factors[[2]](#footnote-2).

These developments heightened social awareness of businesses’ impact
on human rights and also attracted the attention of the international community, national governments and commercial organizations. Therefore, it is especially important for the Russian Federation to closely follow the latest changes and international trends in this area.

**Novelty of the research topic.** Despite the fact that business can have
a profound impact on human rights the area of international business and human rights is practically not studied in the domestic doctrine of international law. The scientific novelty of the research topic lies in the studying the degree of implementation of the United Nations Guiding Principles on Business and Human Rights, which is one of the main international standards for the state and the private sector in area of business and human rights, to the legislation of Russian Federation as well as in corporate practices of Russian companies.

**Purpose and objectives of the research.** *The purpose of the research*
is to determine the importance of human rights for Russian business and the prospects for further development of the Russian Federation in this area.

*Research objectives* are determined by the purpose of the research and include:

* determining how human rights are relevant to business;
* examination of the framework and specifics of the legal regulation of this area at the international level;
* considering substance of foundational and operational principles of the United Nations Guiding Principles on Business and Human Rights;
* analysis of involvement of Russian business in the issue of business and human rights in general and determining how it promotes and implement the United Nations Guiding Principles on Business and Human Rights;
* expertise of the United Nations Guiding Principles on Business and Human Rights in comparison with the legislation of the Russian Federation;
* identification of the problems associated with the promotion of a given topic, and track trends and goal-setting in ways of solving these problems.

**Methodology and methods of research**. The main methods used in the thesis are: historical; formal-legal (dogmatic); comparative-legal; the method of analytical jurisprudence.

The methods used made it possible to conduct a full and comprehensive research of existing international legal standards in the field of business and human rights, identify existing gaps in regulation and make appropriate conclusions.

**Сharacteristics of main sources and scientific literature.** The source base for the thesis comprises of the theoretical, normative and empirical bases of the research.

From the standpoint of *the theoretical base of research* the works of Russian and foreign researchers, specialists in the field of international law, international human rights law, EU law, international organizations law, international business law, corporate law and international liability law were addressed, in particular the works of: L.C. Backer, L. Chanet, S. Deva, E.N. Feoktistova, E.S. Gerasimova,
R. Higgins, P.C. Jessup, A. Y. Klunya, N. Koike, A.A. Kovalev, N.L. Lyutov,
S.L. Natapov, J. Sarah, A.A. Sinyavskiy, T.B. Vaganova, E.M. Vorobieva,
J. Wouters etc.

The *normative basis of the research* includes the international legal standards
of human rights of the UN treaty bodies, international labour standards of the ILO.

Separately, it is worth noting the international legal standards in the field
of international business and human rights, the analysis of which was given the most attention: the OECD Guidelines for Multinational Enterprises, 1976 (as amended
in 2011); the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, 1978 (as amended in 2017); the ILO Declaration
on Fundamental Rights at Work, 1998; the Code of Conduct for Transnational Corporations, 1976; the UN Global Compact, 2000; the Standards on the Responsibilities of Transnational Corporations, 1988; the UN Guiding Principles
on Business and Human Rights, 2011.

In addition, the general comments of the UN treaty bodies, reports of the Commission on Human Rights, the Human Rights Council, General Assembly resolutions, notes by the Secretary General, reports of the Special Representative John Ruggie and other documents of international organizations were used.

The *empirical basis of the research* includes the decisions of the national courts of the EU Member States, the European Court of Human Rights, as well
as the UN treaty bodies.

# **CHAPTER 1. Introduction to the issue and the history of development and formation of international legal regulation of business in the context of human rights**

 This chapter covers reasons why business have a profound impact on human rights and emphasizes the importance of development and improvement
of effective mechanisms to protect against the negative impact of business activity
on human rights.

 It considers the formation and development of international standards
in international law, including both “soft” law and “hard” law as regulators
of business activity in the context of business and human rights, from the moment
of their inception to the present day and reflects perspectives and challenges of their improvement.

## **§1. Introduction to the issue of business and human rights**

The idea of human rights is both simple and powerful: everyone has the right
to be treated with dignity. Human rights are inherent in all people, regardless
of citizenship, place of residence, gender, national or ethnic origin, skin color, religion, language or any other status. Everyone should be able to enjoy human rights without discrimination. These rights are interrelated, interdependent and indivisible.

Human rights are often expressed and guaranteed by law, in the form
of treaties, customary international law, general principles and other sources
of international law. International human rights law lays down obligations on States
to act in certain ways or to refrain from certain acts, so as to promote and protect the human rights and fundamental freedoms of individuals or groups[[3]](#footnote-3).

It has long been recognized that business can have a profound impact
on human rights. One of the main trends in the development of international relations and international law today is the increasing role of non-state actors, who, along with the main subjects of international law - States - begin to influence social and political processes taking place both in the international arena and in the domestic space. Along with these changes, new scientific problems arise that require comprehension and development. One of them is the problem of changing the world as a result
of the emergence, growth and spread of transnational corporations (hereinafter - TNCs).

TNCs have enormous potential for positive impact: they stimulate the development of world production, scientific and technological progress, create new products that meet important human needs, establish new jobs[[4]](#footnote-4). At the same time, there are, unfortunately, also many examples in which the activities of TNCs, especially
in developing countries, contribute to negative phenomena. Today,
it is increasingly common to hear that TNCs violate the human rights of both their employees and others. In particular, companies can influence the following areas:
a wide range of labour rights, environmental rights, the rights of local communities, consumer protection and product safety, respect for privacy (personal data) etc.

The term “transnational corporation” refers to an economic entity operating
in more than one country or a cluster of economic entities operating in two or more countries - whatever their legal form, whether in their home country or country
of activity, and whether taken individually or collectively[[5]](#footnote-5). Due to its structure, consisting of subsidiaries, branches and representative offices, TNCs operate
in various national jurisdictions in the internal legal regimes of various States. The main duty of TNCs as a subject of legal relations is to comply with the laws of the jurisdictions in which they carry out their business activities. States, whose national law is sufficiently developed, control well the activities of TNCs. However, this control is weakening in developing States with weak governance, high levels
of corruption, excessive political influence and low levels of rule of law[[6]](#footnote-6). Such States are becoming more and more dependent on TNCs in the context
of investment, job creation for the population, etc. In this regard, giving TNCs more and more privileges and providing protection on the one hand, in a number of cases States are unable to ensure that they comply with the rules governing their behavior
on the other[[7]](#footnote-7). In particular, they are unable to protect the population from the negative impact of the activities of these companies.

Another problem is that due to the intrinsic features of the structure and management of TNCs, proving the involvement of the management company in the crimes committed by its subsidiaries often turns out to be an unattainable task for victims of human rights violations. TNCs often manipulate the amount of their business liabilities using a “corporate veil”[[8]](#footnote-8), with the help of which management companies can “dump” their obligations onto their subsidiaries, thus remaining out of the reach of the victims of their transnational entrepreneurial activity.

A particular problem, in our opinion, is the absence of a single opinion on the legal personality of TNCs in the doctrine at the present time, as well as the absence
of any legally binding international legal treaty that enshrines their status as a subject
of international law.

Thus, in the modern doctrine of international law, there are at least three points of view on the international legal personality of transnational corporations: 1) TNCs have full international legal personality[[9]](#footnote-9); 2) TNCs have partial international legal personality[[10]](#footnote-10); 3) TNCs do not have international legal personality[[11]](#footnote-11).

Currently, the absence of a unifying international legal act that defines the international legal status of TNC as a subject of international law does not allow States to effectively regulate its business activities of a transnational nature and hinders the prevention of violations in the field of tax, environmental, labour law and human rights. In fact, the absence of international regulation has already led to the formation
of transnational contract law between large TNCs and States, under which corporations have the opportunity to create rights and obligations from the position of a “strong player”, especially when operating in developing countries[[12]](#footnote-12). Using their economic superiority, TNCs often put pressure on the policy and decisions
of a developing State both when concluding an agreement and in the process
of entrepreneurial activity, avoiding various kinds of administrative, civil and other liability in case of violation of local laws and internationally recognized human rights[[13]](#footnote-13). With the ability to freely move capital between its subsidiaries, as well
as taking advantage of the limited liability of controlled subsidiaries, TNCs remain virtually elusive to national legal orders. Therefore, recognition of the status
of a subject of international law for TNCs and the assignment of international rights and obligations to them would greatly simplify the control over their transnational activities by States and provide balanced conditions for all participants in legal relations.

It should be emphasized that in connection with the institutional changes
in the economy, over time, all of the above becomes relevant not only in relation
to TNCs as large corporations, but also to any company operating in at least two States. Moreover, today, enterprises operating even within the same State are also often violators of human rights and environmental standards.

Thus, the reason for the difficulties in the relationship between business and human rights today lies in the governance gaps caused by globalization - between the size and influence of economic forces and participants and the ability of societies
in different countries to manage the negative consequences they create. This raises the question of whether contemporary international law can oblige TNCs and other enterprises engaged in entrepreneurial activities to respect human rights, labour and environmental law, and how that can be achieved in practice.

## **§2. The concept of international legal regulation of business in the context of human rights**

### **§2.1. “Soft” law as a regulator of business activity in the context of human rights**

Given the potential negative human rights impact of business, the international community called for a clearer and precise regulation of the obligations and responsibilities of commercial organizations in the field of human rights protection.

Attempts at international legal regulation of the entrepreneurial activities
of corporations began from the draft “Code of Conduct on Transnational Corporations”[[14]](#footnote-14). In the 1970s, the subject of countering businesses' negative impact
on human rights was especially pressing among newly independent colonial developing countries. The first negotiations on the Code of Conduct
on Transnational Corporations began in 1977 within the framework of the Intergovernmental Working Group on the Code of Conduct on Transnational Corporations. The aim of the negotiations was to reach an agreement on the development and adoption of a document that would cover the relations arising between States and TNCs. The project did not receive support and was canceled: the conflict was between the interests of developed and developing countries, and the main disputes arose over foreign direct investment, nationalization, the legal nature of the Code of Conduct on Transnational Corporations and the definition of TNCs[[15]](#footnote-15). Despite the fact that the negotiations on the draft code were unsuccessful, they showed the interest in the development of such an agreement and gave impulse
to further developments in this area.

The ideas laid down in the Code of Conduct on Transnational Corporations have been developed in the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights[[16]](#footnote-16). The main feature
of the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights was that they imposed obligations
on all TNCs to “respect, ensure respect and protection of human rights recognized
in both international and domestic law” within their “respective spheres of activity”[[17]](#footnote-17). The Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises have made a big a step forward in the field of human rights. For 2003, this was the most complete and exhaustive set of rules on the responsibilities of TNCs and other enterprises. Many formulations of the norms were set out in imperative form and impose the same obligations on enterprises as on States. This has caused numerous debates and disputes between interested parties[[18]](#footnote-18). Despite this, the document was never officially adopted, the project was recognized as having no legal force.

The next attempt was the creation of a new international standard in the field
of business – the United Nations Global Compact. The UN Global Compact is a global initiative of the United Nations aimed at developing and implementing corporate policies and disseminating best corporate practices in the field of human rights.
The UN Global Compact contains 10 universal principles in the field of human rights, labour, environment and anti-corruption[[19]](#footnote-19). The principles of the Global Compact are based on the Universal Declaration of Human Rights, the International Labour Organization Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the UN Convention against Corruption. Members of the UN Global Compact make voluntary commitments
to adhere to the ten principles and achieve sustainable development. This means that the company identifies, prevents, reduces the level, and is also responsible for any negative impacts that it may have on society and the environment. As the commentary to the UN Global Compact states: “The UN Global Compact is a leadership platform for the development, implementation and disclosure of responsible corporate practices. Launched in 2000, it is the largest corporate sustainability initiative in the world, with more than 8,000 companies and 4,000 non- business signatories based in over 170 countries, and more than 85 Local Networks.”[[20]](#footnote-20)

Thus, the UN Global Compact have become international legal standard. Today it is the largest platform for dialogue between TNCs, States and other interested parties. Nevertheless, it did not solve one of the main problems at that time: no mechanisms were proposed for bringing enterprises to international legal responsibility, and
no supervisory mechanisms were created for the activities of enterprises, leaving control over the observance of human rights to business.

