

Public Debate

Report

The UN Norms for Business: Process, Content and Real Value
Venue: Perscentrum Nieuwspoord, Lange Poten 10,
The Hague, the Netherlands

Weds 12 May 2004

Organisers:

IRENE, International Restructuring and Education Network Europe, SOMO, Centre for Research on Multinational Corporations; Amnesty International/The Netherlands; in collaboration with the Maastricht Centre for Human Rights, Maastricht University.

Report written by Julie Smith

WELCOME AND INTRODUCTIONS

Peter van der Geer introduced the public debate and posed the question, “Is there a need for the UN Norms?” He asked who was in the audience and established that most were from NGOs. Business, citizens, researchers and academics were also represented.

Joris Oldenziel, Somo, gave the background to the public debate and explained that 45 experts from around the world had spent the day discussing the role of business and human rights and the importance of the UN Norms. In summary, the day could be seen as a sharing of positions, a discussion of the legal implications and of what the Norms might mean for business - which highlighted the confusion that business feels about their content and role.

Piet de Klerk, Human Rights Ambassador, Dutch Ministry of Foreign Affairs, gave the key note presentation. He stressed that the Dutch government puts emphasis on the responsibilities of MNCs and that CSR will feature high on the agenda of the Dutch European Presidency in the second half of 2004.

Companies have broader responsibilities in society and this needs discussion with government and other stakeholders. The new UN draft Norms document is part of this discussion.

He explained that the Office of the High Commissioner is to look at the draft Norms of the Sub-Committee, look at the existing standards, consult with relevant stakeholders and then issue a report to be discussed at next year’s session of the Commission for Human Rights (CHR).

There is not much enthusiasm in Geneva for the Norms where it is felt that the Sub-Commission was trying to do two different things: i) distil everything from existing standards

and ii.) put this in treaty-like language. This raises all kind of legal questions as in the end it is States that are responsible for human rights not MNCs. The legal language caused the most hesitation amongst delegations as did the lack of definition in the monitoring mechanism. In addition, the Commission said that the draft Norms had not been requested and have no legal standing.

There is essential agreement on the main starting point ie. that MNCs do have these responsibilities – but this set of Norms, which could be seen as a specification for the global compact, do not work because of their treaty-like formulation.

He concluded by saying that there is a need to concentrate on how we can shape the responsibilities that companies have in the area of human rights. There is scope for co-operation and this debate contributes to this.

Questions from the floor were answered by the Ambassador. These included:

- **When will the Dutch Government take a position on the Norms?**

The Government has talked to stakeholders who feel that the formulation needs attention. Business has hesitations – if the Norms become a legal requirement, it becomes an issue for the company lawyers and it becomes much more combative. The Government will take a position when asked to in the formal consultation process.

- **Which countries do support the Norms?**

I have not heard of any country that would accept the Norms as they stand.

- **What was the mandate given to the experts?**

The Sub-Commission had no mandate.

- **Is there any effort to reach a European position. Will the Dutch Government's presidency affect this?**

The Netherlands will try to come to a common position with other European countries. But they have been asked to talk to all countries.

- **Why did the Commission let the Sub-Commission do this for 4 years and say nothing?**

Because it was not on the agenda

The panel of experts gave a brief summary of their positions on the Norms:

Wilco Gunster, International Chamber of Commerce, The Netherlands, explained he represented a world business organisation that supports human rights. They are not happy with the Norms and feel that they are not business friendly.

Ashim Roy, Mill Mazdoor Panchayat Trade Union, India, feels this is a very positive legally binding instrument.

Yin Shao Loong, FOE Malaysia, said the Norms were a product of extensive consultation and consideration – they have been adopted and are no longer draft Norms. He feels their value is that they attempt to deal with the activities of MNCs in a globalised world.

Hilke Molenaar, Amnesty International, The Netherlands, feels that the Norms are very clear and comprehensive – a very good human rights benchmark.

Menno Kamminga, Centre for Human Rights, Maastricht University, The Netherlands, feels the Norms are an attempt to work with a new actor ie. the companies.

Sune Skadegard Thorsen, attorney at law, Denmark, said that the more the Norms are debated, the more human rights awareness is raised with companies.

Tom McCarthy, human rights consultant, Geneva, felt the key issue was the mandatory versus voluntary debate. Can the international community directly address private actors? The Commission is looking at how to strengthen and implement the Norms next year and there is a strong commitment from the Commission to move ahead. This is not a negative situation.

DEBATE

1st Motion: The UN Norms give added value to existing CSR instruments.

There was discussion about what is acceptable as a rights based approach for business. The UN Norms give business a step in the right direction, but there is a need for more specificity as to what the Norms would mean in practice. A need to address the ICC concerns was also voiced although it was noted that the ICC do want to contribute to the CHR consultation process.

One of the biggest business concerns was about chain responsibility which one of the businesses present said that they do not feel in control of. Yin Shao Loong responded to this by saying that many companies have deliberately outsourced. Companies use globalisation to get financial advantages but they also need to take responsibility for the other outcomes.

Menno Kamminga said that one advantage of the Norms is that business would be held accountable in the same way in every country and Ashim Roy said that the UN Norms are the most balanced mechanism so far.

Motion 2: The UN is the most obvious institution to develop a human rights instrument.

This raised a comment about the ILO and it's effectiveness in dealing with issues like child labour. There was a response that the ILO is very effective on specifics like child labour but the UN Norms deal with much wider issues. In addition, the ILO only refers to States not to businesses.

Tom McCarthy said that he can not see any other place that brings all the stakeholders together but admitted that getting quality discussion is difficult. He added that many of the Norms need a great deal of careful thought

There was a question about whether it should be the CHR that considers CSR. Menno Kamminga said that it was difficult to think of another division of the UN that would be more

appropriate. Adding that the big advantage of the CHR is that there are well established procedures for public participation.

A question was asked about the difficulty of finding an accountable business when there is a major problem. This led on to a question about whether the Norms would have helped in the Bhopal case. Usha Ramanathan, who is involved in this case, said that they were looking for constructive engagement with companies so that Bhopal can not happen again. Sune Skadegard Thorsen added that the Norms would have been helpful by improving safety (which would have been as stringent as that of the US) and victims would have received compensation.

There was a query over whether Wilco Gunster represented the position of the ICC or just that of its most defensive members, and he was asked why he was taking such a conservative position. His response was that there will always be a range of opinions in such a large membership but he was representing the position of the ICC.

FINAL ROUND UP

Tom McCarthy asked businesses to start to discuss concrete things they can do. Hilke Molenaar emphasised the importance of continuing this dialogue and Ashim Roy agreed, saying that social dialogue is a must and that business should let us know what is acceptable to them.

From the company side, Wilco Gunster said that the nature of business is to be proactive. Regulation is another game and he does not think that there is a need for this regulation.

The final word came from Piet de Klerk, Dutch Ministry of Foreign Affairs, who said that he is now even more convinced that progress with the Norms was impossible.

Colophon:

Organisers: Peter Pennartz/IRENE, Joris Oldenziel/SOMO, Hilke Molenaar/Amnesty International The Netherlands

Author of the Report: Julie Smith

Financial support:

a.o. the European Community,

NCDO/National Committee for International Cooperation and Sustainable Development, The Netherlands, www.ncdo.nl;



and La Fondation des Droits de l'Homme au Travail, Switzerland



The views expressed in this document can in no way be taken to reflect the official opinion of the sponsors.