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**Introduction**

**1.1 Why a Commentary for the UN Guiding Principles?**

The UN Guiding Principles for Business and Human Rights (the “UNGP”)[[1]](#footnote-1) was endorsed unanimously by the UN Human Rights Council in 2011.[[2]](#footnote-2) That endorsement has been characterized as a “watershed event in efforts to tackle adverse impacts on people resulting from globalization and business activity in all sectors. They provided, for the first time, a globally recognized and authoritative framework for the respective duties and responsibilities of Governments and business enterprises to prevent and address such impacts.[[3]](#footnote-3)

The UNGP are remarkable for a number of reasons. It is the first instrument of its kind, an instrument produced by a public international organization to provide authoritative guidance respecting the human rights implications of economic activity. It sets out a framework that is directed not just to states, but to enterprises and civil society as well. The UNGP avoids the constraints of legalization to produce a set of expectations that are normative and that may be embedded within legal and societal systems. It changes the center of conduct expectations from a political and economic case for human rights to a human rights case for economic activity expressed through law, public policy and social norms. It embraces the expectations of markets based global economic activity but is sensitive to the national and production chain contexts in which it is to apply. Lastly, it seeks to tie together within new governance modes, the three critical governance communities with substantial effects on the organization and operation of economic activity—the state, the enterprise and mass organizations. The “Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.”

 The endorsement of the UNGP by the UN Human Rights Council in 2011 was also the culmination of an equally remarkable mandate undertaken by John G. Ruggie. The principal architect of what became the UNGP, Professor Ruggie had spent the years 1997-2001 as UN Assistant Secretary-General for Strategic Planning, in the course of which he assisted on the establishment of the UN Global Compact and General Assembly approval of the Millennium Development Goals. It was in those projects that the effort was first made to “weave universal principles into global corporate behavior [through an] expanding set of nested networks.”[[4]](#footnote-4) By 2005 Professor Ruggie’s attention was shifted from the Global Compact and the Millennium Development Goals to a project that more broadly sought to develop a framework for weaving of human rights norms into the economic activity into the activities of states and business enterprises. He was appointed to those ends in July 28, 2005 as the UN Secretary General’s Special Representative for Business and Human Rights (then well-known during the period of his stewardship as the “SRSG”). That appointment followed years of efforts to overcome the challenge of embedding human rights into the activities of multi-national enterprises, an effort ongoing in the United Nations in its then current form since the 1960s and the effort to develop an international code of conduct for business.[[5]](#footnote-5) The SRSG mandate was established[[6]](#footnote-6) in the wake of the rejection (principally by states and enterprises) of earlier efforts to frame a normative structure for the human rights elements of economic organization,[[7]](#footnote-7) represented by the “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.”[[8]](#footnote-8) Six years after his appointment as SRSG, Professor Ruggie was able to develop in the UNGP a novel framework based on the now familiar three “Pillars”.[[9]](#footnote-9) The first pillar posited a set of standards around a state duty to protect human rights. The second pillar developed the critical concept of a corporate responsibility to respect human rights. Both enterprise and state were then bound under a third pillar crafting an obligation to provide remedies for breaches of state duty or enterprise responsibility. What drew most attention at the time was the construction of a corporate responsibility to respect human rights—one that appeared to recognize that both governance and regulatory systems were neither bound exclusively to nor possible to develop only within the legal systems of states. This represented the great innovation from the approach taken in previous iterations of efforts to embed human rights into economic activity--and one that brought forward the work of the UN Global Compact to weave universal principles into global corporate behavior [through an] expanding set of nested networks.

 At the time of its presentation to the UN Human Rights Council, Professor Ruggie urged that “Council endorsement of the Guiding Principles will mark the end of the beginning. Therefore, I very much hope that the Council seizes the opportunity provided by the remarkable consensus and convergence of approaches that has been achieved, endorse the Guiding Principles, and then build on this solid foundation, step by step, in the years ahead.”[[10]](#footnote-10) Since its endorsement, the UNGP has indeed become, as the SRSG hoped at the time, “a common global platform for action, on which cumulative progress can be built, step-by-step, without foreclosing any other promising longer-term developments.”[[11]](#footnote-11) A UN Working Group on the issue of human rights and transnational corporations and other business enterprises was established at the time of the UNGP’s endorsement to promote the UNGP.[[12]](#footnote-12) A multi-stakeholder platform was also created, the Forum on Business for Business and Human Rights. Held annually, that platform has generated a tremendous amount of activity—a global market for ideas about the interpretation, application and development of the UNGP.[[13]](#footnote-13) The UNGP has been incorporated into the governance projects of the OECD, principally its Guidelines for Multinational Enterprises. It has played a prominent role in the construction of related frameworks for managing economic conduct, especially of enterprises, including, for example ISO 26,000.[[14]](#footnote-14) Even as the UNGP were being established and developed, they have been the subject of criticism on a number of levels. These criticisms have emerged especially from developing states, from influential constituencies within academia and civil society, and some business itself. Those criticisms have also fueled efforts to advance the core principles of the UNGP to continue through a process of formal legalization of regulation of economic activities of states and others.

 This Oxford Commentary weaves together the historical foundations of the work that produced the UNGP and build on current developments to contextualize and analyze the rules and principles of the UNGP. The Commentary will provide a comprehensive understanding of the underlying premises which shape the UNGP. From these premises as they evolved, the Commentary will provide an understanding of the UNGP as a system of norms that meld together the governance communities at the center of the operation of economic activity—the state, the enterprise and civil society. By examining and specifying the content of the provisions of the UNGP, thirty-one principles, each with commentary elaborating its meaning and implications for legal systems, public policy, and operational application, the Commentary will contribute to an understanding of the UNGP “as a coherent whole.” By providing a coherent framework, grounded in the understanding of those who contributed to its development and those who have wrestled with its application since, but shaped by its inherent logic as a system for elaborating the human rights basis of economic activity, this Commentary will provide guidance to those institutions and individuals who seek to understand and apply the UNGP to their activities. The aim of the Commentary, ultimately, then, is to serve as a useful standard reference for making sense of the of the UNGPs as a systematization of norms, and of each of the norms in their own right.

Nonetheless, to strive for a comprehensive rationalization of the “sense” of the UNGP is not the same as seeking to arrive at the “correct” sense in which the UNGP ought to be understood as either as a system for rationalizing the role of human rights within economic activity or with respect to each of its principles. The fundamental starting point for this Commentary is that there are no single correct, or true, or manifestly right way to read and understand any commentary, and especially one focusing on the UMNGPs. the Commentary. Such efforts say more about the times and the agendas of those who put forward that “truth”, their “truth”,[[15]](#footnote-15) than it does about anything into which that “truth” is projected. Its greatest value is in its politics, and as a historical marker of agendas ion a particular time and place. And perhaps that is the real moral. *Reality matters less than the ability to cover over it with something plausible*. Formally coherent fantasy can have a far greater and long lasting legal effect than the reality that it seeks to cover. Generations of people may look, and understand the disjunction, and not recognize the disjunction for what it is. The only thing that appears natural in the construction of legal orders of human social and political systems, including the UNGPs,. seems to be the ability to construct legal fictions with formidable effect.[[16]](#footnote-16) But its long term value as something other than a historical marker is limited. It provides little by way of tools for extracting relevant readings of the UNGPs. To be useful is to be timely, and to be timely requires a different approach to commentary.

To better ensure a long term timeliness, this Commentary avoids the catechistic temptation of orthodox truth in favor a plausibility approach. The Commentary will focus on the UNGP text and its context in and of itself—detached, in the first instance, from context, and then reattached to develop the framework within which it is possible to identify a plausible range of meaning. Context, rather than tect, in turn, will serve to expose the boundaries within which it is possible to describe the extent of the scope of interpretive plausibility. That is, the intent is to rationalize the interpretive scope of the UNGP as a whole, and each of its provisions. That, it is hoped, will provide a more comprehensive guidance on both the sources of plausibility and the connection between ideology, perspective, and principle for interpreting the UNGP in specific ways. The object, then, is to expose the range of possibility (of the plausible), identify the boundary between plausibility and everything else, and help the reader toward their own interpretive choices in reading and applying the UNGPs. The Commentary will model its aims along the lines of the UN Special Representative’s mandate: “establishing universally applicable and yet practical Guiding Principles on the effective prevention of, and remedy for, business-related human rights harm.”

