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Rules of engagement between the UN and private actors

Towards a regulatory and institutional framework



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I. Introduction

In the last two decades, new forms of international cooperation have gained increasing importance: Global multi-stakeholder partnerships and initiatives between public and private actors are now perceived as the future of international cooperation, moving beyond traditional nation-state multilateralism.

This trend is reflected within the United Nations (UN), whose relationship with so-called non-State actors¹ has undergone a radical transformation since the 1990s. After the 1992 Rio Conference on Environment and Development, the UN was faced with the question of how to respond to and acknowledge the increased importance of non-governmental organizations (NGOs)² both in its structures and in its work. Since the end of the 1990s, the dominant effort to integrate interest groups, now often labelled as “stakeholders”, more actively into the UN’s work has been focused on private companies and business associations.

With the adoption of the 2030 Agenda for Sustainable Development in September 2015, this trend has further accelerated. Governments have dedicated a pivotal role to partnerships with the private sector in the implementation and financing of the 2030 Agenda and its Sustainable Development Goals (SDGs).

The root causes of this trend are manifold. They include general dissatisfaction with the slow pace of cumbersome intergovernmental negotiation processes, and the lack of will and capacity on the part of many governments to engage in binding financial commitments to implement global agreements, or to translate existing commitments into practice. Governments are often seen as too weak to solve today’s global problems and to achieve the ambitious goals and targets of the 2030 Agenda alone. On the other hand, corporate actors are often portrayed as pragmatic, solution-oriented, flexible, efficient and un-bureaucratic – and as welcome providers of the urgently needed financial resources for the implementation of the SDGs.

The entire UN system faces a precarious financial situation. Over the years, the increase of assessed contributions has stagnated.³ In his first report on repositioning the UN system, released in June 2017, UN Secretary-General António Guterres states that “only about 15% of the system is core-funded” while “at the same time, more than 90 % of all non-core flows are being directed to single donor-single entity projects”.⁴ Many UN agencies and programs are therefore actively promoting partnerships with the private sector, in hope of additional financial resources for their work.

However, very often, these expectations have been disappointed. Partnerships have brought few additional financial resources.⁵ They have sometimes even shifted decision-making competences and governmental funding from UN entities to these partnerships. In addition, they have granted the business actors influence on the agenda of the UN and the definition of solutions for today’s global challenges.

The new forms of public-private interaction are also promoted by corporations and business lobby groups themselves, as the private sector can benefit from them in many ways.⁶ Cooperation with the UN can bring business actors new market opportunities, reputation and image enhancement, greater visibility on the international scene, better risk management, and improved access to political decision-makers.⁷

Today, there are many different forms of engagement between the UN and the private sector (see Box 1). They range from bilateral contacts, participation in policy dialogues and public-private partnerships (PPPs) for technical cooperation between individual corporations and UN entities at the country level up to global (multi-stakeholder) partnerships between UN entities, governments, corporations, philanthropic foundations, and civil society organizations. Hundreds of collaboration projects aim to exchange knowledge, strengthen advocacy work, mobilize additional private and public resources, facilitate technical co-operation and service provision, and coordinate public and private action in certain policy areas.

¹ The WHO Framework of engagement with non-State actors, for instance, considers nongovernmental organizations, private sector entities, philanthropic foundations and academic institutions as non-State actors. See WHO (2016), para 8. For a more detailed discussion of the problems of this term, mainly the lack of distinction between the various actors, see Box 2 and chapter II.3.

² The UN defines NGOs as “All organizations of relevance to the United Nations that are not central Governments and were not created by intergovernmental decision, including associations of businesses, parliamentarians and local authorities (...).” UN Doc. A/58/817, Glossary.

³ See Adams/Judd (2018).

⁴ UN Secretary-General (2017), para. 112.

⁵ See: Adams/Martens (2015).

⁶ See Seitz et al. (2019).

⁷ See, for instance, a promotional brochure of UNESCO listing incentives for companies to enter into a partnership with the UN agency, UNESCO (2014), p. 9.

Box 1: Forms of engagement between the UN and the private sector

(as referred to in WHO's Framework of engagement with non-State actors, FENSA)

- » Participation in meetings of the governing bodies, in consultations, hearings, and other meetings
- » Provision of resources in form of financial or in-kind contributions
- » Evidence as inputs based on up-to-date information, knowledge on technical issues, and consideration of scientific facts
- » Advocacy as awareness raising of UN issues
- » Technical collaboration, including product development, capacity-building, operational collaboration in emergencies, or other contributions to the implementation of policies. This includes public-private partnerships (PPPs) in the form of project-based collaboration, which has a specific duration, geographical location, funding, and clear outcomes and outputs of mutual interest to different partners.

Limits, risks and side effects

Listening to the discourse maintained in large parts of the UN, one would assume that there is simply no alternative to the enhanced collaboration between the UN and private actors.⁸

So, where is the problem? The basic challenge is that the firm belief in the advantages of enhanced engagement between the UN and the private sector is often not based on empirical evidence and lacks systematic impact assessments. The various UN-business partnerships have developed erratically and without system-wide standards and safeguards.

As demonstrated more fundamentally in previous studies published by Global Policy Forum, Brot für die Welt and MISEREOR, the enhanced interaction between the UN and the private sector threatens to increase corporate influence and to widen the power imbalance between business actors and civil society organizations in global governance.⁹

So far, UN agencies and programs have provided only selective and limited information about their interactions with the private sector. Detailed breakdowns of financial and in-kind contributions from the private sector are difficult to find. Robust system-wide rules and guidelines for interaction are

lacking, and the existing guidelines are weak and highly heterogeneous.

There is not even a common terminology within the UN system to define business actors or private sector entities. Each UN entity uses its own definition to describe its relationship with private or business actors (see Box 2).

Box 2: Differentiation of business actors and private sector entities

The UN does not use a uniform definition of "Private sector entities".

The Guidelines on a principle-based approach to the Cooperation between the United Nations and the business sector define the latter as

"either for-profit, and commercial enterprises or businesses; or business associations and coalitions (cross-industry, multi-issue groups; cross industry, issue-specific initiatives; industry-focused initiative); including but not limited to corporate philanthropic foundations".¹⁰

In several cases, this definition is also used to describe the private sector.¹¹

The WHO Framework for engagement with non-State actors (FENSA) defines the private sector as follows:

"Private sector entities are commercial enterprises, that is to say businesses that are intended to make a profit for their owners. The term also refers to entities that represent, or are governed or controlled by, private sector entities. This group includes (but is not limited to) business associations representing commercial enterprises, entities not "at arm's length" from their commercial sponsors, and partially or fully State-owned commercial enterprises acting like private sector entities."¹²

Some UN entities, like the WHO consider private philanthropic foundations as non-profit entities and therefore as a separate type of actors. However, whether it be foundations by corporations, like the Coca-Cola Foundation or foundations by wealthy individuals, such as the Bill & Melinda Gates Foundation, they often gained their funds from corporate activities or have shares in these corporations. Similarly, some NGOs receive a large share of their funds from corporations or philanthropic foundations. These funds make it difficult to distinguish between public interest NGOs and business NGOs.¹³

Certain UN organizations consider business actors as non-governmental organizations, non-State actors, (non-party) stakeholders, or in some cases even as part of civil society.¹⁴

10 UN Secretary-General (2015), Art. 8(b).

11 See for instance Joint Inspection Unit/Dumitriu (2017), para 8.

12 WHA69.10, Art. 10

13 See, for instance, <https://thewire.in/health/whos-plan-to-jointly-work-with-privately-funded-groups-threatens-its-credibility>

14 <https://unctad.org/en/Pages/About%20UNCTAD/UNCTAD%20And%20Civil%20Society/NGOs-IGOs-with-observer-status.aspx>

8 See for instance UN Secretary-General (2017b), para. 131.

9 See, for instance, Seitz et al. (2019), Adams/Martens (2015), Martens (2014), Obenland (2014) and Pingeot (2014).

In recent years, awareness has grown that the enhanced interaction with the private sector bares a variety of risks and side effects for the UN, which must be considered carefully. WHO, for instance, has identified the following risks in its Framework of engagement with non-State actors (FENSA):

- a) conflicts of interest;
- b) undue or improper influence exercised by a nonState actor on WHO’s work, especially in, but not limited to, policies, norms and standard setting;
- c) a negative impact on WHO’s integrity, independence, credibility and reputation; and public health mandate;
- d) the engagement being primarily used to serve the interests of the nonState actor concerned with limited or no benefits for WHO and public health;
- e) the engagement conferring an endorsement of the non-State actor’s name, brand, product, views or activity;
- f) the whitewashing of a nonState actor’s image through an engagement with WHO;
- g) a competitive advantage for a non-State actor.¹⁵

UN Secretary-General António Guterres acknowledges that the UN “must do better to manage risks and ensure oversight in a manner that protects its values and yet allows space for innovation and expanded partnership arrangements”.¹⁶

He complains about the lack of transparency and accountability of the range of partnerships and states that due diligence standards and procedures would be highly heterogeneous across the UN system and would need to be streamlined. It would sometimes lead to contradictory decision-making across entities, “undermining the integrity and increasing the vulnerability of the Organization”.¹⁷

Two reports of the UN’s Joint Inspection Unit (JIU) of 2017 also point out to gaps within the current UN system’s mechanisms and policies on ethics and integrity, as well as on partnerships with the private sector.

