

Report

Luncheon Meeting with Ms Claudia Roth, MP, German Commissioner for Human Rights and Humanitarian Aid on 17 March 2004

Side event to the 60th session of the Commission on Human Rights on the
*“Norms on the Responsibilities of Transnational Corporations and other
Business Enterprises with Regard to Human Rights”*

1. Participants

- Claudia Roth, MP, Commissioner of the Federal German Government for Human Rights and Humanitarian Aid
- Prof. David Weissbrodt, University of Minnesota
- Lee Swepston, International Labour Organisation
- Dr. Peter Reuss, German Foreign Office, Head of Office of Ms Roth
- Robert Dieter, Permanent Mission of Germany in Geneva
- Dr. Theodor Rathgeber, German Forum Human Rights
- Nils Rosemann, German Forum Human Rights
- Dr. Erfried Adam, FES Geneva Office
- Karl-Heinz Moder, FES Geneva Office

2. Synopsis of the Discussion

The luncheon meeting had been realized to bring together officials of the German Government and of International Organisations with supporters of the *“Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights”* (hereafter: the Norms¹) to give the latter the opportunity to promote the Norms and to clarify any misunderstandings or misinterpretation.

David Weissbrodt, a former member of the UN Sub-Commission for the Protection and Promotion of Human Rights (hereafter UN Sub-Commission) and being the main responsible for drafting the Norms, made a short presentation on the importance and necessity of the Norms. He recalled the unanimous vote for the Norms by the Sub-Commission in August 2003 underlining this way the strong advocacy that the Norms enjoy from the Human Rights experts being assembled in the Sub-Commission. Professor Weissbrodt made clear that the main responsibility for human rights still remained with states and governments. A lot of critiques raised against the

¹ Though the Norms had been approved by a United Nations Body (and therefore often called « UN-Norms »), they still do neither constitute a part of the United Nations legal acquis nor of internationally binding law. Approving the Norms, the UN Sub-Commission recommended the Commission on Human Rights to consider the Norms at its 61th session (to take place in spring 2005).

Norms consist in an alleged shifting of responsibility away from governments to other actors, in this case business enterprises. Actually, the Norms clearly state and confirm in the very first paragraph the traditional responsibility of governments to guarantee and enforce human rights. According to him, they represented a global and comprehensive view of human rights of which labour rights were an integral part. The Norms incorporated the most important regulations from existing documents regarding corporate responsibility such as the OECD-guidelines for multinational enterprises, the ILO-Declaration on Fundamental Principles and Rights at Work, the ILO-Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the UN Global Compact Initiative.

Concerning the question of voluntariness that has been demanded by business federations with regard to corporate responsibility, Weissbrodt pointed out that some 400 transnational corporations (TNC) had joined the UN Global Compact so far but that there existed more than 30,000 TNC worldwide. Therefore, it would make no sense to accept a mere voluntary commitment from business enterprises; an alternative way of how to guarantee corporate respect for human rights had to be taken.

Theodor Rathgeber from the German Forum Human Rights argued that the Norms would bring more security in the process of globalization and would lead to mere competitiveness for German companies. Social standards were the key elements for success for companies in industrialized countries. The Norms did not represent any new human rights obligations, they were in fact just a compilation of existing regulations. This is why there would be no ground for critique in this point. He asked the German government to support the Norms. The second member of the German Forum Human Rights, **Nils Rosemann**, seconded by saying that the Norms represented a common standard and a step away from selectivity since they were –in comparison with already existing regulations- an all-encompassing and comprehensive document. Nevertheless, there were no reasons for TNC or governments to oppose the Norms since they were not new rights but a reflection of existing ones.

Claudia Roth replied that there did not exist a common position of the German government yet. The Green Party was more in favour of the Norms and she personally did support the Norms, but an official position of the Government was still lacking. She referred to Foreign Minister Fischer's speech in the opening session of the CHR. He had stressed that human rights were indivisible and that no division could be made between Political and Civil Rights on the one hand and Economic, Social and Cultural Rights on the other. In his view, everyone was responsible for human rights, not only governments but all stakeholders comprising, beside governments, individuals and transnational corporations as well. Claudia Roth confirmed Theodor Rathgeber's view that social standards were necessary key elements of modern societies. She argued that the Norms were in the TNC's own interest, since economic, social and cultural rights did contribute to the stability and welfare of a society and its individuals who were at the same time consumers. All companies had an interest in social peace and a stable economic framework in order to realize their business activities. Therefore, the Norms

would be positive for industry and were not disadvantageous. Major German companies, TNC's, had realized that and had entered the UN Global Compact such as, *inter alia*, Daimler-Chrysler, Deutsche Telekom, Bayer. In her mind, the ongoing controversial discussion about the question of voluntary or binding regulations was a positive and encouraging sign since it proved that the Norms had been recognized and a discussion as such would bring them forward.