**1.2 Aims and Scope**

 The production of a commentary of this magnitude, respecting an instrument of foundational importance, is undoubtedly a humbling task. The profundity of that necessary humility is deepened where, a sin this case, the Commentary follows the production of both an official commentary, written by those responsible for the development of the forms and text of the UNGPs themselves, and more recently by a magisterial effort, written in the form of a Talmudic ‘Gemara’ (גמרא), originally a mastery and transmission of existing tradition, to the primary text of its ‘Mishnah’ (מִשְׁנָה), oral traditions and expectations reduced to text, one which was undertaken by a collective of some of the most distinguished students of other fields of human rights, business, and its related fields of academic study.[[17]](#footnote-17) In the shadow of those efforts, it may be useful to attempt a brief justification for the production of another commentary, and a suggestion of the ambitions for its elaboration that may both distinguish this commentary from others and at the same time contribute in some meaningful way to the understanding, scope, character, and utility of the object of its study—the UNGPs in and of themselves as well as in their environment.

As a foreshadowing of the focus of the commentaries that follow, it may be worth starting with a brief consideration of the idea of a commentary. At its simplest and essential form, a commentary may be understood as a multi-functional text “intended to complement a particular source ”[[18]](#footnote-18) Among the objectives of a commentary are to explain, analyze, and provide context. The techniques often employed include interpretation of text and its terms, description ad analysis of application, history of enactment and drafting (intent and objectives), and situating the source within a broader policy or social background. Noe of that, however, helps one understand the quality of the effort or its foundation in presumptions, principles and analytic lenses which shape any approach (and also direct it in quite specific ways). To gain greater clarity, and thus to better inform a commentary project, it may be useful to start with the textual representation of the central task itself—the commentary especially as it has come to be understood through a very long history. Three words provide insight here: *comment, gloss,* and *commentary*.

The first is the core word-concept of “comment.”[[19]](#footnote-19) Since the 14th century in English, the word has acquired both a passive and active meaning. One the one hand, *comment signifies an object*: an explanation, interpretation, a contrivance or fabrication (that is the signification) of another object—the thing explained, object, process, condition, state of being, etc. Its foundational derivation from its PIE root—an intensified product of thinking. On the other hand, *comment also signifies the act of commenting*. Here its focus is on the acts of considering, thinking, discussing, and disseminating (writing in the pre-digital eras). It acquires a twofold character—the first is internal (the acts of thinking and considering) as well as of a very public and external focus (discussing and disseminating). Beside it lies another—the term *gloss*.[[20]](#footnote-20) It’s etymology is interesting. On the one hand it references the explanation, translation, or definition of an object otherwise potentially obscure. In a broader sense the original Greek source (γλῶσσα (glossa)) suggests an act of translation from one language to another. On the other there is within it a sense of something that is, on its surface smooth and lustrous, something that can shine in the light. That underscores the word in its active sense—to gloss—to make lustrous, smooth over, or sometimes to veil or shift the meaning of its object.

The second is the object of the work to be attempted—commentary.[[21]](#footnote-21) Like its own building blocks, comments, a commentary is understood in two senses. *The first as the collection of an integrated or associated group of comments*—the Talmudic Gemara, but also the glosses of Roman Law produced by medieval Law Schools,[[22]](#footnote-22) or more generally European scholia or glossators, or Mesopotamian commentators on key tests of their era.[[23]](#footnote-23) Indeed, there is a sense that the great cultural marker of civilization is the deep interlinking between literati culture (文人文化*wenren wenhua*) and the commentary they produced around great cultural objects.[[24]](#footnote-24) In the second, it is the descriptor of the commentary itself as object that may be worthy of comment. In contemporary English that is embedded in the sense that it is the difficult and or obscure rather than what appears to be in “plain English” that is worthy of comment or gloss. To comment is to judge, and to judge is to guide, confine, and orient approaches to the text, tradition, or object that is the focus of comment in specific ways. That is, the commentary itself shapes its object not from the inside but from the outside. That introduces the dynamic element of commentary—the dialogue between text (comment object), commentator, and what the commentator brings to the task of commentary.

It is here that commentary becomes much more sensitive, when it moves from the tasks of thinking, to that of discussing and disseminating. It at this critical nexus point between commentary, the commentator, culture, politics, ideology, and the conscious management of meaning through the instrumentalization of hermeneutics toward specific objectives. This is an ancient issue—though one that was unproblematic until this, critical, age.[[25]](#footnote-25) The problem is magnified where the “ownership” of the object to be commented upon is itself a valuable prize in cultural-political battles for the control of meaning, and meaning making structures among leading social and cultural groups. That itself may be an important socio-political-cultural project, but one that leaps off from rather than resides in the UNGP itself.[[26]](#footnote-26) The same applies, of course, where interpretation is grounded on measurement—there the issue is compounded by a double translation—a perspective driven interpretation of text that is then itself the basis of its translation to the language of measurable effects.[[27]](#footnote-27) It is here that commentary moves into that more contentious arena of polemic, or rather that ne moves from commentary to strategic intervention—something quite important to be sure, but not the stuff of commentary. And it is precisely that sort of agenda or ideologically perspective commentary that ought to be avoided if commentary is to serve its fundamental purpose as explanation, interpretation, and translation of it so that polemic, agenda, strategy, or ideologies might be more soundly applied to it in the service of whatever it is the UNGP are to be used as instrument, pathway, bridge, or foundation. A proper commentary ought to serve all ideologies, strategies, agendas, hopes, dreams and the like alike. That is the aim here.

That is the case with the UNGPs. Its great importance is as the *urtext of the language of business and human rights*, and now of business, human rights, sustainability and climate change. The normative power of urtext ought not to be underestimated. The concept of urtext, translated from the music field, [[28]](#footnote-28) centers on the privileging of unglossed text, that is of text as originally transmitted in written form. It is the transposition of a concept taken from the field of music in which the purity of original text is offered—over and over—as a base from which one can comment or gloss without the distraction or pull of other glosses.

Yet the UNGP urtext becomes a temptation too irresistible to present without a gloss—an authoritative, or a coercive, gloss. That makes it a prize for anyone (person or collective) seeking to manage not just its language, but to invest that language with a meaning that provides the basis for instrumentalizing their particular world views, principles, strategic agendas, and sensibilities. Commentary, then, sometimes finds it irresistible to stray far from the orientation of the glossator. It represents an embellishment that fundamentally guides urtext toward an altered state. That is fair. But that is politics clothed in meaning making. It comes closer in concept to what students of semiotics sometimes refer to a 21st century phenomenon of discursive fluidity—of conversion (of text and meaning) that resonates with the flow of social patterns.[[29]](#footnote-29) Whatever one thinks of this natural impulse to control sources of language and perception over an aspect of human life, the impulse itself suggests both the importance of the task of commentary, and the sensitivity one ought to bring to its production.

Nonetheless , the overlayment of glossing produces either a tendency to *bury text in its glosses*, so that the urtext is lost or becomes irrelevant. This is sometimes the fate of documents like the U.S. Constitution, whose urtext has now been buried in the living constitution of centuries of judicial gloss. Conversely, commentary can sometimes reshape either the way that text is approached or shape the principles and perceptions through which it can be read. That, certainly, has been the century long ambition of august institutions like the American Law Institute, whose glosses (and sometimes reconstructions) of the law of the United States have in their own way become both dispositive as the authoritative means of reading text or rationalizing judicial standards expounded through judgments rendered in cases. This is inevitable and unavoidable as a matter of the linearity of time and the mortality of those who draw from text. Commentary provides a link to perception—cognition—that has floated downstream in time from the present.

This Commentary is intended to provide a comprehensive, principle by principle, analysis of the provisions of the UNGP. That analysis, in turn, is undertaken within a commentary on the overarching unifying framework of the UNGP as itself the development of a system for approaching issues of business and human rights by states, enterprises and civil society. To that end, it will draw on *travaux préparatoires* leading to the UNGP along with the practices, initiatives and other materials (toolkits, analytical frameworks and the like) developed since the adoption of the UNGP in 2011. In that context attention will be paid not just to the work of those who were central to the creation of the UNGP but also to the critical assessments and challenges articulated during the process leading to endorsement, and thereafter. The output of other institutions that have adopted or referenced the UNGP within their own frameworks will also be considered. Among these are the work of the OECD and its National Contact Points as well as judicial decisions by national courts and regional human rights tribunals, among others, that draw on the UNGP. It will also tackle the rationale and objectives of the various provisions of the UNGP, focusing on their impact for the development of a common regime on the governance of human rights through economic activity.