The JIU Report *Review of Mechanisms and Policies addressing Conflict of Interest in the United Nations System* observes that while the topic of personal conflict

of interest is well covered, hardly any organizational conflict of interest policy exists among UN system’s organizations.¹⁸

The JIU Report *The United Nations System: Private Sector Partnerships Arrangements in the Context of the 2030 Agenda for Sustainable Development* recommends, *inter alia*, that

“The Secretary-General of the United Nations and all the executive heads of participating organizations should identify and agree on a minimum set of common standard procedures and safeguards for an efficient and flexible due diligence process (...).”¹⁹

Towards a common and systemic approach to UN-business relations

So far, interaction between the UN and the private sector is mainly governed by the biannually adopted General Assembly resolution *Towards global partnerships and by the UN Secretary General’s Guidelines on a principle-based approach to the Cooperation between the United Nations and the business sector*.²⁰ While these documents set a few basic standards, they are rather non-comprehensive and limited in application. This includes, *inter alia*, only limited selection and exclusion criteria, lack of conflict of interest policies, only vague requirements for due diligence measures.

Already in its resolution of 2015, the General Assembly stressed the need for the UN system

“to develop, for those partnerships in which it participates, a common and systemic approach which places greater emphasis on transparency, coherence, impact, accountability and due diligence, without imposing undue rigidity in partnership agreements”.²¹

In recent years, almost all UN agencies, funds and programs have established Private Sector Focal Points that coordinate activities with the private sector within their respective organization. Many UN agencies, funds and programs have set up processes for establishing new guidelines and policies on the engagement with the private sector. But the requested “common and systemic approach” that leads to

18 For a more detailed discussion of the problematic and differentiation of conflict of interest aspects see chapter II.5.

19 UN Joint Inspection Unit/Dumitriu (2017), recommendation 7.

20 The Guidelines were first issued in 2000, revised and reissued in 2009, and again revised in 2015 as requested by UNGA Resolution A/RES/68/234, see UN Secretary-General (2015).

21 UN Doc. A/RES/70/224, para. 13.

15 WHO (2016), para. 7.

16 UN Secretary-General (2017b), para. 132.

17 Ibid. para 133.

a comprehensive regulatory and institutional framework for UN-private sector relations is still missing.

This working paper aims to provide a rough overview of existing rules and guidelines on the cooperation between the UN and the private sector – at least as they are publicly available. It will describe com-

mon features and discuss advances and shortcomings of the most prominent and debated rules and guidelines. Finally, it will present proposals for improvement of the existing rules and steps towards a new regulatory and institutional framework for interaction between the UN and the private sector.

II. The present state of affairs – current UN rules of engagement with private actors

Rules and guidelines for the engagement of UN entities with the private sector can be found in various documents. The spectrum ranges from general intergovernmental resolutions to specific financial regulations, policies for the use of the UN logo, and procurement guidelines. Some have been developed in a more internal context, and others, like those at the WHO, in several-year-long, in-depth intergovernmental processes.

Several UN entities have included in their rules of procedures provisions on civil society and private sector participation in intergovernmental meetings, decision-making and policy formulation processes (as e.g. accreditation as participant or observer). The Committee on World Food Security (CFS), for instance, has established a civil society and a private sector mechanism which coordinates the participation of their members in the CFS autonomously and which has established its own guidelines.²² Few UN entities have set these kinds of provisions in their specific partnership frameworks and rules, also going into detail on the other forms of engagement (e.g. WHO and UNEP).

Several UN entities, e.g. WFP, FAO, UN-Habitat or UNESCO have established strategies on partnerships with the private sector. Sometimes, as in the case of WFP, these strategies include guiding principles for partnerships, due diligence policies and selection criteria. However, their main emphasis is on mobilizing more partnerships, and only a small section deals with the management of potential risks.

Only few UN entities have established comprehensive frameworks, covering various forms of engagement, and with more detailed provisions on several aspects. Among them are the following:

- » WHO Framework of Engagement with non-State Actors (FENSA) (established in 2016)
- » UNDP Policy on Due Diligence and Partnerships with the Private Sector (established in 2013) complemented by the Risk Assessment Tool Guideline (established in 2016)

- » UNEP Partnership Policy and Procedures (established in 2011)
- » FAO Guidelines for Partnerships and Collaboration with the Private Sector (established in 2000, revised in 2016)

The comprehensive frameworks mostly cover “partnerships” using the definition in accordance with paragraph 8(a) of the *Guidelines on a principle-based approach to the Cooperation between the UN and the business sector*. It defines partnerships as

“a voluntary and collaborative agreement or arrangement between one or more parts of the UN system and the private sector, in which all participants agree to work together to achieve a common purpose or undertake a specific task and to share risks, responsibilities, resources, and benefits”.²³

Procurement of goods and services is not addressed in these frameworks, but is subject to specific procurement policies.

In addition to general principles, the comprehensive frameworks have often included, *inter alia*, due diligence and risk assessment procedures, conflict of interest policies, as well as provisions on monitoring, accountability and transparency. Some elements can also be found in the more limited rules of individual UN entities.

In the following, essential elements of the existing rules and frameworks are described in greater detail.

1. Guiding principles

Many UN entities refer to the UN Charter, the UN Secretary-General’s Guidelines and the ten principles of the UN Global Compact²⁴ as guiding principles of their engagement with the private sector. Few have formulated additional principles, often emphasizing that the interaction should contribute to fulfilling the UN entity’s mandate.²⁵ To ensure the integrity, impartiality and independence of the UN is another principle that is often mentioned.

²³ UN Secretary-General (2015).

²⁴ See UN Global Compact (2004).

²⁵ See e.g. UNHCR (2016).

²² See the “Rules of Procedure of the Committee on World Food Security”, in FAO (2017), pp. 121–127.

In addition, the more recently established or revised frameworks have included the support of the SDGs as a guiding principle.²⁶

WHO's FENSA declares that any engagement must "respect the intergovernmental nature of WHO and the decision-making authority of Member States as set out in the WHO's Constitution"²⁷ and "protect WHO from any undue influence, in particular on the processes in setting and applying policies, norms and standards".²⁸

UNEP's Policy on Stakeholder Engagement has chosen a similar language, stating:

"While input from stakeholders can provide a valuable contribution to the intergovernmental process, decisionmaking within UNEP remains the prerogative of Member States."²⁹

In some cases, the frameworks include principles like "inclusiveness" or "equality"³⁰ of all actors, whether they be civil society organizations or transnational corporations, business associations or philanthropic foundations. The principle of "inclusiveness" in WHO's FENSA has been sharply criticized by civil society organizations as contradicting "the basis of all conflicts of interest policies which, in order to be effective, must consider which actor to exclude, when and why".³¹

2. Definition of private actors

As stated by WHO's FENSA, any due diligence process should include the identification of the nature of the new partner. Some UN entities, like UNDP and WHO, have specific policies for the various actors of the private sector, like companies, business associations (only WHO) and private foundations. Other UN entities, for example UN-Habitat in its policy on stakeholder engagement, treat all actors in the same way, under the term "stakeholders".³²

FENSA and other frameworks, such as UNEP's Partnership Policy and Procedures distinguish between non-profit (NGOs, academic institutions, philanthropic foundations) and for-profit actors (compa-

nies, business associations and corporate foundations). What however is lacking in FENSA and other frameworks is a clear delineation of NGOs with "public" from non-State actors with "for-profit" interests, and a correspondingly differentiated treatment, e.g. with regard to their participation in inter-government meetings and policy dialogues. While commercial enterprises are not allowed to enter into "official relations status" that grants access to these meetings, other entities of the private sector, like business associations, private foundations and NGOs with close business links and business funding, can apply for this status.

According to FENSA, "WHO will determine through its due diligence if a non-State actor is subject to the influence of private sector entities to the extent that the non-State actor has to be considered itself a private sector entity".³³ In March 2019, Third World Network (TWN) complained that this decision had not yet been implemented.³⁴ Such scrutiny would, however, be a critical prerequisite for deciding if an entity were to be allowed to enter into official relation status with the WHO or not. TWN has mapped entities that sought renewal of official relation status, showing that out of 71 non-State actors, 46 (66.2%) disclosed income from the business sector.³⁵

Other UN entities like UNEP or CFS have established major groups or stakeholder mechanisms, based on the categories of stakeholders. There, business and industry, and in the case of CFS also foundations form their own stakeholder mechanism and have the same access to and participation in intergovernmental meetings and decision-making processes as public-interest actors.