David Weissbrodt replied that in fact it would not be a question of "black and white", of voluntary or binding Norms. In general, UN bodies were not in a position to issue binding recommendations. Just in the case that a UN document would be issued as a treaty and be signed by the UN members the document became binding. Nevertheless, one could regard the Norms as "soft law" and experience had shown that all existing human rights treaties had started as soft law (such as the Universal Declaration on Human Rights and the two International Covenants). But for the time being there were no reason for fears and critiques that the Norms would be binding. Considering the still unclear position of the German government he referred to an expertise of the Max-Planck-Institute for International Law in Heidelberg which had come to the conclusion that the Norms were in line with existing international law.

Lee Swepston, International Labour Organisation (ILO), explained the ILO-internal positions: whereas the workers' representatives were in favour of the Norms, the employers still failed to agree on a common position. Though some TNC had declared to support or at least to consider the Norms, a majority of them referred to the stance of their employers' federations, such as the International Chamber of Commerce (ICC), which strongly opposed the Norms. The governmental representatives remained in the background and had not taken a common official position yet. This stalemate meant that there was no institutional position so far. The employers' major problem consisted in the term "obligations", something that so far had not existed in international law. An alternative term such as "responsibility" would undoubtedly be easier to be accepted by the employers. On the other hand, employers would neither oppose that the Norms could take or even already had the character of a "*soft law*" nor would they reject a *voluntary* commitment as they had already done with the UN Global Compact. A second problematic issue for the ILO was that with ever new regulations for corporate responsibility there was a danger of devaluating existing documents, such as the specific ILO conventions.

Claudia Roth stated that, considering the reality of a globalizing world and the challenges caused by the terror attacks of 9/11, one needed to define remedies against terrorism. In her view, stability and security needed a broader definition, they must comprise human rights and social security as well as justice (Lee Swepston agreed, pointing out that already the 1919 ILO charter declares that there would be no peace in the world without social justice). Human rights needed to keep pace with the globalization process what meant that they needed to be globalised (in other words: universalized) as well. In this regard, the European Union had a major role to play. Claudia Roth mentioned the need to re-establish the discussion group "Economy and

Human Rights” within the German Foreign Ministry and invited David Weissbrodt for a presentation and discussion with the members. She announced to invite other stakeholders, decision making top officials and policy makers from the Federal Ministry of Economics and Labour and from the Federal Ministry for Economic Cooperation and Development as well.

Robert Dieter from the Permanent Mission of Germany said that the discussion on the Norms among governments still had not started and that no state was really struggling to discuss the Norms. The EU tried to take a common position and was in favour that the Norms remained on the agenda of the CHR. Three different options were discussed how to proceed: one, to broaden the discussion and to re-table the Norms within one or two years (which represents the favourite option for David Weissbrodt); two, to appoint an independent expert to investigate the impacts of the Norms (critics raised by David Weissbrodt: Who could be the “independent” expert and what would his mandate be alike?); and three, to organize a major stakeholder forum to deliberate on the Norms (doubts from David Weissbrodt who said that such a proceeding had not worked in Europe so far). Dieter continued by pointing out that the EU tried to have the views of the South but the problem was that the Norms were not even known in most developing countries. That required indeed an intensive information activity to get developing countries discussing and taking a position on the Norms. According to Dieter, that work should not be done by the UN Sub-Commission itself but by other actors and means.

Lee Swepston mentioned that there was the danger that the South would regard the Norms as a tool of industrialized countries to protect their industries, claiming higher social standards in companies of the South, raising this way production costs there and taking away the most important production advantage the South had in the global competition. If this impression arose among the countries of the South then the Norms would face strong opposition. David Weissbrodt argued that in his conversations with representatives from developing countries he had been given a positive feedback on the Norms since it was felt that they were an instrument to limit the tremendous power of TNCs and to give workers and their families a minimum standard of equitable working and living conditions. According to him, the Norms would get a strong support from developing countries whereas the biggest economy of the world, the US, fiercely opposed them. Even a change in the administration after the next US presidential elections would not automatically lead to a change in policy towards the Norms. Claudia Roth suggested following a step-by-step policy, i.e. first to define the common and controversial positions, than discussing the problems and then putting the Norms back on the agenda. Referring to the North-South problem, she underlined that it was crucial for a global support for the Norms that they were not seen as an instrument from the North against the South or Africa and other underdeveloped regions against Europe and North America.

In Nils Rosemann’s point of view the responsibility to promote the Norms was with the industrialized countries but there was common agreement among the other discussants that an initiative from the North would lead to an adverse effect. Claudia Roth, Robert Dieter, Lee Swepston and Erfried Adam agreed

that the lead nation should be from the South, e.g. Brazil, India or South Africa. Claudia Roth expressed the need for an “intelligent strategy” to agitate the Norms. What could be done as a next step was to assemble some of the German policymakers and top officials in the already mentioned Foreign Ministry’s working group on “Economy and Human Rights”. Again, David Weissbrodt was invited to Berlin to table his views and to discuss with the members of this working group. Weissbrodt accepted the invitation gratefully and tabled moreover the idea for a big seminar or conference on the Norms in Germany. Considering the so far activities and experience of the Friedrich Ebert Foundation with regard to the Norms, he and Claudia Roth invited the FES to engage in the organization of such an event and to continue its work on the Norms.

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