The United Nations Global Compact and Peace
—Guidance on Responsible Business in Conflict-affected and High-risk areas: A resource for companies and investors[1]—

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I. Preface

In international societies, there have been lots of international laws for the settlement of disputes; these have been repeatedly and precisely examined since the 19th century. As we can see from the United Nations Charter and the four treaties of the Geneva Conventions of 1949, the principles of sovereign states, for conflict resolution, have been created through a great deal of deliberations. However, in this globalization age, not only sovereign states but also non-state actors such as armed groups, have been involved in conflict, this is pointed out by Mary Kaldor in her book *New and Old Wars: Organised Violence in a Global Era.*[2] This is a big challenge on how to deal with conflicts, in which non-state actors have been involved and in which companies are one of actors.

There are three categories of relationships between business and peace. First, businesses are the main cause of conflict. Second, opposite to the first, businesses contribute positively to conflict resolution or peacebuilding. For example, some companies supply relief commodities to the victims and some companies do mine clearing in conflict-affected areas. Third, some of businesses are neutral in conflicting areas, for example selling and distributing foods or daily necessities as their normal activi-

ties. The question is, what position have these companies taken in the conflicted areas. It should be carefully considered if the law of neutrality for sovereign states could be applies to or not to companies. It becomes necessary to make a guideline for business, because businesses are transnationally establishing their activities beyond national borders today. In this context, *Guidance on Responsible Business in Conflict-affected and High-risk areas: A resource for companies and investors* (the Guidance Document) was adopted at the 10th anniversary of the UN Global Compact Leaders Summit which was held on June 24th and 25th, 2010 in New York.

In this paper, first, the relationship between business and peace was examined. In this regard, the significance and historical background of business and peace, was studied by the United Nations Global Compact (UNGC). Second, the purpose and contents of the Guidance Document was explained. Third, the normative feature of the Guidance Document was considered, because this document does not have the character of a positive international law, but it has been recognized as a global norm or standard.

II. The UN Global Compact and "Business and Peace"

1. Significance of "Business and Peace"

The UN Global Compact was proposed by the former Secretary-General Kofi Annan.[3] It is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles. This was proposed on July 26th, 2000 at the UN headquarters in New York. The principles of Corporate Social Responsibility (CSR) of the UN are contained within this document. It is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. By

doing so, business, as a primary agent of globalization, can help ensure that markets, commerce, technology and finance advance in ways that benefit economies and societies everywhere. In 2000, at the starting point of the UNGC, there were nine principles for human rights, labour and environment. On June 24th, 2004, during the UN Global Compact Leaders Summit, it was announced that the UN Global Compact henceforth would include a tenth principle addressing corruption. But there is no principle for "Peace" in these ten principles.

The issue of "Business and Peace" has been considered as the most important matter for the UNGC from its inception. The UNGC is one of the organs of the United Nations which deals with global issues. Businesses are facing multiple issues which are not included in the ten principles of this globalizing world today. You can see on the HP of the UNGC, not only four areas, human rights, labour, environment and anti-corruption, but also, Business and Peace, Financial Markets, Partnerships for Development, UN/Business Partnerships and, Supply Chain Sustainability. It is especially the most important matter for the UN to keep peace and security. It is necessary for the UN to bring new players, as non-state actors of business, into the debates of the UN.

The UN Global Compact works with the private sector on this issue for the following four reasons. First, peace and stability are essential elements for business to prosper and for sustainable economic growth. It is absolutely necessary not only for the UN but also for business to keep peace. Second, promoting peace is the right thing to do for any responsible member of society. Conflict affects the society on all levels. It is not solely a matter of interest for sovereign states but also for business, because business is affected by conflict. It is the matter of course that business, as a member of the society, is interested in the peace and safety of the society. Third, the UN Global Compact recognizes that companies need to make extra efforts to fully implement responsible business practices in conflict-affected areas. That is to say that the UN acknowledges business for positive, active and responsible

performance. The UN does not deny business operating in conflict-affected areas but permit unless there is a possibility of conflict recurring. Fourth, the UN Global Compact acknowledges that the private sector can also play an important positive role in promoting peace and development in conflict-affected countries.

In fact, the UN Global Compact's work on business and peace aims to help businesses uphold the UN Global Compact's Ten Principles everywhere. An effective implementation of the Global Compact's Ten Principles by companies can help them strengthen their capacity to address challenges arising from operating in conflict-affected countries.

