

REPORT
International Expert Meeting
The UN Norms for Business: Process, Content and Real Value

The Netherlands Congress Centre, The Hague
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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.

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BACKGROUND

On 13 August 2003, the UN Sub-Commission for the Promotion and Protection of Human Rights approved the UN Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights. They are the first set of international Norms specifically aimed at the responsibilities of business in relation to human rights.

The UN Sub-Commission transmitted the UN Norms to the Commission on Human Rights for consideration and eventual adoption by the Commission. The Commission finally adopted a resolution in which the Commission requests the Office of the High Commissioner for Human Rights to compile a report setting out the scope and legal status of existing initiatives and standards, including the UN Norms. In writing this report they will consult with all relevant stakeholders.

As part of this process, IRENE, SOMO and Amnesty International/The Netherlands organised an international Expert Meeting and a Public Debate to address the outcomes of the 2004 Human Rights' Commission meeting, held 15 March – 23 April, and to provide an opportunity to examine and discuss the different arguments being put forward by governments, business and NGOs about the Norms.

The Expert Meeting was set up as a roundtable with a number of short presentations to stimulate debate. There were 47 participants from the North and the South representing governments and intergovernmental bodies, business, NGOs, trade unions, legal experts and lawyers.

A Public Debate was held in the evening to promote awareness about the UN Norms to the wider public. The programme included a presentation from Mr Piet de Klerk, Human Rights Ambassador, Dutch Ministry of Foreign Affairs; a panel session with participants from the Expert Meeting, followed by a debate on the issues raised.

THE EXPERT MEETING

1. Welcome and Introductions

Mr Bart Stapert, Amnesty International/The Netherlands, chaired the meeting and introduced the Programme. This was structured to look at the content and current status of the UN Norms, provide a forum for the different viewpoints of the stakeholders and consider the way forward.

In the introductory session a range of reasons were given by participants for attending the meeting. These broke down into three broad headings – the role of the Norms, their applicability, and business concerns.

...to learn to what extent the Norms can be used as a contribution to a common language

...the UN Norms represent an interesting, new approach to the challenges of the changes in the international order

...to assess how the Norms can be evaluated in comparison to existing mechanisms – how to integrate them into national and international law

...to move the debate beyond corporate accountability to public liability

...to leave with some constructive ideas of how the Norms can be used in addition to the existing national laws

...an interest in seeing how we can shape the Norms to move along and make a process that is acceptable to business

...we (as business) want to know what implementation will be like

2. The current state of the Norms in the UN Commission on Human Rights.

Simon Walker, Human Rights Officer, Office of the High Commissioner for Human Rights (OHCHR), Geneva, thanked the meeting for inviting him and welcomed the opportunity to share experience, adding that the Office sees this meeting as a first step in a consultation process on the Norms.

He summarized the status of the Norms from their approval. The Sub-Commission approved the Norms in August 2003 and transmitted them to the Commission suggesting to the Commission that it invite States to comment, and that it consider setting up a Working Group for further discussion on the Norms.

In the inter-session period, initial enthusiasm gave way to a certain amount of confusion as the Sub-Commission resolution raised many issues. Some tensions arose between some States and the Sub-Commission - particularly on the perceived lack of involvement of States in the approval process of the Norms - and several key business groups were critical of the Norms for a range of reasons, particularly on the question of monitoring and implementation. The response from civil society was generally much more positive.

The Commission on Human Rights considered the Norms at its session in March/April and adopted a decision on them. Key elements of the Commission decision include:

- **Preambular** paragraph recognises the Norms as a very useful tool.
- **Paragraph A** confirms that Corporate Social Responsibility (CSR) is a relevant issue for the principal human rights body of the UN system.
- **Paragraph B** requests the Office to compile a report to look at the scope and legal status of existing initiatives. Importantly, the Office has to identify outstanding issues. The process reflects the Commission's concern over the perceived lack of consultation and sends a strong message that the Office has to consult and learn.
- **Paragraph C** notes that the Norms have no legal standing and that the Sub-Commission has no monitoring role.

In conclusion, the Commission decision could be considered a positive development. The Commission adopted its decision by consensus and this now gives the Office of the High Commissioner for Human Rights a clear mandate to consider the question of the responsibilities of transnational corporations and related business enterprises with regard to human rights. The Norms survived, they may change, but people should feel more relaxed and prepared to work on them in the future.

