

Report

Panel discussion: Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights

Side event to the 60th session of the UN-Commission on Human Rights
March 25th 2004, Geneva

On March 25th, in cooperation with the Forum Menschenrechte, the Geneva Office of the Friedrich Ebert Foundation held a Panel discussion on “Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights” (hereafter the norms). The event took place within the scope of the 60th session of the UN-Commission on Human Rights.

The panel was formed by:

- David Weissbrodt, Professor University of Minnesota
- Dwight Justice, International Confederation of Free Trade Unions (ICFTU)
- Lee Swepston, International Labour Organisation (ILO)
- Tricia Feeney, amnesty international (ai)
- Chris Sidoti, International Service for Human Rights (ISHR)
- Joseph Rajkumar, Pax Romana

The discussion was introduced and moderated by Erfried Adam (Director Friedrich Ebert Foundation Geneva).

After an introductory note by *Erfried Adam*, pointing out the character of the norms and the state of play of the discussion, every panellist was allocated some time to give a first statement.

David Weissbrodt firstly stated that he was very glad the norms had been adopted unanimously by the subcommission (composed of 26 Expert from 26 countries). He further explained both the character of the norms themselves and the process of their consultation and final adoption in August 2003.

He stressed the open character of the process, which included several public hearings with several stakeholders from all relevant sectors.

He then drew the attention to §1 of the norms, which implied the question what responsibilities transnational enterprises had with regards to human rights. He stated that their responsibilities had increased; however, the main responsibility to protect Human Rights was still in the hands of governments. Nevertheless there was good reason for having a comprehensive set of guidelines for business enterprises.

The norms could hence be understood as an overview or a summary of pre-existing law, providing guidance for enterprises seeking to have their management in accordance with human rights standards.

With regards to the legal status of the norms, David Weissbrodt pointed out that it was self-evident the norms could be neither binding nor mandatory as they were only adopted by the subcommission.

Considering their implementation there were five basic principles to the norms:

Firstly, companies should consider and reflect the norms; secondly, the norms should help companies to assess whether their action were in conformity with human rights; thirdly, an independent monitoring-system should be build up; fourthly, a mechanism for reparations in case of violations should be established; fifthly, governments should provide a framework for the norms.

So far, David Weissbrodt concluded, the role of the subcommission towards the commission had been to approve the document. The subcommission has asked the commission to comment on the norms and hopes the thought process will continue; it especially calls for governments to closely look at the documents and read them thoroughly. The adoption of the norms is not expected to take place before 2005.

Following, *Dwight Justice (ICFTU)* pointed out that the ICFTU had no official opinion on the norms, but rather some concerns, which, however, were of a very different nature than those raised by the business sector.

He underlined that there was general agreement on the necessity of regulating global economy. Yet, people sometimes did not see the surplus of the norms in addition to the already existing Global Compact. Nonetheless, the latter was merely an instrument for enhancing global dialogue and by no means a system to ensure human rights. Still, the Global Compact did not exclude other measures and could be seen as a source of legitimacy as it was based on generally agreed standards.

Due to Dwight Justice, some of the business complaints do however have a merit: §1 of the norms could be interpreted as if the obligations of both states and the business sector had the same nature, whereas those of the state were obviously different to those of business. He claimed it was rather a question of social responsibility. For instance the right of association of workers could not possibly be established by business enterprises if states did not provide for it. Rather, business might take advantage of a lack of legal regulation and undermine workers' rights. Consequently, business tried to soften existing international law, whereas the norms themselves could be considered as "soft" international law.

Summing up, he stated that independently of whether or not the norms were supportable, certain questions still remained open: who interprets the norms, i.e. where within the United Nations are the norms interpreted, monitored, etc.? Eventually, he concluded, ICFTU could not promote the norms until certain questions had been answered.

The ILO, *Lee Swepston (ILO)* stated, regards the norms a good basis for further discussion. They constituted an honest attempt to cover ground. He welcomed that the norms had a very wide coverage and were generally consistent with the principle that in a globalizing economy, it is necessary to create jobs and that the jobs created represent decent work - respecting the rights of both workers and employers. The current document was an honest intent of including the concerns expressed by the ILO in its collaboration with the subcommission.

In order to underline the positive fact that the document made reference to the ILO standards of decent work he mentioned a recent study by the Asian Development Bank, due to which respecting minimum working standards leads to a better economic situation.

Lee Swepston further made reference to the report of the World Commission on the Social Dimension of Globalization, which he cited some paragraphs of. He added that the ILO was glad that there was extensive reference to ILO standards and supervision.

He said he was expecting the ILO's tripartite constituents would further be involved in the upcoming drafting exercise by the Commission.

