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# Global Accountability of Transnational Corporations: The UN Global Compact as a Global Norm

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*The nature of the UN Global Compact has been studied from the perspective of three frameworks. The first is the theory of norm. The UNGC involves the creation of a network beyond transnational advocacy, as a transnational norm. The network of the UNGC is a public space for dialogue among participants. The second is the theory of subject. In the process of Multi-Stakeholder Initiatives, ownership of various stakeholders and actors including companies are discussed. Furthermore, it attempts to draw the sense of ownership and commitment from those who cannot recognize their ownership. The third is the theory of responsibility. In the age of globalization, in association with increasing multilateral actors, the concept of 'responsibility' should be multilayered. The concept of 'responsibility' should be interpreted stereoscopically and it will be necessary to understand and conceptualize many related concepts concerning 'accountability' such as 'responsibility,' 'charge' and 'commitment,' with gradations.*

## Keywords

UN Global Compact, CSR, GCJN, Norm, Soft Law, Responsibility, COPs

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## I. Introduction

The United Nations has contributed to ‘norm setting’ in the international society since its establishment. There are many kinds of positive norms which were supported in creation by the UN, such as multinational treaties, resolutions of the General Assembly and the Security Council, organizational rules, Memorandums of Understanding, Declarations, etc. All of these norms are not necessarily positive international laws which are concluded by sovereign States with legal binding force. In the international society, however, there are a variety of norms which are considered softer than international law. The United Nations Global Compact (“UNGC”) is one of such norms adopted by the UN. The UNGC was proposed by the former UN Secretary General Kofi Annan and officially established at the UN Headquarters in New York on July 25, 2000. Its main purpose is to promote the Corporate Social Responsibility (“CSR”). The UNGC is a strategic policy initiative for businesses, committed to aligning their operations and strategies with ten universally accepted principles<sup>1</sup> in the areas of human rights, labor, environment and anti-corruption. It can also be called soft law.

The UNGC is different features from positive international law in three distinct

<sup>1</sup> UNGC, Ten Principles, *available at* <https://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> (last visited on Apr. 24, 2015). The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labor standards, the environment and anti-corruption:

### Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

### Labour

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labor;

Principle 5: the effective abolition of child labor; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

### Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8 : undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

### Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

points. First, many kinds of actors are considered stakeholders on the UNGC platform, including corporations, investors, non-governmental organizations (“NGOs”), civil society organizations (“CSOs”), academia, cities, international and national trade unions, and a wide range of public sector organizations. Second, a norm creating process of the UNGC is different from that of positive international law. Positive international law will be established through legal processes such as signature, ratification, or accession and registration, while the UNGC is constituted mainly by common consensus. Third, the UNGC does not have any legal binding force. It operates as per self-regulation and self-restraint of its participants.

In the context of global governance, it is necessary to study global norms which also includes non-State actors (“NSAs”). In this paper, the dynamism of the UNGC as a new UN norm of the 21st century will be analyzed.

This research will be addressed not from a viewpoint of the theory of management or business administration on which CSR is originally based, but from the viewpoint of UN norms. The range of research is limited to the data from the official website of the UNGC containing vast quantities of resources.

As of April 2015, the number of UNGC participants in Japan is 224 including non-business members.<sup>2</sup> Kikkoman, Japan’s Soy Sauce Company, became the first member of the Global Compact in 2001.<sup>3</sup> In 2003, Japanese companies organized the Global Compact Japan Network (“GCJN”).<sup>4</sup> Further, members in Far East Asia would meet annually at the Roundtable Conference. They include local UNGC networks from China, Japan and Korea.<sup>5</sup> This is a special feature of this region. There is not yet such international meeting mechanism of a regional roundtable among local networks.

The activities of the UNGC have been attracted by Corporate Accounting, Disclosure and CSR Policy, Office, Economic and Industrial Policy, the Ministry of Economy, Trade and Industry of Japan. The Ministry stated: “For the stable growth

<sup>2</sup> UNGC, Participant Search, *available at* [https://www.unglobalcompact.org/participants/search?business\\_type=all&commit=Search&cop\\_status=all&country%5B%5D=95&joined\\_after=&joined\\_before=&keyword=&listing\\_status\\_id=all&organization\\_type\\_id=&page=1&per\\_page=50&sector\\_id=&utf8=%E2%9C%93](https://www.unglobalcompact.org/participants/search?business_type=all&commit=Search&cop_status=all&country%5B%5D=95&joined_after=&joined_before=&keyword=&listing_status_id=all&organization_type_id=&page=1&per_page=50&sector_id=&utf8=%E2%9C%93) (last visited on Apr. 26, 2015).

<sup>3</sup> For the list of participants, *see* UNGC, Participants and Stakeholders, *available at* [https://www.unglobalcompact.org/participants/search?utf8=%E2%9C%93&commit=Search&keyword=&country%5B%5D=95&joined\\_after=&joined\\_before=&business\\_type=all&sector\\_id=&listing\\_status\\_id=all&cop\\_status=all&organization\\_type\\_id=&commit=Search](https://www.unglobalcompact.org/participants/search?utf8=%E2%9C%93&commit=Search&keyword=&country%5B%5D=95&joined_after=&joined_before=&business_type=all&sector_id=&listing_status_id=all&cop_status=all&organization_type_id=&commit=Search) (last visited on Apr. 24, 2015).

