COALITION FOR
PEACE AND ETHICS

Input for Consideration by the OHCHR on the Establishment and Operation of a Help Desk on Business and Human Rights

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Coalition for Peace & Ethics
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I. Introduction

Capacity building is a critical part of any regulatory project. It is particularly helpful where the administrative apparatus of a public or private collective seeks to guide its members toward an evolving set of expectations and behaviors. That, essentially, is the point at which the business and human rights community finds itself. Its vanguard of leading social forces--institutionalized within the academy and public international organizations, along with leading organs of liberal democratic civil society, have it in mind to reshape the orthodoxy of behaviors around the fundamental objective of preventing-mitigating-remedying adverse human rights impacts along certain lines. Those lines represent one of several plausible approaches to the operationalization of the principles and expectations embedded in the UN Guiding Principles for Business and Human Rights. It is one, however, that has garnered a substantial authority within the business and human rights community, one derived in part from the recent reports of the Working Group for Business and Human Rights (UNWGBHR).[1] In those works, UNBHRWG stressed the need for further normative development (along lines compatible with its view of UNGP

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[1] Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights at 10: taking stock of the first decade, UN doc A/HRC/47/39 (22 April 2021); UN Working Group on the issue of human rights and transnational corporations and other business enterprises, "Raising the Ambition–Increasing the Pace: UNGPs 10+: A Roadmap for the Next Decade of Business and Human Rights", November 2021,available [https://www.ohchr.org/sites/default/files/documents/issues/business/ungps10/2022-11-08/UNGPS_ROADMAPPLUS10_EN.pdf], last accessed 21 June 2024.

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normativity), and related to that essential disciplinary measures—normatively orthodox capacity building to further objectives of UNGP policy and implementation coherence. The issue was taken up again in the 2023 Working Group Report to the UNHRC.[2]

To those ends, the UNWGBHR urged institutional and working style reform within the UN system:

> Almost a decade of inaction at the executive level of these institutions also reflects the limited number of requests from Member States to integrate and promote the UNGPs. To date, the UN system has not developed sufficient structures or tools to further reinforce implementation support, including systematic data gathering, wide-ranging capacity-building, or a global "help desk" for businesses, States, civil society and other stakeholders. The consequence is a lost opportunity for the UN system to walk its own talk, to spur uptake on a larger scale and to contribute to greater overall coherence in global governance frameworks, which would support coherence in collective efforts toward a just transition and realizing the 2030 Agenda.[3]

The event builds both on the call by the UNWGBHR for coherence and capacity building, but more immediately on a Concept Note,[4] and a Research Brief.[5] The "his concept note presents the main contours of the BHR Helpdesk proposal. The note is part of OHCHR fundraising efforts to implement the recommendations of the UN Working Group on Business and Human Rights in its Roadmap for the next decade of UNGPs implementation."[6] Though a "full funding proposal can be presented upon request,"[7] it is not available as part of the Event.

The institutional leading forces driving business and human rights within the UN system, then, have proposed a mechanism, for the moment built around the concept of the *help desk.* A *magisterium* (an official teaching office—in the sense of role or authority. That office for teaching and guidance is meant to be constituted not as a bureaucratic apparatus (but connected with that institutional authority).[8] And in

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[2] UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Building capacity for the implementation of the Guiding Principles on Business and Human Rights, UN doc A/HRC/53/24, (18 May 2023); for a critical reading, see Stefania di Stefano, Research Brief: Parameters for a Global Helpdesk on Business and Human Rights (Geneva Academy and Friedrich-Ebert-Stiftung, November 2023), available [https://www.geneva-academy.ch/joomlatools-files/docman-files/Business%20and%20Human%20Rights%20Global%20Helpdesk.pdf], last accessed 17 June 2024, pp. 1-4.

[3] UN Working Group on the issue of human rights and transnational corporations and other business enterprises, "Raising the Ambition—Increasing the Pace: UNGPs 10+, supra n. 1, p. 49 (action Area 8, "Stocktaking Findings").

[4] OHCHR, Concept Note: Helpdesk on Business and Human Rights (nd); available [https://www.ohchr.org/sites/default/files/documents/issues/business/hr75/bhr-helpdesk-concept-note.pdf], last accessed 19 June 2024 (hereafter the OHCHR Helpdesk Concept Note).

[5] Stefania di Stefano, Research Brief: Parameters for a Global Helpdesk on Business and Human Rights (Geneva Academy and Friedrich-Ebert-Stiftung, November 2023), available [https://www.geneva-academy.ch/joomlatools-files/docman-files/Business%20and%20Human%20Rights%20Global%20Helpdesk.pdf], last accessed 17 June 2024.

[6] OHCHR Helpdesk Concept Note, supra, n. 1.

[7] Ibid.

[8] Philip Kosloski, "What is the magisterium of the Catholic Church," Aleteia (/ February 2020); available [https://aleteia.org/2020/07/02/what-is-the-magisterium-of-the-catholic-church], last accessed 20 June 2024.

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that form, it appears, an effort will be made to deepen capacity while developing and embedding an orthodox community of interpretation of the UNGP that will drive coordinated application. The realization of this form of an orthodox vision appears likely to draw significantly on European sensibilities on the forms and approaches to understanding bot the UNGP and in instituting that understanding within a highly regulated and compliance oriented business and human rights environment that represents a current form of liberal democracy.[9]

Fair enough--legitimacy of collective meaning making is invariably reduced to a somewhat crude function of the control of the administrative organs through which power over narrative and implementation is exercised. And that power is almost always guided by the leadership of the vanguard of social forces, however they may be recognized within a political-economic system. In this case, the UN system in general, and more specifically the UN apparatus in Geneva under the institutions of the OHCHR has traditionally assumed the representative role of administrator of law, norms, and guidance, touching on human rights along a particular interpretive path. Within that administrative institution, the UNWGBHR has been tasked by the UN Human Rights Council, since the time of the endorsement of the UNGPA, to promote effective and comprehensive dissemination, promote good practices, provide support, gather data on the situation on the ground explore options respecting the UNGP and the business and human rights project, working in close cooperation with other human rights organs assisted by the OHCHR.[10]

