

DISCUSSION PAPER

ILO – UN Standards Synergies or Competition?

On behalf of
Friedrich-Ebert-Stiftung
IG Metall
Misereor



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Abbreviations

BDI	Federation of German Industries
CSR	Corporate social responsibility
ECOSOC	United Nations Economic and Social Council
ICFTU	International Confederation of Free Trade Unions
ILO	International Labour Organization
IMF	International Monetary Fund
IOE	International Organisation of Employers
IUF	International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association
MNE	Multinational enterprise
NGO	Nongovernmental organization
OECD	Organisation for Economic Co-operation and Development
UNCHR	United Nations Commission on Human Rights
UNTC	United Nations Centre on Transnational Corporations
WTO	World Trade Organization

Joint foreword of the sponsoring institutions

The rapidly advancing process of economic globalization has expanded and consolidated the influence and room for maneuver of business enterprises, in particular of big transnational corporations, in both the economic and political spheres. There is no question that many corporations may contribute to a country's development and to improving living conditions by creating jobs and stimulating economic growth. But this is not always the case. Nor should we overlook the fact that the growing role played by business enterprises is altering government functions. In some countries in the South in which the state fails to guarantee the population human rights and development, corporations have come to be expected to assume quasi-governmental functions in the social sector. Occasionally corporations, making use of private security forces, themselves even take on policing functions, or fund the equipment and deployment of state security forces. Elsewhere corporations profit from war and civil conflict and are either themselves involved in human rights violations or tacitly accept such violations as long as they hold promise of economic benefits. For example, some corporations operate and produce under extremely inhumane conditions as long as the state tolerates, or even promotes, such conduct.

Nongovernmental organizations (NGOs) and labor unions are largely agreed on the need to codify, at the international level, the responsibility of business corporations to respect human rights. But thus far they have not been able to develop any joint notions of what shape such rules might be given and – above all – where they might best be anchored at the international level.

As far as labor and social standards are concerned, the ILO already has an established set of instruments designed to protect them. But is this sufficient? How are the ILO standards implemented? And what about the cases in which a corporation

violates not workers' and labor union rights but economic, social, and cultural human rights in the wider field in which it is active? Where is a corporation called to account if it uses its economic activity to (co-)finance civil wars that claim the lives of thousands of people? Or if it profits from the forced expulsion of local populations, depriving them of their livelihoods? Is the ILO the place best suited to develop instruments appropriate to counteract such violations of economic, social, and cultural rights? Or is it the United Nations? And if so, will the newly created Human Rights Council be willing and able to do so? If not, where would the appropriate place be to forge on with the discussion?

Such fundamental, open questions form the subject matter of this study. It presents two possible instruments for rules applying to multinational corporations: the 1977 ILO Tripartite Declaration on Principles concerning Multinational Enterprises and Social Policy (amended in 2000) and the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, which were adopted in 2003 by the subcommission of the then UN Commission on Human Rights.

For the time being, the latter have failed due to the resistance of UN member countries, rejection on the part of organized business interests, and reluctance on the part of labor unions in the UN Commission on Human Rights.

But the door has not yet been closed once and for all to worldwide, binding rules for corporate responsibility anchored in the UN framework. UN Secretary-General Kofi Annan has appointed a UN special representative for corporate responsibility and human rights; his task is, among other things, to look into the question of how it would be possible to define more exactly a corporation's "sphere of influence" as far as human rights are concerned.

In 2005 the special representative was given a relevant mandate by the Commission on Human Rights. In 2007 John Ruggie is set to present his final report to the Human Rights Council. It is still unclear whether or not the Human Rights Council will extend his mandate. What is certain, though, is that the discussion over the questions outlined above will not by any means be over when the UN special representative's report is published.

It makes sense for labor unions and nongovernmental organizations to develop joint goals and strategies and to take the opportunity to gain what influence they can on the international discussion process bearing on corporate human rights responsibility.

