Defining the Boundaries of Social Responsibility: ISO 26000, John Ruggie, and the “Sphere of Influence” Debate

Stepan Wood

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Abstract

This article asks how to define the boundaries of social responsibility using the ISO 26000 Social Responsibility guide as a case study. Until recently, the draft ISO 26000 answered this question largely in terms of an organization’s ability to influence other actors, often expressed in terms of its “sphere of influence”. United Nations Special Representative on Business and Human Rights, John Ruggie, rejected this approach as inconsistent with the United Nations’ “protect, respect, remedy” framework because it conflated “leverage” with “impact”. ISO 26000 was modified to accommodate his objections. I use this case as a springboard to argue that the boundaries of social responsibility should be defined in terms of leverage, not actual contribution to impacts, because this is supported by societal expectations, moral philosophy, and leading social responsibility initiatives. I propose a process to determine the boundaries of social responsibility in terms of the intersection of impact and influence.

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1 Associate Professor, Osgoode Hall Law School, York University, Toronto; Jean Monnet Fellow, European University Institute, San Domenico di Fiesole, Italy (2010-11); member, Standards Council of Canada’s Canadian Advisory Committee on Social Responsibility; vice-chair, Standards Council of Canada’s Canadian Advisory Committee on ISO/Technical Committee 207/Subcommittee 1, Environmental Management Systems. Correspondence: swood@osgoode.yorku.ca. The author’s description of events at the May, 2010 meeting of the ISO Working Group on Social Responsibility are based on personal observation as an observer attached to the Canadian delegation. An earlier version of the article was presented to the Canadian Business Ethics Research Network Symposium on Business and Human Rights, Toronto, 26 February 2010. The research was funded in part by a grant from the Social Sciences and Humanities Research Council of Canada.
1. Introduction

In July 2010, the International Organization for Standardization (ISO) issued the Final Draft International Standard (“FDIS”) of its social responsibility guide, ISO 26000, for approval by its national member bodies, marking the culmination of six years of work by a multinational working group (ISO 2010a). The goal of ISO 26000 is to provide guidance to all kinds of organizations on the principles and practices of social responsibility (“SR”). One of the central questions in this field is how to define the boundaries of an organization’s responsibility for environmental or human rights abuses committed by third parties. Should an apparel company be responsible for violations of workers’ rights in its suppliers’ factories? Should a mining company be responsible for illegal killings by private security forces contracted to protect its assets and personnel? Should battery manufacturers be responsible for contamination caused by toxins leaching from their improperly disposed products? Should manufacturers of law enforcement equipment be responsible when police use them to suppress lawful assembly and expression? Should banks be responsible when the companies they finance illegally displace indigenous people? Should gasoline refiners or retailers be responsible when Inuit children sniff their products to get high? Where and how should the boundaries of an organization’s responsibility be drawn when actors outside the organization are involved in socially irresponsible behaviour?

Earlier versions of ISO 26000, including the Draft International Standard (“DIS”) approved by an overwhelming majority of member bodies in February, 2010, answered this question more or less in terms of an organization’s degree of control or influence over others’ conduct (ISO 2009a, 2010a). They employed the concept of “sphere of influence,” first introduced into SR discourse by Professor John Ruggie and United Nations Global Compact Executive Director Georg Kell when they created the Global Compact (Global Compact Critics 2010). This approach is also found in other leading social and environmental initiatives, including the Global Reporting Initiative (“GRI”), the European Union’s Eco-Management and Audit Scheme (“EMAS”) (European Commission 2009) and the ISO 14001 environmental management system standard (ISO 2004). It has, however, recently been rejected by Ruggie himself, now Special
Representative of the United Nations Secretary General on Business and Human Rights. In November 2009, Ruggie wrote to the WGSR, warning that ISO 26000’s treatment of sphere of influence was inconsistent with his three-part “protect, respect, remedy” framework insofar as it grounded corporate responsibility in the ability to influence others as distinct from actually causing or contributing to human rights impacts (Ruggie 2009a).

In the run-up to the final WGSR meeting in Copenhagen in May 2010, the working group leadership accepted Ruggie’s view, thoroughly rewriting the definition of “sphere of influence” and the two key passages in which the concept was explained and applied. These changes, drafted in consultation with Ruggie’s team, were endorsed by the WGSR in Copenhagen amidst controversy. The effect of the changes was to retreat substantially from the proposition that responsibility can arise from an organization’s ability to influence (influence as “leverage”) and replace it with a much stronger insistence on causal contribution to harm (influence as “impact”).

The FDIS represents the final drafting stage. At this point only editorial changes are permitted. No changes to the “technical” (i.e. substantive) content of the standard are allowed. The FDIS therefore represents more or less the final version of ISO 26000. This is unfortunate, because it was a mistake to heed Ruggie’s advice on the question of sphere of influence. The boundaries of corporate responsibility for social, environmental and human rights abuses should not be limited to situations of causal responsibility, but should extend to situations in which an organization has the ability to influence others’ values or behaviour. The purpose of this article is to substantiate this claim.

Part 2 describes the ISO Working Group on Social Responsibility and the significance of ISO 26000. Part 3 introduces the “sphere of influence” debate and traces its treatment from the 2009 Draft International Standard of ISO 26000, through Ruggie’s negative reaction to the DIS, to the FDIS version of ISO 26000. Part 4 then engages the debate in earnest, making the case for defining the boundaries of social responsibility in terms of leverage. Part 5 offers conclusions.

2. An ISO 26000 Primer
2.1 The ISO Working Group on Social Responsibility
ISO 26000 was drafted by an international multi-stakeholder working group known as the ISO Working Group on Social Responsibility (WGSR). ISO is a federation of the national standards bodies of approximately 160 countries. It is the leading source of international technical standards for industry. Traditionally specializing in product standards, ISO rose to global prominence in the 1980s when it moved into the novel arena of organizational management standards with the publication of the ISO 9000 series of quality management standards. This was followed by the publication of the ISO 14000 family of environmental management standards in the 1990s. This new generation of standards addressed generic business management practices rather than specific product or process characteristics. It brought ISO much closer to issues of broad societal concern, including international competitiveness, environmental protection and sustainable development. As a result, ISO has had to respond to the interests and demands of a wider range of constituencies than it traditionally served, including environmental NGOs, labour unions, governments and intergovernmental organizations.

The decision to develop an SR guidance standard brought ISO definitively into the arena of public policy and societal values. Recognizing that it was on unfamiliar ground, ISO adopted a new approach for this work item. The special rules adopted for ISO 26000 emphasized effective participation of all major stakeholder categories and conferred special rights on certain international observer organizations. These innovations were unprecedented within ISO, but their assessment is beyond the scope of this article.

Participation in the WGSR was high from developed and developing countries and all stakeholder groups. The Working Group consisted of several hundred experts divided into six stakeholder categories: consumers, government, industry, labour, non-governmental organizations, and a residual catch-all category called “service, support, research and others”. The experts hailed from more than ninety countries and forty international organizations. This is not to say that all stakeholder categories were equally, or adequately, represented. Organized labour was underrepresented in the WGSR and national “mirror” bodies (the groups responsible for developing national member body input to the WGSR), but this was partly offset by strong individual leadership in the WGSR and the vigilant participation of the International Labour Office. Industry, ISO’s
traditional core constituency, was also underrepresented numerically in the WGSR but this too was offset by strong individual leadership, a high level of transnational coordination and substantial resources. Human rights and environmental groups were also underrepresented, especially those from developing countries and even more so those representing indigenous and marginalized communities.