Another initiative of the UN was the United Nations Guiding Principles
on Business and Human Rights (hereinafter – “the UNGPs”), which became the key source of soft law providing an authoritative global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.

Since 2008, when the UN Human Rights Council unanimously endorsed the UN Protect, Respect and Remedy (PRR) Framework[[21]](#footnote-21), it has been globally accepted that businesses have a responsibility to respect internationally recognised human rights*.* In June 2011, the Human Rights Council, the main United Nations intergovernmental body responsible for the promotion and protection of human rights, endorsed the UNGPs. the UNGPs had been developed by the then Special Representative of the United Nations Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie[[22]](#footnote-22).

The UNGPs provide a blueprint for action, defining parameters within which States and companies should develop policies, rules and processes based on their respective roles and particular circumstances[[23]](#footnote-23). They provide clarity to States on the implications of their existing duty to protect human rights against adverse impact caused by companies, including as it relates to ensuring that those affected
by business activities have access to an effective remedy. They also provide practical guidance to companies about what steps they should take to ensure that they respect internationally recognized human rights and address any impact. By establishing
a global framework, they create a common platform for action and accountability against which the conduct of both States and companies can be assessed.
The UNGPs constitute a global standard that is also increasingly reflected in other international governance frameworks. These UNGPs apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure[[24]](#footnote-24).

The UNGPs consist of 31 principles and include three pillars: (I) the State's duty to protect human rights; (II) the corporate responsibility to respect human rights; (III) the access to remedy[[25]](#footnote-25). These UNGPs are grounded in recognition of: States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms; the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; the need for rights and obligations to be matched to appropriate and effective remedies when breached. The principles for each pillar consist of “foundational principles” and “operational principles”, each principle is accompanied by a Commentary. The chapter 2 of this thesis considers the UNGPs.

Until now, special attention has always been paid to the first two pillars, while the third one has not been popular and has not been touched upon in research papers. However, this approach to the consideration of the pillars contradicts the provisions
of the preamble, which states that the UNGPs should be considered as a “single whole”. In the last two years, the situation has changed dramatically, and today everyone unanimously recognises that the third pillar should be considered “as a red thread that runs through all three interrelated and interdependent components.” For example, the 2017 report of the Working Group on Human Rights and Transnational Corporations states that “Any measures taken by States under component I and enterprises under component II will have some positive or negative impact on access to effective remedies under component III.”[[26]](#footnote-26) Thus, the effectiveness of legal remedies will depend on the totality of measures taken by key actors to protect individuals from the adverse impact of business activities on their rights and freedoms.

The principles relating to the responsibility of business enterprises to respect human rights are of direct relevance to the commitment undertaken by Global Compact participants. Principle 1[[27]](#footnote-27) of the UN Global Compact calls upon companies to respect and support the protection of internationally proclaimed human rights; and Principle 2[[28]](#footnote-28) calls upon them to ensure that they are not complicit in human rights abuses.

As a global standard applicable to all business enterprises, the UNGs provide further conceptual and operational clarity for the two human rights principles championed by the UN Global Compact. They reinforce the UN Global Compact and provide an authoritative framework for participants on the policies and processes they should implement in order to ensure that they meet their responsibility
to respect human rights[[29]](#footnote-29).

The UNGPs are advisory in nature. J. Ruggie considers corporate responsibility to respect human rights to be social rather than legal[[30]](#footnote-30). There are certain advantages
to this approach. From the point of view of the modern doctrine of international law, TNCs are not subjects of public international law, and therefore they are not subject
to the legally binding norms of international treaties. However, this restriction does not affect social norms that apply to all subjects of legal relations, including TNCs.
In accordance with the UNGPs, corporations are subject to voluntary obligations
to respect human rights. On the one hand, social norms do not impose strict obligations and leave the adoption of special measures to protect human rights to the discretion
of the TNCs themselves. On the other hand, ignoring the principles can have
a detrimental effect on the company's reputation, investments and international contracts. Trends in recent years clearly show that the UNGPs have become more than just social norms[[31]](#footnote-31).

The effectiveness of the UNGPs as an international standard is questioned
by many. Among the main disadvantages are the instrumentalist explanations of the responsibility of TNCs[[32]](#footnote-32), the lack of an ethical framework[[33]](#footnote-33), the almost complete absence of negative obligations[[34]](#footnote-34), and the lack of mechanisms for involving stakeholders[[35]](#footnote-35). Despite these disadvantages, it should be noted that it is the soft nature of the UNGPs that has caused the rapid dissemination of the ideas of the principles among international intergovernmental and non-governmental organizations, as well as human rights defenders' societies. The UNGPs had a significant impact on the development of other international standards (in particular, the OECD Guidelines for Multinational Enterprises of 2011[[36]](#footnote-36)), have contributed to the intensification of the implementation of the principles through national action plans (NAPs), and the subsequent development of remedies for individuals affected by business activities.

The 16th of June 2021 marked the 10th anniversary of the unanimous endorsement by the Human Rights Council of the UNGPs. Due to this date the Working Group on the issue of human rights and transnational corporations and other business enterprises presented to the Human Rights Council a report and
a roadmap the “UNGPs 10+” or “next decade BHR”[[37]](#footnote-37) to take stock of the implementation of the UNGPs and chart a course for action in the decade ahead.

As the Working Group considers: “Quantifying the “success” of the Guiding Principles is fundamentally a futile exercise: not only is 10 years a blink of the eye
in “international time”…efforts to promote implementation of the Guiding Principles to date have enabled broader levels of participation from a wider range of stakeholders, challenging them but also bringing them together to learn from each other and
to generate the diversity of responses that the complex nature of business and human rights requires. The upcoming “road map” rests on the common platform that was established in 2011 and will set a course for action by States, businesses and others.”[[38]](#footnote-38)

Thus, we can conclude that, despite the “soft” nature of the legal regulation
of the topic of business and human rights, the UNGPs contain a sufficiently recognized approach by States to address the problem of the impact of business activities on human rights which has its perspectives and challenges.

### **§2.2. “Hard” law as a regulator of business activity in the context of human rights**

The next, we will consider the role of “hard” law in the international legal regulation of business activities in the context of human rights. Hard law refers
to sources that are formally legally binding. Basically, these are, of course, international treaties.

The role of international treaties in regulating issues related to the topic under consideration is twofold: on the one hand, international treaties are sources
of obligations in the field of human rights within the framework of “first pillar” (obligations of States to prevent violations under their jurisdiction, obligations
to protect human rights). On the other hand, in the “second pillar” (the obligation
of business to observe human rights in the course of human rights by third parties
on its territory and in the implementation of their activities), international treaties serve as a material source of human rights norms, that is, they enshrine human rights that business must observe.

First of all, it is necessary to investigate the extent to which States,
in accordance with the international treaties they have concluded, have undertaken the obligation to protect the individual from business activities that either violate human rights or lead to socially or environmentally harmful consequences. As a source
of positive obligations of States to protect human rights, any international human rights treaty ratified by a State will be considered such. The International Covenant on Civil and Political Rights[[39]](#footnote-39), adopted in 1966, is of crucial importance in terms of guarantees for the protection of human rights and ensuring social standards and the International Covenant on Economic, Social and Cultural Rights[[40]](#footnote-40). Article 26 of the International Covenant on Civil and Political Rights obliges States to guarantee a general prohibition of discrimination, and article 22 of the Covenant guarantees the right to form trade unions and to participate in their activities. Article 3 of the International Covenant on Economic, Social and Cultural Rights establishes the principle of equal rights between men and women, Article 7 guarantees fair working conditions (in particular, fair wages and equal remuneration for work of equal value, working conditions that meet the requirements of safety and hygiene, as well as reasonable restrictions on working hours). Article 8 of the Covenant establishes the right to form trade unions, and art. 9 - the right of everyone to social security. Article 10 guarantees special protection
of motherhood and the prohibition of child labour. Finally, article 12 of the Covenant, along with other measures, states the need to improve all aspects of environmental and occupational health. In addition, there are special agreements aimed at ensuring social standards, for example, The Convention on the Elimination of all Forms of Discrimination Against Women[[41]](#footnote-41), the Convention on the Rights of the Child of 1989[[42]](#footnote-42), as well as various conventions of the International Labour Organization (ILO). The latter include, inter alia, the Freedom of Association and Protection of the Right to Organize Convention (1948)[[43]](#footnote-43), the Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, or Equal Remuneration Convention  (1951)[[44]](#footnote-44), the Convention on Discrimination in Employment and Occupation (1958)[[45]](#footnote-45), and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)[[46]](#footnote-46).

The minimum set of “hard” sources on which business must rely is established by the UNGPs. Principle 12 of the UNGPs states that the responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights[[47]](#footnote-47) and the principles concerning fundamental rights set out in the International labour Organization’s Declaration on Fundamental Principles and Rights at Work[[48]](#footnote-48).

In the comments to paragraph 12, it is also noted that, depending on the circumstances, enterprises may need to take into account other norms. Because business enterprises can have an impact on virtually the entire spectrum
of internationally recognized human rights, their responsibility to respect applies
to all such rights. In practice, some human rights may be at greater risk than others
in particular industries or contexts, and therefore will be the focus of heightened attention.

Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights
of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights
of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards
of international humanitarian law[[49]](#footnote-49).

It can be concluded that the range of relevant international treaties regulating the content of human rights that business must comply with is narrow and the criteria for its boundaries and applicability in general are unclear. In the absence of hard law, there has been a marked tendency to use soft norms when addressing corporate human rights responsibility[[50]](#footnote-50). Soft norms, like those embodied in the United Nations Global Compact, the Organization for Economic Cooperation and Development (“OECD”) Guidelines on Multinational Corporations, the International Labour Organization's (“ILO's”) Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, and corporate codes of conduct, are all deliberately kept legally non-binding. Follow-up mechanisms, if they exist, are aimed at dialogue rather than confrontation.

Highlighting the issue of “hard” law in the context of business and human rights, it is impossible not to touch on the latest trend - draft legally binding instrument
to regulate, in international human rights law, the activities of transnational corporations and other business enterprises[[51]](#footnote-51). Among the reasons why it was decided to develop such a document despite the existence of the UNGPs were: insufficient provision of access to remedies in the UNGPs and the need for an additional international legal instrument (international treaty) for strengthening the capacity
of domestic law to protect human rights in the context of business activities; the need for a legally binding document to correct the current imbalance between recognizing the impact of TNCs on human rights and the need to protect them in this regard, on the one hand, and the economic and political guarantees extended to TNCs, on the other[[52]](#footnote-52); lack of effectiveness of soft law instruments.

It appears that in recent years, the importance of soft law in the field
of international business and human rights has been increasingly strengthened because the UNGPs have become the basis for a draft legally binding instrument
to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

# **Conclusions**

The authors came to the following conclusions:

Business have a profound impact on human rights. It emphasizes the importance of development and improvement of the effective mechanisms to protect against the negative impact of business activity on human rights. The challenge lies in the fact that the legal standards that should create a framework for business do not keep up with its development. This raises the question of whether contemporary international law can oblige TNCs and other enterprises engaged in entrepreneurial activities to respect human rights, labour and environmental law, and how that can be achieved in practice.

One of the main reasons for the impunity of TNCs and other enterprises engaged in entrepreneurial activities is the absence of any international legal norms establishing universal corporate responsibility for violations of human rights, which creates a global challenge to modern international law. However, in recent years, the importance of soft law in the field of international business and human rights has been increasingly strengthened. The UNGPs have become the basis for a draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations.