There are three roles that the UNGC and businesses consider in the relationship between Business and Peace. First, responsible business practices help companies become better aware of existing national and international laws. The Guidance Document, which is the object of this paper which we will examine later, is not a positive law but a normative document which has been established by precise examination of international and domestic laws. Using this Guidance Document, businesses can find common ground with international law and local domestic law, and can make them the principle in this area. Second, a practice of corporate responsibility is a critical tool to minimize business risks as well as negative impacts of the companies' operations. This would be useful for businesses who would be doing business in an area where the recurrence of a dispute is a high-risk. Third, responsible business practices can serve as an instrument to create long-term values and build sustainable peace in conflict-affected areas. It would open the possibility that businesses could actively contribute to peacebuilding activities. In this globalizing age today, businesses play a positive role rather than a negative role.

2. Historical background of Business and Peace

The UNGC has operated actively since 2001. Here is a back-

ground history of considerations of the Guidance Document.

There are three phases which the UNGC has considered the topic of "Business and Peace." First, from March 2001 to May 2004, the first activity undertaken on the theme of business and peace is the Policy Dialogue Series on the Role of the Private Sector in Zones of Conflict. Second, from Oct. 2004 to Dec. 2004, a series of expert workshops were held entitled "Identifying Public Policy Options to Promote Conflict-Sensitive Business Practices." Third, from Jan. 17th, 2007 until now, the Expert Group on Responsible Investment was organized to discuss creating the Guidance Document.

1) First phase: from March 2001 to May 2006

This is the first step for the UNGC to deal with the issue of "Business and Peace." At this stage, the following questions are considered; how the private sector can contribute to peace and what kind of framework is necessary for the sake of considering this issue. This is the time when problems arise. At this point, the following six meetings were held.

Mar. 21–22, 2001, New York, US
 Global Compact Policy Dialogue Meeting: The Role of the Private Sector in Zones of Conflict
Sep. 27–28, 2001, Geneva, Switzerland
 Global Compact Policy Dialogue Meeting: The Role of the Private Sector in Zones of Conflict
Apr. 17–18, 2002, New York, US
 Global Compact Policy Dialogue Meeting: The Role of the Private Sector in Zones of Conflict
Nov. 18–19, 2002, Johannesburg, South Africa
 Global Compact Policy Dialogue: Africa Workshop
Nov. 13–14, 2003, Almaty, Kazahstan
 Global Compact Policy Dialogue: Central Asia Workshop
May 27–28, 2004, Bogota, Colombia
 Global Compact Policy Dialogue: Colombia Workshop
Dec. 14, 2004, New York, US
 Global Compact Symposium: Strengthening Conflict-

Sensitive Business Practices in Vulnerable and Conflict-Affected States

May 17, 2006, Khartoum, Sudan
  Meeting Explores Partnership Opportunities in Post-conflict Societies

In the discussions at these meetings, the following working groups were established. a) Multi-Stakeholder Initiatives, b) Revenue-Sharing Regimes,c) Impact Assessment and Risk Management, d) Transparency. These four working groups examined and discussed each problem.

At the meeting in Sudan, May 2006, participants came to the following conclusion. (1)To set up working group made up of representatives from the meeting in Khartoum to oversee and introduce a local network of the UN Global Compact in Sudan. (2)The working group would reach out to other potential stakeholders as the planning continued, and sample projects would be examined for suitability. (3)A representative of the UNDP in Sudan acts as a convener for this working group. The group would report on the progress after six months, and the follow-up action will then be determined.[4]

2) Second Phase: from Oct. 2004 to Dec. 2004

A series of expert workshops were held under the title of "Identifying Public Policy Options to Promote Conflict-Sensitive Business Practices."

Oct. 7–8, 2004, New York, US
  Expert Workshop I: Identifying Public Policy Options to Promote Conflict-Sensitive Business Practices
Dec. 13, 2004, New York, US
  Expert Workshop II: Identifying Public Policy Options to Promote Conflict-Sensitive Business Practices

In a series of workshop, the following three points were identified. (1)Clarifying the respective roles of all actors in

society in ensuring that business operations avoid negative impacts and contribute to conflict prevention and peace-building; (2)Showcasing promising multi-stakeholder initiatives aimed at conflict-sensitive business practices and proposing ways to scale them up (Extractive Industry Transparency Initiative, Kimberley Process); (3)Calling the attention of Governments and the UN system to the need for more effective public policy responses in order to order to harness the positive potential of business in zones of conflict.[5]

3) Third phase: from January 2007 to June 2010

The third phase is the norm creating process of the Guidance Document of "Business and Peace." Prior to the adoption of the Guidance Document, there had been nine drafting and deliberating meetings which were held in various cities around the world. On June 24th and 25th, 2010, at the tenth anniversary of the UNGC leaders summit in New York, this document was adapted.