While some labour and civil society groups rejected ISO’s SR work from the outset, there has been little organized opposition to the process or the guide. Within the WGSR, the successive drafts have been approved by large majorities. Going into Copenhagen, a strong sense of forward momentum was noticeable across stakeholder categories, notwithstanding the fact that many participants had serious concerns about certain aspects of the guide. Aside from the “sphere of influence” issue, the main stumbling blocks at the final meeting in Copenhagen were thrown up by national governments which had arrived late to the bargaining table. Several Islamic states objected to inclusion of any reference to sexual orientation, and government representatives from the United States, Canada, India and other countries rejected language regarding the precautionary principle. The sexual orientation issue was resolved in Copenhagen to almost all experts’ satisfaction by substituting the nebulous term “personal relationships”; and debate of the precautionary principle was closed despite sustained opposition from the United States.

2.2 ISO 26000’s Significance

ISO 26000 bears all the marks of a document drafted by committee. In 106 densely packed pages of turgid prose (including Annexes) it describes seven SR “principles,” two “fundamental practices,” seven “core subjects,” more than thirty associated issues and dozens of “related actions and expectations”, along with numerous concrete tips for integrating SR throughout an organization’s operations. It is long, dense, complex, and full of trade-offs the meaning of which is apparent only to insiders. The text is often convoluted, awkward and repetitive. This is no surprise given the size, heterogeneity and multilingual character of the group that drafted it, not to mention the complexity and contestability of the subject. The document’s length and intricacy are bound to hinder its
use by many organizations, especially small and micro-enterprises that make up the vast majority of business firms.

ISO 26000 nevertheless represents a remarkable achievement. Most importantly, it sets down for the first time a definition of SR that is widely accepted by representatives of major stakeholder groups from around the world. It is also the first major international document to provide guidance to all kinds of organizations anywhere in the world on the full range of SR subjects.

Until now, social responsibility notoriously lacked a universally agreed definition. The key achievement of ISO 26000 is to provide a definition of social responsibility around which firms, governments, NGOs, trade unions and others everywhere can converge, quieting if not putting a final end to definitional confusion and allowing debate to shift to the question of implementation. ISO 26000 defines SR as follows:


responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour that

- contributes to sustainable development, including health and the welfare of society;
- takes into account the expectations of stakeholders;
- is in compliance with applicable law and consistent with international norms of behaviour; and
- is integrated throughout the organization and practised in its relationships.

(ISO 2010a, clause 2.18, emphasis and internal cross-references removed)

This definition, which has remained essentially unchanged since early 2008, resolves several key controversies, including whether SR refers extends beyond voluntary action to encompass compliance with applicable laws (it does); whether SR includes an obligation to contribute to broader societal welfare and sustainable development (it does); and whether organizations may ignore authoritative norms derived from international law even if they do not apply directly to companies or are more demanding than domestic law (they may not).
The second major accomplishment of ISO 26000 is to provide integrated guidance to all kinds of organizations, anywhere in the world, on the full range of SR subjects. It is – in theory at least – applicable to organizations of all types, all sizes, in all geographic, political, cultural and economic settings, and in all sectors, whether public, private or voluntary. It encompasses the whole range of social responsibility issue areas, from anti-corruption to sustainable development, and all aspects of incorporating SR into an organization’s decisions and activities, from general principles to concrete operationalization. It embraces a holistic, integrated approach and discourages organizations from “cherry-picking” the aspects of SR that suit them.

ISO 26000 is organized into seven clauses. Clauses 1 and 2 describe the document’s scope, terms and definitions. Clause 3 canvasses historical developments and contemporary trends in social responsibility and elucidates the role of the nation-state in social responsibility. Clause 4 describes seven principles of social responsibility: 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. Clause 5 provides guidance to organizations on how to recognize their social responsibilities and engage their stakeholders. Clause 6 provides detailed guidance on six social responsibility “core subjects”: organizational governance, human rights, labour practices, the environment, fair operating practices, consumer issues, and community involvement and development. Clause 7 provides operational guidance on how to integrate social responsibility into an organization’s management systems and processes. A massive Annex provides information about dozens of existing SR programs and initiatives.

Because of the WGSR’s multi-stakeholder process, ISO’s reputation as the leading source of voluntary standards for international business, and the lack of a single globally accepted SR framework, ISO 26000 will very likely become a worldwide benchmark for SR. What it says about defining the boundaries of an organization’s responsibility, in particular the circumstances in which an organization is responsible for the behaviour of other parties with whom it has a relationship, is likely to carry substantial weight.
3. ISO 26000 and Ruggie on Sphere of Influence

3.1 The Debate

One of the thorniest questions in the field of social responsibility is the extent to which an organization should be responsible for environmental or social abuses committed by third parties with which it has some kind of relationship. The debate revolves around the nature of the organization’s involvement in the offending conduct: should responsibility arise from the organization’s degree of influence over the conduct, or only its actual contribution to it? The UN Global Compact e-learning tool, produced by the Office of the UN High Commissioner for Human Rights in collaboration with the UN Global Compact Office, favours the former: “the more control, authority or influence a business has over a situation giving rise to human rights abuses (or the means to improve respect for human rights), the greater the business responsibility to act” (Office of the United Nations High Commissioner for Human Rights n.d., Module 2.1, “Sphere of Influence and the Global Compact Principles”). The Global Compact asks companies to embrace, support and enact its ten principles “within their sphere of influence” (United Nations Global Compact Office 2008, 6).

The contrary position – urged ironically by the very person who was responsible for the inclusion of “sphere of influence” in the Global Compact – insists that responsibility is a function not of leverage over but of actual contribution to the actions of others, most importantly in the form of complicity in human rights abuses (Ruggie 2008a). For Ruggie (ibid., 6), “sphere of influence remains a useful metaphor for companies to think broadly about their human rights responsibilities and opportunities beyond the workplace” but “is of limited utility in clarifying the specific parameters of their responsibility to respect human rights”. The problem with the Global Compact’s formulation of “sphere of influence,” according to Ruggie (ibid., 5), is that it conflates “impact,” which falls within the corporate responsibility to respect human rights, with “leverage,” which may or may not (ibid.). Ruggie concludes that leverage should only give rise to responsibility where the company causes or contributes to the human rights abuse.
3.2 ISO 26000’s Treatment of Sphere of Influence and Ruggie’s Response

The most extensive change to the text of ISO 26000 at the final meeting of the WGSR was a thorough revision of its treatment of the concept of sphere of influence, and the associated concept of “due diligence”. Most other revisions at this stage involved changing individual words or sentences, but when it came to these two concepts entire long passages of text were rewritten. To understand the changes and their implications, it is necessary to consider how the DIS (issued for ballot in 2009) treated sphere of influence, what Ruggie had to say about it in his November 2009 note to the WGSR, and how the guide was changed in the FDIS version (issued for ballot in 2010).

The DIS: Leverage Gives Rise to Responsibility

Sphere of influence featured prominently in ISO 26000 from the beginning. As the draft guide developed over the first five years, numerous passages were inserted suggesting that an organization’s responsibility for the misconduct of third parties with whom it is in a relationship varies with its ability to influence those parties. Being a document drafted in committee by parties with widely divergent interests, it also contained passages suggesting that responsibility is based only on causal contribution to harm and that organizations are not responsible for impacts caused by other organizations; but on balance the draft guide favoured the position that the ability to influence others can give rise to social responsibility, and the greater the ability to influence, the greater the responsibility.

