

„Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights“

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by Karl-Heinz Moder, Program Officer FES Geneva

Synopsis

The *Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights* (hereafter: the Norms), being approved in August 2003 by the UN Sub-Commission on the Promotion and Protection of Human Rights (hereafter: Sub-Commission), represent the *most recent comprehensive and concise global document* dealing with companies' human rights obligations and responsibilities.

The Norms do not introduce *new* obligations for businesses. They reaffirm and reinforce the declarations that have been made so far with regard to human rights responsibilities of business enterprises (e. g. the OECD-guidelines on multinational enterprises and the UN Global Compact Initiative, etc.) and concentrate the core guidelines and standards in this new concise document. Though not being a formal treaty, the normative content of the Norms make them a document with the character of an "authoritative recommendation".

Currently, the Norms are under review and critiques are raised against them, above all from employers' federations. Governments and trade unions are about to define their position whereas civil society organisations, above all NGOs from the human rights sector, support the Norms and try to promote them and raise comprehension among governments, companies and citizens.

1. The content of the Norms

The document on the Norms¹ comprises 19 operative regulations, each including an explanatory commentary as well as four closing provisions giving the definition of the key terms used in the document. It is important to know that in its preamble the document acknowledges "*the universality, indivisibility, interdependence and interrelatedness of human rights, including the right to development.*" Using the term "human rights" specifically includes the whole range of internationally recognized human rights dimensions, i.e. civil and political as well as economic, social and cultural rights.

¹ UN Document E/CN.4/Sub.2/2003/38/Rev.2 (26 August 2003), Norms with Commentary

Norm 1 ("General Obligations") recognizes that the primary responsibility to promote, secure, respect and protect human rights still is incumbent on states but that transnational corporations (TNCs) and other business enterprises bear this duty "within their respective spheres of activity and influence" as well.

The further provisions deal with:

- non-discrimination (Norm 2)
- the right to security of persons (Norms 3 - 4)
- the rights of workers (Norms 5 - 9)
- the respect for national sovereignty and human rights (Norms 10 – 11), including the prohibition of corruption and fundamental rights to development (food and drinking water, housing, highest attainable physical and mental health standards etc.)
- obligations with regard to consumer (Norm 13) and environmental protection (Norm 14)

Norms 15 – 19 give recommendations concerning the implementation of the Norms and the monitoring of companies in how these incorporate and respect the outlined provisions in their corporate conduct and activities.

2. The character of the Norms

The Norms are recommendations for a responsible and accountable business conduct with regard to human rights and are designed to assist companies to perform in a way that is socially and politically responsible and sustainable. In a broader sense, the Norms can be qualified as an instrument for guiding globalization. They represent a comprehensive "checklist" for business enterprises on how to act in conformity and consistence with international human rights norms. Moreover, internationally agreed clear basic principles and standards have the capacity to contribute to conflict prevention and generate more confidence between TNCs and the society of the respective country where the TNC operates.

Though they are partly drawn from existing obligatory international treaties, the Norms do not have the status of a binding international agreement since they are not (yet) designed as such. States will not have to ratify them and proceed then to an implementation in their national legislation. Nonetheless, the Norms have more legitimacy as mere corporate code of conducts since they are the result of an UN-authorized, public, participatory and consultative process. This is why one could qualify them as "authoritative recommendations" as to underline their normative power.

The Norms reflect most of the current trends in the field of international law and particularly international human rights law with regard to the activities of TNCs and other business enterprises.

In fact, the Norms and their explanatory commentaries can be regarded as an authoritative interpretation of the Universal Declaration of Human Rights (1948). Though the Universal Declaration addresses primarily to nation states as the main bearer of human rights obligations, it specifically mentions that "*every individual and every organ of society...shall strive...to promote respect for these rights and freedoms*"². Accordingly, this postulate is valid for private businesses likewise.