The commentary has several objectives, some of which are worth foregrounding here. One is to raise awareness about the significance of the UNGP as a framework for governance within states, and enterprises. Another is to consider the interaction between the UNGP and the international practice since 2011. Still another is to explore the key criticisms of the UNGPs, both as a system and with respect to individual provisions as well as to explore how the UNGP interact with regional and specific governance frameworks on human rights in economic activity. A related objective is to examine the relationship between the UNGP and other international instruments, both public and private as well as to examine the contribution of judicial and non-judicial mechanisms in the provision of remedy. Lastly this contribution has as an objective to provide concrete illustrations of the challenges and best practices that are being developed in line with emerging consensus on the application of the UNGPs.

These objectives and that framing cannot be undertaken in a vacuum. The author is quite aware of the sensitivities that have emerged in this area, especially in the wake of the endorsement of the UNGP in 2011. The ambiguities and complexities that are contained in the UNGP make the case for the production of commentary; at the same time these continue to serve those who adhere, sometimes passionately, to ways of rationalizing the world only within the premises of which it is possible to understand the UNGP text, and as sub-text, and as meta-text. The Commentary will avoid polemic or the appearance of taking sides. The intent is to turn agnosticism into a strength that can contribute to the value of the commentary beyond current debate, and provide a basis for current and future generations to return to the source as they continue the long struggle to shape and reshape social relations in the field of economic activity. It is hoped that this approach will make it possible to better address key arguments that helped form the UNGP as well as those key criticisms, in a way that invites the reader to assess and arrive at her own conclusions. The UNGP is also in its formative stage of development; as Professor Ruggie suggested it represents the end of the beginning. The approach to be adopted is one of systemic integrity and coherence—to let the logic of the UNGP to drive analysis. At the same time, the work will lay out the debates and controversies that have emerged around the UNGP, as well as their consequences for the advancement of the project of regulating the human rights effects of economic activity in whatever form undertaken. Substantial effort will be made to identify and consider all significant viewpoints with respect to ambiguities of interpretation and to identify issues where there is little consensus. The overall objective is to present the range of plausible approaches that the logic of the UNGPs would suggest but also identify those areas where ambiguity remains unresolved and to point the way top resolution. A final note: the book will avoid a formal legal analysis of the provisions of the UNGP. The UNGP are nor law, though they point to law; they are not social norms though they suggest its contours. The UNGP is something quite new and distinctive—a systemic framework for developing a new focus and language through which governance systems may be ordered. That is both the genius of the UNGP and the difficulty of using conventional forms to gloss its principles. The Commentary, then, will point to legal effects and societal consequences, as well as expectations for governance of policy and markets oriented behaviour oriented mechanics.

This commentary, then, is written with these structural, discursive, ideological, historical, and political foundations of comment well in mind. The book Commentary will have the following features. First, it includes a principle-by-principle analysis, accompanied by a bibliography of significant academic literature relevant to a provision, an overview of the drafting history of the provision and an analysis of the text. Second, it attempts an analysis of the extent to which the UNGP organises a body of international law or departs from it, as well as the extent to which the UNGP Principles highlight tensions between international normative and national legal orders. In that context it will draw on relevant thematic sources from international human rights law, appraising the contributions of other instruments such as the International Bill of Human Rights and other relevant instruments to the UNGP. Third, it will focus on key areas of policy implications. Foremost among them will be an appraisal of the interaction between the UNGP, international law, and societal norms; that is an engagement with the polycentricity that Professor Ruggie noted appeared at the heart of the 3 Pillar UNGP project; thematic focus will include human rights and economic activity in weak governance or conflict zones. Fourth, it will embed consideration of applications of the UNGPs as a modality of both interpretation and development of the UNGPs themselves. To that end, the commentary will include an examination of the case-law, toolkits, human rights due diligence forms, and other expressions of state agencies, international courts and tribunals, civil society, labor organizations and others in producing practical applications of the UNGP. Fifth, related to the application of the UNGP within the broad 1st Pillar structures of the state and law, the Commentary will examine the UNGPs’ application by 2nd Pillar institutions. Areas of focus will include an analytical and comprehensive assessment of the UNGP as a key-working tool for the management and protection of human rights in economic activities of states, enterprises, other organizations, and individuals. Sixth, the Commentary will consider the effect of key sources of opposition, at the macro and micro level to the idea and the text of the UNGPs in its development and character. That will be undertaken through a clear and thorough examination of the debates and criticisms around the UNGPs as conceived and thereafter, as implemented. Seventh, no Commentary can be complete without considering the contribution of the UN’s Special Procedures, and in the case of the UNGP, the work of the Intergovernmental Working Group on Transnational Corporations and other Business Enterprises with Respect to Human Rights to elaborate an international legally binding instrument on transnational corporations.

Putting this all together gives one a sense of the complexities of commentary But more importantly it suggests the central role of disclosure. This is especially significant where the object is to shift the power of decision--of the way that explanation, analysis, interpretation, etc., is received—from the commentator to the reader. The object here is not to hide but rather to expose the principles ad structures from which the act of commentary can be undertaken. It exposes the range of alternative approaches that are plausible within the cages of the UNGP structure and its thirty one principles plus its general principles. It invites the reader to be an active participant in the further construction and application of the UNGP—and in that way to contribute to its meaning in ways that build on the work and actions previously undertaken. And always, the key element of this commentary is to provide an anchor—a center—around which the significance and effects of intention, of intent, of effects, and of application and resistance, can be read consistently over time. *That anchor, and that center is the text of the UNGP itself.* That text is source, anchor and gateway; it is the bridge between aspiration and realization; and it is the representation of a system the construction of which was begun in earnest with the endorsement of the UNGP itself in 2011.

**1.3 The Meaning of Text and the Performative Politics of Commentary**

*In pricipio erat Verbum, et verbum erat apud Deum, et Deus erat Verbum.Hoc erat in principio apud Deum. Omnia per ipsum facta sunt; at sine ipso factum est nihil, quod factum est*.[[30]](#footnote-30)

One of the difficult issues for a glossator is that of the object of annotation, and the lens through which that gloss is to be undertaken. More significant still, perhaps, is the issue of the underlying ideology of the act of commentary itself. The term “Commentary” is so ubiquitous, and now ancient in advanced societies that it is easy to neglect the challenges and ambiguities often veiled by its symbolic rendering as text. Turning again to etymology, the term in the principal languages originating in modern form in Europe hep reveal some of that ambiguity and challenge. The focus is on explanation of *obscure and difficult passages in text* that may be culturally important, religious fixed and eternal, or otherwise authoritative as a source for the justification of the organization of social relations, but that acquires its own methodological structures, sometimes as important as the object of commentary.[[31]](#footnote-31) It can serve to augment explanation and curate application and understanding by those responsible either for the creation or the protection of the integrity of the text for which commentary appears necessary. That also suggests an educational role—targeting those who must explain or apply these texts or practices to others. In this sense commentary augments collective solidarity through guidance by a vanguard or elite invested with a special relation to text.[[32]](#footnote-32) In its most positive form, it can represent “an organic synthesis of the essential and fundamental contents” of doctrine, written and oral.[[33]](#footnote-33) Yet it can also serve the opposite purpose—to expose and resist orthodoxies deepened through the commentary of groups devoted to the protection of a specific way of approaching text, its meaning, and the principles through which textual analysis and application may be approached.[[34]](#footnote-34)

Sometimes lost in these structural social relations are its object—*text situated in place and time*. Here text may be understood broadly as any authoritative or socially important expression around which guidance appears to serve a positive purpose. Commentary cannot escape the tightly woven territories within which text is confined, whatever the commentator’s pretensions to politics, cultural manifestations, or instrumentalization. Commentary navigates most soundly within the kingdom of text; it can meander elsewhere but then it changes its character—to polemic, program, re-education, and the like, for the greater glory of those whose collar the commentary wears.[[35]](#footnote-35) While it is tempting to focus on its consequences, the challenges of text for producing explanation, analysis deserves sustained attention. Text presents its own constellations of difficult questions, questions the resolution of which colors not just the analysis/explanation but also exposes the fundamental premises from which commentary is approached. Simple tasks—identifying obscurity requiring explanation, choosing the basis on which to frame explanation/analysis (word, phrase, etc.), and investing the symbolic directions for reading text (punctuation, grammatical rules)—become applied manifestations of presuppositions that themselves may reveal an underlying lens that in turn reflects choices about the way the world is rationalized (to the exclusion of others). Likewise the determinant of the choices of emphasis—text or intent—are themselves the end product (rather than the beginning) of the application of presumptions about the nature of text, the basis of its authority and the identification of the sources of that authority. The determination that text speaks for itself, or that text merely serves as a snapshot of the intent and objectives of those invested with the authority to produce authoritative expressions of intent and objectives changes the lens of explanation and analysis. More difficult, but in contemporary commentary more prevalent, is the premise that both text, or the intent or desired effects it may have memorialized, may be less relevant that the uses to which the community into which it is projected puts it. Thus it is not either text or objectives, but application that matters for commentary. But like commentary that privileges either text or intent, applications privileging commentary is also locked in time. It can suggest only the contours of application through the time of publication and thus becomes irrelevant with the passage of time, since the power of this commentary depends on its temporal currency.