The DIS defined social responsibility in terms of ethical and transparent behaviour that “is integrated throughout the organization and practised in its relationships” (ISO 2009a, clause 2.1.18). “Relationships” meant “an organization’s activities within its sphere of influence” (ibid.). “Sphere of influence,” in turn, was defined – in awkward English – as “area or political, contractual or economic relationships across which an organization has the ability to affect the decisions or activities of individuals or organizations” (ibid., clause 2.1.19). A note explained that “area” could be understood in a “geographic or functional sense” (ibid.).
While the language left a great deal to be desired, the underlying approach could be traced directly to the UN Global Compact. According to the Global Compact e-learning tool, sphere of influence “is about where the boundaries of a company’s human rights responsibilities lie” (Office of the United Nations High Commissioner for Human Rights n.d., Module 2.1, “Sphere of Influence and the Global Compact Principles”). As noted earlier, the tool explains that the more influence or control a business has over a problematic situation or the means to improve it, the greater the responsibility to act. “Ultimately,” it continues, “the closer the company’s relationship is with a group of rights holders (or perpetrators of rights abuse), the greater the need for an immediate business response” (ibid.). These relationships define its sphere of influence, which the Global Compact depicts as a series of concentric circles. At the centre is the company’s workplace, followed by the supply chain, marketplace, community and government. The company’s degree of influence is generally thought to decline farther from the centre, but it can vary substantially within and between components of the sphere of influence. A company’s influence over a particular supplier’s labour practices may, for example, be less than its influence over environmental contamination in a particular community in which it does business or over decision-making by particular government officials, even though the latter two are depicted as more remote from the organization than the former. The notion of concentric circles is therefore potentially misleading, but the idea that organizations are embedded in webs of relationships in which they enjoy varying degrees of influence over rights-holders and rights-abusers is sound.

Whatever its shortcomings, two key points emerge from the UN Global Compact’s treatment of sphere of influence: first, it “seeks to establish the scope of corporate responsibility for human rights issues based on the extent of a particular business’ influence,” and second, the ability to influence gives rise to a positive responsibility “to ensure that influence is used to positive effect” (ibid., Module 2.2, “Establishing Boundaries of Corporate Responsibility”).

The DIS version of ISO 26000 was cut from the same cloth, stating:

In addition to being responsible for its own decisions and activities, an organization may, in some situations, have the ability to affect the behaviour of
parties with which it has a relationship. Such situations are considered to fall within an organization's sphere of influence.

An organization cannot be held responsible for the impacts of every party over which it may have some influence. However, there will be situations where an organization’s ability to influence others will be accompanied by a responsibility to exercise that influence…. Generally, the responsibility for exercising influence increases with the ability to influence.

An organization is responsible for the impacts of decisions and activities over which it has control. (ISO 2009a, clause 5.2.3)

The clause on labour practices proclaimed, similarly, that an organization “should make reasonable efforts to encourage organizations in its sphere of influence to follow responsible labour practices, recognizing that a high level of influence is likely to correspond to a high level of responsibility to exercise that influence” (ibid., clause 6.4.3.2).

On the issue of child labour DIS 26000 went even farther, specifying that an organization has a responsibility not just to exercise its influence but to ensure specific outcomes: “If an organization has child labour in its…sphere of influence, it should ensure not only that the children are removed from work, but also that they are provided with appropriate alternatives” (ibid., clause 6.3.10.2.). The section on environment was also replete with references to an organization’s responsibility to take concrete actions to improve environmental performance within its sphere of influence.2

These themes were repeated elsewhere in the DIS. One clause opined that “there will be situations where an organization’s ability to influence others will be accompanied by a responsibility to exercise this influence”; and “The greater the potential for negative

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2 ISO 2009a, clauses 6.5.2.1 (the organization “should act to improve its own performance, as well as the performance of others within its control or sphere of influence”); 6.5.3.2 (the organization should “seek to prevent use” of certain chemicals by organizations within its sphere of influence); 6.5.4.1 (the organization should “stimulate water conservation” and identify ways to “increase the efficiency of raw material use” within its sphere of influence); 6.5.5.2.1 (the organization should “implement measures to progressively reduce and minimize the direct and indirect GHG emissions within its control or sphere of influence”).
impacts, the higher the level of responsibility to exercise influence to minimize those impacts” (ibid., clause 7.3.2).

In short, DIS 26000 embodied the view that the boundaries of social responsibility coincide with the extent of an organization’s ability to influence others, and that the greater the influence or the greater the potential harm, the greater the responsibility to exercise that influence in a positive way.

Ruggie’s Response: Leverage Does Not Equal Responsibility

Ruggie issued his comments on ISO/DIS 26000 in November 2009. While acknowledging that the use of the sphere of influence concept in the human rights portion of ISO 26000 (clause 6.3) was broadly consistent with his three-part “protect, respect, remedy” framework, he cautioned that its use in the rest of the document was not. In his opinion,

The draft Guidance is internally inconsistent on this issue, and beyond the human rights section it is inconsistent with the UN framework. This will send mixed and confusing messages to companies seeking to understand their social responsibilities, and to stakeholders seeking to hold them to account. (Ruggie 2009a, 2)

He reiterated the view, expressed in his 2008 report on Sphere of Influence and Complicity, that the sphere of influence concept “can be a useful metaphor for companies to employ in identifying opportunities to support human rights, but that influence by itself is not an appropriate basis on which to attribute specific social responsibilities to companies” (ibid.; see also Ruggie 2008a, 4). In his view, insofar as ISO 26000 conflates influence (in the sense of leverage) with responsibility, it should be rejected because “it requires assuming, in moral philosophy terms, that ‘can implies ought’” (Ruggie 2009a, 2, quoting Ruggie 2008a, 5). He rejected this conflation for three reasons:
• First, “companies cannot be held responsible for the human rights impacts of every entity over which they may have some leverage, because this would include cases in which they are not contributing to, nor are a causal agent of the harm in question.” (Ibid.)
• Second, “Nor is it desirable to require companies to act wherever they have influence, particularly over Governments.” (Ibid.)
• Finally, “using influence as a basis for assigning responsibility invites strategic manipulation.” (Ruggie 2009a, 3, quoting Ruggie 2008a, 6)

In the United Nations’ “protect, respect, remedy” framework, the corporate responsibility to respect in essence means to act with “due diligence” to avoid infringing human rights. “Due diligence,” in turn, “comprises reasonable steps by companies to become aware of, prevent, and address adverse impacts of their activities and relationships” (Ruggie 2008a, 8). In Ruggie’s view the sphere of influence idea helps companies to understand that their responsibility extends beyond the workplace but is too broad and ambiguous to define the due diligence obligation:

the scope of due diligence to meet the corporate responsibility to respect human rights is not a fixed sphere, nor is it based on influence. Rather, it depends on the potential and actual human rights impacts resulting from a company’s business activities and the relationships connected to those activities. (Ibid.)

In short, he urged the WGSR to excise the suggestion that corporate responsibility is based on the ability to influence, and to refocus ISO 26000 on causal contribution to human rights impacts.

Before leaving this section it is worth noting that nowhere in Ruggie’s note on ISO 26000 did he object to the guide’s insistence that an organization is responsible for the impacts of decisions and activities over which it has control (ISO 2009a, clause 5.2.3). This might seem odd, since control is the extreme case of ability to influence. But it makes sense if one assumes, as both Ruggie and ISO 26000 appear to do, that actions
under an organization’s control are equivalent to actions of the organization itself. The controlled actor’s actions are attributed to the organization under principles of agency.

*FDIS 26000: Responsibility Arises Primarily from Impact, Not Leverage*

The WGSR leadership took Ruggie’s advice, substantially rewriting the definition of sphere of influence and the main clauses elaborating upon the concept. Most references to responsibility arising from and increasing with the ability to influence (influence as “leverage”) were removed, and in their place one finds a narrower focus on causal contribution to harm (influence as “impact”). This was very much in line with Ruggie’s position and the result of direct consultations with his team, which reportedly continued until four days before the Copenhagen meeting.³

³ Jonathon Hanks, Convenor, Integrated Drafting Task Force, remarks to WGSR Opening Plenary (17 May 2010, Copenhagen).