Jan. 17, 2007, New York, US
   Informal Consultation on Responsible Investment in Weak States
Jun. 26–28, 2008, Mumbai, India
   Responsibility to the Future: Business, Peace, Sustainability
Dec. 1, 2008, Khartoum, Sudan
   Local Network launch in Sudan
Apr. 7, 2009 Istanbul, Turkey
   Working Session: "Doing Business in a Multicultural World"
Jun. 8, 2009 Istanbul, Turkey
   First Expert Group Consultation Meeting on Responsible Investment in Conflict-Affected Countries
Mar. 1–2, 2010 Khartoum, Sudan
   Conference on Responsible Business and Investment in Conflict-Affected Areas
Apr. 25–26, 2010, Tokyo, Japan
   Workshop on the Role of the Private Sector in Contributing to Peace and Development

Jun. 24–25, 2010 New York, USA
  UN Global Compact Leaders Summit 2010: Building a New
  Era of Sustainability

In this article, three typical meetings were examined, the first at NY in 2007. Followed by a meeting in Sudan as a conflict affected area, and the last draft meeting was held at Tokyo in 2010.

i) The first meeting in 2007
The first meeting, which was entitled "Responsible Investment in Weak or Conflict-Prone States," convened by the UN Global Compact Office, the Office of the Comptroller of the City of New York and the Principles for Responsible Investment (PRI) brought together institutional investors, business and civil society. PRI, as a stakeholder of "Business and Peace," was a co-sponsor of this meeting. The meeting was focused on the role of investors. The key findings of this meeting were as followings. First, there can be links between the longer-term fiduciary duty of investors, the protection of human rights and the social and environmental sustainability of communities in weak/conflict-prone states. Second, experience shows there are cases where these issues can be addressed through positive engagement however divestment remains an important factor in debates. Third, in the event of a humanitarian crisis in a conflict zone, such as the present crisis in Darfur, Sudan, companies should mobilize to provide urgent humanitarian relief through international aid organizations, such as the United Nations High Commission for Refugees (UNHCR) and the UN Office for the Coordination of Humanitarian Affairs (OCHA). Fourth, the leverage of the investment community and business can be significantly enhanced through greater dialogue and cooperation, perhaps it would lead to a common framework.

ii) Conflict-affected Areas: the meeting in Sudan
The next noteworthy meeting was "Conference on Responsible

Business and Investment in Conflict-affected Areas" which was held in December 2008 and took place in Sudan. It is very important to meet in the area of conflict such as Sudan to discuss on "Business and Peace," and how to change existing problems. I've listed the main points of this meeting.

First, the UN Global Compact Network Sudan was launched at Khartoum. The meeting of the UNGC was held on May 17th, 2006; the title was "Meeting Explores Partnership Opportunities in Post-conflict Societies," there had been no local network in Sudan until 2008. This is an important first step for peacebuilding and development. The first step was to present and discuss served to the introduction of the UN Global compact and its ten principles and provide participants with an opportunity to share practical experiences from that country. For example, Talisman Energy and Detasi in partnership with DAN (NGO) undertook a series of initiatives that improved the quality of life in 91 villages by building capacity in community governance, agricultural practices and dispute resolution.[6]

Second, the event was organized by the Al Badayel Advanced Training Center, the Sudanese Businessmen and Employers Federation and the Ahfad University for Women, in collaboration with a number of government ministries, the UNIDO Sudan and the UNDP Sudan.[7]

The active role of women for social change and development has gotten a lot of attention. It would contribute to the development of small business and poor urban women.

Third, several participants echoed the view that there is a need for stronger engagement of the private sector in sustainable development, particularly the oil industry.[8] It is desirable for the oil companies to contribute to fair resource distribution.

Fourth, a local network action plan for 2009 was prepared. It is very important to follow up the activities of the local network.

A second meeting was held in Sudan following the 2009 activities. A meeting of the UNGC in Sudan was held once

more in March 2010. With the title of "Responsible Business & Investment in Conflict-Affected Areas," members of the local network of Sudan engaged in drafting the Guidance Document of "Business and Peace." Sudan's Vice President, HE Ali Osman M. Taha, participated the meeting. Minister of Energy and Mining encouraged all oil operating companies to join the Global Compact and declared their support for registering the Global Compact Local Network as a legal entity.[9]

iii) Tokyo workshop

The last draft meeting was held on April 25th and 26th, 2010 in Japan. The title of this workshop was "United Nations Global Compact; Business & Peace Workshop, Japan, How Business Can Contribute to Peace and Development through Multi-stakeholder Collaboration." From the standpoint of the UNGC, the draft of the Guidance Document of "Business and Peace" would be recognized by the multi-stakeholders in Asia, and would be admitted by the authorization of the Asia.

