



UN and Business: Where do we stand?

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The Programme on Global Issues and Civil Society

Worldwide, the role of civil society has been increasing at rapid speed. Non-governmental organizations (NGOs) have become significant and influential players and generate much interest. Created in 1986, the Programme on Non-Governmental Organizations and Civil Society aims at contributing towards a better understanding of NGOs and the solutions of complex and conflictive societal problems involving NGOs.

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INTRODUCTION

A key characteristic of globalization is that the actors involved are not only states but non-state actors, particularly multinational or trans-national corporations. As the influence and reach of corporations has grown as a result of globalization and other global developments, there is an increasing debate about the roles and responsibilities of corporate actors with regard to human rights.”¹

The interface between the United Nations and the Private Sector has become an issue high on the agenda. Does the international community need to regulate multinationals with binding instruments? Is it dangerous to have TNCs bridging gaps where states have failed to enforce the law? What is the weight of voluntary initiatives? Is it possible to combine mandatory instruments and non-binding initiatives? What exists at the moment in this field? Why is this issue not regulated through a binding Convention?

Traditionally, international human rights standards have been the responsibility of governments, aimed at regulating relations between the state and individuals or groups. In view of the increased role played by corporate actors, at both the national and international level, the United Nations is considering the scope of the responsibilities of businesses and exploring ways in which corporate actors can be made accountable for the impact of their activities on human rights. However, the practical meaning of the link between business and human rights remains unclear for many and there remains substantial debate over which human rights can and should apply to business, and in what way.

The issue of international regulation of multinationals has a long controversial history and is still very sensitive². From the 1970s, attempts to change the behaviour of TNCs through the United Nations have been made, but none have met with much success. The “United Nations Centre on Transnational Corporations” which was created in 1974, was wound up in 1992, faced with US hostility to its perceived anti-free market agenda. An agenda that was exemplified by projects such as its proposed Code of Conduct for multinational firms. In 1999, the United Nations Sub-Commission on the Promotion and Protection of Human Rights, the main subsidiary body of the Commission on Human Rights, created a working group on TNCs. In 2003, this Sub-Commission submitted the now famous Norms on TNCs (cf. part 3 of the report) to the Commission. They were rejected under pressure from the business lobby who regarded the instrument as unrealistic and dangerous. It is clear that, overall, TNCs do not want binding instruments and have a strong preference for guidelines, platforms and dialogues.

To relaunch the debate, the Secretary General of the United Nations nominated a Special Representative on this issue (cf. part 2).

¹ From the website of the Office of the United Nations High Commissioner for Human Rights: <http://www.ohchr.org>

² To have an interesting overview of the relation between the United Nations and the private sector, please read the following article: “Cooperation between the United Nations and the Private Sector Addressing Issues of Global Concern”, Joseph Klee and Uda Klee, Seton Hall Journal of Diplomacy and International Relations, Fall 2002.

Along with this movement aimed at regulation, we can observe a variety of initiatives that try to involve private sector actors on issues like human rights, environment and labour standards. Among the most important and well known of these is the Global Compact (cf. part 1). So far, the Global Compact has succeeded where other initiatives have failed³. Its approach is different from the Centre-proposed initiative mentioned above, which was based largely on concepts from the New International Economic Order, a reform agenda pushed by developing countries in the 1970s and 80s. In the Global Compact there are no binding rules, nor are there enforcement procedures or system for monitoring transgressions. Its ten core principles are non-enforceable.

Civil society, especially NGOs, have been very active on this theme from the beginning and their points of view are diverse. For some, like Ms. Paine,⁴ the aims of TNCs are very clear when they want to be associated with the United Nations. In her opinion, TNCs hope to influence the UN's ideological position with the aim of promoting their own products and public image. Ms. Richter also denounced the risk of this collaboration⁵. For more moderate observers, the association between the United Nations and multinationals could be very constructive but needs to remain balanced.

The relation between the United Nations and the private sector is complex and diverse.

The London-based NGO Business & Human Rights has published a list (long but still not exhaustive) on the initiatives that exist on this issue including:

- *The Equator Principles*
- *The European Parliament Code Of Conduct*
- *The Extractive Industries Transparency Initiative (EITI)*
- *The Global Reporting Initiative*
- *The ILO Declaration On Fundamental Principles & Rights At Work*
- *The ILO Tripartite Declaration*
- *The Kimberley Process*
- *OECD Guidelines*
- *The UN Global Compact*
- *The UN Millennium Development Goals*
- *UN Norms On Business & Human Rights*
- *UN Principles for Responsible Investment*
- *Voluntary Principles on Security & Human Rights*

³ « Politics: The UN Global Compact-Surviving without Annan », available online at <http://www.ethicalcorp.com>

⁴ « The Road to the Global Compact: Corporate Power and The Battle over Global Policy at the UN », Ellen Paine, October 2000, available online at <http://www.globalpolicy.org>

⁵ « "We the people" or "We the corporations"?, Critical reflections on UN-business "partnerships" », Judith Richter, IBFAN/GIFA, January 2003 and « Building on Quicksand: the Global Compact, democratic governance and Nestlé », Judith Richter, CETIM, IBFAN/GIFA and Berne Declaration, October 2003

This list gives us an idea of the diversity of the projects in this field. We will not deal in this report with all the different forms of collaboration and cooperation between the two actors, for instance, we will not study philanthropy or partnerships.⁶ We have chosen to concentrate only on the initiatives concerning the United Nations and TNCs. More precisely, we will concentrate on the two most important: the Global Compact (first part) and the United Nations Special Representative on the Issue of Human Rights, TNC's and other Business Enterprises, Prof. Ruggie (second part). In the last part of the report (third part), we will look briefly at some other smaller initiatives of the United Nations regarding multinationals.

As suggested in a report⁷ by the consultancy firm King Zollinger & Co., the different United Nations instruments should stand to gain from a mutual and constructive relationship. But what about a comprehensive convention? It is true that the substance is more or less clear, as we will observe in this report, but for the moment there is no political will to create and implement a convention. Presently, national regulations are the only binding instruments that the international community has with which to regulate TNCs.

Currently, the most interesting national binding instrument is the American "Alien Torts Claims Act". This act of 1789 grants jurisdiction to US Federal Courts over "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States". Until recently this Act was only been used against individuals, but efforts have since been made to use the Act to sue TNCs for violations of international law in countries outside of the US. For instance, several citizens from Myanmar, with the support of Earth Rights International, an American NGO, sued Unocal for human rights violations in the construction of the Yanada pipeline. If suits such as these are allowed to proceed, then the Act could become a powerful tool for increasing corporate accountability.

To conclude, the international community should, in our view, support the development of minimum human right standards applicable to the business sector and the implementation of voluntary initiatives aimed at increasing corporate social responsibility. They should be encouraged as the tools of a more harmonious globalisation for all.

⁶ "A Perilous Partnership", Joshua Karliner, TRAC, IPS and CIPA, March 1999, available online at <http://www.corpwatch.org>

⁷ "The United Nations Human Rights Norms for Business and the UN Global Compact", Alison King, February 2004

INITIATIVES

Global Compact

History

In an address to the World Economic Forum on 31 January 1999, the former Secretary-General (SG) of the United Nations, Kofi Annan, challenged business leaders to join an international initiative – the Global Compact – that would bring companies together with UN agencies, labour organisations and civil society to support universal environmental and social principles. The Global Compact’s operational phase was launched at the UN Headquarters in New York on 26 July 2000.

The central idea is of a complementary structure, it is not conceived of as a replacement for what exists already but more an initiative aimed at complementing national and regional regulations and voluntary initiatives.

It is important to underline the central role of Kofi Annan in the creation of this Compact. The previous Secretary General worked during his whole mandate to better integrate multiple stakeholders (including Businesses and NGOs) into the United Nations system. The Global Compact is one of the results of Annan’s engagement with this collaborative process.

Kofi Annan’s Special Adviser for Strategic Planning, John Ruggie, was appointed to design and manage the Global Compact. In July 2005, Prof. Ruggie was nominated United Nations Special Representative on the Issue of Human Rights, Transnational Corporations and Other Business Enterprises with Georges Kell replacing him as Head of the Global Compact.

What is it?

The Global Compact is a voluntary initiative with two main goals: to mainstream the Ten Principles in business activities around the world and to catalyse actions in support of UN goals. The Global Compact is *not* a regulatory instrument – it does not “police”, enforce or measure the behavior and actions of companies. Rather, the Global Compact relies on public accountability, transparency, the enlightened self-interest of companies, labour and civil society to initiate and share substantive action in pursuing the principles upon which the Global Compact is based. We can consider it a forum for dialogue.