A wide-ranging discussion followed in response to Simon Walker's presentation. Key questions and responses from Simon Walker included:

- **What is the timescale for the consultation process?**

The report must be submitted late November/ December 2004.

- **How will the Office conduct outreach for the report?**

Simon Walker stressed that he was not speaking for the Office, but he expected that there would be a limited number of active requests for information. Objectivity, transparency and balance is critical and the Office will be asking for information from States, Employers' Associations, TNCs (those who have expressed interest, adhesion to Global Compact etc.), and civil society groups that have also already expressed an interest.

In addition, information will be collected in a passive way via seminars etc. He stressed that they will try and canvas as many opinions as possible in the short time-frame available.

- **What other 'existing instruments' will be included in the report?**

To limit the scope of the report they probably will start with three instruments. The ILO, the OECD guidelines and the Global Compact. There is no final decision about this yet.

- **How do you reconcile the voluntary nature of the Global Compact with the legal accountability of the Norms which both come under the UN umbrella?**

He does not think that voluntary to legal accountability is a shift. It is possible to have a dual system. If companies want to adhere to the Global Compact they need to know how to go about doing that. Ultimately, the Norms are there to avoid companies committing human rights violations.

3. The content and legal status of the UN Norms

Menno Kamminga, Maastricht Centre for Human Rights, Maastricht University, expressed support for the Norms because they allow the UN to directly address company behaviour. Companies fit the same pattern as other groups and individuals who take power away from the State, like armed opposition groups and terrorists, and they must be held accountable in the same way.

He responded to the complaint about a lack of consultation over the drafting of the Norms by saying that this was an extremely conscientious and open process but because a different mind set is required to get away from thinking in terms of the State, much more consultation will be required.

Companies complain they do not know what standards to follow and they therefore have a lot to gain from the adoption of the Norms. They create a level playing field, a stable investment climate and security.

The main issue that the Norms have raised is that their adoption at UN level undermines the responsibility of the State. But the Norms deal with this in the first paragraph which says that States have the primary responsibility and in which the term ‘within the sphere of activity and influence’ is introduced. The latter may be a vague concept, but will be made more specific through case law and practice. None of the rights mentioned in the UN Norms intrude on the responsibilities of governments.

Another issue is that the Norms are too ambitious and not carefully drafted. Kamminga agreed with this. Some can and should be drafted more specifically and carefully, this will be done in the working group of the UN Commission for Human Rights.

Even if the Norms are not adopted by the Commission he feels they will still have a life because they have been adopted by the Sub-Commission. There is a need for them - for example, in the domestic courts - although it provides a better basis for the supervisory mechanisms if governments adopt them.

4. The Business arguments, limits and challenges – what next?

Tom McCarthy, Human Rights Consultant, Geneva, advised the meeting not to be discouraged by the difficulties of the UN system. Governments don’t like to deal with human rights issues and the Sub-Commission has given the Commission “a kick in the pants” by placing the subject on the agenda.

Business is a real player in the Norms debate and companies have a right to ask what this means for them. Some strongly object to the Norms and this needs careful handling because of the influence companies have with government. He thinks that a paper written in response

to the paper of the IOE (International Organisation of Employers) and the International Chamber of Commerce (ICC) would be valuable in helping to negate its influence.

Editor's note: This extensive response is already available, written by Chip Pitts (and a short response by Sir G.Chandler)

There is a need for a bottom-up approach, ie. start at community level, together with a need to develop a clear idea of how to approach the CHR/OHCHR consultation for the report. Who needs to act, how and with what contents and objectives to make the necessary wording and clarifications which will make the Norms acceptable to all.

Further discussion followed where the point was made that although there is a current need to work with companies on human rights issues, it is important that the State is not undermined in the process. If local government apply laws, working conditions improve dramatically.

Companies' negative reaction to the Norms - "new instrument development fatigue"- was discussed. One view was the need to get more States involved in CSR debates and activities first. Another was that the "whole point of the Norms is to ensure a common moral grounding – a common respect for human rights. If there are no consequences for companies who evade these – what will be the outcome for society?"

In addition, communities have the same fatigue as companies and "are asking, when are we going to get someone to play by the rules?" Some communities have no belief in voluntary initiatives and feel there is a need to build at international level and implement at national level.

Key questions included:

- **Is the UN mechanism against corruption a middle step?**
The UN Corruption Convention requires States to make corruption by companies a criminal offence under domestic law. But this is no help when States collude with companies.
- **Has the International Bar Association (IBA) adopted a position on the Norms?**
There is no formal position but there has been a positive acknowledgement of the work
- **What dialogue will there be between the Commission and the WTO on the effects that their policies have?**
The Sub-Commission report in 2000 described the WTO "as a nightmare for developing countries". This year an Expert Panel at the Commission will spend a week looking at assessments of trade policies.