3. Exclusionary criteria

Based on the UN Secretary-General's (UNSG's) Guidelines, many UN entities have established selection and exclusion criteria for partnering with a private actor. The UNSG's Guidelines state that the UN will not engage with business sector entities:

- a) Which contribute to or are otherwise complicit in human rights abuses, tolerate forced or compulsory labour or the use of child labour, are involved in the sale or manufacture of anti-personnel landmines or cluster bombs, or that otherwise

²⁶ See e.g. UNICEF (2017).

²⁷ WHO (2016), para. 5(c).

²⁸ Ibid. para. 5(e).

²⁹ UNEP (2016), para. 3.

³⁰ See UN-Habitat (2018).

³¹ Letter by 48 Civil Society Organizations, from 25 January 2016 (https://www.medico.de/fileadmin/user_upload/media/who-fensa-cs_25-01-2016.pdf).

³² See UN-Habitat (2018).

³³ WHO (2016), para. 13.

³⁴ See Gopakumar (2019).

³⁵ See <https://thewire.in/health/whos-plan-to-jointly-work-with-privately-funded-groups-threatens-its-credibility>.

do not meet relevant obligations or responsibilities required by the United Nations.

- b) That are engaged in any activities which are inconsistent with sanctions established by the United Nations Security Council or other similar measures.³⁶

As described by the UNSG, the exclusionary criteria vary among the UN entities. While, for instance, 61% of UN entities totally exclude companies in the tobacco industry from partnerships, 19% consider them as high-risk sector but do not exclude them from partnerships.³⁷

WFP adds for example the following exclusionary criteria:

“Systematic failure to demonstrate commitment to meeting the principles of the United Nations Global Compact or the United Nations Guiding Principles on Business and Human Rights.”³⁸

However, WFP does not explain in further detail what it regards as a “systematic failure”.

UNDP’s *Guidelines for Private Sector Partner Risk Assessment Tool* contains a list of 11 exclusionary criteria. According to this list, unlike with high risk-sector companies, UNDP will not under any circumstances engage with companies

- » involved in the manufacture, sale or distribution of controversial weapons or their components;
- » that manufacture, sell or distribute tobacco or tobacco products;
- » that violate UN sanctions, relevant UN conventions, treaties, and resolutions;
- » that are directly involved in pornography;
- » that manufacture, sell or distribute substances subject to international bans or phase-outs (can include e.g. pharmaceuticals, pesticides or herbicides, asbestos, ozone depleting substances, persistent organic pollutants [POPs] and mercury) and wildlife or products regulated under the Convention on International Trade in Endangered Species (CITES);
- » that are engaged in the gambling industry;

- » that violate human rights, including rights of indigenous peoples and other vulnerable groups, or that use or tolerate forced or compulsory labour or child labour.³⁹

Some organizations have defined exclusionary criteria related to industries in their policy area. WFP, for instance, considers actors active in the food and beverage industry as subject to an elevated level of scrutiny.⁴⁰ Although especially the products of the alcohol, soda and fast-food industry have a specific (and potentially negative) impact on health, the WHO does not exclude these industries from engagements but only states to exercise particular caution towards those private actors related to non-communicable diseases and their determinants.⁴¹ What this particular caution will look like, e.g. which practical steps it calls for, is not yet defined.

In its *Guidelines and Manual for Working with the Business Community* from 2001, UNICEF further excludes any “manufacturers of infant formula whose marketing practices violate the International Code for the Marketing of Breastmilk Substitutes; and companies involved in pornography, exploitative and/or corrupt practices; companies found in violation of environmental laws”.⁴²

Fossil fuels, chemicals and GMOs are sensitive sectors for UNEP. It does, however, not exclude companies in these sectors from partnerships.⁴³

For UNHCR, neither companies nor their subsidiaries are eligible for partnerships if they do not meet the criteria.⁴⁴

UNDP goes into even more detail. It states that the exclusionary criteria have to be applied to the entire supply chain of the respective company and provides guidance on how to deal with the direct or indirect involvement of subsidiaries. For instance, UNDP’s Guidelines do not allow engagement if the parent company is a manufacturer of weapons and owns more than 20% of the potential partner, or its revenues exceed 5% of total annual revenues. With regard to business associations, UNDP, however, states:

39 UNDP (2016a), pp. 7–9.

40 See WFP (2019), para. 18.

41 See WHO (2016), para. 45.

42 UNICEF (2001), para. 6.

43 See UNEP (2011), Annex 2.

44 See UNHCR (2016).

36 UN Secretary-General (2015), para. 16.

37 See UN Secretary-General (2017a), para. 33.

38 WFP (2019), para. 17.

“UNDP will not exclude working with a chamber of commerce because it may have a company from an excluded sector among its members. However, if the chamber or association itself is involved in promotion of an excluded sector, then UNDP will not engage with them.”⁴⁵

At the WHO, the link to related companies does seem less relevant. While WHO’s FENSA requires particular caution with regard to private sector entities whose policies or activities are negatively affecting human health, the Bill & Melinda Gates Foundation has received official relation status at the WHO. The Bill & Melinda Gates Foundation Trust endowment – the source of revenue for the Foundation – was and still is invested in companies of the food and beverage industry, like Coca-Cola, Walmart, or Arcos Dorados – McDonald’s largest franchisee in the world – products that cause or treat the current crisis of preventable heart disease, stroke, cancer, and diabetes.⁴⁶

Interestingly, UNHCR counts on the self-reporting of the corporation but makes the provision of liability for damages. The Corporate Guidelines state:

“Corporate partners are responsible for indicating their present and past activity in the above areas to UNHCR prior to concluding any deal. By entering into an agreement with prior knowledge of non-eligibility status, a company can be liable for damages incurred by UNHCR from such partnership.”⁴⁷

4. Due diligence and risk assessments

As the UN Secretary-General claims in his reports of 2017, most UN entities conduct due diligence.⁴⁸ As described by the UN Secretary-General, this does, however, often lead to contradictory or not plausible decision-making. The UN Office for Partnerships, for instance, did not see any problems co-organizing a joint side event at the High-level Political Forum on Sustainable Development 2018 with the International Alliance for Responsible Drinking, representing 11 of the biggest alcohol producers in the world.⁴⁹

Some entities also use the services of external due diligence research service providers, facilitated by

the UN Global Compact. Detailed descriptions of due diligence and risk management processes are rarely publicly available.⁵⁰ Exceptions are, among others, WHO, WFP, UNDP, UNEP and FAO.

WHO’s FENSA distinguish between due diligence and risk assessment, defining the two processes as follows:

“Due diligence refers to the steps taken by WHO to find and verify relevant information on a non-State actor and to reach a clear understanding of its profile. While due diligence refers to the nature of the non-State actor concerned, **risk assessment** refers to the assessment of a specific proposed engagement with that non-State actor.”⁵¹

But not all UN entities draw such a clear line between these two processes. UNDP, for instance, defines the following steps for conducting a risk assessment, describing it at the same time as a due diligence process (see Figure 1):

- » Collate background information.
- » Step 1: Assess the private sector entity against UNDP exclusionary criteria.
- » Step 2: Research potential controversies.
- » Step 3: Assess the private sector entity commitment to ESG [Environmental, Social and Good Governance issues] and the partnership risks and benefits.
- » Step 4: Make a decision.
- » Step 5: Prepare risk log, monitoring plan and communication materials.⁵²

For WFP, due diligence is required for any private contribution at or above US\$ 50,000, or any partnership that includes an agreement. Exceptions are allowed in events of emergency when funding is rapidly needed. However, in such a case, the due diligence process has to be completed retroactively.⁵³

UNDP follows a different approach that requires conducting risk assessments in all contexts, including crisis and post-crisis settings. In crisis settings, the headquarters can provide more support to ensure a quick assessment process.⁵⁴

45 UNDP (2016a), p. 3.

46 See <https://www.holdingschannel.com/13f/bill-melinda-gates-foundation-trust-top-holdings/> and an open CSO letter to the WHO, criticizing this practice: <http://www.babymilkaction.org/archives/12011>.