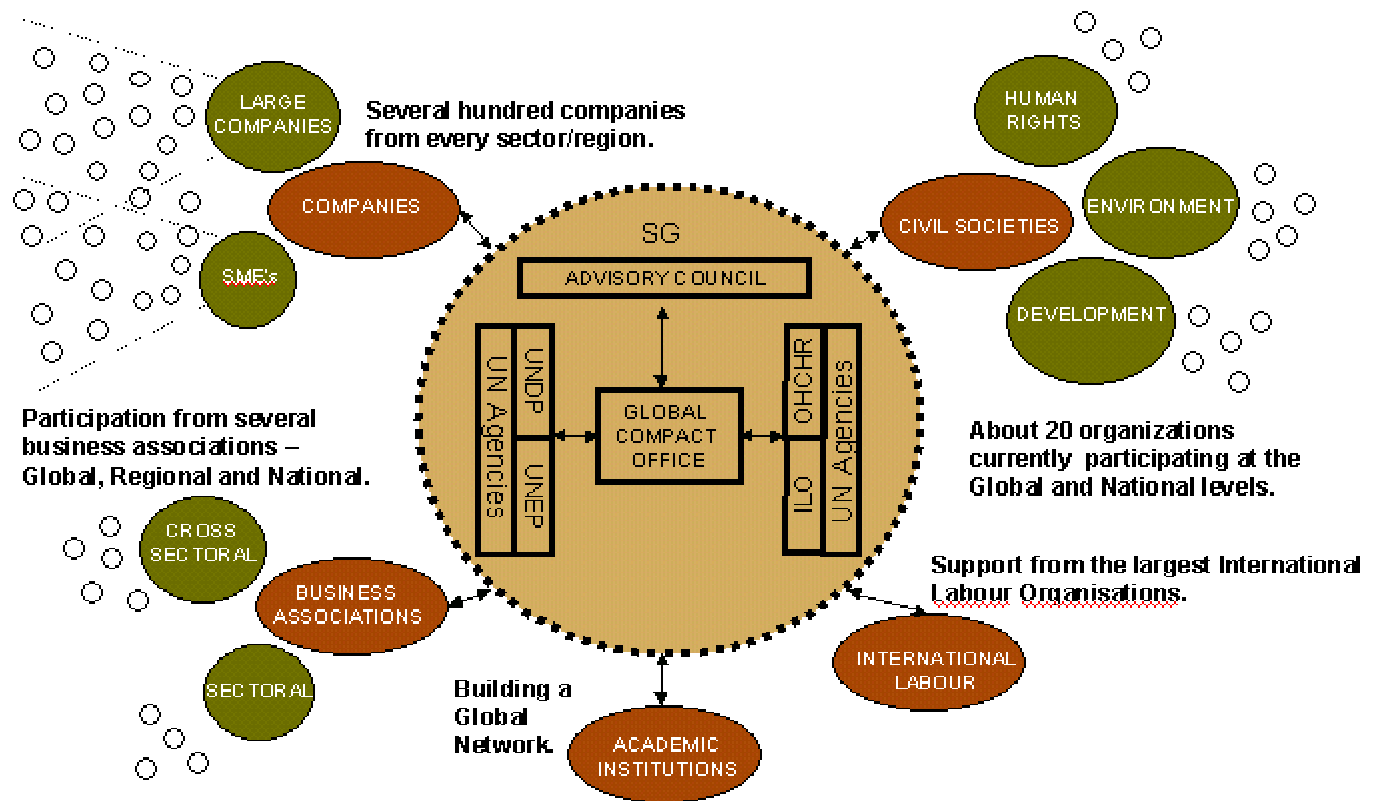
Structure⁸:

Executive Director: Georg Kell

Assistant to the Executive Director: Ursula Wynhoven and Catharine Smith

⁸ For more details, please consult the Global Compact website, under “ About the Global Compact/ contact us”.

Staff: Manuel Escudero, Birgit Errath, Melissa Powell, Kola Badejo, Lila Karbassi, Gavin Power, Matthias Stausberg, Carrie Hall, Cecilie Hultmann, David Kennedy, Eleonore Kopera, Jeff Senne, Olajobi Makinwa, David Teller.



GOVERNMENTS FROM NORTH & SOUTH SUPPORTIVE

Network

The Global Compact is a network with the Global Compact Office and 6 UN agencies forming the core. These are:

- [Office of the High Commissioner for Human Rights \(OHCHR\)](#)
- [International Labour Organization \(ILO\)](#)
- [United Nations Environment Programme \(UNEP\)](#)
- [United Nations Office on Drugs and Crime \(UNODC\)](#)
- [United Nations Development Programme \(UNDP\)](#)
- [United Nations Industrial Development Organization \(UNIDO\)](#)

Being a personal initiative of the ex-Secretary-General of the United Nations, the Office of the Global Compact reports directly to the Secretary General, which gives it a very special status and a large degree of independence.

Principles

[Human Rights](#), based on the Universal Declaration of Human Rights.

- [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.

[Labour Standards](#), based on the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work.

- [Principle 3](#): Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- [Principle 4](#): the elimination of all forms of forced and compulsory labour;
- [Principle 5](#): the effective abolition of child labour; and
- [Principle 6](#): the elimination of discrimination in respect of employment and occupation.

[Environment](#), based on the Rio Declaration on Environment and Development.

- [Principle 7](#): Businesses should support a precautionary approach to environmental challenges;
- [Principle 8](#): undertake initiatives to promote greater environmental responsibility; and
- [Principle 9](#): encourage the development and diffusion of environmentally friendly technologies

[Anti-Corruption](#) (introduced in June 2004), based on the United Nations Convention against Corruption.

- [Principle 10](#): Businesses should work against all forms of corruption, including extortion and bribery.

Participation

The Global Compact indicates several arguments as to why firms should participate in the initiative. These include:

- Demonstrating leadership by advancing responsible corporate citizenship.
- Producing practical solutions to contemporary problems related to globalisation, sustainable development and corporate responsibility in a multi-stakeholder context.
- Managing risks by taking a proactive stance on critical issues.
- Leveraging the UN's global reach and convening power with governments, business, civil society and other stakeholders.
- Sharing good practices and learnings.
- Accessing the UN's broad knowledge of development issues.
- Improving corporate/brand management, employee morale and productivity, and operational efficiencies.
- Developing partnerships.

To become a member of the Global Compact, a company has to fulfil four conditions:

- Send a letter from the Chief Executive Officer (and endorsed by the board) to the Secretary-General of the United Nations expressing support for the Global Compact and its principles;
- Set in motion changes to business operations so that the Global Compact and its principles become part of strategy, culture and day-to-day operations;
- Publicly advocate the Global Compact and its principles via communications vehicles such as press releases, speeches, etc.;
- Publish in its annual report or similar corporate report (e.g. sustainability report) a description of the ways in which it is supporting the Global Compact and its ten principles.

Global Compact Listing Policy on Micro Enterprises (from website):

Due to administrative constraints, companies with less than ten direct employees (micro-enterprises) will not be entered into the database of participating companies. However, we encourage micro enterprises to stay informed about all Global Compact activities via this website and to engage with their Global Compact country network. Network information can be found in the "Around the World" section.

Other stakeholders at the international level are also encouraged to participate. NGOs, academic institutions, labour organisations, and public sector perspectives and expertise are considered indispensable in the evolution and impact of the Global Compact. The notion of partnership is central to the initiative, with all actors contributing to the implementation of the principles around the world.

Civil society and other non-business organisations can participate through a number of Global Compact engagement mechanisms, including Policy Dialogues, Learning, Local Networks and Partnership Projects. They are also encouraged to commit their organization to the ten principles and to report on progress made within their organization.

Cities are also strongly encouraged to participate in the Compact⁹.

The Global Compact, also called the “ World’s largest voluntary-corporate citizenship organization” had 3800 members at its inception in 2000 (of which 2900 were business) and in 2006, more than a thousand new stakeholders became members of the initiative.

It is interesting to observe that the great majority of members come from developing countries.

The list of members is transparent and available on the Global Compact website.

Financial aspects

There are no membership fees: it is a voluntary initiative, not a formal membership organization.

⁹ For more details on this issue, please refer to the Global Compact website under <http://www.unglobalcompact.org/ParticipantsAndStakeholders/cities.html>

The Global Compact only accepts core funding from government donors. On occasion, participants may be asked to contribute to the cost of convening specific meetings and activities they wish to attend. (For instance, for the Leader Summit 2007 a contribution of US\$ 2,000 per attendee is suggested.)

Apart from these 2 aspects, there is now The Foundation for the Global Compact, which is a non-profit organization, launched on 19 April 2006 that helps raise funds to support the work of the UN Global Compact Office and Global Compact-related activities. It is the official fundraising vehicle of the UN Global Compact Office with respect to the private sector.

The list of donors is available on their website.

Communication in Progress (COP)¹⁰

The Communication in Progress (COP) was introduced in 2003. It is a description of actions taken by participants in support of the Global Compact. The COP is expected annually of all participating companies, and must be shared publicly with stakeholders – through annual financial, sustainability or other prominent public reports, in print or on the participant’s website. Companies failing to communicate progress will be labeled “non-communicating”. Should a participant fail to submit a COP for two years, that participant will be labelled “inactive” on the Global Compact website.

According to the Global Compact, the purpose of the COP requirement is both to ensure and deepen the commitment of Global Compact participants and to safeguard the integrity of the initiative. It also aims to create a rich repository of corporate practices that serves as basis for learning and continuous performance improvement.

The GC Office provides tools to help firms in preparing the COP. A COP database is also accessible through the website and a selection of notable COPs is given as exemple.

Non-communication: 632 participants (list available on the website)

Inactive: March 2007, 561 participants (list available on the website)

Delisting

In October 2006, 335 members were considered as inactive and therefore delisted. Six months later, in January 2007, 203 more cases followed.