If the present study proves able to contribute a constructive impulse in this direction, then it will already have met one of its goals. In addition, it may provide help and orientation for those corporations that are seriously interested in shaping their sphere of influence in a human rights-oriented and socially adequate manner.

And last but not least, the present study addresses the government level. Governments, it notes, should initiate dialogue with labor unions, churches, and other civil society forces with a view to seeing corporations operating in the globalized economy at long last committed to a body of binding social and human rights obligations.

Aachen, Geneva, and Frankfurt, August 2006



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Introduction

Nongovernmental organizations (NGOs) and labor unions are largely agreed on the need to codify, at the international level, the responsibility of business enterprises to respect human rights. Labor unions and human rights organizations also work closely together in cases in which labor union members are subjected to persecution and the freedom to organize is under threat. Furthermore, both of these social forces are actively involved in a number of multistakeholder processes, and they often formulate joint positions. Examples of such cooperation would include the Ethical Training Initiative in the UK, the Forest Stewardship Council, or the Clean Clothes Campaign.

In view of the globalization of the economy and the undiminished power of multinational corporations, both labor unions and NGOs are calling for international and binding rules for business enterprises. But thus far they have not been able to develop any joint notions on what shape such a body of rules might be given and where it might be anchored at the international level. Indeed, while the draft of the “UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” adopted in 2005 by the Sub-Commission of the UN Commission on Human Rights has been welcomed by human-rights and other NGOs, the response from labor unions has been highly skeptical. The UN Norms on the Responsibilities of Business Enterprises may be seen as one initial approach to obliging corporations at the international level to comply with human rights standards. The debate on a possible implementation of the Norms has been marked by highly contrasting positions. Even though labor unions and NGOs agree in essence on the need for internationally binding rules for business enterprises, they have not reached agreement on a uni-

form position on the Norms. The present discussion paper will seek to cast light on the positions shared by the two sides and to focus on the issues under dispute. Since one of the weighty arguments advanced by the union side was the issue of possible competition between the UN Norms and the ILO, the paper will pay particular attention to this question.

The first section of the paper will take a comparative look at the UN Norms, the ILO corporate responsibility instrument, i.e. Tripartite Declaration on Principles concerning Multinational Enterprises and Social Policy, with a view to discussing their potential for further development. However, any attempt to directly compare the two is bound to be fraught with problems. The main reason is that the ILO’s Tripartite Declaration and the ILO conventions are instruments which have long been established and their implementation is constantly monitored on the basis of tried, while the UN Norms have not yet been tested in practice. Section 1 therefore focuses on the question of what potential the ILO has to establish rules for the human rights-related conduct of business enterprises.

Section 2 then goes on to present and discuss the positions of NGOs and labor unions on the UN Norms, and Section 3 draws conclusions bearing on the work yet to be done.

Aside from a review of the literature and an Internet search for relevant information, the present paper is based primarily on a number of interviews conducted in recent months with representatives of labor unions, NGOs, the ILO, and business organizations. We would like to take this opportunity to extend our thanks to all of our interview partners for the time they gave us as well as for their interest in the project.

Why is there a need for human rights standards for business enterprises?

The call to regulate corporate conduct at the international level is not new. It had already been raised in the 1960s and 1970s, above all by the developing countries united in the G77 as part of their conception of a new world economic order. The United Nations Economic and Social Council (ECOSOC) took a decision to develop a code of conduct for business enterprises, entrusting the United Nations Centre on Transnational Corporations (UNCTC), a body of ECOSOC, with the task. The code of conduct was never submitted for a vote within the UN, and the UNCTC was disbanded as an independent unit. The notion of regulation subsequently fell victim to the deregulation mantra dear to international politics in the 1980s and 1990s. Instead of development of binding rules for corporations in the UN framework, thought was now given to business partnerships of the kind that found expression in the Global Compact.