47 UNHCR (2016).

48 See UN Secretary-General (2017a).

49 For more detail see Seitz et al. (2019), Box 2.

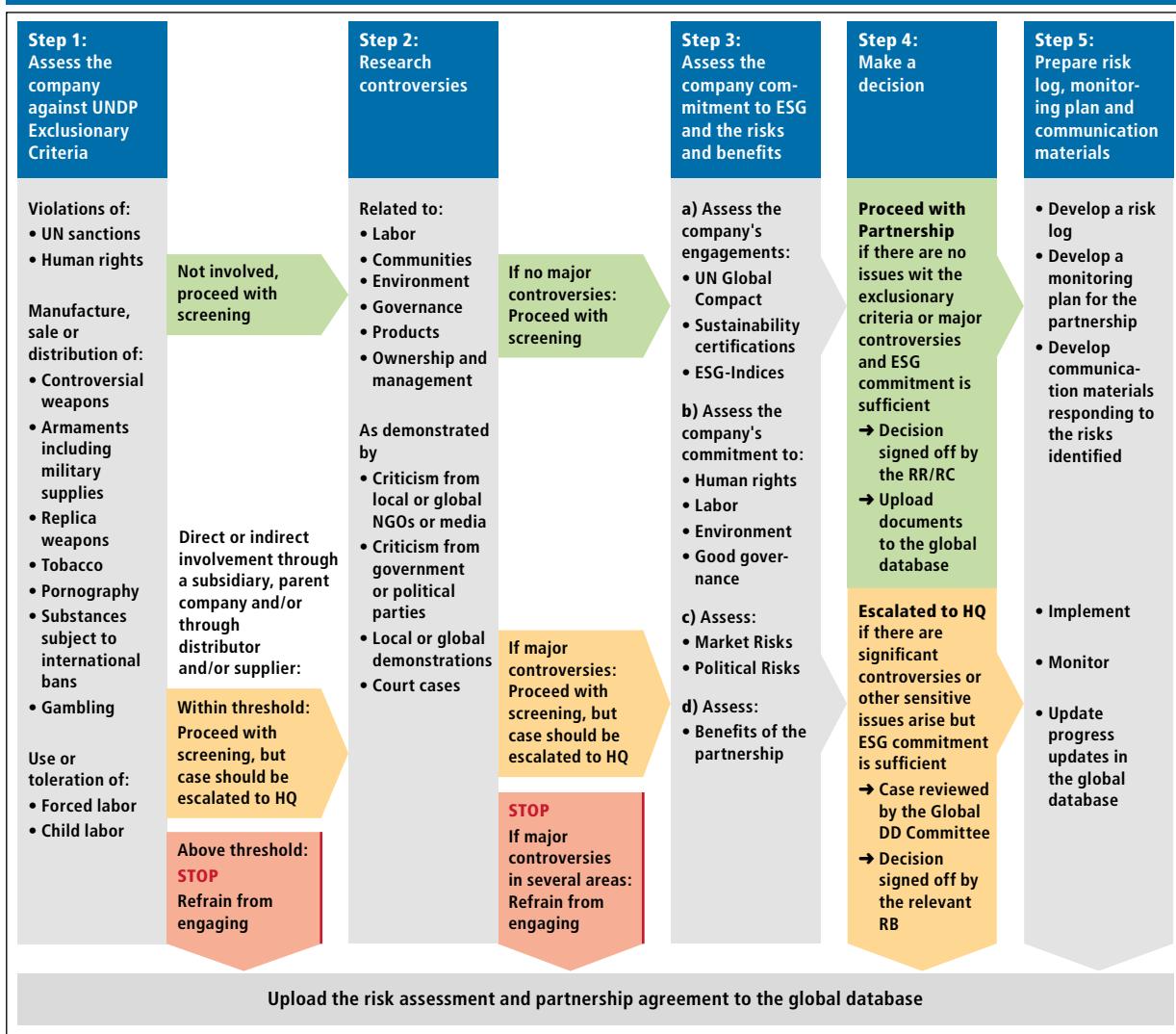
50 E.g. UN Women and UNICEF.

51 WHO (2016), para. 29.

52 UNDP (2016a), p. 2.

53 WFP (2019), Due Diligence Process Overview, para. 8.

54 See UNDP (2013), p. 3.

Figure 1: UNDP Due Diligence Process for Private Sector Partnerships

Source: UNDP (2016a).

Often, the guiding principles serve as basis for the UN entities' due diligence criteria. UNDP has set specific due diligence assessment criteria.⁵⁵ In the case of WFP, the Legal Office assigns four different levels of risk to the due diligence report. Depending on the level of risk, different procedures and responsibilities for approval are necessary. As the definition of the level of risk is not clearly defined, it leaves room for interpretation.

WHO's FENSA declares that if the engagement is of low risk, for example because of its repetitive nature, or because it does not involve policies, norms and standard setting, a simplified due diligence and risk assessment can be performed.⁵⁶

UNEP due diligence procedure comprises three categories of risk (exclusion screening, caution, positive screening), which require different procedures afterwards.⁵⁷

For UNDP, for those partnerships that do not involve a “close engagement” (e.g. an advocacy or policy dialogue event or financial contributions under US\$ 100,000) and “in which the private sector entity is from a low-risk sector”, a reduced level of due diligence can be applied.⁵⁸ In contrast to WHO's FENSA, UNEP and WFP, UNDP provides a list of high-risk sectors and describes different cases when there is a low, significant or high risk.⁵⁹ It lists the several sectors as high-risk (see Table 1).

⁵⁵ See UNDP (2013), p. 8.

⁵⁶ See WHO (2016), para. 28, and guide on how to determine whether an engagement qualifies for a simplified assessment procedure in WHO (2018), p. 29–30.

⁵⁷ See UNEP (2011), p. 18-19 and Annex 2.

⁵⁸ UNDP (2016a), p. 5.

⁵⁹ See UNDP (2013), p. 2, Annex 1 and UNDP (2016a), Annex 1.

Table 1: High-risk sectors for UN-business interactions (according to UNDP)

Oil and gas: Extraction of oil and gas (including oil sands); manufacture of refined petroleum products; transport via pipeline.
Metals and mining: Mining (incl. coal, diamonds and other precious and semiprecious stones, metals, uranium, etc.), manufacture of basic iron, steel, non-ferrous metals, precious metals; casting of metals; treatment and coating of metals; quarrying.
Utilities: Electric power generation from large dams, nuclear power plants, fossil-fuel power plants (e.g. gas and coal-fired); electric power transmission and distribution; water collection, treatment and supply; sewerage; waste treatment and disposal; materials recovery (recycling).
Large infrastructure: Construction of buildings, roads, railways, civil engineering projects; construction or upgrading of large dams, nuclear power plants or pipelines.
Agriculture and fishing: Growing of crops, including palm oil or other large monocultures (e.g. energy crops for biofuels); livestock farming, fishing; aquaculture.
Timber, pulp and paper: Timber production; logging; sawmilling and planning of wood; production of pulp and paper.
Alcohol: Manufacturers of alcoholic beverages, wholesale distributors and importers that deal solely and exclusively in alcohol beverages or whose primary income comes from trade in alcohol beverages. In addition, "alcohol industry" includes associations or other entities representing or funded largely by any of the above, as well as alcohol industry lobbyists.
Chemicals: Manufacture of basic chemicals, pharmaceuticals, petrochemicals, agrochemicals, pesticides, fertilizers, plastics, paints, varnishes, coatings, detergents and toiletries.
Clothing, toys and consumer electronics (risks are due mostly to issues in the supply chain)
Fast food, high sugar drinks and soda

Source: UNDP (2013), p. 6.

Even if a potential partner is categorized as belonging to a high-risk sector, the due diligence and risk assessment can still result in entering into a partnership. UNDP has, *for instance*, a long-lasting cooperation with the Foundation of the sugar drink and soda company Coca-Cola (e.g. 2006–2016: Every Drop Matters,⁶⁰ 2014–2018: New World⁶¹).

While the benefits of new partnerships are often cited, explicit mentioning of potential risks is rare. WHO's FENSA, however, has included a list of potential risks (see chapter 1).⁶²

In controversial and risky partnerships, UNDP suggests preparing a risk management strategy and risk management capacity assessment.⁶³

A slightly different approach is pursued by UNEP. Prior to initiating a partnership, a so-called 'partner scoping' should be made by the responsible officer. This includes the following six steps:⁶⁴

- » Evaluation of the presumed need for a partnership
- » Determination of the types of external resources required for projects implementation
- » Determination of the nature of the foreseen partnership
- » Determination of the category of partner providing UNEP with funding (including due diligence procedure)
- » Determination of the category of partner that UNEP will provide with funding in relation to agreed tasks (including due diligence procedure)
- » Determination of the category of collaborating partner with whom in-kind resources are shared

WFP has identified three key dimensions to assess partnership impact, the number of additional beneficiaries reached, the reduction of WFP costs and higher efficiencies in core operations and the value to beneficiaries unlocked by strengthening WFP staff capacities.⁶⁵

Needs assessments of an organization, the added value of a potential collaboration/partnership, and cost-benefit analysis are rarely outlined in detail.

60 See <http://www.watergovernance.org/programmes/every-drop-matters/>.

61 See <https://www.coca-colacompany.com/stories/undp-and-the-coca-cola-foundation-release-report-on-new-world-pr>.

62 See WHO (2016), para. 7.

63 See UNDP (2013), p. 10.

64 See UNEP (2011), p. 7ff.

65 See WFP (2019).

5. Conflict of interest policies

Hardly any UN entity has comprehensive conflict of interest policies. Conflict of interest is often defined as “a situation in which some interest of a person has a tendency to interfere with the proper exercise of his judgement in another’s behalf.”⁶⁶ Anne Peters explains further that “(...) the conflict we are dealing with is an intrapersonal [or intra-institutional or intra-organizational] conflict arising within a human or an institution which is entrusted with such decision-making. It is not a clash between different actors.”⁶⁷ A conflict of interest of an institution or a staff person can occur, for instance, if the institution or the staff has the mission to set a regulation or to monitor the implementation of a norm in the energy sector and receives funding or seeks funding from a coal company at the same time.