¹⁰ From the GC website

Events and Meetings

Last Headlines, 2007:

March:

Pilot Version of Human Rights and Business Learning Tool Launched Today

New Line of Ceylon Tea Promotes Global Compact

Launch of "Principles on Climate Leadership" in San Francisco

February:

Regional GC Centre for Latin America and the Caribbean to be established in Bogotá

Kenya Network Launched as Platform for Public-Private Dialogue

January:

Record Quarter for Companies Communicating on Progress

First Consultation on Responsible Investment in Weak States

Spanish Multinational GC Participants Launch MDG Campaign

Next Meetings, 2007:

July:

Global Compact Leaders Summit Facing Realities: Getting Down to Business, Geneva

June:

World Diversity Leadership Forum, New York

May:

Regional Meeting of Global Compact Network Focal Points: Latin America & Caribbean, Buenos Aires

April:

3rd Communication on Progress Expert Meeting, Geneva

US Network Meeting: Managing Climate Change, New York

Global Business Summit for the Environment (B4E), Singapore

Regional Meeting of Global Compact Network Focal Points: Asia, Bangkok

Regional Meeting of Global Compact Network Focal Points: Middle East, Cairo

March:

CSR, The Nigerian Experience, Nigeria

Partnership for Sustainable Development, Norway

Responsible Business Practice in the oil and gaz sector, Kuala Lumpur

Tools and publications

Most recent publications

- After the Signature: a Guide to Engagement with the Global Compact
- Making the connection: Using GRI's G3 Guidelines for the COP

- Principles for Responsible Investment
- Your Guide to the Global Compact: A Resource Package
- Leading the Way in Communication on Progress
- A Guide for Integrating Human Rights Into Business Management
- Business Against Corruption: Case Stories and Examples
- The Global Compact Environmental Principles Training Package

More than 30 documents are available for free on the website of the Global Compact.

NGO Scepticism and the Global Compact's reaction

Among different criticisms that have been formulated regarding the Global Compact, the following are among the most important:

1. Enterprises use the Global Compact to whitewash their situation¹¹. The expression “bluewash” (in reference to the colour of the UN flag) has been used regarding the misuse of the UN values and the use of the Global Compact as a “platform for propaganda”¹². For some NGOs, the legitimacy and the image of “Big Business” is more important than real improvements in regulating social and environmental norms.

More specifically, some TNCs have been criticised because of their presence in countries, which consistently violate human rights.

In response the defenders of the compact speak of the notion of partnership and of the mutual benefits of such an initiative.

2. Abuse in the use of the logo

In response the Global Compact states that¹³: “The Global Compact has developed its own logo, which is used frequently in official Compact documents and publications. The use of the Global Compact image is strictly regulated and the same restrictions apply to its use as the general United Nations logo. Those policies are contained in the UN Business Guidelines (which can be accessed at <http://www.un.org/partners/business/otherpages/guide.htm>.)”

3. Absence of any control mechanism¹⁴. The initiative only encourages enterprises to publish annual reports, but has “no teeth” to punish those who don't follow the Global Compact recommendations. Even at the national level, no controls exist to protect these international principles.

¹¹ Letter of January 16th, 2004, UN Alliance for a Corporate-Free UN, available on <http://www.corpwatch.org>

¹² cf. “Tangled Up in Blue, Corporate Partnerships at the UN”, Kenny Bruno and Joshua Karliner, Corpwatch, September 2000.

¹³ From <http://www.unglobalcompact.org/AboutTheGC/faq.html>

¹⁴ cf. “Tangled Up in Blue, Corporate Partnerships at the UN”, Kenny Bruno and Joshua Karliner, Corpwatch, September 2000.

The Global Compact responds that:¹⁵ “following the recommendations made by the working group of the Secretary General's Advisory Council, the Global Compact adopted a set of integrity measures to safeguard the initiative and to avoid potential abuse. They also encourage companies to communicate at least annually to their stakeholders and the public at large on progress made in internalizing the principles within their own operations and activities. Global Compact participants are also expected to submit a short description and a web link to these communications to the Global Compact and/or Global Compact local network website. Participants that do not submit such a description within two years of signing on to the Global Compact will be removed from the list of participants until a submission has been made.”

4. “Pick and Choose”: some members follow some of the principles but not all of them. Such a selection process ruins the integrity of the Compact.

The Global Compact responds that all members are strongly encouraged to follow all principles. Some aspects may take more time than others.

5. The concept of “ Best Practice” is developed by the initiative (to share best practice among members) at the expense of the idea of standards. Here again, the absence of a compulsory structure or “teeth” is criticized.

According to Ruggie, the good practices will chase the bad ones and at the end, the Global Compact will trigger a real desire for a codification.

6. This initiative gives no real role to NGOs: the business sector is the main interlocutor of the UN system in this regard and the risk is high that an important imbalance will appear to the detriment of NGOs. This new alliance alarms them and they are afraid of a double-standard UN.

The Global Compact responds that NGOs (such as Amnesty International, Human Rights Watch and others) are also members of the Compact and all stakeholders have an equal responsibility to take on board the initiative.

7. The initiative should remain rooted within the UN's larger development context and grounded in local realities and livelihood concerns. To tackle development gaps in the Global Compact, members of the RING Alliance¹⁶ propose to integrate into the principles the following organising themes: reducing poverty, building social capital and enabling responsible entrepreneurship.

The Compact responds that it already has a development perspective and is active in promoting the values mentioned above.

¹⁵ From <http://www.unglobalcompact.org/AboutTheGC/faq.html>

¹⁶ “The Development Dimensions of the UN Global Compact”, Prepared by the RING Alliance for the Secretariat of the UNGC, July 2003

Other Reactions:

The Union of International Associations (UIA)¹⁷ has been very active on this issue and has published a series of very interesting reports which are all available online.

The Alliance for a Corporate Free UN is a global network of human rights, environment and development groups working to address “undue corporate influence” in the UN and to hold corporations accountable on issue of human rights, labour rights and the environment. Corpwatch serves as the Alliance secretariat. They have produced several reports and articles and are an important focal point for this issue.

The Citizen Compact was proposed by the Alliance for a Corporate Free UN in Davos in 2000. It’s an alternative compact of 9 points, asking for a legal framework to regulate transnational corporations.

Ms. Richter¹⁸ has written several reports on private-public partnerships and about the relations between the UN and the private sector. Her main focus is Nestlé who she criticizes for its abuses of human rights and of the Global Compact principles in general. She underlines the initiative’s lack of transparency and the integration of human rights abusers into the Compact.

Comments: some examples ¹⁹Corpwatch:

CorpWatch openly questions the “new relationship between the UN and big business” and expresses concern that the Global Compact may be “threatening the integrity of the UN”. According to CorpWatch, it is contradictory that the “leaders of corporations well known for running sweatshops, engendering environmental disaster and colluding in human rights violations sit at the same table as Mr. Annan...”. Although these corporations agreed to adhere to and publicly promote the Global Compact’s ten core principles of universally accepted labour, environmental, and human rights values, CorpWatch is concerned that there is no mechanism to make adherence to the Compact’s principles binding and worry that this undermines the UN’s potential for demanding corporate accountability. Moreover, CorpWatch accuses corporations with reputations for human rights and environmental violations of trying to “bluewash” their images by “wrapping themselves in the UN flag.”

¹⁷ On the issue of UNGC and NGOs, the Union of International Associations (UIA) published: “ Globalization: the UN’s Safe Haven for the world marginalized”, including “ UN Public Relations and NGOs”, “Challenges arising from the UNGC” and “The Global Compact of the United Nations”, all available online at [http:// www.uia.org](http://www.uia.org)

¹⁸ “ We the people” or “We the corporations”? Critical reflections on UN-business “partnerships” , Judith Richter, IBFAN/GIFA, January 2003 and “ Building on Quicksand: the Global Compact, democratic governance and Nestlé”, Judith Richter, CETIM, IBFAN/GIFA and Berne Declaration, October 2003

¹⁹ These comments were gathered by CASIN in 2002 and published in an NGO profile “Profile UNGC”, Nov. 2002

Corporate Europe Observatory (CEO):

CEO claims that corporations have been given a “free ride” through the Global Compact. They are concerned that companies are able to use the Global Compact, the UN’s “seal of approval”, to “improve their public image, without any changes in their overall corporate social, environmental, or human rights behaviour.” Like many other NGOs, CEO is also wary of the lack of binding agreements, real enforcement, and monitoring mechanisms”.

Global Policy Forum (GPF):

GPF expresses the concern that “corporations do not have the same interests and goals as the UN”. They state that companies’ resources must be “brought to the aid of sustainability”, but that sustainability must not be redefined to mean “good for big business”.

Friends of the Earth International (FOEI):

Friends of the Earth International call the Global Compact an “ideological bluewash”, citing examples of Shell, Rio Tinto, and UBS as companies that have “breached the Global Compact’s principles with impunity”. FOEI denounces the Global Compact, claiming that this sort of behaviour calls into question the validity and effectiveness of the entire exercise”.

In order to better understand the relation between the defenders of the compact, three letters²⁰ are of interest. They were sent in July 2000 from a coalition of NGOs to Kofi Annan, and he answered them.

UNRISD’s propositions:

Having some of the same concerns as those that are mentioned above, the United Nations Research Institute for Social Development (UNRISD) has developed 3 scenarios regarding the future of the initiative.

- a) The “dangerous one”: to stick to the actual practice of the Global Compact.
- b) The “reformed one”: inclusion of some modifications to allow greater scope for compliance with the principles.
- c) The “alternative one”: to keep the Global Compact and to have alternative approaches elsewhere in the UN structure.

And Now

These are some of the actual concerns and discussions about the future of the initiative:

“Without Annan, what is the Global Compact’s future?”

According to Mr. Kell²¹, the good news is that the compact is now standing on its own feet. The new Secretary General said that he would be backing the initiative. He is, for example, going to chair the Leaders’ Summit in Geneva this June.

