



updated 2 December 2004

Excerpts from submissions to United Nations consultation on business & human rights

The Office of the UN High Commissioner for Human Rights has received submissions in preparation for a report on “The responsibilities of transnational corporations and related business enterprises with regard to human rights”. The report is being prepared at the request of the UN Commission on Human Rights. The Commission is expected to review the report at its next session (March-April 2005, Geneva).

Below we list the submissions that are available online as of 2 December 2004. We provide a brief excerpt from each, to highlight some of the points made. These extracts are not intended to constitute summaries of the submissions. The full submissions are available on the OHCHR website:

www.ohchr.org/english/issues/globalization/business/contributions.htm, and by each individual excerpt below we provide a link directly to the full text.

We have also included excerpts from submissions and commentaries that have been made available to the Resource Centre but are not yet on the OHCHR website.

List of submissions

Action Aid.....	5
Amnesty International.....	5
Australia (Government).....	6
Australian Lawyers for Human Rights*.....	6
Australian NGOs (Mineral Policy Institute, Friends of the Earth Australia and the Brotherhood of St Laurence).....	7
Austria (Government).....	8
BASF.....	8
BDI (Federation of German Industry) & BDA (Confederation of German Employers' Associations).....	9
Belgium (Government).....	10
Berne Declaration.....	10
BP.....	10
Business & Human Rights Resource Centre.....	11
Business & Industry Advisory Committee to the OECD (BIAC)*.....	11
Business for Social Responsibility (BSR).....	11
Business Leaders Initiative on Human Rights (BLIHR).....	12
CAFOD.....	12
Canada (Government).....	13
Castan Centre for Human Rights Law, Monash University, Melbourne, Australia.....	14
CBI (Confederation of British Industry).....	16
Center for Human Rights and Environment (CEDHA, Argentina).....	19
Chandler, Sir Geoffrey – former director of Shell International, Founder-Chair of Amnesty International UK Business Group 1991-2001.....	19

Chirwa, Danwood – Lecturer in Law, Department of Commercial Law, Faculty of Law, University of Cape Town – <i>Contribution to ESCR-Net in advance of its submission</i>	20
Christian Aid	20
Columbia University Law School Human Rights Clinic	22
Committee on the Rights of the Child*	22
Confederation of Danish Industries*	22
Croatia (Government)	22
Cuba (Government)	23
Czech Republic (Government)	23
Danish Institute for Human Rights	23
Denmark (Government)	24
Deva, Surya – PhD candidate, University of Sydney Faculty of Law	25
Dutch Roundtable on Business & Human Rights	25
ESCR-Net (International Network for Economic, Social & Cultural Rights)	26
ESCR-Net (International Network for Economic, Social & Cultural Rights); Rights and Accountability in Development; World University Service (German Committee)-Forum Menschenrechte – joint submission	26
Ethical Funds Company	27
European Union	28
FIDH (Fédération Internationale des Ligues des Droits de l'Homme)	29
Finland (Government)	31
François-Xavier Bagnoud Center for Health and Human Rights (Harvard University)	31
Gap	31
Geneva Social Observatory	32
German Clean Clothes Campaign	33
German NGOs: MISEREOR, Diakonisches Werk der EKD, Deutsche Gesellschaft für die Vereinten Nationen, FIAN, Germanwatch, WEED	33
Germany (Government)	34
Global Compact Office	34
Greece (Government)	35
Greenpeace International	35
House, Frances – Member of Amnesty International UK Business Group; former Director of Corporate Practices, International Business Leaders Forum	36
Human Rights First	36
Human Rights Watch	38
Hungary (Government)	38
ILO (International Labour Organization)	38
IMF (International Monetary Fund)	39
Infact	39
Interfaith Center on Corporate Responsibility	40
International Baby Food Action Network (IBFAN)	41

International Business Leaders Forum (IBLF).....	41
International Chamber of Commerce (ICC).....	42
International Commission of Jurists.....	43
International Organisation of Employers (IOE).....	44
International Service for Human Rights.....	46
Italy (Government).....	47
Lithuania (Government)*.....	47
Jus Semper Global Alliance	47
Kamminga, Menno – Professor of International Law, Maastricht University; Co-Director, Maastricht Centre for Human Rights	48
King Zollinger	48
Lawhouse.dk (Sune Skadegard Thorsen).....	48
Leighton, Michelle – Law and Policy Consultant - International Environment, Human Rights, CSR; and Roht-Arriaza, Naomi – Professor, Hastings College of the Law, University of California – <i>Contribution to ESCR-Net in advance of its submission</i>	49
Luxembourg (Government).....	49
Mauritius (Government).....	49
McCarthy, Thomas E. – member of International Bar Association Corporate Social Responsibility Panel; former Senior Advisor to UN High Commissioner for Human Rights	50
Migrant Workers' Committee*	50
Netherlands (Government)	50
Newmont*	51
Nexen.....	51
Nolan, Justine – Lecturer, Australian Human Rights Centre, University of New South Wales	52
Norway (Government)	52
OECD (Organisation for Economic Co-operation and Development)	53
O'Reilly, John – member of Amnesty International UK business group, former BP executive	54
Oxfam	55
Pfizer.....	56
Philippines (Government)	57
Poland (Government)	57
Portugal (Government)*	57
Rio Tinto*	57
Sasol	57
Shell	57
Sonofon (part of Telenor).....	59
Storebrand*	59
SustainAbility	59
Sweden (Government).....	60
Switzerland (Government).....	61

Syrian Arab Republic (Government).....	61
Telefónica	61
Third World Network (Europe).....	61
TwentyFifty (human rights consultancy).....	62
UNEP (United Nations Environment Programme)*	62
United Kingdom	62
United States	64
United States Council for International Business (USCIB).....	65
UNRISD (United Nations Research Institute for Social Development)	66
VNO-NCW (Confederation of Netherlands Industry & Employers)	67
World Confederation of Labour*	67
Young, Stephen – Global Executive Director, Caux Round Table	67

*Submissions with an asterisk do not have an excerpt as their text has not been made available online, as of 2 December 2004. We will add an excerpt from each one as soon as it is made available.

Action Aid

Full text: www.ohchr.org/english/issues/globalization/business/docs/actionaid.doc

EXCERPT: "...Securing people's rights is first and foremost the duty of national governments. Nonetheless, business has a role to play in responding to the challenge of promoting human rights and sustainable development. This was recognised in the Universal Declaration of Human Rights which called upon 'every organ of society' to respect, promote and protect human rights. The Declaration therefore applies to non-state actors such as companies.

EXISTING INITIATIVES WITH REGARDS HUMAN RIGHTS

Whilst companies increasingly recognise their responsibility to human rights, voluntary (company) codes offer little by way of emphasis on this issue. Other existing initiatives – such as of the OECD Guidelines, the UN Global Compact and ILO Tripartite Declaration – have also been useful in raising awareness, but refer to human rights in general terms and are largely non-binding on parties. Furthermore, they have largely failed to reduce the negative impacts of companies' activities on vulnerable communities.

OUTSTANDING ISSUES

The UN Norms should be seen as complementary to other initiatives; for example, the Global Compact sets out general principles and values on human rights whilst the Norms are more about identifying – in more detail – companies' responsibilities to human rights and how these rights might be realised.

ActionAid believes that the UN Norms, and consultations surrounding them, can also be seen as part of the continuum along the road from self-regulation towards placing greater obligations on companies. The establishment of an international normative framework on the responsibilities of companies towards human rights (i.e. the Norms) is therefore part of this continuum and is important for a number of reasons, inter alia:

- They apply to all companies ('within their respective spheres of activity and influence') as well as governments
- They are comprehensive and substantive in that they draw upon existing international law and standards.
- They seek to balance the rights of people and communities with the rights and responsibilities of companies.
- Similar standards would place obligations on governments and companies and thereby provide an international level playing field.

At this stage, ActionAid would request that the consultation process clarifies that the remit of the UN Norms includes 'producer rights' (particularly small-scale agricultural producers) as opposed to a potentially narrower definition of worker's rights and labour rights (see for example Article 8 which refers only to remuneration for workers). Many producers are directly and indirectly involved with, and influenced by, TNCs. Corporations are using their market power to drive down farm gate prices and pay farmers low prices for their crop, thus undermining basic human rights and contributing to poverty..."

Amnesty International

Full text: www.ohchr.org/english/issues/globalization/business/docs/amnesty.doc

EXCERPT: "Measures must be taken to minimize the negative effect of corporate activities on human rights, to encourage companies to contribute to the realization of human rights within the spheres of their activity and influence. There must also be adequate and effective remedies when corporate activities abuse human rights..."

The [UN] Norms with their accompanying commentary should form the basis for an international, universally recognised, normative framework for business also providing minimum standards that states should reflect in their domestic laws...

Amnesty International would like to see this report contribute to placing the responsibilities of companies with regard to human rights firmly on the Commission's agenda in future years. In practical terms such ongoing engagement...should entail...

- a) Work towards the establishment and endorsement of a set of principles setting out the human rights responsibilities of business, The *Norms*... should form the basis for this normative framework as the leading example of a detailed code of human rights standards applicable to companies.
- b) Clarification that the human rights responsibilities of transnational corporations and other business enterprises is not a new issue but a corollary of states' obligations to protect human rights;
- c) An extension of the reporting and consultation process beyond the 2005 session of the Commission...;
- d) Ensuring that the process of consultation is open, transparent and effective...;
- e) Exploration of existing mechanisms to review and assess the success of individual corporations in meeting their human rights responsibilities..."

Australia (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/australia.pdf

EXCERPT: "...The Australian Government is strongly committed to the principle that guidelines for Corporate Social Responsibility (CSR) should be voluntary. The Norms represent a major shift away from voluntary adherence. The need for such a shift has not been demonstrated..."

...The OECD Guidelines are the only comprehensive and multilaterally-endorsed code of conduct for Multinational Enterprises (MNEs) that Governments are committed to promoting...

While the OECD Guidelines do not have a specific chapter on human rights principles and do not go into the same level of detail on human rights as the draft Norms, human rights principles run throughout the recommendations of the Guidelines and in some cases go further than comparable recommendations in the Norms. For example, the OECD Guidelines not only discourage forced and compulsory labour (as do the Norms), they also encourage MNEs to contribute to their effective abolition.

The OECD Guidelines also tie MNEs activities and human rights responsibilities to the host government's international obligations and commitments. In the "General Policies" recommendations, the OECD Guidelines state that enterprises should "Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments..."

Australian Lawyers for Human Rights*

Full text: Not yet available online

EXCERPT: "Australian Lawyers for Human Rights ("ALHR") is an NGO, with over 900 members, that focuses on practising and promoting awareness of human rights in Australia..."

Analysis of existing Australian initiatives...International treaties in general have no direct effect in Australia without domestic legislation. So, for example, when the Australian government ratifies a treaty, that does not create rights within the country until legislation is passed enacting as much of the treaty framework as the parliament chooses.

Australian parliaments have passed laws which give effect to various aspects of the country's international human rights obligations. These cover areas such as sex discrimination, race discrimination, occupational health and safety laws, superannuation, product safety laws, environmental laws, and criminal laws. While these laws do not always protect the full extent of the related human rights standard, within their relevant field, the laws provide a universal system that all parties must follow. Accordingly, TNC's operating in Australia are required to ensure their activities comply with various human rights such as the freedom from discrimination, right to life, fair wages, freedom from torture, safe working conditions, personal security, unionism, privacy, social security contributions, and public health standards related to environmental and industrial hygiene.

These laws do not operate extraterritorially, so Australian companies operating overseas are not directly subject to these controls. However it is as yet untested the extent to which liability may be pursued more generally extraterritorially through for example the law of negligence or laws governing misleading and deceptive conduct.

There have been proposed laws introduced into national parliament to regulate companies' actions. These include the *Corporate Code of Conduct Bill 2000* (reintroduced in 2004 with amendments as the *Corporate Code of Conduct Bill 2004*). This seeks to impose environmental, human rights, and labour standards on Australian companies operating overseas, but the proposal has not been passed. The proposal does not have the support of those political parties who may form government, and so does not appear likely to be enacted within the foreseeable future.

There are also various initiatives affecting TNCs' human rights responsibilities outside of the national parliament. Some state governments (Australia is made up of eight states and territories, each of which are able to make laws within their own jurisdiction) have passed or are proposing laws that will contribute to TNCs having to comply with various human rights standards while operating in these jurisdictions...

There are also industry initiatives that encourage companies to comply with various human rights standards...

All these initiatives assist in increasing the reasons for TNCs operating in Australia to comply with various human rights standards. However, with the exception of those areas covered in national laws, there is no way of ensuring that TNCs do comply with human rights, and where they don't, taking action to address the problem...

Outstanding issues... Better development of international standards would assist. Reference can then be made to accepted international standards to encourage other parties in the country (eg. TNCs, state governments) to ensure companies observe human rights standards; even where the national government has chosen not to give the protection it is internationally required to do.

Agreed international standards, through the Norms or otherwise, would also assist countries where national legal standards do not operate effectively. Relevant here are those countries where Australian companies are operating free of Australian legal controls..."

Australian NGOs (Mineral Policy Institute, Friends of the Earth Australia and the Brotherhood of St Laurence)

Full text: www.ohchr.org/english/issues/globalization/business/docs/mineral.doc

EXCERPT: "...We respectfully request the Commission to commit to focus its future activities on this issue, and direct the resources necessary to deal substantially, transparently and in an open manner with the ongoing problems caused by the absence of effective standards and social and legal controls upon transnational corporations..."

We thus highlight the importance of creating binding obligations that secure the legal and social control of transnational corporations and provide effective mechanisms for ensuring their responsibility for activities that violate human rights. The inability of those whose human rights are violated to hold transnational corporations to account for the abuse of their rights remains one of the most urgent outstanding issues that have yet to be addressed substantially in the current and existing frameworks addressing this issue...

Voluntary or self regulatory mechanisms will also never address the problem of transnational corporations that show no internal commitment to these issues, and thus will never have the wide reaching impact of binding mechanisms. 95 of the top 100 companies in Australia do not even have a policy commitment to the Universal Declaration of Human Rights...

There is...growing acknowledgement within the business community regarding the need for binding and uniform conditions for how business is to be carried out. Some companies recognise that it would benefit those wishing to act in an ethical manner. As it currently stands, companies that operate at lower social or environmental standards often have an advantage over those who seek to be ethical and consistent in their operations across different national jurisdictions. For instance, in mid 2004, key members of the Dutch timber industry signed a declaration that calls for the EU to come up with binding legislation to forbid the import of illegal timber. The industry clearly

recognises that their own approach, based on voluntary measures, is not sufficient and the declaration calls upon the Dutch government (as chair of the EU) to come up with draft legislation...

The desire for mandating ethical conduct for transnational corporations is not just reflected in Australian Non Government Organisations (NGOs) but by the Australian population generally. Polls by the St James Ethics Centre have revealed that 92% of the Australian public believes that companies should go beyond the minimum definition of their role in society- that is to employ people and make profit- and should contribute to setting higher ethical standards..."

Austria (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/austria.pdf

[Submission of Government of Austria is European Union submission, with additional section on Austrian national initiatives/standards]

EXCERPT: "...3. Austrian national initiatives/standards

In November 2002 the Austrian Code of Corporate Governance was published (www.corporate-governance.at). It provides Austrian corporations with a framework for the management and control of enterprises. It covers the standards of good corporate management common in international business practice as well as the most important provisions of Austrian corporation law that are of relevance in this context...

A main instrument of Austrian CSR policy is the initiative "CSR Austria" (www.csr-austria.net), which was started in late 2002 by the Austrian Federation of Industries and the Ministry of Economic Affairs and Labour..."

BASF

Full text:

Cover letter: www.ohchr.org/english/issues/globalization/business/docs/basf2.doc

Selected Best Practices and Initiatives of BASF regarding human rights / Comments on the "UN Draft Norms":
www.ohchr.org/english/issues/globalization/business/docs/basf1.doc

EXCERPT: "...As a response, please find attached selected information highlighting BASF's approach towards respecting, protecting and promoting human rights within the company's sphere of influence.

I would appreciate, if our and other companies' contribution could encourage you to take a more balanced approach towards the role of corporate citizens regarding the realization of human rights, than the UN Sub-Commission did with their so called "UN Draft Norms".

Our comments on the "Draft Norms" are also attached to this letter...

Comments on the "UN Draft Norms"

First of all, with regard to the Draft Norms, BASF fully shares the view recently expressed by the ICC, the IOE and the BDI.

Secondly, public initiatives and guidelines in place, such as the Global Compact, the OECD Guidelines and the Millennium Development Goals already set a sufficient framework for good business conduct with regard to human rights. The behavior of good corporate citizens regarding human rights does not depend on a rigid regulatory framework, but on setting incentives rightly. The rigid approach taken by the Draft Norms, on the contrary, can create serious obstacles to voluntary activities of companies.

Thirdly, the Draft Norms left significant room for technical improvement regarding the legal drafting, which includes the

- too broad legal scope of the norms reaching way beyond the sphere of influence of companies,
- conjunction of very vague obligations with strict and serious liability consequences,

- combination of undisputed core rights with ambitious aspirational norms, such as the right to development, in a single legal document,
- one-size-fits-all approach ignoring regional and developmental differences,
- set up of a costly and unnecessary monitoring regime.

Fourthly, the draft norms appear to be driven by an ideological anti-corporate spirit, particularly regarding transnational corporations (TNCs). One is tempted to arrive at this assumption, as monitoring conducted by NGOs and liability in practice will hardly be targeted towards thousands of SMEs in developing countries, but towards selected TNCs. Such practice encouraged by the UN appears arbitrary, unjustified and discriminatory, since transnational companies regularly own a better track record regarding human rights than most of the SMEs in developing countries.

Finally, the Draft Norms failed to at least adequately notice, to what extent business contributes to the realization of human rights already through its products and core business operations...”

BDI (Federation of German Industry) & BDA (Confederation of German Employers' Associations)

Full text: www.ohchr.org/english/issues/globalization/business/docs/bundesverband.pdf

EXCERPT: “...Overview of positions

I. For imperative moral and economic reasons, German business stands by its duty to promote respect for human rights and to contribute to their recognition by applying them.

II. In their international activities, German companies assume responsibility for the economic and political environment in which they operate. In the framework of their direct investments, German companies create jobs abroad and enable higher social standards, more environmental protection, better education and hence a general improvement in the standard of living and greater well-being in the countries in question. This simultaneously increases the potential for more democracy and human rights.

III. Human rights pacts are international conventions and therefore agreements between states. The obligations they create lie with states in the first instance. Once given concrete form in national legislation, international norms become binding on private legal entities, i.e. on citizens and companies.

IV. BDA and BDI welcome the current debate on corporate social responsibility and human rights because it can result in the respective responsibilities of politicians and business being discussed...

V. However, what we reject are initiatives whereby private legal entities are supposed to become agents for enforcement of international law, as for instance in the draft norms drawn up by the UN Human Rights Committee's Subcommittee. With the position set out in this paper, we wish to demonstrate that it is not right to shift the state's tasks with respect to ensuring human rights on to companies...

Differentiate responsibility of policy-makers by player

7. *Respecting* human rights is also dependent on the extent to which there is an overwhelming consensus within society in an individual state that assigns legitimacy to human rights. For instance, there are many international conventions which have been ratified by fewer than twenty states. Even the two important human rights conventions dating from 1966 have so far only been accepted by around forty states. *Application* of human rights depends in turn on the extent to which the internationally agreed norms are implemented in national legislation. Moreover, the ultimate *enforceability* of human rights is also dependent on the extent to which each individual can prosecute a legal claim. This requires a functional separation of powers with an independent judiciary which guarantees effective legal protection. Only if these conditions are met in full can human rights be valid for all members of a society.

Responsibility of non-state players

12. German companies feel a calling actively to *promote realisation* of human rights within the scope of their possibilities, and to *contribute to their recognition* by applying them. In the framework of their *corporate social responsibility* (CSR), they assume responsibility for realisation of human rights. With their own *voluntary initiatives*, multinational companies - sometimes also in the framework of public-private partnerships or jointly with non-governmental organisations – seek to make a contribution to better implementation of human rights. In this way, companies can strengthen human rights by complementing, not substituting for, the actions taken by policy-makers...”

Belgium (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/belgium.pdf

[Submission of Government of Belgium is European Union submission. Section called “National initiatives/standards” says: “Information on Belgian enterprises will be communicated to the OHCHR at a later date.”]

Berne Declaration

Full text: www.ohchr.org/english/issues/globalization/business/docs/bernedec.doc

[Only available in French]

EXCERPT: “...La Déclaration de Berne...appelle depuis plusieurs années à l'établissement d'un cadre juridique international cohérent et contraignant sur les responsabilités des sociétés transnationales en matière de respect des droits humains et de l'environnement...”

La Déclaration de Berne a salué l'adoption par la Sous-commission des droits de l'Homme de l'ONU, en 2003, du « Projet de Normes sur la responsabilité des sociétés transnationales et autres entreprises en matière de droits humains » (ci-après, « projet de Normes », « Normes de la Sous-commission » ou « Normes »). Ce projet représente un premier pas vers l'établissement d'un cadre juridique international contraignant...

Recommandations :

- La Commission des droits de l'Homme devrait soutenir le projet de Normes afin de le faire aboutir.

Mais 3 points doivent encore être améliorés afin qu'il représente un véritable progrès en matière de contrôle des activités des sociétés transnationales.

- Il faut absolument étudier et créer des mécanismes contraignants de mise en œuvre et d'application des Normes. Ils sont certes évoqués dans le texte, mais de façon vague. Or c'est l'élément clé à développer si l'on veut que les Normes changent réellement quelque chose par rapport à ce qui existe déjà actuellement...On peut imaginer p.ex. la mise sur pied d'un tribunal qui puisse juger les entreprises pour violations des droits humains, ou la possibilité des les juger dans le cadre de tribunaux internationaux existants.

- Les sociétés transnationales doivent être tenues pour responsables sur l'ensemble du processus de production, de distribution et de commercialisation qu'elles dirigent, c'est-à-dire qu'il faut établir, dans le texte des Normes, la responsabilité solidaire des sociétés transnationales avec leurs fournisseurs, sous-traitants et preneurs de licence. L'ONU doit notamment pousser les Etats à adopter des législations qui rendent les sociétés transnationales légalement responsables, dans leur propre pays (celui où est basé leur siège), pour des violations de droits humains commises par elles ailleurs.

- Le texte des Normes doit comporter le principe de la responsabilité civile et pénale des dirigeants des sociétés transnationales, c'est-à-dire de ceux qui prennent les décisions stratégiques ; sinon, en cas de sanctions, elles viseront plutôt les exécutants, cadres subalternes ou travailleurs...”

BP

Full text: www.ohchr.org/english/issues/globalization/business/docs/bp.pdf

EXCERPT:

1. "A set of Norms that lay out code of conduct-like responsibilities and expectations of businesses with regard to human rights, based on the Universal Declaration of Human Rights, constructed through a multi-stakeholder engagement process and agreed by governments is something that BP can support.
2. We believe that we already incorporate in all material aspects in our policies, operations and practices, the expectations relevant to us as a company and implicit in the Norms...
3. However, we were concerned about some aspects of those drafted Norms...
4. The tone of the document ignores the potential beneficial effects that business per se has on the realisation of international standards of human rights.
5. In general, accountability should not be given to an actor who does not have the capacity to fulfill that accountability. Business cannot and should not be held accountable for what is the role of government. (Businesses can and should be held accountable for their own operations).
6. The proposed monitoring and verification process is vaguely defined and impractical. Experience with similar processes supports this view.
7. In summary of the above, BP can support the general intent of the proposed Norms but believes that the proposed Norms need amendment, and a process should be put in place to bring parties together in open dialogue to resolve differences and agree a set of responsibilities and expectations of businesses with regard to human rights.
8. In the spirit of conciliation and constructive engagement, BP offers to participate in that process.
9. For background, we describe, in the paragraphs that follow, BP's approach to human rights..."