The revised text was developed within a small group known as the Integrated Drafting Task Force (“IDTF”). The IDTF was established in 2007 to review and revise the texts produced by the various drafting groups in an integrated manner, in light of comments submitted (which often numbered in the thousands). It was made up of the leaders of the drafting groups, representatives of the six WGSR stakeholder categories (with roughly equal representation of developed and developing countries), and representatives of the International Labour Office, UN Global Compact Office and ISO Central Secretariat. Counting many of the leading personalities and key players in the WGSR among its members, it quickly emerged as a crucial forum for negotiating and resolving issues. Delicate compromises were often hammered out in the IDTF and then presented to the WGSR for approval more or less as *faits accomplis*, with warnings that reopening matters for debate in the plenary would jeopardize the fragile consensus achieved in the smaller group. Some IDTF proposals were circulated to the WGSR on the eve of meetings, leaving many experts feeling that they had insufficient time to consult their national mirror committees. To a certain extent, this sort of process was unavoidable if progress was to be made in such a large and heterogeneous group. Nonetheless, it often
provoked objections from experts who felt left out of the process and either disagreed with the proposed text or wanted more time to consult their constituencies.

The IDTF’s proposed new text on sphere of influence (ISO 2010c) was circulated to the WGSR less than two weeks before the Copenhagen meeting, too late for most national delegations to consult their mirror committees. It was presented to the plenary on a “take it or leave it” basis as a fragile compromise that resolved disagreements among key players, in particular industry representatives (who agreed with Ruggie’s position) and NGO representatives (who preferred the prior draft of ISO 26000), while being consistent with Ruggie’s framework for business and human rights. The IDTF Convenor tolerated discussion of the proposal very reluctantly, and one IDTF member emphasized that every word of the new text had been debated in the smaller group.

The first component of the IDTF’s proposal was a new definition of sphere of influence. One element of the definition sparked immediate controversy: a new Note saying “There is no necessary link between the ability to influence and the responsibility to exercise that influence” (ISO 2010c, 11). Several government, NGO, consumer and SSRO (“service, support, research and others”) experts objected to this Note on the basis that it unduly narrowed the scope of social responsibility, gave organizations an excuse not to take responsibility instead of encouraging them to take responsibility, and unnecessarily highlighted the absence of responsibility in a negative way. Several industry experts and a few government representatives spoke in favour of the Note, some reiterating Ruggie’s reasoning, others insisting that ISO 26000 needs a clear statement of what “sphere of influence” is not. One industry expert argued that allocating responsibility based on influence alone is undesirable, because organizations can “game the system” by reducing their influence in order to avoid taking responsibility, and because simply being bigger should not subject an organization to greater responsibility.

When the IDTF Convenor repeatedly tried to close discussion, one expert objected that while the text might have been negotiated carefully within the IDTF, it was new to the Working Group and the Working Group’s opinions on it should be respected. The first day of the meeting ended without a resolution of the issue. The next morning, the IDTF Convenor opened the meeting with a new proposal drafted by the “most engaged stakeholders,” particularly industry and NGO representatives, restating the Note
in more positive terms: “The ability to influence does not, in itself, mean there is a
responsibility to exercise that influence”. This new proposal was once again presented as
a fait accompli, too delicate to be discussed. The Convenor asked for immediate
approval, but reluctantly accepted comments when numerous hands went up in protest.

One NGO representative complained that the new text was worse than its
predecessor because it was no longer clear that there was any link between influence and
responsibility. In his view influence should normally lead to responsibility, but not in
every case. A handful of other NGO representatives said they could live with the new
compromise text. Again, industry representatives supported the proposal. After hearing a
few more comments, the leadership declared the IDTF’s proposed text on sphere of
influence adopted as revised, to widespread applause. The result was that the WGSR
never discussed the rest of the IDTF’s proposed new text on sphere of influence,
amounting to some 900 words – a very large chunk of text considering that every word
and sentence in ISO 26000 was the subject of years of intense negotiation. The IDTF text
was simply inserted, lock, stock and barrel, into the Final Draft International Standard.

What, then, does the FDIS say about sphere of influence? First, it defines sphere
of influence as:

range/extent of political, contractual, economic or other relationships through
which an organization has the ability to affect the decisions or activities of
individuals or organizations

NOTE 1 The ability to influence does not, in itself, imply a responsibility to
exercise influence.

NOTE 2 Where this term appears in this International Standard, it is always
intended to be understood in the context of the guidance in 5.2.3 and 7.3.2. (ISO
2010a, clause 2.19; emphasis and internal cross-reference removed)

The first sentence of the definition improves upon its awkward predecessor while
retaining the idea that sphere of influence is about an organization’s ability to affect
behaviour through its relationships with others. Yet the two notes affect its meaning in crucial ways. Note 1, as we have seen, reflects Ruggie’s rejection of leverage-based responsibility. Note 2 reinforces this position by saying that sphere of influence should always be interpreted in light of the two main clauses in which the term is discussed, which (as we shall see) now present a narrower, impact-based version of responsibility. Note 2 was inserted because it was too late to renegotiate all the references to sphere of influence scattered throughout the draft. Instead, the IDTF focused its attention on the two key clauses and inserted this note to give them interpretive priority in the event of conflict with other passages.

The two clauses are 5.2.3, which speaks about recognizing an organization’s social responsibility, and clause 7.3.3, which deals with integrating social responsibility throughout the organization. Some features of the DIS are preserved, including the basic proposition that:

In addition to being responsible for its own decisions and activities, an organization may, in some situations, have the ability to affect the behaviour of organizations/parties with which it has relationships. Such situations are considered to fall within an organization's sphere of influence. (ISO 2010a, clause 5.2.3)

What has changed are the implications of this ability to influence. Gone are the propositions that responsibility for exercising influence increases with the ability to influence, that “there will be situations where an organization’s ability to influence others will be accompanied by a responsibility to exercise this influence,” and that a “high level of influence is generally likely to correspond to a high level of responsibility to exercise that influence” (ISO 2009a, clauses 5.2.3, 7.3.2.1 and 7.3.2.2). Instead, responsibility is portrayed as flowing from causal contribution:

An organization does not always have a responsibility to exercise influence purely because it has the ability to do so. For instance, it cannot be held responsible for the impacts of other organizations over which it may have some influence if the
impact is not a result of its decisions and activities. However, there will be situations where an organization will have a responsibility to exercise influence. These situations are determined by the extent to which an organization’s relationship is contributing to negative impacts. (ISO 2010a, clause 5.2.3, emphasis added)

This passage is oddly ambivalent, however. On the one hand, unlike Note 1 to the definition of sphere of influence, the phrase “does not always have” suggests that ability to influence normally gives rise to responsibility; but on the other hand, the text goes on to insist that such responsibility arises only from causal contribution to negative impacts.

This ambivalence is enhanced in another passage according to which there “will be situations where an organization has the responsibility to be alert to the impacts created by the decisions and activities of other organizations and to take steps to avoid or to mitigate the negative impacts connected to its relationship with such organizations” (ibid.). This sentence, taken verbatim from the earlier draft, appears to suggest that there may be a proactive responsibility to ameliorate impacts caused not by the organization itself but by third parties with whom it is in a relationship. The same idea is found in another passage:

An organization should conscientiously and methodically manage its own impacts associated with each core subject and monitor the impacts of the organizations within its sphere of influence, so as to minimize the risk of social and environmental harm, as well as maximize opportunities and positive impacts. (ISO 2010a, clause 7.4.3)

Why would ISO 26000 call upon an organization to monitor the impacts of other organizations within its sphere of influence, unless those impacts can give rise to responsibility?

Some other significant references to leverage-based responsibility survived unscathed in the FDIS. For example, the clause on labour rights still says, “An organization should make reasonable efforts to encourage organizations in its sphere of
influence to follow responsible labour practices, recognizing that a high level of influence is likely to correspond to a high level of responsibility to exercise that influence” (ISO 2010a, clause 6.4.3.2). In addition, the entire “core subject” of fair operating practices is premised on a leverage model of SR: “fair operating practices concern the way an organization uses its relationships with other organizations to promote positive outcomes” (ibid., 6.6.1.2). It presumes that an organization’s ability to influence others gives rise to a positive responsibility to exercise such influence in a constructive direction.