Nonetheless, guidance and leadership is to some extent constrained by the text (and perhaps intent) of the object of interpretation and application. The text through which such administrative measures are undertaken tend to speak for themselves; and that provides a substantially large space within which the administrative organs of the UN can choose to interpret the documents "under their care" in ways that reflect policy choices.[11] It is in the manner of the delivery of the guidance, and the forms of that collective leadership, then, that there may be several possible paths available, each with distinctive benefits and consequences (both positive and negative). And this will and ought to have a substantial impact on the design, operation, and authority of help desks undertaken to both develop the business and human rights narrative, interpret the UNGP, *and achieve the political objectives of coherence, unified interpretation, and operational discipline.*

That political role invested in capacity building is both the great benefit and the source of the great caution to this helpdesk enterprise. It serves as well as the conceptual heart of this input. At its core, the Helpdesk will serve as the centralization, mouthpiece, and manifestation of ay enterprise in which the

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[9] See, e.g., Ursula von der Leyen, "Special Address by President von der Leyen at the World Economic Forum 16 January 2024″ (16 January 2024); available [https://ec.europa.eu/commission/presscorner/detail/en/speech_24_221], last accessed 21 June 2024 ("It has never been more important for the public and private sector to create new connective tissue. Because none of these challenges respect borders. They each require collaboration to manage risks and forge a path forward. And this is what I want to talk about today . . Europe is uniquely placed to show how this can work. Because our democracies and our businesses have interests that align.").

[10] UN Human Rights Council, Resolution; Human Rights and Transnational Corporations and Other Business Enterprises A/HRC/RES/17/4 (6 July 2011), ¶¶ 6-9.

[11] Larry Catá Backer, *The UN Guiding Principles for Business and Human Rights, A Commentary* (OUP, forthcoming 2025), chapter 1.

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interpretive direction of UNGP application will be undertaken by an administrative body with substantial practical disciplinary effect as an administrative rather than as a political matter, even though substantial issues of policy will be determined in the course of the work of the Helpdesk. While there is nothing "wrong" with the delegation of such potentially significant authority to an administrative organ—especially one that may formally have no mandatory authority—the practical effect of that enterprise on mandatory systems suggests that at a minimum, measures ought to be considered to ensure both the greatest possible transparency, and the widest possible approaches to consultation. It also cautions respect for margins of appreciation in interpretation, though that weakens the objective of convergence, it recognizes the reality of a sometimes broad scope of plausible interpretive outcomes which will contribute to contextual effectiveness on the ground. That, perhaps, is where it matters most—as it affects the lives and realities of individuals who are both rights and risk bearers of human rights and its impacts.

One does not develop a help desk from the bottom up--nor necessarily with a view to enlarging the primacy of human rights holders who tend to bear the consequences of adverse human rights impacts.[12] Instead, it tends to be more efficient to target those collective organs into which positive responsibility for the care and protection of human rights harms bearers authority are vested. While the result may be to objectify the bottom--the individuals who are the object of all of this activity--the benefits, from the perspective of techno bureaucrats and the institutions they populate--may be worth the objectification.

The Office of the High Commissioner of Human Rights, along with the UN Working Group for Business and Human Rights along with the Geneva Human Rights Platform, and Friedrich-Ebert-Stiftung Geneva office--a virtual top level People's Political Consultative Conference of leading business and Human Rights organs--now seeks to exercise consultation on the form and function, as well as the targets, for a mass push toward the construction and operation of systems of help desks to facilitate the embedding of the appropriate expectations and drivers for business and human rights. An invitation has been extended to those ends:

> It is my pleasure to invite you to an event on Establishing Effective Helpdesks on Business and Human Rights taking place on Thursday, 26 June 2024 @ 14-15h in Geneva, Palais des Nations, Room XXII. The event, which is co-organized by OHCHR, the Geneva Human Rights Platform, and Friedrich-Ebert-Stiftung Geneva office, aims to discuss how to establish effective helpdesks on business and human rights at the global, regional, and national levels that can work together to strengthen the understanding and implementation of the UN Guiding Principles on Business and Human Rights. We encourage you to join to discuss how such initiatives can be most helpful to States, business, civil society, rights holders, and others. Please note that this is an in-person only event taking place in Geneva. If you are unable to join, it would be great if you could encourage any colleagues you may have that are based in Geneva to come.[13]

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[12] See the excellent background analysis highlighted in the consultation, Stefania di Stefano, Research Brief: Parameters for a Global Helpdesk on Business and Human Right, supra.

[13] Geneva Academy, Press Release, Establishing Effective Helpdesks on Business and Human Rights (UNOHCHR and Friedrich Ebert Stiftung, 26 June 2024), available [https://www.geneva-academy.ch/event/all-events/detail/462-establishing-effective-helpdesks-on-business-and-human-rights], last accessed 21 June 2024.

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Bravo. The focus is on the bearers of responsibility. The object to help them meet those responsibilities in ways that align with contemporary expectations by those public collectives who drive an understanding of the structures and premises around which compliance based regimes for managing economic activity through the lens of human rights (and now sustainability) presume is the best approach. *One deals directly*, then. with the structuring of high level compliance and operations at the macro-institutional level—one is constructing an apparatus. One *does not deal directly* with the agency of individual rights bearers or their capacity at any organizational level; these individuals and their low level mass organs, remain, as they have for a while, objects of all of this activity—rights holders are the consumers of guidance and leadership to be provided by the institutionalized vanguard apparatus of the helpdesk embedded within the OHCHR. Perhaps that is necessary—a policy determination the value of which is something that is not for me to say. It's disciplinary focus,[14] though, can indeed be a powerful instrument of coordination and control.

The Coalition for Peace & Ethics (CPE) welcomes the effort to deepen capacity for the interpretation and application of the UNGP. CPE agrees that a more comprehensive quasi-administrative mechanism is necessary for purposes of activity coherence around the business and human rights project. That, in turn, requires the establishment of some sort of mechanism with the multiple purposes identified in the OHCHR Concept Note. At the same time such an effort ought to be undertaken with caution, and a sensitivity both (1) to the interpretive flexibility built into the UNGP (one that may, from time to time, produce interpretations that do not align with the policy preferences of the OHCHR and others), and to the realities, sometimes complex, on the ground, especially with respect to rights holders who are also the primary risk bearers of adverse human rights impacts and of the interpretive policies and determinations by centralized administrative organs in Geneva. It is with that in mind that CPE offers these preliminary observations and suggestions (the CPE Inputs) that it is hoped will at least contribute to the conversations around and the ultimate establishment, of this Helpdesk mechanism. This CPE Input is divided into two parts. Section II considers the broader issues raised by the Helpdesk concept as elaborated in the OHCHR Concept Note. Section II then offers a preliminary set of brief suggestions and recommendations.