<sup>4</sup> GCJN, About the United Nations Global Compact [国連グローバル・コンパクトについて], *available at* <http://ungcjin.org/gc/index.html> (last visited on Apr. 26, 2015). <available only in Japanese>

<sup>5</sup> GCJN, Report on the 6th CJK-RT Conference [第6回日中韓ラウンドテーブル開催報告], *available at* <http://www.ungcjin.org/cjkrt/detail.php?id=147> (last visited on Apr. 26, 2015). <available only in Japanese>

of the Japanese economy and its sustainable prosperity in the future, we deepen the study of what the socially and economically desirable corporate governance system should be.”<sup>6</sup> Although the Japanese government cooperates with the UNGC and GCJN, the members of the UNGC ought to independently take responsibility for these activities. It feels evident that the Japanese government is not committed to the activities of the UNGC. *E.g.*, as the UNGC had a joint meeting with the UN Peacebuilding Commission on June 25, 2013,<sup>7</sup> the Permanent Mission of Japan to the UN supported this meeting only financially and logistically.

The UNGC can be comprehensively analyzed from not only an international law and relations perspective, but also global governance or the constructivism which is rather more relevant.

There are many definitions concerning the theory of global governance and the theory of constructivism. Watanabe and Tsuchiya defined global governance as:

A broad meaning of the power, the norms and the regimes between each actor, leads in some case, and restraints in some case, the actions of various actors. Generally, these processes and regimes for the sake of resolving the problem of the collective action in the international society were becoming the so-called global governance.<sup>8</sup>

The concept of ‘global governance’ originated from “Our Global Neighborhood,”<sup>9</sup> the report of global governance committee published in 1995. There are two factors to this theory. One is mutual interaction among various actors, and the other is the norms or the regimes to cover the whole globe.

As per the theory of constructivism, Dale Copeland explains that: “Three elements make constructivism a distinct form of international relations theorizing.”<sup>10</sup> “First, global politics is said to be guided by the inter-subjectively shared ideas, norms, and values held by actors... Second, the ideational structure has a constitutive and not just regulative effect on actors.”<sup>11</sup> In this sense, the ideational structure is composed

<sup>6</sup> Japan Ministry of Economy, Trade and Industry, Corporate Governance, *available at* [http://www.meti.go.jp/english/policy/economy/corporate\\_governance/index.html](http://www.meti.go.jp/english/policy/economy/corporate_governance/index.html)(last visited on Apr. 26, 2015).

<sup>7</sup> UN Peacebuilding Commission, June 2013 Delegations to consult UN Journal and Communications from PBSO, *available at* [http://www.un.org/en/peacebuilding/calendar.asp?d\\_month=6&d\\_year=2013](http://www.un.org/en/peacebuilding/calendar.asp?d_month=6&d_year=2013) (last visited on Apr. 26, 2015).

<sup>8</sup> TSUCHIYA WATANABE EDS., GLOBAL GOVERNANCE [グローバル・ガバナンス] 4 (2001).

<sup>9</sup> See OUR GLOBAL NEIGHBOURHOOD (1995), *available at* <https://global.oup.com/academic/product/our-global-neighborhood-9780198279976?cc=kr&lang=en&> (last visited on Apr. 26, 2015).

<sup>10</sup> D. Copeland, *The Constructivist Challenge to Structural Realism: A Review Essay*, in CONSTRUCTIVISM AND INTERNATIONAL RELATIONS: ALEXANDER WENDT AND HIS CRITICS 3 (S. Guzzini & A. Leander eds. 2005).

<sup>11</sup> *Id.*

of norms in the international society. “Third, ideational structures and actors (‘agents’) co-constitute and co-determine each other.”<sup>12</sup> In other words, the theory of constructivism can be explained by the three following features: (1) inter-subjectivity of multilateral actors of global society; (2) the ideational structure of global society, i.e., a global norm; and (3) interaction between multilateral actors and a global norm.

The primary purpose of this research is to discuss the theoretical discourse of the UNGC as a global norm. This study is based on the interdisciplinary approach between the theory of global governance, constructivism, as well as positive international law. Under the framework of global governance, this paper will analyze the UNGC with three relevant tools such as (1) the theory of norm, (2) the theory of subject, and (3) the theory of responsibility.

## II. Normative Connotation of the UNGC

A normative connotation of the UNGC is analyzed from the following three theoretical frameworks: (1) the theory of norm, (2) the theory of subject, and (3) the theory of responsibility.

### A. Theory of Norm

Sakae Agatsuma defines norms as “the rule of, ‘*Sollen*’ -what should be -, whereas the fact is, ‘*Sein*’ - what it is -.”<sup>13</sup> The theory of international politics as propounded by academics like Peter J. Katzenstein, describes the concept of a ‘norm’ as “collective expectations for the proper behavior of actors with a given identity.”<sup>14</sup> Yasuaki Onuma said that a norm is “Power of Ideas.”<sup>15</sup> In addition to existing realities, a norm needs a power of ideas which can draw a future vision, i.e., “what the society should be.” Robert Keohane mentions:

<sup>12</sup> *Id.*

<sup>13</sup> T. Olechowski, *Kelsen's Rechtslehre im Überblick*, Kelsen Working Papers 48, in H. Kelsen. *EINE POLITIKWISSENSCHAFTLICHE EINFÜHRUNG* (Tamara Ehs (Hrsg), 2009), available at <http://www.univie.ac.at/kelsen/files/kelsenrechtslehre.pdf> (last visited on Apr. 26, 2015). <available only in German>

<sup>14</sup> P. KATZENSTEIN, *THE CULTURE OF NATIONAL SECURITY: NORM AND IDENTITY IN WORLD POLITICS* (1996).