As noted earlier, some parts of the earlier draft spoke of a responsibility not just to exercise influence but to achieve certain results within the sphere of influence. These passages were for the most part retained. The passage on child labour, for example, was qualified slightly so that the organization should ensure “as far as possible” that child labourers in its sphere of influence are removed from work and given appropriate alternatives (ISO 2010a, clause 6.3.10.3). The clause on environment still says that an organization “should act to improve its own performance, as well as the performance of others within its control or sphere of influence” (ibid., clause 6.5.2.1); should “seek to prevent use” of certain chemicals by organizations within its sphere of influence (ibid., clause 6.5.3.2); and should “stimulate water conservation” and identify ways to “increase the efficiency of raw material use” within its sphere of influence (ibid., clause 6.5.4.1). These passages are, however, subject to the caveat that they should be understood consistent with clauses 5.2.3 and 7.3.3 (ibid., clause 2.19).

Clauses 5.2.3 and 7.3.3 also contain some useful clarifications. They preserve the proposition that an organization is always responsible for the impacts of decisions and activities under its control, and clarify that control may be formal or de facto (ISO 2010a, clauses 5.2.3 and 7.3.3.2). They also explain that the sphere of influence includes relationships within and beyond the organization’s value chain, and that not all of an organization’s value chain necessarily falls within its sphere of influence (ibid., clause 5.2.3). Clause 7.3.3 provides useful guidance on sources of influence, including ownership, participation in organizational governance, scope and relative importance of economic relationships, contractual rights and obligations, legal authority, and public opinion. It notes that an organization can exercise its influence to enhance positive
impacts, minimize negative impacts, or both, and identifies various concrete avenues of influence including contractual terms, public statements, community engagement, political lobbying, media relations, information sharing, investment decisions, trade associations, and promotion of good practices. Finally, it favours dialogue in the first instance, but makes it clear that if dialogue is ineffective, an organization should resort to other actions including changing the nature of the relationship.

The FDIS fails, however, to give much guidance on drawing the line between control and influence, a crucial exercise under both the FDIS and the Ruggie framework since its outcome may mean the difference between responsibility and no responsibility. The same exercise is not nearly so critical with a leverage-based approach, in which responsibility varies along a continuum from no influence to complete control.

In short, while the emphasis of ISO 26000 has shifted from leverage-based to impact-based responsibility, it still contains strong traces of both. The question then is, which approach is preferable?

4. How Should the Boundaries of Social Responsibility be Defined?

4.1 Reconsidering the Voluntary/Mandatory and Legal/Moral Dichotomies

The argument against leverage-based responsibility ultimately comes down to the claim that social responsibility should be limited to situations of causal responsibility, that is, where an organization is causing or contributing, directly or indirectly, to negative impacts. Before we can evaluate this claim, however, it is necessary to confront certain assumptions shared by Ruggie, ISO 26000 and most SR discourse. The first is the assumption of a dichotomy between voluntary and mandatory social responsibility; the second concerns the distinction between legal and moral responsibility.

Throughout SR discourse and in both ISO 26000 and Ruggie’s writings runs the assumption of a dichotomy between mandatory and voluntary social responsibility, between taking responsibility by choice and being held responsible whether one likes it or not. ISO 26000, like all other ISO standards, purports to be voluntary. Organizations will choose voluntarily whether or not to use it. It is intended to help organizations seeking to become more socially responsible. As such it assumes that organizations may
choose to take responsibility for their activities and decisions. On the other hand, it also insists that an organization may not pick its social responsibilities to suit its whims: social responsibility is a package deal and does not countenance selective cherry-picking (ISO 2010a, Introduction). ISO 26000 thereby distinguishes implicitly between the voluntary act of “taking responsibility” and the involuntary process of “being held responsible”.

The tension between the two is evident in ISO 26000’s treatment of sphere of influence. When the IDTF introduced new text on sphere of influence in 2008 that emphasized leverage-based responsibility, it stated that “the guidance about ‘sphere of influence’ should be taken within the context of the voluntary, non-binding nature of the document” (ISO 2008a, 8). The IDTF was surely aware of Ruggie’s views on sphere of influence, which had been published a few months earlier to considerable fanfare (Ruggie 2008a). The implication, presumably, was that because ISO 26000 is voluntary, it may take a broader approach to delimiting social responsibility than Ruggie’s United Nations framework, which was intended to reflect enforceable obligations.

The dichotomy resurfaces in Ruggie’s own writing on business and human rights, which distinguishes between corporate responsibility for human rights abuses and voluntary action to support human rights. “Asking companies to support human rights voluntarily where they have leverage is one thing,” he writes; “but attributing responsibility to them on that basis alone is quite another” (Ruggie 2009a, 2, quoting Ruggie 2008a, 5). In a similar vein he suggests that while control and causation might provide a suitable basis for holding firms responsible for human rights abuses, they “may be too restrictive for companies that seek to not only respect rights but also to voluntarily ‘support’ them” (Ruggie 2008a, 6). Influence may be an appropriate basis for voluntary corporate action, but not for holding a firm responsible involuntarily.

This voluntary/involuntary dichotomy ultimately breaks down under scrutiny:

While the term [“voluntary”] suggests an autonomous choice made freely, without external pressure, the fact is that voluntary codes are seldom ‘voluntary’ in this sense. Virtually all voluntary codes are undertaken because the relevant actors have been effectively pressured to act. … [Firms] may feel pressured to undertake voluntary codes to, inter alia, defuse a threat of mandatory regulation,
realise cost savings, distinguish themselves in a competitive market, ameliorate bad publicity, respond to a consumer boycott, satisfy customer or investor demands, meet industry association membership requirements, maintain social legitimacy or fulfil a perceived ethical obligation. (Wood 2006, 248, citation omitted; see also Gibson 1999)

Social responsibility can never be purely voluntary, because responsibility by definition implies a requirement to answer for one’s decisions and actions regardless of whether one undertook responsibility voluntarily or had it thrust upon one. “Responsible,” in its ordinary sense, means “answerable, accountable (to another for something); liable to be called to account” (OED, 3rd ed., “responsible”). Nor can it be purely involuntary, since even if responsibility is imposed against one’s wish, one has at least an element of choice whether to engage in the conduct that gives rise to responsibility. In short, no one can take responsibility without thereby being subjected to an obligation to account for oneself, and no one can be held responsible without having first exercised his or her will to perform some predicate step.

Ultimately, what is voluntary about ISO 26000 is an organization’s choice whether to accept it as a useful and authoritative account of social responsibility. Once that choice is made, the scope and content of an organization’s social responsibility are determined by the application of the guide, not by the organization’s voluntary choice of what it likes and dislikes.

The unhelpful voluntary/mandatory dichotomy is often conflated with the distinction between legal and moral responsibility, which is a different issue. One of the first things to strike an observer about the work of the WGSR is that many participants do not seem know or agree what kind of responsibility they mean when they argue about social responsibility, legal or moral; nor in what forum actors are to be held responsible (e.g. the marketplace, courts of law, or the court of public opinion); nor what form a proper answer might take (e.g. reduced market share, explanation, apology, monetary compensation, or in-kind restitution). This has substantial implications. If one is speaking of formal legal liability enforced through legislation, executive action or judicial decision, a higher degree of precision (and perhaps a narrower scope) of obligations and
penalties might be called for than when one deals with broader moral responsibilities enforced via informal social or economic sanctions. According to ISO 26000, SR is about both: it “entails actions beyond legal compliance and the recognition of obligations to others that are not legally binding” (ISO 2010a, clause 3.3.2).