 Business is able to ignore human rights, social and legal standards and environmental standards, as they exist in many industrialized countries, due to the complex corporate structure and wide choice of the location of its companies (enterprises) focused on purely economic interests. Such a “choice of law” through the choice of the place of production, reaching an agreement with the host State
to grant certain privileges, as well as taking advantage of one's own dominant position and the unstable political situation in the host State can be perceived
as a kind of “legal vacuum”. At the present time, at least at the level of universal international law, legally binding norms that regulate business activities in the context of human rights, independent of States, have not yet fully developed. On the contrary, it is rather States that are called upon to control companies in fulfilling their obligations under international law. Since most States still do not use their control capabilities effectively enough, demands are often made for a more consistent subordination of the activities of transnational corporations to the principles and norms of international law. Against this background, the UNGPs represent an important attempt to formulate corporate obligations for multinational corporations, the importance of which cannot be ignored. As soon as it finds a greater degree of binding force, it will move closer
to an international legal treaty, which should be further provided with a mechanism for its implementation.

# **CHAPTER 2. The United Nation Guiding Principles on Business and Human Rights as the main international standard in the field of business and human rights**

This chapter will present the UNGPs – the first universally recognized global standard in the field of international business and human rights, developed
by John Ruggie, professor at Harvard University and the United Nations Secretary General’s Special Representative on the issue of human rights and transnational corporations and other business enterprises from 2005 to 2011 to clarify the different roles and responsibilities that States and companies have to address business impact
on human rights[[53]](#footnote-53). The UNGPs are directed to all States, as well as to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership or structure[[54]](#footnote-54).

This chapter is divided into three paragraphs, each corresponding to one pillar of the UNGPs:

1. The “State duty to protect”: States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms[[55]](#footnote-55);
2. The corporate responsibility to respect human rights: the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights[[56]](#footnote-56);
3. Access to remedy: the need for rights and obligations to be matched
to appropriate and effective remedies when breached[[57]](#footnote-57).

Within the framework of each paragraph, both foundational and operational principles are considered.

## **§ 1. The “State duty to protect” under the UNGPs**

When talking about general framework of international human rights law relevant to the “state duty to protect” it is crucial to mention The Universal Declaration of Human Rights (hereinafter – “the UDHR”)[[58]](#footnote-58), adopted in 1948, together with two international human rights treaties, the International Covenant
on Civil and Political Rights (hereinafter – “the ICCPR”)[[59]](#footnote-59) and the International Covenant on Economic, Social and Cultural Rights (hereinafter – the “ICESCR”)[[60]](#footnote-60)
as well as additional human rights treaties, such as the European Convention
on Human Rights (hereinafter – the “ECHR”)[[61]](#footnote-61). These international human rights law’s foundational instruments define the main contours of States’ international human rights law duties.

In general, State’s obligations under the above instruments may be formulated as follows[[62]](#footnote-62):

*Respect*: The State itself must refrain from actions or measures that violate human rights. This obligation applies to all State bodies performing legislative, executive, judicial or other functions (“negative obligations”);

*Protect*: The State is obliged to protect individuals and groups of individuals from violations of their human rights perpetrated by other actors (“positive obligations”);

*Fulfil*: The human rights of individuals or groups of individuals may require special programmatic measures by States to ensure their protection (“positive obligations”).

Human rights have traditionally been viewed as safeguarding the individual's dignity and fundamental freedoms of individuals against the power of States rather than private actors[[63]](#footnote-63). As a result, non-state actors are rarely subjected to direct obligations or responsibilities under human rights treaties.

Likewise the ECHR in formal terms applies only to violations of human rights by States. Every member state of the Council of Europe is required to “accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms”[[64]](#footnote-64). This is further reflected by the obligation on States under Article 1 ECHR “... to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention”[[65]](#footnote-65). Article 34 ECHR however restricts the jurisdiction of the European Court to applications received from persons, Non-Governmental Organisations or groups of individuals “claiming to be the victim of a violation by one of the High Contracting Parties”[[66]](#footnote-66). The European Court lacks jurisdiction *ratione personae* over applications lodged against individuals or companies. Similarly the UN Human Rights Committee has stated that obligations under the ICCPR “do not have direct horizontal effect as a matter of international law” so that it cannot consider claims between private parties[[67]](#footnote-67).

Nonetheless, public awareness of non-state actors' impact on human rights has progressively grown. The mismatch between corporate impacts on human rights and the inadequate procedures for their legal responsibility has recently come
to be considered as diminishing the effective enjoyment of human rights envisaged
by the international legal order, as the scale and power of businesses has grown
as a result of globalisation. As a result, international human rights bodies have increasingly defined in greater detail the duties of States to control the conduct
of non-state actors in order to avoid human rights violations, giving rise to the concept of “indirect” obligations.

The European Court of Human Rights has repeatedly stated that States should take measures to protect human rights and the private sphere of legal relations.
The provisions of the ECHR are transferred to the horizontal plane of legal relations between individuals and are applied in interpersonal relations of the parties, which allows national courts to consider such disputes on the basis of Convention[[68]](#footnote-68). This interpretation of the ECHR has been called the “Drittwirkung effect”. Thus, enterprises engaged in entrepreneurial activity are indirectly bound by obligations
to comply with international legal rights enshrined in the ECHR.

Thus, as discussed in the following sections, broader principles developed
by human rights bodies, including the European Court of Human Rights, concerning States' duties to prevent and respond to abuses by non-state actors in general provide the legal foundation on which the UNGPs, the Council of Europe Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States[[69]](#footnote-69) on human rights and business, and other recent standards have begun to define States' specific duties regarding business-related human rights violations, as well as the underlying responsibilities of business actors to respect and not harm human rights.

Various conceptual, doctrinal and procedural obstacles prevent the formulation of direct obligations of corporations in the field of human rights,
as mentioned earlier. As a result, the approach of international human rights bodies, embodied in the UNGPs, is to further clarify the direct obligations and “positive obligations” of States to protect against human rights violations by corporations,
as well as to disclose the logical consequences of these State obligations for business entities.

The UNGPs’ specific provisions addressing the first “pillar” of the UN Frame- work are divided into two categories: “foundational” principles (Principles 1 and 2) and “operational” principles (Principles 3 to 10).

The UNGPs (Principle 1) provides a description of the State duty to protect, according to which: States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises[[70]](#footnote-70). This requires States to take appropriate steps to prevent, investigate, punish and redress such abuse through considering the full range of permissible preventative and remedial measures including effective policies, legislation, regulations and adjudication.

 According to the Commentary to UNGPs (Principle 1), State duty to protect thus represents a “standard of conduct” [[71]](#footnote-71). Therefore, States are not responsible for human rights abuse by private actors. However, States may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors’ abuse.

Thus, the UNGPs (Principle 1) echoes the doctrine of “positive obligations”, developed by the European Court of Human Rights and widely used by it to hold businesses accountable for human rights violations[[72]](#footnote-72). The “positive obligations” require States to take reasonable and appropriate measures[[73]](#footnote-73) to control third party conduct that violates human rights and which may entail State liability for human rights violations caused by inadequate regulation of private industries.

For instance, in Tătar v. Romania, the European Court observed that water pollution with cyanide from a gold mine could interfere with the right to private and family life by harming human well-being. As a result the state had a duty to regulate the authorising, setting-up, operating, safety and monitoring of industrial activities, especially those dangerous to the environment and human health[[74]](#footnote-74).

Similarly, in Marangopoulos Foundation for Human Rights (MFHR)
v. Greece, where a private mining corporation in which the state was the largest shareholder was alleged to be responsible for environmental pollution in breach
of rights under the European Social Charter, the European Committee of Social Rights found that the obligations of national authorities included developing and regularly updating sufficiently comprehensive environmental legislation and regulations[[75]](#footnote-75).

The positive obligations of States also imply the use of preventive measures aimed at preventing violations of human rights. In accordance with the practice
of the European Court of Human Rights, preventive measures involve the timely
“in accordance with the law”[[76]](#footnote-76) intervention of States in the legal relations of two
or more parties taking place on their territory and under their jurisdiction in order
to prevent potential violations of internationally recognized human rights. The choice of means to implement these measures lies on States and involves the use
of specific means provided for by domestic law[[77]](#footnote-77).

This logically leads to the requirement imposed by the UNGPs (Principle 2), that “States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations” [[78]](#footnote-78). According to the Commentary to the UNGPs (Principle 2), States “are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction”, nevertheless, “there are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses[[79]](#footnote-79). The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State’s own reputation”[[80]](#footnote-80).

Therefore, the UNGPs distinguish “extraterritoriality” as a legal issue from prudential considerations, which should weigh in favor of actions by States
to control the behavior of their corporate nationals working overseas, where possible and without intruding on the sovereignty of other States[[81]](#footnote-81).

 It is rather difficult to perform positive obligations for several reasons. First, States cannot fulfill their positive obligations when specific areas of human rights are not fully covered by their domestic law. Such an area can be, for example, non-discrimination, labour rights, privacy and many others[[82]](#footnote-82). Second, a government may lack an effective corporate accountability mechanism. It can be difficult for the State to assess the activities of an enterprise and respond in a timely manner to potential threats of human rights violations. Thirdly, a corrupt State may not be interested
in the transparency of the operations of its enterprise and therefore not fulfill its positive obligations towards state enterprises.

 All of the above reasons form gaps in legal regulation. John Ruggie believes that in order to eliminate them, States should encourage the corporate culture
of enterprises located on their territory, in which respect for human rights is part
of the business. In his report to the Human Rights Council, the Special Representative proposed five priority areas in which the State can promote respect for human rights among corporations. These areas include:

(a) The desire to achieve greater policy coherence and effectiveness among business offices[[83]](#footnote-83);

(b) Promoting respect for human rights when States engage in business activities with enterprises, whether as owners, investors or purchasers[[84]](#footnote-84);

(c) Developing a corporate culture of respect for human rights both in one's own State and in neighboring States[[85]](#footnote-85);

(d) Development of an innovation policy for the management of companies conducting their operations in areas affected by armed conflict[[86]](#footnote-86);

(e) Consideration of extraterritoriality[[87]](#footnote-87).

In practice, this means that States should develop and adopt appropriate regulatory legal acts in their domestic legislation, using the UNGPs
as an international legal standard.

 If the foundational principles of the UNGPs indicate the general direction
of the State's policy, then the operational principles include a list of specific measures by which the State can fulfill its obligations. The UNGPs (Principles 3
to 10) define the functions of States in the field of regulation and human rights protection policy in the implementation of entrepreneurial activities by enterprises; protection of human rights in the conduct of their activities by State-owned enterprises by requiring such enterprises to comply with the principle of due care for human rights; monitoring by States of their compliance with their international obligations to protect human rights when they conclude contracts with enterprises or enacting legislation
in the interests of enterprises to provide services that may affect the implementation
of human rights; monitoring by States of the observance of human rights by enterprises in conflict-affected areas; ensuring the coherence of the policy of state bodies in the observance of human rights, etc[[88]](#footnote-88).

 For instance, one of the concrete steps to promote policy coherence in the business and human rights area, in line with the UNGPs (Principles 8 to 10),
is to develop a Nation Action Plan (hereinafter – “NAP”) on business and human rights. A NAP is a policy document formulated by a State which identifies priorities and actions it will adopt to support the implementation of international, regional
or national obligations and commitments in a particular policy area or topic[[89]](#footnote-89).
In 2011, the European Union requested Member States to develop NAPs to support implementation of the UNGPs[[90]](#footnote-90) and, in 2014, the UN Human Rights Council followed suit[[91]](#footnote-91).

Prompted by these and other initiatives, a steadily increasing number
of governments and non-State actors have now launched NAPs or NAPs-related processes. To date, governments of 19 European countries have published business and human rights NAPs (Belgium, Czech Republic, Denmark, Finland, France, Georgia, Germany, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Norway, Poland, Slovenia, Spain, Sweden, Switzerland and the UK) while NAPs are currently under development in 2 others (Portugal, Ukraine) [[92]](#footnote-92).

NAPs can provide a variety of benefits. Their development may prompt governments to commit to implementing business and human rights standards, resulting in better "vertical" alignment of national laws, policies, and institutional practices with international commitments, strengthening the rule of law, and, ultimately, increasing the effectiveness of human rights.