<sup>15</sup> Yasuaki Onuma, *Humanitarian Norm in International Society - Its meaning and limits* [国際社会における人道的規範—その意義と限界], 2007 Annual meeting at the session of Transnational Studies of Japan Association of International Relations [2007年度日本国際政治学会トランスナショナル分科会], at 16-7, available at [http://jair.or.jp/old\\_documents/nl/114.pdf](http://jair.or.jp/old_documents/nl/114.pdf) (last visited on May 9, 2015).

Ideas influence policy when the principled or causal beliefs they embody provide road maps that increase actor's clarity about goals or ends-means relationships, when they affect outcomes of strategic situations in which there is no unique equilibrium, and when they become embedded in political institutions.<sup>16</sup>

Peter M. Haas also points out the importance of the power of ideas in his theory of epistemic community.<sup>17</sup> "The power of ideas"<sup>18</sup> is the rule or norm which cannot be called positive international law. For the UN norms, "the power of ideas" becomes the driving force to move organs of the UN as well as the international society.

Constructivism has a common standpoint with the theory of epistemic community which attaches great importance to "the power of ideas."<sup>19</sup> On this, Satoshi Oyane states:

In the first place, it is an idea that constructivism paid its attention. Strictly speaking, it is an ideational factors, and this ideational factors include specifically an idea, a principle, recognition, a norm, etc. In other words, ideas refer to the contents of the consciousness of actors, creed concerning the character of the international society, recognition of the role of great power or NGO and the way how to catch specific problems such as a global environment or human rights.<sup>20</sup>

Moreover, constructivism does not provide universal truth, but it places importance on the subjectivity of each actor from the standpoint of value relativism. Although the theory of constructivism does not necessarily place emphasis only on individuality or subjectivity of the idea, common knowledge of each individual idea can be called an international norm.<sup>21</sup> It means that "the concept of common

<sup>16</sup> J. GOLDSTEIN & R. KEOHANE, *IDEAS AND FOREIGN POLICY: AN ANALYTICAL FRAMEWORK* 3 (1993).

<sup>17</sup> P. HAAS, *WHEN KNOWLEDGE IS POWER, THREE MODELS OF CHANGE IN INTERNATIONAL ORGANIZATIONS* (1990).

<sup>18</sup> R. THAKUR et al., *INTERNATIONAL COMMISSIONS AND THE POWER OF IDEAS* (2000). It is true that there are many obstacles and problems at the norm creation by the independent committees, but it should be placed a certain value at the idea-creating ability of such independent committees. The independent committees, the UN secretariat and the panel of academic experts, which have the idea-creating ability, are generally called Blue Ribbon Panel, Epistemic Community or Transnational Advocacy Network. It is also included in this category the norm creation by the Non-Governmental Organizations which have a special expertized ability to advocate.

<sup>19</sup> For details on the theory of constructivism, see N. ONUF, *WORLD OF OUR MAKING: RULES AND RULE IN SOCIAL THEORY AND INTERNATIONAL RELATIONS* (1989); A. WENDT, *SOCIAL THEORY OF INTERNATIONAL POLITICS* (2001). Wendt emphasizes on the subjectivity of actors. He explains the norm is created by collective identity. See Wendt, *id.* at 229.

<sup>20</sup> Satoshi Oyane & Takahiro Yamada, *The Theory of International Relations of the Global Society*, YUHKAKU COMPACT [グローバル社会の国際関係論] 77 (2006).

<sup>21</sup> WENDT, *supra* note 19, at 160.

knowledge is equivalent to that of 'intersubjective understandings.'<sup>22</sup> Also, common knowledge constitutes an international norm.

Although the UNGC and its operational procedure were drafted by John Ruggie who was the Assistant Secretary General to Kofi Annan,<sup>23</sup> it can be understood that the inter-subjectivity of a norm is ensured in the actual operating process of the UNGC.

It is important to ensure the inter-subjectivity of the UNGC which is a network of norms operated through Internet. The UNGC website is the platform for various agencies like companies, NGOs, self-governing bodies, and academia to participate and share information and exchange views. It is a place for mutual exchange of ideas by various actors. By making full use of information technology, the structure of the UNGC is built so that a large number of actors can confirm inter-subjectivity. In this sense, the UNGC secures collective inter-subjectivity. It is the ground for a dynamic norm creation, which maintains the generation of continuous development of the norm itself. This collective inter-subjectivity has become norm recognition, which appeals to the dimension of 'public reason.'<sup>24</sup> John Rawls pointed it out as 'general will';<sup>25</sup> Rousseau did it psychologically as 'collective unconsciousness'<sup>26</sup>

<sup>22</sup> *Id.* 160-1.

<sup>23</sup> J. RUGGIE, *CONSTRUCTING WORLD POLITY: ESSAYS ON INTERNATIONAL INSTITUTIONALIZATION* (2002); G. Kell & J. Ruggie are prominent brains for the establishing the United Nations Global Compact. See J. Ruggie, *Global markets and social legitimacy: the case for the "Global Compact,"* in *TRANSNATIONAL CORPORATIONS*. (UNCTAD/ITE/IIT/12[Vol. VIII, No.3]) 101-20 (1999), available at [http://unctad.org/en/Docs/iteiit12v8n3\\_en.pdf](http://unctad.org/en/Docs/iteiit12v8n3_en.pdf) (last visited on Apr. 26, 2015). See also J. Ruggie, *Global governance.net: the Global Compact as learning network*, 7 *GLOBAL GOVERNANCE* 371-8 (2001).