At this stage in the development of SR norms, these questions about the sources, forums and forms of social responsibility should be kept open, so that relevant actors and institutions – from national courts and legislatures to international organizations, to financial intermediaries, to market participants, to civil society organizations – can experiment with their own solutions. It is sufficient to understand responsibility, as ISO 26000 does, as liability to answer to relevant parties for one’s conduct, without prejudging the identity of the parties to whom one must answer, the forum in which one must answer, nor the form of the answer.

Having considered briefly the voluntary/mandatory and legal/moral dichotomies, we can address the merits of the question of where to draw the line around an organization’s social responsibility.

4.2 Societal Expectations and Philosophical Foundations

Moving to the substance of the issue, Ruggie insists that “companies cannot be held responsible for the human rights impacts of every entity over which they may have some leverage, because this would include cases in which they are not contributing to, nor are a causal agent of the harm in question” (Ruggie 2009a, 2, quoting Ruggie 2008a, 5). He repeats this position in his 2010 report on further steps toward operationalizing the “protect, respect, remedy” framework:

Scope [of corporate responsibility] is defined by the actual and potential human rights impacts generated through a company’s own business activities and through its relationships with other parties,…. Such attributes as companies’ size, influence or profit margins may be relevant factors in determining the scope of their promotional CSR activities, but they do not define the scope of the corporate
responsibility to respect human rights. Direct and indirect impacts do. (Ruggie 2010, 13)

This article argues, by contrast, that while organizations should certainly be responsible in such situations, their responsibility does not end there but should extend to situations in which they have the ability to influence activities or decisions.

Decades of experience with anti-sweatshop campaigns and the like have shown that societal actors – citizens, consumers, workers, social movements, indigenous and local communities, non-governmental organizations – will hold business firms accountable for their exercise of influence over others and for their failure to exert influence that could prevent or lessen human rights abuses. As one influential report put it, “society at large will hold a company responsible for violations occurring in plants from which it sources products or services, and therefore over which it has a degree of influence” (Frankental & House 2000, 17). Likewise, the UN Global Compact Office acknowledges that “stakeholder expectations often extend to the belief that companies can and should make a positive contribution to the realization of human rights where they are in a position to do so” (UN Global Compact Office 2009, unpaginated).

Societal actors will hold organizations to account both for how they exercise their influence and for their failure to exercise it. An example of the former would occur where a multinational retailer pressures its suppliers relentlessly to cut costs, as a result of which some suppliers to curtail workers’ rights in their factories. In this situation the multinational firm contributes to and may even be complicit in the violation. But societal actors also expect that if an organization can influence the social and environmental decisions and activities of others with whom it has relationships in a positive direction, it has a responsibility to do so. They will hold companies responsible not only for the harms they caused or contributed to, but also for those committed by actors they could have influenced but chose not to. The UN Global Compact e-learning tool reflects this widespread social expectation when it says that the more influence a company has over a situation giving rise to human rights abuses, or over the means to improve respect for human rights, the greater the responsibility to act (Office of the United Nations High
If an organization has the means to improve respect for the environment or society yet chooses not to use those means, societal actors will expect it to answer for its choice. Such is the case, for example, where an institutional investor holds substantial shares of stock in a mining company which it has reason to believe is responsible for illegal pollution or forced displacement of an indigenous community, yet elects to be a passive shareholder rather than engaging in dialogue with management, bringing shareholder resolutions, voting its shares according to its conscience, divesting itself or otherwise seeking to influence the mining company’s behaviour. It is hard to imagine such an investor claiming to have a socially responsible investment strategy.

A long line of Western political thought holds that responsibility should be limited to objects within an actor’s power. Many contemporary societal actors also hold the obverse, that with power comes responsibility and (with apologies to moral philosophers everywhere) as Spider-Man said in the eponymous 2002 movie, “With great power comes great responsibility” (Raimi 2002). Power without responsibility leads to tyranny (Wettstein 2010; Drucker 1994, 101). Numerous scholars argue that if business firms or other organizations are operating in positions of authority, their power must be matched with responsibility (Wettstein, ibid.; Kobrin 2009, 350; Scherer and Palazzo 2007).

Ruggie objects to this line of reasoning because it assumes that “can implies ought” (Ruggie 2009a, 3; 2008a, 6). To raise the “is-ought” problem in opposition to leverage-based responsibility is something of a distraction. While it has its adherents, many contemporary philosophers either insist that an “ought” can, indeed, be derived from an “is” (e.g. Searle 1964, 1995; MacIntyre 1981, 148-150), or reject the is-ought gap altogether. We need not let these meta-ethical debates detain us. The question is whether there are good reasons to conclude that firms that have the capacity to influence others ought to exercise that influence in defence of human rights. As Professor Adrian

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4 E.g. Hamilton 1952 [1787], 192 (“Responsibility, in order to be reasonable, must be limited to objects within the power of the responsible party”).
Henriques, a British NGO expert in the WGSR, argued in response to Ruggie’s note on ISO 26000, the suggestion that organisations should seriously consider what they should do, in the light of what they can do is extremely important. Having taken account of their resources, priorities and the scale of the impacts in question, it would appear on the face of it to be a natural part of organisational responsibility to consider what action is appropriate. (Henriques 2009, 2-3)

To a certain extent leverage-based responsibility can be explained in terms of Ruggie’s causation/contribution approach. By exercising its influence in a manner that leads a third party to violate human rights, an organization contributes to the resulting harm. If it does so knowing that human rights violations will result, it also satisfies Ruggie’s definition of complicity (Ruggie 2008a, 9). What about situations where an organization has the ability to influence another yet fails to do so? Failure to exercise influence can also be understood as contributing to negative outcomes, inasmuch as an actor may contribute to a result by omission as well as by commission. Wettstein (2010) argues that inaction in the face of a human rights violation gives rise to responsibility where the organization has a morally significant connection with the violation (e.g. it benefits from the violation or is associated with the violator) and is able to influence the situation in a positive way. In such situations, silence or other inaction can be seen as encouraging or condoning the violation, and the organization has a responsibility to speak out against it. But in Ruggie’s “protect, respect, remedy” framework, contribution is not understood to include situations such as these, where an organization tacitly encourages or approves anti-social behaviour by failing to exercise its influence.

The causation/contribution approach is therefore inadequate to reflect the scope of social responsibility that society demands. Such responsibility arises not only from causation of or contribution to an impact, but from an organization’s ability to influence the activities or decisions that caused or contributed to the impact, or the severity of the impact. The ability to influence a situation gives rise to a responsibility to exercise that influence in a manner consistent with human rights, environmental protection, and
sustainable development. In other words, there are good reasons to reject the conclusion shared by Ruggie’s framework and much business-and-human rights discourse that corporate responsibility is limited to a negative duty to cause no harm, as distinct from a positive duty to take action to improve a given state of affairs (Wettstein 2010). Ruggie himself recognizes that the scope of social responsibility “is defined by social expectations—as part of what is sometimes called a company’s social licence to operate” (Ruggie 2008b, 199). He did not appear, however, to gauge social expectations correctly when he defined the corporate responsibility to respect in narrow, negative terms.

It is worth noting that ISO 26000 itself also rejects this narrow focus on negative duties. As discussed earlier, according to ISO 26000 a socially responsible organization does not just “do no harm,” it takes a wide range of positive steps to improve social and environmental conditions (ISO 2010a). The scope of social responsibility as portrayed by ISO 26000 extends well beyond the negative duty that is the subject of Ruggie’s “responsibility to respect”. As such, a different approach to drawing boundaries around it is appropriate.