Business & Human Rights Resource Centre

Full text: www.ohchr.org/english/issues/globalization/business/docs/businessshr.doc

EXCERPT: "The Business & Human Rights Resource Centre (www.business-humanrights.org) monitors reports about the human rights conduct of over 1600 companies worldwide..."

Each week we add to our website reports of positive initiatives undertaken voluntarily by individual companies to promote human rights, protect the environment, combat poverty and contribute to conflict resolution...

But each week we also add a large number of reports about the involvement of companies and their suppliers in significant abuses of fundamental human rights, in all regions of the world....

The facts speak for themselves. The current framework (lack of corporate accountability at the international level; varying and often weak systems of accountability within states; reliance on voluntary measures by companies) is not addressing extensive human rights abuses. There is clearly a need for the UN to adopt a set of international principles..."

Business & Industry Advisory Committee to the OECD (BIAC)*

[Cover letter not yet available online.

Annex: *BIAC Discussion Paper on Supply Chain Management – OECD Roundtable on Corporate Responsibility – Supply chains and the OECD guidelines for multinational enterprises, Paris, 19 June 2002:*
www.ohchr.org/english/issues/globalization/business/docs/businessindustry.pdf]

Business for Social Responsibility (BSR)

Full text: www.ohchr.org/english/issues/globalization/business/docs/businesssocial.doc

EXCERPT: "...Given the interlocking nature of the public, private and independent sector opportunities and obligations to advance human rights, BSR is very pleased that the UN, and the Office of the High Commissioner in particular, continue to pursue dialogue around these issues to achieve greater clarity, consensus and action..."

By way of context, I would note that Business for Social Responsibility (BSR), is a leading resource for advice and information on corporate social responsibility, with offices in San Francisco, Paris and Hong Kong. Human rights has been a core part of our activities since BSR was formed in 1992, and this work is based on our belief that business has an important role to play in promoting the enjoyment of human rights globally, and also has an obligation to avoid complicity in human rights violations...

In our view, the Norms reflected, and to some degree sought to address, three essential questions: (1) What are the responsibilities of companies concerning human rights? (2) What are the boundaries between the obligations of companies and other actors with respect to human rights? and (3) What are the accountability mechanisms for ensuring that these obligations are followed? ...

It is our belief that greater understanding about boundaries, and the relative responsibilities different sectors have for promoting and ensuring human rights, will result in greater engagement by companies on human rights...Because this is a debate that by definition involves state actors, as well as civil society perspectives, the UN is particularly well situated to achieve greater understanding and action.

What accountability mechanisms could appropriately ensure that these obligations are followed? While this is likely the most complex question to address, it is also of central importance to the UN, the private sector, and key stakeholders, and also the general public. We encourage further consideration of this question, and also express the hope that lack of consensus on this question would not prevent agreement on other points where greater consensus exists.

We also would welcome the chance to insert into this overall discussion the question of how business can help to create an environment in which positive rights are more widely enjoyed. While much public attention has been given to the need to reduce human rights violations attributable to business, it is also valuable to identify and promote the ways that business can help create societies in which rule of law prevails; economic rights are enjoyed more widely, and civil society institutions are able to play their role in the promotion of human rights..."

Business Leaders Initiative on Human Rights (BLIHR)

Full text: www.ohchr.org/english/issues/globalization/business/docs/blihr.doc

EXCERPT: "The companies participating in BLIHR (ABB Ltd, Barclays PLC, Hewlett-Packard Company, National Grid Transco PLC, the Novartis Foundation for Sustainable Development, Novo Nordisk A/S, MTV Networks Europe, Statoil and The Body Shop International PLC)...work to both respect and support human rights across all activities that lie within our 'spheres of influence'. We support, 'as organs of society', the 1948 Universal Declaration of Human Rights and also support the full range of internationally agreed human rights instruments that have developed since this time.

We have welcomed the content of the Norms as a valuable focus for better understanding about how business might proceed with relation to human rights, recognizing also that there are some areas that require much greater clarification. We see that it is in our interests, as well as those of wider society, to better understand the ways in which civil, political, economic, social and cultural rights can be supported within our companies and across our business sectors. The prime responsibility for upholding these rights lie with governments, but we are also interested in exploring where the boundaries of our responsibility might lie to help implement these rights. We believe that this does not detract from the central role of government as the main duty bearer for fulfilling human rights, rather it reinforces it..."

CAFOD

Full text: www.ohchr.org/english/issues/globalization/business/docs/cafod.doc

EXCERPT: "...**Summary**

1. The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights represent the most promising mechanism for developing a framework to support companies in meeting their responsibilities with regard to human rights.

2. The Norms:

- give a comprehensive and coherent list of the human rights obligations of companies
- complement and strengthen existing initiatives to promote human rights
- are designed to apply to all transnational corporations and related businesses
- provide a practical tool to help companies that want to improve their performance on human rights.

3. In view of these strengths, the Norms should form the main focus of the report on existing initiatives and standards relating to businesses' responsibilities on human rights, which the Office of the High Commissioner for Human Rights is preparing for submission to the Human Rights Commission in 2005.

12. Rather than conflicting with existing initiatives, the Norms complement and strengthen other measures to improve human rights by addressing gaps in the current system. Indeed this is suggested by the fact that several of the companies which have already signed up to the Global Compact are also 'test-driving' the Norms. The added value of the Norms lies in the fact that they offer a more detailed and comprehensive list of companies' obligations on human rights, set a standard for all companies to work towards and can be used as a practical tool to achieve improvements..."

Canada (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/canada.doc

EXCERPT: "...1.1 The primary responsibility for the promotion and protection of human rights rests with States.

1.2 However, existing implementation and enforcement mechanisms are unable to deal with every situation, and some States are unable or unwilling to uphold their international human rights obligations. While States have the primary responsibility for the promotion and protection of human rights, there is a growing recognition of the role that other actors - including the private sector - can play in promoting respect for human rights.

2.2 Canada is of the view that the CHR should have an important role to play in the development of any UN standards of corporate social responsibility with respect to human rights. However, Canada has a number of concerns regarding the draft norms. The first is that they purport to extend existing international human rights and other obligations of States to impose binding obligations on TNCs and other business enterprises. A non-binding document, such as the draft norms, could not have this effect even if adopted by the Commission on Human Rights...

2.4 A second concern with the draft norms is that in many places, existing obligations under international human rights law are misstated, or new obligations are posited which have not been established in international law.

2.5 A third concern is that the draft norms deal with issues which lie beyond the competence of the Commission on Human Rights, which has, for example, no mandate to consider questions relating to labour, anti-corruption, consumer protection, or environmental standards, issues which lie within the competence of other bodies. These issues should be dealt with in other, more appropriate fora.

2.6 A final general concern with the draft norms is that the Commission on Human Rights is not equipped to fulfil the monitoring role proposed. The resources of the UN human rights system are already over-stretched. The Commission should focus its efforts on urging States to comply with their international human rights obligations...

3. Scope and legal status of existing initiatives and standards relating to the responsibility of transnational corporations with regard to human rights:

The Corporate Social Responsibility Framework

3.2 For the most part...the human rights sections of existing mechanisms are not as well developed as other components of the CSR agenda. Even when read together, these sections are not sufficient to address the full range of human rights issues business enterprises often face when conducting business in many countries. The development of human rights guidance or principles for companies is a necessary step in better defining the relationship between business enterprises and human rights and could complement State efforts to uphold their international human rights obligations.

International Criminal Law

3.3 Reinforcing the responsibilities of states and advancing CSR initiatives are not by themselves sufficient to address the more specific issue of corporate involvement in the most serious crimes known to humankind: genocide, crimes against humanity and war crimes. Under international law, individuals, including corporate officers, can be held to account (individually or jointly) for committing genocide, crimes against humanity or war crimes, as well as for ordering, soliciting, inducing, aiding, abetting or otherwise assisting in such crimes, contributing to the commission of such crimes by a group acting with a common purpose, or attempting to commit such crimes. In addition, superiors can be held liable for such crimes committed by individuals under their effective authority and control, as a result of failing to exercise control properly, and for failing to prevent or punish those who committed such crimes.

3.4. Under international criminal law, corporations (as opposed to individual corporate officers) cannot be prosecuted for committing genocide, crimes against humanity or war crimes. The jurisdiction of the International Criminal Court (ICC) is governed by the doctrine of complementarity, under which the ICC will only act if a State is unwilling or unable to investigate or prosecute. States may choose, in implementing the Rome Statute of the ICC into domestic law, to adopt legislation that permits corporations to be prosecuted for genocide, crimes against humanity and war crimes.

4. Options for strengthening standards on the responsibilities of business enterprises with regards to human rights:

4.1 An approach to business and human rights can be organized around three tranches of activity: 1) reinforcing the primary role of States in promoting and protecting human rights; 2) promoting and strengthening existing CSR mechanisms; and finally 3) better understanding the linkages between business enterprises and international crimes in States where governments are unable or unwilling to uphold their own laws. While the CHR has an important role to play in each of these tranches of activity, in some cases the proposed work is beyond its mandate. In all cases, the work should be conducted in close co-operation with relevant stakeholders such as business enterprises, NGOs, labour unions, governments and multilateral organizations..."

Castan Centre for Human Rights Law, Monash University, Melbourne, Australia

Full text: www.ohchr.org/english/issues/globalization/business/docs/castancentre.doc

EXCERPT: "...This submission will focus on the Norms..."

Scope

5. Outside their provision for the State to bear primary responsibility for implementation, the Norms provide for contemporaneous and complementary human rights responsibilities to fall to TNCs, in respect of those within their "spheres of activity and influence"...

10. A TNC's sphere of activity and influence with respect to human rights may be viewed as a series of concentric rings. At the centre are core operations, followed by business partners, host communities and finally advocacy and policy dialogue...

14. Liability for complicity needs to be fleshed out further if the Norms are to become legally enforceable. Unanswered questions include: what level of involvement or knowledge on the part of the company is required?...

15. The Alien Tort Claims Act [hereafter 'ATCA'] litigation from the United States provides useful insight into how the concept of complicity might develop...

17. Paragraph 12 of the Norms states that corporations shall respect and contribute to the realisation of economic, social and cultural rights...which is in fact a less onerous obligation than that required of States in the ICESCR [Intl. Covenant on Economic, Social & Cultural Rights]. For most companies contribution to the realisation of these rights would centre on labour rights, environmental rights (under the right to health), children's rights, but might also conceivably extend to cover rights to education and participation in cultural life – that is, the rights associated with the workers and communities who most directly fall within the company's sphere of activity and influence...

24....the implementation provisions from the Norms follow the traditional human rights model; that is enforcement through domestic legislation backed up by a transnational reporting and complaints procedure...

25. An important issue to be resolved is the question of which nation is the correct forum for claims to be brought, given the fact that many corporations operate across jurisdictions...

Legal Status

26. As international rules directed at TNCs, the Norms form part of the growing phenomena of non-State parties attracting responsibilities under international law. The phrase 'privatising human rights' has been used by detractors of the Norms in support of their view that somehow the implementation of the Norms will let States off the hook in their role upholding human rights. However, it does not follow that from additional sites of responsibility comes a corresponding reduction of the State's liability in respect of human rights protection and promotion...Rather, the human rights burden is both increased in size and to some extent differently composed, as the duty to discharge is shared out across the different entities...

32. The fact that the Norms are not 'instant international law' does not prevent them from 'hardening' over time into 'international custom, as evidence of a general practice accepted as law'...if State practice moves accordingly. The required practice would be that of States participating in the implementation of the Norms through whatever mechanism for enforcement is created, with the necessary legal intent that the enforcement process be a process under international law...

34. The most direct and obvious means by which the Norms might harden into positive law would be if they continue their progress through the UN and are eventually adopted either as a declaration or later as a treaty...

35. The domestic arena is the most appropriate and likely place for the Norms to obtain substantial legal effect (either before or after the Norms acquire international legal status) through the enactment of domestic law that incorporates the Norms, thereby bringing TNCs and other business enterprises within a national human rights Framework...

36. As a non-binding international code the Norms might still have domestic impact. Such codes can become a source of guidance for national authorities and TNCs since both can rely on and utilise the codes to fill in gaps in the relevant law and practice. The Norms may thus become a springboard for legally creative action by national courts and other agencies...

37. Use could also be made of the Norms in private law suits without their prior adoption as a treaty or other legally binding instrument...

38. Regulatory authorities...or ethical investment indexing bodies...might adopt the Norms as part of their mandatory reporting requirements...

39. Many scholars have addressed the question of whether TNCs *should* be made legally accountable for their human rights violations in what has become known as the voluntary versus mandatory debate. The main reasons for some form mandatory international framework are:

- Given the imposition of fundamental, international, legal obligations on Individuals...and armed oppression groups it would be anomalous for companies to maintain only minimal obligations under international law.
- This is particularly true given the unique mobility, power and transnational nature of corporations. The growing importance of companies in the face of increased 'contracting out' of State functions attaches particular urgency to the need to regulate and punish corporate wrongs...
- Sometimes States are in connivance with TNCs, in which case the State may benefit from failing to enforce human rights obligations against TNCs.

- States are notoriously inconsistent in their respect for and enforcement of international human rights, which calls into question the efficacy of an approach which relies on States to enforce human rights obligations on
- TNCs...

...outstanding issues

41....as a work in progress moving through the UN human rights machinery (albeit at the bottom of the UN hierarchy) the Norms in their entirety gain a certain status, which might be described as soft law, and the OHCHR should preserve this status...

46....international monitoring and enforcement...of the Norms...could take the form of an international reporting and complaints mechanism either by way of a “yet to be created” TNC-specific scrutiny body or process (see Norms, paragraph 16), or at least in the first instance, by way of explicit lines of inquiry pursued under the existing scrutiny procedures of the UN’s six principal human rights committees as to what States are doing to ensure that all corporations are protecting and promoting human rights within their (the States’) jurisdiction.

47. However this is for the future. Domestic regulation is the rightful starting place as there are already systems in place to protect certain rights, particularly labour rights and environmental rights, and these can be built on in order to provide wider human rights protection...”

48. If domestic regulation is to be effective, the question of jurisdiction needs to be resolved in favour of a broad approach allowing cases to be heard where TNCs are headquartered or their assets are kept.⁶³ This is so that liability may be established and reparations orders enforced, preventing the situation described above (in paragraphs 5 and 6) where the State has limited ability to control companies within its jurisdiction...”

CBI (Confederation of British Industry)

Full text:

Cover letter: www.ohchr.org/english/issues/globalization/business/docs/confederationbritish1.doc

Annex A (Opinion of Professor emeritus Maurice Mendelson QC on the UN Norms):

www.ohchr.org/english/issues/globalization/business/docs/confederationbritish2.doc

Annex B (“Four inter-related questions”):

www.ohchr.org/english/issues/globalization/business/docs/confederationbritish3.doc

EXCERPT: “...We also strongly support the Commission’s explicit statement in Decision 2004/116 (c) that the Sub-Commission’s draft norms have no legal standing & that no monitoring of them should be performed. It is right that they should not constitute the starting point for the High Commissioner’s work. For your information, I attach a memorandum that was prepared in advance of the Commission’s 60th session. This explained our fundamental concerns with the draft norms...This is attached as Annex A...”

We believe that the [High Commissioner’s] report will need to be very clear about some fundamental questions, as well as the realities of human rights protection & promotion. To assist that goal, we attach at Annex B a paper that explores four inter-related questions...”

“Annex A

IN THE MATTER OF THE DRAFT “NORMS ON THE RESPONSIBILITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH REGARD TO HUMAN RIGHTS”.
OPINION OF PROFESSOR EMERITUS MAURICE MENDELSON Q.C.

For the reasons indicated below, I consider this document [the norms] to be extremely unsatisfactory from a legal viewpoint. In particular:

- It has little or no basis in existing international law.
- It plays “fast and loose” with the established means of creating international law, and seeks to mix law, “soft law”, guidelines, non-law and would-be law, not to mention assorted categories of rules, in a most unsatisfactory normative stew.
- It runs counter to the general structure of international law which, for good reason, places the responsibility for ensuring good governance and respect for human rights on States and their instrumentalities.

- It begs numerous questions, both of practice and principle...

...The authors of these Norms are to be congratulated for their zeal for human rights and other forms of human flourishing – goals which every right-minded person will share. Unfortunately, for the reasons already given and for many other reasons which brevity forbids mentioning, these Norms are not appropriate for advancing those values and goals, and could even prove counter-productive...”

“Annex B

QUESTION 1: WHAT IS MEANT BY “HUMAN RIGHTS”

1. A logical and necessary preliminary consideration to any study of human rights responsibilities in any context is the definition of “human rights”. The phrase is not a precise term of art, and has been used by some in an unhelpful expansive way.
2. Clearly the concept encompasses traditional civil and political rights, as well as economic, social and cultural rights, broadly along the lines of the two International Covenants of 1966. But on the other hand, not all international rules and standards for the promotion of human flourishing can be appropriately subsumed under the heading “human rights”. Much of international law exists for the ultimate benefit of human individuals and groups; but this is not enough to justify classifying it all as “human rights”. Therefore, and contrary to what has sometimes been proposed, rules and standards emanating from the following other branches of public international law are not properly classified under this head¹:
 - international humanitarian law or the laws of war
 - international labour law
 - international criminal law
 - international environmental law
 - international health law
 - consumer protection and anti-trust law
 - and sundry other rules not easily subsumed under a particular branch of international law, but in any event not properly classifiable as human rights law, such as conventions combating the corruption of officials.
3. It is not just that it is imprecise and incorrect to classify these aspects of international law as “human rights law”. It is also unhelpful to “lump them together” in this way...

QUESTION 2: THE NORMATIVE STATUS OF THE RULES UNDER EXAMINATION

4. In addition to, or even leaving aside, the issues concerning the definition of “human rights” outlined above, there are further important questions to be considered regarding the legal status - the normativity - of the rules in question.
5. Even if it were to be assumed, strictly for the sake of argument, that it would be desirable and useful to make TNCs responsible for breaches of human rights, there can be no justification for making them legally responsible for the breach of rights which are not legally binding even on the States under whose jurisdiction the TNCs in question operate.
6. The principal, and practically the sole, source of human rights law is conventions in force. There are very few human rights rules that could be said to be customary law, and those are also embodied in conventions that are very widely accepted.
7. Written instruments that are not in treaty form do not as such create any binding human rights obligations. Examples include International Labour Organization recommendations, resolutions and policies of the World Health Organization, and the UN Global Compact, to name but a few...
9. ...There are few, if any, existing human rights obligations that are addressed to non-State actors.² ...

¹ This is not to say that there cannot be overlaps. For instance, some International Labour Organization Conventions relate to such traditional human rights matters as freedom of association. However, this does not mean that all international labour conventions are human rights conventions – most are not.

² Exceptionally, instruments relating to international criminal law or the laws of war enable individuals to be made legally responsible for their acts. But that topic is self-evidently outside the proper scope of human rights law in the present context.

14. In short, not all human rights rules are equally imperative, or imperative in the same way. In particular, they often call for choices to be made by Governments and, to a large extent, are subject to the discretion of Governments. Whether, in these circumstances, it is feasible or desirable to make TNCs responsible for breaches of these rules is the subject of the next Question.

QUESTION 3: HOW FAR IS IT FEASIBLE OR DESIRABLE TO SUBJECT TNCs TO HUMAN RIGHTS OBLIGATIONS?

16. International law is still essentially a law between States.³ Its obligations generally fall on States rather than on other persons. That is certainly the case where human rights are concerned.⁴ It is not simply an historical accident that it is so. States – who are the makers and addressees of international law – wish it so...
25. The rare cases where it has been alleged that there has been culpable incitement or collusion by a TNC in serious governmental violations of human rights naturally attract attention and a desire to do something about it. But it seems inappropriate and inefficient to erect an entire structure of international human rights obligations for TNCs simply because of such exceptional cases, however serious; and there may well be better ways to deal with this particular problem.
26. In addition, there are practical legal problems that appear not to have been properly considered so far. It is not possible to talk meaningfully about the imposition of legal responsibility for human rights violations on TNCs without detailed jurisdictional and procedural rules. Key issues that would need to be satisfactorily addressed include:
- would an international convention or conventions simply impose obligations on States to ensure, by the application of domestic law, that TNCs comply with their supposed human rights obligations?
 - or would there be an international tribunal or tribunals to determine the issue?
 - what would be the standard of culpability required for them to be held liable?
 - how would responsibility for a breach be apportioned between a TNC and a host Government?
 - if a tribunal found a TNC was in breach, but it had acted under the authority of the Government, does this mean that the latter would itself be estopped from arguing that it was not in breach; or would there be a rebuttable presumption that it had acted unlawfully; or would it “simply” be politically prejudiced? how far is it feasible or desirable to make TNCs liable for the activities of their associates above or below them in the supply chain?...

QUESTION 4: OVERALL, WOULD THE IMPOSITION ON TNCs OF LEGAL LIABILITY FOR BREACH OF HUMAN RIGHTS HELP TO PROMOTE HUMAN RIGHTS?

28. For reasons already indicated, an elaborate system for imposing obligations on TNCs would distract attention away from the primary obligation of Governments to respect and “deliver” human rights, and could give them an excuse not to do so.
29. Furthermore, although all human rights have to be taken seriously, not all breaches are equally grave. If a TNC felt that it could be penalized not just for collusion with a Government in a grave breach such as torture or slavery but even for a relatively less serious and in any case more debateable breach – as for example by paying above the minimum wage prescribed by the host State but below what some third party considers that international law requires- the result might tend to be not to invest abroad, or to invest only in countries where there is likely to be less of a problem. These countries are not necessarily the ones where foreign investment could do the most good, or is most needed...
32. It is recognised that exactly what would happen is necessarily somewhat speculative, particularly when trying to predict the future or dealing with a system whose characteristics are still very uncertain. We suggest, however, that, in conducting her study, it behoves the High Commissioner to consider carefully whether the hypothetical benefits that can be achieved by making TNCs legally responsible for compliance with human rights rules might not be outweighed by the disadvantages. This relates not so much to the TNCs themselves - though they too have rights, including human rights, under international law - but to the millions of individuals whose well-being depends upon economic growth, wealth creation & employment opportunities that business generates.”

³ The separate role (to a limited extent) of international organizations is not relevant here.

⁴ In particular, the doctrine of horizontal effect (*drittwirkung*) is not generally accepted in international human rights law.

Center for Human Rights and Environment (CEDHA, Argentina)

Full text: www.ohchr.org/english/issues/globalization/business/docs/cedha.doc

EXCERPT: “Our comments will focus on the general context, value and strength of language of the norms, as well as the potential contribution the norms could make to national implementation, which we feel has been left out of the current version...”