II. The Help Desk Concept Note as Framework

1. Introduction. The "Introduction" of the Concept Note sets the stage for the Concept, its placement within the OHCHR, and its institutional character. It was written as part of a fundraising document; it "presents the main contours of the BHR Helpdesk proposal. The note is part of OHCHR fundraising efforts to implement the recommendations of the UN Working Group on Business and Human Rights in its Roadmap for the next decade of UNGPs implementation. A full funding proposal can be presented upon request" (Concept Note n. 1).

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[14] One speaks here of discipline in the sense of both law and norms as disciplinary argents of both mass behaviors and mass consciousness, as understood since the middle of the last century. See, e.g., Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Alan Sheridan (trans); NY: Vintage Books, 1995))

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To that end it advances certain principles and premises. *First,* that the UN Guiding Principles for Business and Human Rights are the "authoritative global standard for preventing and addressing human rights harms in the context of business activities." (Ibid., p. 1). "*Second*, that the OHCHR is the focal point for "providing uniform guidance and clarification" on the interpretation of the UNGP.

With respect to the first, there does appear to be a consensus about the importance of the UNGP as the *framework* for addressing issues of human rights harms in economic activity. That *framework* offers a set of *processes*, addressed to States and to third parties (including business enterprises). The framework processes addressed to States are founded, at a minimum on the *international legal obligations of States*, and are realized through the traditional mechanisms of international law with respect to State obligations in the international system. The framework processes addressed to business enterprises, are grounded at a minimum on respect for the human rights instruments identified in UNGP Principle 12, which are realized through the development and application of systems of human rights due diligence. Both States and non-State third parties to which the UNGP might be applied, are responsible for ensuring remedial protections under standards described in the UNGP's 3rd Pillar. That might be understood as the cluster of authoritative standards to which the Concept Note refers. But one cannot be sure.

With respect to the second, the notion of the constitution of the OHCHR as the focal point has had a curious history, reflecting intent, certainly, but also perhaps regulation or formal authority less. It does suggest a way of approaching interpretation and meaning making with respect to which there may be less familiarity among stakeholders than might be assumed.

The genesis of this premise might be found in the work of SRSG Ruggie in the final years of his mandate. On the very last paragraph (¶ 126) of SRSG Ruggie's 2010 Progress Report on the operationalization of the "protect, respect, and remedy" framework,[15] SRSG Ruggie spoke to having become the de facto focal point for business and human rights. He expressed the hope that after the end of his mandate that an "advisory and capacity building function" would be "anchored" in the UN. He suggested further that "Logically, this should rest with the OHCHR."[16]

Two years later, that *desire* was recast as something substantially more formal by the UN Secretary General in his Report on "Contribution of the United Nations system as a whole to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles on Business and Human Rights."[17] Citing SRSG Ruggie's desire

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[15] Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, Business and human rights: further steps toward the operationalization of the "protect, respect and remedy" framework A/HRC/14/27 (9 April 2010); available [
[https://undocs.org/en/A/HRC/14/27]; last accessed 25 June 2024, ¶ 126.
[16] Ibid.
[17] UN Secretary General, Report to the UN General Assembly on "Contribution of the United Nations system as a whole to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles on Business and Human Rights" (A/HRC/21/21; 2 July 2012), available [https://documents.un.org/doc/undoc/gen/g12/148/33/pdf/g1214833.pdf?token=HzLrVyxNDMLqC9f7u6&fe=true] last accessed 25 June 2024 (hereafter, UN Secretary General Report A/HRC/21/21).

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expressed as ¶ 126 of A/HRC/14/27 as support, the SG turned desire into fact ("The institutional focal point within the United Nations system for providing uniform guidance and clarification on issues relating to the interpretation of the Guiding Principles rests with OHCHR")--with the additional requirement that the OHCHR work "in close collaboration with the Working Group" for Business and Human Rights.[18] Now treated as self-evident, the Working Group, eleven years later, relied on that assumption-practice-desire-expectation as a premise on which the concept of a helpdesk, as they would now develop that concept, could be developed authoritatively under the authority of the OHCHR.[19]

The object of this history is not to suggest that the OHCHR lacks capacity to develop administrative mechanisms that are meant to offer guidance and interpretation--however they may be authoritatively received (or not). Rather it is to highlight the interpretive methods, and the trajectories of that interpretation (along with the principles that they might advance) that would be built into any mechanism so organized. It suggests as well the difficulty of attaining anything like the sort of sophisticated reading of text (UNGP) and the related persuasive or authoritative documents around which the interpretive project is undertaken—and contested. In other words, in the operation of an OHCHR helpdesk, one must be prepared to address issues of guidance and interpretation in the manner and forms illustrated in this simple but telling example. For those unversed in the subtleties and practice tropes of this administrative organ, it might well be that capacity building will be necessary to ensure the capacity to acquire the substantive capacity proposed.

These initial premises are central to the objectives of the project--the avoidance of fragmentation in interpretation and divergence of understanding among stakeholder groups.[20] That objective was drawn directly from the SG's 2012 A/HRC/21/21.[21] In 2012, the SG was worried about securing the "full benefits of convergence" which would be threatened by fracture in implementation. A single interpretive narrative was thought a necessary response. Yet at the time, that narrative disciplining of collective meaning was supplied by the dissemination by the OHCHR of its 98 page "Interpretive Guide" to 2nd Pillar Corporate Responsibility compliance.[22] By 2023, that was not enough. Two principal reasons were offered in the Concept Note: (1) the growing popularity of the UNGP augmenting the risk of interpretive approaches at variance with what might be preferred within the OHCHR apparatus; and (2) Conversely, the popularity of the UNGP had also increased the number of requests to the OHCHR for authoritative interpretation that threatens to overwhelm that apparatus.[23]

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[18] Ibid., ¶ 33.
[19] Report of the Working Group for Business and Human Rights, "Building Capacity for the Implementation of the UNGP (A/HRC/53/24; 18 May 2023) available [https://digitallibrary.un.org/record/4013009?v=pdf&ln=en], last accessed 24 June 2024, at ¶ 71.
[20] Concept Note, supra, p. 1.
[21] UN Secretary General Report A/HRC/21/21, supra, ¶ 32.
[22] Office of the High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (HR/PUB/12/02, New York & Geneva, United Nations, 2012).
[23] Concept Note, supra, p. 1.