The purpose of this workshop is as following.
・To present the Guidance Document "Responsible Business in Conflict-Affected and High Risk Areas: Guidance for Companies & Shareholders,"
・To provide a multi-stakeholder forum for discussion on the ways in which to promote responsible business practices in difficult operating environments,
・To provide Global Compact participants and other stakeholders with an opportunity to share experiences and lesson learned and to profile inspiring examples of business promoting peace and development by advancing the Global Compact principles,
・To raise awareness about the UN Global Compact and the role of the private sector in conflict-prevention and peace-building.[10]

Three points are mentioned for this workshop. First, the

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title of this workshop was modified to peaceful expression. In the titles of the other drafting meetings of this Guidance Document, the word "Responsible Business and investment in Conflict-affected and High-risk areas" was mentioned. Special consideration is needed for the Japanese business community, because the Japanese business community is not familiar with conflict-affected areas.

Second, the importance of the multi-stakeholder process was emphasized. Although there is no participation from investors and NGOs in the Global Compact Japan Network (GCJN), investors and NGOs participated and made speeches in this workshop.

Third, there is the obvious gap between academia and business communities in Japan. One of Japanese academia, Prof.Kunugi, argued the following;

> Several scholars in Japan have already drafted the following as Principles 11 and 12 of GC, together with the proposal that the UN Charter, the Millennium Declaration and the 2005 Summit Outcome document be added to the list of documents in the Preamble of GC:
>
> **Peace and Security**
> **Principle 11:** Businesses should support concerted efforts by the United Nations and other international organizations to build and maintain peace and security; and
> **Principle 12:** support measures for conflict prevention and peace-building, and for protection of people in armed conflict, as well as empowerment of their capacity for human security at all times.[11]

In contrast, the Japanese business community is reluctant to consider peace issue. They did not take a direct approach on this issue, but rather an indirect approach. They thought that it would be better for empowering conflict affected areas to deal with the matter of the Millennium Development Goals (MDGs) and to implement the ten principles of the

UNGC.

The second day of this workshop, the word "conflict" was deleted from the title of the workshop. The title on the second day was "United Nations Global Compact; Business & Peace Workshop, Japan; Public Forum on the Role of Private Sector for Peace and Development." It is important that there are various opinions in multi-stakeholder process. The standpoint of the Japanese business community concerning "Business and Peace" is not a direct approach but a structural approach. The structural approach is, as Johan Galtung studied a form of violence based on the systematic ways in which a given social structure or social institution harms people by preventing them from meeting their basic needs. Structural violence inevitably produces conflict and often direct violence.[12]

As a result of the Japanese workshop, some points were revised or added. First, the idea of the Bottom of Pyramid (BOP) business was introduced and included in the document. Second, two mine-clearing companies in Japan made a presentation and showed a large picture of mine clearing. This picture was included and introduced as a good practice in the Guidance Document. Third, at the local network, it was suggested that it is very important to work with independent and trusted third parties.

III. Guidance on Responsible Business in Conflict-affected and High-risk areas: A resource for companies and investors

The Guidance Document on Business and Peace was adopted at the tenth anniversary of the leaders' summit of the UNGC which was held from June 24th to 25th, 2010, after a lot of declarations and considerations which I have mentioned above. A precise analysis of the contents of this document will be studied in the next paper which will explain the following two points. First, the background process behind developing the

Guidance Document and the primary purpose of this Guidance Document. Second, an outline of this document, is explained. It is the main purpose of my paper to analyze this document in the light of norm creation of the UN.

1. The primary purpose of the Guidance Document on Business and Peace

First, we will examine the background process behind developing the Guidance Document and its necessity.

The process began with the first Global Compact-PRI meeting in 2007 on this issue. The chairman of the first Global Compact-PRI meeting was Sir Mark Moody-Stuart. He has a foot in two camps, both a business side and a CSR side. He is an ex-chairman of Royal Dutch Shell and a director of HSBC Holdings, and a vice Chairman of the Board of the UN Global Compact, a Chairman of the Foundation for the Global Compact and until December 2007 a former member of the Board of Directors of the Global Reporting Initiative (GRI).

The Expert Group process has been organized under the Chairmanship of Sir Mark Moody-Stuart. The Expert Group is composed of institutional investors, companies, civil society and UN representatives. The outcomes of this collaboration resulted in the development of the draft Guidance Document which forms the basis for our discussions for the duration of our meeting.