Effectiveness in implementation and monitoring is perhaps *the* most important element to ensuring that the norms are utilized, respected and enforced...Unlike other initiatives of international law, the State, as an actor and responsible party, is largely left out of the context, except for in Article 1 where States are recalled to have the “primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights”, and Article 17, where the norms assign more direct responsibility...We recommend:

1. The role of the State in the monitoring and enforcement of the Norms could be greatly strengthened, placing the state in a more proactive compromise to ensure the enforcement of the norms...
2. The UN and its agencies, especially the OHCHR should commit to provide guidance and technical expertise...to encourage and assist states to work towards the normative harmonization of national laws with the Norms...
3. The UN should commit to assist in the realization of a gap analysis to take stock of current national laws in each State with respect to the Norms...
4. The issue of an appropriate tribunal for TNCs, at some stage, will need to be addressed...
5. In Article 16 the phrase “transnational corporations and other businesses enterprises shall conduct periodic evaluations concerning the impact of their own activities on human rights under these Norms”, should read “transnational corporations and other business enterprises shall conduct periodic evaluations concerning the impact of their own activities *on the rights established by* these Norms.”
6. A TNC should be specifically obligated to report in detail on any publicly expressed issue of their non-compliance to the Norms...
7. The UN and its agencies should encourage states to pass legislation which would hold TNCs legally accountable in their own country for human rights violations they commit abroad...”

Chandler, Sir Geoffrey – former director of Shell International, Founder-Chair of Amnesty International UK Business Group 1991-2001

Full text: <http://209.238.219.111/Chandler-submission-to-UN.doc>

EXCERPT: “The production of the present Norms document was a great achievement on the part of all concerned. I hope that it will be built on and that there will be no abandonment of its fundamental purpose and principle. It is desirable that the wording should be clarified where it may appear ambiguous and thus lead to misrepresentation...It would also be desirable to postpone consideration of the monitoring or control measures which are included in the present version until the platform of principles is established...”

A set of UN-endorsed norms or principles for businesses, clearly and unambiguously worded, recognising the benefits that companies bring, but also the harm they can do if such norms or principles are disregarded in practice, would be of immense value to companies themselves, to investors, and also to the wider public and market forces which would have a measure against which to judge and influence company performance. They would usefully condense the complex set of internationally agreed standards which now exist in a variety of instruments. They would add moral force, but not additional legal requirements, in that they would reflect society's legitimate expectations of company behaviour. In the longer term it must be hoped that national governments will translate international human rights law into national law and that such UN-endorsed norms or principles could provide a basis for the regulatory framework that is now seen as desirable by many, including the World Business Council for Sustainable Development. Such outcomes, however, are clearly a long way ahead and the need for action now is urgent...”

Chirwa, Danwood – Lecturer in Law, Department of Commercial Law, Faculty of Law, University of Cape Town – Contribution to ESCR-Net in advance of its submission

Full text: <http://209.238.219.111/Chirwa-comments-UN-Norms.doc>

EXCERPT: “Apart from the much written about US Alien Tort Claims Act and the ‘state action’ doctrine, and the German ‘*drittwirkung*’ principle, recent developments in comparative constitutional law suggest a trend towards an acknowledgement that human rights bind both the state and non-state actors. This contribution will highlight developments from Africa.

Constitutions adopted after 1990 by African states have, in addition to recognising both civil and political rights and economic, social and cultural rights increasingly entrenched the horizontal application of human rights. Article 18 of the 1990 Constitution of Cape Verde provides that ‘Constitutional norms regarding rights, liberties and guarantees shall bind all public and private entities and shall be directly enforced’. The Constitutions of Ghana [1992, section 12(1)] and Malawi [1994, section 15(1)] contain a similar provision with different formulation...

Under the 1996 Constitution of South Africa, the Bill of Rights also applies to private actors. Section 8(2) provides that ‘A provision of the Bill of Rights binds a natural or juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.’...

Judicial decisions interpreting these provisions and addressing direct responsibility of private actors for human rights are yet to emerge. However, South African Courts have expressly stated in respect of the South African Bill of Rights that private actors have human rights obligations...”

Christian Aid

Full text:

Full submission: www.christianaid.org.uk/indepth/410unchcr/UNCHCR%20submission_formatted.pdf

Accompanying report “Behind the mask”: www.christianaid.org.uk/indepth/0401csr

EXCERPT: “...Christian Aid would like to draw the attention of the Office of the High Commissioner to a report published by Christian Aid earlier this year. *Behind the mask: the real face of corporate social responsibility*, enclosed with our submission, seeks to underline Christian Aid’s experience of working with poor communities affected by the activities of transnational corporations. This experience, together with research with which we have been involved in this area, leads us to conclude that alone, voluntary CSR initiatives – though of significant value – are insufficient to mitigate the often negative impact of transnational corporations on poor communities...”

...UNHCHR action on outstanding issues

To help identify and clarify outstanding issues with respect to corporate responsibility for human rights, Christian Aid offers the following 16 recommendations for inclusion in the OHCHR work programme:

1. Identify the potential benefits of the UN Draft Norms

This comprehensive document deserves further assessment with respect to its potential value in areas such as:

- promoting legal and regulatory reform at the national level
- encouraging companies to review and improve their human rights policies and practices
- educating both local communities and legal professionals about standards for corporate conduct, especially in developing countries
- evaluating social impact statements related to plans for major projects
- providing a powerful tool for NGO advocacy, shareholder and consumer pressure, media reporting and other means of promoting corporate accountability
- providing the cornerstone for a framework of legal regulation of corporations at the global level...

2. Analyse the implementation provisions of the UN Draft Norms

...

3. Seek the adoption of the draft norms by the UN Global Compact

...

4. Clarify human rights law issues

The debate on CSR poses major conceptual questions about the status of corporations as moral actors, and the nature of their ethical and legal obligations...

Questions also arise about how human rights obligations are 'fulfilled', especially in the economic, social and cultural fields. The OHCHR can play a role in this task.

5. Explore means of redress for human rights violations

In the interest of justice, this complex area of legal procedures and remedies under national and international law requires further development. Even if a comprehensive legal framework were in place, breaches would still occur and effective means of redress must be made available. Just some of the issues the OHCHR may wish to consider include:

- facilitating claims against governments for their failure to exercise due diligence regarding the human rights conduct of corporations operating in their jurisdictions, rather than requiring parties to take action against the corporations directly.
- exploring means by which claims can be made in the home country of a TNC or at the international level, given the inability or unwillingness of some host governments to enforce national law.
- assessing the overall limitations of existing legal means of bringing action against TNCs, such as those under the US Alien Tort Claims Act.
- empowering local communities by providing an avenue of redress against corporations whose legal and financial resources may overwhelm the typical plaintiff.
- drawing from the jurisprudence of the European Court of Human Rights.
- learning from the experience of the UN human rights treaty bodies, especially with respect to individual petition procedures.

6. Draw on existing regulatory regimes as legal models

...

7. Recommend specific changes to national laws

...The OHCHR should consider drafting a series of 'model laws', based on some of the substantive elements of the UN Draft Norms. This would help national governments to consider and adopt appropriate measures...

8. Consider the development impact of CSR efforts

...Special sensitivity to the needs of developing countries is required, particularly in light of 'comparative advantage' and the discrepancy in standards between a company's host and home countries...

9. Establish a link to the realisation of the right to development

...

10. Include UN Draft Norms in trade and investment agreements

...

11. Evaluate the role of reporting

...

12. Assess the business impact of enhanced standards and enforcement

...

13. Examine questions of corporate governance

...While the social issues under consideration here are distinct, they also point to the need for a rigorous approach to corporate governance. This overall economic and political environment may help advance corporate accountability in areas such as human rights...

14. Encourage research in the academic community

...

15. Associate the expansion of human right responsibilities with ethical globalisation

...After an initial 'anti-globalisation' backlash, the debate is now taking on more constructive form in the quest for 'ethical globalisation'... This grants the OHCHR an important entry point into one of the dominant themes of contemporary political and economic life, allowing it to make a concrete contribution to 'making globalisation good'.

16. Integrate corporate responsibilities into UN goals

Finally, it is worth recalling that the UN's overall objectives are three-fold: peace, development and human rights. The worldwide activities of business enterprises hold implications in each of these interrelated areas. The OHCHR must help ensure that such activities do not undermine these goals..."

Columbia University Law School Human Rights Clinic

Full text: www.ohchr.org/english/issues/globalization/business/docs/columbiauni.doc

EXCERPT: "As the growing economic power of transnational corporations gives rise to increasing political power globally, transnational corporations (TNCs) have emerged as the most influential yet unregulated actors on the international stage. The development and proliferation of regional trade agreements and bilateral investment treaties (BITs) have endowed transnational corporations with the power to directly challenge the domestic regulatory authority of national governments..."

Recently, BITs have been used to challenge a decision by Mexican authorities to renew a permit for a toxic waste facility; to combat an order by the Chilean government to move a factory located adjacent to an ecological preserve; and to undermine a proposed system for economic empowerment of disadvantaged ethnic groups in South Africa. As the previous examples show, the international economic treaties relied on by TNCs allow them significant power to affect the domestic regulations of countries in which they are not even based...

Even for governments that value human rights, the competitive nature of the global market for investment is a significant disincentive against imposing what may be perceived as cumbersome obligations upon potential sources of capital... The reality today is that international obligations must be placed on the corporations themselves, as well as governments..."

Committee on the Rights of the Child*

Submission not yet available online.

Confederation of Danish Industries*

Submission not yet available online.

Croatia (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/croatia.pdf

EXCERPT: "...The Republic of Croatia has stable democratic institutions which function in an orderly manner and there are no significant problems in ensuring the rule of law and respect for fundamental human rights..."

Fundamental rights and freedoms are guaranteed by the Constitution, and they are also supported by various international conventions, of which the Republic of Croatia has ratified all the key conventions of the United Nations in the area of human rights...

In the described legal surroundings all commercial subjects are started and are in business, and they are obliged to respect and enforce the legislation of the Republic of Croatia, whether they are national or multinational entities, because they are all obliged to respect possible restrictions and measures in the sense of human rights protection..."

Cuba (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/cuba.pdf
[Only available in Spanish]

EXCERPT: "...A través de esa globalización neoliberal, se está imponiendo una nueva reconquista de los países en desarrollo por parte de las potencias imperialistas...y sus agentes económicos, tales como las empresas transnacionales.

La formación de ese tipo de empresas ha sido resultado de la concentración de la propiedad por vía de las alianzas, fusiones y adquisiciones que cada vez más aumentan su poder y control del comercio mundial...

Paralelamente, se está observando la disminución del papel de los Estados y de su capacidad económica y financiera para realizar el derecho al desarrollo...

De ahí la importancia del texto normativo elaborado por los expertos de la Subcomisión cuyo objetivo es determinar la responsabilidad de las transnacionales y otras empresas acorde a las normas internacionales en materia de derechos humanos y al derechos internacional.

Cuba apoya en principio ese cuerpo normativo, mediante el cual se establece la responsabilidad primordial que tienen los Estados en la promoción de protección de los derechos humanos consagrados en la legislación internacional y nacional, incluso, velando por que las empresas transnacionales y sus filiales respeten a esos derechos durante las actividades que desarrollan en el territorio de un país.

Cuba reitera que la inclusión del principio del respeto a la soberanía nacional como una responsabilidad de las empresas transnacionales y otras empresas comerciales es un elemento cardinal en ese cuerpo normativo..."

Czech Republic (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/czechrepublic.pdf
[Submission of Government of Czech Republic is the European Union submission]

Danish Institute for Human Rights

Full text: www.ohchr.org/english/issues/globalization/business/docs/danishinstitute.doc

EXCERPT: "...Comments on the content [of the UN Norms]

The DIHR [Danish Institute for Human Rights] believes that the UN Norms indicate the right balance between the obligations of states and companies, given that states are entrusted with the "primary responsibility" for respecting, protecting, promoting and securing the fulfilment of human rights, while companies – for their part – are endowed with subsidiary responsibilities "within their respective spheres of activity and influence".

However, the DIHR finds that the phrase "within their respective spheres of activity and influence" should be elaborated so as to more carefully delimit the responsibilities of businesses with regard to human rights. First of all, the concept should be clarified throughout the text – particularly in connection to positive duties, such as the obligation of companies to contribute to the realization of an adequate standard of living. In addition, the DIHR recommends that the concept is added to the list of definitions.

The DIHR also believes that the relationship between the UN Norms and existing human rights documents should be clarified in more detail. Being a restatement of existing law, the UN Norms should provide a clear link to other relevant documents in order to prevent any weakening of existing standards. It would also be of great importance to companies to be able to see the exact linkage between specific provisions in the UN Norms and their original sources. While such direct references have been included in the commentary section on the "rights of workers", they have unfortunately been left out under the majority of the other provisions.

Finally, the DIHR considers the provisions related to respect for national sovereignty and human rights one of the key strengths of the UN Norms. Since most human rights problems stem from state failure, it is important to emphasise that companies should not abuse their often superior bargaining position vis-à-vis national authorities, especially in small and poor states, to get away with less and thereby undermine the public interest and the rule of law.”

Comments on the implementation

The DIHR acknowledges the provisions of implementation as an attempt to secure the effectiveness of the UN Norms. Bearing in mind that this is a positive feature, the provisions are nonetheless too vague and ambiguous to fulfil their intended role. For example, the envisaged mechanisms for corporate reporting on the implementation of the norms fail to establish any precise guidelines. Similarly, the outlined measures on possible legal action are unclear. While the UN Norms seem to suggest the adoption of extraterritorial legislation, the difficulties and challenges that may arise from such a system are not adequately addressed.

Suggestions on the future process

To facilitate a constructive process resulting in the adoption of the UN Norms, the DIHR is of the opinion that any discussion of the provisions of implementation should await agreement on the content of the Norms. Otherwise, the important function of formalising the responsibilities of businesses with regard to human rights risks being held hostage to disputes over implementation and monitoring.

Finally, although the commentary is helpful in clarifying the meaning of the standards, the UN Norms are still not fully operational. Consequently, it will be necessary to develop concrete and effective tools to mainstream the rights established by the UN Norms in a business context. The DIHR hopes that the High Commissioner will help develop and promote such tools, including the adaptation of existing tools to be used in conjunction with the UN Norms...”

Denmark (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/denmark.pdf

[Submission of Government of Denmark is European Union submission, with additional section on Danish initiatives and standards]

EXCERPT: “...Existing Danish initiatives and standards

Government initiatives with an international focus

As an element in its development assistance programmes, Denmark supports Corporate Social Responsibility (CSR) both at the operational level and at the level of building standards and norms...Danish business is a partner in a wide range of Danida activities:

- Traditional projects (contracts/supplies)
- Sector programmes (for example the road sector)
- The Private Sector Programme, that facilitates partnerships between Danish and local businesses. It is possible for Danish enterprises to seek support for activities related to human rights, labour rights and equality measures.
- Mixed credits
- Business sector programmes in Vietnam and Ghana: Human rights and CSR are core elements for example via support to industrial organisations.
- Public Private Partnerships

Support to the work of Danish labour unions in developing countries...

Government initiatives with a domestic focus...

Currently, the Ministry of Economic and Business Affairs is developing CSR tools for Danish companies challenged by CSR issues...

The CSR tool will serve as a guide to Danish companies in answering codes of conduct questionnaires from their customers. It will do so by, among other things, giving them a picture of which and how international agreements and conventions mentioned in codes of conduct are implemented in the Danish law...”

Deva, Surya – PhD candidate, University of Sydney Faculty of Law

Full text: www.ohchr.org/english/issues/globalization/business/docs/deva.doc

EXCERPT: “...please find attached to this letter a brief submission that charts some of the critical issues which, in my view, are fundamental to developing an effective regulatory regime of corporate human rights responsibility...”

In response to continued corporate irresponsibility for human rights violations, diversified multiple regulatory initiatives have emerged (and more are likely to emerge in future). The diversity, primarily, lies in terms of their **scope** (covers human rights, labour rights, environment or all of these), **nature** (voluntary, non-voluntary or obligatory), **source of origin** (internal or external), **level of operation** (municipal, regional or international), and the **amplitude of obligations** (merely negative, or both negative and positive obligations)...

I am of the view that the existing regulatory framework for corporate human rights responsibility is highly inadequate in that it is neither effective nor efficient. In sum, existing regimes have failed not only on the front of preventing human rights violations by TNCs, but also in terms of providing an adequate relief – in a speedy and cost-efficient manner – in cases of human rights violations. The Norms though offer some promise in this respect, they also fall short of what is essential to develop an effective and efficacious framework for corporate human rights responsibility...

OUTSTANDING ISSUES

An adequate regime of corporate human rights responsibility requires existence of guidable human rights standards; incentives for compliance; and effective sanctions in case of non-compliance. Given so, at least the following still unresolved issues require immediate attention:

- Should a TNC follow different human rights standards everywhere it operates, or should it pay some respect to universality of human rights? In other words, whether a TNC should adopt same standards both at ‘home’ and in ‘Rome’? Should more fundamental/universal human rights be treated differently?
- How could corporate law – which underpins corporations’ pursuit for maximum profit for shareholders, often at any cost – be tuned so that it obligates corporations to take into account the interests of non-shareholders as well?
- Assuming that the Norms acquire a legally binding character in near future, which institutions at different levels would preserve that obligatory character and how?
- Should a parent corporation, immediate or ultimate, be liable for human rights violations by its subsidiaries as a matter of principle?
- How could it be ensured that corporations do not (mis)use the doctrine of forum non conveniens to evade, delay or frustrate their liability for human rights violations?
- What role, if any, the WTO mechanism should have in ensuring that TNCs while doing free trade do not indulge in human rights violations? Could both the UN and the WTO act in cooperation?...”

Dutch Roundtable on Business & Human Rights

Full text: www.ohchr.org/english/issues/globalization/business/docs/dutchround.doc

EXCERPT: “...The Round Table is a forum where both Dutch multinationals as well as the Dutch Section of Amnesty International are represented...”

Companies represented now in the Round Table are: ABN AMRO Bank, Akzo Nobel, C&A Nederland, Heineken International, ING Group, Royal Ahold, Royal Boskalis Westminster, Royal Numico, Royal Philips Electronics, Sara Lee/DE, Rabobank Nederland, Shell Nederland, Unilever and Vendex/KBB...

The participating company commits itself to contribute in an active way to the common knowledge of the Round Table by giving specific information on the ways the responsibilities in the area of human rights are met by providing cases, making presentations, sharing dilemmas etc. In the same active way as the companies are

expected to contribute with their knowledge and experience on policies and their implementation, Amnesty International is expected to contribute her (international) knowledge and experience with respect to the legal environment and the result of research on the actual situation in the various countries with respect to human rights.

Starting in 2004 each year four themes are selected e.g. forced labour, freedom of association and collective bargaining. Per theme a study group is composed consisting of representatives of Amnesty International and those of the Round Table participants who may be expected to have relevant experience with the theme chosen. The study group has to produce a report with the focus on implementation and best practices. Per theme it will be decided whether and if so how the report produced can be made of use for a broader public.

Since the very initiative of the draft UN Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, the participants have discussed and followed the draft norms within the forum. In 2000, mr. Weissbrodt joined one of the round table discussions. Although opinions vary among participants, they are positive toward discussing the initiative..."

ESCR-Net (International Network for Economic, Social & Cultural Rights)

Full text: www.ohchr.org/english/issues/globalization/business/docs/escrnet2.doc

EXCERPT: "Emphasizing the lack of adequate compensation for victims of the 1984 Bhopal disaster, the ongoing environmental contamination, and the failure of Union Carbide or former Chairman Warren Anderson to face criminal charges, Sadhna Karnik of the Gas Victims Struggle Support Committee, in Bhopal, explains, "The fighting ground is really very unequal." Noting the inaction of the Indian and US governments, she suggests, "The multinational corporations bring particular political forces to power, and now people from the corporate sector are coming to politics with particular aims and have control over state power."...Companies have often hidden behind limited liability arrangements or outdated laws that allow a 'corporate veil' to be drawn between a parent company and the practices of its subsidiaries and distributors..."

The importance of the UN Norms is evident in the case of agricultural workers in the United States...the median income of agricultural workers in the US is \$5000-\$7500 per year. This is far below the poverty line and decreasing over the past decade, yet the Department of Labor reports that the price of fruits and vegetables has doubled in the last two decades...In the past six years, there have been five criminal prosecutions for slavery in Florida's fields, and another 125 cases are under investigation. Despite the notable struggle of groups like the Coalition of Immokalee Workers, there are several obstacles to advancing the human rights of agricultural workers in the US. Under the US National Labor Relations Act of 1935, agricultural laborers and domestic servants are denied the right of association and collective bargaining. Additionally, corporations as citrus and tomato buyers have denied any supply chain responsibility for the conditions faced by agricultural workers.

By clearly delineating the human rights obligations of governments and corporations, the UN Norms offer a key international standard for assessing and monitoring government legislation and corporate policies. In the case of agricultural workers in Florida, the UN Norms outline human rights to a safe and healthy working environment, remuneration that ensures an adequate standard of living, freedom of association and collective bargaining, and freedom from forced labor...

The Framework Convention on Tobacco Control (FCTC) was negotiated and unanimously adopted by the 192 Member States of the World Health Organization in May 2003. After the fortieth ratification, expected by the end of 2004, it will become a legally binding, international treaty with independent oversight. While limited to a specific industry, the treaty is an important milestone in terms of corporate accountability and public health...

We are hopeful that the diversity of comments and ideas presented in this submission provide the basis for ongoing dialogue and the ultimate strengthening of corporate accountability with regard to human rights..."

ESCR-Net (International Network for Economic, Social & Cultural Rights); Rights and Accountability in Development; World University Service (German Committee)-Forum Menschenrechte – joint submission

Full text: www.ohchr.org/english/issues/globalization/business/docs/escrnet1.doc

Full text Spanish: www.choike.org/documentos/joint_submission_esp.pdf

Full text French: www.escr-net.org/GeneralDocs/Joint_Submission_fr.pdf

EXCERPT: “There are many initiatives today that set guidelines for company activities, including the observance of human rights in general terms. They have done valuable work in raising awareness of key issues among companies. However, whether unique to a particular company or adopted sector-wide, voluntary initiatives and codes often lack international legitimacy while creating an uneven playing field. Voluntary initiatives may work for the well-intentioned, but the overwhelming majority of companies have no human rights policy, and few have made explicit commitments...”

Some of the existing mechanisms and initiatives relating to the responsibilities of companies with regard to human rights are outlined and described below. While each of these has made important contributions, we believe that the UN Norms are an important step forward in strengthening standards for corporate behavior by identifying the human rights responsibilities of business. The UN Norms represent the logical development and amplification of generalised statements regarding human rights in the other initiatives and therefore offer an essential guide to implementation for States and corporations...”

Ethical Funds Company

Full text:

Cover letter: www.ohchr.org/english/issues/globalization/business/docs/ethical1.doc

Full submission, “Corporate liability for human rights violations”:

www.ohchr.org/english/issues/globalization/business/docs/ethical2.doc

EXCERPT: “Submission by...Ethical Funds Inc [Canada]....Prepared by International Legal Resources Centre...Our focus in this submission is on the need for enforcement mechanisms in support of the UN Norms...The UN Norms, as a precedent setting initiative, should pave the way to a binding international agreement...”

At present, national legal or administrative measures to ensure compliance are generally not implemented...

...Canada has no real legal instrument with a built-in corporate accountability and enforcement mechanism, although some corporations have adopted a voluntary code of conduct. The Government of Canada is presently encouraging the use of voluntary business codes of conduct relating to human rights practices. In early 1997, the government endorsed the "International Code of Ethics for Canadian Business", a document that some corporations have pledged to follow, including Talisman Energy Inc, a corporation charged in the USA with genocide...However, this voluntary code is vague and lacks an independent monitoring mechanism...