<sup>24</sup> J. RAWLS, *THE LAW OF PEOPLES: WITH THE IDEA OF PUBLIC REASON REVISITED* (1999). Rawls proposed 'Public Reason' as the expression form of the ideal liberal democracy.

<sup>25</sup> J. ROUSSEAU, *THEORY OF THE SOCIAL CONTRACT* (Takeo Kuwabara et al. trans. 1954). Rousseau intended the general will of social contracts in the domestic context for making social contracts. In the UNGC, there would be some problem how we can recognize the general will of the global norm, and with whom the participating actors can conclude the social contracts. These points are critical research questions when we study the system of the governance without government. Rosenau studied the problems of "Governance without Government" See generally J. ROSENAU & E. CZENPIEL, *GOVERNANCE WITHOUT GOVERNMENT: ORDER AND CHANGE IN WORLD POLITICS* (1992).

<sup>26</sup> HAYAO KAWAI, *THE GUIDEBOOK OF PSYCHOLOGY OF JUNG* (1967). "Stand Up and Take Action Campaign" of the UN, which is not the UNGC, but both of them might be effective to work for collective unconsciousness of the people on the earth. "Stand Up and Take Action is a global campaign for citizen action against poverty and for the MDGs. This global campaign has grown in recent years attracting worldwide citizen participation. In October 2008, 116 million people in 131 countries – an astounding 2% of the world's population – came together to remind world leaders that their first priority is to act decisively to end poverty and inequality. In 2009, millions will come together again as part of the Stand Up and Take Action initiative to act on the changes they want to achieve locally, and to outline the agenda for development that they want to see implemented globally." See Stand Up and Take Action and GCAP, National Welfare Social Service & Development Form website, available at <http://www.nwf.org.za/gcap-sa/129-stand-up-and-take-action-and-gcap> (last visited on Apr. 26, 2015). The campaign refrained every year from 2006 to 2014. Also, this campaign provided some opportunity to the worldwide citizens to speak out their voices and participate altogether with global civil society. It raised some sense of collective unconsciousness of global society.

which Carl Gustav Jung also referred to.<sup>27</sup> When the inter-subjectivity of a norm has been recognized collectively, the recognition method of the norm is said to ensure the subjectivity of the norm creating actors.

In considering the nature of norms, the subject of creation and that of participation of actors should also be examined. The character of a norm differs according to the actor that creates it. The UNGC is opening to civic society, such as companies, NGOs, local governments, and academia. When considering the democratic opportunity of norms, international law aims at democracy among sovereign States, whereas the UNGC aims at a democracy not only among corporate citizens but also other actors.

The UNGC is a wider transnational norm including a variety of actors, whereas international law involves only sovereign States. Take for example the Convention of the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personal Mines and on Their Destruction (hereinafter Landmine Ban Treaty). The idea of the Landmine Ban Treaty, the concepts of 'Human Security' and "the Responsibility to Protect" ("R2P") are advocated as the foundation of the norm by the independent international committee. Although 'Human Security' originated from the UNDP's Human Development Report of 1994,<sup>28</sup> more precise considerations were found in Human Security Now,<sup>29</sup> the report of the Commission on Human Security.<sup>30</sup> The concept of R2P was created by the International Commission on Intervention and State Sovereignty ("ICISS").<sup>31</sup> Those normative concepts as the Landmine Ban Treaty, Human Security, and R2P are all advocated by non-State actors such as NGOs and the independent international committees. It means that norm creating processes are all originated from the global civil society.

How are the processes of these normative concepts implemented, then? In the norm against landmine, it has legal binding force is based on the Landmine Ban Treaty which takes on the operational processes of States responsibility. In the meantime, 'Human Security' is implemented through the Japan-led human security

<sup>27</sup> C. Jung, Concept of Collective Unconscious at Jung, available at [http://www.carl-jung.net/collective\\_unconscious.html](http://www.carl-jung.net/collective_unconscious.html) (last visited on Apr. 24, 2015).

<sup>28</sup> UNDP, HUMAN DEVELOPMENT REPORT 1994, available at <http://hdr.undp.org/en/content/human-development-report-1994> (last visited on Apr. 26, 2015).

<sup>29</sup> The Comm'n on Human Security, Human Security Now (2003), available at <http://www.un.org/humansecurity/content/human-security-now> (last visited on Apr. 26, 2015).

<sup>30</sup> The Comm'n on Human Security, co-chaired by Mr. Amartya Sen & Mrs. Sadako Ogata was backed up and organized by the Japanese government, but was independent from the government.

<sup>31</sup> THE INT'L COMM'N ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT (Dec. 2001), available at <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (last visited on Apr. 26, 2015).



fund, which was started at the UN. In the case of R2P, the Security Council will make a decision on who should take responsibility or what kind of responsibility should be taken.