Nevertheless, he expressed some concerns the ILO had regarding the current document. The current version gave the norms a rather obligatory character, whereas he would prefer them to be just a statement and thus non-binding. They did not present a statement of existing international law, as the recommendations and declarations they made reference to were in fact no binding obligations on transnational corporations, but mere guidance.

Lee Swepston concluded by expressing again the ILO's interest in continuing to take part in the discussion of the current document, which was a good basis for a final version.

The next speaker was *Tricia Feeney (Amnesty International)* who started her statement by raising the question why the concerns that made a regulation such as the norms necessary actually arose, i.e. why is society unhappy about some companies' behaviour?

Civil Society did often suffer from enterprises' behaviour in lawless situations, such as had been the case during the Congo-Conflict. Once government's control decreased due to internal conflicts, etc. companies often made use of this situation, which led to severe imbalances, mainly affecting the poorest of the poor. Such situations needed an international response, which could be provided by the norms.

She then made references to some of the concerns raised by those that opposed the norms. Most of these were definitely based on misunderstandings. The implications of the norms were for instance sometimes misinterpreted in the sense that companies had to break their contracts with subcompanies as long as those did not comply with the norms and could hence be abused of as a pretext to terminate inconvenient contracts.

Further, the ICC's reaction to the norms were widely exaggerated and based on misinformation. The norms did bridge existing gaps in international law and were by no means a way of evading it. Besides, many companies already took on the responsibility assigned to them by the norms. The argument that the norms were opposed to foreign direct investment was totally groundless.

She concluded that more and more states were about to elaborate joint statements in support of the norms but that this process would still take time as one could not possibly rush to a judgement.

Chris Sidoti (International Service for Human Rights) put the norms in the context of the development of international law. Although international law built on the concept of nation states, it was not only addressed to nation states.

The norms established a comprehensive summary of existing law and of existing obligations companies have.

It was very appropriate for international law to further develop, e.g. in response to some companies' human rights violating actions.

Obviously, it was naïve to expect that states could always properly protect human rights and prevent business from violating them. It had to be considered within international law that transnational enterprises were often more powerful than some rather powerless states.

International law needed to develop in order to adequately reflect society's needs.

Regarding future developments, presumably not only business but also other bodies would have to take on responsibilities with respect to human rights, as states could not always provide adequate protection of human rights violations.

Joseph Rajkumar (Pax Romanaf) underlined his favourable view of the norms with the fact that companies played an important role in citizens' everyday life. Often workers did not have any rights at all; this lack could be adequately addressed by the norms. He stressed that they did not only state legal but also ethical principles.

Lee Swepston opened the following discussion by emphasizing once again on the need for international law to further develop. This process, however, would take some time.

An *indigenous movement* representative asked about the consideration of indigenous people in the context of the norms.

Another concerned was raised by a representative of the *International Federation of University Women* who said that international norms were sometimes inflexible, sometimes controversy, whereas a holistic, integrated approach was crucial. She further emphasized on the effect on women.

A delegate from the *Mission of Chile* asked David Weissbrodt for his opinion on a paragraph of amnesty international's brochure on the norms (page 7) which could be understood as if the organization was undermining the role of the CHR in elaborating the norms.

Following, *Theodor Rathgeber (Forum Menschenrechte)* underlined his support of the norms that presented an excellent platform to discuss ethical and legal standards.

Katherine Hagen pointed to the dilemma of how the different parties (those in favour and those opposed to the norms) could get involved in a constructive way. There was a need of a structured framework (in addition to the one provided by ILO) for a non-inflammatory discussion.

James Parsson (Journalist) added that having the norms on a voluntary basis implicated getting as many people on the boat as possible.

In a concluding round, *David Weissbrodt* took up the questions raised within the discussion:

The norms did in fact deal with the rights of indigenous people, as well as those of women; they went even further.

Referring to the intervention by the delegate from the Mission of Chile, he pointed out that Amnesty International was already using the norms, so that despite of not having been adopted so far, they had already begun to be implemented. Obviously, Amnesty International was not undermining the Commissions role.

With respect to Katherine Hagen's comment he stressed that the norms were meant to supplement not to replace international law.

Dwight Justice then drew the attention once again to the question of binding versus non-binding standards, pointing out that ICFTU generally did agree with legally binding standards, such as the ILO conventions. Nevertheless, he underlined, the norms should be revisited in respect to labour practices.

Further, it was recommendable to look at the scope of things: human rights were one thing, labour standards a different thing.

Finally, he stressed the necessity of distinguishing the role of governments from the role of business and other actors.

Joseph Rajkumar spoke of a joint responsibility of states and companies. The norms could be seen as a certain framework and as such be taken advantage of before being approved by all states.

Lee Swepston concluded the round by saying that the discussion needed to continue.

Anna Kalbhenn
Intern, FES Geneva