The choices have important consequences. *Text based explanations* are grounded in the notion of the separation of collective acts (people) from the expression of their collective actions (which for the preservation of the integrity of the system of social relations) must be detached from the living individuals who produced it. This is an ideology that guards against abuse of discretion and the arbitrary in human relations by making text exogenous to those who produce it. Nonetheless, it is an approach that becomes deeply mired in the challenges of language and linguistics, and especially its fluidity and indeterminacy other than as acts of collective power.[[36]](#footnote-36) *Intent based explanations*/analysis ae grounded in the premise that textual autonomy is impossible but must be grounded in the context and social relations within which it is produced. And thus text is a gateway bridging the exercise of authority and its temporal application from the moment of creation onward. This is an ideology that reflects the vertically ordered hierarchical structures of authority that presumes authority flows down. *Application* based *explanation* effectively displaces the primacy of text as autonomous or of the creator as controlling in favor of the notion that both text and intent are merely the static starting points for the dynamic process of dynamic interaction between text/authority and the population into which it is projected. What animates text and intent are its *use*. Text and intent are inanimate (or in the language of critical scholars, radically indeterminate and thus legitimacy threatening);[[37]](#footnote-37) the only power they have is to move others to act. This is a bottom up ideology of social relations; if text is the clay that molds the body of an object created for a purpose, then that clay and purpose become animated (ensouled) by through the breath of application. And yet the great fear—that application will be monstrous, and unguided, text and intent will be obliterated.[[38]](#footnote-38)

1.3.1 Words and Commentary.

*The ordinariness of meaning*. It has long been a mainstay of interpretation, especially among jurists, and among those even more passionately embraced by those emerging from the traditions that can be called “common law,” that words ought to be given their *ordinary* meaning.[[39]](#footnote-39) Indeed, the good doctors of jurisprudence, especially in the United States and then from there among those who admire this sort of approach, have devoted themselves not merely to the gospel of ordinariness, at least when it comes to meaning, but also to the business of preaching or teaching the “word.”[[40]](#footnote-40) They, in turn, stand on the shoulders of giants, who built a special room for legal hermeneutics and interpretation within the mansions of hermeneutics, cognition, and the construction of knowledge.[[41]](#footnote-41)

The goals are worthy. Its importance is substantial enough to induce generations of students of legal semiotics to indulge, without irony, in its study.[[42]](#footnote-42) While for jurisprudence, the object is both “pure” (to capture the singular or best or plausible essence of meaning of a word) and practical (in a power-business sense) to “sell” meaning to those organs of state and market that might then by operation of their own functions in society, impose that meaning on the collectives over which they exercise some measure of authority. One cannot detach the ordinariness of meaning from the power to compel (public and political) or induce (private, cultural, economic) adherence in collective life. And that brings one back to the word. “So there must be a close connection between law and society, between language and legal discourse. Before everyday language can compose this expressivity, it needs the ‘word’ as its ultimate building block in language.”[[43]](#footnote-43)

Taking a broader view, whatever the quantum of effort, and however important the stakes, this effort might be supposed to amount to nothing more than a great feat of jurisprudential bathos, though a critically important one for the operation of a collective within its time.[[44]](#footnote-44) Nor is it even a particularly subtle and complicated insight derived in essence from theories of communication, that is the way that grunts and scratching can be commonly decoded by a group trained in that art. Nor further still, does the insight jar among those who worry about the alignment of symbol (text) or performance (utterance, including inflexion) in the construction of predictable and imitable invocation (text and performance) or response (reading and hearing).[[45]](#footnote-45) One operates in the field of social relations always in the service of the ordinary; the essence of Commentary might then be well situated within the ordinary project extraction of meaning, plain meaning, from words, or their performance in speech or in action. One performs text as commentary, and yet commentary (or the treatises into which they may be embedded) is not merely the performance of text but the script through which commentary is performed.[[46]](#footnote-46) And that brings one back to the word in its broadest sense: *In principio erat Verbum*.

In that insight lies contradiction—and the great challenge for Commentary. The more tightly one holds to the idea that a word has a plain meaning, that the word incarnates the ‘ordinary,’ the more difficult it is to grasp that meaning in fact-- *et Deus erat Verbum* . This is the problem of the word, what in ancient Chinese rhetoric touches on the issue of *ming-ming* (明名intelligent naming).[[47]](#footnote-47) And what in the Judeo-Christian tradition touches on the intimate connection between creation and naming.[[48]](#footnote-48) Intelligent naming, and the connection between creation and identification, sets the fundamental template—the eternal in the semiotics of religion. Meaning, even in its ordinary senses—“is not a thing.”[[49]](#footnote-49) It is instead better appreciated as the product of symbols that encode instructions for perception that is in constant motion as it is shared among community of encoders. Put differently, the problem of the word, and the language built around it, is that it is an object the value of which is derived from the production and consumption of meaning that serves the community of meaning producers and users—that is as an object of language platforms.

That, in turn, embeds a number of instabilities. *First there is the matter of time*. People die, societies change, and with that death and those changes, the words that may have been plainly meaningful in one way at one time and among a generational cohort of people may lose both plainness and meaning. The famous example of the meaning of the term “commerce” for purposes of the US Constitution, or for that matter the lain meaning of equality in a society in which when it was first proffered females virtually no political and limited economic rights, while others, mainly people of African descent were enslaved. *Second is the matter of technology*. Technology changes society. Those changes must be built into the language and communication of that society and its structures of operation and power. Those changes are sometimes built into the language society uses. For example. the meaning of Copy and paste in the age of the word processor is quite different than at the of the founding of the American or the French Republics, or even of the People’s Republic of China. *The third is the matter of migration*. People bring all sorts of baggage with them when they migrate. Among this baggage is their language. European languages are filled with examples of substantial changes in vocabulary, meaning and usage during periods of great migrations—for example the waives of migrations of Angles, Saxons, Norman French, Danes and others into the United Kingdom is one example. Changes here are subtle and sometimes suggest the ways that people seeking to learn a hist language change it in the process. This pattern continues today. *The fourth is the matter of linguistic functional differentiation among same language speakers*. In the English speaking world it is something of a cliché to suggest that lawyers speak a different language than others; but the same applies to other fields. Terms of art are as much a part of the world of business and they are a part of the world of law, science, religion, and other sib communities with their own argot. Plain meaning here becomes a meadow held together only by proximity and pollination (sometimes). *The fifth is the matter of engineering*. From the time of the Enlightenment, human society, first in Europe, and then virtually everywhere, embraced the notion of perfection. This perfection was not understood in its previous version bound up in the language and sensibilities of religion. Rather it was bound up in the rationalization of the human, its measurement, and ultimately its expression as an ideal to which those in control of social forces could nudge the masses under their charge. This fundamental shift in the understanding of humanity at the center of itself required a vocabulary, and to that ends old words could be repurposed. Consider as an example the transformation of words like accountability and accounting. *The sixth is the matter of translation*. Societies borrow words, even as they borrow customs, practices, and sometimes sensibilities. Globally connected societies borrow more aggressively. And borrowing can become a matter of state policy. Even when one is not borrowing, one is encountering other collectives whose language and usage—whose text—requires some form of translation. The free movement of goods, capital, and investment has made that inevitable. Common language sometimes sacrifices older specific meaning in the service of new context. *The seventh is the matter of the extra-ordinary*. To insist on an ordinary meaning also admits to the possibility of the extra-ordinary—the specialized language of a community. Lawyers are masters of the construction of language as its own homonym—built on words that sound and are spelled the same as words in their ordinary sense, but which acquire a distinct meaning. This is the world of terms of art, and of the production of specialized knowledge, and the power relations that follow.