Membership for the past nine Expert meetings were flexible changed from time to time, and these were not closed and restricted. Most of the expert meetings were not closed and were open to every stakeholder, and these were announced on the homepage of the UNGC. The announcements of these meetings were sometimes too small for stakeholders to find but they were previously announced. It is very difficult to make the two desires compatible. One is to keep the democratic process for the norm creating process, which is open to multi-stakeholders, and another is to have a secret diplomacy for the norm creating process. It is necessary for

creating treaty, to keep the negotiating process secret, otherwise nothing will be decided.

At the first meeting, between the companies and the investors in 2007, the participants became aware of the following two points. First, there is no clear understanding among stakeholders regarding what constitutes responsible investment. Second, investors are often unaware of the good practices and lessons learned by local businesses. While businesses do not always take into consideration the investors' unique perspective—there is an urgent need for these stakeholders to engage in dialogues. Because of the necessity to dialogue between the companies and the investors, the creation of the Guidance Document of Business and Peace was considered.

The primary purpose of this Guidance Document is twofold; " (1) To assist companies in implementing responsible business practices by living up to the Global Compact Ten Principles in conflict-affected and high-risk areas, so they may maximize their long-term financial performance and make positive contributions to peace and development, while minimizing risks and negative impacts to both business and society. (2) To provide a common reference point for constructive engagement in conflict-affected and high-risk areas, as opposed to divestment, between companies and investors (specifically shareholders and potential shareholders)."[13]

The UNGC is for multi-stakeholders but the main targets are companies and investors. The principle of responsible investment (PRI) was included in the past nine meetings. It is a big challenge to understand the role of the investors in conflict-affected and high-risk areas.

2. The Guidance Document on Business and Peace

This Guidance Document aims to provide a common reference point for companies and investors. It does not offer technical instructions for the best practices nor is it a blueprint for responsible behaviour in all the conflict-affected and high-risk areas. Rather, it provides a foundation for

addressing critical issues and a guidance that can be adapted to specific circumstances. The document categorizes responsible business practices into four sections: Core Business, Government Relations, Local Stakeholder Engagement, and Strategic Social Investment. It is interesting among other multi-stakeholder processes that this Guidance Document pays attention to the role of the government. All of these sections are complementary and, given the cross-cutting nature of some aspects, should be considered in interconnection with the other parts of the Guidance. Good practice with regard to one section should not be considered a substitute for another. The Guidance is complemented by an annex that builds upon existing resources in the field and provides a list of tools and initiatives that can be considered for further support.[14]

1) Core Business

The following six points are directed at businesses, which are the main principles of this Guidance. (1)Do no harm, and they are encouraged to adapt existing due diligence measures to the specific needs.[15] (2)Companies are encouraged to make a commitment to constructive dialogue to prevent disputes.[16] Disputes may be avoided through dialogue. The establishment of grievance and dispute settlement mechanisms allows the affected parties to raise problems with the companies and a clear process for discussion and resolution. (3)Companies should respect national law and strive to meet international standards, especially where national law sets a lower standard.[17] We can see in many cases in conflict-affected and high-risk areas, the rule of law is not firmly established. Instead of the domestic law, the United Nations Global Compact's Ten Principles would play an important role. (4)Companies are encouraged to manage security services provided by private as well as, to the extent possible, public security forces, in accordance with evolving good practice including the Voluntary Principles on Security and Human Rights.[18] It is very important for business to keep

security in conflict-affected and high-risk areas. Humanitarian assistance and keeping security by the UN were discussed in past meetings. (5)Companies are encouraged to carefully monitor their business relations, transactions as well as flows of funds and resources and to develop a rigorous supply chain management system to assess and monitor if and how their suppliers obtain resources and raw materials in conflict-affected and high-risk areas.[19] The idea of protection of the *bona fide* purchaser of property or goods would not necessarily be applicable in conflict-affected and high-risk areas. (6)Companies are encouraged to develop detailed policies on specific bribery issues and put in place robust management procedures such as risk assessment, training, and whistle-blowing to prevent corruption.[20] This sixth point is the same as the tenth principle of the UNGC.

2) Government

Business has to take care of the government in conflict-affected and high-risk areas. (1)Companies are encouraged to explore all opportunities for constructive corporate engagement with government.[21] (2)Companies are encouraged to take all necessary measures to avoid complicity in human rights violations by government actors in relation to all aspects of the company's operations.[22] (3)Companies are encouraged to develop clear policies and robust management practices to prevent corrupt relations with government officials.[23] The relationship between business and established governments of advanced countries and the relationship between business and governments in conflict-affected and high-risk areas are different. Business has to have an unshakable posture to consider peacebuilding in conflict-affected and high-risk areas.