Any national human rights policy initiative could potentially have such consequences. NAPs processes, on the other hand, should stimulate the cross-government participation needed to ensure “horizontal” policy coherence as a result
of their unusually broad framing. Furthermore, if techniques and methodologies for building NAPs are based on human rights, there should be further benefits. In the creation of NAPs, concepts such as transparency, inclusion, participation, and non-discrimination should empower rights holders and create room for communication and mutual understanding between stakeholders.

If NAPs include clear and evidence-based targets, milestones, and indicators, they should also serve as a foundation for holding governments accountable and comparing them to other countries over time.

However, a more skeptical attitude toward the value of NAPs is possible. Claire Methven O'Brien states that some see NAPs as a handy fig leaf for governments' unwillingness to implement policies that could be interpreted as putting businesses
at a competitive disadvantage, or as a platform where corporate lobbying will trump actual progress under the guise of “multi-stakeholderism”[[93]](#footnote-93). As a result, some see NAPs as a waste of time and money that may be better spent on corporate “naming and shaming” or advocating for “hard” legal measures in areas like non-financial reporting or mandated due diligence[[94]](#footnote-94).

Nevertheless, the development of the NAP is the first step towards creating
a corporate culture. Compliance with the principles of transparency, involvement and non-discrimination create a space for dialogue and mutual understanding between
all interested parties. This approach has already been implemented
in practice, for example, during the adoption of the NAP in Denmark, where the Government conducted interviews with enterprises, representatives of civil society and “implementing organizations”[[95]](#footnote-95).

We believe, that the existing extensive practice can help the Eurasian Economic Union States including Russia to develop mandatory regional standards, as well
as national regulatory legal acts for the protection of the human rights
of individuals in the field of business.

## **§ 2. The corporate responsibility to respect human rights under the UNGPs**

While States retain the duty to respect, protect, and fulfill human rights, the Council of Europe, the United Nations, and many other international and business organizations have now recognized related but distinct responsibilities of businesses for human rights through soft law instruments, political commitments, national policies, and other measures. The so-called “corporate responsibility to respect” human rights is elaborated under the second pillar of the UN Framework and
by the UNGPs. It also contains both foundational principles (Principles 11 to 15) and operational principles (Principles 16 to 24).

 The UNGPs (Principle 11) states that business enterprises should respect internationally recognized human rights and avoid their violation, and in case
of violation, eliminate the adverse consequences for human rights of the impact they have exerted[[96]](#footnote-96). In accordance with The UNGPs (Principle 12), the responsibility
of business enterprises for the observance of human rights extends to internationally recognized human rights, which are understood, at a minimum, as those enshrined
in the International Bill of Human Rights and the principles relating to fundamental rights, which are set out in the International Labour Organization’s Declaration
on Fundamental Principles and Rights at Work[[97]](#footnote-97). This includes, in particular, the right to an effective remedy[[98]](#footnote-98). According to the working group, “enterprises should not negatively affect the exercise of the right to effective remedies and should not contribute to it or be directly related to it, that is, they should not take any actions that would “deprive an individual of the opportunity to exercise this right or reduce such an opportunity”[[99]](#footnote-99).

 According to the UNGPs (Principle 13) the responsibility to respect human rights requires that business enterprises:

(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even
if they have not contributed to those impacts[[100]](#footnote-100).

 This obligation exists in addition to the obligation to comply with national laws and regulations protecting human rights, "applies to all enterprises, regardless of their size, sector, conditions of activity, forms of ownership or structure"[[101]](#footnote-101) and covers almost the entire spectrum of internationally recognized rights, since there are not many internationally recognized rights, if there are any at all, on which business in one way or another is not able to have a real or perceived impact.

 Human rights due diligence is an important part of corporate responsibility, which is defined as such a measure of prudence, activity or diligence that can
be properly expected from a reasonable and prudent enterprise and which such
an enterprise usually exercises in specific circumstances in order to exercise its responsibility for respect for human rights.

In accordance with the UNGPs (Principle 17) the exercise of human rights due diligence[[102]](#footnote-102):

A) Should address the adverse impact on human rights by enterprises;

B) Will have a different degree of complexity depending on the size of the enterprise, the risk of a serious impact on human rights, as well as the nature and conditions of its activities;

C) Should be permanent, because over time, the risks to human rights may change[[103]](#footnote-103).

The Commentary to the UNGPs (Principle 17) notes that “conducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step
to avoid involvement with an alleged human rights abuse. However, business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing
to human rights abuses.”[[104]](#footnote-104).

As mentioned above human rights due diligence is an ongoing process that runs in parallel with the rest of the activities of enterprises and is integrated into its internal policy. This means that enterprises should apply the due diligence procedure during
all their business operations and in all branches of their activities. Commercial enterprises should integrate the due diligence procedure into all their structural units. Any enterprise or individual who is a representative of such a corporation must also apply the procedure of human rights due diligence in the framework of its business activities. Thus, the implementation of the due diligence procedure for human rights should take place vertically from top to bottom, from the parent company to its branches all around the world.

A business’ first step in undertaking due diligence should be to adopt and publish a policy commitment to respect human rights. Thereafter, the process
of human rights due diligence comprises four steps:

1. Assessment of human rights risks, as well as potential and actual impacts on human rights, both as a result of the actions of the analyzing enterprise itself, and as a result of the actions of partners with whom such an enterprise has business[[105]](#footnote-105). The scale of assessment of human rights consequences will depend
on the industry, as well as on national and local conditions.
2. Integration of the results obtained into the company's activities and the adoption of timely response measures. At this stage, enterprises should act
in accordance with the results obtained by them at the first stage and strive to prevent or mitigate the impact on human rights in a particular area controlled by the enterprise[[106]](#footnote-106). Such measures should also be supported by a change in the internal policy of the enterprise if it is the cause of human rights abuses. The key role in the practical implementation of this stage is played by the top management of enterprises[[107]](#footnote-107).
3. Monitoring the effectiveness of response measures of enterprises.
At this stage, the company should monitor the results of the measures taken
in previous step. As John Raggi notes, "tracking results provides the information necessary to create appropriate incentives and sanctions for employees and ensures continuous improvement of the situation"[[108]](#footnote-108). Rights-holders or their representatives,
as well as other stakeholders should be involved in evaluating impact mitigation efforts, for example, through establishment of joint community company monitoring initiatives. Outcomes revealed by monitoring should then be reflected, for example,
in further changes to company policies, operational management approaches, and performance reviews with relevant staff and suppliers[[109]](#footnote-109).
4. Communication and accountability. Enterprises should provide interested parties with information about the means used and measures by which
it was possible to review the impact on human rights in a form accessible to them, taking into account local culture, technical capabilities and language. Reports can
be sent directly to interested parties or to States. Enterprises must provide sufficient information to assess the adequacy of the measures taken, as well as take into account the company's trade secrets and not harm personnel, journalists or other persons concerned by the measures taken[[110]](#footnote-110).

The issue of adopting a single legislative act in the EU on mandatory due diligence in the field of human rights in all EU States is not simple. The development of such an act includes the elaboration of many different elements, such as the human rights covered by the law (all internationally recognized rights or only some of them, for example, social rights?), the size of the companies to which this act will apply, the branches of entrepreneurial activity to which this law will apply, and other elements. Nevertheless, time has certainly dictated the need to adopt a comprehensive legislative act regulating the activities of enterprises in the field of human rights. Let's consider several documents that served as a prerequisite for the adoption of such an act.

To date, some of the most developed European Union member States have already developed their own laws on due diligence of enterprises in the field of human rights. In particular, one of the most striking examples of such an initiative is the French law French Duty of Vigilance law. In addition, similar laws and draft laws have been developed in Germany (German Draft Law For A Human Rights and Environmental Due Diligence Act), Denmark (Dutch Child Labour Due Diligence Law), Switzerland (Swiss Responsible Business Initiative). A common feature of all these initiatives
is the introduction at the national level of the obligation of companies (legal entities) to exercise due diligence in the field of human rights and the environment, as well as the establishment of civil liability of the parent company for violation of established obligations by its subsidiaries.

In addition, in 2014, Directive 2014/95 “On disclosure of non-financial information” was adopted in the EU[[111]](#footnote-111). According to it, large companies registered
in the EU are required to publish reports on environmental protection policies, social responsibility and employee attitudes, respect for human rights, the fight against corruption and bribery, as well as age, gender, educational and professional diversity in the board of directors. These rules applied only to large companies of public interest with more than 500 employees. Thus, the directive covers approximately 6,000 large companies and groups throughout the EU, including banks, insurance and other companies recognized by states as socially significant.

Finally, in 2017, the European Parliament adopted Regulation 2017/821 [[112]](#footnote-112) establishing due diligence obligations in supply chains to limit the ability of armed groups and security forces to trade tin, tantalum and tungsten, ores and gold originating from conflict-affected and high-risk territories of EU.

In 2020, the EU Commissioner for Justice, Didier Reynders, expressed readiness to legislate obligations for European companies to implement due diligence procedures in the field of human rights and the environment[[113]](#footnote-113) in early 2021. The initiative will include mechanisms to hold companies accountable for non-compliance with human rights, appropriate mechanisms to ensure that companies comply with their obligations in the field of human rights, as well as provisions on access to legal remedies for persons whose rights have been violated by companies.

On 23 February 2022, the Commission adopted a proposal for a Directive
on corporate sustainability due diligence (hereinafter – “Directive”)[[114]](#footnote-114). The aim of this Directive is to foster sustainable and responsible corporate behaviour and to anchor human rights and environmental considerations in companies’ operations and corporate governance. The new rules will guarantee that firms consider the negative consequences of their actions, both within and outside Europe. A corporate due diligence obligation is established by this Directive. Identifying, ending, avoiding, mitigating, and accounting for negative human rights and environmental impacts in the company's own operations, subsidiaries, and value chains are the fundamental parts
of this task. Directors are rewarded for helping to achieve sustainability and climate change mitigation objectives.

The Directive also introduces duties for the directors of the EU companies covered. These duties include setting up and overseeing the implementation of the due diligence processes and integrating due diligence into the corporate strategy.
In addition, when fulfilling their duty to act in the best interest of the company, directors must take into account the human rights, climate change and environmental consequences of their decisions.

Thus, in accordance with the UNGPs, all enterprises:

1) Are obliged to respect internationally recognized human rights;

2) If enterprises establish that they have had a negative impact or contributed
to it, they should, within the framework of legal processes, compensate for the damage caused or cooperate to compensate it;

3) Are obliged to take preventive measures to prevent or reduce damage
if an adverse impact on human rights may lead to “irreparable” harm;

4) Enterprises should establish or participate in effective complaint mechanisms at the operational level for the benefit of individuals and communities who may
be victims of adverse impacts.

## **§ 3. Access to remedy under the UNGPs**

Business should always be conducted in a manner that respects human rights, and states have a responsibility to ensure that business conduct does not violate human rights and that those whose rights are violated have access to appropriate remedies. Workers' and consumers' rights, the right to health and the environment, the right
to privacy, and equality and non-discrimination are all common examples of these rights[[115]](#footnote-115).

Thus, access to remedy is one of the three core principles of the UN Protect, Respect andRemedyFramework. According to John Ruggie, remedy comprises the third pillar of the UN Framework because:

“Even where institutions operate optimally, disputes over the human rights impact of companies are likely to occur. Currently, access to formal judicial systems
is often most difficult where the need is greatest. And non-judicial mechanisms are seriously underdeveloped - from the company level up through national and international levels.”[[116]](#footnote-116)

Further:

“Effective grievance mechanisms play an important role in the State duty
to protect, in both its legal and policy dimensions, as well as in the corporate responsibility to respect. State regulation proscribing certain corporate conduct will have little impact without accompanying mechanisms to investigate, punish, and redress abuses. Equally, the corporate responsibility to respect requires a means for those who believe they have been harmed to bring this to the attention of the company and seek remediation, without prejudice to legal channels available.”[[117]](#footnote-117)

The third pillar of the UNGPs consists of one foundational principle (Principle 25) and six operational principles (Principles 26 to 31), which address State-based judicial mechanisms, State-based non-judicial grievance mechanisms, non-State-based grievance mechanisms, as well as criteria for the effectiveness of non-judicial grievance mechanisms.