And thus the reason for this con-textualization of text and its plain meaning is to serve as one of a series of caveats to the commentary that is to follow. It is offered by way of explanation of the reason the Commentary will not indulge in the usual practice of those who wear the collar of their profession and their status as elites with an obligation to conform to class orthodoxy (the power of the plain) and on that basis to proffer the best or only or most logical or most correct way of extracting the ordinariness of the meaning of the word around which it is necessary to comment—and here one encounters obliviousness to the ironic contradiction of the ordinariness of meaning. Put differently, in the words of Michel Foucault—to make oneself, and this Commentary “acceptable.”[[50]](#footnote-50) Very little that is plainly evident—and especially words—require mountains of other words to ensure the proper construction, understanding and use of the all too ordinary test that is its object. The exception—where it is necessary to protect the ordinary either from the extraordinary or form capture by ithers whose sense of the ordinary is indeed quite distinct from that being defended. The extraction of meaning, then, to reinforce the sub-text of the last few paragraphs, is intrinsically political.

*The task of the Commentator*. In the face of this, it seems clear that the Commentator faces an initial choice. The conventional approach is to use the commentary to extract what the Commentator will suggest is the true or best meaning of text. This is an important exercise, to be sure. But it is a political one that increases the value of the Commentary by fashioning it into an instrument that ca be utilized by those who favor that interpretation and meant to use it in their battle for control of the ordinary meaning of a term. In a field the core approaches to which are neither plain or stable, such an approach has great value and is likely the better political choice. That “better” political choice is augmented if the Commentary can also cement or advance the status or position of the Commentator within the meaning making community of which they are a member. One is, in effect rewarded for being loyal to one’s intellectual caste.[[51]](#footnote-51) The act of glossing is then made an instrument that is not attached to the text but rather to the meaning community that sees in such text (and its glossing) a meaning of advancing its world rationalizing project.

The alternative approach is to seek to define the limits within which it is plausible to extract some form of ordinary meaning from the text. To that end, a Commentary might serve a higher purpose not by arguing for the value of one ordinary (or extra-ordinary) meaning over another, but rather to consider the extent of the range of plausible ordinary meanings—or perhaps extraordinary meaning—that may be identified. It is in the construction of that field of plausibility that a number of additional issues arise that also affect both the interpretive process and the character of the challenge the Commentator faces.

 1.3.2 Words in Con-Text

Though important to the task of the Commentator—and more so to the function of hermeneutics, linguistic and legal-cultural cohesion aligned with a worldview around which a social reality is ordered and preserved—word meaning is not at the center of the task of extracting meaning from text. Words, like other symbols, acquire meaning not merely in themselves, but in the context in which they are placed. That is, whether or not their meaning is ordinary, the meaning of words is derived not only in itself but from the words around it. At a greater level of generality, it acquires meaning from the self-contained environment of text which is meant to serve as a sort of autonomous meaning field: a phrase, a sentence, a paragraph, a section, the larger section within which it is embedded, and so on.

Why state the obvious? Because the obvious hides sometimes its own directional symbols: the meaning of words in context may be managed by other meaning rules: the rules of syntax (and its violation, rules of grammar and usage, the power of symbols in written text (periods, semi-colons, etc.), or pauses and inflection in speech, and the like. Word meaning exists not merely in the context of the words around it, but also in the context of the symbols that are used to rationalize and support the interrelationship of words aggregated together and meant to be read as part of a larger set or sets of wholes. One moves from word to language. And in the context of the UNGP, from general and popular language to the rarified language of an international community seeking to develop normative frameworks in a highly specialized field. One contends not merely with vocabulary and syntax, but with the language through which it may be expressed.

Yet here one encounters another problem. There is no ordinary meaning rule for reading clusters of words together; far less for reading words embedded in a larger and more complex text. One way to extract a range of meaning where its object is to consider the meaning of multiple words that are meant to have a relationship to each other is a formal one: to apply the rules of grammar, syntax, and punctuation to the word clusters and to give them the meaning that the application of such rules suggests—the ordinary meaning rule applied in a different terrain. Or one could, by discerning deviation from those rules, extract a meaning grounded in what appears to be an intentional effect to avoid the rules to a different meaning ends. In that context one can judge whether one penalizes inadvertent breaches of such rules (the traditional judicial rule that one reads a contract against its drafter), or otherwise indulge in rewriting (effectively forgiving transgression). Alternatively, one could look to other similar word projects for insights to be applied by analogy. Courts tend the approach the readings of similar statutes in the same way. Common law courts tend to use a number of techniques to rationalize and as a shorthand for unity of meaning or approach in similar circumstances; stare decisis as one of them. The notion of predictability is deeply built into language and the practice of the judiciary. Yet the determination of the boundaries between those circumstances in which application of meaning rules is warranted and when to avoid these rules then produce a set of meta or overarching grammars of extracting meaning from words in their textual context.

At its outer boundaries, context presents the challenge of objectification of a different sort. It is sometimes possible to detach the idea of the body of text that is the subject of commentary from the text itself. In the case of the UNGPs, for example, the idea of the UNGPs as a whole becomes as important as the substance of its text. In this case the UNGP are objectified in ways in which it is no longer essential to understand how it works or even its three pillar structures. The UNGP stands for something else--as a project, as a process, as a set of aspirations, and the like. It is in some sense a fetish—a sign that signifies something else. And it is this “something else” that may be invoked by those who apply the UNGPs in this way. A commentary of the objectified UNGP , as distinct from a commentary of the UNGP, is an important additional context from which meaning and application may be extracted.

*The task of the Commentator*. Commentary can fight against rules in the search for interpretive or explanatory purity. Or commentary can embrace them and add its own voice to the mellifluous polyphony of orthodoxy. However, all such efforts reveal more about the commentator than about the object of commentary. For strategic commentary it follows that either position (or anything in between that serves the purpose of the commentator) will do as long as one is content to understand commentary as an instrument serving a purpose beyond explanation or analysis. That is perfectly respectable. Its weakness is the temptation to pretend that what is instrument is universal, undisputed, inevitable, and incapable of objection. Yet that is precisely the foundation of orthodoxy (whether of vanguards in or with power or those seeking their displacement). Again, striving toward the boundaries of plausibility serves the larger objective of a commentary that means to outlast the fickle obsession with orthodoxies which in contemporary social relations hardly last long enough to merit documentation.

1.3.3. Intent and Effect

Do words and the text in which it is embedded have any meaning at all in themselves? If text or words are merely symbols—then they represent something other than selves. They are a picture, on object, a memory, a recording, of the intention of those who had the authority to not merely choose these words, but (through some process that accords with the practices and habits of a culture) to make them authoritative. If that is the case, then are words (text) merely pass through for the intention, meaning, objectives, principles, world views, and approaches of those who were responsible for their use or those for had the authority to give the words power. Here one encounters ordinary meaning in the experiences that are held in common and reduced to word.

What, in the end, is [common]? Words are vocal symbols for ideas; ideas, however, are more or less definite mental symbols for frequently returning and concurring sensations, for groups of sensations. It is not sufficient to use the same words in order to understand one another: we must also employ the same words for the same kind of internal experiences, we must in the end have experiences *in common*.[[52]](#footnote-52)

In the field of law—hard or soft—the issue is usually framed as the context between text and intent. On the one hand, one can take the position that words speak for themselves. That is that what was made authoritative were the words, and nothing else. Whatever intent was meant to be inserted into those words would have had to have been accomplished by aggregating enough words to make the intent plain enough to discern from the ordinary meaning of the words used to those ends. On the other hand, it is possible to see in words nothing more than a set of symbols that direct ne towards meaning—and the only possible authoritative meaning must be that embodied in the intent of the drafters (or adaptors) in authorizing the clusters of words that became text.

In this sense, words never have an ordinary meaning—they have only the meaning that expresses and furthers the intention of the drafters in choosing them to memorialize their intent, objectives, understandings, and purpose. If one embraces a notion of meaning through but not in words, then the object of extracting meaning might also be redirected from the meaning embedded in words (text, speech, or symbol) to an examination of the way that choices of meaning changes or threatens intent or purpose. That is one moves from a formal standard to a functional standard; the former focusing n words and their meaning, the later focusing on *intent and effect*.[[53]](#footnote-53)

But whose intent and what effect, and what relationship between that intent and the articulation of preferred effect and the glossing of text? There are several possibilities, three of which merit consideration. The first focuses on the person or group actually drafting the language to be considered. The second focuses on the group that considered the draft submitted and approved or enacted it. The third focuses instead on those who applied it, whether within the apparatus of state or outside of it. This has particular relevance to the UNGP.