In Canada, only one civil lawsuit related to human rights violations has been brought against a multinational company. Cambior Inc. was sued for environmental damage associated with its joint venture gold-mining operations in Guyana...

Treaty on corporate accountability The next step after the adoption of the UN Norms would be to sign an international treaty. This treaty would specify the human rights obligations of corporations and require States to provide criminal, civil, or administrative proceedings for violations of those obligations. Indeed, in this treaty the states would do what they did not manage to do in the Rome statute, which created the International Criminal Court (ICC), and that is to agree on the criminal liability of corporations...

Creation of an International Civil Court States seem to have no incentive to prosecute corporations for human rights violations. The international community should give victims the opportunity to sue them. The lesson that emerges from actual State practice is very clear: individuals must be given the means to enforce and protect their own rights.

Moreover only a few victims can receive compensation from The Victims Trust Fund of the ICC. Indeed, victims cannot initiate their own proceedings, thus not all the victims will see their case examined by the ICC. In addition, in order for victims to receive compensation from the Fund, not only must their case be examined by the ICC, but the perpetrators must also be found guilty.

The international community also has to create an International Civil Court...in much the same way it has established the International Criminal Court (ICC). This international civil court, like the ICC, would be based on the concept of universal jurisdiction. This international civil court would not exclusively look at corporate accountability and liability for the human rights violations, but would also allow individuals to be prosecuted for human rights violations. Victims would be able to sue not only the State agents who directed and carried out human rights abuses, but also the States that employed them and their corporate accomplices. The civil litigation system in the United States, where corporations have been prosecuted for human rights abuses, can be used as a model. The international civil court that is being proposed would simply universalize the concept existing in the USA. Clearly such a court cannot be established tomorrow, but it is an achievable goal. The international community can and must do for civil law what it has done for international criminal law -- that is to establish civil liability for non-State actors who have committed human rights violations..."

European Union

Full text: Full text of EU submission not yet available online as a stand-alone document. To read the submission see one of the country submissions that uses the text of the EU submission, e.g. see Government of Greece pg. 2-12: www.ohchr.org/english/issues/globalization/business/docs/greece.pdf

EXCERPT: "...1....The European Union is of the opinion that transnational corporations and related business enterprises can play a constructive role vis-à-vis human rights. We stress that the prime responsibility for the protection and promotion of human rights rests with States, and that it is the responsibility of States to implement human rights obligation through legislation, regulations and related monitoring and enforcement measures. Transnational corporations and other business enterprises shall respect local legislation and regulations, to the extent that local legislation or regulations do not make business an accomplice to human rights violations..."

4. The EU considers CSR demands placed on companies to be mainly defined by the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977, rev. 2000), the OECD Guidelines for Multinational Companies (2000) and the Global Compact principles (2000, rev. 2004). All three instruments contain explicit and implicit human rights benchmarks. The implementation thereof is generally dependent on decisions of companies to establish internal enforcement measures or incentive policies. In certain cases, an effective implementation can also be reached through cooperation with external expertise or public-private partnerships.

7. Respect for national legislation is the first and compulsory step for all enterprises. The EU would expect that States' national legislation should prohibit acts by domestic and multinational enterprises that are incompatible with human rights standards and principles and that all enterprises should refrain from such acts. Besides, States may wish to play a proactive role and promote corporate responsibility through incentive measures, in close consultation with all concerned social actors. Nevertheless, the EU also reiterates that according to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights every individual and every organ of society is under a responsibility to strive for the promotion and observance of human rights in support of States' efforts to meet their legal obligations. This would involve at least the responsibility for companies to ensure that they are not in any way complicit in human rights abuses. In addition enterprises, that wish to exercise a proactive role with respect to human rights, may decide to take voluntary measures to do so.

8.... Within the EU territory itself, CSR is defined in a way implying that companies voluntarily integrate social and environmental considerations into their operations with stakeholders, in addition to their compliance with a comprehensive system of European and national regulations...

13. ...The EU believes that the OHCHR report should take account of the international initiatives/standards mentioned hereunder. For the sake of clarity, the overview is divided in two parts. The first part deals with initiatives/standards that stress the role of States, the second part consists of initiatives which encourage corporations to take on a more active role, including in the area of human rights.

[First part gives details of: UN Convention against corruption; Report of World Commission on the Social Dimension of Globalisation; ILO Declaration on Fundamental Principles & Rights at Work; ILO Conventions; ILO Tripartite Declaration; OECD guidelines; OECD Convention on Combating Bribery; European Commission strategy on CSR and Multi-Stakeholder Forum on CSR; Publish What You Pay campaign; EU trade agreements; Cotonou Agreement on AVP-EU Cooperation; Helsinki Process on Globalisation and Democracy].

[Second part gives details of: UN Global Compact; UNDP Division for Business Partnerships; Caux Round Table; Global Sullivan Principles; Global Framework Agreements; World Economic Forum Statement 'Global Corporate Leadership Challenge'; ISO standard on Social Responsibility; World-wide Responsible Apparel Production (WRAP); Global Alliance for Workers and Communities; Extractive Industries Transparency Initiative; Kimberley Process; Voluntary Principles on Security & Human Rights; UN Draft Norms; Business Leaders Initiative on Human Rights; OECD investment committee's 'integrity package' for TNCs]...

Outstanding issues

Coherence: It is imperative that coherence and synergy between the different actors and initiatives be ensured with regard to the role of transnational corporations and related business enterprises vis-a-vis human rights...

Clarification: ...An exercise that would promote clarification, would bring added value to the promotion of the corporate role in the field of human rights...

Encouraging companies to act: Improving domestic State legislation would ensure a better contribution of transnational corporations and related enterprises to the full enjoyment of human rights. This would be in line with governments' duties to promote and protect human rights...

Global promotion of responsibilities: Not all states have effective legislation and regulation requiring minimum standards of corporate behaviour. This should be further promoted, and supported in cases where states need technical assistance...

Law and jurisdiction: one of the most complex areas is the question of jurisdictional powers of states over corporations that are headquartered in one country, operate in a second, and may have many of their assets in third countries. Further consideration will be needed to what extent companies should be subject to the law and jurisdiction of their parent states in relation to their operations overseas...

Scope: transnational corporations never act in isolation, but with and through a range of domestic corporate actors, including suppliers, distributors, sub-contractors, service-providers, and others. The relationship between these actors, and their respective responsibilities for ensuring that their actions are in line with human rights standards, should be further analysed and explored...

Individual responsibility: to what extent can individuals be held criminally responsible for corporate action which is clearly incompatible with human rights standards..."

FIDH (Fédération Internationale des Ligues des Droits de l'Homme)

Full text: www.ohchr.org/english/issues/globalization/business/docs/fidh.doc

1) Critical analysis of the European Union initiatives related to the responsibility of business with regard to human rights

The European Multi Stakeholder Forum on Corporate Social Responsibility was launched based on the premise, which all participants agreed to, that CSR is about "the voluntary integration of environmental and social considerations into business operations, over and above legal requirements and contractual obligations. CSR is about going beyond these, not replacing or avoiding them".

In fact, while dialogue within the Forum has been developing, almost nothing has been done to develop these legal requirements and contractual obligations, which that dialogue should not have replaced.

As a member of this Forum, FIDH urged the Commission to take responsibility for translating the discourse on CSR into effective regulation, to put an end to the existing situation of impunity...

a. Developing European Public Procurement law in accordance with the requirements of human rights

The Member States should be encouraged to include a concern for human rights in their public procurement policies. Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134 , 30.4.2004, p. 114) does not go far enough in that direction...

b. Contributing to the promotion of the OECD Guidelines for Multinational Enterprises

The FIDH also believes the European Commission could do more to contribute to the multinational enterprises domiciled in the European Union complying with the OECD Guidelines for Multinational Enterprises and submitting to the control mechanisms of the revised Guidelines (2000). It could, for instance, create contact points in the EU Delegations in third countries, thus facilitating the lodging of complaints against EU-based multinationals for their activities abroad. The "EU contact points" should be recognized the same role as the national contact points instituted in each country of the OECD...

c. Securing the credibility of codes of conduct

The FIDH also believes that the current proliferation of codes of conduct, while encouraging in principle as it demonstrates a willingness by business actors to accept that they have a responsibility which goes beyond making profit for their shareholders, also may constitute a problem. The codes of conduct are of very variable quality... The difficulty with these strong variations in the quality of codes of conduct is that such codes are now quickly losing their credibility...

The FIDH believes the European Commission has a crucial role to play in response to this situation. The Commission noted in its July 2001 Green Paper on corporate social responsibility that monitoring is important to "secure the credibility of codes of conduct". It should immediately set up the European Monitoring Platform called for by the Resolution adopted on 15 January 1999 by the European Parliament, or transform the Multi-Stakeholder Forum on CSR into such an Observatory...

d. Combating impunity for human rights violations committed in third countries by EU-based multinational enterprises, or with their complicity

Multinational enterprises based in the EU which commit themselves, or are complicit in, human rights violations committed abroad, especially in developing countries whose governments may lack the incentives, the power, or even the will to sanction such violations, should not enjoy impunity within the European Union. They are civilly liable to the victims of such violations: this is already a possibility under Council Regulation n° 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, p. 1), Article 2(1) of which states that "persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State". However, the FIDH is aware that victims of human rights violations in which corporations domiciled in the EU have a responsibility do not in fact rely on this possibility...

More importantly, the FIDH believes that, in certain circumstances where serious human rights violations have occurred in which a corporation based in the European Union shares a responsibility, the possibility must exist to engage the criminal liability of that corporation....

2) FIDH's support for the UN Norms for Business

Since the beginning of the work of the Working Group of the Sub commission on the Promotion and Protection of Human Rights, FIDH has considered that the UN Human Rights Norms for Business represent a major step forward in the process of establishing a common global framework for understanding the responsibilities of business enterprises with regard to human rights...

3) Recommendations to the High Commissioner

Call for an extension of the reporting and consultation process beyond the 2005 session of the Commission...

- Ensure that the process of consultation is open, transparent and effective...

- Recognizing the limits of diverse voluntary standards and initiatives, press for the establishment and endorsement of a common, international standard setting out the human rights responsibilities of business. The UN Norms...should form the basis for this normative framework, as the leading example of a detailed code of human rights standards applicable to companies.
- Clarify that while states have primary obligations to promote, respect, protect, and fulfill human rights, transnational corporations and other business enterprises have corollary human rights responsibilities within their spheres of influence. These human rights responsibilities are not new; however, they are beneficially outlined in The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.
- As an initial step towards implementation and enforcement of greater corporate accountability with regard to human rights, develop mechanisms to review and assess the success of individual corporations in meeting their human rights responsibilities...”

Finland (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/finland1.pdf

[Finnish submission is the Government Report to Parliament on the human rights policy of Finland 2004]

François-Xavier Bagnoud Center for Health and Human Rights (Harvard University)

Full text: www.ohchr.org/english/issues/globalization/business/docs/harvard.doc

EXCERPT: “The OHCHR’s work on globalization, encompassing business and human rights, directly relates to this Center’s work, in particular our Program on Human Rights in Development, which aims to advance the incorporation of a human rights-based approach to human development policy...”

We are particularly pleased that the Norms recognize that transnational corporations can foster development, while having the capacity to negatively affect the components of development. Paragraph 12 specifically identifies the obligation of corporations to contribute to the realization of the rights to development, adequate food, the highest attainable standard of health, and access to education, among others...

...We believe that a critical review should be undertaken of the investment laws and policies of the countries where TNCs operate, including EPZs and other mechanisms through which resource-poor countries seek to attract foreign investment deserves and that such a study should give explicit attention to the 1986 Declaration on the Right to Development and on the 2003 Norms on the responsibilities of TNCs...”

Gap

Full text: www.ohchr.org/english/issues/globalization/business/docs/gap.pdf

EXCERPT: “...One of the greatest challenges we face in addressing human rights challenges is how to achieve a level playing field when not all businesses share the same commitments and viewpoints about what companies can and should be doing with regard to addressing these issues. We are optimistic that the results of this process will help to address this challenge.

Gap Inc.’s commitment to human rights: First, I would like to reaffirm the specific commitment our company has made to strive to realize the human rights principles laid out in the UN Global Compact...

In addition to our affirmations of these principles, we seek to follow through on our commitment through actions, programs, and policies, some of which I have highlighted below. Detailed descriptions of the scope, successes, and opportunities for improvement of our human rights efforts can be found on our website and in our Social Responsibility Report at the following link: http://www.gapinc.com/social_resp/social_resp.htm...

Gap Inc.'s participation in the Business Leaders Initiative on Human Rights (BLIHR): ...To further explore the relationship between business and human rights, we have recently joined BLIHR, chaired by Mary Robinson. Through our participation in this program, we will be working with other brands and with human rights experts from academia, governments, trade unions, and non-governmental organizations in order to deepen our understanding of the concepts addressed in the Global Compact and the "Norms on the Responsibilities of Transnational Corporations and Related Business Enterprises with Regard to Human Rights" (UN Norms). We will also be assisting in BLIHR's project of "road-testing" the feasibility and appropriateness of the provisions of the UN Norms in order to identify concrete and appropriate ways to integrate human rights into business decision making and to empower and strengthen existing initiatives that are working toward the same goal.

Scope of current human rights initiatives: ...we would like to draw your attention in particular to our efforts around ethical sourcing...

In addition to our social responsibility report referenced above, some additional public reports based on our partnerships activities can be found at the following links:

- Independent Monitoring of contract factories by human rights NGOs:
 - El Salvador: <http://www.gmies.org.sv/gmies/documentos.htm>
 - Guatemala: <http://www.coverco.org/eng/monitoring/reports/GAP/>
- Training on labor rights and dispute resolution in Cambodia: <http://www.clo.org.kh/news/PDF/Public-Report2004.pdf>
- Multi-stakeholder initiatives to improve labor rights and working conditions through training and capacity building at national and regional levels:
 - Guatemala: Document attached separately
 - Central America: Document attached separately...

Legal status of existing initiatives and standards: While we do not understand most of our ethical sourcing and other social responsibility activities to be legally mandated, neither do we view them as mere voluntary add-ons that could be easily discontinued without repercussions to our business objectives...

We understand that BLIHR will continue to work closely with the Office of the High Commissioner, and we will allow BLIHR to address the matter of the legal status of existing initiatives and standards in further detail with you on our behalf. Regardless of the legal status of the UN Norms, our current understanding of this standard and other human rights standards such as the UDHR is that many of their articles codify human rights concepts that are aspirational in nature and that are limited to a business entity's particular sphere of influence. As part of its work, BLIHR is seeking to advance understanding about what the appropriate spheres of influence and limits of responsibility of business, civil society, and governments with regard to human rights should be, and we accordingly look forward to expressing our views on this topic to you through BLIHR..."

Geneva Social Observatory

Full text: www.ohchr.org/english/issues/globalization/business/docs/genevasocial.doc

EXCERPT: "...The most important observation that the GSO brings to this dialogue is that one cannot expect good corporate governance or good corporate social responsibility in the face of poor public governance. What is more, inadequate or flawed public governance cannot be remedied by good corporate governance or social responsibility, although they can help improve the governance "environment," especially if there is a common understanding on internationally accepted principles. These observations are consistent with and reinforced by the recent report of the Global Commission on the Social Dimension of Globalization, which emphasized the importance of good public governance at the community level, national level, the regional level – and even at the international level – in order to achieve a fairer globalization for all.

...Although it should be understood that neither CSR nor corporate governance should be seen as the ultimate solution for the problems associated with poor public governance and poverty, their potential for contributing to a fairer globalization should be featured in any evaluation of existing and emerging standards. Such a broadened appreciation of the issues should be encouraged as a means to stimulate a constructive dialogue and should facilitate the search for policy coherence. Furthermore, the dialogue should include the participation of business, trade unions, NGOs, academics, government officials, parliamentarians and all other interested parties..."

German Clean Clothes Campaign

Full text: www.ohchr.org/english/issues/globalization/business/docs/germancleanc.doc

EXCERPT: “The enclosed submission of the German CCC concerns the OECD Guidelines for Multinational Enterprises...

... We agreed to disagree – this is the key conclusion drawn by the parties involved in an OECD complaint case of the German Clean Clothes Campaign (CCC) on instances of labour rights violations in two Indonesian supplier factories of adidas (see the final communiqué of the German National Contact Point of 24 May 2004 at www.bmw.de/Navigation/Unternehmer/auslandsgeschaefte.html)). Yet, in spite of an overall disappointing outcome of this case under the OECD Guidelines for Multinational Corporations, the German CCC considers it to have been far from a useless exercise. In the following, the CCC makes an assessment of this case combined with proposals for future action...

Although the OECD Guidelines for Multinational Corporations are a voluntary instrument to enhance their global social responsibility, they nevertheless compel member governments to follow-up on their compliance through NCP structures. In so far, the OECD Guidelines are a mixture of voluntary and binding regulation. In view of the limited effects which according to the CCC, complaint cases filed to the OECD have had so far, it seems necessary to strengthen this instrument considerably if it is to fulfil its function. The proposals for future action mentioned above, are options which may be considered at the next revision process of the OECD Guidelines if sufficient public pressure can be generated.

Since their adoption in 1976, the OECD Guidelines for Multinational Corporations have undergone a series of revisions, the latest one involving some remarkable steps forward such as the extension of their scope of application including supply chains.

In the long run, however, a strategy of ensuring the global observance of social and labour standards by multinational corporations through complaint cases will be insufficient. The above-mentioned proposals should therefore be seen as steps towards binding international regulation...”

German NGOs: MISEREOR, Diakonisches Werk der EKD, Deutsche Gesellschaft für die Vereinten Nationen, FIAN, Germanwatch, WEED

Full text: www.ohchr.org/english/issues/globalization/business/docs/misereor.pdf

EXCERPT: “Whereas e.g. in trade law business accepts, or even asks for laws and regulations that demand transparency and strict compliance with existing standards, companies in their majority so far refuse to accept similar compliance standards in regard to their social performance. Economic globalization has led to the development of enforceable rules outlining the rights of companies, whereas duties and responsibilities of companies are not laid down yet in any equally enforceable legal framework. There is an obvious need to match the rights of companies with responsibilities...”

Scope and added value of the UN Norms

1. The UN Norms are comprehensive, transparent, focused, universally applicable and they have the authority of the UN by having unanimously been adopted by its Sub-Commission on the Promotion and Protection of Human Rights

2. The UN Norms support and strengthen the ILO Core Labour Standards

The ILO Core Labour Standards are the strongest international instruments available to protect labour rights. Labour rights are human rights. However, not all human rights - as defined in the International Bill of Human Rights and other existing conventions and declarations - are labour rights. The UN Norms explicitly refer to ILO standards and promote their enforcement. They complement the ILO standards by also covering non-work-related human rights.

3. The UN Norms are a key instrument to achieve sustainable development

The UN Norms endorse the precautionary principle, one of the most vital principles of global environmental policy making and law since the Earth Summit of 1992. The UN Norms therefore help to make operational for the conduct of multinational enterprises a key instrument to achieve sustainable development.

4. Empowerment of (potential) victims of human rights violations

One outstanding issue identified when looking at existing instruments is the lack or insufficiency of protection and remedy offered to (potential) victims of human rights violations. The UN Norms have the potential to close this gap. Therefore the monitoring and enforcement mechanisms of the Norms need to be strengthened.

5. Prevention of violent conflict

...There is a broad consensus amongst the different stakeholders that companies do have an important role to play, not only in a post-conflict situation, but also during the conflict, and even more so in a pre-conflict situation...The UN Norms explicitly acknowledge the role and responsibilities of companies in war and conflict..."

Germany (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/germany.pdf

EXCERPT: "...The German Government...promotes in particular the dialogue on business and human rights (featuring differing topics) between government and business representatives, the trade unions and NGOs..."

1. The UN Secretary General's Global Compact

2. Resolution "Towards Global Partnerships"

Within the UN-system Germany, with the support of EU-partners, has launched an initiative promoting partnerships between the private sector, civil society, UN-Agencies and all other relevant actors aiming at implementation of the Millenium Development Declaration...

3. Business and conflict...

In a comprehensive actionplan, adopted in May this year, the German Government formulated its concerted agenda for conflict prevention, identifying 161 areas for further action. These include counseling on the relevance of actions by the private sector in crisis-situations; support for the initiative Transparency of Payments (EITI); the promotion of crisis prevention as an issues in national and international financing; and support for diversified economic structures in developing countries to name a few.

4. OECD guidelines for multinational enterprises

5. ILO fundamental principles and rights at work

6. Working Group on Human Rights and Business

7. German Programme for Social and Ecological Standards, especially Roundtable discussion on "codes of conduct"

8. Common code for the coffee community

9. Information campaign "fair feels good" on fair trade

Global Compact Office

Full text: www.unglobalcompact.org/content/NewsDocs/pos_ungc.pdf

EXCERPT: Our response is focused on our own initiative - the Global Compact - and is organized under your suggested headings:

a) Existing initiatives and standards relating to the responsibility of transnational corporations and related business enterprises with regard to human rights

The Global Compact is the voluntary corporate citizenship initiative of the United Nations Secretary-General. It evolves around ten principles derived from key international statements of principles: the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption. The first two of the ten Global Compact principles concern human rights. They are:

Principle 1 Businesses should support and respect the protection of internationally proclaimed human rights; and
Principle 2 make sure that they are not complicit in human rights abuses...

One of the founding premises of the Global Compact is that, without the private sector's active involvement, there is the danger that universal principles, including those embodied in international human rights instruments, will remain unimplemented...As an initiative of the Secretary-General, it is not appropriate for the Global Compact to preempt governments by expressing an opinion on the merits of the *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*. However, the Global Compact Office always welcomes efforts that help to clarify complex human rights questions and that foster practical changes.

b) The scope and legal status of these initiatives

The Secretary-General's authority to introduce and run the Global Compact comes from his role as Chief Administrator of the Organization. As such, it is his duty to find effective means of implementation for goals (such as those embodied in the Global Compact principles) already endorsed by Member States. The Global Compact has also been recognized by the General Assembly. See, for example, A/RES/58/129, which took note of the Global Compact and welcomed related activities...

The Global Compact is designed to complement, and not substitute, existing regulatory frameworks by encouraging voluntary, innovative corporate practices. As time passes, the positive contribution of the Global Compact to legally binding approaches will become more clear, especially in locations where governments are failing.

...Its main tools are learning, dialogue, local networks, initiatives, and partnership projects. Instead of policing, measuring or enforcing the compliance of companies to lowest common denominator standards – which the Global Compact has neither the mandate nor the resources to do – the Global Compact adds value by motivating its participants to be proactive, engage in innovative practical solution finding, and communicate with their stakeholders about their progress...

c) Any outstanding issues

The two human rights principles are perhaps the least well defined of the Global Compact principles. To help elaborate what the principles mean in practice, the Global Compact Office has been working with the Office of the High Commissioner for Human Rights on a range of projects. One such project is a joint publication of a number of human rights case studies and a series of papers on the topic of human rights and business...

The Global Compact Office has recently undergone a reorganization to reallocate resources towards those activities that have had the most impact. One area that has been given a high priority is human rights..."