According to the UNGPs (Principle 25) as part of their duty to protect against business-related human rights abuse, States must take appropriate steps
to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy[[118]](#footnote-118).

The realization of the right to an effective remedy depends on access
to judicial and non-judicial mechanisms of legal protection. Referring to the UNGPs operational principles (Principles 26 to 31) three categories of mechanism that may facilitate access to remedy for victims in connection with human rights abuses linked to business activities can be identified: State-based judicial mechanisms, State-based non-judicial grievance mechanisms, non-state-based grievance mechanisms (including mechanisms provided by businesses, industry associations, multi-stakeholder groups and international bodies)[[119]](#footnote-119).

The effectiveness of the legal protection mechanism is ensured by the presence of damage compensation mechanisms within it[[120]](#footnote-120). The legal protection mechanisms provided must be effective, since otherwise rights will mean little
in practice[[121]](#footnote-121). In addition, the right to an effective remedy is closely linked to the concept of corporate responsibility[[122]](#footnote-122). Effective remedies should ensure corporate responsibility, which should contribute to some form of legal protection. With regard to the criteria for the effectiveness of the remedy, the working group identifies as the main elements the availability, acceptability, adequacy, timeliness of the remedies evaluated from the point of view of the copyright holders. Access to social protection should be provided without discrimination and taking into account the situation
of marginalized and vulnerable groups. In particular, where enterprises are required
to provide redress through complaint mechanisms at the operational level, they should also consider taking special measures to ensure that vulnerable groups have effective access to such mechanisms[[123]](#footnote-123).

The UNGPs declare that access to an effective remedy has both substantive and procedural dimensions, in keeping with the principles and standards included
in international human rights treaties[[124]](#footnote-124) addressing the right to remedy. It should
be emphasized that the remedies provided through the grievance procedures outlined in this section can take a variety of substantive forms, with the goal of counteracting or making good any human rights violations that have occurred. Apologies, restitution, rehabilitation, financial or non-financial compensation, punitive punishments (criminal or administrative, such as fines), and the prevention of harm through, for example, injunctions or guarantees of non-repetition are all examples of remedies. Procedures for providing redress should be fair, free of corruption, and free of political or other attempts to sway the conclusion[[125]](#footnote-125).

Within the framework of the UNGPs, the obligation to compensate for damage lies both in States and in enterprises engaged in entrepreneurial activity. The obligation of enterprises follows from the UNGPs (Principle 22), according to which “in cases where enterprises determine that they have had an adverse impact
or contributed to it, they should, within the framework of legal processes, compensate for the damage caused or cooperate to compensate it”[[126]](#footnote-126). However, an enterprise cannot fulfill this obligation if it has not developed any complaint mechanisms. Therefore,
in order to follow this principle, the enterprise, within the framework of its activities, is obliged to provide all persons interacting with it with a special complaint mechanism, as well as an effective remedy.

However, the research of the European Union Agency for Fundamental Rights (FRA) on access to justice shows that, in general, the effectiveness of judicial remedies is often hampered by restrictive rules on legal standing, evidence barriers, high legal costs (combined with restrictive rules on legal aid) and the length
of proceedings[[127]](#footnote-127).

Overall, one method to remove barriers is to make information about the various procedures more readily available and accessible, even in terms of the language used as human rights legal language and terminology are challenging for both victims and businesses.

A number of experts have emphasized the importance of corporations receiving better information about their human rights commitments. Delivering more knowledge to businesses on business and human rights issues could serve
as a preventive measure, especially for small and medium-sized businesses. Thus, States should have the primary responsibility for disseminating knowledge, both through public awareness campaigns and legal professional training[[128]](#footnote-128).

# **Conclusions**

The authors came to the following conclusions:

The UNGPs are a global international legal standard for the protection
of human rights from adverse impacts of enterprises engaged in entrepreneurial activity. The main purpose of the UNGPs is not to hold enterprises and corporations accountable, but to prevent such impact through preventive measures by States and
to provide victims affected by the activities of enterprises with effective complaint mechanisms that provide access to effective remedies. Access to legal remedies
is a connecting theme of the international legal standard that stretches across all three pillars of the UNGPs.

The UNGPs have a great practical effect. More and more enterprises are making policy statements and including the procedure of due diligence for human rights in their codes of conduct and, thereby consolidating the binding provisions
of the principles for themselves. In addition, the UNGPs have become the basis for the development and improvement of State and non-State grievance mechanisms
to ensure victims' access to legal remedies at the international, regional, national, sectoral and operational levels.

The provisions of the UNGPs are reflected in the acts of international organizations, codes of corporate responsibility of enterprises, and are also implemented by States into national legislation with the help of NAPs. The existing practice of implementing the NAP can help the Eurasian Economic Union States
to develop their legally binding regional and national standards for the protection
of human rights in the field of business. Compliance with the principles
of transparency, involvement and non-discrimination in the development of the NAP contributes to the creation of a corporate culture, a space for dialogue, and therefore strengthens the position of copyright holders and provides them with more opportunities to protect their rights. At the same time, it should be noted that the UNGPs are implemented mainly in developed countries, while the largest number
of human rights violations as a result of business activities of enterprises occurs mainly in developing countries.

The UNGPs contribute to the formation and consolidation of a corporate culture of respect for human rights in society. To date, corporate culture has already been formed in the countries of the European Union, as well as partially formed
in the countries of the Council of Europe. The European Union and the Council
of Europe are leaders in disseminating business and human rights guidelines to their member States. They not only issue recommendations on the implementation of the principles, but also take care of removing existing barriers to access to legal remedies.

From the point of view of enterprises, human rights represent a risk. In order
to control risks, enterprises need to use a due diligence procedure for human rights during all their business operations and in all branches of their activities. Due diligence for human rights is an ongoing process of assessing risks to human rights and runs
in parallel with the rest of the activities of enterprises, being integrated into its internal policy. It serves as a kind of preventive mechanism to prevent actual impacts on human rights, that is, prevents the violation of human rights of persons concerned with the entrepreneurial activity of enterprises. That is why due diligence for human rights occupies an important place in the UNGPs.

# **CHAPTER 3. Implementation of the United Nation Guiding Principles on Business and Human Rights in the Russian Federation**

This chapter explores how Russian business is involved in the promotion and implementation of the UNGPs – directly and indirectly, taking into account the development of Russian legislation and business's understanding of its responsibility in the field of entrepreneurial activity and human rights.

## **§ 1. Russian business and human rights**

Until quite recently, the concept of “human rights”, and even more so its connection with the activities of a particular enterprise, was not quite clear
to Russian citizens. Two recent trends have made many corporations think about the relationship of business to the topic of human rights, and people – about how specifically their rights can be respected or violated by companies: the increased interest of Russian business in the topic of Corporate Social Responsibility
in the last decade and the high activity of public discussion on this topic, as well
as the financial and economic crisis that broke out and its devastating impact
on business, which resulted in a gross violation of the labour rights of employees
of the affected companies (reduction of staff, working hours, salary, social package)[[129]](#footnote-129).

Currently, the government of Russian Federation, shareholders, top managers
of Russian companies, their employees, as well as other interested parties, including investors, industrial associations, multi-stakeholder organizations, national human rights organizations, trade unions and civil society organizations, are interested
in the topic business and human rights. The government ensures the adoption and compliance with domestic legislation that requires enterprises to respect human rights. Companies are increasingly thinking about how to prevent conflicts arising from non-compliance with human rights, and to build such management processes that allow analyzing and improving the work of mechanisms for the implementation of the rights of employees and other groups of stakeholders. Employees and other interested parties monitor and evaluate the behavior of companies with respect to human rights.

It becomes evident that not only States, but also businesses, can have
an impact on human rights and should work to avoid violations, mitigate risks, and effectively manage risks. Underestimating these risks can harm those whose rights are potentially violated, as well as the company's business reputation, investment attractiveness, and public image. This is the reason for various stakeholders, such as government institutions, civil society organizations, and investors, to become more interested in the environmental, social and corporate governance (ESG) factors evaluation, which covers processes, procedures, and policies to ensure human rights protection[[130]](#footnote-130).

According to the survey by PwC and NAFI[[131]](#footnote-131) for 2021 the interest in ESG principles in Russia remains the prerogative of large companies. Thus, 50% of top managers of large businesses have an idea about them, compared to 33% of managers and owners of small and medium-sized businesses.

Reality in this case “determines consciousness”: only 14% of respondents among those who are aware of ESG principles (or 6% of all surveyed entrepreneurs) note that it is important for their business relations to take into account the best practices in the fields of ecology, social policy and management. 78% of managers who are aware
of the ESG principles (31% in terms of all surveyed entrepreneurs) say that at the moment their compliance is not an important factor for continuing cooperation with partners, investors and creditors.

Almost every third participant in the study (30%), who is aware of the ESG principles (or 12% of all surveyed entrepreneurs), does not comply with them
in their practice, but plans to do so in the future. 41% of those who are aware of the ESG principles (16% of all entrepreneurs) comply with all or part of these principles.

In order to make the ESG policy more effective and to strengthen the interest
of Russian companies in compliance with its principles, it is necessary to make non-financial reporting of companies mandatory (as in some countries, including the UK, China, Indonesia), and to provide tax incentives to responsible companies[[132]](#footnote-132).

Despite these indicators, Russian business contributes significantly to the achievement of the national strategic goals and the global sustainable development goals. This is confirmed by the results of a survey of more than 200 large, medium- sized and small businesses conducted by the Russian Union of Industrialists and Entrepreneurs (hereinafter – “the RSPP”) in 2020[[133]](#footnote-133).

A survey of companies conducted showed that the topic of human rights
is perceived by companies as a practical matter of managing business processes and engaging with stakeholders.

Companies' commitment to protecting and respecting human rights can
be seen in corporate documents that include these aspects (codes of ethics, business conduct and business partnership; general business principles; human rights, health and safety policies; standards of employee conduct, etc.). 82% of the companies surveyed have such documents, of which 15% have a Companies' commitment
to protecting and respecting human rights can be seen in corporate documents that include these aspects (codes of ethics, business conduct and business partnership; general business principles; human rights, health and safety policies; standards
of employee conduct, etc.). 82% of the companies surveyed have such documents,
of which 15% have a separate policy on human rights, and some noted that they started the development of such a policy.

When developing documents and constructing work on the protection and support of human rights, companies rely on basic International and Russian standards/principles, such as: The UN Universal Declaration of Human Rights, which were noted by 60% of the companies surveyed, the main conventions of the UN and the ILO, and the UN Global Compact – 53%, the UNGPs – 48%, the Social Charter of Russian business – 58%, International standard ISO 26000:2010 “Guide to Social Responsibility” and the Russian standard of the same name GOST R ISO 26000-2012 – 26%.

The main challenges, according to the survey participants, include health maintenance and harm to health (68%), issues related to labour rights and environment – over 40%, security and safety of personal data – 30%

As mentioned earlier, one of the main international standards that provide States, companies and other interested parties with an appropriate framework
to understand their different but complementary roles and the actions that need
to be taken to effectively prevent and eliminate the adverse effects associated with entrepreneurial activity is the UNGPs.

The National Network of the Global Compact of Russian Federation also includes this topic among its priorities. Since 2015, it has been working to promote and put into practice the UNGPs, taking into account the development of Russian legislation and business competencies in the field of corporate responsibility and sustainable development; to the extent that business' understanding of its responsibility in this area is synchronized with international standards and what should be the next steps of the State, the business community and civil society in order to harmonize interaction and minimize risks in the field of human rights for all parties[[134]](#footnote-134).

