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Responses to major critiques about the UN Norms of Corporate Responsibility (Norms)

Critique One

The focus of the Norms towards corporate responsibility is a false and new concept, which weakens the concept of state responsibility as precondition for human rights.

Response

Beside state responsibility the responsibility of non-state actors is an emerging but already recognized concept of human rights protection.

- UN General Assembly Resolution “Declaration on the Rights and Responsibilities of the Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/55/144 – December 12, 1998):

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.
2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.
3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

- The Norms are supplementary to the UN General Assembly Resolution “Responsibilities of States for internationally wrongful acts” (GA/RES/56/83 – December 12, 2001)

Article 9

Conduct carried out in the absence or default of the official authorities

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.

Further arguments can be found in CEDAW, OP, ICRC, CERD, Rome Statute of the International Criminal Court as well as in Humanitarian Law. Therefore the Norms do not circumvent or undermine the responsibilities of governments. In fact, they state at the outset that "*States have the primary responsibility to respect, ensure respect for, prevent abuses of, and promote human rights recognized in international as well as national law.*" Nor do the Norms attempt to impose responsibilities on businesses which are not appropriate to them and already existing as state obligations to regulate corporate influence as well as abuses and violations of human rights. Instead they clearly state that companies have only responsibilities "*within their respective spheres of activity and influence* "

At the Johannesburg Summit 2002, Governments clearly committed themselves to "*actively promote corporate responsibility and accountability, based on Rio Principles, including through the full development and effective implementation of intergovernmental agreements and measures [...]*." (Plan of Implementation of the World Summit on Sustainable Development, para. 49). The new UN Norms would provide an important instrument to fulfill this commitment.

Critique Two

The CHR has nothing to do with the Norms until the Sub.Com. requested for a decision or any member of the CHR will take them up for consideration.

Response

- There is no need to formalize the discussion about the Norms. Since the work of the Sub.Com on TNCs started in 1995 there is a single occasion where the CHR secretariat recognized the work of the Sub.Com. on the various issue of TNCs (See note by Secretariat E/CN.4/1997/110). This was after the Sub.Com "transmitted" background documents to the CHR and proposed the establishment of a Working Group by CHR as well as further activities on this issue (see E/CN.4/Sub.2/RES/1996/39).
- The CHR did obviously ignore the proposal made by the Sub.Com., the Sub.Com. itself gave Mr. Guissé the mandate to prepare a background document (E/CN.4/Sub.2/1997/11) followed by the establishment of an own Working Group (by E/CN.4/Sub.2/RES/1998/8 and E/CN.4/Sub.2/RES/2001/3).
- The work of the Sub.Com. will be recognized under their report (E/CN.4/2004/2) and the report of the Chairperson of the Sub.Com. (E/CN.4/2004/83).
- In addition the final report of ~~final report~~ the Special Rapporteur of the Sub.Com on Globalization (E/CN.4/Sub.2/2003/14) will be discussed under the various Resolutions as well as under Draft Sub.Com Resolution 14 (publication of reports). The work of the Special Rapporteur is complementary and interconnected with the work of the working group on TNCs.
- Further more under the follow up of GA/RES/55/144 (see above) the Special Representative of the Secretary General (Hina Jilani) requested a special focus on non state actors, esp. corporations.