Greece (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/greece.pdf
 [Submission of the Government of Greece is European Union submission]

Greenpeace International

Full text:

Cover letter: www.ohchr.org/english/issues/globalization/business/docs/greenpeace3.doc

Annex, "Corporate Crimes" report: www.ohchr.org/english/issues/globalization/business/docs/greenpeace1.pdf

Annex, "Bhopal, continuing the fight for health and justice":

www.ohchr.org/english/issues/globalization/business/docs/greenpeace2.pdf

EXCERPT: "We draw to your attention to the statements submitted and coordinated by the Economic Social and cultural Rights Net (ESCR-Net and others) as well as MISEREOR (and others) [see "German NGOs" submission]

and their recommendations. Greenpeace fully endorses these inputs and their analysis of existing initiatives, their scope and legal status as well as the outstanding issues that they address...

...2004 marks the 20th anniversary of the Bhopal chemical disaster – probably the most shocking example of corporate irresponsibility the world has seen... The factory site in Bhopal is still contaminated and is poisoning people daily... Because of a lacking global instrument for corporate accountability and liability, neither Union Carbide, the company responsible for the accident in 1984, nor Dow Chemicals, which has since merged with Union Carbide to form the largest chemical company in the world, have had to take responsibility for the disaster...

The ongoing tragedy of Bhopal shows most clearly that the world needs a global binding instrument for corporate accountability and liability.

However, Bhopal is only one extreme example. Despite some companies voluntarily adhering to higher standards, which we welcome, corporate crimes continue around the world. As an illustration, we attach our “Corporate Crimes” report from 2002, which details such examples in a variety of industries...

The World Summit on Sustainable Development (WSSD) in Johannesburg in 2002 acknowledged that existing initiatives on corporate responsibility and accountability are insufficient. It gave the global community a mandate to develop global rules for global businesses. Paragraph 49 of the Johannesburg Plan of Implementation states that governments must:

actively promote corporate responsibility and accountability, based on Rio Principles, including through the full development and effective implementation of intergovernmental agreements and measures...

Greenpeace urges you to address as one of the outstanding issues in your report, how this Johannesburg commitment could be taken forward by the global community.

In our view, the UN Norms... could be a crucial first step in implementing the Johannesburg Plan of Implementation...”

House, Frances – Member of Amnesty International UK Business Group; former Director of Corporate Practices, International Business Leaders Forum

Full text: www.ohchr.org/english/issues/globalization/business/docs/house.doc

EXCERPT: “The moral and business cases for companies addressing human rights within their legitimate sphere of influence are clear. Morally, respecting human rights is the right thing to do. From a business perspective, it is a question of risk and reputation management. Public scrutiny of corporate performance with regard to human rights is on the rise from many quarters. Trust in global companies is at an all-time low. And yet, only a minority of companies have adopted codes or policies in an attempt to embed human rights into mainstream business. This may, in part, be due to a lack of clarity as to how and where to begin addressing this challenging area. The ‘Norms’ represent a significant step forward in codifying the human rights responsibilities of companies...

... to become common currency, the ‘Norms’ need to be accepted by business as much as by other sectors. Further consultation to address some companies’ concerns about weaknesses in the drafting process and final text will pay dividends in the future. Concerns have been raised in particular about monitoring of compliance and lack of detail regarding implementation. I would like to endorse John O’Reilly’s point in his submission of 29 September that mandatory and comprehensive human rights impact assessments prior to major projects being approved would encourage preventative measures. This could usefully be considered within the remit of the ‘Norms’...”

Human Rights First

Full text: www.ohchr.org/english/issues/globalization/business/docs/hrfirst.doc

EXCERPT: “...Our work has included engagement in several initiatives that link our focus on workers’ rights and support for internationally-recognized labor standards with our broader interest in strengthening national and international legal mechanisms that promote accountability... These initiatives include, in particular, the Fair Labor

Association (FLA)...Human Rights First also has participated in “voluntary” public-private partnerships such as the U.N. Global Compact and the U.S.-U.K. Voluntary Principles on Security and Human Rights...

...an important gap remains with respect to clarifying the international legal responsibilities of corporations. While, as the OHCHR has noted, “there is a developing consensus that human rights are applicable to private actors,” it is also true that the manner in which they should apply to business remains – as the OHCHR also has stated – a matter of “substantial debate.”

The Norms represent by far the strongest and most comprehensive effort to date to address this gap...

The Norms, along with the interpretive Commentary that accompanies them, constitute a very useful interpretation of the Universal Declaration of Human Rights of 1948, especially insofar as the Declaration applies not only to states but to other “organs of society” – including businesses. The Norms bring together the provisions of the Declaration, human rights treaties and conventions, and other recognized international legal instruments governing labor standards, environmental protection, prohibitions on corrupt practices, and other measures.

The Norms also advance other initiatives developed in the past quarter century to address business activities – notably, voluntary measures such as the Organization for Economic Cooperation and Development’s Guidelines for Multinational Enterprises (as revised in 2000) and the International Labor Organization’s Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (as also revised in 2000)...

While they encourage businesses to do more to promote and protect internationally recognized human rights, the relevance of both the OECD Guidelines and ILO Declaration also depends primarily on the interest of national governments in applying their principles. As a result, they have not done enough to ensure, in practical and specific ways, greater human rights accountability on the part of corporations...

As a participant from the outset in the U.N. Global Compact, we also see its limitations...

...in addition to other steps needed to increase its effectiveness as a measure of promoting corporate accountability, the U.N. leadership, working through the Global Compact, needs to support the Norms publicly. As part of this process, the Norms should be used as a guiding framework for defining the minimum standards expected of companies participating in the Global Compact.

Key Benefits of the Norms

Comprehensiveness and specificity: As noted above, the Norms constitute the most comprehensive statement of human rights standards applicable to business. They both reiterate and build on prior efforts to address the responsibilities of companies for human rights...

A balanced approach to corporate responsibility: The Norms do not challenge the continued primacy of states for human rights protection and promotion. Indeed, Article 1 of the Norms makes clear that “states have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law...”...

Opportunities to test implementation: The mechanisms for implementation set out in the Norms are varied and apply not only to corporations but to national governments and international institutions as well. Credible procedures for monitoring and verification are therefore crucial.

While it is likely to take considerable time to develop and gain approval for a generally-applicable monitoring system, in the interim the Norms should be used in the manner suggested by some companies, notably by the International Business Leaders Forum (IBLF) and its membership, and non-government organizations in monitoring corporate compliance with human rights.

Just as important, the Norms provide a practical “checklist” for any corporation interested in analyzing and improving upon its human rights performance. To this end, businesses should take a proactive approach to “road testing” the Norms to help clarify both their content and the most feasible means of implementation. As the IBLF noted in its very constructive April 2004 statement on the Norms, they provide “a useful basis for dialogue, development of good practices, and benchmarking” and “can provide companies with a framework within which to develop and benchmark their own specific human rights policies”...

This should be done in concert with non-governmental organizations. It also would benefit from active encouragement and facilitation by those charged with administering the Global Compact...”

Human Rights Watch

Full text: www.ohchr.org/english/issues/globalization/business/docs/hrwatch.doc

EXCERPT: “The Norms, along with their commentary, are currently the most authoritative and comprehensive interpretation of companies’ responsibilities under international human rights and humanitarian law. Moreover, the Norms incorporate some of the best guidelines developed through voluntary initiatives. As such, the Norms provide guidance for any company seeking to develop a code-of-conduct and provide a benchmark for those companies that already have a code...”

The Norms also begin to close a loophole because they apply to all forms of business and not only transnational corporations...

We strongly support the Norms and view them as an important step forward for corporate accountability. We encourage the High Commissioner to include in its report:

- Support for the U.N. Norms and the important work of the Sub-Commission on the Promotion and Protection of Human Rights.
- An analysis of corporations that are attempting to implement or otherwise utilize the U.N. Norms as well as a call for corporations to undertake such efforts.
- Support for continuing and extending the consultation process for NGOs, governments, and companies in order to further strengthen the Norms.
- Examination of possible ways that governments, multilateral institutions, and financial institutions could implement or otherwise use the Norms in order to promote corporate accountability...”

Hungary (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/hungary.pdf

[Submission of Government of Hungary is European Union submission, with additional section on national initiatives in Hungary]

EXCERPT: “...National initiatives in Hungary

Although corporate social responsibility in Hungary has started to develop relatively lately due to the economic and social transition, initiatives promoting corporate social responsibility within the business sector in Hungary have been multiplying in recent years, and there is evidence of a willingness and commitment to the idea.

One initiative to recall is the Hungarian Business Leaders Forum, created in February 1992 as part of the international network of the Prince of Wales Business Leaders Forum. It is supported by leading Hungarian and international business leaders, corporations and non-governmental organizations...The priorities for actions are as follows:

Education (improving human resources)

Enterprise (promoting business and enterprise skills)

Environment (eco-efficiency, protection and improvement)

Exclusion (assisting those people who could suffer losses out from the transition to a market economy – the young and civil society organisations helping the disadvantaged...)”

ILO (International Labour Organization)

Full text: www.ohchr.org/english/issues/globalization/business/docs/ilo.pdf

EXCERPT: “...Despite the fact that international labour standards, from a perspective of international public law, are generally addressed to ILO Member States, many Conventions and Recommendations explicitly require and

encourage cooperation between governments and employers' and workers' organizations and forsee the participation of these organizations in their application. In addition, when the provisions of ratified Conventions are incorporated in national law, that law is binding on all enterprises operating in the countries concerned.

In addition, the Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference in 1998, called upon all ILO Member States to respect, promote and realize the fundamental principles and rights at work regardless of whether the underlying Conventions have been ratified or not...

In 1977 the ILO Governing Body adopted the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (revised 2001). This Declaration provides guidance to multinational enterprises as well as to domestic business, governments and workers' organizations in such areas as employment, training, conditions of work and life, and industrial relations... It is important to note that this Declaration was adopted on a tripartite basis and thus constitutes the only international instrument in this area that has the full support of governments, employers and workers. Furthermore, it is interesting to note in the context of the current debate about the social responsibilities of business that the Declaration successfully attempts to balance the different social responsibilities of governments and business. The Declaration also contains a procedure for the examination of disputes, that allows for an interpretation of the provisions of the Declaration...

The "Draft Norms" have been drafted in terms of legal obligations. This approach has given rise to some confusion and misunderstanding since the principles included in the text do not in fact constitute obligations on enterprises under international law. The ILO Conventions that are cited in the draft do not impose obligations directly on individual enterprises, but rather require ratifying States to ensure the instrument concerned is implemented inside the country. The ILO Conventions, Declarations and Codes of Practice cited are not binding in any case, but are rather documents that provide guidance. This would appear consistent also with requirements under the human rights standards adopted by the United Nations itself. It therefore would appear useful to ensure that in further consideration of the issue of human rights and business, attention is paid to both the possibility and desirability of attempting to impose international legal obligations on non-state actors, particularly business enterprises, under (1) general international public law and (2) international law in the field of human rights and labour. There may also be room for consideration of the extent to which obligations on enterprises under national laws giving effect to international legal obligations may be strengthened, and where additional needs for enforcement and promotion may lie. In this context, particular attention should be paid to recent developments, such as the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly of the United Nations in 1998, as well as relevant international and domestic jurisprudence.

It is recalled that other issues of details regarding references to ILO standards and procedures would have to be clarified in further drafting exercises relating to the Draft Norms..."

IMF (International Monetary Fund)

Full text: www.ohchr.org/english/issues/globalization/business/docs/imf.pdf

EXCERPT: "...As you will be aware, the IMF – in line with its mandate – is not directly involved in initiatives or standards pertaining to the responsibility, with regard to human rights, of transnational corporations and related business enterprises. On the more general issue of how the IMF's work relates to human rights, may I refer you, for example to my [Klaus Enders, Assistant Director, IMF] statement on the UNHCHR's High-Level Seminar on the Right to Development, which took place in Geneva on February 9-10 this year.

Of course, given the importance of the issue, we look forward with great interest to the High Commissioner's report..."

Infact

Full text: www.ohchr.org/english/issues/globalization/business/docs/infact.doc

EXCERPT: "...In response to the OHCHR request for "existing initiatives and standards relating to the responsibility of TNCs and related business enterprises," Infact highlights the Framework Convention on Tobacco

Control (FCTC). The FCTC, negotiated by the 192 member states of the World Health Organization and unanimously adopted in May 2003, is a milestone in the history of public health and corporate accountability.

This groundbreaking treaty—the first to hold a specific industry accountable—will save millions of lives and change the way tobacco giants operate globally. The treaty will help prevent Big Tobacco from meddling in health policies, and give governments the right to prioritize the health of their citizens over trade and commercial interests. The FCTC also establishes important precedents for international regulation of other industries that profit at the expense of our health, our environment and human rights. It advances the international regulation of TNCs by codifying corporate accountability standards in a legally binding form and strengthening the expectation that TNCs should conduct themselves in a socially and environmentally responsible manner.

Here are just a few ways the FCTC breaks new ground:

Ban on advertising, promotion and sponsorship [Article 13]...

Exclusion of the tobacco industry [Articles 5.3, 12(e)]

The FCTC includes strong, binding language which excludes the tobacco industry from involvement in public health policymaking and calls on governments to be alert to the industry's attempts to undermine such policies...

Public disclosure of information [Articles 4.1, 10, 20]

The FCTC clearly establishes the principle that every person should be informed about the dangers of tobacco. Prior agreements require the disclosure of information, but do not call for that information to be shared with the public...

Participation of civil society [Preamble, Articles 4.7, 12(e)]

The FCTC firmly establishes the principle that civil society participation is essential in achieving the objectives of the FCTC and its protocols while also explicitly excluding NGOs affiliated with the tobacco industry from involvement in tobacco control strategies...

The FCTC opened for signature on 16 June 2003 and will enter into force 90 days after the 40th country has ratified or accepted the treaty. With 168 signatories and 30 ratifications as of 1 September 2004, international momentum is strong—and the WHO expects the FCTC to become law by the end of 2004. Once the FCTC enters into force it will become a binding instrument of international law with independent oversight. This will be a dramatic change from the voluntary standards or codes that corporations—especially the tobacco industry—have a history of proposing..."

Interfaith Center on Corporate Responsibility

Full text: www.ohchr.org/english/issues/globalization/business/docs/interfaith.doc

EXCERPT: ICCR is a coalition of 275 religious investors from the Catholic, Jewish and Protestant communities in the United States with a combined investment total of over \$100 billion... Since its founding in 1971, human rights has been a central element of ICCR's mission...

In ICCR's current work with over 50 companies on human rights, we hear from many top managers that it is difficult to understand all the international human rights agreements and how they apply to business... The UN Norms... help address this confusion and eliminate any ambiguity about the obligations of private sector actors...

The commentaries on each provision are especially helpful in providing guidance to companies designing their own policies and practices consistent with the UN Norms...

The UN Norms provide a vehicle for corporations to "road test" the Norms in their business operations. The implementation of the Norms are challenging but doable. ICCR members and associates have engaged a number of companies and worked in various levels of collaboration to assist in the development of human rights policies and practices...

Alcoa adopted a human rights policy based on discussions with ICCR members and other stakeholders. Ford Motor Company adopted a human rights code that includes the ILO core labor standards and is implementing it code throughout the company and to first-tier suppliers. The Gap includes basic labor rights in its Code of Vendor

Conduct, has put substantial resources into internal and independent monitoring of supplier factories and recently issued its first public report on social responsibility performance. McDonald's is implementing its code of conduct throughout its supply chain, emphasizing a systems approach that supports human rights compliance over time. Occidental Petroleum recently agreed to adopt a formal human rights policy after ICCR members and associates filed a shareholder resolution calling for the development and implementation of such a policy. Reebok's human rights program includes monitoring of its supplier factories and engagement with non-governmental organizations and unions to conduct worker education and training... There are a number of other companies that are addressing human rights issues in some form with varying levels of effectiveness...

As investors, we welcome the UN Norms as an essential element of corporate social responsibility and we pledge to participate in the process that further refines the implementation strategies to make the Norms a living reality..."

International Baby Food Action Network (IBFAN)

Full text:

www.gifa.org/UN%20Human%20Rights%20Norms.htm#UN%20Human%20Rights%20Norms%20for%20business#UN%20Human%20Rights%20Norms%20for%20business

EXCERPT: "...we have submitted, as per the attached letter, the reports of IBFAN's 2004 global monitoring of company compliance with the International Code of Marketing of Breastmilk Substitutes and subsequent, relevant resolutions of the World Health Assembly (collectively referred to as the International Code).

In view of the results of IBFAN's research, which show that the International Code continues to be consistently violated, we wish to bring these new documents to the attention of the Sub-Commission and the Working Group...

...IBFAN's monitoring research clearly demonstrates that voluntary codes of conduct and even UN international recommendations in the field of public health are not sufficient to prevent violations by manufacturers and distributors of the child's right to the highest attainable standard of health. Binding international instruments are the only way forward..."

International Business Leaders Forum (IBLF)

Full text: www.ohchr.org/english/issues/globalization/business/docs/ibusiness.pdf

EXCERPT: "...IBLF wishes to draw the attention of the OHCHR to the statement we issued on the eve of the 56th meeting of Commission on Human Rights in the context of its discussion on the *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights* submitted by the UN Sub-Commission on the Promotion and Protection of Human Rights.

In this statement we made it clear that the IBLF believes that there is a need for an authoritative and comprehensive set of guidelines on the applicability of the Universal Declaration of Human Rights to companies that distills into one the numerous existing human rights related guidelines, including the UDHR, ILO Conventions and OECD Guidelines for Multinational Enterprises, to provide a common reference point for companies and bring much needed clarity to a difficult area, and reinforce initiatives such as the UN Global Compact which the IBLF has been supporting since its inception.

Whilst recognising that the UN Sub-Commission document has some room for clarification and improvement, and the general difficulty of interpreting development rights in a meaningful way in many contexts, the IBLF nevertheless sees the 'Norms' as providing companies with a useful framework of reference on which to build their own specific human rights policies, and an opportunity to demonstrate progress in commitment to human rights in their own legitimate spheres of influence as part of their overall commitment to responsible business.

The IBLF acknowledges the efforts of the Working Group on the Working Methods and Activities of Transnational Corporations and hopes that the UN Commission on Human Rights establishes a process by which this first iteration at a framework of reference forms a key ingredient of further cross-sector consultation between business, governments and civil society on the appropriate role of the private sector with respect to human rights..."

International Chamber of Commerce (ICC)

Full text: www.ohchr.org/english/issues/globalization/business/docs/intchamber.pdf

EXCERPT: "...While ICC considers that the establishment of the legal framework for protecting human rights and its enforcement is a task for governments, we also believe that business has an interest in encouraging the improvement of social conditions, including by providing an example of good human rights practices, as these are an essential factor for stable development..."

... ICC was encouraged by the clear recognition by the Commission in its decision that the draft prepared by the Sub-Commission was not requested by the Commission, that as a draft it has no legal standing and that the Sub-Commission should not perform any monitoring function with respect to the draft. ICC views the Commission's decision as an opportunity to start afresh a dialogue on business and human rights in the form of an open and constructive exchange of views in the context of an inclusive multi-stakeholder process in which we very much look forward to participating...

...the issue in our view is not whether we need yet another initiative or standard on business and human rights – we do not. Rather, the real question should be: given the many different existing initiatives, what can be done to improve the capacity of governments, businesses, intergovernmental organizations, labour, and non-governmental organizations, to work together towards their full and effective implementation?...

...we would expect the report to confirm the primacy of the role and responsibility of the State for implementing the human rights provisions in their national laws, and living up to their international commitments on human rights through the establishment and implementation of appropriate regulatory frameworks at national level... The report should also explain that international voluntary initiatives on human rights by private actors can only be a complement to and not a substitute for national law. ICC fully shares the view that business has a role to play in supporting governments in their efforts to improve the enjoyment of human rights. However, ICC cannot accept the approach taken by the draft developed by the Sub-Commission. It is simply not feasible to transfer the responsibilities of the State with regards to human rights onto business because of governments' unwillingness and/or lack of capacity to meet their responsibilities effectively...

The blurring of this fundamental distinction in the Sub-Commission's draft, by confusing the role of business and the obligations contracted by governments through various international instruments – many of them far outside the scope of what is generally understood to constitute "human rights" – is unhelpful and the report should clearly reject such an approach. The report might usefully try to focus the scope of what is understood by "human rights" in the context of business and human rights. In this respect, the proposals made in the first section ("Question 1: What is meant by human rights") of the paper submitted to your office in response to your letter by the Confederation of British Industry and ICC United Kingdom, makes some very clear and helpful suggestions that we would support.

Establishing an ongoing consultation process...

...while we understand that this written solicitation of input is necessary to satisfy the time constraints under which your office is required to produce the report, we feel strongly that this can only be a first step in a proper process of consultation and cannot be a substitute for such a process...

Building the capacity of governments to implement human rights...

Another useful contribution that the report could make to the debate would be to propose ways in which intergovernmental organizations – chiefly the UN – together with business, labour and NGOs, could help national governments improve the enjoyment of human rights...

Improving the enjoyment of human rights in the domestic business sector

A key point in this debate, which the report should highlight, is that "transnational corporations" (to use the terminology of the Commission on Human Rights' decision) are more often than not part of the solution to human rights challenges than part of the problem. There is overwhelming empirical evidence to show that transnational

corporations tend to raise standards – including human rights standards – where they operate...One of the main issues that the report should seek to address is how to deal with human rights challenges in the domestic business sector, where many of these challenges occur...

Encouraging companies to address human rights in their core activities through voluntary initiatives...

Companies should be encouraged to continue to address human rights in a pragmatic and value-adding way within their core business operations. Many companies focus on human rights protection and promotion in three main areas:

- _ human rights in product quality and safety,
- _ human rights in employee practices, and
- _ human rights in employee practices through supplier and/or collaboration partner network management.

Companies can effectively put in practice their voluntary commitment to respecting human rights through the application of their own business principles..."

International Commission of Jurists

Full text: www.ohchr.org/english/issues/globalization/business/docs/icj.doc

EXCERPT: "...The Norms elaborated by the Sub-Commission clearly reaffirm the primary duty of states under human rights law. The value of the Norms lies in having codified in one document the specific human rights that apply to companies. They provide a benchmark and make clear by which standard states must measure the behaviour of companies. For the first time, the duty of states to exercise "due diligence" in relation to companies is spelt out in human rights language.

Need for Direct Obligations on Companies

Frequently however, states are unable or unwilling to enforce human rights guarantees against companies. Some host states are too weak economically and politically in relation to trans-national corporations in particular, and have no effective possibility to hold companies to account. Some states lack effective control over all or certain parts of the country, or are unable to regulate companies effectively because of other legal or political obstacles. In these situations international standards have started to, and must further develop, criteria that define the *direct responsibility* of companies under human rights law.

It is sometimes contended that human rights only bind states and not non-state actors and can therefore not be imposed on private companies. There are, however, no legal or conceptual arguments that prevent companies having direct responsibilities for human rights violations. It is clear that states may decide at an international level to recognise rights and duties of non-state actors. The Universal Declaration of Human Rights itself affirms the duty of everyone, not only states, to uphold human rights; international humanitarian law binds armed opposition groups; non-state actors can commit crimes under international law, such as slavery, crimes against humanity, genocide or war crimes – to name but the most obvious examples...

Existing Soft Law Standards on Companies' Direct Responsibilities

Companies have already been conferred rights under international law. In bilateral investment agreements, for example, they have international standing to enforce their rights against states. In some appropriate cases they have been able to assert their right to enjoy a limited range of human rights found in international human rights treaties.