²⁰ “Letters to Kofi Annan Blasting the Global Compact Corporations”, Corpwatch, July 2000, available on <http://www.corpwatch.org>

“What about the reforms?”

The Global Compact now has an independent board and a new trust fund, formalising the multi-layer structure that gives local Global Compact networks and the three-yearly Leaders Summit roles in the organisation’s direction.

“What are the current main difficulties for the Global Compact?”

The Global Compact has funding problems, which the new trust fund is supposed to help solve. It also has some coordination difficulties. And, finally, the introduction of some “integrity measures”, designed to protect its credibility, at one point looked set to backfire.

“Who are the new participants?”

According to Seb Beloe from SustainAbility²², emerging market companies are definitely the new actors in the initiative. They are the biggest part of the Compact because they want to be seen to compete at the highest global standards. In comparison, we can observe that for other multinationals, more used to Corporate Social Responsibility and standards like the principles proposed by the Compact, the initiative has less to offer. Mr. Kell answers this critic by proposing new attractive plans including: more events, further work on difficult issues such as corruption in financial analysis, and a major initiative on climate change.

²¹ « Politics: The UN Global Compact-Surviving without Annan », available online at <http://www.ethicalcorp.com>

²² id.

John Ruggie, United Nations Special Representative on the issue of Human Rights, TNCs and other Business Enterprises

History

In July 2005, the Secretary General Kofi Annan appointed John Ruggie as Special Representative on the issue of Human Rights and Transnational Corporations and other Business Enterprises. The establishment of this mandate was requested by the United Nations Commission for Human Rights in its resolution 2005/69 and approved by the United Nations Economic and Social Council on 25 July 2005. The mandate is for two years²³.

The majority of NGOs applauded this decision²⁴. Businesses, on the other hand, had a more balanced reaction. Some companies reacted enthusiastically²⁵ but the majority were reluctant to have their activities looked at and potentially controlled.

John Ruggie²⁶

From 1997 to 2001, John Ruggie served as United Nations Assistant Secretary-General and chief adviser for strategic planning. In this position, he was among the main architects of the Millennium Development Goals and the Global Compact, which he headed from 2000, to 2005 when he resigned to ensure the integrity of his new mandate as Special Representative. Apart from his civil servant duties, he is also the Kirkpatrick Professor of International Affairs and Director of the Center for Business and Government at Harvard University's Kennedy School of Government.

Mandate

The mandate includes:

- Identifying and clarifying standards of corporate responsibility and accountability with regards to human rights.
- Researching and clarifying the implications of concepts such as “complicity” and “sphere of influence” for transnational corporations and other business enterprises.
- Identifying “best” practice by states and companies
- Developing materials and methodologies for undertaking human rights impact assessments of business activities.

²³ For more information on Special Representatives in general, their functions and their mandates, please visit the website of the Office of the High Commissioner for Human Rights (OHCHR) at <http://www.ohchr.org>

²⁴ For instance : Amnesty International's public statement from 21/04/05 and ICCR from 22/04/05

²⁵ See for example the reaction of “Carrefour”

²⁶ For Prof. Ruggie's entire bio, please visit KSG website at <http://www.ksg.harvard.edu>

Reports

The first report²⁷ was presented at the Commission's 62nd session in 2006. This was an interim report presenting views and recommendations for consideration by the Commission before submission of the final report²⁸ in March 2007.

Depending on whether the Council decides to extend Prof. Ruggie's mandate for an extra year, a final report will be issued in 2008.

Other Activities

Workshops 4 workshops were organized in 2006 and official summaries²⁹ of legal workshops were provided to the Council.

Survey Questionnaire³⁰: a questionnaire was sent to all UN member States and to Global Fortune 500 Firms.

Addendum Reports³¹: a supplementary report was written on state responsibilities to regulate and adjudicate corporate activities under the United Nations core human rights treaties (an overview of treaty body commentaries) and a second one on global patterns, regional and sectoral variations in business recognition of human rights.

Interim Report

The first interim report was presented at the United Nations Human Rights Council in September 2006.

Introducing his work, John Ruggie began by underlining the fact that his mandate touched on fundamental questions in the evolution of modern international law and governance. He asked to what extent and how should international law and governance be modified in order to manage the impact of non-state actors, such as business enterprises? He emphasized that a fundamental aim of his mandate was to help make globalization work for all. He concluded his remarks by saying that the last thing victims needed were more unenforced declarations: they needed effective action.

The interim report was intended to frame the overall context of the mandate (as the Special Representative (SR) saw it), to outline the general strategic approach, and to summarize the current and planned programme of activities. The mandate had the normative aim of strengthening the promotion and protection of human rights in relation to business activities and Prof. Ruggie saw it as his job to provide the best and most dispassionate analysis possible.

²⁷ E/CN.4/2006/97, February 2006. All the documents from the Human Rights Council are available online.

²⁸ A/HRC/4/35, February 2007 and A/HRC/4/74, February 2007

²⁹ A/HRC/4/35/Add. 2, February 2007

³⁰ A/HRC/4/35/Add. 3, February 2007

³¹ A/HRC/4/35/Add. 1 and Add. 2, February 2007

At a conference in New York³², Prof. Ruggie explained that there are two polarized sides to the debate on human rights:

- 1) On one side are lawyers and business groups that seek only to follow the letter of the law.
- 2) On the other are human rights organizations and other advocates who expect that companies should go significantly above and beyond what a strict reading of the law requires.

Prof. Ruggie made clear that his mandate at the UN was two-fold: first to reframe the debate and then to collect data through research, workshops and consultations that would seek potential solutions.

The first section of the report is not controversial. It discusses human rights issues, why they are important and existing responses to abuses from the UN, civil society, business and government. Prof. Ruggie mentions, among other things, the Global Compact and the ILO's work.

The second part dives directly into the debate surrounding the relevant human rights norms³³. The SR's major concern had been the legal and conceptual foundation of norms that he estimated to be poorly conceived and therefore highly problematic in their potential effects. He said that: " In the best case scenario, they (the Norms) would do little more than keep lawyers in gainful employment for a generation, but in the worst case, they would turn transnational corporations into more benign 21st century versions of East India companies, undermining the capacity of developing countries to generate independent and democratically controlled institutions capable of acting in the public interest." Prof. Ruggie suggests that the Norms contain "useful elements" but he takes issue with them on two grounds: the legal authority advanced for the Norms and the principle by which they propose to allocate human rights responsibilities between States and firms.

In addition, he contends that the Norms are too doctrinal, making them difficult to start with. Lastly, he notes that they are not precise enough regarding the division of responsibilities between states and TNCs.

Prof. Ruggie made private visits to the sites of major global firms in order to better understand the realities of TNC practices. He also complemented these visits by meeting with civil society actors. In regard to these visits, the study underlines that oil, gas and mining industries account for nearly two-thirds of all violations of human rights, environmental laws and labour standards. It is followed by food and beverage industry.

In addition to Prof. Ruggie's work and to help him in his mandate, research was done by the Office of the United Nations High Commissioner for Human Rights (OHCHR)³⁴ on States

³² at "Busines for Social Responsibility", New York, November 2006

³³ Please refer to the section on Norms.

³⁴ Available on the OHCHR website

obligations to regulate and adjudicate the role of the private sector as defined in the 7 core international human rights treaties.

He concluded by saying that if there were easy solutions to the challenge that the mandate was meant to meet and manage, they would have been adopted long ago.

State Reactions:

In general, states were supportive of his work, encouraging the SR to further explore the topic. It is important to note, however, that three countries voted against the appointment of a SR on this question: USA, Australia and South Africa. They asserted that the Commission (now the Council) should in no way continue to deal with TNCs, not even by means of a SR designated by the Secretary General.

NGO Reactions:

The two main arguments put forward by NGOs concerned the importance of binding instruments and the use of the norms. In general, they want Prof. Ruggie to go further and not to be so “nice” to TNCs. A very common reaction was: “ At least, keep the norms, we can not accept a regression!”.

For example, the British NGO, Action Aid said that the Special Representative should be “more severe to TNCs”³⁵.

Amnesty International wrote³⁶ to the SR to make recommendations on how they would like the mandate to be taken forward. They underlined the importance of norms and the risk of having only voluntary instruments. They thus pushed for the inclusion of effective mechanisms for holding companies to account. In addition, they expressed a desire to continue their “constructive engagement” with the SR. Mr. Ruggie reacted with interest to these letters and strongly encouraged them to contribute to his mandate.

Earth Rights International also engaged in a dialogue with Prof. Ruggie and submitted a report³⁷ in order to, among other tasks, “assist the SR in meeting one of the objectives of his mandate: the clarification of the concept of complicity”.

The mandate of Prof. Ruggie was notable for its openness: he sought the advice of NGOs and made his work transparent and accessible. According to Susan Aaronson³⁸, he gained both goodwill and trust over time.

³⁵ “Droits de l’homme: Bras de fer autour des transnationales”, Michel Buhrer, Infosud, September 2006

³⁶ Four documents are available, one letter from Amnesty International (AI), a second one from a coalition of NGOs and two responses from Prof. Ruggie, on the website of AI: [http:// www.amesty.org](http://www.amesty.org)

³⁷ “The International Law Standards for Corporate Aiding and Abetting Liability”, Earth Rights International, July 2006

³⁸ « Ruggie tells States to mind their businesses », Susan Aaronson, March 2007, available online at : <http://www.policyinnovations.org>

Business Reactions:

According to the UN-Business Focal point³⁹, the business community has not reacted to the report. However, in general, they were opposed to the relevant Norms because of their binding aspects and the lack of clarity regarding their enforcement. Another argument put forward was that the Norms subverted voluntary efforts to promote corporate responsibility. Stephano Bertasi from the “International Chamber of Commerce” stated⁴⁰ that the ICC doesn’t have a problem with efforts to encourage companies to do what they can, but they have difficulties with the underlying premise and the principles on which the Norms are based.