Wettstein (2010) supplies a philosophical foundation for such broader boundaries. A positive duty arises, he argues, when three elements are present: the organization has some level of autonomy to act (a requirement shared by all accounts of social responsibility), it has a morally significant connection to the human rights violation or other misbehaviour, and it has the ability to influence the situation in a positive way. What constitutes a morally significant connection is a matter of some debate. Connections may range from active involvement (in which case they qualify as “complicity” in the Ruggie framework) to passive association. Maintaining contractual or employment relations, having linked ownership structures, being part of the same value chain, or simply benefiting from the misbehaviour may suffice. Specifying what constitutes a morally significant connection is beyond the scope of this article. The point here is that there is a cogent argument from the perspective of moral philosophy for a positive responsibility to exercise influence when these three components exist.

4.3 Leverage-Based Approaches in Other Leading SR Initiatives
Not only does leverage-based responsibility have a basis in societal expectations and moral philosophy, it is consistent with other leading social and environmental initiatives. ISO 14001, EMAS, and the Global Reporting Initiative all take a leverage-based approach to defining the boundaries of social responsibility. As already indicated, The UN Global Compact can also be read as consistent with this approach, although the UN Global Compact Office has distanced itself from this position (United Nations Global Compact Office 2009). Finally, the entire “socially responsible investment” movement is premised on a leverage model of social responsibility.

ISO 14001, the world’s leading environmental management system standard (ISO 2004), and EMAS, the European Union’s voluntary environmental management scheme (European Commission 2009), recognize that to be considered environmentally responsible, an organization should identify and manage the environmental aspects of its activities, products and services that it can control and those it can influence. ISO 14001 “applies to those environmental aspects that the organization identifies as those which it can control and those which it can influence” (ISO 2004, clause 1). It requires an organization to establish, implement and maintain procedures to (a) identify the environmental aspects of its activities, products and services “that it can control and those that it can influence,” and (b) determine those aspects that have or can have significant impacts on the environment (ISO 2004, clause 4.3.1). The organization must ensure that these significant environmental aspects are taken into account in its environmental management system ("EMS") (ibid.). The concepts of “control” and “influence” define the outer boundaries of the aspects that must be included in the EMS. An EMS need not include all environmental aspects of a product from raw materials extraction to end-of-life disposal, only those that the organization can control or influence.

Like ISO 26000, ISO 14001 presumes that an organization is responsible for things under its control. “In addition to those environmental aspects an organization can control directly,” the Annex to ISO 14001 opines, “an organization should also consider aspects that it can influence, e.g. those related to goods and services used by the organization and those related to products and services that it provides” (ISO 2009a, Annex A, clause A.3.1). Such aspects might relate to the decisions and activities of various third parties, including raw materials suppliers, product designers, distributors,
resellers, consumers, waste disposers, and regulators. An organization must determine the nature and degree of influence it has over these aspects, and include them in its EMS accordingly.

This does not mean that all ISO 14001-conforming organizations include in their EMSs all environmental aspects over which they have some influence. ISO 14001 gives organizations wide leeway over this question by giving them authority to determine the scope of the EMS, the extent of their influence over environmental aspects, the significance of those aspects, and the priority to be placed upon them. Furthermore, there are deep disagreements over how to operationalize the principle of control and influence, and how far up or down the value chain it extends. But the worldwide EMS community is in agreement on the basic proposition: an environmental management system should include the environmental aspects that the organization can control and those that it can influence.

EMAS, the European Union’s voluntary environmental management scheme, incorporates ISO 14001 as its EMS component (European Union 2009, Annex II). It therefore embodies the same principle of control and influence. It requires participating organizations to identify all direct and indirect environmental aspects with a significant impact on the environment (ibid., Annex I). Direct aspects are those under the organization’s direct management control. Indirect aspects “can result from the interaction of an organisation with third parties which can to a reasonable degree be influenced by the organisation” (ibid., 22). Unlike ISO 14001, EMAS does not allow organizations to exclude indirect aspects via restrictive scoping of their EMS. It requires non-industrial organizations (whose main environmental aspects are not likely to be confined to their own operating sites) to consider the indirect environmental aspects associated with their core business, including product life-cycle issues (design, development, packaging, transportation, use, and disposal), capital investment, loans, insurance, and the environmental performance of contractors and suppliers (ibid., 23). Once they have identified these indirect aspects, organizations must consider how much influence they can have over these aspects, and what measures can be taken to reduce the environmental impact (ibid.). They must also describe their significant indirect aspects in
a public environmental statement and report annually on their performance related to those aspects (ibid., Annex IV).

Some might object that both ISO 14001 and EMAS in fact define the boundaries of an organization’s environmental responsibility in terms of impact rather than leverage and are therefore consistent with Ruggie’s approach. EMAS speaks of “all the significant direct and indirect environmental aspects which result in significant environmental impacts of the organisation” (ibid., Annex IV, 36). ISO 14001 is about “controlling the impacts of [organizations’] activities, products and services on the environment” (ISO 2004, Introduction). It defines “significant environmental aspect” as one that has or can have a significant environmental impact, and an environmental impact as any change to the environment “resulting from an organization’s environmental aspects” (ibid., clauses 3.6, 3.7). The focus of both schemes is, admittedly, on improving organizations’ environmental impacts. Yet what counts as “the organization’s impacts” is determined not only by the organization’s causal contribution to the impact but also by its ability to influence the environmental aspect at issue. The former is the standard for direct aspects under the organization’s operational control; the latter for indirect aspects over which it has influence. If an organization is able to influence an aspect, it is expected to include that aspect in its EMS in a manner commensurate with its degree of influence. EMAS and ISO 14001 therefore draw the outer boundaries of environmental responsibility in terms of leverage, not impact.

The Global Reporting Initiative (GRI) takes a similar approach to defining the boundaries of social responsibility. The GRI is the leading global standard for sustainability reporting. As with financial reporting, one of the basic questions a reporting organization must answer is where to draw the boundaries around the entities for which it gathers information. The GRI Boundary Protocol recognizes that sustainability reporting “poses a unique boundary challenge since an organisation’s economic, environmental, and social impacts occur as a result of, and are linked to, activities involving a complex network of entities in its value chain” (Global Reporting Initiative 2005, 2). The boundary for a sustainability report is linked with “the range of entities for which an organisation is likely to be held accountable…and whose actions will influence the decisions of stakeholders regarding the reporting organisation” (ibid., 4) – precisely the
same questions that inform the definition of the boundaries of social responsibility under a “leverage” approach.

The GRI Boundary Protocol defines the boundary for sustainability reporting in terms of the intersection of two variables: impact on one hand, and control and influence on the other. The first step in setting a boundary is to determine whether the entity falls under the organization’s control or significant influence. The second step is to determine whether the entity generates significant sustainability impacts, actual or potential. The third is to set the reporting boundary, with the type and detail of reporting dependent upon the degree of control or influence and significance of impact (GRI 2005).

Finally, the entire movement for socially responsible investment is premised upon a “leverage” model of social responsibility (see Richardson 2008, 102). It presumes that financiers have responsibility because – and to the extent that – they have the ability to influence the activities and decisions of the organizations to which they provide capital, whether in the form of debt or equity finance. Their influence seldom rises to the level of causal contribution or complicity; as Richardson (ibid., 3) notes, “Causal relationships between finance and environmental impacts are separated widely across time and space, frequently obscuring holistic responsibility”. A socially responsible investor is one that uses what leverage it has to ensure that the entities in which it invests engage in socially acceptable practices, or refuses to invest in certain entities because it deems their practices socially unacceptable. This explains why the International Finance Corporation applies Performance Standards to projects it finances (IFC 2006). The Performance Standards apply not to the IFC itself but to its clients (the entities responsible for implementing and operating the project). They are applied on the theory that the IFC has the ability to influence its clients’ behaviour in a positive direction, not that the IFC is causally responsible for the impacts of that behaviour. This ability to influence gives rise to a positive responsibility to act. The same logic underlies the commercial banks’ Equator Principles (Equator Principles Association 2006). In both cases, financiers are concerned primarily with the impacts of the projects they finance, not with the impacts they cause or contribute to themselves.