The area of direct corporate responsibility has been rapidly developing in recent years and member states of several international organisations have already concluded that companies *should* respect human rights principles. The *OECD Guidelines for Multinational Enterprises* and the *ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* are significant because they are authoritative, if limited, high-level statements by governments that businesses have a responsibility to uphold certain human rights. These instruments explicitly accept the direct responsibility of companies. Similarly, labour standards, i.e. the human rights of workers, are directly binding on companies as employers in the tripartite ILO system. UN human rights

treaty bodies, such as the Committee on Economic, Social and Cultural Rights have also emphasised the responsibilities of private companies in their General Comments...

The Norms bring together these existing standards of soft law. They do not create or seek to create new international law, but collate disparate standards into one document...

Need for Binding and Common Rules on Corporate Accountability

...We must recognise the limits of voluntarism and pursue a complementary route towards legal responsibility, offered by the Sub-Commission's Norms.

If accountability is to be taken seriously, it requires remedies for victims of violations and effective redress and implementation of the rules. In the end, voluntary codes offer victims charity, which can be granted or withheld at will. Binding rules give rights to victims. All must accept binding rules and not only those who choose to follow them. Common, binding rules will not be selective with standards and will need to reflect all the human rights recognised by the international community...

Human Rights as the Common Binding Standard

There is a clear advantage in using human rights as the common minimum standard. Human rights standards rise above the array of different existing rules and regulations found in labour standards, criminal law, health and safety standards, corporate law and others, even though many of these reflect human rights obligations. Human Rights are the most fundamental rights of the person. As the International Council on Human Rights Policy has written, international human rights law "is the only existing internationally-agreed expression of the minimum conditions that everyone should enjoy if they are to live with dignity as human beings"...

Future Tasks

...The ICJ believes that two areas identified in the Norms are in particular need of clarification:

1) The concepts of "sphere of influence" and "complicity":

As stated above, companies will exercise their human rights obligations in practical ways that differ to governments. Companies should only be responsible for violations that come within their "sphere of influence" – within which they have sufficient knowledge and control to justify being held accountable. Companies may also be "complicit" in human rights violations committed by governments or other actors such as armed opposition groups. These concepts need considerable more legal clarity...

2) Procedural questions, such as extra-territorial or universal jurisdiction, the doctrine of the corporate veil and the doctrine of *forum non conveniens*:

States on whose territory violations are committed (host governments) are often unable or unwilling to enforce their legislation and there is no foreign or international mechanism to counter this deficit. A first step could be to establish effective extra-territorial reach of legislation or universal jurisdiction for some of the most flagrant human rights violations committed in other countries...."

International Organisation of Employers (IOE)

Full text: www.ohchr.org/english/issues/globalization/business/docs/intorgemployers.doc

EXCERPT: "The IOE followed closely the work of the Sub commission with regard to its development of the draft document on the "Responsibilities of transnational corporations and other business enterprises with regard to human rights". At the time of its consideration by the Commission last April, we, in conjunction with the International Chamber of Commerce (ICC), expressed our strong views against their adoption. We were pleased to see that the Commission did not accept the document and that it clearly stated that it was of no legal effect. We understand that this new report will consider again the content of the Sub-commission's draft document and, for completeness and to avoid repetition in this letter, we attach, as part of our submission of information, a copy of the position we adopted and promoted on them - a position which remains unchanged.

In that text we clearly state our firm position that:

- The State, and the State alone, is the duty-bearer of international human rights obligations, not private actors, including companies;
- Most human rights responses require social “balancing” decisions at the national level and these decisions must be the responsibility of States.
- The Sub-commission document sets out to in effect “privatize” human rights by placing onto business the duties of the State;
- Business does not seek, nor should it be given, international legal human rights obligations as a duty-bearer. That obligation needs to be separated from the willingness of business to comply with domestic law and to promote human rights;
- The Sub-commission misinterpreted and misapplied ILO labour standards, both in terms of content and application. ILO standards are the responsibility of State under the ILO Constitution, not companies...

Many companies, not just multinational enterprises and their supply companies, are working to support human rights in their areas of operation and influence. This is done through compliance with national law, but also further enhanced through voluntary Corporate Social Responsibility (CSR) initiatives...

It is important to remember that not all companies undertake voluntary actions beyond legal compliance. Not doing so is not, and must not be seen as, a failure on the part of companies. CSR is by its very nature – be it regarding human rights, the environment or any other issue, either economic or social – driven by business realities and businesses will choose those issues most relevant to them and to the community where it operates...

Where legal responsibilities properly lie...

We have had an opportunity to read the submissions provided to you by BIAC [Business and Industry Advisory Committee to the OECD], the International Chamber of Commerce and the Confederation of British Industry and we concur with them wholly. The specific elements of our submissions are included below...

The nature of the discussion must be clarified. This debate has been complicated by differing perspectives as to the meaning of the terms “human rights” and “responsibilities” as they apply to enterprises.

The Commission refers to the *responsibilities* of business for human rights. At the international level, the legal responsibility for human rights rests exclusively with States. As bearers of these responsibilities, States must translate their international commitments into national law and practice. Through that process, they must identify the *accountabilities* of social actors through legislation and compliance processes. Through this approach, all actors in society are made accountable to the extent determined by government through its legislation. Those actors are then *responsible* for complying with those requirements and will be held accountable for non-compliance by the national systems within which they operate. Therefore, responsibilities and accountabilities arise for business and other social actors through the application of the national law. To talk of business *responsibilities* vis-à-vis the international obligations of States is confusing, both in terms of this debate, but also with regard to the provisions of the Universal Declaration itself.

The desire to place responsibility for human rights on business may stem from frustrations concerning what is regarded as some governments’ inability or unwillingness to effectively pass and enforce their own laws. That lack of capacity, however, should not be used as an excuse to shift the responsibility for human rights to business. Instead of placing the responsibility on actors, such as business, who do not have the capacity to fill this role, efforts should be made to help strengthen the capacity of governments to enforce their international obligations at the national level through effective legislation and enforcement...

However, all of this is different from legal “responsibility” – in the sense it is used in international law – with regard to legal bearer responsibilities. That mis-understanding as to both context and meaning of the word “responsibility” should be clarified as part of this process by the Commission. Business is not seeking to avoid *accountability* with regard to national legal obligations, but it does not accept legal *responsibility* for international human rights...

The human rights issues we see result from the action or inaction of governments and business, with its necessarily narrow focus, cannot address those failures in any way comparable to what governments can and should do. Governments owe a duty to all their citizens and only they have the legitimacy to deliver it. That lack of action, for whatever reason, is the issue that must be addressed if human rights are to be advanced. It is an issue which is hard to resolve and so makes the option of transferring obligations onto others look attractive to some. However, what of the larger issue of human rights observance? Short cuts do not work..."

International Service for Human Rights

Full text: www.ohchr.org/english/issues/globalization/business/docs/ishr.doc

EXCERPT: "...2.3.1. State responsibility: violations by private actors within national jurisdiction

Where a state neglects or refuses to take reasonable steps towards the adoption of appropriate frameworks to fulfil international human rights obligations, any person who suffers damage as a consequence of this failure may make claims against the state under national, regional or international legal mechanisms. This liability may be indirect in the sense that the violation need not be committed by the state but is effectively sanctioned by the state's inaction. Human rights treaties, comments by UN expert bodies interpreting treaties and by regional human rights courts and national supreme courts have confirmed this...

2.3.2. Direct responsibility on businesses in relation to human rights

It is less clear, however, whether and to what extent international legal instruments can impose internationally enforceable legal obligations upon private actors directly. Jurists have observed that there is no theoretical obstacle preventing private actors from being subjected to international law and that there has been a consistent development in this direction since the Second World War. Rights and duties under international law may be conferred upon non-state actors.

Indeed, it has been suggested that the soft law status of existing declarations (due to their authority and the level of consensus in their adoption) may already have had the effect of imposing obligations upon corporations, particularly when they are specifically drafted to make business responsible and accountable for the observance of human rights standards.

Where voluntary initiatives and national regulation fails to protect human rights adequately, there is need for international law to step in as a complementary mechanism to ensure that corporations are not able to act in an unrestrained way to the detriment of citizens, and local and foreign communities...

2.3.3. Right to reparations

The Norms incorporate the obligation to provide reparations for human rights abuses which is widely acknowledged to form part of both international and domestic law. In requiring businesses to provide adequate and effective reparations to those who are adversely affected by their failure to comply with their human rights responsibilities the Norms take an approach that is consistent with other significant human rights treaties, which create a general duty to make appropriate reparations for violations of human rights...

3. OUTSTANDING ISSUES - SUBMISSIONS...

Submission 1

The draft Norms should be accepted as a comprehensive statement of existing international principles and standards concerning business and human rights, most of which already have binding international legal status through treaties or by virtue of their acceptance into practice by international consensus. The necessary implementation and enforcement mechanisms should be decided upon and their independence should be ensured...

Submission 2

An appropriate monitoring body or mechanism should be identified or, if necessary, established to supervise implementation of the international human rights obligations of transnational corporations and other business enterprises and to provide authoritative statement and interpretation of those obligations...

Submission 3

The Norms and Commentary should define more usefully the manner in which the term sphere of activity and influence of a transnational corporation or other business enterprise is delineated. Guidance could be provided by the inclusion of a list of criteria and discretionary factors in the body of the Commentary, as well as a statement of relevant principles derived from international, regional and national jurisprudence...

Submission 4

The nature and degree of human rights violations by third parties in which a transnational corporation or related business enterprise will be held to be complicit should be clarified.

Submission 5

The positive obligation of states and businesses to use their influence to promote and ensure respect for human rights requires clarification.

Italy (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/italy2.pdf

[Submission of Government of Italy is European Union submission, with additional section on national initiatives in Italy]

EXCERPT: "...Italian Government principles on CSR:

The Italian Government believes it is necessary to prevent CSR initiatives from resulting in additional costs for enterprises due to certifications, labels or compulsory codes. This is particularly crucial for SMEs...

The Italian Government believes that the role of the Governments should be focused on mainstreaming of CSR, contributing to create a favourable context for the competitiveness of enterprises, and, in order to guarantee credibility, promoting a common framework and monitoring CSR communication campaigns..."

Lithuania (Government)*

Submission not yet available online.

Jus Semper Global Alliance

Full text: www.jussemper.org/Resources/Corporate%20Activity/Resources/CSRandHRnorms.pdf

EXCERPT: "In the area of greatest concern for TLWNSI [The Living Wages North and South Initiative], the right to a living wage, which is critical for good corporate citizenship and sustainability, despite its gross oblivion by most stakeholders, the Norms maintain the same criterion currently used by the ILO and other frameworks. This makes the concept of fair compensation clearly ambiguous. The Norms call for corporations to pay a fair and reasonable remuneration that ensures an adequate standard of living for workers and their families. Such remuneration shall take due account of their needs for adequate living conditions with a view towards progressive improvement. They also emphasize the need to take particular care to pay just wages in the least developed countries. Nonetheless, they leave it open to anyone to interpret what are an adequate standard of living and a just wage..."

... If southern workers continue to endure a system where they are denied a dignified life and the Human Rights framework ignores the problem, then what is the point of these Norms? The Norms are an expression of growing concern for an ethos that is, above all, a generator of the greatest inequality and misery that both North and South

have endured in contemporary times. Nonetheless, they fail to tackle, once again, the key element generating such inequality: the globalization of markets, prices and consumers but not of labour endowments..."

Kamminga, Menno – Professor of International Law, Maastricht University; Co-Director, Maastricht Centre for Human Rights

Full text: <http://209.238.219.111/Kamminga-Corporate-Obligations-under-Intl-Law.doc>

EXCERPT: [From "Corporate Obligations under International Law", paper presented to 71st conference of the International Law Association, Berlin, 17 Aug 2004]..."In domestic law, it has long been accepted that legal persons such as companies have legal obligations - for example under labour and environmental law - and that they may be held liable for breaches of these obligations. As a matter of fact, companies cannot be imprisoned but in most states they can be sentenced to other criminal sanctions such as fines.

In international law, there is no general rule that companies are responsible for their internationally wrongful acts...

Nevertheless, some long-standing multilateral treaties do directly impose obligations on companies. The 1969 Convention on Civil Liability for Oil Pollution Damage provides that the owner of a ship (which may be a company) shall be liable for any pollution damage caused by it. The 1982 UN Convention on the Law of the Sea prohibits not only states but also natural and juridical persons from appropriating parts of the seabed or its minerals...

No-one has suggested, as far as I am aware, that by adopting these provisions states have undermined or 'privatized' their own responsibility. On the contrary, the drafters of these treaties apparently considered companies to be such important players that in order to achieve the treaty's objectives they had to be addressed directly, in addition to states...

These instances demonstrate that there are no reasons of principle why companies cannot have direct obligations under international law..."

King Zollinger

Full text: "The United Nations Human Rights Norms for Business and the UN Global Compact", Alison King www.ohchr.org/english/issues/globalization/business/docs/kingzollinger.pdf

EXCERPT: "...The recently adopted UN Norms...are a good and welcome basis for improving companies' human rights track records. The UN Global Compact's nine principles help to put the discussion on business' responsibility with regard to human rights into a wider development perspective; as a global values-based learning platform and experimental laboratory, the Global Compact can assist in elaborating and putting the UN Norms into practice. A closer linkage between the two instruments would help to promote the Norms and to increase the Global Compact's credibility..."

Lawhouse.dk (Sune Skadegard Thorsen)

Full text:

Full submission: www.ohchr.org/english/issues/globalization/business/docs/lawhouse1.doc

Annex, "Perspectives on the UN Draft Norms":

www.ohchr.org/english/issues/globalization/business/docs/lawhouse2.doc

Annex, "Contemporary directions for business on human rights":

www.ohchr.org/english/issues/globalization/business/docs/lawhouse3.doc

EXCERPT: "It is apparent that internationally *binding* standards would greatly improve the levelling of the playing field and reduce impunity for corporations. It should appear evident that such binding standards will only create a minimum level of protection for people influenced by corporations and thus leave ample room for more dedicated and proactive corporate actors that wish to make a difference in relation to sustainable development..."

However, for the creation of *binding* international law Lawhouse.dk is of the opinion that the present UN Norms, or for that sake any existing code, compact, or guideline, needs redrafting in order to create a reasonable solution. Lawhouse.dk is in favour of creating binding international minimum standards for business behaviour...

...the UN Norms have created an interesting debate and this submission wishes to assist in offering directions to the continuous role of the UN within business and human rights. The proposition for the coming development of the Norms is a *two-tier* track...

1. The first tier is the adoption of Norms that are voluntary in nature and equivalent to the OECD guidelines but enjoy the global acknowledgement that only the UN can grant. In order not to duplicate the UN Global Compact, the coming Norms should include more business-oriented guidelines on the same principles and thus function as an aid to making the principles practical and operational...
2. The second tier would be to commission the development of binding international legislation. It must be expected that such a venture will require a long preparation period. This submission seeks to describe that such venture is not impossible, but will involve careful consideration..."

Leighton, Michelle – Law and Policy Consultant - International Environment, Human Rights, CSR; and Roht-Arriaza, Naomi – Professor, Hastings College of the Law, University of California – Contribution to ESCR-Net in advance of its submission

Full text: <http://209.238.219.111/Leighton-Roht-Arriaza.doc>

EXCERPT: "First: We think it would be useful for the Commission to understand clearly that our view is that these norms do not make "new" law for companies, but rather restate norms already applicable under international human rights doctrine and practice...."

Private actors are subjects of international law in a number of spheres. Individuals as well as companies can be held responsible for international crimes, and indeed several companies faced criminal sanctions after World War II. Legal persons (corporations) enjoy the right to freedom of speech, according to the European Court of Human Rights...Legal persons also can be responsible under treaties on oil pollution from ships for damages and insurance payments. Legal persons also have rights under international treaties, for example the right to bring claims against states under Chapter 11 of NAFTA or under bilateral commerce treaties...

"Soft law" instruments also refer to the role of private business. Agenda 21, for example, has an entire chapter on business and industry, drafted with the full participation of business leaders...

As the International Council on Human Rights Policy put it in their Report "Beyond Voluntarism," "no conceptual obstacle prevents states from requiring companies to abide by legally binding international human rights obligations." (p. 57) The Norms are an important step towards compiling and specifying those obligations in a way that is relevant and useful for companies...

Second, the relationship between the Norms and other existing human rights, environmental and labor standards could profitably be clarified further... We might suggest to the Commission the following:... 'The TNC Norms are not meant to be interpreted in any way that would lessen or weaken the obligations imposed on businesses by other laws, or international standards, including those provided by the ILO'..."

Luxembourg (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/luxembourg.pdf
[Submission of Government of Luxembourg is European Union submission]

Mauritius (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/mauritius.pdf

EXCERPT: "...1. The Ministry of Labour, Industrial relations and Employment of Mauritius is concerned with terms and conditions of employment of employees employed by transnational corporations and related business enterprises. No separate legislation, however, exist pertaining only to terms and conditions of employment. The Labour Law of the land applies to all employees without distinction.

2. As far as the fundamental rights for employees regarding Occupational Safety and Health are concerned, the standard of protection afforded is same for local and transnational employees and the guiding principles are based on ILO standards (conventions and recommendations)..."

McCarthy, Thomas E. – member of International Bar Association Corporate Social Responsibility Panel; former Senior Advisor to UN High Commissioner for Human Rights

Full text: <http://209.238.219.111/McCarthy.pdf>

EXCERPT: [From "Business and Human Rights: What do the New UN Norms Mean for the Business Lawyer?", *International Legal Practitioner*, Nov 2003] "...As lawyers become increasingly aware of their professional role in advising clients on corporate social responsibility, including human rights...the questions now are: what impact will the Norms have on daily practice? How do these UN Norms fit within all the other codes, guidelines and procedures that have seen the light of day in the past years? Will businesses be asked to explain their activities to the United Nations?..."

The business lawyer has a number of options in relation to the Norms. She or he can ignore them and hope for the best for their clients. Or, the Norms could serve as a checklist of issues that should be monitored by business. There are a number of other corporate social responsibility codes and mechanisms that might prove helpful in interpreting the Norms and advising particular clients. The social accountability standards SA 8000, the Ethical Trading Initiative, the Amnesty International Human Rights Principles, the OECD Guidelines for Multinational Business and the Global Reporting Initiative are some.

The Norms will almost certainly become a key element in future UN activities regarding the human rights impact of transnational business. Further, UN human rights bodies can be expected to increase significantly the attention they give to particularly egregious cases of human rights violations by corporations. Advising clients of this possibility would appear to be prudent. Although a legally binding global compliance framework may be many years off, national enforcement of human rights standards on companies could accelerate change...

Individually, lawyers are clearly concerned by these Norms and their implementation. In addition, the legal profession collectively may well have its own important contribution to make: first, in seeing that the human rights elements of corporate social responsibility are widely known in the profession; secondly, in engaging lawyers from developed and developing countries in coming to grips with the practical implementation of human rights standards by business; and, thirdly, in helping the United Nations to refine the scope and meaning of the Norms. Business lawyers are well placed to help bridge the gap between the concerns and objectives of human rights advocates and the realities and constraints of the commercial world..."

Migrant Workers' Committee*

Submission not yet available online.

Netherlands (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/netherlands.pdf

[Submission of Government of Netherlands is European Union submission, with additional section on "National response"]

EXCERPT: "...National response

...As basic international instruments to promote observance of human rights in relations to corporate activities, The Netherlands attaches great importance to the ILO Conventions, in particular to the core labour standards as

referred to in the ILO Declaration on Fundamental Principles and Rights at Work, and to its follow-up. The Dutch government strongly supports the mechanism for annual review and implementation of the ILO Declaration...

While self-regulation by companies forms the cornerstone of the Dutch approach to CSR, the government is vigilant that the approach is effective. To that end the government positions itself as a promoter of CSR in the business community and as a facilitator of CSR partnerships or projects. The Dutch Ambassador for Human Rights has an active role in promoting the human rights aspects of CSR among Dutch entrepreneurs and operates as a focal point for Dutch government policy toward civil society and the business community. Other principles the Dutch government uses in promoting and facilitating CSR among Dutch corporations, are:

- a. *Keeping businesses informed...*
- b. *Spreading best practices...*
- c. *Promoting the OECD Guidelines for Multinational Enterprises...*
- d. *Facilitating the implementation of the Voluntary Principles on Security and Human Rights...*
- e. *Making government procurement conducive to sustainability...*
- f. *Applying CSR criteria to financial support...*
- g. *Promoting sustainability reports...*
- h. *Enhancing international support for CSR..."*

Newmont*

Submission not yet available online.

Nexen

Full text:

3 documents submitted:

Nexen Human Rights Policy: www.ohchr.org/english/issues/globalization/business/docs/nexen6.doc

The International Code of Ethics for Canadian Business – An Audit Format Compliance Review – Supplement to 4 companies and a code, an article published in Corporate Knights magazine (April 28, 2003):

www.ohchr.org/english/issues/globalization/business/docs/nexen1.pdf

International Code of Ethics for Canadian Business:

www.ohchr.org/english/issues/globalization/business/docs/nexen3.pdf

EXCERPT: “The International Code of Ethics for Canadian Business – An Audit Format Compliance Review – Supplement to 4 companies and a code, an article published in Corporate Knights magazine (April 28, 2003)...

Now that the Corporate Knights article – Four Companies and a Code – has been published, a final summary report on the International Code of Ethics for Canadian Business (ICE) review can be distributed to each of the four participating companies – Enbridge, EnCanda, Nexen and Talisman – providing a final summary of the scoring for each company, as well as a short discourse on the process and analysis...

With domestic criticism of Canadian companies’ international operations relative to social and environmental issues being a regular exercise, it was assumed that room exists within the Canadian media context for a third-party review of how well a few Canadian companies are meeting the expectations of their domestic citizenry while operating outside our national boundaries...

In order assess whether EnCana (in Ecuador) and Enbridge, Nexen and Talisman (all in Colombia) were living up to expectations of corporate citizenship...Corporate Knights conducted more than 100 interviews with various stakeholders...”

Nolan, Justine – Lecturer, Australian Human Rights Centre, University of New South Wales

Full text: www.ohchr.org/english/issues/globalization/business/docs/australianhrcentre.doc

EXCERPT: “The OECD Guidelines and the ILO Tripartite Declarations were revolutionary in the sense that they explicitly honed in on delineating the obligations of companies with respect to protecting human rights but they are subject to severe limitations. Apart from the fact that they are non-binding, their implementation mechanisms are extremely weak, the duties outlined are broad and lack details and provide little practical guidance for companies aiming to implement such rights...”

The Global Compact has been successful in attracting a large number of participants, now estimated at more than 1700, but its attempt to build such a broad and inclusive tent with a diverse range of corporate participants, has resulted in a diminution of its overall effect. For these reasons, the Global Compact should develop a closer association with, and reliance on the key human rights set out in the Norms...

...The comprehensive and arguably overly inclusive nature of the Norms is both its greatest asset and potential defect. The incorporation with equal status of what some call ‘third generation rights’, such as the right to development and environmental protection go beyond the traditional human rights norms set out in the International Bill of Rights. However the formulation of international human rights law is a dynamic process and while it would be less radical to restrict the Norms to certain ‘core’ rights that are reasonably well formulated and have a clear nexus to business, such as labour rights, this would be adopting an overly restrictive and negative approach. The gradual development of ‘soft law’ standards in the last 35 years has led to a broadening of the scope of rights applicable to business...”

Norway (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/norway.pdf

EXCERPT: “...with the view to inform the OHCHR of initiatives that are not widely known, we have included an overview of developments concerning ethical guidelines for the Norwegian Government Petroleum Fund and the process on the Voluntary Principles on Security and Human rights, in which Norway takes part.