Final Report⁴¹

The final report deals with the mapping of current international standards and practice regarding business and human rights. Prof. Ruggie does not develop recommendations but rather maps out a solid and evidence-based foundation. He covers:

- I) The state duty to protect,
- II) Corporate responsibility and accountability for international crimes,
- III) Corporate responsibility for other human rights violations under international law,
- IV) Soft law mechanisms,
- V) Self-regulation,
- VI) Conclusions

Summary and key conclusions⁴²:

I) State duty to protect:

Prof. Ruggie discusses the firmly established principles that give States a duty to protect against human rights abuses by non-state actors within their jurisdiction. He mentions the generalized obligations the treaty bodies impose, such as CEDAW’s⁴³ prohibition of discrimination by any "enterprise". He notes, for example, positive obligations to ensure the rights discussed under the International Covenant on Civil and Political Rights. He concludes his discussion by underlining the fact that the duty to protect is at the very foundation of the international human rights regime.

II) Corporate responsibility and accountability for international crimes⁴⁴:

Noting that States are not the only duty bearers under international law, the Special Representative mentions the relationship between individual responsibility and corporate responsibility. He discusses the way in which corporate responsibility is being shaped through the interplay of two developments: the expansion and refinement of international individual

³⁹ « John Ruggie releases interim report on the promotion and protection of Human Rights », UN-Business Focal Point, March 2006, available at http://www.enebuilder.net/focalpoint/e_article000554328.cfm?x=b11,0,w

⁴⁰ in “The Financial Times”, 13/08/03

⁴¹ To view a very interesting summary of the report, please read the speech that Prof. Ruggie gave at Clifford Chance in London, 19/02/07

⁴²This part is largely inspired by the excellent work done by International Service for Human Rights on summarising the documents of the Human Rights Council. “The Report in Short”, Alison Leon, International Service for Human Rights, available online at <http://www.ishr.ch>

⁴³ Convention on the Elimination of All Forms of Discrimination Against Women, art. 2

⁴⁴ “The Report in Short”, Alison Leon, International Service for Human Rights, available online at <http://www.ishr.ch>

responsibility through the ICC and ad hoc tribunals; and corporations' responsibility for international crimes under domestic law.

The Special Representative notes that individual criminal or civil liability may extend to corporations, depending on whether international standards are incorporated into criminal or civil codes on a state by state basis. One example of such a measure is the United States Alien Torts Claims Act discussed above. Civil proceedings can also be extended for related wrongs under domestic law. These liabilities have a slowly expanding impact on the risk environment for companies. Remedial options for victims are similarly expanding.

The Special Representative lists two problems related to corporate responsibility and accountability. Firstly, the idea of a separate corporate personality that sees corporations as made up of individual entities and not one umbrella entity that can be held liable; and secondly, allegations of "complicity" in international crimes, which, as an umbrella term, lacks established clarity. He concludes his discussion on the notion of corporate responsibility by noting that, despite this lack of clarity, it is established that even if a corporation regrets a crime, or states that it did not intend to commit a wrong, it will not be absolved for liability if it knew, or should have known, that it was contributing to the commission of a crime.

III) Corporate responsibility for other human rights violations under international law:

Professor Ruggie states that the emerging corporate responsibility for international crimes is grounded in a growing national acceptance of international standards for individual responsibility. While it is in the process of evolving, there is observable evidence of its existence.

He also underlines that when one looks for uniform practice regarding human rights violations under customary international law, such practice cannot yet be identified. Nothing in the Universal Declaration of Human Rights (UDHR), the Covenants on economic, social, cultural, civil and political rights, the core human rights treaties, or the ILO core convention prevents states from imposing international human rights responsibilities directly on companies; however evidence shows that States might favor indirect legal provisions. He points to the traditional role of indirect responsibilities on corporations, that is, the responsibilities provided under domestic law in accordance with states' international obligations.

IV) Soft law mechanisms:

Prof. Ruggie outlines the soft law mechanisms that address corporate responsibility and accountability for human rights. They are: the traditional standard-setting role, the enhanced accountability mechanisms, and an emerging multi-stakeholder forum that involves corporations directly.

He describes two prominent examples of normative rules in soft law that are essential to the elaboration and further development for corporate responsibility standards: the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, which

proclaims that all parties should respect the Universal Declaration of Human Rights and international Covenants; and the OECD Guidelines.

He mentions others as well, including: the National Contact Point, or NCP, a non judicial review procedure; the International Finance Corporation's performance standards for their investment funds, the Voluntary Principles on Security and Human Rights, the Kimberley Process Certification Scheme for stemming the flow of conflict diamonds, and the Extractive Industries Transparency Initiative which aims to increase the transparency of Government revenue from taxes, royalties, and fees paid by companies. The force of such initiatives can be measured through their operational impact on the ground, and the degree to which they serve as examples for other firms.

Prof. Ruggie states that the standard-setting role of soft law remains important.

V) Self-regulation:

Prof. Ruggie examines the policies and practices of governments as well as a subset of businesses: the Fortune Global 500 Firms⁴⁵. These are discussed in Addenda 3⁴⁶ of the report.

In addition, he seeks to report on the business recognition of actual policies and practices regarding human rights, collective initiatives, and socially responsible investment funds. These are discussed in Addendum 4.

VI) Conclusions:

Not having addressed the issue of recommendations in his report, Prof. Ruggie's ending remarks are general observations from his study that 'map' current international standards and behaviour.

The Special Representative points to a governance gap caused by misalignment between economic forces and governance capacity. While in principle public authorities set the rules by which businesses operate, sometimes governments cannot take effective action. He suggests that states may be subject to a collective action problem that could impede their role as the international community's 'public authority' because they compete for access to markets and investment. Unfortunately, as a result, the most vulnerable people and communities pay the heaviest price for these gaps. For Prof. Ruggie, human rights and the sustainability of globalization are linked. It is thus urgent that states and businesses consider where the current situation may be headed.

⁴⁵ For more details, please refer to the two mentioned documents and, for a summary, to the "Report in Short" by Alison Leon.

⁴⁶ A/HRC/4/35/Add. 3, February 2007 and A/HRC/4/35/Add. 4, February 2007

Regarding soft law measures such as voluntary standards, Prof. Ruggie concludes that they offer promising innovation, specifically in multi-stakeholder hybrids, but they also have obvious weaknesses. The challenge is to bring such efforts to the scale of systemic interventions.

The Special Representative expresses concern that not all States have internalized the full meaning of the state's duty to protect, nor its implications regarding the prevention and punishment of violations by non-state actors. He also notes that states do not seem to be taking advantage of the legal and policy tools at their disposal to meet treaty obligations.

When he presented his report to the Council, Prof. Ruggie underlined the fact that companies who perpetrate international crimes have faced growing liabilities. He noted that this has occurred through domestic laws, reflecting international standards. The ratification of the International Criminal Court (ICC) statute and its incorporation into domestic law has contributed to this. However Mr. Ruggie noted that civil cases such as those brought under United States' Alien Tort Claims Act, also contributed to standards entering national legal systems.

He mentions that the corporate "sphere of influence" is linked to the state's duty to protect, noting that when states fail in their duty to protect, corporations are left to fill the vacuum. He expressed the hope that the nexus between corporate responsibility and state duties can be clarified in order to avoid a protection gap. In another parallel event, Mr. Paschoud, personal special adviser of the SR, concluded by saying "The main finding of the report is that states should do more".⁴⁷

The Special Representative concludes that the foundation presented by the report is an essential first step that should be followed by a strategic assessment of the major legal and policy measures that states and social actors could take regarding human rights responsibilities. To make available the "views and recommendations" invited by resolution 2005/69, he asked for a one-year extension of the mandate.

Reactions by States

Germany, on behalf of the EU, asked Prof. Ruggie what areas he intended to make suggestions on and how far he thought individual responsibility could be drawn. Norway asked how state-owned enterprises could be engaged. Some States voiced concern over the lack of interest in the situation in developing countries, and issues associated with poverty and the importance of giving voice to the victims of abuses. France made a strong point that the developing trend of corporations to voluntarily implement international standards was a dangerous system. France stated that this approach was allowing corporations to pick and choose which human rights abuses they should be concerned about. Indonesia, Bangladesh and Cuba all highlighted the

⁴⁷ The parallel event was organised by a German NGO, the "Friedrich Ebert Stiftung", on "Business and Human Rights-a new approach at the UN?", March 28th2007.

need for a definition of corporate responsibility and the need for regulation. Many states voiced their support for an extension of the mandate for a further year.

Prof. Ruggie thanked the delegations for their innovative approaches, specifically thanking France who suggested he analyse human rights abuses by corporations. The Special Representative replied to questions on remedies, regretting that at the international level he had recorded few instances of their effectiveness. Prof. Ruggie noted that he did go to the field and had met with communities, representatives of many groups affected by the activities of corporations and with enterprise associations. To conclude, Prof. Ruggie noted that the United Nations lacked the capacity to deal with the issue in a more effective manner, and he invited NGO participation in undertaking relevant studies.

NGO Reactions

Three written statements from NGOs were available⁴⁸ at the fourth Session of the Council.