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The solution proffered: institutionalization and upgrading "of this line of work" to provide service more fairly, as the OHCHR understands that term.[24] And, thus, here we are. But where, exactly, is "here"? On the one hand one notes the desire to construct a quite spare mechanism with a large portfolio and scant resources. On the other hand, it is meant to be deeply embedded in the cross-consultations of all mechanisms within the UN system with some finger in the business and human rights pot. The idea, it appears, is what the SRSG famously referred to as "leverage"[25] but in this case in reverse—the Helpdesk is to make up for staff and resources by leveraging UN resources. At the same time the "knowledge hub" idea developed most recently in the Working Group 2023 Report, suggests a leveraging from the bottom and potential fracture as it appears to focus on localized knowledge bases but theoretically coordinated and disciplined by the central organ.[26] That may not produce the desired results except on paper. On the other hand, it might be that the model adopted is that of the Norwegian Ethics Council—one in which only "key cases" or "critical interpretations" that further political or policy goals may be entertained, the rest to draw inspiration from what is offered.[27]

2. Background. The Concept Note used the "Background section (Concept Note, supra, pp. 1-3) to drive home three points.

The first was to add authority, continuity, and legitimacy through forms of consultation, by sourcing the idea for the helpdesk in the "stock taking" work of the working Group, the OHCHR "and other partners" around the Working Group's UNGPs 10+ Roadmap report. The Help Desk Concept was then echoed in the Working Group's 2023 Report (A/HRC/53/24). In addition, the work of the G7 under the German Presidency added weight to the concept. "An OHCHR report on sustainable global supply chains prepared for the German Presidency of the Group of Seven (G7) echoed the Working Group's Roadmap recommendations, calling on G7 States to "commit to using their broad powers across domestic policy areas to implement more ambitious supporting measures" to implement the UNGPs as a complement to mandatory approaches."

The second focused on lessons learned from the ongoing guidance and technical support by OHCHR (Concept Note, supra, p. 2). Here the OHCHR was recast as the "guardian of the UNGPs" (Ibid.)--a heroic, and no doubt a necessary characterization. A reference to the ongoing written guidance was made to suggest the demand side arguments for a helpdesk (link here), and the popularity of its 2012 Interpretive Guide was noted. Most interesting in its recital of the activities that keep it busy in this respect are the "demand side clients. They include States (especially with respect to their regulatory ambitions and their National Action Plans); business;

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[24] Ibid..
[25] Interpretive Guide, supra, p. 8 and UNGP Principle 19.
[26] UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Building capacity for the implementation of the Guiding Principles on Business and Human Rights, UN doc A/HRC/53/24, supra, ¶¶66-70.
[27] Larry Catá Backer, The Business of Facilitation and the Presumption of Corporate Untrustworthiness; The Norwegian ″Guiding Cases″ in Delek Group, Sumitomo, and KDDI, Law at the End of the Day (24 December 2023), available [https://lcbackerblog.blogspot.com/2023/12/the-art-of-facilitation-and-presumption.html] last accessed 25 June 2024.

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civil society organizations (which have access to OHCHR) and other international organizations.

One gets the sense that demand side pressure is generated at the high end of the spectrum of stakeholders--actors who matter, who have impact; and especially institutional actors. That raises a caution—a focus almost entirely on conversation among the representatives of collectives may tend to skew discussion toward the sensibilities and interests of collectives themselves. That is, mass organizations have their own approach to the world which includes both their own welfare and the perpetuation of systems in which they retain their appropriate place and role. That may or may not align with the normative objectives for which they have been constituted in the field of business and human rights. There is little to suggest here how or under what circumstances individual rights holders might have direct *and effective* access.

Human rights adverse impacts risk bearers do not appear to engage in any sort of meaningful way. For them reliance on these mass organizations--political, economic, social, and international, seems to be the expectation. For human rights bearers, the OHCHR Accountability and Remedy Project (ARP)[28] with its focus on remedy is on offer; for institutional actors a place at the table for system building and the development of significant interpretive consensus is also available.[29] Capacity is certainly an issue, but it is as likely that the unconscious premises and power of *arborescence* that also plays a role. Already one gets a sense of the power of hierarchy and impact in the design, purpose, and operational style of the helpdesk: this is not to foster neural pathways but rather a routing from top to bottom. That may make sense; the acceptance of that model without much discussion might make less sense given the nature of the subject and its objectives.

The third focuses on structuralist and system building principles and objectives. One of them appears to be to enhance the role of the OHCHR as the hub of interpretive activity when it comes to human rights. Fair enough. The object here is not merely convergence, but convergence within the apparatus of the OHCHR, and with it the control of the parameters, premises, and objectives of interpretation. Another appears to be inherently administrative. Functionaries are quite concerned about the scope and limits of jurisdiction--and the jurisdictional limits of the interpretation facility of the UNGP is no exception. "Thus, while it could be appropriate for the helpdesk to provide an assessment of the extent to which a draft law aligns with the UNGPs, it would be out of scope for the helpdesk to comment on the legal implications of national laws related to business and human rights" (Ibid., p. 3).

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[28] "The Accountability and Remedy Project (ARP) aims to strengthen implementation of the "Access to Remedy" pillar of the UNGPs. Since its official launch in 2014, three substantive phases have been completed, with each phase focusing on one of the three different categories of grievance mechanisms referred to in that pillar." OHCHR and Business and Human Rights, OHCHR Accountability and Remedy Project: Improving accountability and access to remedy in cases of business involvement in human rights abuses, website available [https://www.ohchr.org/en/business/ohchr-accountability-and-remedy-project] last accessed 22 June 2024 (with links to ARP reports).

[29] Concept Note, supra, p. 3.

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A sort of principle of subsidiarity might be developed with national issues to be handled locally and core interpretive directives handled from the center. (Ibid.). The same applies to labor standards. Also interesting is the functional differentiation of the OHCHR helpdesk organ with the role of the Working Group. "Further, the BHR Helpdesk and OHCHR's advisory role is meant to be distinct, but complementary, to the activities of the UN Working Group on Business and Human Rights. . . in performing a BHR Helpdesk function, OHCHR will liaise closely with the Working Group to ensure alignment in approaches to interpretative and practical matters relating to the UNGPs." (Ibid.).