As for the UNGC, not only the norm creating process, but also the norm implementation process is applied in the transnational context. The UN Secretary General proposed the first nine principles,<sup>32</sup> and NGOs and companies decided upon the last (10th) principle (principle of anti-corruption), making full use of the network of the UNGC.<sup>33</sup> Because the UNGC is a transnational norm, instead of just being a treaty between States, it initially asks for social responsibility of the companies. The UNGC operates on a non-state level by the Office of the UNGC. States are hardly involved in its implementation.

It follows that the United Nations GC is the non-state existence of all processes, such as norm creation, implementation and norm Development. It has been called a global norm because the system is open to various actors on the earth.

## B. Theory of Subject

The theory of subject can be divided into three categories: (1) what is the subject of the UNGC?; (2) what is the subject of the right and duty of the law?; and (3) what is the subject of matter?

First, the variety of participants of the UNGC should be examined. The UNGC website explains that: "The Global Compact involves all relevant social actors: companies, whose actions it seeks to influence; governments, labour, civil society organizations, and the United Nations as an authoritative convener and facilitator."<sup>34</sup>

In the UNGC, there are two categories of participating subjects: 'actors' and 'stakeholders.' 'Actors' are companies, while 'stakeholders' are governments, labour, and civil society organizations.<sup>35</sup>

<sup>32</sup> The Global Compact's operational phase was launched at UN Headquarters in New York on July 26, 2000. The Secretary-General challenged business leaders to join an international initiative - the Global Compact - that would bring companies together with UN agencies, labor and civil society to support nine principles in the areas of human rights, labor and the environment. See Sourcewatch, United Nations Global Compact, available at [http://www.sourcewatch.org/index.php/United\\_Nations\\_Global\\_Compact](http://www.sourcewatch.org/index.php/United_Nations_Global_Compact) (last visited on Apr. 26, 2015).

<sup>33</sup> UNGC, Transparency and Anti-corruption, available at <https://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/anti-corruption.html> (last visited on Apr. 26, 2015).

<sup>34</sup> UNGC, UN Global Compact Participants, available at <https://www.unglobalcompact.org/ParticipantsAndStakeholders/index.html> (last visited on Apr. 26, 2015).

<sup>35</sup> The word 'accountable' may be defined as follows: 1. responsible to someone or for some action; answerable; and 2. able to be explained. See COLLINS ENGLISH DICTIONARY, available at <http://www.collinsdictionary.com/dictionary/english/accountable> (last visited on Apr. 26, 2015). It might be appropriate to understand the meaning of accountability as the responsibility to the result in the context of the UNGC. It has much stronger meaning than

Second, there are two types of subjects. One is a passive subject demanding the right and duty of the law. The other is an active subject questioning norm creating ability. It is not the duty, but the right of companies to participate in the UNGC. As the UNGC is a voluntary and self-restraint norm for companies, it is left to the free will of the companies to follow it or not.

In the UNGC, there are relationships which have opposite interests in fields such as human rights, labor, environment, and anti-corruption. They would be envisioned, *e.g.*, between individuals and companies, workers and companies, and environment and companies. In the case of positive international law, such a relationship can be explained as that between right and duty. The UNGC, however is not the relationship between rights and duty, in that it is between quasi-rights and quasi-duty.

The ten principles of the UNGC have already been stipulated in existing international treaties. It does not, however, undermine the *raison d'être* of the UNGC because the Compact are a variety of NSAs and placed as a 'preventive measure' which is a previous step of judgment by sovereign States with legal binding force.

An active subject is a norm creating ability of the UNGC. International law is established after the diplomatic negotiations between sovereign States. The UNGC was, however, formulated by the proposal of the UN Secretary General in 2000. It has only 10 principles. In 2004, when the UNGC office asked each participating company about the 10th principle (anti-corruption), the overwhelming majority had no objections.<sup>36</sup> At a meeting on June 25, 2004, more than 400 corporate executives, government officials and civil society leaders for the largest and highest-level organizations gathered at the UN. The 10th principle was adopted at the leader's summit of the UNGC based on the agreements of these participants.<sup>37</sup> In conclusion, the first nine principles of the UNGC were formulated by the UN Secretary General, and the last, was developed by, *inter alia*, NGOs and companies. Although there is no difference between these principles, because non-State actors are the norm creating actors, the last principle was proposed by companies themselves as their own principle. It is the momentum of democracy for NSAs as the norm creating actors.

responsibility.

<sup>36</sup> UNGC, Corporate Leaders at Global Compact Summit Pledge to Battle Corruption, available at [https://www.unglobalcompact.org/NewsAndEvents/news\\_archives/2004\\_06\\_25.html](https://www.unglobalcompact.org/NewsAndEvents/news_archives/2004_06_25.html) (last visited on Apr. 26, 2015).

<sup>37</sup> Toru Umeda The United Nations Global Compact and the Principles for Responsible Management Education (PRME) [国連グローバル・コンパクトと『責任ある教育原則』] 21 J. INT'L STUD. [国際研究] 23-42 (2008), available at [http://www.u-keiai.ac.jp/issn/menu/ronbun/no21/21-023\\_umedu.pdf](http://www.u-keiai.ac.jp/issn/menu/ronbun/no21/21-023_umedu.pdf) (last visited on Apr. 26, 2015). <available only in Japanese>

The UNGC website is a public forum for norm creation. *E.g.*, academics who are participating in the UNGC led a norm creating action and finally adopted the Principles for Responsible Management Education (“PRME”) in June 2007.<sup>38</sup> Although most of the PRME contents were drafted by the office of the UNGC under the auspices of academic groups, stakeholders of the UNGC were entrusted to deliberate and develop PRME until its adaption. From this case, it can be recognized that a norm under the UNGC confers a norm-creating ability not only to companies as the main actors, but also to academic groups as stakeholders. Although PRME was proposed at the public space of the UNGC, its main actors are academic groups. In this mechanism, public space can create the sub-system by connecting links.