The “Human Rights Advocate” recommended establishing a working group to work on norms regulating TNCs and on mechanisms to implement them. The “Forum on Indonesian Development” focused on the situation in Indonesia regarding this issue. “The International Federation of Human Rights Leagues”, among other suggestions, supported the continuation of the mandate of Prof. Ruggie.

Two NGOs made some comments and asked questions during the “interactive dialogue” with Prof. Ruggie:

- “Movement contre le racisme et pour l’amitié entre les peuples”⁴⁹ argued that transnational corporations are responsible for violations of human rights, just as individuals are. It called for mechanisms to assess this and pointed out that TNCs could be complicit or directly involved in human rights violations. However, it argued that Prof. Ruggie plays down this approach, arguing instead that TNCs are not directly subject to international law.⁵⁰ He did not respond on the issue of complicity and related legal issues, but stated that he will do so in the future.

- A number of NGOs in a joint statement expressed their appreciation for the Council’s continued focus on business and human rights.⁵¹ They agreed with Prof. Ruggie that the expansion of the global market has not been matched by equivalent protections for victims of corporate human rights abuses and stated that the Council’s discussions on this issue must incorporate the perspectives of those affected by corporate human rights abuses. They also shared the Special

⁴⁸ A/HRC/4/NGO/9, A/HRC/4/NGO/54 and A/HRC/4/NGO/113, February 2007

⁴⁹ Speaking on behalf of: Centre Europe – Tiers Monde (CETIM); Fédération Syndacale Mondiale (FSM); Ligue Internationale pour les droits et la libération des peuples (LIDLIP); Women’s International League for Peace and Freedom (WILPF).

⁵⁰ Oral statements made during the Council’s sessions are available on the OHCHR extranet, which can be accessed at <http://www.portal.ohchr.org>

⁵¹ Joint Statement by the International Commission of Jurists, ESCR-Net, Human Rights Watch, Amnesty International, International Federation of Human Rights Leagues (FIDH).

Representative's concern that States either do not understand their obligation or are not able or willing to fulfil their duty. While they viewed voluntary and multi-stakeholder initiatives as playing a role in relation to business and human rights, they were concerned that many such initiatives lack credibility because they fail to ensure that the principles they advocate are upheld in practice. They stressed that over-reliance on voluntary initiatives, as a means of safeguarding human rights of victims of corporate human rights abuses would be both inappropriate and inadequate. They asked Prof. Ruggie what measures he would take, if his mandate was extended, to analyse patterns of corporate abuses and their impacts on individuals and communities and to integrate the perspective of victims into his programme of work as a basis from which to develop recommendations to the Council.

Other reactions:

Julian Oram of Action Aid⁵² stated that: "A voluntary approach to tackling corporate abuse simply is not enough to protect the rights of millions of people". According to several NGOs, Prof. Ruggie seems to advocate a self-regulatory approach, favouring voluntary initiatives rather than tougher global legislation and that is not enough. They argue that: "The United Nations must urgently develop global human rights standards for all business and effective mechanisms to monitor and enforce them." Action Aid has documented a series of TNC abuse cases and underlines that a key feature of these cases is that all companies involved have either made voluntary pledges on human rights issues or committed to industry initiatives or codes of conduct.⁵³

According to Mr. Teitelbaum⁵⁴, from The Transnational Institute, Ruggie's report is "consistent not only with the now defunct Human Rights Commission, which shelved the Sub-Commission's project to create international standards, but also with the more general orientation of the United Nations towards the serious economic, political and social problems represented by the disproportionate power of large transnational corporations."

Yves Lador⁵⁵, from Earth Justice, was worried about several points. Firstly, the lack of a voice for victims in the debate and secondly, the risk of ignoring the importance of norms and to "pick and choose" texts that please the Special Representative instead of having a complete panorama of what exists. Mr. Lador, joined by several other NGOs, concluded by saying that the real danger is that we end up with fewer regulations than were obtained in the past.

⁵² cf : « Latest News » online under <http://www.actionaid.org>

⁵³ The cases' description are available online at <http://www.actionaid.org>

⁵⁴ "United Nations and Transnational Corporations: a deadly association", Alejandro Teitelbaum, TNI, available at: <http://www.tni.org>

⁵⁵ "Droits de l'homme:gants de velour pour les multinationales", Michel Buhner, Infosud, 28/03/07, available online at <http://www.infosud.org>

Business Reactions

The policy director of the International Chamber of Commerce (ICC), Stefano Bertasi, said his organisation was “very positive” about Prof. Ruggie’s work. He also said “the report confirms the primary role of the states, not companies, in protecting human rights”⁵⁶.

The three leading international business organizations (the ICC, the International Organization of Employers and the Business and Industry Advisory Committee to the OECD) collaborated on a paper on companies in weak governance zones. They advised companies operating in this kind of zones abide by the following principle: “All companies are expected to obey the law, even if it not enforced, and to respect the principles of relevant international instruments where national law is absent”.

Some companies went further. An example is the French company Carrefour, which has published on its website and largely disseminated an announcement stating their commitment to UN standards on the responsibility of companies for human rights. They welcomed the appointment of Prof. Ruggie and declared that the SR should take into account the norms (2003) that “constitute today the most thorough transcription of the implication for business activities of the international law on human rights.”

According to Susan Aaron⁵⁷, however, despite verbal support, many corporate executives were nervous about his findings and, ultimately, his recommendations.

Future of the Special Representative?

At the fourth Session of the Human Rights Council, a parallel event was organised by a German NGO, the “Friedrich Ebert Stiftung”, on “Business and Human Rights: a new approach at the UN?”⁵⁸. This public panel discussion brought together representatives of civil society and Gerald Paschoud, Prof. Ruggie’s personal special adviser (due to a change in the time schedule of the Council, the SR could not come himself). Mr. Paschoud mentioned as “next steps” the following.

As the best way to move forward, the Special Representative wants an extension of his mandate of a year in order to include recommendations. He wants to try to go in two directions: first, he wants to look at the substance because mechanisms have to be effective and have to go beyond declarations. Secondly, he wants to try to indicate effective ways to move forward. For Prof. Ruggie, as voluntarism and binding standards have their limits it has to be thought in new dimensions. To extend his mandate will also allow him to integrate comments and recommendations from different stakeholders into a final report.

⁵⁶ For more information on the ICC’s reaction to the report, please visit :<http://www.iccwbo.org>

⁵⁷ « Ruggie tells to States to mind their businesses », Susan Aaronson, March 2007, available online at : <http://www.policyinnovations.org>

⁵⁸ For more details, please read the report « Report of the Parallel Event-Business and Human Rights-a new approach? », Annefried Muller, FES, March 2007

There is also an urgent need for more solid accountability mechanisms and an effective platform for potential victims. This still needs to be developed.

Lisa Misol, from Human Rights Watch, suggested at the same meeting that the extension of the mandate should be an opportunity to work more on developing recommendations, opening the process to wider discussion and, importantly, allowing the possibility for the inclusion of victims in the discussion. It was emphasized that The Council is one of the only fora in which the “ voice of people”, and victims can be heard, something that is crucial if a purely academic debate is to be avoided in this arena.

It was suggested that another role for civil society would be to continue to create awareness of this issue and to document abuses by companies. Lisa Misol suggested that civil society needed to continue to push for regulation and to make people aware of the seriousness of the issue.

To conclude, we can observe that Prof. Ruggie himself is not an instrument of change. He can only strongly encourage and push governments, business and civil society to act on these issues. They are the ones who have to take up and implement decisions. To avoid another report, representing years of work, but without practical implementation it is crucial to have active leaders and strong political will to move forward.

Some Other Initiatives on the Issue “United Nations and Business”

With regard to interfaces between the United Nations and Business, there are several interesting projects that have been realised⁵⁹. We have chosen some of them to present briefly in this last section.

The United Nations Special Rapporteur on the rights of everyone to the enjoyment of the highest attainable standards of physical and mental health

Paul Hunt was appointed United Nations Special Rapporteur in 2002 by a resolution⁶⁰ of the United Nations Commission on Human Rights. The mandate was for three years.

He is mandated to:⁶¹

- Gather, request, receive and exchange information on the right to health from all relevant sources;
- Engage in dialogue and discuss possible area of cooperation with all relevant actors, including governments, relevant United Nations bodies, specialized agencies and programmes, in particular the World Health Organization (WHO) and the Joint United Nations Programme on HIV/AIDS, as well as non-governmental organizations (NGOs) and international financial institutions;
- Report on the status, throughout the world, of the right to health, including laws, policies, good practices and obstacles;
- Make recommendations on appropriate measures that promote and protect the right.

In 2004, the Commission decided to extend the mandate until 2008 and to invite Paul Hunt to:

- continue to explore how efforts to realize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health can reinforce poverty reduction strategies;
- continue his analysis of the human rights dimensions of the issues of neglected diseases and diseases particularly affecting developing countries, and also the national and international dimensions of those issues.

The Special Rapporteur has undertaken country visits,⁶² transmitted communications to States with regards to alleged violations of the right to health⁶³ and submitted annual reports on his activities⁶⁴.