3. The BHR Helpdesk Concept--Function and Organization. The last 2 pages of the Concept Note are devoted to sketching out a rough structure for the Helpdesk. It is built around five functions which are conveniently illustrated through a set of interlinked circles, suggesting not just linkage but equivalence.
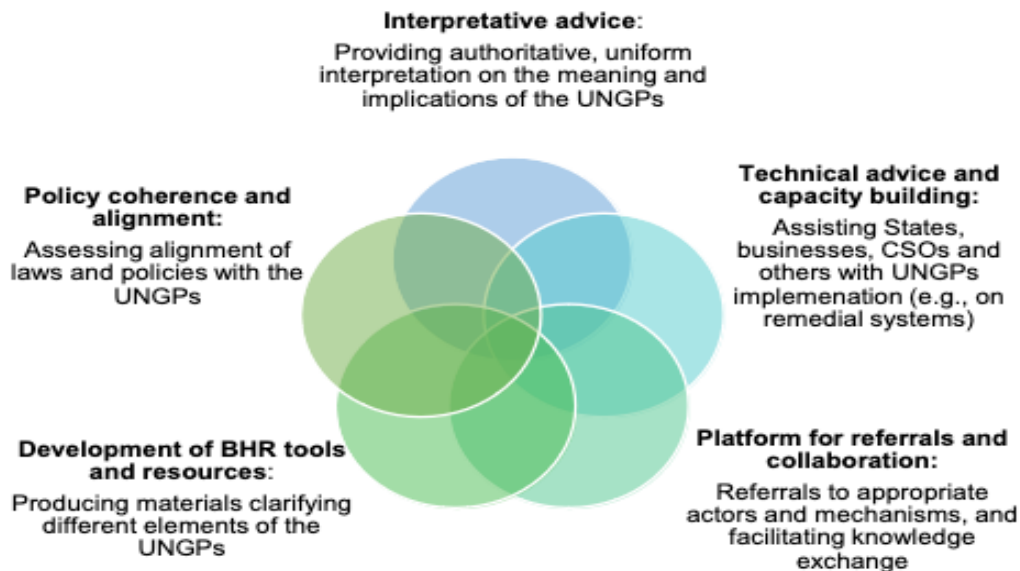
Pix Credit Concept Note, p. 4.

a. Interpretive advice. The Concept Note characterizes the function of advice in terms of platforms--though it is not clear what either the authors, or the concept, mean. Platforms are spaces where consumers and producers of things of value to both meet and exchange. But it also suggests that producers and consumers may constantly shift roles. Moreover, platforms are spaces for the harvesting of data. It is not clear whether that is also contemplated, though the expanding portfolio of possible applicable (European) law may be an issue. In any case, it appears the notion is that this platform will cat like a router in some cases, and (on the basis of analytics it is presumed) also develop more summary forms of response based on the routinization of forms of requests. Of course, the danger there will be in the essentialization of advice that, the more generic it gets loses its value to its consumers. The Issue of confidentiality is left

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deliberately vague--a worrying sign if indeed the principal object of this enterprise is to centralize and enhance buy in for a coordinated discipline of the narratives and understandings (as well as the application) of the UNGP.

b. Policy coherence and alignment. The focus here is on a coordinated approach to the disciplining of national measures in line with and subject to the OHCHR interpretive principles for the UNGP. The objects of these efforts are states, but the request for such pronouncements may come from business and civil society--and in contested political fights, likely from both. Little is said about alignment with the OECD, though one might expect that this is implied.

c. Technical advice and capacity building. Advice apparently builds capacity; it might also produce dependence. And as the authoritative effect of the Helpdesk becomes more pronounced, it might serve to reduce capacity as well as autonomy. But it will produce a substantially integrated administrative apparatus that cuts through the differentiation among collective organs exercising different sorts of jurisdictions and power--States, business enterprises, civil society, and international organizations. It will certainly do little to enhance the capacity of ground level actors without the means or capacity to reach out to Geneva. Thus if there is ant capacity building it would be to enhance the capacity of middleperson institutions to augment their authority as representatives of smaller states, businesses, civil society organs. . . .and of course individual rights holders.

d. Development of BHR tools and resources. The expectation appears to be that the Helpdesk will not just produce reasoned interpretation when approached by stakeholders, but that it will contribute to the glossing of the UNGP. Yet that ought also to be a more democratic process, at least with respect to obligations to consult not just with the usual actors and those already intimately connected to the UN Geneva apparatus but others who have and will produce their own glosses and applications of the UNGP. This is especially important with respect to such efforts at the operational level of economic activities and especially in those remote venues which may be more difficult to access from Geneva. There is a worry here as well--one already hinted at in the 98 pages of the initial OHCHR first effort at glossing the UNGP's 2nd Pillar corporate responsibility to respect human rights--and that is that the tendency towards the baroque-to the highly sophisticated and perhaps abstracted glossing of the UNGP text that may well serve important functions at a very high level of authority, will prove to be less useful to those who may well be tasked with operationalizing those interpretations among communities of rights holders unable to benefit from those efforts.

Second, and perhaps more importantly--given the broad range of plausible interpretations in the UNGP any facility that speaks to interpretive heresy ought to be approached with caution. One references here the sentiment expressing in the Concept Note: where BHR Helpdesk staff detect trends in misinterpretations of the UNGPs, materials can be developed and shared publicly to clarify those areas." (Ibid., p.3). If the OHCHR has an

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agenda then it is certainly free to pursue it--but in matters relating to the UNGP, all stakeholders must be permitted that margin of appreciation built into the text--as for the rest that is part of a healthy politics that should be transparent and well debated--but not as a form of heresy control.

e. Platform for referrals and collaboration. The routing function of the Helpdesk is augmented through this function. And in this sense the idea of Helpdesk as platform acquires some additional value. Little, however is said about the use of this facility for data gathering and analysis. And perhaps that is the greatest gap in the conceptualization of a Helpdesk that invariably will become a significant source of data collection about business and human rights practices and concerns, All of that, in turn, will serve an essential role in the objectives (hopefully transparent) of the OHCHR to (re)shape and manage the narrative of the UNGP, and with it, of the expectations and imaginaries[30] of economic activity under the umbrella of rights.

f. Governance. The preliminary plan for a governance mechanism follows the usual path. One hires a "coordinator" anchored within the OHCHR's Business and Human Rights Unit. The coordinator would be aided by staff--likely also encumbered with other duties. The coordinator would be expected to be entrepreneurial in leveraging UN Geneva resources ("leverage the wider OHCHR system" Ibid., p. 4). Most important, and perhaps like the SRSG himself during his mandate, he will have to rely on the kindness and self-interest of stakeholders--especially well-resourced States, business and civil society--to undertake the work envisioned. For all of that, this very, very, thin administrative apparatus hardly aligns with the vastness of the five principle objectives of the Helpdesk, and one might well fear that the project's governance, will doom it to disappointment. That, anyway, is the risk.