Today the RSPP actively promotes responsible business practices and sustainable development culture including respect for human rights. This issue
is reflected in the principles of the UN Global Compact of which the RSPP is a member since 2003 and the Social Charter of the Russian Business. The RSPP has also promoted the UNGPs in the Russian business community.

The Russian Federation was one of the five countries to co-sponsor the mandate of the Special Representative of the UN Secretary-General on human rights and transnational corporations and other business enterprises. The Russian company Sakhalin Energy was one of the five companies in the world selected for testing
of the UNGPs They have since been widely recognized and have remained relevant. All enterprises regardless of the nature of their business are advised to implement these principles. The RSPP continues its cooperation in this area with the Office
of the UN High Commissioner for Human Rights and the International Labour Organization (ILO,) which is highly appreciated[[135]](#footnote-135).

It can be concluded that, issues related to human rights and business are firmly on the agenda and are being actively discussed in Russian business circles. The analysis of survey shows an increase in companies’ attention to human rights issues.

## **§ 2. Development of Russian legislation in the field of business and human rights and its compliance with the UNGPs**

### **§ 2.1. State duty to protect human rights**

The normative basis for the recognition of human rights and freedoms
in Russian Federation is primarily constitutional provisions. According to Article 17
of the Constitution of the Russian Federation recognition and guarantees shall
be provided for the rights and freedoms of man and citizen according to the universally recognized principles and norms of international law and according
to the present Constitution[[136]](#footnote-136).

Chapter 2 of the Constitution of the Russian Federation in particular stipulates that all people shall be equal before the law and court, all forms of limitations
of human rights on social, racial, national, linguistic or religious grounds shall
be banned, man and woman shall enjoy equal rights and freedoms and have equal possibilities to exercise them[[137]](#footnote-137); everyone shall have the right to the inviolability
of private life, personal and family secrets, the protection of honor and good name[[138]](#footnote-138), everyone shall have the right to association, including the right to create trade unions for the protection of his or her interests[[139]](#footnote-139); labour is free[[140]](#footnote-140); everyone shall have the right to favorable environment, reliable information about its state and for
a restitution of damage inflicted on his health and property by ecological transgressions[[141]](#footnote-141).

Thus, those human rights, the exercise of which is inextricably linked with entrepreneurial activity, such as labour rights, ecological rights ect. are firmly enshrined in Constitution of Russian Federation, which has the supreme juridical force, direct action and shall be used on the whole territory of the Russian Federation.

Additionally, the Russian Federation stands for strict compliance with contractual and customary norms and confirms its adherence to the fundamental principle of international law - the principle of conscientious fulfillment
of international obligations[[142]](#footnote-142).

According to Part 1 of Article 15[[143]](#footnote-143) of the Constitution of the Russian Federation, the rights and freedoms of man and citizen are recognized and guaranteed in the Russian Federation in accordance with the generally recognized principles and norms of international law, which, in accordance with Part 4 of Article 15[[144]](#footnote-144) of the Constitution of the Russian Federation, are an integral part of the Russian legal system . If an international treaty of the Russian Federation establishes rules other than those provided for by law, the rules of the international treaty shall apply.

The following important legal acts in the field of human rights protection have been implemented into the system of the Russian Federation:

1. The Universal Declaration of Human Rights[[145]](#footnote-145). Adopted and proclaimed by UN General Assembly Resolution 217 A (III) on December 10, 1948. Ratified
by the Russian Federation on May 5, 1998;
2. The European Convention on Protection of Human Rights and Fundamental Freedoms[[146]](#footnote-146);
3. The International Covenant on Civil and Political Rights[[147]](#footnote-147). It was ratified by Decree of the Presidium of the Supreme Soviet of the USSR
of 18.09.1973 № 4812-VIII;
4. The International Covenant on Economic, Social and Cultural Rights[[148]](#footnote-148). It was ratified by Decree of the Presidium of the Supreme Soviet of the USSR dated 18.09.1973 № 4812-VIII;
5. The Convention on the Rights of the Child[[149]](#footnote-149). Adopted by resolution
UN General Assembly No. 44/25 of November 20, 1989 Ratified by the Resolution
of the Supreme Soviet of the USSR of 13.06.90 № 1559-1.

Thus, the listed legal acts are part of the legal system of the Russian Federation. Laws adopted in Russia must comply with the specified norms of international law,
in case of contradiction, the norms of international treaties shall be applied.

The specific responsibilities for the observance of human rights by enterprises and the methods of their observance are defined in the sectoral legislation, the most important of which will be considered. In addition, Russian legislation provides for control by State bodies over the observance of human rights by enterprises in various fields[[150]](#footnote-150) and provides for civil, administrative and criminal liability[[151]](#footnote-151) for human rights violations.

With regard to labour legislation:

The Russian Federation is a party to a number of conventions defining the principles of trade union activity:

1. Convention No. 87 of the International Labour Organization “Concerning Freedom of Association and Protection of the Right to Organize” (adopted in San Francisco on 09.07.1948 at the 31st session of the ILO General Conference). The Convention was ratified by the Decree of the Presidium of the Supreme Soviet of the USSR 06.07.1956;
2. Convention No. 98 of the International Labour Organization “Concerning the application of the Principles of the Right to Organize and to Bargain Collectively” (adopted in Geneva on 01.07.1949 at the 32nd session of the ILO General Conference). The Convention was ratified by the Decree of the Presidium of the Supreme Soviet
of the USSR dated 06.07.1956;
3. Convention No. 135 of the International Labour Organization “On the Protection of the Rights of Employees' Representatives at the Enterprise and the opportunities offered to them” (signed in Geneva on 23.06.1971).

Thus, the main international principles governing the protection of the right
to freedom of association and the conclusion of collective agreements are part of the Russian legal system.

Many of these international principles are also enshrined and specified
in domestic acts: Federal Law № 10-FZ of 12.01.1996 “On Trade Unions, Their Rights and Guarantees of Activity”[[152]](#footnote-152), Labour Code of the Russian Federation[[153]](#footnote-153), Federal Law
№ 92-FZ of 01.05.1999 “On the Russian Three-Party Commission for the Regulation of Social and Labour Relations”[[154]](#footnote-154)).

It follows from the above that the Russian legislation reflects the main internationally recognized principles of legal regulation of relations related to the association of employees and collective bargaining, as well as provides for specific measures aimed at implementing these principles.

However, the problems of compliance of Russian labour legislation with international labour standards have been developed by authoritative scientists in the field of labour law[[155]](#footnote-155). Based on the results of this work, recommendations were developed for the improvement of Russian legislation. With regard to the principle under consideration, the following proposals have been made.

1. To introduce into the legislation a norm containing the provisions specified
in Article 2 of the ILO Convention No. 98[[156]](#footnote-156), guaranteeing the independence
of associations of workers and employers, protection from acts of interference
in each other's affairs.

2. To take the necessary measures, including the amendment of Article 45[[157]](#footnote-157)
of the Labour Code of the Russian Federation, in order to ensure, both legally and practically, the possibility of collective bargaining for the conclusion of social and partner agreements at the professional level.

3. Amend or supplement the legislation in such a way that the higher trade union organizations, federations and trade union confederations were provided with access to collective bargaining, and they were also granted the right to conclude collective agreements.

Thus, the Russian legislation in this area can be improved. At the same time, the existing shortcomings do not affect the overall positive assessment of legislation in this area.

In addition, the Russian Federation is a party to a number of conventions that enshrine the principle of the inadmissibility of forced labour:

1. Convention No. 29 of the International Labour Organization “Concerning forced or compulsory labour” (adopted in Geneva on 06/28/1930 at the 14th session
of the ILO General Conference). The USSR ratified the Convention (Decree of the Presidium of the Supreme Soviet of the USSR dated 04.06.1956);

2. International Labour Organization Convention No. 105 on the Abolition
of Forced Labour (Geneva, June 25, 1957). Ratified by Federal Law dated 23.03.1998 № 35-FZ “On ratification of the Convention on the Abolition of Forced Labour”[[158]](#footnote-158).

In the acts of federal legislation it is established that forced labour
is prohibited[[159]](#footnote-159). Therefore, it can be concluded that the Russian legislation enshrines the main internationally recognized principles that presuppose the elimination
of forced labour, and also provides norms that specify and develop these principles.

The Russian Federation is a party to the following conventions regulating discrimination in the field of labour:

1. Convention No. 111 of the International Labour Organization “Concerning discrimination in the field of work and occupation” (adopted in Geneva
on 25.06.1958 at the 42nd session of the ILO General Conference). The Convention was ratified by the Decree of the Presidium of the Supreme Soviet of the USSR dated 31.01.1961;
2. Convention of the International Labour Organization No. 100 “Concerning equal remuneration of men and women for work of equal value” (Geneva, June 29, 1951). The USSR ratified the Convention by Decree of the Presidium of the Supreme Soviet of the USSR of April 4, 1956.

Consequently, the principle of non-discrimination defined in these acts (including depending on gender differences) is part of the Russian legal system. Russian domestic legislation contains norms that specify and develop this principle,
in particular, it clarifies what does not constitute discrimination[[160]](#footnote-160).

At the same time, the application of these norms is associated with a number
of problems one of which is the difficulty in proving the fact of discrimination[[161]](#footnote-161).
In this regard, it is proposed to supplement the legislation with norms that facilitate the proof (in particular, redistributing the burden of proof) of discrimination in the field
of work[[162]](#footnote-162).

Thus, despite the existing shortcomings, legislation in the field under consideration can be characterized as mature and adequate.

With regard to the privacy legislation:

The Russian Federation is a party to the Convention on the Protection
of Individuals with Automated Processing of Personal Data (Concluded
in Strasbourg on 28.01.1981). The Convention was ratified by Federal Law № 160-FZ of 19.12.2005[[163]](#footnote-163) with declarations.

In order to implement this principle, the legislation contains a number
of measures aimed at limiting interference in private life, in particular, the following: the list of documents that can be requested from an employee during employment
is limited[[164]](#footnote-164); processing of personal data (employees and other subjects of personal data) incompatible with the purposes of personal data collection is not allowed[[165]](#footnote-165);
it is not allowed to transfer personal data to third parties without the consent of the subject of personal data[[166]](#footnote-166); the requirements for the protection of personal data during their processing in the information systems of personal data are established[[167]](#footnote-167).

Thus, Russia not only proclaims the principle of privacy, but also provides for
a number of specific measures aimed at its implementation. Nevertheless, the legal doctrine makes proposals for improving legislation in this area, in particular, the following: to introduce into legislation norms that employers should regularly analyze the practice of processing personal data in order to: reduce, as far as possible, the volume and type of the personal data received and improve ways to protect the privacy of employees; to introduce into legislation the norms that employers should inform
or consult with their employees and their representatives in advance regarding the introduction or modification of automatic systems for the acquisition and use
of personal data, etc[[168]](#footnote-168).

In this regard, it is possible to talk about the improving Russian legislation
in this area.

With regard to environmental protection legislation:

The Russian Federation is a party to several dozen international treaties regulating environmental issues, in particular, the following:

1. Convention for the Prevention of Marine Pollution by Dumping of Wastes and Other Materials (Moscow - Washington–London–Mexico, December 29, 1972). The USSR ratified this Convention by Decree of the Presidium of the Supreme Soviet
of the USSR of December 15, 1975 № 2659-IX. The Convention entered into force for the USSR on January 29, 1976;
2. Convention on the Protection of the World Cultural and Natural Heritage (Paris, November 23, 1972). This Convention was ratified by Decree of the Presidium of the Supreme Soviet of the USSR of March 9, 1988 № 8595-XI.;
3. Convention on Long-range Transboundary Air Pollution (Geneva, November 13, 1979). The Convention was ratified by the Presidium of the Supreme Soviet
of the USSR on April 29, 1980. The Convention entered into force on March 16, 1983; the Vienna Convention on Protection of the Ozone layer (Vienna, March 22, 1985). The Convention entered into force on September 22, 1988.