In his 2006 Interim Report to the UN Commission on Human Rights, John Ruggie, the UN Secretary-General's Special Representative on the issue of human rights and transnational corporations and other business enterprises, notes that the reason why rules for corporate conduct have again come under discussion in the UN framework is that the growing power of transnational corporations has led to renewed calls for a countervailing power and for controls on the exercise of corporate power. The mere fact that corporations are globally active and in a position to act more swiftly and comprehensively than many national governments and international institutions is sufficient justification of the need to stipulate rules governing activities of transnational corporations. These rules should apply equally for all business enterprises. "[S]evere imbalances between the scope of markets and business

organizations on the one hand, and the capacity of societies to protect and promote the core values of social community on the other, are not sustainable." (Interim Report 2006, p. 6) There is a need for legislation and standards to counter these power imbalances.

Furthermore, some corporations have themselves provoked these growing calls for more regulation of transnational business enterprises, in particular by knowingly or unknowingly contributing to violations of human rights, by their complicity in human rights violations, or by profiting from such violations. To cite an example, in recent years more and more complaints have been raised about corporations like Coca Cola, claiming that their suppliers or subsidiaries have been involved in human rights violations: In India the huge water demand of bottling plants is contributing to lowering groundwater levels, regularly depriving village communities of the water they need; a bottling plant in Columbia is reported to have worked hand in hand with a paramilitary organization and to have at least tolerated the murder of leading union representatives; a Coca Cola subsidiary in Turkey used a notorious anti-insurgency unit to brutally suppress a workers' protest.¹

All this serves to underline the need for generally valid, binding rules. As a rule, measures voluntarily adopted by the business community have fallen short of the mark. While there can certainly be no objections to voluntary corporate activities going beyond the required legal framework, such activities are more often undertaken to achieve internal corporate policy goals and to place them in a positive light. But they do not constitute a generally valid framework that also compels black sheep and free-riders to comply. Voluntary measures

1 For the individual cases, see e.g. the Killer Coke campaign website, www.killercoke.org, and the counterstatement published by the Cola Company, www.cokefacts.org, as well as the detailed compilation of information under www.business-humanrights.org-individual-companies-Coca-Cola.

often get no further than the level of “best practice examples.” The aim of binding rules is to prevent bad practices and to translate best-practice examples into normal corporate practice.

The rights of victims of human rights violations constitute another argument in favor of binding rules. Victims are in need of rights and a place where these rights are recognized, in order, among other things, to be able to claim compensation. This is virtually impossible on the basis of voluntary agreements.

Some countries lack the possibilities, or the will, to hold corporations accountable for their conduct. International standards should be by no means seen as a substitute for effective and implemented national legislation, but such interna-

tional standards can serve as a frame of reference, and they can also provide a contribution to harmonizing national standards.

In its 80-year history the ILO has contributed in crucial ways to the development and harmonization of national and international standards in the world of work. The proposed UN Norms on Human Rights and Transnational Corporations and Other Business Enterprises concerning Human Rights aims in the same direction for human rights in general. The following section will take a more in-depth look at the approaches adopted by the ILO and the UN Commission on Human Rights to develop standards for corporate conduct and to promote their implementation.

The International Labour Organization (ILO)

Achieving the goal of decent work in the globalized economy requires action at the international level. The world community is responding to this challenge in part by developing international legal instruments on trade, finance, environment, human rights and labour. The ILO contributes to this legal framework by elaborating and promoting international labour standards aimed at making sure that economic growth and development go along with the creation of decent work. The ILO's unique tripartite structure ensures that these standards are backed by governments, employers, and workers alike. International labour standards therefore lay down the basic minimum social standards agreed upon by all players in the global economy. (ILO 2005, p. 8)

The International Labour Organization, the oldest organization in the UN system, was founded in 1919. Its mandate is to improve conditions of labor, which “involv[e] such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled...”² These improvements include “the regulation of the hours of work including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for

work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures.”³

The international labor code is the basis on which the ILO operates; this body of law consists at present of 185 conventions and 195 recommendations. The conventions cover fundamental issues concerning human rights, social policy, and employment, as well as working conditions in certain fields of employment such as seafaring or agriculture. The Eighty plus years of the ILO's history have seen the development of a large variety of conventions on fundamental workers' rights and the right to organize⁴ as well as highly specific regulations like those set out in the Medical Examination Convention for fishermen.⁵ With a view to preventing the number of conventions from unduly proliferating and to ensuring that declining ratification figures do not render them irrelevant, the ILO has set out to revise and summarize these conventions.⁶ One example here would be the Maritime Labour Convention adopted in January 2006; it consolidates the ten existing ILO seafaring conventions. Further conventions are set to be consolidated as well.