Taken together one has a sense of the comprehensiveness and ambition of the Helpdesk project. On the one hand, conceptually, the comprehensiveness makes sense. From the practical perspective, however, comprehensiveness will come at a steep price. It is not clear that the lean staff anticipated will be capable of effectively meeting its responsibilities . The vision, in effect, is for the institution of a complex administrative apparatus with substantial quasi-administrative, quasi-judicial, and quasi-legislative (policy-wise at least) responsibilities. It might well be an unrealistic expectation that these can be met by the institutional structures proposed. Moreover the data and accountability measures that may be necessary to support this enterprise, as well as the cost and operation of outreach, may not have been adequately considered.

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[30] The premises that make it possible to interpret inputs and to give them meaning in an ordered and rationalized way, providing, at its broadest level, the rules bases for consciousness. Jean Paul Sartre, *The Imaginary* (London: Routledge, 2004 [1948]), pp. 6-15, 185-187 ("The object as imaged is therefore contemporary with the consciousness that I have of it and it is exactly determined by that consciousness: it includes in itself nothing but what I am conscious of; but, inversely, everything that constitutes my consciousness finds its correlate in the object." Ibid., p. 6). To be able to affect the imaginaries of economic activity is to assert a control over the values and understandings of economic activity within a social collective.

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III. Suggestions and Recommendations.

In light of the discussion in Sections I-II, the following suggestions and recommendations are offered:

1. *Interpretive advice.*

A. It is not clear what a "centralised platform where States, businesses, civil society organizations, and others could seek authoritative interpretation" means. There are several key points that would need substantial consideration:

> i. The definition of "authoritative" will have to be clarified. The UNGP are a framework that self-consciously does not create either new law nor is mandatory in its provisions. The interpretation of those Principles cannot be "authoritative" in the legal sense but might be substantially persuasive because it is connection with the OHCHR. That, in turn suggests a reputational authority rather than a legal one. That ought to be clarified.

> ii. It is not clear that States and other multi-lateral organs cannot themselves establish other centers of authoritative interpretation. The Working Group's focus on knowledge centers certainly suggests that possibility. Other States, especially those who do not embrace the political-economic ideology of the OHCHR may well be given incentive to develop their own authoritative centers.

> iii. If one is dealing with a platform, it is not clear how this platform (generally aligned with big data tech or at least virtual spaces) is connected to the administrative apparatus peopled with natural persons that the Concept Note describes as the human administrative apparatus. Moreover, a platform implies a space where producers and consumers meet to exchange—but underlying that is a principle of reciprocity—producers of interpretations may be consumers of information brought by those seeking interpretation grounded in their own contextual challenges. Ideally this sets up a space where descriptive and predictive modeling is possible using big data tech. None of this is explored and all of it should be.

> iv. The access issues that are at the heart of the Remedies Pillar of the UNGP appear as well here. It is not clear how access will be maintained, and the barriers to access that will be built into the system (technical accessibility, language accessibility, physical accessibility, etc.).

> v. On the other hand the interpretive facility appears to construct the Helpdesk as a sort of router—they do not do the "interpreting" but send it off to others and thereby relieve the current OHCHR staff of the burden of deciding to respond and responding. It is not clear how these are meant to connect to the notion of knowledge hubs advanced through the UNWGBHR.

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B. Little mention is made of transparency, other than that "Individual requests for advice may be kept confidential." There are at least two issues. The first is a function of the form of advice and interpretation to be offered. Contentious interpretations may require some protection of the parties. Several models are available—for example those adopted under the ICSID system. But even in the absence of contention issues of privacy may require a closer look at transparency. On the other hand, the less information available on the "platform" the less likely even "authoritative" interpretations will have effects beyond those seeking advice. And in any case it is not clear: (1) whose privacy is in need of protection other than perhaps individual human rights holders; (2) whether those decisions are grounding in unspecified factors (e.g. vulnerability, etc.); (3) whether civil society or human rights defenders, or even enterprises under some circumstances ought to be entitled to privacy. Yet privacy does not necessarily mean that interpretive advice cannot be made transparent. Rules respecting those issues will be complex and contentious.

C. It is not clear what role, if any national human rights institutes will play a role in interpretation. Certainly the Paris Principles appear to leave room for participation.[31] The same question applies to the OECD and its National Contact Point system. Coordination with that system is essential if the connection between Chapter IV of the OECD Guidelines for Multinational Enterprises and the UNGP mechanisms are to remain aligned in more than form.

D. If the German template[32] is meant as a model, then the objectives of the Helpdesk would be considerably more modest than the Concept Note suggests. This is a technical service that is useful, to be sure, but which is not, in itself, directed toward the construction and guidance on policy driven UNGP interpretation and application.

2. *Policy coherence and alignment.*

A. It is not clear what "will be available to provide assessments" means. In one sense that suggests the Helpdesk will function as a sort of high end consulting firm. On the other it may also suggest that this high end consulting firm will charge for the privilege of consultation—the implications of which would be quite challenging. More importantly, of course, is the need for policy coordination among enterprises and civil society. These actors appear absent from this mechanism.

B. On the other hand the suggestion seems to be that this consulting service is available only to States and only for help on formulation of National Action Plans. The use of National Action

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[31] UN General Assembly, Resolution: Principles relating to the Status of National Institutions (The Paris Principles) (GA/RES/48/134 (20 December 1993); available [https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris], last accessed 21 June 2024.

[32] Partners in Transformation, Agency for Business and Economic Development (Agentur für Wirtschaft und Entwicklung), "Helpdesk on Business and Human Rights" (Helpdesk Wirtschaft und Menschenrechte), available [https://wirtschaft-entwicklung.de/en/helpdesk-on-business-human-rights/], last accessed 25 June 2024.

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plans as a vehicle for policy coherence is at best problematic—especially given the broad scope of interpretive plausibility built into the UNGP. Yet if that is the intent then the OHCHR ought to be quite transparent about the use of this mechanism for political ends—to use administrative consultation to project its own interpretation and application of the UGP into States.

3. *Technical advice and capacity building*.

A. It is not clear how the technical advice portfolio is to align with the "interpretation" portfolio and the "policy coherence" objective. There is, in theory, virtually no space between interpretation of the UNGP and technical advice and capacity building about the UNGP in context. In both cases the platform concept might be useful. But again the connection between the platform concept and the human officials who will populate the apparatus remains unspecified.