Focusing on the drafters would produce an analysis heavily weighing the work product of John Ruggie and his team. But this team included both a core of people and a larger band of others, sometimes harder to identify, that produced key input at various points in the process. It also leaves open the question of whose intent and wat effects ought to be used for interpretation: Ought the focus of the intent and effects be centered on the formal work product of John Ruggie as SRSG, or should a broader net be cast—including speeches and other performances of meaning, earlier work on other mandates and eve his academic work. The same would apply for his collaborators. If John Ruggie represents the synthesis of intent, then the individual strands of his collaborators’ intent may be weighed less or ignored. But the reverse may be true. Coordinating, weighing, and aggregating issues then may have greater effects on shaping interpretation than the actual intent or effects that are subject to that analysis. That is the danger, of course: text is hard to miss even if one misses the interpretive mark—intent must be constructed by the debris it leaves lying around, and the effects to be advanced or avoided must then be adduced from this construction.

In contrast, focusing on the endorsers shifts analysis to the UN Human Rights Council and the apparatus of the Office of the High Commissioner for Human Rights. But they did not work in a vacuum either and several states played leading roles. That opens the question of relevance, focusing on the universe of statements and materials produced. It also exposes the apparatus of the HRC and the OHCHR as contributors to the text—and the shaping of the intent—of the UNGP. That is not implausible. But it is inconvenient in the sense that it requires a disaggregation of intent and the production of identified effect that may be difficult to reconcile much less coordinate. And in this case, the problem of intent becomes more difficult.

Most interesting is the last of the possibilities—a focus on those who apply the text to whatever ends suit them. Here intent and effect is extracted from the aggregation of the uses to which it is put by those who find in it something sufficiently valuable o convenient to be bent to the purposes for which it is invoked. Here the political and strategic objectives of use may, in the aggregate provide a sese of the meaning of text; not necessarily the meaning the words suggest or that its creators, drafters, or enactors might have assumed, but rather the meaning which suits the mass of those who employ it for their own ends. This use, in some instances might itself function as a gloss—in the sense that the need to use text in a particular way requires the provision of some sort of more or less persuasive glossing of the text. That gloss, in turn, then serves as a basis for the instrumental proffering of text (now suitably glossed) and towards the ends for which the gloss is put forward.

*The task of the Commentator.* Where one moves beyond text to intent, the glossator may be tempted to choose. That choice is fair enough if it is made explicitly, and even better if the rationalization for the choice is also provided. That choice, however, is necessary if one moves from intent to effect. That is, if one uses the indeed effect as the basis for explaining/analyzing/interpreting—for glossing—text. One must be sensitive to the parallel approaches of glossing and interpreting a text. They occupy common ground. But the tasks are to some extent different, or at least their objectives out to be different. *Explaining* provides supplemental approaches to text to aid in the ability to understand what was attempted to be expressed through (in this case) words. Explaining can tie the broad themes of a text (as a whole, or as a set of interrelated parts) with its manifestation in each of its most granular sub-parts. *Analyzing* seeks to approach issues of complexity, ambiguity, or obscurity by disaggregating the thing analyzed into simpler (sometimes its simplest) elements and then to reconstitute the pieces in ways that are more approachable. Analysis can also serve as criticism, or in the process of reducing something to its essential components, to expose the underlying glue (ideology or unstated presumptions) that had held them together. That exposure then permits either better understanding the text in light of its ideological glue or to more effectively oppose the thrust of the ideology incarnated as text. Both are the stuff of treatise writing in the contemporary era. But leak into the core role now usually ascribed to the task of commentary.[[54]](#footnote-54) *Interpretating* seeks answers about the meaning of text usually for the purpose of its application in specific context. Judges and lawyers interpret text, for example, in the context of providing advice to clients and in the meaning making context of disputes and dispute resolution. Interpretation is closely aligned with application—the positive act, which maty draw on explanation and analysis, for a determination of meaning as a function of the context in which interpretation is necessary, and then to its application—especially to its consequences as outcome, doctrine, and remedy.

Glossing is not undertaken for clients (as such) or with a specific problem (or set of problems) for which a more or less specific answer is necessary. Glossing, in this sense, has been described as an act of digestion, one the product of which is consumable by those otherwise unable to effectively approach the original text (unaided). “Because commentary sources digest the law for you, you will find it easier to grasp the law's meaning and the policies behind it. Also, commentary sources cite to the relevant case law, statutes, regulations and administrative rulings. This is particularly useful if you do not know the citation of a statute.”[[55]](#footnote-55) A general commentary is best aimed at a board range of audiences. This commentary, more specifically, aims to benefit academics and students of international law and international relations. But it is also intended for practitioners—lawyers, judges, and individuals charged with enterprise compliance and responsible business conduct (RBC) portfolios.[[56]](#footnote-56) It will also be a reference publication for legal advisers of governments and NGOs, as well as policy-makers and practitioners working in human rights and economic activity. Lastly, it is meant to be accessible to people with no specialized expertise. They form a critical audience. Many of them ultimately will bear the responsibility for transforming text, and the legal framework that follows, along with markets expectations, into viable systems of managing economic activity.

The structure will be developed along the following lines.

(1) One starts with the object itself—the UNGP. That object, in turn, can be understood in two senses, each with significant consequences for the form and character of comment. First, the UNGP can be understood as an embodiment of an idea or perspective. *The UNGP as idea* is detached from the specifics of its text. Rather the focus is on the UNGP as a singulatory that stands for something else. It is, in this sense, a sign that signifies a way of thinking about the relationship of economic activity to human rights in specific ways—in this sense one extracts generalized principles, ideologies, agendas, practices, and customs from the UNGP as a whole. Second, *the UNGP can itself be understood as its text*. In this sense higher order values might be extracted from its text, rather than, as in the case of starting with the UNGP as idea, reading text from higher order values derived from the production of the UNGP as a whole. Commentary here requires close reading of text. But that itself poses an initial problem—what is text? This is the long standing conundrum of memorialization: the relationship between text and text producers or adopters. Textualists at one end would detach text from its creators or users and start form the proposition that text alone is authoritative, detached from the context in which it was created. AT the other, text is understood merely as the recording of context, instructions for preserving and applying the intent and sensibilities of its creators or of those, later, who use it (within the scope of its authority and extent). The gulf between these three starting points for commentary then produce the sometimes large space within which there exists a range of plausible construction, readings, interpretations, or “play at the joints” for the instrument.

(2) Consideration of these manifestations of the UNGP—as object, as sign signifying meaning, and as the means for interpreting, guiding, and judging the actions of others in systems of economic activity—might benefit from a closer connection with its origins. These suggest both the unifying vision that produced the UNGP (and which may still survive within its text or in its form), as well as those points of fracture within the core ecologies of those meant to receive and apply it. The object is not to tie the meaning of the UNGP to its origins or to the outsize personalities that shaped it, but rather to be sensitive to the clues these processes might provide in shaping the contours and limits of plausibility in approaching interpretation, applications, and thus useful commentary on the object itself and within its intended context.

(3) With that in mind, commentary can then focus more precisely *on the UNGP as urtext*—in this case pristinely preserved in the form of the text of the 2011 UNGP as endorsed by the Human Rights Council. That serves as the hub. Commentary will radiate form that hub in waves that take one further and further from its core—but consciously so. It will start as a guide to the text in which the UNGP as understood and approached as a self-referencing system from which it is possible to deduce answers to any consideration within its ambit. This is not meant as another variation of the impulse to hermeneutics--but rather a close engagement with the signification of text in and as text as endorse and thus made authoritative. At the same time, it is meant to expose ideology supporting plausibility and this to provide an extra-textual context for textual meaning.

(4) It then shifts to interpretation—and here deviates from traditional commentary. Where in the usual course a commentary will advance a particular vision—this commentary will describe the universe of plausible interpretive ecologies that might be interpreted form out of the UNGP. More specifically, it will comment on the borderlands of the plausible. In the process it will identify the ideologies, strategies, and objectives from which different interpretive schools might be built to nudge the rationalization of the UNG or any part of it in pre-determined directions.