HOW DO WE MAKE IT REAL?

5. Coming to grips with implementation – the views and challenges of the stakeholders

Sune Skadegard Thorsen, attorney at law, Denmark, talked about the business perspective (a powerpoint presentation is available from Peter Pennartz at IRENE).

He said that communicating the Norms to business is a challenge. The triple bottom line approach is understood by business and this is a useful way for them to think about the Norms and frame their responsibilities.

People	Planet	Profit
Social	Environment	Economics
	Johannesburg Action Plan	
International Bill of Human Rights	Rio Declaration	International Accounting Standards
	UN Biodiversity Convention	UN Anti-Corruption & Bribery Convention

Companies will never accept responsibility for all human rights. Some, like environmental issues, are highly contentious and there are other obligations, that States do not adhere to, for which it would be impossible to make companies liable.

Eighty percent of his work with business is raising awareness. Companies need basic human rights explaining. There is a need to demystify what they are and explain what the impact would be on companies if they ever became liable. No-one in business wants to be in conflict with human rights – it is just that they need informing about them.

Professor Alan Miller, Business Leaders Initiative on Human Rights, talked about this three-year programme to help lead and develop the corporate response to human rights. It aims to explore a common language and framework and consider what the shared responsibilities are.

BLIHR took a problem solving approach to look at the benefits of the Norms to companies. Each of their eight member companies is participating in a range of projects. Some projects look at how the Norms affect individual companies, others look at the effect on the sector and others look at the broader governance issues.

- Member companies are:
- ABB - project: taking a case in a certain country to see to what extent adoption of the Norms would contribute
 - Barclays PLC – project: looking at other instrument compared to UN Norms
 - Hewlett Packard – project: looking at supply chain issues
 - MTV Networks Europe
 - National Grid Transco plc
 - Novartis
 - Novo Nordisk – project: looking at management systems along the Norms
 - Body Shop International – project: researching UN Norms vs. GRI

There are two more years for the projects to develop with a report being published on 10 December 2004 (Human Rights day) and an interim report due next year.

The company views:

AkzoNobel: The company has a lot of hesitation about the UN Norms because they are abstract. Explaining the huge range of issues and implications to the Board would be impossible. The Norms would be easier to accept if they were more focussed and it was clear who would enforce/ monitor them and what the sanctions are.

How can we improve the Norms? There is a need to sit together and look at each one. What does each one mean for each of the stakeholders? Only communication and dialogue will achieve Norms that are acceptable.

ING Group: Business principles talk about human rights and although this is voluntary it does not mean that business does not want to follow them.

Ahold: There is a feeling in the company that although the UN Norms have been put together, no-one knows what they will do. There is also confusion about the role of companies' own business principles and whether they will cover them under the Norms. Company business principles are based on their priorities – for example, Ahold is a retailer so the issues are about suppliers not about all human rights issues.

How will companies be judged by the Norms – will it be on their effort or on the amount of control they have? “This lack of clarity creates fear.”

The issues raised by the companies centred the discussion on how companies deal with compliance on human rights. The point was made that they currently only concentrate on rights that they identify they can deal with (ie. gain value from their CSR initiatives). This raises the question of how companies make their compliance systems work so that they comply with all of the Norms.

The discussion moved on to consultation and there was feedback that business is critical of the lack of consultation by the Sub-Commission. A “formal consultative” process was proposed which establishes a framework for business to look at the Norms in detail.

- **If the Norms are clarified, will businesses support the monitoring mechanisms?**

One company expressed support – that if companies were participating, they will want to be involved in monitoring – but questioned what this would be. The discussion also focussed on the difficulty of getting change in companies, even with the majority in support.

The Norms were also seen as an opportunity for business. They are currently investing heavily in internal monitoring but the Norms would move some of this obligation to an international monitoring system. However, another participant said that third party monitoring would be more objective. Monitoring does not have to be a UN responsibility.

One company said it is a task for progressive companies to explain the UN Norms to other businesses not present at the meeting. There is a need to clarify and make it attractive for business to participate.

It was also noted that there was a need to be careful that those companies that do officially try and improve, do not get all the bad publicity whilst others hide.