4.4 A Proposed Process to Define the Boundaries of Social Responsibility
How, then, should the outer boundaries of social responsibility be identified? Figure 1, adapted from the GRI Boundary Protocol (GRI 2005, 8), presents a process for determining the boundaries of social responsibility. The organization first identifies the SR issues relevant to its activities and decisions. It then considers the entities with whom it has relationships, asking firstly whether it has control or influence over their activities or decisions, and secondly whether they have significant SR impacts. Activities and decisions under its control always fall within the organization’s SR boundary. Activities and decisions over which it has influence are included within the boundary, commensurate with the degree of influence and the significance of the impact. It is beyond the scope of this article to define the precise shape and content of an organization’s responsibility in these situations. To draw an analogy to the common law, this article, and the process described in Figure 1, are concerned with the question of whether a “duty of care” exists. The question of what an organization must do to fulfill its duty – the “standard of care,” so to speak – is a separate issue.
The critical point driven home by the GRI Boundary Protocol and the proposed boundary-setting process in Figure 1 is that the two variables of “impact” and “control/influence” are both relevant. It is their intersection that determines the scope of an organization’s responsibility. The first variable concerns whether the organization has
control or influence over the other entity’s activities or decisions; the second whether that entity -- as distinct from the organization itself – has significant impacts. If the answer to both questions is yes, the organization is responsible for those impacts. This is not a question of the organization causing or contributing to the impact, but having leverage over the entity that causes it.

5. Conclusion

This article argues that leverage is an appropriate basis for determining the scope of social responsibility. It is not, however, an unqualified endorsement of the concept of “sphere of influence”. As noted earlier in this article, the notion of a sphere made up of distinct, concentric circles radiating out from the organization is misleading. But this does not mean that the concept has no utility. As Henriques observes,

A straightforward interpretation of the idea of a ‘sphere’ in terms of proximity is indeed problematic. However there is no need to define the size of the sphere other than in terms of influence. In other words, the concept of ‘sphere of influence’ is simply saying that there is a set of impacts over which an organisation has a variety of different levels of influence, with greatest influence being represented as towards the centre of the sphere. (Henriques 2009, 3)

Instead of sphere of influence, Ruggie offers a three-part process to determine the scope of a company’s responsibility: understand the country context within which it operates; assess the impacts of its own activities; and analyze whether it might contribute to abuses through its relationships with third parties (Ruggie 2008a, 7). This raises numerous difficult questions. How does a country’s human rights context correspond to the firm’s degree of responsibility? How does one distinguish between a firm’s “own” and activities and others’? Ruggie lists political lobbying and the provision of security for personnel and assets as examples of a firm’s own activities. Yet security services are typically provided by third parties. Moreover, while a firm may engage in lobbying itself, more often it would hire a third party lobbyist or rely on its trade association. And the impact
of lobbying on human rights is indirect since it is the government laws and policies that are influenced by such lobbying that have impacts on human rights, not the lobbying itself.

Next, what kind of “contribution” is sufficient to attract responsibility? At some points Ruggie suggests that the standard is complicity: “[a]voiding complicity is part and parcel of due diligence for ensuring that companies respect human rights” (ibid., 9-10). At other points he suggests that different forms of involvement might suffice. One example is benefiting from, or being seen to benefit from, another’s abuse of human rights. He suggests that due diligence includes ensuring that the firm does not knowingly benefit from human rights abuses (ibid., 22). He also seems to suggest that mere presence in a setting where human rights abuses take place might give rise to responsibility in some cases, when he concludes that “both operating in contexts where abuses occur and the appearance of benefiting from such abuses should serve as red flags for companies to ensure that they exercise due diligence” (ibid., 21). Neither of these forms of responsibility can be explained on a theory of causal contribution. In yet other passages he seems to recognize that the boundaries of responsibility may, indeed, be wider than this, when he writes that a company should “assess whether it might contribute to or be associated with harm caused by entities with which it conducts, or is considering conducting business or other activities” and “ensure that the company is not complicit, or otherwise implicated in human rights harms caused by others” ibid., 7 and 22, emphasis added).

Ruggie acknowledges that application of his alternative to leverage-based responsibility is bound to be inductive and fact-based (ibid., 6). This is true also of the leverage approach. The latter, however, has the advantage of conceptual simplicity: a firm’s leverage varies on a continuum from no influence to complete control, and its responsibility varies with its degree of leverage: the more leverage, the more responsibility.

Before closing, it is necessary to meet one more objection. Ruggie argues that a “leverage-based” approach creates perverse incentives for governments and business:
However, the proposition that corporate human rights responsibilities as a general rule should be determined by companies’ capacity, whether absolute or relative to States, is troubling. On that premise, a large and profitable company operating in a small and poor country could soon find itself called upon to perform ever-expanding social and even governance functions – lacking democratic legitimacy, diminishing the State’s incentive to build sustainable capacity and undermining the company’s own economic role and possibly its commercial viability. Indeed, the proposition invites undesirable strategic gaming in any kind of country context. (Ruggie 2010a, 13)

This fear about corporate meddling and government abdication pervades Ruggie’s writings as UN Special Representative. The concern that leverage-based corporate responsibility will give governments an incentive to shirk their responsibilities in the hope that companies will step in to fill the breach is not an argument against leverage-based responsibility because the state’s responsibility to protect human rights is independent of the business responsibility to respect them. The state’s liability for neglecting or violating human rights is not diminished by corporate action to support those same rights. Only the most unscrupulous governments would treat such a situation as an excuse to shirk their responsibilities, and such governments would be likely to neglect their duty to protect human rights in any event.

Furthermore, if the concern is that firms might usurp governments, surely this would be inconsistent with social responsibility however defined. Social responsibility implies responsible involvement in politics and public policy. Indeed, ISO 26000 sets down clear expectations for responsible political involvement (ISO 2010a, clause 6.6.4). The only reason to conclude that requiring firms to act wherever they have influence is not desirable is if one believes that firms are likely to exercise this influence irresponsibly. If this premise is correct, the entire project of social responsibility is in jeopardy. But if firms can exercise their influence responsibly, there is no reason not to require them to do so.

Leverage is a sound basis for defining the scope of social responsibility. The WGSR’s decision to defer to Professor Ruggie’s view may have made sense from a
pragmatic perspective (it would be inadvisable to be out of step with the emerging
dominant conceptualization of the business-human rights relationship), but not as a
matter of principle. ISO 26000 may come down on the side of “causal contribution to
impact,” but the document is ambiguous enough, and SR norms are in sufficient flux, that
it may still be possible to reorient the debate toward a leverage-based approach. One can
only hope for such an outcome, because ultimately basing social responsibility solely on
complicity and causal contribution will likely prove inadequate to solve the problem of
business and human rights. Only by engaging organizations’ capacity to influence others,
and recognizing that it can give rise to positive responsibilities to act rather than just
negative duties to avoid harm, will the transformation toward a sustainable and just
global order be possible.

References


Equator Principles Association. 2006. The “Equator Principles” (July), online:

of the Council of 25 November 2009 on the voluntary participation by organisations in a
Community eco-management and audit scheme (EMAS), OJ L 342 (22 November 2009)
pp. 1-45.

Frankental, Peter and Frances House. 2000. Human rights: Is it any of your business?

Gibson, Robert G. 1999. “Voluntary Initiatives, Regulations, and Beyond” in Robert B.
Peterborough, Ontario: Broadview Press.

Global Compact Critics. 2010. “How ‘sphere of influence’ was introduced into the
Global Compact” (8 May), online:
http://globalcompacteritics.blogspot.com/2010/05/global-compacts-principle-one-
subject.html.

Global Reporting Initiative. 2005. GRI Boundary Protocol (January), online:

Henriques, Adrian. 2009. ISO 26000 and the Concept of ‘Sphere of Influence’ (unpublished manuscript, December).