A system of federal legislation aimed at protecting the environment has been created: Federal Law № 7-FZ of 10.01.2002 “On Environmental Protection”
(the Law on Environmental Protection); Federal Law № 174–FZ of 23.11.1995
“On Environmental Expertise” (the Law on Environmental Expertise); Federal Law № 89-FZ of 24.06.1998 “On Production and Consumption Waste” (the Waste Law), Federal Law № 33-FZ of 14.03.1995 “On Specially Protected Natural Territories”, etc.

The legislation establishes measures to prevent adverse effects, in particular, the following: a fee is established for the negative impact on the environment[[169]](#footnote-169); environmental quality standards are established, standards of permissible environmental impact in the implementation of economic and other activities, other standards in the field of environmental protection[[170]](#footnote-170); in relation to planned economic and other activities that may have a direct or indirect impact on the environment,
an assessment is being made Environmental Impact Assessment – Ecological expertise[[171]](#footnote-171); in relation to individual entrepreneurs, legal entities, in the process
of economic and (or) other activities of which waste is generated, waste generation standards and limits on their placement are established[[172]](#footnote-172).

Thus, the legislation on environmental protection can be recognized as quite developed.

To conclude, Russian legislation provides comprehensive regulation and provides for the implementation of most of the functions of the State reflected in the UNGPs. At the same time, there are shortcomings of varying degrees of materiality in a number of areas of legal regulation and law enforcement. At the same time, the existing shortcomings do not affect the overall positive assessment of legislation
in these areas.

### **§ 2.2. The corporate responsibility to respect human rights**

The issue of social responsibility of business in Russian Federation
is regulated by adopting the Guidelines on Social Responsibility (GOST R ISO 26000- 2012), approved by the Order of the Federal Agency for Technical Regulation and Metrology № 1611-st dated November 29, 2012 (hereinafter – “the Guidelines on Social Responsibility”). According to the introduction to the Guidelines, it is intended for voluntary use both by those who are beginning to be guided by the concept of social responsibility, and by those who have more experience in its implementation, that means, that it is not legally binding and is advisory in nature[[173]](#footnote-173).

The following practices are recommended for enterprises: determining the course of the organization to increase social responsibility[[174]](#footnote-174), introducing social responsibility into the management, systems and procedures of the organization[[175]](#footnote-175). (the implementation of these practices involves consideration of Principle 15
of the UNGPs[[176]](#footnote-176)); the use of the statement of social responsibility as a key element
of the organization's strategy through its integration into systems, policies, processes and decision-making behavior[[177]](#footnote-177) (the implementation of these practices involves consideration of Principle 16 of the UNGPs[[178]](#footnote-178)); the need to assess the impact
on human rights, taking into account conclusions and taking measures[[179]](#footnote-179)
(the implementation of these practices involves consideration of individual provisions of Principle 17 of the UNGPs[[180]](#footnote-180)); the need for consultations with citizens[[181]](#footnote-181) (the implementation of these practices involves consideration of Principle 18 of the UNGPs[[182]](#footnote-182)); exert influence on management[[183]](#footnote-183) (the implementation of these practices involves consideration of Principle 19 of the UNGPs[[184]](#footnote-184)); the analysis and improvement of the activities and practices related to social responsibility[[185]](#footnote-185) (the implementation
of these practices involves consideration of Principle 20 of the UNGPs[[186]](#footnote-186)).

It should be noted that the issue of social responsibility of enterprises
is considered not only at the legislative level. With the assistance of the RSPP a number of initiatives in the field of corporate social responsibility of enterprises and sustainable development were realized. Methodological instruments have been developed, including Charters of Russian business (the Social Charter of Russian Business[[187]](#footnote-187), which formulates the principles of responsibility of business practices[[188]](#footnote-188), and the Russian Anti-Corruption Charter for Business[[189]](#footnote-189), which involves the introduction
of anti-corruption programs and other measures of anti-corruption corporate policy into corporate governance practice) and recommendations of the RSPP (Basic performance indicators (Recommendations for use in management practices and corporate non-financial reporting)[[190]](#footnote-190), Recommendations for companies to conduct a self-assessment based on the provisions of the international standard ISO 26 000:201028[[191]](#footnote-191), “Five steps towards social sustainability of the company”[[192]](#footnote-192)).

In addition, practical tools have been developed. Since 2014, the RSPP has been analyzing public reports of companies and determining the sustainable development indices “Responsibility and transparency” and “Sustainability Vector” (ESG indices), used to calculate Moscow Exchange-RSPP stock indices. This analysis helps
to identify business leaders in corporate sustainability, responsibility and transparency[[193]](#footnote-193).

The RSPP's electronic libraries, – one of the Russia's largest electronic resources – which are publicly available on the RSPP website, also serve as a platform for companies to share their best practices: the library of corporate practices and the library of non-financial company reports.

The libraries’ materials serve as a basis for compilations of corporate practices and analytical reviews of non-financial reports. In the last 4 years alone, the following compilations have been published: “Russian Business and Sustainable Development Goals” (2018); “Non-financial reporting in Russia and the world: Sustainable Development Goals in Focus” (2019); “Decent Work – Sustainable Business” (2020) and collection “Russian Business and Human Rights” (2021).

Currently, active legislative work is underway to develop a system for the formation, publication and control of the reliability of non-financial reporting.
 In 2017, the Concept of Non-financial Reporting and the Plan of Measures for its implementation (hereinafter – “the Concept”) were approved by Order of the Government of the Russian Federation № 876-r dated May 05, 2017[[194]](#footnote-194). The Concept provides for the creation and development of a system of regulatory and methodological support for public non-financial reporting, including the adoption
of the federal law “On Public Non-financial Reporting”[[195]](#footnote-195) (a document aimed
at a wide range of stakeholders, containing information and indicators that comprehensively reflect the approaches and results of the organization's activities
on social responsibility and sustainable development, including economic, environmental, social aspects and control systems); the stages of development
of public non-financial reporting up to 2023 are envisaged[[196]](#footnote-196); the types and content
of non-financial reporting are defined[[197]](#footnote-197); control and assessment of the quality
of public non-financial reporting are provided[[198]](#footnote-198); the correlation of financial and non-financial reporting is assumed, namely: it is noted that the issues of comparability
of financial and non-financial reporting data require attention[[199]](#footnote-199).

In 2021 Recommendations on Disclosure by Public Joint-stock Companies
of Non-financial Information Related to the Activities of Such Companies were adopted by Letter of Bank of Russia № IN-06-28/49 dated July 12, 2021 (hereinafter – “the Recommendations”). The Recommendations stated that in order to increase the confidence of interested parties in the Company's activities and non-financial information disclosed by it, the Company is recommended to conduct
an independent external assessment of non-financial information disclosed in the annual report of the joint-stock companyor in a non-financial report in the form
of professional confirmation (assurance)[[200]](#footnote-200).

It should be noted, that for 2022, the draft of the federal law “On Public Non-financial Reporting”, mentioned earlier, has been developed for the fifth year, but the process is far from being completed due to the fact that “large resource companies
do not want to disclose their non-financial statements, and in general, almost all major companies oppose this law.”[[201]](#footnote-201)

Notwithstanding this on November 23 , 2021 Vladimir Putin approved a list
of instructions following a meeting with Government members on measures
to implement climate policy in the Russian Federation on October 5, 2021. According to Pr-2244, item 2 b): to the Government of the Russian Federation jointly with the State Duma The Federal Assembly of the Russian Federation to ensure the introduction of amendments to the legislation of the Russian Federation aimed at developing the system of public non-financial reporting of legal entities[[202]](#footnote-202).

Thus, there is currently no comprehensive regulation of the issue of social responsibility of enterprises in the legislation. However, active legislative work
is underway to develop a system for the formation, publication and control of the reliability of non-financial reporting.

To conclude, Russian legislation provides for a significant number
of measures specified in the UNGPs for the observance of human rights
by enterprises.

### **§ 2.3. Access to remedy**

 Judicial protection is the most effective way to protect the violated constitutional rights and freedoms of citizens. In accordance with Article 46 of the Constitution
of the Russian Federation everyone shall be guaranteed judicial protection of his rights and freedoms[[203]](#footnote-203).

 The judicial system of Russia is enshrined in the Federal Constitutional Law № 1-FKZ “On the Judicial System of the Russian Federation” dated December 31, 1996, which defines the composition of the judicial system, that is, the circle
of bodies that administer justice.

The judicial system of Russia is based on the following principles: the unity
of the judicial system[[204]](#footnote-204); independence of courts and independence of judges[[205]](#footnote-205); binding judicial decisions[[206]](#footnote-206); equality of all before the law and the court[[207]](#footnote-207); participation of citizens in the exercise of justice[[208]](#footnote-208); publicity in the activities
of courts[[209]](#footnote-209); conducting legal proceedings in Russian or, in cases provided for
by law, in the state language of the public in whose territory the court is located[[210]](#footnote-210).

However, judicial protection also has its drawbacks, which the State is trying
to resolve. Currently, judicial protection, although it has advantages, is not properly provided by the State. For instance, the majority of citizens are not fully aware
of their constitutional rights[[211]](#footnote-211). Any appeal to the court requires knowledge of any fundamentals of legislation in order to legally correctly state and justify claims. Thus, the insufficiency of legal education takes place.

Thus, Russian legislation provides for provisions aimed at ensuring equal access to justice. At the same time, there are problems in the administration of justice that need to be solved.

Additionally, the Russian Federation provides for a system of State non-judicial complains against actions (inaction) of enterprises, as well as a wide range
of guarantees for the implementation of efficiency principles when reviewing complaints by relevant state bodies. Consideration of relevant complaints takes place within the framework of the activities of the bodies that monitor compliance with legislation in the relevant field[[212]](#footnote-212). The Commissioner for Human Rights in Russian Federation holds a significant position in the consideration of complaints.

It should be mentioned, that the following non-State mechanisms are recognized in the Russian Federation:

1. The European Court of Human Rights (hereinafter – “the ECHR”). According to paragraph 2 of the Resolution of the Plenum of the Supreme Court
of the Russian Federation dated 27.06.2013 № 21 “On the application by courts
of general jurisdiction of the Convention on the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 and the Protocols thereto” dated June 27, 2013 the legal positions of the ECHR, which are contained in the final decisions adopted in relation to the Russian Federation, are binding on the courts.

Meanwhile, in recent years, the implementation of the ECHR's decisions has become less predictable, namely, by the Resolution of the Constitutional Court
of the Russian Federation № 1-P “In the case of the resolution of the issue of the possibility of execution in accordance with the Constitution The decision of the European Court of Human Rights of July 31, 2014 in the case “YUKOS v. Russia”
in connection with the request of the Ministry of Justice of the Russian Federation” dated January 19, 2017 found it impossible to implement the decision of the ECHR
in terms of individual and general measures imposed on Russia and in terms
of compensation awarded. In substantiation, the Constitutional Court of the Russian Federation pointed out that the decision of the ECHR cannot be considered binding
on the Russian Federation if the specific provision of the European Convention
on Human Rights on which this decision is based, as a result of interpretation carried out in violation of the general rule of interpretation of treaties, in its meaning comes into conflict in accordance with the provisions of the Constitution of the Russian Federation that have their grounds in the international public order and form the national public order, primarily relating to the rights and freedoms of man and citizen and to the foundations of the constitutional system of Russian Federation[[213]](#footnote-213).

2. The Human Rights Committee. The recommendations of the Committee
on Individual Communications are taken into account by Russia in the framework
of voluntarily assumed international legal obligations. According to the Definition
of the Constitutional Court of the Russian Federation № 1248-O dated June 28, 2012, despite the fact that the International Covenant on Civil and Political Rights contain provisions directly determining the significance of considerations of the Human Rights Committee adopted on individual communications for the participating States, this does not exempt the Russian Federation from the conscientious and responsible implementation of the considerations within the framework of voluntarily assumed international legal obligations[[214]](#footnote-214).