² Preamble of the UN Universal Declaration of Human Rights, see: <http://www.unhchr.ch/udhr/lang/eng.htm>

3. Background

Since TNCs and business companies have tremendously been expanding their economic activities and have gained not just more profit but considerable power and influence as well, an ever growing number of international organisations (UN-bodies, OECD etc.) and NGOs have argued that increased power and influence of TNCs must go in tandem with increased responsibility for international human rights standards. This is why in recent years a considerable number of TNCs have developed their own private guidelines for behaviour (corporate codes of conduct) to meet with public pressure and expectations. At the same time, international initiatives have been undertaken to define a corporate code of conduct for internationally operating enterprises, trying to agree on common (minimum) obligations and responsibilities for TNCs with regard to human rights' protection and fulfilment:

- The OECD-guidelines for multinational enterprises, drafted in 1976 and revised in June 2000 give reference to important international commitments like human rights, core labour standards as well as the principle of sustainability and provision. They dispose of a mechanism of implementation and complaint which is guaranteed above all through the national liaison office to be inaugurated by the ratifying states.
- Not less important concerning human rights responsibilities of companies are the numerous conventions of the International Labor Organization (ILO), concentrated in the eight core conventions of the ILO-Declaration on Fundamental Principles and Rights at Work (adopted 1998) and the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (adopted in 1977 and revised in 2000).
- The Global Compact of the United Nations, an initiative launched in 2000 by Secretary General Kofi Annan, is based on nine major principles encompassing human rights, labour standards and environmental sustainability, integrating as well the ILO's Declaration on fundamental principles and rights which is qualified this way as universal social standard.

Since the UN Sub-Commission considered the working methods and activities of business enterprises with regard to human rights important to be examined, a working group composed of five of the Sub-Commission's members was established in August 1998. The elaborated document was finally approved by the Sub-Commission in its session on 13 August 2003. The Norms are the result of a public, participatory and consultative process unlike codes of conduct which are being elaborated within a company.³

4. Reactions to the Norms

Critiques on the Norms have been made since the very beginning of the work on them, above all from private businesses and their organisations (e.g. International Organisation of Employers, International Chamber of Commerce). These are opposed to ever more prescriptive regulations, monitoring mechanisms and new legal frameworks

³ The Norms have been discussed by a broad range of representatives from international politics, society and economy, including UN agencies, private business, trade unions, NGOs and academics in four public hearings in Geneva (2000, 2001, 2002 and 2003) and two meetings of the Sub commission in 2001 and 2003.

imposed on them, favouring instead voluntary business initiatives and stress, that companies are already supporting other human rights initiatives like the Global Compact. There are hitherto just a few TNCs (like Novartis, BP) that do support the Norms unlike the broad list of big companies that participate in the UN Global Compact Initiative.

Initially, governments have adopted a more wait-and-see policy but are now about to define their position. Only a few states have declared their support to the Norms so far (e.g. Switzerland). True, international trade unions (like ICFTU) and also the International Labour Organisation do not refuse the Norms as such but they wonder if their present form is suited to foster companies' self-commitment with regard to human rights as well as to labour and social standards.

There is also concern that an inflation of international corporate codices is to the detriment of the sake itself since an ever growing number of documents dealing with corporate responsibility could undermine and weaken the importance of the so far existing agreements.

Major support for the Norms is mainly coming from civil society organisations, above all from the human rights spectrum (OMCT/World Organisation against Torture, amnesty international, German Forum Human Rights, International Service for Human Rights, Christian Aid, and FIDH etc.) which is trying to promote the Norms among governments, citizens and business enterprises. These NGOs argue that the Norms fill an existing gap by pulling together into one single document the key international human rights laws, standards and best practices applying to all businesses.

The Norms are more detailed than any existing document with regard to businesses' responsibility for human rights and not in contradiction but in conformity and complementary with existing international provisions (as also acknowledged by the UN Global Compact Office).

5. Outlook

In its Resolution 2003/16⁴ the UN Sub-Commission for the Promotion and Protection of Human Rights recommends the UN Commission on Human Rights (CHR) to invite governments, UN-bodies, specialized agencies, NGOs and other interested parties to submit (at its 61st session in 2005) comments on the norms and the commentary and to establish a working group thereafter to review the norms.

Currently, governments and international organisations (such as ICFTU and ILO) are deliberating on the Norms. In the European Union, a discussion is taking place on how to reach a common position on the Norms, with ideas ranging from the appointment of an expert commission to review the Norms to a European-wide process of conferences where national governments, trade union federations, private businesses and NGOs can table their comments on the Norms.

It remains unclear when this discussion process within the individual UN-member states will be ended so that the next step, the establishment of a working group on the Norms by the CHR, can be initiated. Accordingly, the adoption of the Norms, in whichever draft, by the CHR will take even more time.

⁴ U.N. Doc E/CN.4/Sub.2/2003/L.11 at 52 (2003)