⁵⁹ On the theme of the regulation of TNCs a very complete report was conducted by Derirée Abrahams : « Regulating Corporations-A resource guide », July 2004, available online at <http://www.unrisd.org>

⁶⁰ Resolution 2002/31

⁶¹ From the website of the Office of the United Nations High Commissioner for Human Rights: <http://www.ohchr.org>

⁶² The reports “Country Visits” are available online at: <http://www.ohchr.org>

⁶³ The reports « Individual Complaints » are available on line at : <http://www.ohchr.org>

⁶⁴ The annual reports are available on line at : <http://www.ohchr.org>

The United Nations Norms on the Responsibilities of Transnational Corporations and Other Entreprises with Regards to Human Rights⁶⁵

In 2003, the United Nations Sub-Commission on the Promotion and Protection of Human Rights, the main subsidiary body of the Commission on Human Rights, adopted the “United Nations Norms on the Responsibilities of Transnational Corporations and Other Entreprises with Regards to Human Rights” (henceforth “the Norms”). The Norms were then transmitted to the Commission on Human Rights for consideration and possible adoption⁶⁶.

These Norms summarize existing ones drawn from the United Nations human rights system, the International Labour Organization and some environmental pacts. The 23 articles are derived from binding standards under international law, complemented by a monitoring system, periodic evaluation, a complaints procedure and mechanisms for awarding compensation for damages incurred. The core idea is to synthesize all the rules that have been devised for corporate responsibility in the fields of human rights, systematising them into a single and universal text.

The reaction to the proposed Norms has been extremely divided. While many NGOs welcomed the Norms as a step in the “right direction” (towards regulation of TNCs), the majority of international business organizations rejected them strongly and were opposed to any form of regulation.

The advantages of the Norms for NGOs were: their clear articulation, their applicability and their measurability. For example, some NGOs, like Human Rights Watch and Amnesty International, have used the Norms as a basis for assessing the conduct of business.

Business reactions: Mr. Vasella, CEO of Novartis, said: “The proposal as drafted is problematic and unrealistic and has understandably provoked a sceptical or negative reaction from many companies and industry associations. Some – including the International Chamber of Commerce – are resisting it.”⁶⁷ He suggested that voluntary initiatives, like the Global Compact, were much more appropriate. Generally, most companies were really reluctant to have a binding instrument controlling their actions.

When the United Nations Human Rights Commission held its meeting in 2005, no agreement was reached. Three states voted against the Norms: The USA, South Africa and Australia. They maintained that in no way should the Commission continue to deal with TNCs⁶⁸.

Instead, the Secretary General decided to appoint a Special Representative, Prof. John Ruggie, on this sensitive issue. This nomination was perceived in two different ways: some saw it as a way to

⁶⁵ E/CN.4/Sub.2/2003/12/Rev.2 (2003)

⁶⁶ For more information on the Norms, several very good reports were conducted. Among them: “UN Norms on the Responsibilities of Transnational Corporations”, Theodor Rathgeber, Fridrich Ebert Stiftung, April 2006, “The UN Norms for Business: towards legal accountability”, Amnesty International, 2004 and “The Added Value of the Norms”, Joris Oldenziel, SOMO, April 2005.

⁶⁷ « Business must help frame new human rights rules”, The Financial Times, April 2004

⁶⁸ « United Nations and TNCs : a Deadly Association », Alejandro Teitelbaum, April 2007, available online at : <http://www.tni.org>

keep the question of human rights and business on the agenda, while others had the impression that TNCs lobbies had managed to bury the debate.

Other projects

a) The World Health Organisation Framework Convention on Tobacco Control⁶⁹:

For many observers the only global corporate accountability treaty is the Framework Convention on Tobacco Control.

This Convention was negotiated by the 192 member states of the World Health Organization (WHO). The world's first public health treaty contains a host of measures designed to reduce the health and economic impacts of tobacco. Signed in 2003, after four years of negotiations, the final agreement provides a basic framework for states seeking to enact comprehensive tobacco control legislation. This instrument is legally binding only on states, which ratify it.

The next Conference of the Parties to the Convention will be in Bangkok from June 30th to July 6th 2007.

b) Advocacy by the High Commissioner for Human Rights:

In resolution 2005/69, the Commission on Human Rights mandated the High Commissioner, in collaboration with the Special Representative of the Secretary General, Prof. John Ruggie, to convene annually a consultation with executives from a particular business sector to discuss the human rights challenges faced by that sector. In November 2005, the High Commissioner convened a consultation with representatives from the extractive sector⁷⁰. In January 2007, the High Commissioner convened a consultation with representatives from the finance sector⁷¹.

⁶⁹ For more informations on this topic, please visit the website of WHO: <http://www.who.org> and that of a coalition of NGOs: "The Alliance for Tobacco Control": <http://www.fctc.org>

⁷⁰ Report E/CN.4/2006/92

⁷¹ Report A/HRC/4/99

PREAMBLE

In January 1999, United Nations Secretary General Kofi Annan called for a "Global Compact" between the UN and the business community. In that compact, he challenged business leaders to embrace and enact nine core principles derived from UN agreements on labor standards, human rights and environmental protection. In exchange, he promised, the UN will support free trade and open markets.

Citizen organizations and movements recognize that the private sector has enormous influence on human health, environment, development and human rights. Everyone shares the hope that economic well-being will bring real human development and ecological security. Yet as Unicef Executive Director Carol Bellamy has said, "It is dangerous to assume that the goals of the private sector are somehow synonymous with those of the United Nations because they most emphatically are not." At times corporations work at cross purposes to the wider realization of rights and responsibilities enshrined in United Nations covenants, declarations and agreements.

The growing concentration of wealth and power in the hands of fundamentally undemocratic global corporations and other institutions of [globalization](#) with no accountability to governments or peoples is in direct conflict with the principles and aims of the United Nations to enhance human dignity and the capacity for self-governance. As the UN Sub-Commission on Human Rights puts it, the UN should not support institutions or corporations whose activities "create benefits for a small privileged minority at the expense of an increasingly disenfranchised majority."

Citizen organizations and movements support the mission and values of the United Nations. These objectives must have primacy of place and must not be subordinated to commercial trade, investment and finance rules. The UN, as an institution that prioritizes human rights, health, labor standards, sustainable development and ecological protection over commercial interests, must have the capacity to exercise its mandate.

Citizens organizations and movements recognize that declining financial support from governments to the UN and its specialized agencies make their job harder. The UN must adjust to these circumstances; however it must do so while adhering to its Charter and its impartiality, and without compromising its commitment to its fundamental principles.

We propose a compact between the UN and civil society, regarding the UN's relationship with the private sector. With this compact, we pledge our active support for a strengthening of the United Nations, financially and politically. Adherence to these nine principles will safeguard the image, mission and credibility of the United Nations as it deals with the private sector.

THE PRINCIPLES

- Multinational corporations are too important for their conduct to be left to voluntary and self-generated standards. A legal framework, including monitoring, must be developed to govern their behavior on the world stage.
- The United Nations will continue to develop tools to ensure universal values of environmental protection and human rights, through such mechanisms as multilateral environmental and human rights agreements, codes of marketing, and ILO conventions.
- The United Nations recognizes the legitimate purpose of national and local legislation to protect ecosystems, human health, labor standards, and human rights. The United Nations will assist civil society and governments in enacting and implementing such legislation.
- The UN must find ways to ensure that other intergovernmental bodies, such as the IMF, World Bank and WTO, do not depart from the principles and goals of the UN Charter.

- United Nations agencies will advise and offer assistance to corporations wishing to understand and improve their human rights and environmental behavior. Such assistance will not be considered a "partnership."
- The United Nations does not endorse or promote products or brand names of any private corporation, and will avoid the appearance of such endorsements.
- The United Nations will avoid any public association or financial relationship with companies with destructive practices, or products that are harmful to human health or the environment. Before entering any relationship with a corporation, the UN will thoroughly evaluate whether the objectives of that company are compatible with those of the UN. In doing so, it must set up open and transparent processes of dialogue with NGOs and community groups with expertise on those corporations' activities.
- The United Nations and its agencies will continue to fulfill their mission with funding from governments. In cases where private corporations wish to make a donation, the money will go to programs that have no connection to commercial projects for that company.
- The UN will act with full transparency in all its dealings with the private sector, at the conceptual, planning and implementation stages. NGOs should have access to the same information in this regard as the private sector.

**Davos, Switzerland
January 28, 2000**

Preamble

Bearing in mind the principles and obligations under the Charter of the United Nations, in particular the preamble and Articles 1, 2, 55 and 56, inter alia to promote universal respect for, and observance of, human rights and fundamental freedoms,

Recalling that the Universal Declaration of Human Rights proclaims a common standard of achievement for all peoples and all nations, to the end that Governments, other organs of society and individuals shall strive, by teaching and education to promote respect for human rights and freedoms, and, by progressive measures, to secure universal and effective recognition and observance, including of equal rights of women and men and the promotion of social progress and better standards of life in larger freedom,

Recognizing that even though States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights, transnational corporations and other business enterprises, as organs of society, are also responsible for promoting and securing the human rights set forth in the Universal Declaration of Human Rights,

Realizing that transnational corporations and other business enterprises, their officers and persons working for them are also obligated to respect generally recognized responsibilities and norms contained in United Nations treaties and other international instruments such as the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the four Geneva Conventions of 12 August 1949 and two Additional Protocols thereto for the protection of victims of war; 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; the Rome Statute of the International Criminal Court; the United Nations Convention against Transnational Organized Crime; the Convention on Biological Diversity; the International Convention on Civil Liability for Oil Pollution Damage; the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment; the Declaration on the Right to Development; the Rio Declaration on the Environment and Development; the Plan of Implementation of the World Summit on Sustainable Development; the United Nations Millennium Declaration; the Universal Declaration on the Human Genome and Human Rights; the International Code of Marketing of Breast milk Substitutes adopted by the World Health Assembly; the Ethical Criteria for Medical Drug Promotion and the "Health for All in the Twenty-First Century" policy of the World Health Organization; the Convention against Discrimination in Education of the United Nations Education, Scientific, and Cultural Organization; conventions and recommendations of the International Labour Organization; the Convention and Protocol relating to the Status of Refugees; the African Charter on Human and Peoples' Rights; the American Convention on Human Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms; the Charter of Fundamental Rights of the European Union; the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development; and other instruments,