In summary, the key message seemed to be that the only way to develop clarity about human rights is through constructive engagement.

The views from the South

Yin Shao Loong, Friends of the Earth / Malaysia.

Yin Shao Loon's presentation argued that the Norms would help protect local communities from bad company practices that affect the environment. He cited a case taken up by FOE Malaysia where hydrogen sulphide gas emissions from a rubber factory were causing severe health problems in the local community saying that this would not have happened if the Norms were in place.

He emphasised the need to take the Norms forward, stressing that the obligation to act is paramount.

Usha Ramanathan, India, made the case for international law and cited the Bhopal case as an example of why this is necessary. She felt that there is a fundamental problem over jurisdiction.

Large corporations have a huge influence over municipal laws which makes it even more important that international law sets standards. In addition, MNCs use the threat of withdrawing from countries to prevent governments from acting. She argues the need for different ways to curb these practices.

There are also a host of other issues including child labour, unionisation, occupational health, environmental free riding etc, which have not moved forward either and she asks finally, "What do we mean when we say we want corporations to respect and protect and fulfil these human rights?"

Elijah Munyuki, SEATINI, Zimbabwe, commented on how business profits are up 900% in the harsh economic and political environment of Zimbabwe. There are allegations of unethical business practices and a lack of respect for legal processes. There are many states with similar problems across Africa and Western MNCs are seen as part and parcel of bad governance. He sees the possibility of a system to enforce business standards as very attractive.

Businesses in Zimbabwe are asking what the Norms will mean and also question what they mean for indigenous MNCs. He sees the need to build capacity within African professionals to raise awareness of CSR – in particular the UN Norms and asks whether the International Bar Association (IBA) is interested in doing this work in Zimbabwe or in the region.

Viraf Mehta, Partners in Change, India, recognised the perceived failure of CSR and voluntary approaches in Northern countries and pointed out that India has only been dealing with this for 5 years and has not got far in the process. Very few companies in India have even heard of the Norms.

Asian countries supported the Global Compact and Millennium Development Goals which had something visible at the centre that would do something about poverty. There was a belief that working together with companies on business in the community initiatives would lead to monitoring in the long term.

Now there is suspicion about what the UN Norms actually intend – he feels that they fail to see how the voluntary approaches move on to corporate accountability. The UN needs to come up with something that makes business a partner in this pro-poverty agenda. Business needs to make the move from looking at the symptoms of poverty to looking at the underlying reasons for why it exists.

He feels that specific standards for sectors are more relevant and companies find these easier to deal with and he is not convinced that the UN has done enough to make the State more accountable.

THE ROAD AHEAD

Dialogue is the answer

This session reinforced the need for dialogue. The UN Norms give a map of what is inside CSR but there are problems over commitment, boundaries, interpretation, measurement, implementation and verification. The need for a wider discussion with business was suggested, particularly between NGOs and business.

Tom McCarthy asked participants from the South how they wanted to see things go forward in a concrete way in the (near) future.

Consultation process

The consultation process is very important but there was still some confusion about **how** the Office will gather the information, with limited resources, to keep to the **timeframe** for the December report.

One view was that the report deadline should be extended to make sure issues are dealt with properly. Tom McCarthy felt there was insufficient time and resources in the UN for this.

How to involve more businesses?

There was a view that the adoption of the Norms has raised awareness. Companies have at least heard of them and there is a need to build on this in the year ahead. Now there is more interest from companies in how the Norms will affect them, they may be more likely to sit round the table.

Need for clarification

Amnesty International felt there was a need to clarify the doubts being voiced by business. They are asking companies to start testing the Norms as there is a need for serious criticism point by point.

Tom McCarthy voiced a similar view referring to the objective which the CHR set itself for the next session “..to submit the report to the CHR at its sixty first session in order for it to identify options for strengthening standards on the responsibilities of transnational corporations and related business enterprises with regard to human rights and possible means of implementation” (paragraph b of the decision.) He suggested that the objective should be to show that the Norms are a key way to achieve those objectives and suggest a process for doing so. This could be a process with business, NGOs, academics, perhaps UN bodies and government representatives (perhaps informal participation on their part) of clarification of one or two of the Norms, bringing their meaning for business closer to the ground in order to show that such a process is possible and fruitful.

Peter Pennartz of IRENE concluded the Expert Meeting and proposed that in view of the consultancy process of the CHR during the coming year for the 61st. session, the organisers would take the initiative to gather ideas and proposals from the NGO group of participants for follow up steps.

Colophon:

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