As the UNGC itself collaterally generates PRME, a sub-system of the UNGC is created. The “CEO Water Mandate: An initiative” addressed by business leaders in partnership with the international community,<sup>39</sup> *e.g.*, was also acknowledged at the leader’s summit held in July 2007. Companies can voluntarily participate in these activities, but the participating CEOs are committed to follow this norm. From October 20 to 21 of that year, another norm under the UNGC, “Caring for Climate: A Call to Business Leaders,”<sup>40</sup> opened for signatures.<sup>41</sup> Accordingly, in the UNGC, a norm creating power of actors and stakeholders is recognized; they have active norm subjectivity.<sup>42</sup> As a result, the UNGC has been recognized as the arena for global democracy in which a variety of NSAs such as companies and academic groups can participate in the norm-creating process.

### C. Theory of Responsibility

The UNGC should be analyzed from the viewpoint of responsibility under international law. Malcom Shaw maintains that: “It provides that whenever one state commits an internationally unlawful acts against another state, international

<sup>38</sup> PRME was drafted by the idea and effort of Dr. Manuel Escudero who was one of the advisor of the office of the UNGC. PRME is opened to join every academic educational school, *available at* <http://www.unprme.org> (last visited on Apr. 26, 2015).

<sup>39</sup> *See* The CEO Water Mandate: An initiative by business leaders in partnership with the international community, *available at* [http://www.unglobalcompact.org/docs/news\\_events/8.1/Ceo\\_water\\_mandate.pdf](http://www.unglobalcompact.org/docs/news_events/8.1/Ceo_water_mandate.pdf) (last visited on Apr. 26, 2015).

<sup>40</sup> UNGC, Caring for Climate: The Business Leadership Platform, *available at* [http://www.unglobalcompact.org/docs/news\\_events/8.1/caring\\_for\\_climate.pdf](http://www.unglobalcompact.org/docs/news_events/8.1/caring_for_climate.pdf) (last visited on Apr. 26, 2015).

<sup>41</sup> *Id.*

<sup>42</sup> It is the legal subjectivity of the place under international law. If the UNGC, one of soft laws, would be understood as a positive law, it can be called as a legal subjectivity. If the UNGC would not be understand as a positive law but just a norm, it would be considered as a norm subjectivity.

responsibility is established between the two. A breach of international obligation gives rise to the requirement for reparation.<sup>43</sup> What kind of responsibility does the subject of the norm take in order to keep the norm and what kind of responsibility will the subject take for breaching the norm? When will this theory be applied to the UNGC? The following are seven areas of contention to these questions.

First, the UNGC is soft law<sup>44</sup> also known as CSR.<sup>45</sup> CSR is strongly related to the concept of transparency, which is one of the most important premises for implementing the UNGC. By disclosing information of companies, it becomes clear as how much of the items incorporated into the UNGC are respected and followed. Guidelines for reports, which show the Global Reporting Initiative (“GRI”)<sup>46</sup> and International Organization for Standardization (“ISO”)<sup>47</sup> are the ways to be transparent and disclose information. The process of creating reports is tantamount to carrying out social responsibility.

Second, the concept of ‘accountability’ and ‘transparency’ are considered equal. It is believed that these two concepts are inseparable. The Japanese translation of the concept of accountability is ‘explanation responsibility’ [説明責任]<sup>48</sup> or ‘actor’s responsibility’ [行為主体責任]. If ‘accountability’ is only just a rhetoric, there is no reason to refer to it. In this sense, ‘actor’s responsibility’ can be applied as the meaning of ‘accountability.’ In the context of global governance, it is necessary to recognize the responsibility of various actors. Is it then, enough for the subjects of the UNGC only to explain what they do? The contents and the results of their activities are also very important for taking responsibility. In this sense, the meaning of ‘accountability’ is “the responsibility for the result.” The concept of ‘accountability’ has thus a much stronger implication than just the concept of ‘responsibility.’

Third, stakeholders have responsibility as participants of the UNGC. The participants of the UNGC, including other stakeholders, have to submit a report

<sup>43</sup> M. SHAW, INTERNATIONAL LAW 778 (6th ed. 2008).

<sup>44</sup> See generally Hiroyuki Kansaku, *Does soft law expand into the theory of ‘Corporate Social Responsibility’? Trends in the EU* [ソフトウェアの『企業の社会的責任』論への拡張 ? EU における動向], 4 SOFT L. RES. [ソフトウェア研究] (2005). This paper explains Corporate Social Responsibility (CSR) as soft law.

<sup>45</sup> There is the view that the United Nations Global Compact is not a “corporate social responsibility” in the true sense. ISO, GRI (Global Reporting Initiative) are the true CSRs which conclude Memorandums of Understanding with the UNGC. The UNGC is the umbrella norm of these CSRs.

<sup>46</sup> See the official website of Global Reporting Initiative, available at <https://www.globalreporting.org/Pages/default.aspx> (last visited on Apr. 26, 2015).