Furthermore, in its 1998 Declaration on Fundamental Principles and Rights at Work, the ILO set a clear-cut signal by defining a set of core labor standards which set the stage for a more socially just society.⁷ The rights codified in the core labor standards are human rights, and they are binding

2 Constitution of the ILO, in its most recent version (Nov. 1974).

3 Ibid., Preamble.

4 Freedom of Association and Protection of the Right to Organise Convention No. 87 of 1948; Right to Organise and Collective Bargaining Convention No. 98 of 1949.

5 Medical Examination (Fishermen) Convention No. 113 of 1959.

6 Between 1995 und 2002 the ILO's Governing Body reviewed all ILO standards developed prior to 1985 with a view to determining whether they are in need of revision. 71 conventions were declared to be “up-to-date,” while others are set to be revised or eliminated as obsolete.

7 The core labor standards include: 1. freedom of association and the right to organize and bargain collectively; 2. freedom from all forms of forced labor; 3. the effective abolition of child labor; 4. nondiscrimination in employment.

on all states, whether they have ratified the relevant conventions or not. All other ILO conventions are binding only for the countries that have ratified them.

Both states and private actors have accepted the ILO's central role in setting and defining labor standards in the international context. This has until now prevented the possibility that different organizations might act on the basis of different sets, or interpretations, of labor standards, a case that would inevitably lead to conflicts. The OECD Guidelines and the Global Compact e.g. make explicit reference to the ILO and its conventions.

The enforcement mechanisms available to the ILO include:

- regular reporting (states are obliged to report; the reports are assessed by an expert commission; states are required to report every two years on implementation of the core labor standards and the four other “priority” conventions;⁸ for all other ILO conventions the parties are required to submit regular reports every five years);
- technical cooperation, support for the parties in their national efforts to implement ILO conventions;
- public relations work;
- intergovernmental complaint procedures;
- grievance procedures for nonstate actors.⁹

Subject of the complaint mechanism are states, not the corporations concerned. The ILO's verification functions have increased in connection with the ILO “Declaration on Fundamental Principles and Rights at Work and its Follow-up,”¹⁰ the reason being that the reporting interval was shorted to two years and reports can be demanded from all states, whether they have ratified a convention or not. However, the ILO has only very limited means to move countries to implement and to comply with the labor standards. The approaches the ILO mainly uses are in essence moral pressure, provision of technical support, and social dialogue.

The Decent Work Agenda

The ILO's strategic goals are set out in the Decent Work Agenda (Decent Work 1999). The goals are:

- Promotion of the fundamental principles and rights at work
- Creation of new employment opportunities
- Protection against social risks and loss of employment
- Strengthening of social dialogue on stabilization of societies and economic development

With a view to advancing these goals, several pilot projects with different priorities are underway in Bahrain, Bangladesh, Denmark, Ghana, Kazakhstan, Morocco, Panama, and the Philippines. The ILO is seeking in this way to emphasize its support of countries and the social partners in implementing existing social standards at the national level.

The ILO's structure

The ILO has a tripartite structure. The organization's membership is made up of governments, employees' organizations, and employers' organizations (see Annex). The social partners are involved in standard-setting, reporting, and monitoring of implementation. But the governments alone are responsible for ratifying conventions, creating national frameworks for their implementation, and reporting to the ILO. At present the ILO has 176 member countries.

This tripartite structure is one of the ILO's major strong points; it increases the organization's credibility and ensures that the conventions and recommendations adopted have the support of governments and social partners alike. However, this structure also makes the ILO quite unwieldy.