3. Arbitration courts. In accordance with Russian legislation, arbitration courts are one of the possible mechanisms for considering a dispute between individuals and enterprises (Clause 14 of Article 2 of Federal Law № 382-FZ “On Arbitration (Arbitration Proceedings) in the Russian Federation” dated December 29, 2015)[[215]](#footnote-215).
At the same time, a significant disadvantage of this mechanism is the high size of the arbitration fee, which does not allow it to be recognized as popular among Russian citizens.

To conclude, the legislation of the Russian Federation provides with State judicial mechanisms, State non-judicial mechanisms and non-State grievance mechanisms which correspond to the UNGPs.

# **Conclusions**

The authors came to the following conclusions:

All over the world, including Russian Federation, civil society is becoming more active both in its relations with business and with the State, and there
is a growing demand for people’s interests to be taken into account. In business practice, this is increasingly seen in the context of respect for human rights. The lack
of understanding and consideration of these interests poses risks for companies themselves and may result in reputational and financial losses.

It can be concluded that, issues related to human rights and business are firmly on the agenda and are being actively discussed in Russian business circles.

The RSPP actively promotes responsible business practices and sustainable development culture including respect for human rights. This issue is reflected
in the principles of the UN Global Compact of which the RSPP is a member since 2003 and the Social Charter of the Russian Business adopted by the business community on the initiative of RSPP. The RSPP has also promoted the UNGPs adopted by the UN in 2011 in the Russian business community.

Therefore, Russian business makes a significant contribution to the solution
of national strategic objectives and global sustainable development goals, which
is confirmed by the results of a survey conducted by the RSPP in 2020.

Despite the fact that ESG principles are mostly popular among large Russian companies, the interest in a comprehensive assessment of companies' activities taking into account ESG factors is growing since Russian business depends on the global market and the interest of ethical consumption already affects consumer preferences within the country.

In order to make the ESG policy more effective and to strengthen the interest
of Russian companies in compliance with its principles, it is necessary to make non-financial reporting of companies mandatory (as in some countries, including the UK, China, Indonesia), and to provide tax incentives to responsible companies. Thus, there is currently no comprehensive regulation of the issue of social responsibility
of enterprises in the legislation. However, active legislative work is underway
to develop a system for the formation, publication and control of the reliability
of non-financial reporting.

The conducted analysis give a generally positive assessment of the legislation
of the Russian Federation for its compliance with internationally recognized principles and practices reflected in the UNGPs: Russian legislation provides for the implementation of most of the functions of the State in the field of regulation reflected in the UNGPs, a significant number of measures specified in the UNGPs on the observance of human rights by enterprises, the range of judicial and non-judicial mechanisms, as well as guarantees of their effectiveness in order to ensure citizens' access to legal remedies.

To conclude, Russian legislation provides comprehensive regulation and provides for the implementation of most of the principles reflected in the UNGPs. However, there are shortcomings of varying degrees in a number of areas of legal regulation and law enforcement. At the same time, the existing shortcomings do not affect the overall positive assessment of legislation in these areas.

# **CONCLUSION**

At the present time there is no doubt, that human rights are profoundly affected by business. There is a rising understanding that businesses and stakeholders confront additional risks, especially those connected to human rights, particularly socio-economic and cultural rights. Different components of these rights are integrated in the fields of production, sales, and finance, and they apply to businesses of any nature. Human rights are impacted in relationships between employers and employees, manufacturers and consumers, entrepreneurs and the people who live in the area where they operate. All important processes, such as occupational and environmental safety, information security, working conditions, product quality, and others, are affected.

 Protection of internationally recognized human rights from the potential and actual adverse impacts of business enterprises as a result of their entrepreneurial activities is provided by international human rights law standards.

International human rights law standards are part of the system
of international law and are divided into “soft” law and “hard” law. The binding force of standards depends on the extent to which they are recognized by key actors in the field of international business and human rights. Thus, even without legally binding force, one or another international legal standard can have a practical effect and influence the behavior of key international business and human rights actors.

Today, the UNGPs are the global normative international legal standard in the field of business, which is equally recognized by all key actors in the field
of international business and human rights. The UNGPs are “soft” law norms and,
in practice, are a guide for States and enterprises, containing practical recommendations for respecting, protecting and ensuring human rights in the field
of business. The UNGPs represent an important attempt to formulate corporate obligations for corporations and also promote a corporate culture that respects human rights. According to the UNGPs States have a positive obligation to respect, protect and fulfil human rights and fundamental freedoms, corporations are responsible for performing specialized functions, required to comply with all applicable laws and
to respect human rights and victims affected by the activities of enterprises shall
be provided with effective complaint mechanisms that ensure access to effective remedies.

The UNGPs have a significant practical impact. More and more businesses are making policy statements and implementing human rights due diligence procedures
in their codes of conduct, thereby reinforcing the principles' binding provisions for themselves. Furthermore, the UNGPs have served as a foundation for the development and improvement of State and non-State grievance mechanisms to enable victims' access to legal remedies at the international, regional, national, sectoral and operational levels. The UNGPs' provisions are reflected in international organizations' acts, enterprise codes of corporate responsibility, and are also integrated by States into national legislation through NAPs – a development strategy in the field of international business and human rights, chosen by the State to protect individuals from the adverse impacts of corporations and other enterprises engaged in business activities on human rights and formulated by it in accordance with the UNGPs.

In modern world, including Russian Federation, the concept of responsible business conduct has gained prominence. It becomes evident that not only States, but also businesses, can have an impact on human rights and should work to avoid violations, mitigate risks, and effectively manage risks. Underestimating these risks can harm those whose rights are potentially violated, as well as the company's business reputation, investment attractiveness, and public image. Additionally, various stakeholders, such as government institutions, civil society organizations, and investors, are becoming more interested in the ESG evaluation, which covers processes, procedures, and policies to ensure human rights protection.

The RSPP plays an important role in actively promoting responsible business practices and a culture of sustainable development, including the UNGPs,
in Russian business community. As a result the topic of human rights is perceived
by a great number of Russian companies as a practical matter of managing business processes and engaging with stakeholders, thus, many of them have corporate documents, that include these aspects: codes of ethics, business conduct and business partnership; general business principles; human rights, health and safety policies; standards of employee conduct, etc.

The results of the analysis show that the Russian Federation's law is typically
in line with internationally recognized principles and practices expressed in the UNGPs: in order to ensure citizens' access to legal remedies, Russian legislation provides for the implementation of most of the State's functions in the field
of regulation reflected in the UNGPs, a significant number of measures specified
in the UNGPs on the observance of human rights by enterprises, the range of judicial and non-judicial mechanisms, as well as guarantees of their effectiveness. However, there are shortcomings of varying degrees in a number of areas of legal regulation and law enforcement. At the same time, the existing shortcomings do not affect the overall positive assessment of legislation in these areas.

*Recommendations.* After analyzing the content of international legal standards, considering the doctrine of international law, as well as studying the opinions
of international organizations, the authors came to the following conclusions:

1. In order to fill existing gaps in regulation of business and human rights, an international legal standard should take the form of an international treaty,
be universal in scope and legally binding in nature. Finally, such a standard should provide for the establishment of an appropriate complaints mechanism at the state level, to which victims of adverse effects could apply.
2. In order to further systematically and effectively promote the UNGPs among Russian business the Russian Federation needs to start developing a National Action Plan. The Russian Federation and other Eurasian Economic Union member States can learn many useful lessons from the implementation of the UNGPs through the NAP, focusing on the practice of the EU and the Council of Europe, both at the regional and national levels. Existing extensive practice can help to develop mandatory regional standards, as well as national regulations for the protection
of the human rights of individuals in the field of business. This will contribute to the development of relations with neighboring and, in particular, with European states, and will also attract new investments to our country.
3. In order to bring legislation in line with the UNGPs and other international standards legislative work may be initiated, especially in the field
of labour legislation (trade union activity, discrimination in the field of labour), privacy legislation, administration of justice etc. Additionally, active legislative work shall be initiated in order to develop a system for the formation, publication and control of the reliability of non-financial reporting, in particular, the adoption of the Federal law
“On Public Non-financial Reporting”.
4. In order to familiarize government officials with international standards in the field of international business the Russian Federation should also take care
to conduct special trainings. It is highly important to educate people on the need
to comply with these standards and explain to them the necessity to ensure that human rights are protected from the adverse effects of commercial enterprises.
We believe that this work can help achieve the stated goal and contribute to the development of a corporate culture among civil servants and top managers
of Russian enterprises.
5. Enterprises on the territory of the Russian Federation should take the initiative to comply with international legal standards into their own hands and take
on voluntary obligations to comply with them. The first step in the right direction would be to join the UN Global Compact and then change corporate codes in line with the principles of the UNGPs. In addition, all businesses within the Russian Federation should issue a mission statement to establish their human rights responsibilities
in accordance with the UNGPs. The next step should be to implement human rights due diligence at all levels and in all areas of business. This will allow assessing and subsequently leveling the risks of human rights violations, which will not only save companies' money, but also contribute to the development of corporate culture, as well as the growth of reputation in the international market. Ultimately, respect for human rights will lead to an increase in the welfare of companies and the achievement of their main goal - to maximize profits.

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**SAINT PETERSBURG STATE UNIVERSITY**

**ABSTRACT**

**of Master's thesis**

**Master's Degree Program “Transnational Legal Practice (in English)”**

**Name**: Korobova Polina Igorevna

**Topic of Master’s thesis**: “Implementation of the United Nations Guiding Principles on Business and Human Rights: Russian perspective”

**Purpose the research:** to determine the importance of human rights for Russian business and the prospects for further development of the Russian Federation in this area.

**Objectives of the research:**

1. determining how human rights are relevant to business;
2. examination of the framework and specifics of the legal regulation of this area
at the international level;
3. considering substance of foundational and operational principles of the United Nations Guiding Principles on Business and Human Rights;
4. analysis of involvement of Russian business in the issue of business and human rights in general and determining how it promotes and implement the United Nations Guiding Principles on Business and Human Rights;
5. expertise of the United Nations Guiding Principles on Business and Human Rights in comparison with the legislation of the Russian Federation;
6. identification of the problems associated with the promotion of a given topic, and track trends and goal-setting in ways of solving these problems.

**Conclusions drawn from the results of the research:**

1. At the present time there is no doubt, that human rights are profoundly affected
by business. The United Nations Guiding Principles on Business and Human Rights is the first universally recognized global international standard in the field
of business and human rights directed at States and companies that clarify their duties and responsibilities to protect and respect human rights in the context
of business activities and to ensure access to an effective remedy for individuals and groups affected by such activities. In order to fill existing gaps in regulation
of business and human rights, an international legal standard should take the form of an international treaty, be universal in scope and legally binding in nature.
2. The topic of human rights is perceived by a great number of Russian companies
as a practical matter of managing business processes and engaging with stakeholders, thus, many of them have corporate documents, that include these aspects: codes of ethics, business conduct and business partnership; general business principles; human rights, health and safety policies; standards of employee conduct, etc.
3. The results of the analysis show that the Russian Federation's law is typically
in line with internationally recognized principles and practices expressed in the United Nations Guiding Principles on Business and Human Rights. However, there are shortcomings of varying degrees in a number of areas of legal regulation and law enforcement. At the same time, the existing shortcomings do not affect the overall positive assessment of legislation in these areas.
4. In order to further systematically and effectively promote the United Nations Guiding Principles on Business and Human Rights among Russian business the Russian Federation needs to start developing a National Action Plan.
5. In order to bring legislation in line with the United Nations Guiding Principles on Business and Human Rights and other international standards legislative work may be initiated, especially, in order to develop a system for the formation, publication and control of the reliability of non-financial reporting. To familiarize government officials with international standards in the field of international business the Russian Federation should also take care to conduct special trainings. Enterprises on the territory of the Russian Federation should take the initiative to comply with international legal standards into their own hands and take on voluntary obligations to comply with them.

**Keywords:** business and human rights, EU law, the United Nations Guiding Principles on Business and Human Rights, Corporate Social Responsibility, human rights due diligence, non-financial reporting, Russian legislation, Russian business practices.

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