3) Local Stakeholder Engagement

(1)Companies are encouraged to establish strategic and rigorous stakeholder engagement mechanisms across company and contractor operations.[24] It is a good example to establish

local networks in Sudan, as we studied. (2)In the context of existing inter- and intra-group tension, take a broad and inclusive approach towards stakeholder engagement.[25] It is desirable that a pretty flexible and broad sighted approach is needed when comparing with a local network in peaceful countries. (3)Companies are encouraged to engage proactively with relevant civil society organizations and international organizations.[26] Even if it is a local stakeholder engagement, the relationship with the UN and international organizations as well as local civil society should be considered. (4)Companies are encouraged to promote and take action towards constructive and peaceful company-community engagement. It would lead conflict-affected and high-risk areas to peace.[27]

4) Strategic Social Investment

The meaning of 'strategic' in this context is the 'strategy' to lead a society to peace. (1)Companies are encouraged to establish strategic social investment programs built on existing capacities.[28] Strategic Social Investment refers to the voluntary, and sometimes legally mandated, financial contributions by companies. (2)Companies are encouraged to employ the same rigor in developing social investment strategies as other aspects of business operations.[29] Even if the company's activities would consider and be sensitive to the conflict, it would be meaningless if their strategic social investment did not consider or be sensitive to the conflict. (3)Companies are encouraged to implement strategic social investment as an independent activity, separate from company's obligations to mitigate or compensate for its operations' impacts.[30] Social investment does not include resources spent on core business activities such as local hiring, contracting, waste management, or land compensation. It is necessary for the companies to have a long-term sustainable development. (4)Companies are encouraged to ensure that social investment projects are sustainable and not replacing services which should be provided by the government.[31] A company-

driven social investment approach, without abandoning responsibility on the way, undertaken in isolation from the public service of the government, can contribute to development in conflict-affected and high-risk areas.

This paper examined a survey of the Guidance Document which was adopted in June 2010 and is at the starting point. I cannot explain how the Guidance will be applied and will contribute to peacebuilding, but we will watch future development.

IV. Normative features of the Guidance Document of "Business and Peace"

If we understand the Guidance Document as the norm, what kind of features does this document have? In this section, the Guidance Document will be analyzed from three points of view. (1) The normative function of the Guidance Document in the field of maintaining peace and security by the UN, (2) The Guidance Document as the subordinate norm for the UNGC ten principles, (3) Normative connotation of the Guidance Document.

1. The normative function of the Guidance Document in the field of maintaining peace and security by the UN

In the first place, the normative quality of the Guidance Document, as the UN norms in the field of maintaining peace and security in the post cold war era, is examined. The features of the UN norms in the field of peace and security have been evolving from the framework of the UN Charter in 1945. The most special feature of the UN norms in the field of maintaining peace and security of the post cold war era is the change from a framework for conflict resolution between states, to a framework for conflict resolution among many kinds of actors. The concept of conflict resolution has been expanded in recent years to include many new ideas such as the idea of conflict prevention, peacebuilding, human securi-

ty and the responsibility to protect. Six points are mentioned in the analysis of the feature of peace and security by the UN in the post cold war.

First, most of conflicts today have not been interstate conflict but domestic conflict. Second, in many cases, conflicting parties and stakeholders are non-state actors such as a national liberation group, an armed group or a religious group. Moreover, companies and civil societies, in some cases, have been involved in conflicts.

Third, these new types of conflicts require new sets of conflict resolution guidelines such as conflict prevention and peacebuliding which have not been included in the UN Charter. These new norms are not necessarily considered as international laws but rather as new types of UN norms. Fourth, norm entrepreneurs of these new types of norms are not necessarily states. Conflict prevention and peacebuilding were first proposed in *the Agenda for Peace* by the former Secretary-General Boutros Boutoros=Ghali. Most of normative ideas, such as the idea of human security and the idea of the responsibility to protect, have been produced not by the framework of states to states relationships, but by the norm creating activities of non-state actors, such as the UN Secretary-General, the UNDP and independent international commissions. Fifth, with the diversification of actors, the onus of responsibility becomes unclear, it is necessary for many actors to clarify the responsibility. The idea of responsibility has also been expressed in diverse words, such as 'accountability,' 'responsibility,' 'commitment' etc. Lastly, in some cases, if non-state actors violate these new norms, domestic laws have been enforced and furthermore would be the target of the UN economic sanction.