What has developed in the ILO, though, is a balanced equilibrium between the interest groups involved. Some ILO staff members fear that the

8 The four 'priority' conventions are: the Tripartite Consultation Convention (No. 144, 1976), the Labour Inspection Convention (No. 81, 1947), the Labour Inspection (Agriculture) Convention (No. 129, 1969), the Employment Policy Convention (No. 122, 1964). These conventions are the backbone of the international system of labor standards.

9 These are organizations of employers and employees which form part of the ILO's structure. Nongovernmental organizations, local communities, and others are required to submit complaints via one of these organizations.

10 International Labour Conference, 86th Conference, Geneva, 18 June 1998.

organization could begin to break down if this equilibrium were disrupted.

The ILO standards and the WTO

Since the 1996 WTO conference in Singapore decided not to adopt social clauses and to recognize the ILO as the sole international institution responsible for the setting of labor standards, there has been as good as almost no communication between the two institutions. The ILO and its conventions are thus not considered in the WTO's agreements. Nor has the WTO mentioned the ILO in the sections of its recent reports concerned with its cooperation with other international institutions.

The idea of linking social standards and trade sanctions has provoked the vehement resistance of many developing countries, a factor responsible in part for the circumstance that the discussion in the WTO on social standards is blocked.

The ILO standards and the World Bank / the International Monetary Fund

Thus far there has been little concrete cooperation between the ILO and the international financial institutions – World Bank and International Monetary Fund (IMF) – in the area of social standards.¹¹ While the World Bank has, at least rhetorically, acknowledged the significance of the right to organize, the significance of collective bargaining, and the need to abolish child labor, it has de facto contributed little to the implementation of labor standards. Much like the IMF, the World Bank's structural adjustment programs tend to see labor standards more as a drag on economic development. In their lending policies these programs come out openly against the institution of labor inspectors, one of the fundamental principles of the ILO, by

defining this area as an expenditure item of public budgets that needs to be reduced.

An established World Bank / ILO dialogue process has been unable to overcome these differences. The positions now, though, appear gradually to be showing signs of convergence. In its new guidelines,¹² the World Bank Group's International Finance Corporation has for the first time made positive reference to the ILO core labor standards and the relevant ILO conventions.

The Tripartite Declaration on Principles concerning Multinational Enterprises and Social Policy

As mentioned above, the ILO conventions and recommendations are addressed to states. But the ILO does have one instrument that is addressed to business enterprises: the Tripartite Declaration on Principles concerning Multinational Enterprises and Social Policy. It was adopted in 1977 by the ILO's Governing Body, and since then it has been adapted several times to accommodate further developments of the ILO's body of standards.

Frame of reference

The Tripartite Declaration is a guideline for multilateral corporations, governments, and employers' and employees' organizations in the fields of employment, training, and conditions of work and life. All the parties concerned by the Declaration should respect the sovereign rights of States, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards. They should respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations as well as the

¹¹ The situation is somewhat different in the fields labor-market and employment policy and social policy; here there has, for several years now, been an ongoing dialogue between ILO and World Bank and ILO and IMF, and, despite divergent concepts, there has been concrete cooperation - e.g. in the course of the Asian financial crisis.

¹² For detailed information, see www.ifc.org/policyreview. The International Finance Corporation specifies that the following principles be used for assessing the risks involved in the financing of private-sector projects in its member countries: Performance standards on social and environmental sustainability 1: Social and environmental assessment and management systems; 2: Labor and working conditions; 3: Pollution prevention and abatement; 4: Community health, safety, and security; 5: Land acquisition and involuntary resettlement; 6: Biodiversity conservation and sustainable natural resource management; 7: Indigenous peoples; 8: Cultural heritage (30 April 2006).