<sup>47</sup> See the official website of ISO, available at <http://www.iso.org/iso/home.html> (last visited on Apr. 26, 2015).

<sup>48</sup> IKUYO HASUO, THE UN ADMINISTRATION AND THE NOTION OF ACCOUNTABILITY: THE GUIDEPOST OF THE RESTORATION OF THE UN (2012) [国連行政とアカウントビリティ概念 : 国連再生への道標]. <available only in Japanese>

which is called Communication on Progress (“COPs”).<sup>49</sup> COP should include the following three items:

1. A statement by the chief executive expressing continued support for the Global Compact and renewing your company’s ongoing commitment to the initiative and its principles.
2. A description of practical actions (i.e., disclosure of any relevant policies, procedures, activities) that your company has taken (or plans to undertake) to implement the Global Compact principles in each of the four issue areas (human rights, labor, environment, anti-corruption).
3. A measurement of outcomes (i.e., the degree to which targets/performance indicators were met, or other, qualitative or quantitative, measurements of results).<sup>50</sup>

As long as the actors or the stakeholders participate in the UNGC, it is required that they have to submit these reports. It is very effective for keeping transparency if these reports are open to the public on the website of the UNGC. When report-submitters are asked questions, they need to respond. In this way, COPs will also fulfill their accountability.

Fourth, if an actor violates the law, they will be sanctioned. Which sanctions should apply if participants do not observe the principles? In the UNGC, are there any similar situations to an internationally illegal act? As the UNGC is a voluntary and self-restrained norm for companies, legal sanction is not necessarily imposed only because the company did not observe the principle. However, all participants should submit a COP every year. If a company fails to meet a COP submission deadline, it will be marked as ‘non-communicating,’<sup>51</sup> which is equivalent to a ‘yellow’ card. Also, if companies have been non-communicating for longer than 12 months, they will be expelled from the Global Compact,<sup>52</sup> which is equivalent to a ‘red’ card. Both lists of red card holders and yellow card participants are open to the public on the UNGC website. ‘Expelling’ is one of the UN sanctions, similar

<sup>49</sup> UNGC, What is a COP?, *available at* <https://www.unglobalcompact.org/COP/index.html> (last visited on Apr. 26, 2015).

<sup>50</sup> UNGC, Frequently Asked Questions about COP, *available at* [https://www.unglobalcompact.org/COP/frequently\\_asked\\_questions.html](https://www.unglobalcompact.org/COP/frequently_asked_questions.html) (last visited on Apr. 26, 2015).

<sup>51</sup> UNGC, The list of non-communicating participants: 1934 companies are listed as ‘non-communicating,’ *available at* [https://www.unglobalcompact.org/COP/analyzing\\_progress/non\\_communicating.html](https://www.unglobalcompact.org/COP/analyzing_progress/non_communicating.html) (last visited on Apr. 26, 2015).

<sup>52</sup> UNGC, Expelled Participants: 4662 companies are expelled from the UNGC in 2014, *available at* [https://www.unglobalcompact.org/COP/analyzing\\_progress/expelled\\_participants.html](https://www.unglobalcompact.org/COP/analyzing_progress/expelled_participants.html) (last visited on Apr. 26, 2015).

to a legal punishment. Companies want to promote a good image. If they get a red or yellow card from the UNGC, it may prove to be more effective than legal punishment.

Fifth, the problem of the responsibility can be observed from the principle of *Pacta Sunt Servanda*.<sup>53</sup> The word ‘compact’ of the UNGC is the situation between “a verbal promise” and ‘contract.’ It is not a contract with strong legal binding force, but self-restraint or autonomous rule. The Global Compact may be a promise which is somewhere between a control regime and arbitrary action. It promotes the prevalence of dialogue between participants and a learning process. In this sense, it is a highly motivated and unprecedented experiment to fill the vacuum between existing norms. From the viewpoint of *Pacta Sunt Servanda*, corporations voluntarily agree and accede to the UNGC. In this sense, the UNGC is a norm which clearly has an autonomous binding force as compared to an international custom. In the international community, a State does not easily conform a new norm, since it can legally bind that State as long as customs and *opinio juris* exist.<sup>54</sup> On the other hand, only after a written agreement, actors or stakeholders can be the members of the UNGC. In this case, *Pacta Sunt Servanda* can be applied as a concrete basis to the norm creation of the UNGC.

Sixth, companies can be sanctioned by the UN Security Council.<sup>55</sup> Under normal circumstances, the economic sanction based on the UN collective security system should be targeted only to a sovereign State in specific. However, there is a possibility that NSAs could also be sanctioned. They include parties to a dispute involving civil war, those without a *de jure* government, a terrorist or an individual who is responsible for war crimes. On December 19, 2000, the UN Security Council decided to apply the sanction against Ariana Afghan Airlines aircraft.<sup>56</sup> Furthermore, on January 15, 2002, the Security Council decided to terminate the sanction against Ariana Afghan Airlines aircraft or Ariana Afghan Airlines funds which were expressly nominated in the Security Council resolution.<sup>57</sup> It was a cornerstone for

<sup>53</sup> A. Aust, *Pacta Sunt Servanda*, 8 MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 15-7 (R. Wolfrum ed., 2012).

<sup>54</sup> Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. ¶ 207 (June 27). For details, see P. MALANCZUK, AKEHURST’S INTRODUCTION TO MODERN INTERNATIONAL LAW 44 (7th ed. 1997).