Complexities of relationships among a variety of new actors reflect the framework of norms in the field of peace and security of the UN. The theory of the new norms demanded is fuzzy. The idea of human security and the responsibility to protect, which have arisen in 21st century, are expected as norms which would be prescriptions against negative effects of globalization. In this broad context of the evolution of the UN norms in the

field of peace and security, the Guidance Document was produced to live up to the needs of a new norm for businesses.

2. The Guidance Document as the subordinate norm for the UNGC ten principles

We examined the background history of the norm creating process of the Guidance Document. Now let us examine the function of the Guidance Document in the UNGC.

The ten principles of the UNGC, as compared with the positive international law, has an ambiguous normative nature, which is recognized as a soft law. Because a lot of research has been done in this area, in this paragraph, we will not examine the ten principles but the subordinate norm of the UNGC. A normative character of this document is much softer and more ambiguous than that of the ten principles. It will be referred to as a "soft-soft law."

The UNGC does not only have the Guidance Document for "Business and Peace" but also many subordinate rules. In June 2007, the principle for Responsible Management Education (PRME) for academia in the UNGC was adopted. In this case, the main actors for norm creation were not businesses but academia. The PRME was adopted as the UNGC's subordinate norm, but it is in effect separate from ten principles of the UNGC. It is possible for one university to participate in the PRME, even if it does not participate in the ten principles of the UNGC.

In contrast, the Guidance Document on Business and Peace, mentioned the ten principles and a Communication on Progress (COP), was established as a subordinate and attached rule for the UNGC. There are a lot of subordinate rules under the UNGC and their modalities are diverse. A more question for the Guidance Document is about its effectiveness as a norm. Until November 2009, contents of this document had been called "the guidance principles." Because companies worried about being bound by this new framework in addition to the ten principles of the UNGC, they decided to change the name from "the guidance principles" to "the guidance points." This word

"points" is used as "a point of reference."

It is a regrettable matter that, by changing the word from "principle" to "point," a normative character of this document is weaker.

3. Normative connotation of the Guidance Document

The Guidance Document on Business and Peace was established, after the accumulation of many deliberations. Despite these prudent considerations for drafting the Guidance Document, it was given just a soft-soft law status under the ten principles of the UNGC. The Guidance Document is by no means not a positive law, nor has legal binding force. Furthermore, social pressure, which ten principles of the UNGC has, is weak.

The Guidance Document is not imposed by governments; it was created under the cooperative discussion among multi-stakeholders (MSH). In the field of international peace and security concerning businesses, this is only one normative guideline for Business and Peace, this is the first criteria for businesses. There are no other normative guidelines in the field of Business and Peace.

Norm prescribes the relationship between business and peace in international society since there are no other norms, the effectiveness of this Guidance Document has a comparative advantage, and this document would have a high possibility of developing an international legal norm. The Guidance Document was not imposed by the government but was created thorough multi-stakeholder collaboration and discussion. Corporations are one of the most important participants. As long as this norm was created by MSH themselves, under the basic principle of *"Pacta Sunt Servanda,"* MSH should take responsibility to keep this document.

As mentioned before, in the case of Sudan, the rule of law collapsed. When the government would make the UNGC a substitute for domestic law and obliged oil industries to participate in the UNGC local network and to make financial contributions, it would function as an effective domestic law. Even if it would be

too weak to construe as a legal norm, the Guidance Document would have a great influence as a norm.

V. Concluding note—Future challenge of "Business and Peace"

In the ten principles of the UNGC, there is no clause for "Peace." However, the United Nations, whose primary mandate is to maintain international peace and security should not ignore this issue. As long as the UNGC is one of the UN organs, not only it has to consider "Peace" as the structural problems such as human rights, environment, labour and corruption, but it should deal with the issue of "Peace" directly.

During ten years development of the UNGC, various methods have been examined for "Business and Peace." After these considerations, the Guidance Document of "Business and Peace" was established. The document, however weak, was designed saw an extension of the UN in creating international peace and security in the age of globalization. The Guidance Document was created, even though the problems were not settled. The document is at the starting point and will continue to be used and to be developed. In conclusion, we will address two future challenges. Collaboration and creation of the local network, and linking and collaborating with the United Nations System.