Tabelle 1

Comparative outline of MNE Declaration and UN Norms on TNCs

	ILO – Declaration on Multilateral Corporations	UN Norms on the Responsibilities of Transnational Corporations
Year	1977, last revision 2000	2004
Adopted by	ILO Governing Body	Subcommission of the UNCHR
Scope of application	ILO member countries	UN member states
Frame of reference	<p>Universal Declaration of Human Rights and the relevant covenants adopted by the UN General Assembly</p> <p>ILO Constitution</p> <p>ILO Declaration on Fundamental Principles and Rights at Work</p>	<p>Universal Declaration of Human Rights and the relevant covenants adopted by the UN General Assembly</p> <p>A total of 27 other international conventions and declarations, including the ILO conventions</p>
Target groups	<p>Business enterprises</p> <p>States responsible to defining national frameworks</p>	<p>Business enterprises</p> <p>States responsible for defining national frameworks</p>
Character	Voluntary	Planned as binding standards
Contents	Workers' rights: incl. core labor standards, promotion of employment, worker safety, training, conditions of work and life, industrial relations	<p>Workers' rights: core labor standards, decent remuneration as well as a safe working environment</p> <p>Right to security of persons</p> <p>Respect for economic, social, cultural, and political and civil human rights</p> <p>Consumer protection</p> <p>Application of the precautionary principle in environmental protection</p>
Instruments used for implementation	<p>Surveys / data collection</p> <p>Dispute-settlement procedures concerning interpretation of the Declaration</p> <p>Support for building the capacities needed to implement the Declaration</p>	<p>Internal company guidelines</p> <p>Reporting on implementation</p> <p>Supplier contracts</p> <p>Monitoring on the basis of mechanisms yet to be created</p> <p>Obligation to provide compensation</p>

*Constitution of the International Labour Organization and its principles according to which freedom of expression and association are essential to sustained progress. They should contribute to the realization of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted in 1998. They should also honour commitments which they have freely entered into, in conformity with the national law and accepted international obligations.*¹³ (General Policies, paragraph 8)

The Declaration makes explicit reference to the UN human rights conventions, and it centers on freedom of expression and association.

While the Declaration requires business enterprises to comply with their own national legislation, it goes a step further in e.g. noting as regards the right to submit complaints at work:

This is particularly important whenever the multinational enterprises operate in countries which do not abide by the principles of ILO Conventions pertaining to freedom of association, to the right to organize and bargain collectively and to forced labour. (Paragraph 58)

Contents of the Declaration

The Declaration refers to all areas “of ILO concern which relate to the social aspects of the activities of multinational enterprises, including employment creation in the developing countries...” The individual chapters are concerned with the following issues:

- Employment promotion
- Equality of opportunity and treatment
- Security of employment
- Training
- Wages, benefits and conditions of work Minimum age Safety and health
- Industrial relations Freedom of association and the right to organize Collective bargaining

In an age marked of increasing globalization and growing threats to outsource jobs, Paragraph 53 must be seen as particularly relevant:

Multinational enterprises, in the context of bona fide negotiations with the workers’ representatives on conditions of employment, or while workers are exercising the right to organize, should not threaten to utilize a capacity to transfer the whole or part of an operating unit from the country concerned in order to influence unfairly those negotiations or to hinder the exercise of the right to organize; nor should they transfer workers from affiliates in foreign countries with a view to undermining bona fide negotiations with the workers’ representatives or the workers’ exercise of their right to organize. (Collective bargaining, paragraph 53)

The Declaration calls on companies to respect the right of workers to submit complaints without suffering any prejudice as a result. It furthermore calls on companies to develop voluntary conciliation and arbitration procedures to settle industrial disputes.

The Declaration is updated at regular intervals, with new ILO conventions and recommendations relevant to the Declaration being added.

Implementing mechanisms

The ILO Declaration is voluntary in nature and does not provide for any verification or complaint mechanisms. The approaches possible here include capacity-building, data collection, and promotion of social dialogue. In view of the Declaration’s worldwide validity and the diversity of issues and tasks it addresses, the working unit the ILO has set up for the Declaration is far too small (five persons).