B. It is not clear whether individual rights bearers are "actors" to whom this facility is available. Access to justice issues arise if that is not the case.

C. here is potential overlap in the technical advice facility with the work of the OECD. It is assumed that formal and informal connections will be elaborated, though their details will be important.

D. The reference to ARP again suggests the use of the Helpdesk as a sort of router. I that is the case then much more specificity may be required as well as functional differentiation which ought to be clearer.

4. *Development of BHR tools and resources*.

A: The Helpdesk is imagined as a sort of accelerator of much of the work that, at one point, one have been forgiven for assuming was at the center of the UNWGBHR portfolio. The overlap here remains to be specified, but duplication, given the thinness of UN Geneva resources, might require some critical work in developing the details of the Helpdesk apparatus.

B. More significant is the implication that the Helpdesk will have as a primary function the collection and analysis of data related to the transactions with which it engages actors seeking its services.[33] Beyond the privacy and consent issues involved—especially given the trajectories of European law on these matters—this suggests that the Helpdesk apparatus will require a large capacity to engage in big data tech—descriptive and predictive analytics, and ultimately some sort of generative intelligence assistance. The failure to mention much less grapple with this implication may be the greatest challenge of moving the project forward.

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[33] OHCHR Concept Note p. 4: "For instance, where BHR Helpdesk staff detect trends in misinterpretations of the UNGPs, materials can be developed and shared publicly to clarify those areas."

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C. The Helpdesk's function as a guardian against interpretive heresy (" where BHR Helpdesk staff detect trends in misinterpretations of the UNGPs, materials can be developed") implicates the nature of the interpretive project itself in three ways.

i. First it seems to conform that there is a political element to the Helpdesk in the form of using the interpretive function to make "authoritative" the policy objectives of the OHCHR through the mechanics of interpretation. It also suggests, without substantial support, that in many situations there is only one "best" interpretation of the UNGP. That is a highly contested assumption. If that is the case then the Helpdesk will have to be transparent about this if it means to retain the "authority" of its interpretations.

ii. Second, the implication is that "misinterpretations" will be used as data, the interpretation or analysis of which will be used to produce narrative disciplining materials. None of this is "wrong" unless the Helpdesk is not transparent about what it is doing, or at least the premises that guide its work .

iii. Third, the issue of clashes of authoritative interpretation becomes important. One can, for example, envision the creation of a multilateral vehicle for the interpretation of the UNGP in accordance with Socialist premises.[34] But does not have to travel all the way to the Socialist camp to envision the possibility of alternative centers of authoritative interpretation in other places. Likewise, where NCP and Helpdesk interpretations do not align a mechanism will have to be established to deal with those issues. Where authoritative interpretation vary and more importantly when they cannot be harmonized, some sort of mechanism will be required.

5. *Platform referrals and collaboration.*

A. The platform concept will have to be refined. Right now it is in danger of being all things to all people and functions. That is unrealistic. With respect to the focus on its router features, the platform element will be a virtual assistant. But that raises the core issue of access: virtual systems work for well-funded enterprises deeply embedded in the networks of elite actors hovering around the UN apparatus and driving its consultation universe. But these are precisely the actors that the Helpdesk need not reach. It is the others among whom the value of capacity building may be much more important. Those issues will have to be developed and sorted.

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[34] Larry Catá Backer, Symposium on Business and Human Rights (BHR) Regulatory Initiatives Outside Europe: Part 11: Erika George and Enrique Samuel Martinez, "The Uyghur Forced Labor Prevention Act: An Assessment Of Enforcement Efforts", Law at the End of the Day (23 June 2024); available [https://lcbackerblog.blogspot.com/2024/06/symposium-on-business-and-human-rights_23.html], last accessed 23 June 2024; Larry Catá Backer, Symposium on Business and Human Rights (BHR) Regulatory Initiatives Outside Europe: Part 6: Larry Catá Backer--"The Chinese Path for Business and Human Rights"[白 轲 "工商企业与人权的中国道路"], Law at the End of the Day (17 June 2024), available [https://lcbackerblog.blogspot.com/2024/06/symposium-on-business-and-human-rights_17.html], last accessed 23 June 2024.

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B. Platforms require coding, and coding requires oversight, and oversight and coded operations require quality assessment and accountability measures. These are both highly technical and expensive. It is not clear that resources have been allocated to ensure a properly operating platform as envisioned.

C. Platforms, and any coded analytics built on data and interative interactions with data can become corrupted during or as a consequence of the iterative process itself. Coding bias and avoiding iterative bias drift requires both resources and attention, as well as transparency in accountability and core standards and principles embedded into virtual systems.

D. One can assume that referrals envisioned will serve as data. That data and the results of the referrals are necessary for deepening the authority of the interpretive and technical assistance process, but it also augurs caution for the reasons set forth above.

6. Governance

A. It is not clear what it means for the Helpdesk to be "anchored" institutionally within the OHCHR Business and Human Rights Unit. That raises two questions with respect to capacity—one is sensitivity to the use of technical and institutional jargon. The other is that specificity and precision might be especially useful in the context of establishing the apparatus of the Helpdesk and establishing as well the basis of its authority.

B. The administrative model (beyond the apparatus around the construction and operation of the platform) is to be vested in a single "coordinator" and "several" staff each assigned a functionally distinct enterprise area. Much of the work would be obtained by leveraging resources. . With more funds, the physical presence of the Helpdesk would go global. It is not clear how this apparatus of natural persons meshes with the operation of the platform.

C. The Concept Note raises the issue of language and resolves it in an institutionally expected way—like the UN, the Helpdesk would operate in the official languages of the UN. That sets up a gap between the capacities of those who need the services of the Helpdesk most and the ability of the Helpdesk to understand. The problem is especially acute if significant interactions are to be effectuated through a platform and in virtual space. Perhaps some additional leveraging will be required here. But for the moment the conceptualization is silent on the matter.

IV. Concluding Thoughts and Suggestions for More Theoretical Explorations of the Helpdesk Impulse in the Enterprise of Business and Human Rights.