1) Collaboration and Creation of Local Network

The UN Global Compact has supported the work of its Local Networks—particularly those located in conflict-affected countries, such as Nepal, Colombia, Sri Lanka, and Sudan. In the early days, activities undertaken by the local networks tended to be ad-hoc and sporadic and were often affected by local political and social problems. A notable example is the launching of the Global Compact Local Network in Sudan in 2008 following two years of consultations and preparatory work. The network seeks to provide a forum for businesses not only in domestic arena but also in

international arena. In the case of Sudan, the cause of conflict was natural resources. Despite good progress, the local network found it challenging to maintain a high level of interest and engagement from all key stakeholders and to ensure responsible business practices in this conflict/post-conflict environment. To require commitment from all industries participating in the UNGC local network, it would make possible that local network itself would solve the problem. After the inception of the Guidance Document, there would be possibility that the operation of a local network in conflict affected areas and high-risk areas would step forward for peacebuilding activities. Without special collective mechanism as the local network, there would be a high possibility that the achievement of the purpose of promoting peace and development would encounter difficulty. To promote peacebuilding and to perform conflict resolution, in the context of the UNGC and under international pressure, it would be important to establish and operationalize the local network domestically and internationally.

2) Linking and Collaborating with the United Nations System

Various UN reports in the 21st century pointed out the importance of cooperation between the UN and the private sector in the field of conflict prevention and peacebuilding. However, in practice, the role and potential contribution of the private sector has not been promoted actively. In the Guidance Document of "Business and Peace," there is no mention of the role of the UN in conflict prevention and peacebuilding. It might be preferable that the active use of the framework of the UN conflict resolution, as the case of the local network of Sudan, because the issue of conflict must be main subject rather than that of business in the framework of the UN. Through lots of experiences of the peacekeeping operation, the UN has had accumulated a lot of knowledge and experience of conflict resolution for many years. When the UN and the private sector would cooperate actively, the local network of the UNGC could contribute to peacebuild-

ing more effectively. For the companies which perform business in conflict affected areas and high-risk areas, the link with the UN would be a good way to get information regarding safety. For those companies which cooperate with the activities of the UN peacebuilding, it would be important to make a link with the UN for their security. Some businesses are worried about whether the partnership would be organized, or others are worried about who would be in control. The UN is not a ruler of businesses. The UNGC and businesses have to cooperate with one another, so that they are in an equal basis. It would be necessary to consider the framework of "Business and Peace" of the UNGC and to construct a win-win relationship between the UN and the private sector.

Notes

1. This paper was submitted at the International Studies Association Annual Conference in Montreal, Canada, March 16th, 2011.
2. Mary Kadlor, *New and Old Wars: Organised Violence in a Global Era*, Stanford University Press, 1999.
3. The review of published research concerning "the UN Global Compact" has already mentioned in following paper. Mariko Shoji, "Globalization and modern development of the norm of the UN: A case study of the UN Global Compact," Takeo Uchida ed., Chikyusyakai no Henyou to Gavanannsu (A Change of Global society and Governance), Chuo University Press, Feb. 2010.
4. *Public-private partnership: a post conflict framework of shared opportunities and responsibilities*, http://www.unglobalcompact.org/Issues/conflict_prevention/meetings_and_workshops.html
5. Symposium on "Strengthening Conflict-Sensitive Business Practices in Vulnerable and Conflict-Affected States"-14 December 2004, New York, Summary Report, p. 1.
6. Meeting Report, the UN Global Network Sudan, p. 3.
7. http://www.unglobalcompact.org/Issues/conflict_prevention/meetings_and_workshops.html
8. Meeting Report, *ibid.*, p. 3.
9. Executive Summary, "Responsible Business & Investment in Conflict-Affected Areas," p. 1.
10. Program of the workshop, United Nations Global Compact; Business & Peace Workshop, Japan, How Business Can Contribute to Peace and Development through Multi-stakeholder Collaboration."
11. Documents of "United Nations Global Compact; Business & Peace Workshop, Japan, How Business Can Contribute to Peace and Development through Multi-stakeholder Collaboration."
12. Johan Galtung, "Violence, Peace, and Peace Research," *Journal of Peace Research*, Vol. 6, No. 3, 1969.
13. Business and Peace Guidance Document, p. 6.
14. *Ibid.*, p. 7.
15. *Ibid.*, p. 10.
16. *Ibid.*, p. 12.

17. *Ibid.*, p. 13.
18. *Ibid.*, p. 13.
19. *Ibid.*, p. 14.
20. *Ibid.*, p. 15.
21. *Ibid.*, p. 16.
22. *Ibid.*, p. 18.
23. *Ibid.*, p. 18.
24. *Ibid.*, p. 20.
25. *Ibid.*, p. 22.
26. *Ibid.*
27. *Ibid.*, p. 23.
28. *Ibid.*, p. 24.
29. *Ibid.*
30. *Ibid.*, p. 26.
31. *Ibid.*, p. 26.