<sup>55</sup> Mariko Shoji, *Diversification of actors in the international society by the analysis of the resolutions of the United Nations Security Council* [国際社会における行為主体の多様化-国連安保理経済制裁決議を通して], in SIGNIFICANCE AND LIMITATIONS OF THE INTERNATIONAL COMMUNITY - THEORY, THOUGHT AND HISTORY [国際社会の意義と限界—理論・思想・歴史] (Toru Oga & Yoneyuki Sugita eds., 2008).

<sup>56</sup> S.C. Res. 1333, U.N. Doc. S/RES/1333, (Dec. 19, 2000), available at <http://www.state.gov/documents/organization/5265.pdf> (last visited on Apr. 26, 2015).

<sup>57</sup> S.C. Res. 1388, U.N. Doc. S/RES/1388, (Jan. 15, 2002), available at <http://www.worldlii.org/int/other/UNSC/2002/1>.

the multilateralization of sanction for the future. Thus, the number of companies targeted by the Security Council would possibly increase. In the context of global governance, not only State actors but also NSAs have to be responsible and accountable for their own actions.

Seventh, the interface between responsibility and power should be referred. As far as the relationship between power and responsibility is concerned, power would shift to the side which takes responsibility. Of course, as Atsushi Sugita pointed out, “the real person of power has the ability to avoid taking responsibility.”<sup>58</sup> Today, however, it is necessary to consider the responsibility and subjectivity of many actors (around) the globe.” Sugita also maintained: “If we find out too many responsible persons, it would be the cause for the dividing of responsibility. As a result, no one can take any responsibility and it could easily lead to an irresponsible regime.”<sup>59</sup> Viewing future global governance, it would be far too much for sovereign States to take responsibility. States cannot take full responsibility for globalization. NSAs should be responsible and accountable for transnational problems which cross borders across States. As Sugita points out:

You have to stop thinking that you are yielded by the power. When you recognize you are one of parties who are involved in the power process, and when you notice here is the responsible person rather than there is in the distance somewhere, this is the first step to change the power.<sup>60</sup>

When companies have to notice that they are parties of the power process and take CSR initiatives, the power in global governance will transform itself from overconcentration of the responsibility against a sovereign State to a multilateral responsibility system by various actors. Political significance of CSR in the age of global governance can be explained as the process of the shift and distribution of corporate power.

pdf (last visited on Apr. 26, 2015).

<sup>58</sup> Atsushi Sugita, POWER [権力] 19 (2000).

<sup>59</sup> *Id.* at 22.

<sup>60</sup> *Id.* at 102.

Table 1: Differences between the UNGC and International Treaty

	UNGC	International Treaty
<b>Subject</b>	Business	State
<b>Norm</b>	Soft Law	Treaty
<b>Norm Creating ability</b>	Yes	Yes
<b>Responsibility</b>	Accountability	International Responsibility
<b>Non-observance</b>	Social Pressure, Sanction	Punishment/Compensation for damage etc.

Source: Compiled by the author.

### III. Conclusion

The UNGC is a transnational norm which includes creating a network beyond a transnational advocacy. The network of the UNGC is a public space for dialogue among various participants. It shows norms creating processes which generate and develop norms continually.

Activities of the UNGC are sustained by multilateral stakeholders, called Multi-Stakeholder Initiatives (“MSIs”).<sup>61</sup> In the process of MSIs, ownership of various stakeholders and actors including companies are discussed. Furthermore, it is trying to draw the sense of ownership and commitment from persons who cannot recognize their ownership. The basic philosophy of MSIs is that every individual is the master of themselves.<sup>62</sup>

In the process of MSIs, partnership and the local network are the fundamental to the UNGC. People gathered under the local network in order to recognize their own self-awareness by creating partnerships. The dialogue proposed by the UNGC would play an important role in promoting a sense of ownership and responsibility. Considering global governance, it is a very important factor, in that the sense of

<sup>61</sup> M. VAN HUIJSTEE, *MULTI-STAKEHOLDER INITIATIVES A STRATEGIC GUIDE FOR CIVIL SOCIETY ORGANIZATIONS* (2012).

<sup>62</sup> The same idea was pointed out by A. Chomsky in his idea of democracy. See *Philosopher Noam Chomsky—raise a true democracy* [未来への提言 思想家 ノーム・チョムスキー - 眞の民主主義を育てる], NHK BS 1, Aug. 30, 2008 (from pm.10:10~11:00), available at [http://cgi2.nhk.or.jp/archives/tv60bin/detail/index.cgi?das\\_id=D0009010760\\_00000](http://cgi2.nhk.or.jp/archives/tv60bin/detail/index.cgi?das_id=D0009010760_00000) (last visited on May 9, 2015).



ownership of each individual leads to individual responsibility.

In the international society, 'responsibility' has not been multilaterally deployed. In the age of globalization, in association with increasing multilateral actors, the concept of 'responsibility' should be multilayered. Because of globalization, people can be easily connected to information throughout the world instantly. It is now capable of recognizing the shared but diverse normative philosophy intersubjectively. Today, it is necessary to recognize 'responsibility' in the context of not only international regional society, but a global one. Various actors take each responsibility according to their capacity. In this sense, the concept of 'responsibility' in the context of global society should not be interpreted as just being a lineal-dimension that are connected with the point and the line (such as, right and duty, or illegal act and responsibility), but should be interpreted as stereoscopically.