Taking into account the standards set forth in the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the Declaration on Fundamental Principles and Rights at Work of the International Labour Organization,

Aware of the Guidelines for Multinational Enterprises and the Committee on International Investment and Multinational Enterprises of the Organization for Economic Cooperation and Development,

Aware also of the United Nations Global Compact initiative which challenges business leaders to “embrace and enact” nine basic principles with respect to human rights, including labour rights and the environment,

Conscious of the fact that the Governing Body Subcommittee on Multinational Enterprises and Social Policy, the Committee of Experts on the Application of Standards, as well as the Committee on Freedom of Association of the International Labour Organization, which have named business enterprises implicated in States’ failure to comply with Conventions No. 87 concerning the Freedom of Association and Protection of the Right to Organize and No. 98 concerning the Application of the Principles of the Right to Organize and Bargain Collectively, and seeking to supplement and assist their efforts to encourage transnational corporations and other business enterprises to protect human rights,

Conscious also of the Commentary on the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, and finding it a useful interpretation and elaboration of the standards contained in the Norms,

Taking note of global trends which have increased the influence of transnational corporations and other business enterprises on the economies of most countries and in international economic relations, and of the growing number of other business enterprises which operate across national boundaries in a variety of arrangements resulting in economic activities beyond the actual capacities of any one national system,

Noting that transnational corporations and other business enterprises have the capacity to foster economic well-being, development, technological improvement and wealth as well as the capacity to cause harmful impacts on the human rights and lives of individuals through their core business practices and operations, including employment practices, environmental policies, relationships with suppliers and consumers, interactions with Governments and other activities,

Noting also that new international human rights issues and concerns are continually emerging and that transnational corporations and other business enterprises often are involved in these issues and concerns, such that further standard-setting and implementation are required at this time and in the future,

Acknowledging the universality, indivisibility, interdependence and interrelatedness of human rights, including the right to development, which entitles every human person and all peoples to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized,

Reaffirming that transnational corporations and other business enterprises, their officers – including managers, members of corporate boards or directors and other executives - and persons working for them have, inter alia, human rights obligations and responsibilities and that these human rights norms will contribute to the making and development of international law as to those responsibilities and obligations,

Solemnly proclaims these Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights and urges that every effort be made so that they become generally known and respected.

A. General obligations

1. 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, including ensuring that transnational corporations and other business enterprises respect human rights. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human

rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.

B. Right to equal opportunity and non-discriminatory treatment

2. Transnational corporations and other business enterprises shall ensure equality of opportunity and treatment, as provided in the relevant international instruments and national legislation as well as international human rights law, for the purpose of eliminating discrimination based on race, colour, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, age - except for children, who may be given greater protection - or other status of the individual unrelated to the inherent requirements to perform the job, or of complying with special measures designed to overcome past discrimination against certain groups.

C. Right to security of persons

3. Transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law.

4. Security arrangements for transnational corporations and other business enterprises shall observe international human rights norms as well as the laws and professional standards of the country or countries in which they operate.

D. Rights of workers

5. Transnational corporations and other business enterprises shall not use forced or compulsory labour as forbidden by the relevant international instruments and national legislation as well as international human rights and humanitarian law.

6. Transnational corporations and other business enterprises shall respect the rights of children to be protected from economic exploitation as forbidden by the relevant international instruments and national legislation as well as international human rights and humanitarian law.

7. Transnational corporations and other business enterprises shall provide a safe and healthy working environment as set forth in relevant international instruments and national legislation as well as international human rights and humanitarian law.

8. Transnational corporations and other business enterprises shall provide workers with remuneration that ensures an adequate standard of living for them and their families. Such remuneration shall take due account of their needs for adequate living conditions with a view towards progressive improvement.

9. Transnational corporations and other business enterprises shall ensure freedom of association and effective recognition of the right to collective bargaining by protecting the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without distinction, previous authorization, or interference, for the protection of their employment interests and for other collective bargaining purposes as provided in national legislation and the relevant conventions of the International Labour Organization.

E. Respect for national sovereignty and human rights

10. Transnational corporations and other business enterprises shall recognize and respect applicable norms of international law, national laws and regulations, as well as administrative practices, the rule of law, the public interest, development objectives, social, economic and cultural policies including transparency, accountability and prohibition of corruption, and authority of the countries in which the enterprises operate.

11. Transnational corporations and other business enterprises shall not offer, promise, give, accept, condone, knowingly benefit from, or demand a bribe or other improper advantage, nor shall they be solicited or expected to give a bribe or other improper advantage to any Government, public official, candidate for elective post, any member of the armed forces or security forces, or any other individual or organization. Transnational corporations and other business enterprises shall refrain from any activity which supports, solicits, or encourages States or any other entities to abuse human rights. They shall further seek to ensure that the goods and services they provide will not be used to abuse human rights.

12. Transnational corporations and other business enterprises shall respect economic, social and cultural rights as well as civil and political rights and contribute to their realization, in particular the rights 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, and shall refrain from actions which obstruct or impede the realization of those rights.

F. Obligations with regard to consumer protection

13. Transnational corporations and other business enterprises shall act in accordance with fair business, marketing and advertising practices and shall take all necessary steps to ensure the safety and quality of the goods and services they provide, including observance of the precautionary principle. Nor shall they produce, distribute, market, or advertise harmful or potentially harmful products for use by consumers.

G. Obligations with regard to environmental protection

14. Transnational corporations and other business enterprises shall carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate, as well as in accordance with relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment as well as human rights, public health and safety, bioethics and the precautionary principle, and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development.

H. General provisions of implementation

15. As an initial step towards implementing these Norms, each transnational corporation or other business enterprise shall adopt, disseminate and implement internal rules of operation in compliance with the Norms. Further, they shall periodically report on and take other measures fully to implement the Norms and to provide at least for the prompt implementation of the protections set forth in the Norms. Each transnational corporation or other business enterprise shall apply and incorporate these Norms in their contracts or other arrangements and dealings with contractors, subcontractors, suppliers, licensees, distributors, or natural or other legal persons that enter into any agreement with the transnational corporation or business enterprise in order to ensure respect for and implementation of the Norms.

16. Transnational corporations and other businesses enterprises shall be subject to periodic monitoring and verification by United Nations, other international and national mechanisms already in existence or yet to be created, regarding application of the Norms. This monitoring shall be transparent and independent and take into account input from stakeholders (including non governmental organizations) and as a result of complaints of violations of these Norms. Further, transnational corporations and other businesses enterprises shall conduct periodic evaluations concerning the impact of their own activities on human rights under these Norms.

17. States should establish and reinforce the necessary legal and administrative framework for ensuring that the Norms and other relevant national and international laws are implemented by transnational corporations and other business enterprises.

18. Transnational corporations and other business enterprises shall provide prompt, effective and adequate reparation to those persons, entities and communities that have been adversely affected by failures to comply with these Norms through, inter alia, reparations, restitution, compensation and rehabilitation for any damage done or property taken. In connection with determining damages in regard to criminal sanctions, and in all other respects, these Norms shall be applied by national courts and/or international tribunals, pursuant to national and international law.

19. Nothing in these Norms shall be construed as diminishing, restricting, or adversely affecting the human rights obligations of States under national and international law, nor shall they be construed as diminishing, restricting, or adversely affecting more protective human rights norms, nor shall they be construed as diminishing, restricting, or adversely affecting other obligations or responsibilities of transnational corporations and other business enterprises in fields other than human rights.

I. Definitions

20. The term "transnational corporation" refers to an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries - whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.

21. The phrase "other business enterprise" includes any business entity, regardless of the international or domestic nature of its activities, including a transnational corporation, contractor, subcontractor, supplier, licensee or distributor; the corporate, partnership, or other legal form used to establish the business entity; and the nature of the ownership of the entity. These Norms shall be presumed to apply, as a matter of practice, if the business enterprise has any relation with a transnational corporation, the impact of its activities is not entirely local, or the activities involve violations of the right to security as indicated in paragraphs 3 and 4.

22. The term "stakeholder" includes stockholders, other owners, workers and their representatives, as well as any other individual or group that is affected by the activities of transnational corporations or other business enterprises. The term "stakeholder" shall be interpreted functionally in the light of the objectives of these Norms and include indirect stakeholders when their interests are or will be substantially affected by the activities of the transnational corporation or business enterprise. In addition to parties directly affected by the activities of business enterprises, stakeholders can include parties which are indirectly affected by the activities of transnational corporations or other business enterprises such as consumer groups, customers, Governments, neighbouring communities, indigenous peoples and communities, non governmental organizations, public and private lending institutions, suppliers, trade associations, and others.

23. The phrases "human rights" and "international human rights" include civil, cultural, economic, political and social rights, as set forth in the International Bill of Human Rights and other human rights treaties, as well as the right to development and rights recognized by international humanitarian law, international refugee law, international labour law, and other relevant instruments adopted within the United Nations system.

* Approved August 13, 2003, by [U.N. Sub-Commission on the Promotion and Protection of Human Rights resolution 2003/16](#), U.N. Doc. E/CN.4/Sub.2/2003/L.11 at 52 (2003).