(5) The identification of borderlands of plausibility then introduces the societal flows in which those are recognized, and with which the UNGPs communicate. This is the commentary on the patterns and possibilities of structural coupling with meaning making communities in which the UNGP are embedded or into which it is received.

(6) Lastly, the commentary will shift the focus from UNGP to the key actors (and some marginal ones) whose instrumentalization of the UNGP also serve to define and suggest its meaning. Here one enters the pragmatics of meaning making—by states, enterprises, civil society, and academics, each of which reshapes the UNGP from itself to an instrument or pathway elsewhere.

(7) And then the commentary will return to text within these ecologies of meaning making, but from out of which text emerges to survive continue to serve as the urtext for successive waves of commentary, ideology, and instrumentalization, ready, in its original text, for commentary—not a commentary of commentaries. But again a source commentary.

(8) To this one adds a final element of gloss—the effects of the turn toward the digital, to the quantitative and analytics. The turn toward the datafication of cognition, of interpretation, and of meaning, also has a gloss of its own, and may fundamentally alter both the forms of commentary and the meaning of its text. That is likely the case in this field and to this text.

**1.4 Organization of the Commentary**

 The Commentary will draw on the format of existing Oxford University Press Commentaries, such as the European Convention on Human Rights: A Commentary (2015) and The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary (2016).

The book will be divided into 7 Parts. The first two parts will set the context and provide an analysis of the road to the UNGP, identifying the major actors and stakeholders and sketching out the scope of original sources. Parts 3-6 serve as the heart of the Commentary, the principle by principle analysis of the UNGP. Part 7 then seeks to tie the work together. It will be divided into two subparts, the first developing the systemic quality of the UNGP as a whole, and the second suggesting the scope and direction of the challenges confronting the UNGP in the future.

Part I: Introduction

 Chapter 1: Introduction and Context

Part II –The Road to the UNGP

 Chapter 2: The historical and Intellectual context to the UNGP

 Chapter 3: From Norms to the Three Pillar Framework; The Work of the SRSG Under his Mandate 2005- 2011

 Chapter 4: Embedding the UNGP From Endorsement

Part III—The UNGP: General Principles

 Chapter 5: The General Principles of the UNGP

Part IV-The UNGP: The State Duty to Protect Human Rights

 Chapter 6: Foundational Principles (¶¶ 1-2)

 Chapter 7: Operational Principles (¶¶ 3-7)

 Chapter 8: Policy Coherence (¶¶ 8-10)

Part V—The UNGP: The Corporate Responsibility to Respect Human Rights

 Chapter 9: Foundational Principles (¶¶ 11-15)

 Chapter 10: Operational Principles and Human Rights Due Diligence (¶¶ 16-21)

 Chapter 11: Remediation and Operational Context (¶¶ 22-24)

Part VI—Access to Remedy

 Chapter 12: Foundational Principles (¶ 25)

 Chapter 13: Operational Principles; State Based Judicial and Non-Judicial Mechanisms (¶¶ 26-27)

 Chapter 14: Operational Principles; Non-State Based Grievance Mechanisms (¶¶ 28-30)

 Chapter 15: Operational Principles; Effectiveness Criteria (¶ 31)

Part VII—The Way Forward

 Chapter 16: The Future of the UNGP; Uses and Influence

 Chapter 17: The UNGP in its Wider Regulñatory Ecology; Enterprise Self-Regulation, International Treaties; Private Standards; and Sustainability

Back matter

 The book is expected to be about 400,000 words, roughly 20,000 words per chapter including footnotes. Bibliographies and any appendices. The manuscript will be submitted by December 2019.

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8. See, David Weissbrodt and Muria Kruger, ‘Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’ (2003) 97 Am. J. Int'l L. 901 <https://scholarship.law.umn.edu/faculty\_articles/243> accessed 15 February 2022. [↑](#footnote-ref-8)
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11. John G. Ruggie, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework,’ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/17/31 (212 March 2011), ¶ 13. [↑](#footnote-ref-11)
12. UNHRC Resolution 17/4 of 16 June 2011, ¶ 6. [↑](#footnote-ref-12)
13. Ibid., ¶ 12. [↑](#footnote-ref-13)
14. International Organization for Standardization (ISO), ISO 26000: Guidance on Social responsibility (Geneva; ISO, 2010). These are built on seven core principles that sound in the UNGP 2nd Pillar (respect for human rights and include: Accountability; Transparency; Ethical behaviour; Respect for stakeholder interests; Respect for the rule of law; Respect for international norms of behaviour; and Respect for human rights. See, ISO, *Discovering ISO 26000* (Geneva, ISO, 2018). [↑](#footnote-ref-14)
15. CIOTER MY TRUTH [↑](#footnote-ref-15)
16. Larry Catá Backer, “Aristotle's Natural Slaves and African Slavery in the United States.” Law at the End of the Day (28 September 2007) available <http://lcbackerblog.blogspot.com/2007/09/aristotles-natural-slaves-and-african.html>. [↑](#footnote-ref-16)
17. *The UN Guiding Principles on Business and Human Rights: A Commentary* (Barnali Choudhury (ed); Edward Elgar, 2023). [↑](#footnote-ref-17)
18. Crowdsourcing Legal Commentary, Vox Populaii, Cornell University Legal Information Institute (31 March 2010); available [https://blog.law.cornell.edu/voxpop/2010/03/31/crowdsourcing-legal-commentary/]. [↑](#footnote-ref-18)
19. Etymology Online, Comment; available [https://www.etymonline.com/word/comment] [↑](#footnote-ref-19)
20. Etymology Online, gloss; available [https://www.etymonline.com/search?q=gloss]. [↑](#footnote-ref-20)
21. Etymology Online (Commentary); available [https://www.etymonline.com/word/commentary]. [↑](#footnote-ref-21)
22. Josiah C. Russell, “Gratian, Irnerius, and the Early Schools of Bologna,” *Mississippi Quarterly* 12(4) (1959), 168-188. [↑](#footnote-ref-22)
23. Eckart Frahm, *Babylonian and Assyrian Text Commentaries: Origins of Interpretation* (Guides to the Mesopotamian Textual Record 5; Münster: Ugarit-Verlag, 2011). [↑](#footnote-ref-23)
24. In the context of philology, see, e.g., Sheldon Pollack, “Future Philology? The Fate of a Soft Science in a Hard World,” *Critical Inquiry* 35 (2009) 931-961. [↑](#footnote-ref-24)
25. Cf., Paolo Grossi, “Ideologia e Técnica em uma Definição Jurídica (a Definição Obertina de Feudo dos Glosadores a Cujas)