...the Norwegian Ministry of Foreign Affairs has disseminated the “Draft UN Norms...” and the relevant decision by the Human Rights Commission to partners participating in the consultative body on Corporate Social Responsibility and human rights and Norwegian economic activity abroad (Kompakt). These are employers’ and employees’ associations, non-governmental organisations, research institutions and Norwegian transnational corporations. A synthesis of the submissions from these partners is included in an annex to this letter...

... The Norwegian Petroleum Fund. Voluntary Principles on Security and Human Rights

The Norwegian Storting (Parliament) has decided that the revenues the central government receives from petroleum activities are to be transferred to the Government Petroleum Fund. The Fund currently amounts to approximately 120 billion Euro, and it is expected that substantial amounts will be transferred to the Fund in the coming years. The Ministry of Finance is responsible for the Petroleum Fund, while its day-to-day management is delegated to the Norwegian Central Bank.

This autumn the Storting adopted ethical guidelines proposed by the Government for the management of the Petroleum Fund. Management of the Fund is intended to meet two ethical obligations: a) the obligation to ensure that future generations receive a fair share of the oil wealth and b) the obligation to respect the fundamental rights of those who are affected by the activities of companies in which the Fund invests.

The ethical guidelines comprise three elements:

- *Exercise of ownership rights* to promote long-term financial return. Long-term return will generally benefit from a portfolio consisting of companies that demonstrate respect for universally accepted norms of ethical behaviour.

- *Negative screening* to exclude companies that produce chemical and biological weapons, anti-personnel mines, weapons with non-detectable fragments, incendiary weapons, blinding laser weapons, nuclear weapons and cluster bombs.
- *Exclusion* of companies in which there is deemed to exist an unacceptable risk of contributing to violations of fundamental humanitarian principles, grave violations of human rights, grave corruption or severe environmental degradation...

Norway participates in a process called Voluntary Principles on Security and Human Rights. The short-term goal of the Principles is to encourage companies in the extractive and energy industries to better understand the environment where they operate, improve relations with local communities through dialogue, and uphold the rule of law. Their long-term goal is to create a better environment for sustainable economic investment and human rights.

Participants in the dialogue process are the United States, the United Kingdom, the Netherlands, Norway, oil- and extractive (mining) companies, and NGOs. Additional information can be found on <http://www.state.gov/g/drl/rls/> . [also see www.voluntaryprinciples.org]

Annex:

Contributions from Members of the Consultative Kompakt-Group

[Includes comments on the UN Norms by: Norad (Norwegian Agency for Development Co-operation), Statoil, Hydro, Amnesty International (Norway), NHO (Confederation on Norwegian Business and Industry), LO (Norwegian Confederation of Trade Unions)]...

OECD (Organisation for Economic Co-operation and Development)

Full text: www.ohchr.org/english/issues/globalization/business/docs/oecd.pdf

EXCERPT: "...The OECD Guidelines for Multinational Enterprises are particularly relevant for your report. These cover a broad range of issues, ranging from basic human rights to compliance with local laws and regulations, safeguarding consumer interests, abstaining from anti-competitive practices and meeting host-country tax liabilities. While observance of the guidelines is voluntary for businesses, adhering governments are committed to promoting them and to making them influential among companies operating in or from their territories. The 38 governments that adhere to the guidelines represent countries that are the source of most of the world's foreign direct investment and are home to most major multinational enterprises. An information note on the OECD Guidelines for Multinational Enterprises is attached..."

The OECD Guidelines for Multinational Enterprises

Results to date

7. The 2000 review of the Guidelines and subsequent work by adhering governments have strengthened the instrument and raised its profile. The unique combination of voluntary recommendations to business and commitments by adhering countries to promote their observance...has worked well since the 2000 review. There is growing evidence that the Guidelines are becoming an important international instrument for promoting corporate responsibility. The Guidelines have been translated into at least 26 languages. A recent survey asked managers of international companies to list influential international benchmarks for corporate behaviour – 22 per cent of them mentioned the Guidelines without prompting...Fifteen countries refer to the Guidelines in the context of their export credit and investment guarantees programs. Five countries used them in training embassy staff and several have used their embassy networks as a source of information for Guidelines implementation.

8. The procedures for contributing to the resolution of issues arising in specific instances are being actively used. As of June 2004, 79 specific instances had been considered. Some of these deal with company conduct in OECD countries, but most look at conduct of multinational enterprises in non-OECD countries...For example:

- **Zambian copper mining.** The Canadian NCP [National Contact Point] has looked in the resettlement plan of a company operating in Zambia's copper belt. As a result of this consideration, the company agreed to postpone its resettlement plans for one year to allow time to rethink them – both the company and the NGO coalition (involving a Canadian and Zambian NGO) that were parties to this specific instance agreed that the procedure made a useful contribution to reducing tensions
- **Korean suppliers in a Guatemalan export processing zone.** The Korean NCP has looked into a Korean company's respect of freedom of association – a core labour standard – in an export processing zone in Guatemala. The Korean NCP encouraged the company to inform the Guatemalan workers of their rights and to respect these rights. The company responded by issuing a manual in comic book form illustrating workers' rights under Guatemalan law.
- **Swedish business service provision in Ghana's gold sector.** The Swedish NCP looked at two Swedish companies' involvement (as business service providers) in Ghana's gold sector. The NCP collected information from on-site visits, from the Swedish embassy and from Ghanaian NGOs. It concluded that, while there are significant environmental and labour problems in Ghana's gold sector, the two companies could not be held responsible for these problems because they were too far removed from them...

Ongoing challenges

10. ...a number of possible areas for future work were identified at the June 2004 meeting of the NCPs including human rights. Protection of human rights has arisen on several occasions in the context of work on the Guidelines – including recent work on the Democratic Republic of Congo.

11. Other areas for Guidelines development include:

Transparency and effectiveness of NCPs. The NCPs are focusing on enhancing the transparency and effectiveness of their operations. They are sharing their experiences through a regular annual meeting in order to learn from their respective experiences and improve their performance.

Parallel legal procedures. Surveys of NCPs show that specific instances are often conducted in parallel with consideration of related matters under legal or administrative procedures. NCPs...are looking more closely at the issues that arise in regard to judging the appropriate role of the Guidelines when issues arising in specific instances are being addressed through other procedures.

Enhancing the contribution of business in weak governance zones. The OECD Investment Committee which has oversight responsibility for the Guidelines is looking into the question of the relationship of the OECD Guidelines with other OECD instruments such as the OECD Anti-Bribery Convention and Recommendations and the OECD Principles on Corporate Governance, and the contribution they might make in contributing to good business practices in zones of conflict.

Partnerships with other international organizations. The Guidelines are one of several global corporate responsibility initiatives. The OECD is building partnerships with other international organisations – in particular with the United Nations, the World Bank and the Global Reporting Initiative (GRI)."

O'Reilly, John – member of Amnesty International UK business group, former BP executive

Full text: <http://209.238.219.111/OReilly-submission-to-UN.doc>

EXCERPT: "I write in a purely individual capacity, having spent over seven years (1996-2003) in Colombia and Indonesia working with a leading international oil company confronting many fundamental human rights challenges and dilemmas. These encompassed issues directly relating to civil and political rights as well as the social, labour economic and cultural dimensions..."

... my experience 'on the ground' in environments characterised by serious human rights abuses has led to a firm conviction of the value of the Norms (or something broadly similar) in assisting transnational and other companies to chart a more sensitive, effective and responsible course in respecting the basic human rights of those communities and societies whom their operations most affect..."

As the OHCHR moves forward...may I make two short observations.

The first is to express a hope that it will substantively address the responsibilities of companies to take positive actions to avoid complicity in human rights violations...

A sadly all too common manifestation of such abuses, often but by no means exclusively in the extractive and infrastructure sectors, arises from companies' relationships with their host governments' security forces for the necessary and legitimate protection of employees and assets. However, when these forces intervene to repress peaceful protests or intimidate local community leaders through arbitrary detention (or worse), then the company cannot remain passive when these activities are objectively conducted in its interests...

Secondly, may I also echo Sir Geoffrey Chandler's plea for greater clarity on the intent of paragraph 12 in the draft norms. Striking a balance between companies as providers vs. enablers in the provision of basic services in the developing world is extraordinarily difficult in practice. There is a real risk that by assuming the functions of government in the areas cited in paragraph 12 on a long term basis, companies may inadvertently create paternalist-dependency outcomes that ultimately choke sustainable development, retard community empowerment and impede the emergence of vibrant civil societies..."

Oxfam

Full text: www.ohchr.org/english/issues/globalization/business/docs/oxfam.pdf

EXCERPT: "...Please find enclosed a submission by Oxfam International with appended supporting documents..."

Trading Away Our Rights
 Play Fair at the Olympics
 Mining Ombudsman Case Report: Tolukuma Gold Mine
 Mining Ombudsman Case Report: Vatukoula Gold Mine
 Formula for Fairness: Pfizer
 Dare to Lead: GlaxoSmithKline
 Beyond Philanthropy
 Drug Companies vs Brazil...

The Norms are a much-needed contribution to promote respect for human rights in that they recognise the integral role that companies play in this challenge...

Whilst there is room to further strengthen the existing draft, the Norms do reflect a holistic approach towards human rights, capturing the fundamental concepts of universality and indivisibility, the needs of different parts of society and the practicalities of applying a human rights regime to business operations.

If business is truly committed to human rights this must be of some benefit. Reluctance to support the Norms will itself fuel public mistrust of companies and raise questions about the authenticity of commitments towards meeting their social and environmental responsibilities.

Corporate violations of human rights

While acknowledging the benefits of TNCs to poor countries, there are many cases of human rights violations committed by businesses, which have been brought to Oxfam's attention either by our own field staff or by partner NGOs...

In these cases, governments are either unable or unwilling to legislate to protect their own people from human rights violations of business and may indeed be complicity in them (such as forced relocation or local people from mine-sites, or tolerance of inhumane conditions in sweatshops).

Regrettably, these cases are not rare exceptions but quite common and generally industry-wide. So for example in the case of mining there is industry-wide resistance to the idea of free prior informed consent of the traditional land-

owners before a mine can be developed. This has often meant in practice loss of land tenure, loss of livelihood, relocation and poverty, not to mention infringing of cultural rights for indigenous peoples.

In the retail sector, abuse of the labour standards across the global supply chain is a common and accepted phenomenon, despite the proliferation of codes of conduct. In particular the insidious and commonplace practice forcing people – usually women – to work excessive working hours for very low pay has an enormous impact. While many large companies cite supply chain management as the problem we note that it is possible to specify in great detail the technical specifications for a sports-shoe but not reasonable toilet breaks for the pregnant women making them...”

Pfizer

Full text: www.ohchr.org/english/issues/globalization/business/docs/prizer.pdf

EXCERPT: “...we support the broad precepts contained in the 1948 Universal Declaration of Human Rights, which in addition to a range of personal protections includes the right to property. However, years of debate surrounding the effectiveness of the Declaration in real-world settings exemplifies the importance of clarifying the relationship between “rights” and “obligations.” Key words carry different meanings to different groups – including the term “human rights” itself.

In that regard, any blurring of distinction between state actors who are properly the subject of international law and non-state actors – like business – whose actions are subject to regulation under national law is troublesome. We do not support the extension of human rights obligations to the private sector at the international level.

A specific illustration of our perspective is the critical issue of expanding access to basic health care in the developing world. The question is: who or what institution is obligated to provide such access? Ensuring access to health care is a basic obligation of governments, and should incorporate the actions of responsible individuals who can afford to pay for health care. Voluntary contributions from public-private partnerships are also a tool to ensure access to health. In addition to participating actively in such partnerships, Pfizer is contributing to improving access by building on our core strength in the discovery and development of new medicines, and by leveraging our scale and technical expertise to improve global public health. However, government must take the lead in establishing the basic legal, regulatory and infrastructure conditions that will allow access to health to increase and allow us to support governments with our particular expertise and resources as appropriate.

Pfizer’s Existing Initiatives

In response to your request for information, following is a summary of Pfizer’s global operations and values as an employer and contributor to global society. We include this information to make concrete how our views are translated into action. For details, please see the attached Overview of Pfizer Social Investments and related web links...

...We cite the examples above because they illustrate the reach and commitment that stem from our voluntary activities. It is important to note that they are fueled by the passions of Pfizer colleagues, not by externally-mandated frameworks or laws.

Finally, your letter asks for our input on outstanding human rights issues we see as being relevant from a global perspective.

In our view, the discussions now taking place on corporate responsibility and human rights illustrates the revolution in social expectations unleashed by globalization and economic growth. More and more people are aware of what occurs when a government cannot or will not meet its obligations to its citizens. It does not follow from this that corporations should be expected to repair the breach where the international community has failed by not introducing appropriate checks and balances. Recognizing that human rights protection and advancement is the obligation of governments, we believe governments must work together in encouraging all stakeholders to participate in creating sustainable solutions to the issues that underpin violations of human rights – lack of governance, political will, corruption, gender discrimination, militarism and civil unrest.

Voluntary initiatives from companies to fight these scourges can help, but more work needs to be done to encourage higher levels of consistency, transparency and accountability in the way that governments interact with

business. And the results must be applicable to local firms and those that are partially owned by states, as well as to multinationals like Pfizer...”

Philippines (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/philippines.pdf

EXCERPT: “...Philippine initiatives and standards relating to the responsibility of transnational corporations

In the Philippines, laws are in place to ensure that transnational corporations and related business enterprises in the course of conducting their activities in the country respect and promote human rights such as labor, health and environmental rights among others:

- *Protection of labor...*
- *Right to social security...*
- *Right to an adequate standard of living, including the right to food, clothing and housing...*
- *Right to health...*
- *ESC rights and environment...*
- *Environmental management...*
 - *Clean air...*
 - *Clean water...*
 - *Land use management...*
 - *Management of toxic waste...*
- *Agrarian reform...*
- *Rights of Indigenous Cultural Communities...”*

Poland (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/poland.pdf

[Submission of Government of Poland is European Union submission]

Portugal (Government)*

Submission not yet available online.

Rio Tinto*

Submission not yet available online.

Sasol

Full text: www.ohchr.org/english/issues/globalization/business/docs/sasol.TIF

EXCERPT: “...Sasol became a voluntary signatory to the UN Global Compact in 2001 and has been publishing comprehensive Sustainable Development reports that follow the GRI guidelines. We recently revised our code of ethics and an accompanying guide for applying this code after consulting extensively with many employees. The new code consists of four fundamental ethical principles — responsibility, honesty, fairness and respect — and 15 ethical standards. These cover such issues as bribery and corruption, fraud, insider trading, human rights and discrimination, and include a commitment to conducting our business with due regard to the interests of all our stakeholders and the environment...”

Shell

Full text: www.ohchr.org/english/issues/globalization/business/docs/shell.pdf

EXCERPT: "...Before sharing Shell's approach to human rights, I [Robin Aram, Vice President External Relations, Policy and Social Responsibility] would like to express support for the letters of input from the OECD's Business Investment Advisory Committee and the International Chamber of Commerce. In particular the points they have raised around:

- the commitment and efforts of the business community to move forward in understanding their responsibilities,
- the adoption of instruments, codes and guidelines and
- the desire of the business community for effective enforcement by national governments of existing human rights obligations through domestic legislation.

Our journey to understanding our human rights responsibilities

...We face many challenges in our day-to-day business that have been linked to the umbrella of 'human rights' issues, such as labour rights, security and relationships with state and private security forces, corruption, indigenous rights and HIV/AIDS to name but a few. In facing these dilemmas, local laws, customs and sensitivities mean there is no "one size fits all" solution.

In **1996**, the Shell Group publicly stated its **support for the Universal Declaration of Human Rights**. The Declaration had existed since 1948. It addresses "all organs of society" which obviously includes business. But Shell was the first energy company and one of the first multinationals to take a public stand in support of it...

It is pragmatic for us to make it clear to the host country and any partners that **we will act according to our Shell General Business Principles**, which are publicly available, regularly reviewed and binding on all parts of our business everywhere (www.shell.com/standards). In 1997 our business principles were revised to include commitments to respecting the human rights of employees and support for fundamental human rights.

We then worked to spread human rights awareness as broadly as possible inside Shell – and outside Shell through engagement with a broad range of social partners. Inside Shell **we defined areas of responsibility**, which are illustrated in our business and human rights responsibilities map...The rights of our people are the innermost circle, the area where we have clear responsibilities and most control. The outermost is national rights where we have no control and many dilemmas (www.shell.com/human) his model was developed in dialogue with Amnesty International...

The Shell Group is committed to pursuing the goal of no harm to people and to protecting the environment. **Environmental, Social and Health impact assessments are required prior to all new projects and major facility developments**, as well as prior to the significant modification or abandonment of existing projects...

We developed a new **human rights compliance tool** for Shell companies, based on tools developed by the Human Rights and Business project of the Danish Centre for Human Rights. First piloted in South Africa in 2001, this was revised in 2002 to give managers a practical step-by step approach to help them avoid violating the basic human rights of employees, local communities and others directly affected by our operations...

Putting process in place around the Shell General Business Principles

Shell has a risk-based approach to social and environmental issues. Our **issues identification and management system** identifies and addresses the social, environmental and ethical risks facing Shell's businesses across the Shell Group...

The value of instruments, codes and guidelines

The SGBP [Shell General Business Principles] guides the day-to-day business and activities of Shell companies and these need to keep pace with external principles and codes that help shape our business environment, for example in relation to human rights these include the Universal Declaration of Human Rights (1948) as mentioned earlier, but also the ILO Declaration of Principles and Rights at Work, the Global Sullivan Principles of Social Responsibility (1999), the UN Global Compact (2000), the OECD Guidelines for Multinational Enterprises (2001), the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (2000) and the Voluntary Principles on Security and Human Rights (2001).

We believe there is an important role for voluntary codes of practice that can help create that solid foundation of good practice in the field of human rights and environmental performance and that enable business to push back the boundaries of social and environmental performance and operate at the cutting edge...”

Sonofon (part of Telenor)

Full text: www.ohchr.org/english/issues/globalization/business/docs/sonofon.doc

EXCERPT: “...At SONOFON, CSR [Corporate Social Responsibility] is centred around three topics. Within these topics there are several focus points and action plans that SONOFON is currently working on...”

The right to privacy

The right to privacy is very important to SONOFON since we as an employer and a telco routinely handle sensitive data. This will bring a whole series of challenges in the future when digital tracking will make consumer behaviour and movements even more clear than they are today...

The right to participate in technological development

It is a natural thing for SONOFON to play an active part in the debate about the right to participate in technological development. We feel that people should have access to information about progress enabling them to participate in and benefit from developments...

Employees

SONOFON has an aim to attract and retain committed and loyal employees by offering the employees training, development and the opportunity to become a valuable resource for both SONOFON and the community. Within this subject we have several focus points: *Health and safety...Help for illness...Focus on health...Stress...Right to unionization...*In 2004, we are intensifying our approach to equality and non-discrimination in our workplaces...”

Storebrand*

Submission not yet available online.

SustainAbility

Full text: www.ohchr.org/english/issues/globalization/business/docs/sustainability.pdf

EXCERPT: “...the Draft UN Norms...bring together all the elements of different standards and codes and provide one standard that can be adhered to by companies in any sector and any part of the world. More importantly, compliance with these Norms would ensure compliance with all the other standards and codes – reducing the complexity of the issue for companies. They are also clear and easy to understand...”

We would be very concerned if this very important piece of work were to be discarded and an entirely new process started. But it is clear that the Norms are controversial, at least in some quarters...Stakeholder consultation on the process and content is key. Especially important is the need to bring in the business perspective and ensure the support of key business actors...While there is scope for the Norms to be improved, we find it difficult to comprehend how companies and other stakeholders can reject outright these Norms without any constructive engagement and discussion...

By way of context, SustainAbility is a consulting firm and think tank that mainly works with companies internationally to develop strategies that address the key social, environmental and economic issues...We work internationally, in developed as well as developing countries, with a broad spectrum of companies across different industry groups including Shell, Nike, Unilever, Microsoft, Starbucks, and Pfizer...

In our 17 years of experience in working with business, we have found that most of them struggle to understand the human rights agenda, not only what the issues are but how they potentially impact them – and where the boundary lies between their responsibilities and those of government. This agenda is not an easy one to understand and the plethora of codes, standards and principles that attempt to address the issue paradoxically make it more difficult for many business people to comprehend...

As a result, we conclude, there is a tremendous need for an overarching set of principles – that are comprehensive and complete, but also clear and simple. This is the reason why we endorse the Draft UN Norms...”

Sweden (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/sweden.doc

EXCERPT: “Sweden and Corporate Social Responsibility (CSR)

The Swedish CSR policy is based on international conventions and policies regarding human rights, core labour standards, environment and corruption that establish a global level for human decency in business. The issue of Corporate Social Responsibility has an important function, as it links:

- An active trade policy for greater openness and freer trade, and
- A foreign policy that strongly emphasises the importance of human rights and sustainable development.

Work related to CSR is carried out on different levels and in various settings.

1. The Swedish Partnership for Global Responsibility

The Swedish Government has invited the corporate community to take part in an initiative called the Swedish Partnership for Global Responsibility. The Initiative was launched by the Prime Minister on 7 March 2002 and aims at encouraging Swedish companies to be advocates of human rights, anti-corruption and a decent and sound environment, all over the world...

2. The National Contact Point for the OECD Guidelines...

3. Public policy in support of CSR

A part from the Swedish Partnership for Global Responsibility the Swedish government has initiated a number of initiatives to incorporate CSR in public policy.

State-owned companies are a specific target group in promoting Corporate Social Responsibility. The Swedish Government has an explicit policy that it should use its role as an owner to promote sound business behaviour within state-owned companies, and in 2004 33 state-owned companies were required to report on their work towards implementing the principles underpinning the Swedish Partnership for Global Responsibility...

Public procurement also serves as an instrument for promoting CSR. In this context, the Government is currently assessing the possibilities of taking social and environmental concerns into account in public procurement...

Since 1999, companies above a certain minimum size have been required to include **information on their environmental impact** (e.g. emissions to air and water, use of manufactured chemicals) in their annual reports, a provision that applies to more than 20 000 sites...

Within the framework of an **Integrated Product Policy**, market stakeholders are encouraged to reduce the environmental impact of products over their entire lifecycle...

Sweden also believes that **export credits** are an important instrument in promoting Corporate Social Responsibility. Consequently, the Swedish Export Credits Guarantee Board provides all its customers with information on the Swedish Partnership for Global Responsibility, existing regulations on bribery and the OECD Guidelines for Multinational Enterprises.

Under the **Public Pension Funds Act** (2000:192), the National Pension Funds are required to draw up an annual business plan, which must include guidelines for investment activities...

On a national level, new legislation entered into force on 1 July 2003, requiring all enterprises to include information on the number of absences due to illness in their annual reports...”

Switzerland (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/switzerland.pdf
[Submission only available in French]

EXCERPT: "...la Suisse, co-auteur de la décision de la Commission des droits de l'homme adoptée lors sa 60^e Session, se réjouit qu'un rapport soit rédigé sur l'étendue et la nature légale des normes, standards et initiatives existant dans le domaine de la responsabilité des entreprises au regard des droits human, y inclus le projet de normes de la Sous-Commission..."

Le project de normes susmentionné consitute une piste intéressante de réflexion parallèle aux instruments existants et aux autres démarches volontaires, tels que les codes de conduite...