The JIU Report *Review of Mechanisms and Policies addressing Conflict of Interest in the United Nations System* observes that while the topic of personal conflict of interest is well covered, hardly any organizational conflict of interest policy exists among UN organizations. It therefore recommends that

“Executive heads of the United Nations system organizations should direct their officials entrusted with the ethics function to map the most common occurrences and register the risks of situations exposing their respective organizations to organizational conflicts of interest, no later than December 2019.”⁶⁸

Even the more comprehensive frameworks, such as those of UNDP, UNEP or WFP, do not deal with the different forms of conflict of interests nor contain any related management tools. Only WHO’s FENSA contains specific provisions on the management of conflict of interests, including individual conflict of interest as well as institutional conflict of interest. FENSA states:

“In actively managing institutional conflict of interest (...), WHO aims to avoid allowing the

conflicting interests of a non-State actor to exert, or be reasonably perceived to exert, undue influence over the Organization’s decision-making process or to prevail over its interests.”

One of the main critiques of FENSA by CSOs is, however, that the framework uses a wrong conceptualization of conflicts of interest, blurring the distinction between a conflict of interest, which is within an actor or institution, with ‘conflicting or diverging interests’ between actors.⁶⁹

6. Roles and responsibilities

Only few frameworks or guidelines dedicate specific roles and responsibilities to their staff. In its Private Donor Guidelines from 2004, the WFP, for instance, charges the Executive Director with leading fundraising efforts for high-value donations, while the Sponsoring Unit assists in identifying institutional or programmatic needs and the Legal Service Division reviews and approves all private-donor contracts.

WHO also assigns responsibilities on FENSA implementation in its *Guide for Staff on engagement with non-State actors*.

Often, the very same department that is in charge of mobilizing resources and promoting new partnerships with the private sector is also charged with due diligence processes. These two functions can stand, however, in conflict of interest. This was the case, for instance, in the WHO. Civil society organizations criticized that the division in the WHO Secretariat in charge of FENSA implementation also has the responsibility of promoting partnerships. “This would create potential risk of compromising the implementation of FENSA especially with regard to due diligence.”⁷⁰ The responsibility was later shifted to the Office of Compliance, Risk Management and Ethics.

WFP has acknowledged this potential conflict of interest and transferred responsibility for the due diligence process from the Private Sector Partnerships Division to the Legal Office.⁷¹

In contrast, UNEP just recently (in January 2018) opened a new Private Sector Unit in the Governance

⁶⁶ Davis (1982), p. 20. The UN’s Ethics Office distinguishes between organizational and personal conflict of interest as follows: “An organizational conflict of interest arises where, because of other activities or relationships, an organization is unable to render impartial services, the organization’s objectivity in performing mandated work is or might be impaired, or the organization has an unfair competitive advantage. A personal conflict of interest is a situation where a person’s private interests – such as outside professional relationships or personal financial assets – interfere or may be perceived to interfere with his/her performance of official duties.” (<https://www.un.org/en/ethics/conflictinterest.shtml>).

⁶⁷ Peters (2012), p. 4.

⁶⁸ UN Joint Inspection Unit/Sukayri (2017), recommendation 1.

⁶⁹ See Civil Society Statement on the World Health Organization’s Proposed Framework of Engagement with Non-State Actors (FENSA), 69th World Health Assembly, May 2016, p. 2 (www.ip-watch.org/weblog/wp-content/uploads/2016/05/FENSA-Civil-Society-Statement-May-2016.pdf). See also WHO (2018), p. 22.

⁷⁰ Gopakumar (2019).

⁷¹ See WFP (2019), Due Diligence Process Overview, para. 1.

Affairs Office, which is again tasked to handle and mitigate risks but also to identify and promote strategic partnerships.⁷²

7. Transparency

Despite the request of the UN General Assembly to all UN agencies, funds and programmes “to disclose the partners, contributions and matching funds for all relevant partnerships, including at the country level”⁷³, detailed information about these partnerships is not publicly available yet.

UN Secretary-General Guterres criticizes this lack of transparency by UN entities, e.g. missing information of the financial dimension of their partnerships. He further states that the information would not be easily collated to provide an overview of partnership activity across the United Nations system, enabling comparability and measurement.⁷⁴

Only a few UN institutions, like WHO, UNESCO and UNEP, report on their engagement with the private sector on a regular basis.

WHO’s FENSA has established a register of non-State actors, an internet-based, publicly available electronic tool to document and coordinate engagement with non-State actors. In addition to the publicly available information, Member States have electronic access to a summary report on due diligence of each non-State actor and their respective risk assessment and risk management on engagement.

UNDP also requires recording the initial risk assessment and the updates in the Private Sector Partnerships Database in the intranet.⁷⁵

8. Monitoring

UN entities have different approaches established for monitoring their engagement with private actors. UNDP, for instance, uses the risk assessment as a basis for a monitoring plan, and project managers are required to monitor regularly and report annually on the progress of every cooperation project (or partnership). They are also required to scan regularly publicly available information in order to avoid any reputational risk caused by the cooperation partner. However, the monitoring tools are not very sophisticated: UNDP’s Guidelines for Private Sector Part-

ner Risk Assessment Tool simply propose to set up a google or news alert regarding the private sector entity in question.⁷⁶

WHO’s FENSA has also included provisions for monitoring and evaluation of the framework. It states that the implementation of the framework should be periodically evaluated. The results of an evaluation, together with any proposals for revisions of the framework, shall be submitted to the Executive Board through its Programme, Budget and Administration Committee.⁷⁷

Similarly, WFP’s Private Donor Guidelines require that reporting, monitoring and evaluation procedures will be established in each partnership agreement.⁷⁸

Several UN entities, such as WHO, UNDP and UNICEF, have established exit strategies for the termination of a cooperation in case of non-compliance. UNICEF, for instance, defines the conditions for ending a partnership as follows:

“UNICEF shall discontinue its participation in a partnership if the alliance makes little or no progress towards achieving its objectives and if it or one of its participants violates any of the guiding principles and operational guidelines (...).”⁷⁹

WHO lists the following reasons for non-compliance:

“significant delays in the provision of information to the WHO register of non-State actors; provision of wrong information; use of the engagement with WHO for purposes other than protecting and promoting public health, such as for commercial, promotional, marketing and advertisement purposes; misuse of WHO’s name and emblem; attempt at undue influence; and abuse of the privileges conferred by official relations.”⁸⁰

In these cases of non-compliance by a non-State actor, WHO initiates an escalating set of counter-measures, from writing a reminder, a warning, or a cease-and-desist letter, to the rejection of renewal of engagement and the termination of engagement.

⁷² See UNEP (2018).

⁷³ A/RES/68/234, para. 13.

⁷⁴ UN Secretary-General (2017a), para. 41 and 42.

⁷⁵ UNDP (2013), p. 10.

⁷⁶ UNDP (2016a), p. 14.

⁷⁷ WHO (2016), para. 75.

⁷⁸ WFP (2005).

⁷⁹ UNICEF (2009), para. 57.

⁸⁰ WHO (2016), para. 69.

III. Elements of a regulatory and institutional framework for UN-private sector relations

So far, the legal and institutional framework for interactions between the UN and the private sector contains considerable gaps and lacks implementation. In contrast to the relationship with NGOs, the UN has neither an intergovernmental agreement regulating relations with the private sector nor a related intergovernmental decision-making body. At the level of the UN secretariats, the diverse range of partnership guidelines is reflected in a confusing assortment of Private Sector Focal Points with varying functions and competencies.

As part of the UN development system reform process, which was set up in 2017, UN Secretary-General Guterres has identified a stronger institutional response and system-wide approach to partnerships as one of seven priority areas for change.⁸¹ He has established several “work streams” to discuss the topic further.⁸²

In other fora, such as the Global Partnership for Effective Development Co-operation, voluntary principles are jointly formulated for private sector engagement at country-level.⁸³ While including the intention to establish safeguards for the use of public resources, establish due diligence, and improving country ownership, they focus on making private sector partnerships more effective and using development cooperation strategically “to offset risks for the private sector.”⁸⁴

A “common and systemic approach” to relations between the UN and the private sector should not, however, simply be limited to operational guidelines and improved cooperation between the Focal Points in the secretariats. The UN should develop an effective regulatory and institutional framework for its relations with the private sector. Such a framework should include the following elements:

1. A set of basic principles

All interaction between the UN and private actors should be based on a set of basic underlying principles. Their formulation need not start from scratch but could use as its starting point the principles outlined in the Secretary General’s Guidelines on a principle-based approach to the Cooperation between the United Nations and the business sector from 2015.

Beyond these general principles, other UN institutions have formulated more detailed frameworks and guidelines, as described in Chapter 2. The Principles of Engagement with the Private Sector already adopted by the UN System Standing Committee on Nutrition (SCN) in March 2006, while meant to guide the work of the SCN, still provide a useful example for other UN institutions as well (see Box 3).