The Office of the High Commissioner of Human Rights, along with the UN Working Group for Business and Human Rights along and the Geneva Human Rights Platform, and Friedrich-Ebert-Stiftung Geneva office --now seeks to exercise a consultation of sorts on the form and function, as well as the targets, for a mass push toward the construction and operation of systems of help desks to facilitate the embedding of the appropriate expectations and drivers for business and human rights. Perhaps the 26 June 2024

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meeting might be better understood as a briefing rather than a consultation. An invitation has been extended to those ends (discussed here; concept note for the event here; on the German template here).

The topic, and the effort, is important. The choices made in structuring this mechanism perhaps more so. This CPE analysis and input, including its suggestions and recommendations go toward the key elements of that structuring—*the delicate balancing between authority and (in)formality in structures and the even more delicate balance between interpretation and instrumentalization*. The fundamental question that requires some discussion is this: will the OHCHR operating perhaps through this Helpdesks mechanism seek to develop a premise that it is the supreme authority or a significant and uniquely situated but not the only authority on the UNGP, its interpretation, and the manager of the premises through which judgments about application must be measured. CPE does not suggest that either position is fatally flawed, only that either requires a measure of transparency, consultation, and perhaps the legitimizing offices of law unless the assertions and operations under any such mechanism is to remain informal. The German model certainly points in that direction. The price one pays for informal narrative management, of course, is the effective and mandatory authority of interpretation and pronouncements, the legal effects of which may vary by State. The effort to move this to a virtual space, through the concept of platforms, is a good one though, as the CPE input suggests, one that in this formative stage of its development, presents critical challenges—and choices among objectives (policy, political, structural and the like). Lastly, it remains to be seen whether or to what extent the helpdesk mechanism can overcome the large challenge of effective access. Aimed only at elite stakeholders the helpdesk mechanism will merely lard an already rich system of access. Aimed to those otherwise unable to access current may require some substantially creative thinking—with respect to which both virtual spaces and the conceptual framework of platforms can play a key role. Tied to that is the final normative element that ought to play a role in structuring—the role of data and data mining in the construction of the helpdesk system. The helpdesk system will generate a tremendous amount of data; much of it will be useful both for system quality control, but also to feed descriptive and predictive models. In a more advanced stage, that data can also serve as a baseline against which behavior changing policy measures may be adopted, adapted, and applied to the community of stakeholders. None of this is necessarily bad, but all of it ought to be considered against emerging legal and normative standards about data and its uses to manage perception and conduct.

In any case, this effort to coordinate or centralize the interpretive ad capacity building function has been a long time coming, one that aspects of which members of CPE have also.[35] That brings one to theory. But that is how things work within the structures of *arborescence*;[36] vertically hierarchical networked interfaces) that are the (necessary or at least inevitable) hierarchical structures of the UN enterprise in Geneva and its associated networks. It is also the essential organizational parameter of its principal stakeholders--States, business enterprises, and the great civil society organs--around and through which this business and human rights project s operated. This *arborescence* now seeks to create a human *neural*

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[35] Larry Catá Backer, "From Guiding Principles to Interpretive Organizations: Developing a Framework for Applying the UNGPs to Disputes that Institutionalizes the Advocacy Role of Civil Society," i*n Business and Human Rights: Beyond the End of the Beginning* 97-110 (César Rodríguez Garavito, ed., Cambridge University Press, 2017)

[36] Deleuze and Guattari, "A Thousand Plateaus" (U Minn Press, 1987; Mille Plateaux (Minuit, 1980).

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network in the form of what is benignly though quite brilliantly strategically named a "help desk" (on "intelligent naming" *ming-ming* (明名).[37] This "help desk" is not just a router, it is an administrative organ the purpose of which is to serve as the "decision-intermediate layer" of a neural pathway that can turn inputs into a uniform and well curated set of outputs aligned with the programming of that layer. It is a stamping machine for uniform and quality controlled product that can standardize the production of business and human rights objects (opinions) that can then produce uniformity around a specific interpretive approach to the premises and principles it seeks to advance-protect.

The help desk, in this sense, is meant as a neural network the operations of which are embedded in a structural *arborescence* grown around the OHCHR. Arborescence, like the Helpdesk, is premised on a dense root system from which issues are drawn up through a trunk (the Helpdesk) and then produces a high level presence (capacity building, interpretative discipline and the like). It presumes a linear model rationalizing authority and order through hierarchy. [38] The model conforms to emerging authoritative principles of structuring aligned public-private governance networks around compliance systems overseen by a technologically proficient bureaucracy (see especially here). That requires, in turn, not merely principles and baselines (in this case the UNGP), but also an interpretive stance that produces a set of clear objectives toward which the UNGP urtext can be deployed (on variation in the possibilities of interpretation and application.[39] This is nicely developed in the key background documents that serve as the framing of the consultation session. The objectives are convergence; leadership and guidance--but not mandatory measures--are to be undertaken by the OHCHR; and narratives along with practice expectations are to be built around a constantly iterative strategic interpretation embedded an institutional organ that is both a source of opinion about "best" or "preferred" reading and application, and a router/projector of interpretation among a large group of related actors.

This certainly falls nicely within a fair reading of the intent of the UNGPs and aligns with the fundamental working style of the OHCHR. The devil, of course, is in the detail. Nonetheless the caution is the temptation to substitute interpretation and policy for text and its many margins of appreciation. The UNGP may more resemble a rhizomatic structure. For that sort of structure a different approach to capacity and interpretation may be in order. The nature of that ordering has been explored by CPE.[40]

Overall, this is a quite worthy project. The analysis that followed is offered in the hope of contributing to the discussion of the worthy project of coordination and perhaps of centralization of UNGP narratives, guiding premises, outlooks, policies, and applications. The further hope is that careful engagement might provide some benefit for decision makers to enhance the proposed interpretive facility's respect of

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[37] Larry Catá Backer, The UN Guiding Principles for Business and Human Rights: A Commentary (OUP, forthcoming 2025), text & n. 18.

[38] Cliff Stagoll, Arborescent Schema, The Deleuze Dictionary, available [https://deleuze.en-academic.com/7/arborescent_schema], last accessed 25 June 2024.

[39] Ibid., Chapters 1-5.

[40] Larry Catá Backer, Nabih Haddad, Tomonori Teraoka, and Keren Wang, "Democratizing the Global Business and Human Rights Project by Catalyzing Strategic Litigation from the Bottom Up," Jena Martin and Karen E. Bravo (eds) *The Business and Human Rights Landscape: Moving Forward, Looking Back* (CUP, 2015), Chapter 9.

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the spirit of the UNGPs themselves in a way that remains positive and useful for everyone but sensitive to context, time, place, and space.