Liste des entités consultées et contributions reçues (annexes) [pas encore disponible sur le web, sauf Amnesty International, King Zollinger]

- ABB
- Amnesty International
- Centre Europe-Tiers Monde
- Communauté de travail
- Credit suisse Group
- Economiesuisse
- Erklarung von Bern
- Ethos
- Industrie-Holding
- King Zollinger & Co.
- Novartis International
- Pro Natura
- Travail.Suisse
- UBS AG
- Union patronale suisse
- Union syndicale suisse..."

Syrian Arab Republic (Government)

Full text: www.ohchr.org/english/issues/globalization/business/docs/syria.doc

EXCERPT: "...Transnational corporations and business enterprises conduct their activities in accordance with the ordinances, laws and regulations in force in the country, in the same way as do other national enterprises. In the performance of their work, they are subject to the terms of the Constitution and the human rights conventions and treaties concluded by the Government of the country. They accord the utmost importance to human rights issues and are dedicated to the improvement of the material and moral well-being of persons and ensuring that they have access to comprehensive health care and to social protection..."

Telefónica

Full text:

[*Telefónica 2003 Corporate Social Responsibility report submitted, incl. sections on:*
Exercising corporate responsibility: www.ohchr.org/english/issues/globalization/business/docs/telefonica1.doc
Employees: www.ohchr.org/english/issues/globalization/business/docs/telefonica2.doc
Suppliers: www.ohchr.org/english/issues/globalization/business/docs/telefonica3.doc
Society: www.ohchr.org/english/issues/globalization/business/docs/telefonica4.doc]

Third World Network (Europe)

Full text: www.ohchr.org/english/issues/globalization/business/docs/europethird_en.doc
[Also available in Spanish and French]

EXCERPT: "...we, the undersigned movements and organizations, declare the following:

- We commend the initiative of the SCHR [Sub-Commission on Human Rights] for having, *finally*, tackled the problem of the working methods of transnational corporations (TNCs), which today constitute one of the primary causes, direct or indirect, of human rights violations and of the regression of basic social, political economic and environmental rights.
- We approve without reservation the willingness of the SCHR to impose on TNCs an international legal framework in order to monitor their activities and to sanction the violations which such activities might give rise to.
- We recall, along with the SCHR, that norms of international law in the area of human and environmental rights listed in the draft are already applicable to TNCs, as they are to all other business enterprises and all other individuals. Moreover, we have pointed out that the problem is not a lack of norms – for such norms exist already – but a lack of ability or willingness on the part of governments to enforce them...
- Consequently, we call upon the High Commissioner to support the initiative of the SCHR in order that it may succeed, and we enjoin our governments, in particular those of countries currently members of the CHR, to examine in a positive light this draft document, which will constitute, once the necessary improvements introduced, an important progress towards the legal and social control of TNCs' activities.

The improvements that we recommend appertain to three important points that, in the present text, are treated in an unsatisfactory manner :

1. The responsibility to be attributed to TNCs for the overall process of production, distribution and marketing that they effectively control, in particular the jointly shared responsibility of TNCs with all their suppliers, sub-contractors and licensees, in so far as it is here a matter of a single economic process under their direction...
2. The introduction of the individual civil and criminal responsibility of the directors of TNCs, to wit those who make decisions of a strategic order, as owners, managers or members of the board of directors...
3. Monitoring measures. This is one of greatest shortcomings of the project. A considerable amount of work must yet be undertaken to sketch out compulsory enforcement mechanisms that are really effective, especially at the international level..."

TwentyFifty (human rights consultancy)

Full text: www.twentyfifty.co.uk/resources/tfohchr%20submission.pdf

EXCERPT: "This submission draws on our practical experience of providing training, consultancy, and leadership on human rights to businesses including members of the Business Leaders Initiative on Human Rights and the Basic Services Human Rights Network. Existing initiatives such as the UN Global Compact, the Global Reporting Initiative, the Voluntary Principles for Security and Human Rights, SA8000 and the Ethical Trading Initiative have done much to raise the profile of human rights, establish expectations and facilitate learning. Yet we have found, in our training activities in particular, that the comprehensive framework provided by the draft UN Norms on the responsibilities of trans-national corporations and other business enterprises with regard to human rights is welcomed.

Through our experience of working with the Norms, we wish to emphasise the value that they are already playing in education – a necessary and important role in furthering the dialogue about business responsibilities for human rights. Their impact has been threefold:

- i) In raising awareness of the range and nature of the impacts that businesses have on human rights
- ii) In introducing new participants to the dialogue about business responsibility for human rights
- iii) In raising the profile of human rights within the broader corporate responsibility dialogue..."

UNEP (United Nations Environment Programme)*

Submission not yet available online.

United Kingdom

Full text: www.ohchr.org/english/issues/globalization/business/docs/uk.doc

EXCERPT:

- “1. This paper should be seen as a complement to the EU contribution.
2. The UK’s objective for this exercise is to strengthen the promotion and protection of international human rights, including by maximising the contribution that business can make. In the preparation of this response, the British Government has consulted interested stakeholders...We suggest that the OHCHR build on the work already done by focussing its efforts on identifying the issues that require in-depth analysis in order for States to move the process forward, starting with next Spring’s Session of the UN Commission on Human Rights. In addition to the points in the EU paper, we would particularly value detailed analysis of the following themes to allow an informed debate between States.

Principles

3. The UK attaches importance to certain principles in this discussion.
- a. The primary responsibility for the promotion and protection of human rights lies with States. It is, therefore, vital to encourage States to implement and enforce national measures to ensure the protection of these rights within their territories, including through effective administrative and judicial processes...
 - b. Any ongoing process should not seek to place companies in the same position as States with regard to obligations in international human rights law. To avoid confusion of their legal status, texts relating to the responsibilities of business with regard to human rights should not use legally-binding treaty language.
 - c. We want this process to add value to work already done in different fora to avoid duplication of effort.
 - d. We should aim for maximum clarity on expectations: stakeholders will understand the principles fully only if they are set out in clear, accessible terms.

Issues

4. To avoid duplication by building on what has already been achieved on corporate social responsibility, this exercise could be an opportunity to work towards a universally accepted collation and clarification of the minimum standards of behaviour expected of companies with regard to human rights. For example, it might be helpful to develop consolidated guidelines derived from the most important human rights-related elements of the OECD Guidelines on Multinational Enterprises, ILO Declarations and Conventions, the Voluntary Principles on Security and Human Rights, the UN Global Compact principles, as well as wider international human rights standards. The UN Global Compact local networks could play a part in discussing the scope for the promotion of such guidelines.
5. At the same time, we recognise that there may be exceptional circumstances in which a State is unable or unwilling to enforce such standards in its territory. In such cases, we acknowledge the arguments for exploring alternative approaches. Any analysis of this area would have to take into account the complex jurisdictional issues involved. It may be that measures are necessary to ensure an adequate standard of behaviour by companies operating in some countries. The UK considers that such measures would be most effective if focussed on the responsibilities of States to regulate and enforce human rights standards in their own territories.
6. Effective implementation of State legislation on human rights protection can be boosted by the involvement of all stakeholders, including business, in the consultation process...
7. Codes of conduct and other voluntary measures can also help to raise standards. The UK has been involved in a number of such initiatives that might merit analysis, eg the Voluntary Principles on Security and Human Rights.
8. Incentives to encourage companies to act deserve further consideration...There is growing use in the financial services sector of benchmarks that seek to assess company performance against a range of CSR

indicators. These can include a human rights criterion, against which some companies compile “human rights impact assessments” to inform their internal decisions on new investment opportunities; potential lenders can ask for such assessments before they agree to fund activities. Such assessments might have a place in future reviews of companies’ reporting and disclosure obligations. The UN, NGOs and other stakeholders could use their experience to help to refine such indicators to promulgate best practice.

9. The debate thus far has rightly looked at all business enterprises. Transnational corporations do not act in isolation, but with and through a range of domestic corporate actors, including suppliers, distributors, sub-contractors, service-providers, and others. They also operate in competitive markets alongside purely national corporations. The relationship between these actors, and their respective responsibilities for ensuring that their actions do not negatively impact on human rights, should be further analysed and explored.

Conclusion

10. The UK believes that all of the above issues warrant further discussion by governments and other stakeholders. We share the aim of improving the overall level of human rights promotion and protection on a universal basis, with business fulfilling a necessary and appropriate role in support of states' efforts to meet their obligations under international human rights law. We look forward to participating fully in moving the process forward both during and beyond next spring's Session of the Commission on Human Rights.”

United States

Full text: www.ohchr.org/english/issues/globalization/business/docs/us.pdf

EXCERPT: ...”As a preliminary matter, the Government of the United States would like to reiterate its position that the Norms adopted by the Sub-Commission have no status – legal or otherwise. Not only was this exercise beyond the mandate of the Sub-Commission – but it was undertaken wholly without consideration for the views of States. The Sub-Commission had no authority to create a set of “norms”, the clearly stated purpose of which is to bind or guide the actions of States or of non-State actors...

...given the fact that the Norms have no status, the United States will not address, line-by-line, the substance of the Norms. Instead, we will address the conceptual flaws, and indeed dangers, of embarking upon this exercise as well as the views of the United States government regarding the appropriate approach to the issues addressed by the Norms and corporate social responsibility more generally...

First, in the view of the United States, the basic assumptions on which the Norms exercise was based are flawed. Any attempt to draft a series of norms to bind private business entities accepts as a baseline assumption that these entities are responsible for widespread human rights abuses in countries where they operate. This assertion simply has no basis in fact. Where human rights abuses are widespread, they are the result of either action or inaction of States, not generally by private enterprises.

While it is true that private entities have been alleged to have been complicity in, or even aided, human rights abuses committed by governments, the fundamental cause of such abuses has been the action or inaction of the government, not of the private entity. And, even where private business entities are alleged to have directly participated in abuses, these acts are not the result of a lack of an international normative framework to govern the entity's behaviour; instead, the cause is the failure of the government to enforce its own law with regard to the unlawful activity. The key to ending abuses allegedly committed by private entities is to promote, enforce and respect the rule of law...

This too is a flawed assumption: that there is no applicable international normative framework to govern the activities of private enterprises. Both the OECD Guidelines on Multinational Enterprises and the various instruments and mechanisms of the ILO create a comprehensive set of guidelines for the activities of private entities that address many of the issues that the Sub-Commission tried to address in the Norms. More importantly, the States have accepted a variety of obligations under international human rights and humanitarian law instruments that occupy the field of protections the Norms purport to create...

...attempts to craft norms of this nature dangerously shift the focus of accountability for human rights violations away from States and toward private actors, thus creating the perception that States have less of a responsibility to end human rights abuses for which they are responsible...

Second...the Norms are flawed for reasons of international law. By attempting to establish duties and obligations for business entities, which are non-State actors, this exercise goes well beyond the present state of international law as well as international legal process...

Third, the United States believes that it is not the appropriate role of the United Nations to serve as a forum for the creation of "norms" that are based on flawed assumptions, that divert attention from the true source of human rights violations and that lack any cognizable foundation in international law. The focus of the UN should be on assisting States in developing and enforcing national law as well as on assisting States to implement their international obligations in a manner that promotes respect for and ensures the protection of all human rights.

One area in which the UN has added significant value, and where its focus should remain, is with the Global Compact. The Compact has been widely lauded as a useful initiative for increasing the effectiveness of the corporate social responsibility (CSR) activities of the business community as well as promoting the importance of CSR among a wide range of businesses throughout the world...The UN should continue to promote voluntary initiatives like the Compact as well as public-private partnerships designed to improve human rights..."

United States Council for International Business (USCIB)

Full text: www.ohchr.org/english/issues/globalization/business/docs/usCouncil.pdf

EXCERPT: ... "Thus, the long-term objective of the international community must be to assist governments in developing the institutions, managerial capacity and financial resources necessary to implement and enforce their laws protecting human rights. The Office of the High Commissioner for Human Rights can help to advance the discussion by clarifying the legal issues, by providing an objective assessment of the opportunities and limitations of business efforts to promote respect for human rights, and by establishing an open and constructive dialogue with the global business community..."

USCIB strongly supports respect for human rights not only because it is the right thing to do, but also because protecting human rights benefits all actors in society, including private enterprise. To flourish, both national and international commerce require the same principles, government policies and national institutions needed to protect human rights, including democracy, the rule of law, anti-corruption, independent courts, free speech, individual liberty, anti-discrimination, and freedom from arbitrary government action. Business has worked consistently to promote effective national frameworks based on good governance, open markets, and sound fiscal, social and environmental policies...

Efforts that seek to absolve national governments from their human rights obligations and to shift that burden to the private sector are misguided and will not be effective in improving human rights in the countries affected...

III. Comments on the work of the Sub-Commission

...As stated previously by USCIB and by our international affiliates in the International Chamber of Commerce and the International Organization of Employers, USCIB found the approach taken by the Sub-Commission to be unfeasible, unnecessary and counter-productive...

First and most importantly, the approach taken by the Sub-Commission attempted to shift the obligations for protecting human rights from governments to the private sector...

Second, the draft would have transformed the qualified obligations and aspirational goals of governments contained in international treaties into unqualified, immediate requirements for companies...

Third, the draft document was unnecessary since all companies, regardless of size or home country, are required to comply with national laws and thus must already comply with the elements of international human rights treaties that have been implemented through national law...

Fourth, the Sub-Commission document was based on a false assumption, namely that “transnational corporations” are somehow unregulated and that an international instrument is necessary to cover their activities. This is simply not the case...

And last, the draft document significantly confused the issue of business and human rights. It blurred the very real differences between the legal obligations of States and private actors, including companies, and used an impossibly broad definition of human rights that went far beyond core human rights to include aspirational goals (adequate housing for all) and unrelated issues (e.g. consumer protection, environmental protection, and competition policy)...

IV. Recommendations

- 1) The High Commissioner’s report must, at the outset, clearly identify the problem we are trying to address in the area of business and human rights as that will shape everything that follows from it.
- 2) Similarly, the report should question the assumptions behind the decision of the Sub-Commission to focus its attention on companies operating in two or more countries...
- 3) The report should address the confusion caused by the Sub-Commission document by presenting an authoritative assessment of the relationship between international treaties and national laws and the respective obligations of States and private actors...
- 4) The report should also address the barriers that governments face in trying to implement and enforce their national laws...
- 5) The report should assess the challenges and practical limitations to implementing human rights through supply chains...While many companies have developed internal policies that integrate social and environmental criteria into their purchasing requirements, using supply chains to enforce human rights would be an inefficient and potentially unfair substitute for implementation and enforcement by governments...
- 6) The report should review the potential of voluntary initiatives to help business and other actors work cooperatively with governments to promote the rule of law, anti-corruption, independent courts, free speech, individual liberty, anti-discrimination, and sound fiscal, social and health, safety and environmental policies...
- 7) The report could very usefully help to define what is meant by human rights in the international, national, and private actor (business) contexts, based on an appropriate scope that focuses on core human rights and excludes unrelated issues such as consumer protection and environmental protection. The report should also clarify which human rights are absolute and which are qualified or aspirational...
- 8) And last, the report should address the potentially negative implications of privatizing the implementation and enforcement of human rights by shifting responsibility to private actors...”

UNRISD (United Nations Research Institute for Social Development)

Full text: <http://209.238.219.111/UNRISD-submission-letter-to-UN.doc>

EXCERPT: “...I [Peter Utting, Deputy Director and Research Co-ordinator on Corporate Social Responsibility, UNRISD] have pleasure in sending you the following reports and books, which have been recently published by UNRISD [all can be found under either “Publications” or “Unpublished documents” in the right hand column of the following page:

[www.unrisd.org/unrisd/website/projects.nsf/\(httpProjects\)/E7F3F4A25DFB0AE980256B6100514A19?OpenDocument](http://www.unrisd.org/unrisd/website/projects.nsf/(httpProjects)/E7F3F4A25DFB0AE980256B6100514A19?OpenDocument)]

1. **Regulating Corporations: A Resource Guide**, which provides information on approximately 100 regulatory initiatives associated with the social, environmental and human rights performance of transnational corporations.
2. **Corporate Social Responsibility and Development: Towards a New Agenda?**, which highlights key issues and debates that emerged at an UNRISD conference of the same title that was held last November.
3. **UNRISD Research and Policy Brief 1 on Corporate Social Responsibility and Business Regulation**, which summarizes some of the main findings to emerge from UNRISD research in this area.
4. **Barricades and Boardrooms: A Contemporary History of the Corporate Accountability Movement**, which examines the evolution of CSR activism and “civil regulation” associated with transnational corporations.

5. Development at Risk: Rethinking UN Business Partnerships, which assesses from a development perspective recent trends associated with collaboration and partnership between the United Nations and transnational corporations.

6. Voluntary Approaches to Corporate Responsibility: Readings and a Resource Guide, which contains two essays on codes of conduct and multistakeholder initiatives, as well as an extensive bibliography...

VNO-NCW (Confederation of Netherlands Industry & Employers)

Full text: www.ohchr.org/english/issues/globalization/business/docs/netherlandsindustry.pdf

EXCERPT: "...VNO-NCE concludes that:

- The protection and promotion of human rights helps to create healthy societies, in which business can develop in a stable way.
- A number of instruments of various nature for the protection of human rights are laid down in national laws, treaties and core conventions. It is primarily the responsibility of states and governments to implement and enforce them. The international community should put further effort in encouraging states and governments, which are failing to comply, to change their policy in this respect.
- There is also already an extensive range of tools to guide transnational business in their policies on the protection of human rights. The focus of future action in this field should therefore not be to develop still more tools, but first to make the existing tools effective and improve their implementation and performance.
- There is a growing willingness of companies to use these tools – on a voluntary basis...
- The UN draft norms intend to be simultaneously and [sic] very wide ranging, and vague, and legally binding. This combination, and especially the fact that the draft norms are proposed to be a binding instrument, would create absolutely unacceptable legal uncertainty for companies, especially in legal systems focused on litigation..."

World Confederation of Labour*

Submission not yet available online.

Young, Stephen – Global Executive Director, Caux Round Table

Full text: www.ohchr.org/english/issues/globalization/business/docs/caux.doc

EXCERPT: "...These observations are personal to myself, reflecting my experience in advocating the Caux Round Table's Principles for Business, and do not constitute any formal recommendation on the part of the Caux Round Table.

The proposed Norms are duplicative of existing standards for corporations

Adoption by transnational corporations and domestic companies of the Caux Round Table's ("CRT") Principles for Business would go far to achieving many of the aims of the proposed Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights. See Principles for Business: www.cauxroundtable.org

The CRT Principles for Business amply respond to the concerns of paragraphs 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of the proposed Norms. To that degree the proposed Norms are redundant of the CRT's intellectual efforts.

The CRT Principles for Business now have the same normative and jurisprudential standing as the proposed Norms would have, namely the power of moral suasion.

Therefore, the High Commission might consider adopting a resolution affirming the CRT's Principles for Business and calling on companies and corporations to adopt those standards in their decision-making.

The CRT Principles have two further advantages that the proposed Norms do not have. First, the CRT Principles for Business also contain clear guidance as to the fundamental goal and purpose of private enterprise efforts, which is to create new wealth. Unlike the proposed Norms, the CRT Principles for Business integrate core business concerns and responsibilities with wider social responsibilities to stakeholders. Second, the CRT Principles for Business are supported by an implementation process, a management tool and procedure by which corporations can align their decision-making with the standards articulated by the Principles for Business. The proposed Norms have no such implementation metric and process.

Confusion over the respective competencies of business and government

The Proposed Norms conflate the responsibilities of business and government. They do not properly delineate the respective obligations of the state and civil society...

Civil society should not call upon business to do what government should do. That would degrade the moral stature of both business and government. Government would be relieved of the obligation to perform its trust while business would be burdened with the temptations of using police powers crudely in the pursuit of profit. We do not need to create a rough Marxism where the bourgeoisie acts as the steering committee of the state. Let governments provide public goods and businesses create wealth under conditions of social justice.

Civil society cannot develop and economic growth cannot happen unless government diligently meets its obligations of fostering the accumulation of social capital, including fidelity to the Rule of Law. Recognizing this fundamental obligation of government, the CRT has proposed certain ethical and socially responsible standards for governments. They too may be found on our website: www.cauxroundtable.org

To insist, as the proposed Norms do, that transnational corporations “contribute to the realization” of “the right to development, adequate food and drinking water, the highest attainable standard of physical and mental health, adequate housing, privacy, education, freedom of thought, conscience, and religion and freedom of opinion and expression” would be to turn enterprises of private ownership into Thomas Hobbes’ Leviathan or Plato’s philosopher kings, crowding out democratic and other political mechanisms and installing in their place a culturally and politically smothering plutocracy.

Such a course would reverse centuries of progress towards political and social justice where private power is separated from ruling authority. Cronyism between big business and the repressive apparatus of a police state can never be healthy for robust enjoyment of human rights.

Furthermore, if private enterprise is to deliver entitlements to individuals, then what is government to do? When there is failure in enjoyment, who would be responsible – the government or private companies? If private companies would be found wanting, how would they be disciplined? And, even if private owners were disciplined, how would the desired goods and services be produced and delivered to those entitled to receive them?

And, inexplicably, the proposed Norms do not provide a conceptual framework for the proper compensation of private enterprise for providing entitlements to health, housing, privacy, education, freedom of thought, conscience and religion and freedom of opinion and expression, not to mention all the other civil and political rights people feel entitled to.

Second, the proposed Norms set up a framework where transnational corporations should step in when government fails to meet its responsibilities. At a minimum, this obligation, if honored by transnational corporations, would have them seek to reform or oust ruling political elites and authorities, even perhaps to the point of organizing and supporting armed insurrection when governments prove to be incorrigibly contumacious and resistant to change.

Setting up such potential confrontation between private power and sovereign authority is inappropriate and contrary to fundamental norms of international law and political justice.

If governments fail in meeting their responsibilities, there should be a political process to change the government. Revolution in political affairs is not a proper calling of private enterprise and should not be encouraged. It should be the role of private enterprise to obey the laws of jurisdictions in which business is conducted. If its laws are unjust and a government brutal, the enterprise has the option of leaving that jurisdiction. But if the enterprise stays under

such conditions, it like any other private citizen living under that regime, has moral flexibility in deciding on the degree of its opposition to the ruling police powers.

Third, the proposed Norms assert that business “as an organ of society” is responsible for “securing” the human rights set forth in the Universal Declaration of Human Rights. This assertion is questionable. Human Rights are fundamentally claims on governments, not on other participants in society. Nor are human rights conceptually entitlements to a share of society’s economic output and other advantages. Unfortunately, too many speak loosely of a “right” to this or a “right” to that without going further and defining who should justly provide the desired goods, services, or enjoyment. From a theological point of view, removing responsibility from the individual and transferring it to another is not morally wise. When the proposed Norms rely upon an intellectual framework of “entitlement”, they exceed the due bounds of valid human rights concerns and venture into other areas of social organization.

Creating conditions of social justice for all humanity is a calling of great importance for both political leaders and civil society, including private enterprise and providers of finance capital. Just how to create those conditions, however, is a very complex matter where few seem to have found a certain path to success. Though the inspiration behind the effort of the proposed Norms to link private enterprise to the enjoyment by many of better conditions is noble and is to be applauded, the means chosen of placing government responsibility on the shoulders of private corporations may not be the most appropriate.”

**Submissions with an asterisk do not have an excerpt as their text has not yet been made available online, as of 2 December 2004. We will add an excerpt from each one as soon as it is made available.*