But it is not enough just to formulate a set of principles. In order for them not to simply remain diplomatic clichés, they must be translated into operational guidelines that can be monitored.

2. Minimum standards for interaction between the UN and the private sector

To give these general principles concrete meaning, governments should agree to minimum standards for the interaction between the UN and the private sector, which then can be adopted and amended to the specific issues and structures of each UN entity. This could be in the form of a General Assembly resolution, comparable to the ECOSOC resolution on the regulation of the consultative relationship with NGOs. Such a resolution should set minimum standards for the shape and composition of initiatives involving the private sector. This should ensure the prevention of an undue influence of business actors on public policies, any distortion of competition, and a lack of representation of affected populations.

To minimize the risk to the UN’s reputation, this resolution should define standardized partner selection and exclusion criteria, which apply to the whole UN system. It should prevent companies and private actors who violate internationally agreed environmental, social and human rights conventions or otherwise violate UN principles (for example through corruption, breaking UN sanctions, proven lobbying

⁸¹ See A/72/684-E/2018/7, para 13 and the FAQ on the UN Development System Repositioning (https://outreach.un.org/ngorelations/sites/outreach.un.org/files/development_system_faq_31_may.pdf).

⁸² See UN Secretary-General (2017b), para 46.

⁸³ 161 countries and 56 organizations are members of the Global Partnership, including the UN Development Group, development organizations, development banks, CSOs, various multi-stakeholder partnerships, foundations and business associations, see <http://effectivecooperation.org/>.

⁸⁴ See <https://effectivecooperation.org/wp-content/uploads/2019/06/Kampala-Principles-final.pdf>, Principle 5.

Box 3: Principles of Engagement with the Private Sector of the UN Standing Committee on Nutrition

"Collaborative engagement with the private sector, beyond mere commercial transactions such as buying products and services, is guided by the following principles:

a) Relevance to Vision and Mandate:

Any collaborative activities with PSOs must have a direct relevance to and be in support of achieving SCN's vision and mandate. SCN shall establish and pursue its own agenda for private sector engagement, rather than only react to proposals.

b) Effectiveness and Efficiency:

Securing concrete outcomes in line with achieving the goals of the SCN, as well as the appropriate use of the SCN's resources as compared to alternative actions.

c) Managing Conflict of Interests:

Identification of interests of collaborating individuals and institutions, assessment of potential conflicts of interest, in keeping with SCN's policy on such conflicts (...) and subsequent management of these or exclusion from participation.

d) Independence from vested interest:

Maintaining the credibility of SCN by ensuring independence from commercial interests.

e) Transparency:

While respecting individual privacy and institutional confidentiality, as appropriate, the aim must be for all interested persons to easily obtain information on the activities, including through posting on websites.

f) Diversity:

Diversifying types of PSOs, to ensure that no one type (size/origin) dominates engagements, and ensuring that those who have no commercial interests in the issues have preferential participation.

g) Differential Safeguards:

Distinguishing between activities that relate to public policy making and should be particularly safeguarded from corporate influence, and other activities with less relevance to or influence on public policy. Differentiating between PSOs involved in activities that are confluent⁸⁵ with the interests of SCN, and those that are not.

h) Human rights based:

promoting and respecting human rights principles, treaties and covenants."⁸⁶

against international UN agreements, distorting competition, evading taxes, etc.) from entering into collaborative relationships with the UN.

The selection and exclusion criteria used so far in the Secretary General's Guidelines are full of gaps and have to be supplemented. A new provisional measuring stick should not be based on the vague principles of the Global Compact but rather, *inter alia*, on the UN Guiding Principles on Business and Human Rights, as well as on the OECD Guidelines for Multinational Enterprises.

Beyond this, the resolution could contain a consolidated list of product areas and business sectors, which are fundamentally off limits for UN-business relations. These should include, but not be limited to, *inter alia*:

- » arms production and trade, including components
- » the alcohol and tobacco industries
- » production of goods that contain substances subject to international bans or phase-outs (incl. e.g. pharmaceuticals, pesticides or herbicides, asbestos, ozone depleting substances, persistent organic pollutants, and mercury).

Minimum standards for interactions and detailed selection and exclusion criteria will remain useless if not systematically implemented. A regulatory framework for relations between the UN and private actors therefore needs also to ensure a transparent screening process and the institutional capacity necessary for this at the UN. This includes an accessible complaints procedure as well as mechanisms regarding the termination of partnerships and the exclusion of companies who do not abide by the minimum standards.

3. Systematic impact assessments and independent evaluations

Before a UN entity enters into a new collaboration or partnership with one or more private actors, the possible impact of this activity must be systematically assessed. This should include evaluating the added value of the initiative for the realization of the UN's goal; the relation between the risks, costs and side effects and the potential benefits; and the possible alternatives to the planned activities. Systematic impact assessments of this kind have not been done in the past, and in the future should be a requirement for every new "partnership". The same applies to independent evaluations of existing initiatives and partnerships.

⁸⁵ Confluent here means not only to be 'not antagonistic' to SCN vision, mandate and principles, but to have mutually supportive interests.

⁸⁶ UN Standing Committee on Nutrition (2006), p. 6.

The impact assessments and evaluations should be carried out by neutral UN bodies and not by institutions which see themselves as promoters of the partnership approach and who are pursuing the rapid expansion of global partnerships (for example the Global Compact Office). The results of the investigations must be made publicly accessible and discussed. One precondition for the independent assessment and evaluation of partnerships is the public availability of information. The UN should, therefore, establish a comprehensive system-wide database of all interactions/partnerships with private sector entities.

4. Institution building

For the UN to realize a regulatory framework for engagement with non-State actors, especially those with the business sector, they need to create the conditions necessary to support this work in their secretariats and at the intergovernmental level. This would include the following steps:

» **Building up staff capacity:** the additional duties of screening companies, legal advice, and monitoring and evaluation of interactions cannot be covered with existing staff resources. Current efforts to simplify guidelines and legal requirements for partnerships in order to facilitate the establishment of new initiatives mean that the required impact assessments and a serious examination of potential partnerships is impossible. It is necessary instead to build up UN staff capacity. To respect the principles called for by governments of ‘integrity’, ‘impartiality’, ‘independence’ and ‘neutrality’, as well as to prevent partisanship and corruption, the UN staff responsible for partnerships with private actors need to have a critical distance from potential partners. It would be counterproductive if the Private Sector Focal Points effectively acted as the representatives of private business interests within the UN system. It is particularly problematic in this context if private business representatives take on official functions at the UN secretariat or secretariats in any of the specialized agencies of the UN.

» **Strengthened impact assessment and evaluation capacity:** To systematically examine the implications of planned partnerships and collaboration projects with business and to evaluate existing initiatives independently, the UN should strengthen its impact assessment and evaluation mechanisms. The Joint Inspection Unit of the UN could play a greater role in this regard, if its financial resources and mandate were extended accordingly.

» **An Ombudsperson:** People and groups who are directly or indirectly affected by UN partnership initiatives and collaboration projects need an independent body to address complaints to. A new Ombudsperson within the UN secretariat could take on this role. It would have a similar function to that of the ombudsperson in the European Commission or the World Bank Inspection Panel. The duties of the Ombudsperson could also include examining complaints about individual UN partner companies.

» **An intergovernmental UN body for relations with the private sector:** Relations between the UN and the private sector are too important to be left only to the operational level of the secretariats. They affect the political future of the UN and should therefore be addressed politically. Discussing the topic sporadically in ECOSOC, and dealing with it every two years as one of 178 agenda items in the General Assembly, is not sufficient. It might therefore be necessary to set up an intergovernmental body which would address the relations between the UN and the private sector and the shaping and monitoring of partnership initiatives on an ongoing basis. It could have a similar status as the ECOSOC NGO Committee or the former ECOSOC Commission on Transnational Corporations. Its duties could cover monitoring the implementation of the principles, minimum standards and guidelines for UN-business interactions, and to develop them if necessary; analysing the impact assessments and evaluations and drawing appropriate conclusions; and making decisions on complaints. Full transparency and the comprehensive participation of NGOs should prevent the body from falling into the web of the business lobby or governments blocking each other over national business interests – admittedly a difficult task. The proposal for such an intergovernmental UN body could be discussed further during the intergovernmental negotiations on the reform of the High-level Political Forum on Sustainable Development or during the biannual debates on the General Assembly resolution *Towards global partnerships*.

But will establishing rules even manifest the interaction with and the opening of the UN for the private sector and its influence? Various civil society organizations are asking for no interaction at all and are calling for more provisions similar to Article 5.3 of the Framework Convention on Tobacco Control (FCTC) that excludes any tobacco industry from setting and implementing public health policies with respect to tobacco control.