Ideology and Technique in a Legal Definition (the Obertine Definition of Feudo from the Glossators to Cujas*,” Seqüência ; Estudos Jurídicos e Políticos* (Marjorie Carvalho de Souza (trans.) 39 (2018): 220-256. [↑](#footnote-ref-25)
26. Cf., Akinwumi Ogunranti, “Localizing the UNGPs – An Afrocentric Approach to Interpreting Pillar II,” *Business and Human Rights Journal* (2022) 1-19. [↑](#footnote-ref-26)
27. James Harrison and Mark Wielga, “Grievance Mechanisms in Multi-Stakeholder Initiatives: Providing Effective Remedy for Human Rights Violations?,” *Business and Human Rights Journal* (2023) 1-23 (online). [↑](#footnote-ref-27)
28. G. Henle Verlag, “What is Urtext” (nd); available []. “The idea behind it is simple and easy to understand. The musician is offered a musical text which reflects the composer’s intentions. The text is undistorted, meaning that neither the editor nor the publishing house have undertaken changes that might misrepresent it. . . This might appear self-evident. However, well into the twentieth century the great performers of the day were absolutely convinced that musical texts – especially those of works from the eighteenth century – were incomplete or had suffered from faulty transmission, in particular concerning “how” they were to be performed.” [↑](#footnote-ref-28)
29. Umberto Eco, Chronicles of a Liquid Society (Richard Dixon (trans); NY: Houghton Mifflin 2017); Jan M. Broekman, *Knowledge in Change: The Semiotics of Cognition and Conversion* (Springer, 2023). [↑](#footnote-ref-29)
30. Ioannes 1:1-3 (In the begging was the Word, and the Word was with God, and God was the Word. He was with God in the beginning. All things were made through him, and nothing that was made was made without him. John 1:1-3; translation Sacred Bible.org; available [https://www.sacredbible.org/studybible/NT-04\_John.htm] ; The King James Version translates et “Deus erat Verbum” from the Vulgate as “the Word was God” ). [↑](#footnote-ref-30)
31. See, e.g., Andrea Padovani, “‘Tenebo hunc ordinem’ Metodo e struttura della lezione nei giuristi medievali (secoli XII–XIV),” *The Legal History Review* 79 (2011) 353-389. [↑](#footnote-ref-31)
32. This vanguard may be politically constituted and formally inserted into social relations—the communist party for example. Or they may constitute a priesthood—for example within religious communities. Likewise they may also develop informally through social interactions or by membership in a particular class of people, for example academics, or judges, or lawyers, or experts—as is common in some liberal democratic societies. Cf., Bertrand de Jouvenel, *On Power: The Natural History of Its Growth* (J.F. Huntington (trans); Indianapolis: Liberty Fund , 1993 (1947). [↑](#footnote-ref-32)
33. *Catechism of the Catholic Church* ((2nd ed.) Libreria Editrice Vaticana.,2019) ¶ 11. [↑](#footnote-ref-33)
34. Friedreich Nietzsche, *The Antichrist* (H.L. Mencken (trans) NY: Alfred A. Knopf, 1923; Project Gutenberg eBook #18322 (18 September 2006)), ¶ 8 (“So long as the priest, that professional denier, calumniator and poisoner of life, is accepted as a higher variety of man, there can be no answer to the question, What is truth? Truth has already been stood on its head when the obvious attorney of mere emptiness is mistaken for its representative”), also § 26. [↑](#footnote-ref-34)
35. This, it seems, is built into the nature of commentary, especially by those whose patronage made commentary possible and desirable. See the discussion in Davis S. Clark, “The Medieval Origins of Modern Legal Education: Between Church and State,” *The American Journal of Comparative Law* 35(4) (1987) 653-719. [↑](#footnote-ref-35)
36. See, generally, Elżbieta Chrzanowska-Kluczewska, “Textual indeterminacy revisited: from Roman Ingarden onwards,” *Journal of Literary Semantics* 44(1) (2015) 1-21; Schlomo C. Pill, “Leveraging Legal Indeterminacy: A Judeo-Islamic View of the Indeterminacy Problem and the Rule of Law,” Journal of Law, Religion, and State 6 (2018) 147-198.; Michael C. Dorf, “Legal Indeterminacy and Institutional Design,” New York University Law Review 78 (2003) 873-981. [↑](#footnote-ref-36)
37. Cf., Ken Kress, “Legal Indeterminacy,” *California Law Review* 77 (1989) 283-337. [↑](#footnote-ref-37)
38. “That is also my victim!” he exclaimed. “In his murder my crimes are consummated; the miserable series of my being is wound to its close! Oh, Frankenstein! Generous and self-devoted being! What does it avail that I now ask thee to pardon me? I, who irretrievably destroyed thee by destroying all thou lovedst. Alas! He is cold, he cannot answer me.” Mary Wollstonecraft (Godwin) Shelly, *Frankenstein; or, the Modern Prometheus* (Project Gutenberg eBook #84 31 October 1993), Chp. 24; available [https://www.gutenberg.org/files/84/84-h/84-h.htm#chap01]. [↑](#footnote-ref-38)
39. Kevin P. Tobias, “Testing Ordinary Meaning,” *Harvard Law Review* (2020) 134:726-806. [↑](#footnote-ref-39)
40. See, e.g., among the mountain of worthy efforts: Felix Frankfurter, Some Reflections on the Reading of Statutes, Columbia Law Review (1947) 47, 527; Ronald J. Gilson, Charles F. Sabel & Robert E. Scott, “Text and Context: Contract Interpretation as Contract Design,” *Cornell Law Review* 100 (2014) 23; Aharon Barak , *Purposive Interpretation in Law* (2005); William N. Eskridge , Jr., *Interpreting Law: A Primer on How to Read Statutes and the Constitution* (2016) ; Antonin Scalia & Bryan A. Garner , *Reading Law: The Interpretation of Legal Texts* (2012); Lawrence M. Solan , *The Language of Judges* (1993); Lawrence M. Solan, *The Language of Statutes : Laws and their Interpretation* (2010); Larry Catá Backer, “Chroniclers in the Field of Cultural Production: Interpretive Conversations Between Courts and Culture,” *Boston College Third World Law Journal* 20 (2000) 291. [↑](#footnote-ref-40)
41. See, e.g., Francis Lieber, *Legal and Political Hermeneutics* (3d ed. 1880; Friedrich Carl von Savigny, I *System of the Modern Roman Law* 66-268 (ed. 1979) (1st ed. Berlin 1849). [↑](#footnote-ref-41)
42. Jan Broekman and Larry Catá Backer, *Lawyers Making Meaning :  The Semiotics of Law in Legal Education II* (Dordrecht: Springer, 2013). [↑](#footnote-ref-42)
43. Jan Broekman, *Meaning, Narrativity and the Real: The Semiotics of Law in Legal Education IV* (Dordrecht: Springer, 2016), p. 96. [↑](#footnote-ref-43)
44. For a brilliant exposition in the context of the transition of the meaning of Irishness, see Donald Harman Akenson, “Public Taste: Baths Ain’t Always Bad,” *Queen’s Quarterly* 127 (2020) 244-263. [↑](#footnote-ref-44)
45. Jan Broekman, *Knowledge in Change: The Semiotics of Cognition and Conversion* (Dordrecht: Springer, 2023). [↑](#footnote-ref-45)
46. Erik Ringmar, “The Problem with Performativity: Comments and contributions,” *Journal of International Relations and Development* 22 (2019) 899–908 (“To perceive and to conceive are closely related activities and explicit

interpretations become possible only because of this embodied interaction. Theatrical performances are one way in which we do this.” Ibid., p. 906). [↑](#footnote-ref-46)
47. Guiguzi (鬼谷子), Guiguzi: China’s First Treatise on Rhetoric; A Critical Translation and Commentary (Hui Wu (trans.); Carbondale: Southern Illinois University Press, 2016 (before 220 A.D.)); Book II.6.1. [↑](#footnote-ref-47)
48. Genesis 2:19 (KJV) (“And out of the ground the Lord God formed every beast of the field, and every fowl of the air; and brought them unto Adam to see what he would call them: and whatsoever Adam called every living creature, that was the name thereof”). [↑](#footnote-ref-48)
49. Broekman, *Meaning, Narrativity and the Real,* supra, p. 94. [↑](#footnote-ref-49)
50. Michel Foucault, Preface, Gilles Deleize and Félx Guattari, *Ani-Oedipus: Capitalism and Schizophrenia* (New Yor: Penguin Classics, 1977), p. xi. (“There was a certain way of thinking correctly, a certain style of political discourse. . . that made the strange occupation of writing and speaking a measure of truth about oneself and one’s time acceptable.”). [↑](#footnote-ref-50)
51. Michel Foucault, Preface supra. This then serves as extended variant of the secret sheep chant in the movie Babe: ““*Baa-ram-ewe! Baa-ram-ewe! To your breed, your fleece, your clan be true! Sheep be true! Baa-ram-ewe.*” Babe (1995), quoted in Christopher Strom, “Baa-ram-ewe!” How the movie Babe explains the value of Lean project management, LinkedIn; available [https://www.linkedin.com/pulse/baa-ram-ewe-how-movie-babe-explains-value-lean-project-strom/]. [↑](#footnote-ref-51)
52. Friedrich Nietzsche, *Beyond Good and Evil* : *A Prelude to a Philosophy of the Future* (Helen Zimmern (trans.) from the Complete Works of Friedrich Nietzsche 19091913; Project Gutenberg eBook #4363 (1 August 2003); ¶ 268. [↑](#footnote-ref-52)
53. Kent Greenawalt, *Statutory and Common Law Interpretation* (Oxford University Press, 2012), chp. 3. [↑](#footnote-ref-53)
54. See for example, Jerome Hall Law Library, Maurer School of Law, University of Indiana, Human Rights Law, Secondary Sources: Commentaries and Treatises; available [https://law.indiana.libguides.com/c.php?g=19825&p=112497]. [↑](#footnote-ref-54)
55. Brooklyn Law School, Library, Library Guides, Researching Statutes: Commentary; available [https://guides.brooklaw.edu/c.php?g=330891&p=2222840]. [↑](#footnote-ref-55)
56. Cf., Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee of the Regions: A Renewed EU Strategy 2011-14 for Corporate Social Responsibility , COM/2011/0681 final (25 October 2011). [↑](#footnote-ref-56)