Some rules leave space for interpretation, and how strictly they are being implemented therefore depends on governments and UN staff. Limiting the space of interpretation, rules of procedure and management of due diligence processes may help. In addition, a coherent approach across the entire organizations and high-level support is needed. Statements like the one from WHO Director-General Tedros do not help in this regard, as it seems that WHO tends to move from risk mitigation to weaker risk management only. On 21 May 2018, at the opening of the 71st World Health Assembly, he stated,

“Some people say that WHO is under threat because of the number of new actors in global health. I say we are more likely to succeed than ever before. By leveraging the experience, the skills, resources and networks of our partners, our impact can be exponentially larger than if we were acting alone. So to those who say that WHO is under threat, it’s quite the contrary. All those global partners are coming with opportunities and WHO should consider it as such. To truly fulfil our mandate, we must make our partnerships even deeper and stronger. (...) FENSA is not a fence. We must use whatever partnerships are open to us, in whatever way we can, to achieve our goal.”⁸⁷

Ensuring a better regulation of the engagement between the UN and private actors is only one approach to limit the risks of such engagement.

In addition, the misleading promotion of ‘multi-stakeholderism’, i.e. partnerships between inherently unequal partners, has to be further questioned. The UN and its Member States have to be reminded of their role as regulators. This includes moving from self-regulation and voluntary commitments of multi-stakeholder partnerships back to the strengthening of public policies and regulatory measures, like binding instruments for business and human rights, as currently discussed in the UNHRC.

Last but not least, in order to ensure that global problems can be solved within the framework of a strengthened democratic multilateralism, it is necessary to provide the UN system with the adequate resources to fulfil its mandate. Member States should therefore increase their untied funding, in particular their assessed contributions, and should not pull themselves out of the affair by referring to the need for more private funds.

⁸⁷ <https://www.who.int/dg/speeches/2018/opening-world-health-assembly/en/>

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https://www.who.int/about/collaborations/non-state-actors/FENSA_guide-for-staff.pdf

WHO (2016): Framework of engagement with non-State actors. Geneva (WHA69.10).
http://apps.who.int/gb/ebwha/pdf_files/WHA69/A69_R10-en.pdf?ua=1

A selection of UN frameworks, rules, guidelines and principles for the engagement with the private sector can be found in the annex of the online version of this working paper at
<https://www.globalpolicy.org/publications/publications.html>

Abbreviations

BINGO	Business Non-Governmental Organization
CFS	Committee on World Food Security
CITES	Convention on International Trade in Endangered Species
CSO	Civil Society Organization
ECOSOC	United Nations Economic and Social Council
FAO	Food and Agriculture Organization of the United Nations
FCTC	Framework Convention on Tobacco Control
FENSA	Framework of Engagement with non-State-Actors
GMOs	Genetically Modified Organisms
ICC	International Chamber of Commerce
IOE	International Organization of Employers
JIU	Joint Inspection Unit
NGO	Non-Governmental Organization
NSA	Non-State Actor
OECD	Organisation for Economic Co-operation and Development
POPs	Persistent organic pollutants
PPP	Public-Private-Partnership
SDGs	Sustainable Development Goals
SCN	Standing Committee on Nutrition
SMEs	Small and medium-sized enterprises
TWN	Third World Network
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNGP	United Nations Guiding Principles on Business and Human Rights
UN-Habitat	United Nations Human Settlements Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNSG	United Nations Secretary-General
USCIB	United States Council for International Business
WFP	World Food Programme
WHA	World Health Assembly
WHO	World Health Organization

Annex: Selection of UN frameworks, rules, guidelines and principles for the engagement with private actors

Institution	UN
Name	Guiding Principles for Partnerships for Sustainable Development ('type 2 outcomes'), "Bali-Principles"
Established in	2002
Link	https://sustainabledevelopment.un.org/content/dsd/dsd_aofw_par/par_mand_baliguidprin.shtml and https://sustainabledevelopment.un.org/content/dsd/dsd_aofw_par/par_critguid.shtml
Institution	UNSG
Name	Global Compact Integrity Measures
Established in	2005
Link	https://www.unglobalcompact.org/docs/about_the_gc/Integrity_measures/Integrity_Measures_Note_EN.pdf
Comment	Periodically revised, lastly 2016
Institution	UNSG
Name	Guidelines on a principle-based approach to the cooperation between the United Nations and the business sector
Established in	2000
Link	https://www.unglobalcompact.org/docs/issues_doc/un_business_partnerships/guidelines_principle_based_approach_between_un_business_sector.pdf
Comment	Revised in 2009 and 2015
Institution	UNSG
Name	Acceptance of pro bono goods and services
Established in	2006
Link	https://popp.undp.org/_layouts/15/WopiFrame.aspx?sourcedoc=/UNDP_POPP_DOCUMENT_LIBRARY/Public/United%20Nations%20Acceptance%20of%20Pro%20Bono%20Goods%20and%20Services%20(ST_SGB_2006_5).pdf&action=default
Institution	UNGA
Name	Resolution: Towards global partnerships: a principle-based approach to enhanced cooperation between the United Nations and all relevant partners
Established in	2001
Link	www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/254
Comment	Periodically revised, lastly in 2018
Institution	UN Women
Name	Procurement policies
Link	www.unwomen.org/en/about-us/procurement/doing-business-with-un-women
Institution	UNCTAD
Name	Arrangements for the participation of non-governmental organizations in the activities of the United Nations Conference on Trade and Development
Established in	1968
Link	https://unctad.org/en/PublicationsLibrary/issmisc2019d2_en.pdf (Annex III)
Institution	UNCTAD
Name	Arrangements for the participation of non-governmental organizations in the activities of UNCTAD
Established in	2011
Link	https://unctad.org/en/Docs/tdbex53d6_en.pdf
Institution	UNDP
Name	UNDP guidelines for working with the business sector
Established in	2001
Institution	UNDP
Name	Revised guidelines on cooperation between UNDP and the private sector
Established in	2009
Link	https://popp.undp.org/_layouts/15/WopiFrame.aspx?sourcedoc=/UNDP_POPP_DOCUMENT_LIBRARY/Public/Policy%20on%20Cooperation%20between%20UNDP%20and%20the%20Private%20Sector%202009.pdf&action=default
Institution	UNDP
Name	Policy on due diligence and partnerships with the private sector
Established in	2013
Link	https://popp.undp.org/_layouts/15/WopiFrame.aspx?sourcedoc=/UNDP_POPP_DOCUMENT_LIBRARY/Public/BERA_Partnerships_UNDP%20private%20sector%20due%20diligence%20policy%202013_FINAL.pdf&action=default

Institution	UNDP
Name	Private sector risk assessment tool
Established in	2016
Link	https://popp.undp.org/UNDP_POPP_DOCUMENT_LIBRARY/Public/BERA_Partnerships_UNDP%20Private%20Sector%20Risk%20Assessment%20Tool%20Guideline%20March%202016.docx and https://popp.undp.org/_layouts/15/WopiFrame.aspx?sourcedoc=/UNDP_POPP_DOCUMENT_LIBRARY/Public/UNDP%20Private%20Sector%20Risk%20Assessment%20Tool%202016.docx&action=default
Institution	UNDP
Name	Private sector partnerships
Established in	2016
Link	https://popp.undp.org/_layouts/15/WopiFrame.aspx?sourcedoc=/UNDP_POPP_DOCUMENT_LIBRARY/Public/Partnerships_Private%20Sector%20Partnerships.docx&action=default
Institution	UNDP
Name	Foundation
Established in	2016
Link	https://popp.undp.org/_layouts/15/WopiFrame.aspx?sourcedoc=/UNDP_POPP_DOCUMENT_LIBRARY/Public/BERA_Partnerships_Foundations%20docx.docx&action=default
Institution	UNDP
Name	Managing partnerships
Established in	2017
Link	https://popp.undp.org/_layouts/15/WopiFrame.aspx?sourcedoc=/UNDP_POPP_DOCUMENT_LIBRARY/Public/Partnerships_Managing%20Partnerships.docx&action=default
Institution	UNDP
Name	Innovation challenges
Established in	2015
Link	https://popp.undp.org/_layouts/15/WopiFrame.aspx?sourcedoc=/UNDP_POPP_DOCUMENT_LIBRARY/Public/PSU_Innovation_%20E-tendering%20and%20CSO%20engagement_Innovation%20Challenge.docx&action=default
Institution	UNDP
Name	Private sector partnerships procedures
Link	https://popp.undp.org/SitePages/POPPSubject.aspx?SBJID=391&Menu=BusinessUnit&Beta=0
Institution	UNDP
Name	Foundations procedures
Link	https://popp.undp.org/SitePages/POPPSubject.aspx?SBJID=419&Menu=BusinessUnit&Beta=0
Institution	UNDP
Name	Guidelines for private sector risk assessment tool
Established in	2016
Link	https://popp.undp.org/UNDP_POPP_DOCUMENT_LIBRARY/Public/BERA_Partnerships_UNDP%20Private%20Sector%20Risk%20Assessment%20Tool%20Guideline%20March%202016.docx
Comment	UNDP internal document
Institution	UNEP
Name	Guidelines on co-operation between the United Nations Environment Programme and business
Established in	2004
Institution	UNEP
Name	Guidelines for participation of major groups and stakeholders in policy design at UNEP
Established in	2009
Link	http://wedocs.unep.org/bitstream/handle/20.500.11822/13246/Guidelines-for-CSO-participation-Aug2609.pdf?sequence=1&isAllowed=y
Comment	revised draft of 2016, updating process still going on
Institution	UNEP
Name	UNEP policy on partnerships and guidelines for implementation
Established in	2009
Comment	Replaced by UNEP partnership policy and procedures
Institution	UNEP
Name	UNEP partnership policy and procedures
Established in	2011
Link	https://wedocs.unep.org/bitstream/handle/20.500.11822/20739/Resource%20Doc%20-%20Partnership%20Policy.pdf?sequence=1&%3BisAllowed=

Institution	UNEP
Name	Handbook for stakeholder engagement
Established in	2015
Link	http://wedocs.unep.org/bitstream/handle/20.500.11822/26862/HANDBOOK%20FOR%20STAKEHOLDER%20ENGAGEMENT.pdf?sequence=1&isAllowed=y
Comment	Revised in 2018
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Institution	UN-Habitat
Name	Guidelines for working with the business community
Established in	2007
Link	https://business.un.org/en/assets/16b41243-853d-4cb3-8341-e6df10b9a1cc.doc
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Institution	UN-Habitat
Name	UN-Habitat stakeholder engagement policy
Established in	First draft April 2018
Link	http://mirror.unhabitat.org/downloads/docs/13484_1_596371.pdf
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Institution	UN-Habitat
Name	Implementing partners' policy and operating procedures
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Institution	UNHCR
Name	Corporate guidelines UNHCR corporate code of conduct
Established in	2016
Link	https://www.unhcr.org/ceu/353-engeneralget-involvedcorporate-and-foundation-partnerscorporate-guidelines-html.html
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Institution	UNICEF
Name	UNICEF guidelines and manual for working with the business community – identifying the best allies – developing the best alliances
Established in	2001
Link	www.aaci-india.org/Resources/UNICEF-Guidelines-and-Manual-for-Working-with-the-Business-Community.pdf
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Institution	UNICEF
Name	Key guiding principles for UNICEF partnerships with civil society and other actors
Established in	2017
Link	https://www.unicef.org/about/partnerships/index_60074.html
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Institution	UNICEF
Name	UNICEF strategic framework for partnerships and collaborative relationships
Established in	2009
Link	https://www.unicef.org/policyanalysis/files/N0928210.pdf
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Institution	WFP
Name	New partnerships to meet rising needs – Expanding the WFP donor base
Established in	2004
Link	https://documents.wfp.org/stellent/groups/public/documents/eb/wfp039108.pdf
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Institution	WFP
Name	Private donor guidelines
Established in	2005
Link	http://www.fao.org/tempref/UNFAO/BODIES/FC/fc121/7879e.pdf (Annex III)
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Institution	WFP
Name	Principles of cooperation for private-sector partners
Established in	2014
Link	https://documents.wfp.org/stellent/groups/public/documents/communications/wfp282072.pdf
<hr/>	<hr/>
Institution	WFP
Name	Investment to achieve zero hunger: WFP's 2018–2022 private sector partnerships and fundraising strategy
Established in	2018
Link	https://docs.wfp.org/api/documents/WFP-0000050721/download/
<hr/>	<hr/>
Institution	WFP
Name	Private sector partnerships and fundraising strategy (2020–2025)
Established in	2019
Link	https://docs.wfp.org/api/documents/WFP-0000104341/download/ and Annexes including due diligence process: https://docs.wfp.org/api/documents/WFP-0000104342/download/

Institution	FAO
Name	Principles and guidelines for FAO cooperation with the private sector
Established in	2000
Link	www.fao.org/3/a-x2215e.pdf
Comment	replaced by FAO guidelines for partnerships and collaboration with the private sector of 2016
Institution	FAO
Name	FAO strategy for partnerships with the private sector
Established in	2013
Link	www.fao.org/3/a-i3444e.pdf
Institution	FAO
Name	FAO guidelines for partnerships and collaboration with the private sector
Established in	2016
Link	http://old.belal.by/elib/fao/661.pdf
Institution	UNESCO
Name	Guidelines for selecting partners in the Member States, including the rules and regulations governing the use of UNESCO's name and emblem by these partners: Proposals by the Director-General
Established in	2000
Link	http://portal.unesco.org/en/files/12673/10543090201directives_pdf_E/directives%2Bpdf%2BE
Institution	UNESCO
Name	Report by the Director-General on the progress made in the preparation of guidelines for selecting partners in the Member States, including the rules and regulations governing the use of UNESCO's name and emblem by these partners
Established in	2002
Link	http://portal.unesco.org/en/files/15238/10643311211165_ex.37.E.pdf/165%2Bex.37.E.pdf
Institution	UNESCO
Name	Regulatory framework for the use of the name, emblem, abbreviation and/or sponsorship of the UNESCO
Established in	2002
Link	http://portal.unesco.org/es/file_download.php/1e027748c55b78f940569f9df6133e93Brochure+2002+ptc.pdf
Institution	UNESCO
Name	UNESCO's comprehensive partnership strategy
Established in	2013
Link	https://unesdoc.unesco.org/ark:/48223/pf0000222986
Institution	UNESCO
Name	Direcives concerning UNESCO's partnership with non-governmental organizations
Link	http://portal.unesco.org/en/ev.php?URL_ID=33137&URL_DO=DO_TOPIC&URL_SECTION=201.html
Institution	WHO
Name	Guidelines on working with the private sector to achieve health outcomes. Report by the Secretariat
Established in	2000
Link	https://apps.who.int/iris/bitstream/handle/10665/78660/ee20.pdf?sequence=1&isAllowed=y
Comment	Replaced by FENSA
Institution	WHO
Name	Principles on WHO's relations with NGO's
Established in	1948
Link	http://apps.who.int/gb/bd/PDF/bd47/EN/principles-governing-rela-en.pdf?ua=1&ua=1
Comment	Revised in 1987, replaced by FENSA
Institution	WHO
Name	Regulations for expert advisory panels and committees
Established in	1982
Link	http://apps.who.int/gb/bd/PDF/bd47/EN/regu-for-expert-en.pdf
Institution	WHO
Name	Guidelines for Medicine Donations
Established in	2010
Link	https://apps.who.int/iris/bitstream/handle/10665/44647/9789241501989_eng.pdf;jsessionid=ECDBF3A81F83973CE8348665525EF51?sequence=1

Institution	WHO
Name	Policy on WHO's engagement with global health partnerships and hosting arrangements
Established in	2010
Link	https://www.who.int/about/collaborations/non-state-actors/partnerships-63rd-wha-agenda-item-18-1-21-may-2010.pdf
Institution	WHO
Name	Framework of engagement with non-State actors (FENSA)
Established in	2016
Link	https://www.who.int/about/collaborations/non-state-actors/A69_R10-FENSA-en.pdf?ua=1
Institution	WHO
Name	Criteria and principles for secondments from nongovernmental organizations, philanthropic foundations and academic institutions – Report by the Secretariat
Established in	2016
Link	http://apps.who.int/gb/ebwha/pdf_files/EB140/B140_47-en.pdf?ua=1&ua=1&ua=1
Institution	WHO
Name	Guide for staff on engagement with non-State actors
Established in	2018
Link	https://www.who.int/about/collaborations/non-state-actors/FENSA_guide-for-staff.pdf
Institution	WHO
Name	Draft approach for the prevention and management of conflicts of interest in the policy development and implementation of nutrition programmes at country level
Established in	2018
Link	http://apps.who.int/gb/ebwha/pdf_files/WHA71/A71_23-en.pdf
Comment	Draft
Institution	UNAIDS
Name	UNAIDS guidelines: Working in partnership with the private sector
Established in	2007
Link	http://data.unaids.org/pub/manual/2007/unaidsguidelines_august2007_draft4_en.pdf
Institution	UNFCCC
Name	UNFCCC Secretariat guidelines for partnerships
Established in	2017
Link	https://unfccc.int/sites/default/files/b_2017_1_unfccc_guidelines_for_partnership_final.pdf
Institution	High-level Forum on the Health MDGs
Name	Best practice principles for global health partnership activities at country level
Established in	2005
Link	www.stoptb.org/assets/documents/about/cb/meetings/09/2.05-08%20Best%20Practice%20Principles/2.05-8.1%20Best%20Practice%20Principles.pdf
Institution	UNOCHA
Name	Guidelines for working with the business community
Established in	2007
Link	https://interagencystandingcommittee.org/system/files/legacy_files/World%20Economic%20Forum%20-%20OCHA%20Guiding%20Principles%20for%20Public-Private%20Collaboration%20in%20Humanitarian%20Action.pdf
Institution	UNSCN
Name	A draft proposal for initiating SCN private sector engagement
Established in	2007
Link	www.unscn.org/files/Core_documents/Proposal_Private_Sector_Engagement_12_February_2007.doc

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