As far as implementation of the Declaration is concerned, the ILO has three different approaches available to it:

1. The Subcommittee on Multinational Enterprises¹⁴ regularly conducts surveys among the ILO membership on the state of implementation of the Declaration among multinational corporations, governments, and the organizations of employers and employees.¹⁵ The surveys focus mainly on government measures undertaken to

¹³ Tripartite Declaration on Principles concerning Multinational Enterprises and Social Policy, version of Nov. 2000, 279, conference of the Governing Body. All other quotations from the Declaration refer to this version.

¹⁴ Subcommittee of the Committee on Legal Issues and International Labour Standards.

¹⁵ The results can be found under www.ilo.org/public/english/employment/multi.

implement the Declaration. The eighth survey, which covers the period between 2000 and 2003, was published in November 2005. As far as concrete corporate conduct is concerned, the published data have little informative value, and they can therefore not be used to draw conclusions on the conduct of individual multinational enterprises. To cite a few examples from the 2005 survey:

Croatia

Trade unions view the introduction of work on Sundays and attempts to obstruct labor union activity in the workplace as negative developments. (p. 80)

Cameroon

The General Workers' Union of Cameroon (UGTC) considers that MNEs do not always respect Conventions Nos. 87, 98, or 135. (p. 91)

China

The All-China Federation of Trade Unions (ACFTU) notes that some MNEs have failed to observe relevant laws, refusing, or even obstructing efforts, to establish trade unions under the pretext that workers are not interested in creating them. (p. 91)¹⁶

Compared with the previous survey, the number of responses received for the 2005 survey declined from 149 (65 countries) to 84 (of a total of 44 countries). The Subcommittee therefore proposes that a new survey method should be developed.¹⁷

2. One other instrument used to support the implementation of the Declaration is the ILO's dispute-settlement procedure. In cases of dispute, governments, employers' organizations, and labor unions can ask the ILO for assistance in interpreting the regulations. Such requests are normally made by governments; but if they show themselves unwilling, employers' or employees' organization are permitted to submit

requests of their own. The ILO secretariat normally prepares a response, which may be submitted to the Governing Body for further discussion. Thus far virtually no use has been made of this procedure.

3. Other approaches to supporting the implementation of the Declaration include studies and efforts to promote the Declaration. These include efforts to publicize the Declaration and the holding of regional conferences and workshops.

Some of the problems encountered in implementing the Declaration must be seen as resulting from the fact that the ILO's work is centered at its Geneva office as well as in understaffing of the responsible unit and lack of a (national or regional) network comparable to the national contact points responsible for monitoring the implementation of the OECD's Guidelines. There are no plans to develop a grievance mechanism concerned with the conduct of individual corporations.

The Declaration is not part of the ILO's general standards-monitoring procedures.

Target groups

The target groups consist of multinational corporations as well as governments and employees' and employers' organizations.

The Declaration explicitly refrains from providing a precise legal definition of multinational enterprises. To facilitate a common understanding, though, the ILO describes multinational enterprises as business organizations, "whether they are of public, mixed or private ownership, which own or control production, distribution, services or other facilities outside the country in which they are based." (Paragraph 6) While the Declaration does refer to multinational enterprises, it underlines, in Paragraph 11, that both "multinational

16 From: Follow-up on and promotion of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (b) Eighth Survey on the effect given to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy: Summary of reports submitted by governments and by employers' and workers' organizations (Part II), November 2005.

17 Follow-up to and promotion of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (a) Eighth Survey on the effect given to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy: Analytical report of the Working Group on the reports submitted by governments and by employers' and workers' organizations (Part I), March 2006, GB295/MNE/1/1.

and national enterprises ... should be subject to the same expectations in respect of their conduct in general and their social practices in particular.”

Summary

Looking at the ILO's body of rules we must note that the Declaration is a relatively weak instrument, and for this reason little use is made of it by either employers' organizations and labor unions.

However the ILO Governing Body, which also includes representatives of the social partners in the ILO, expressly points out that companies are expected to comply with the Universal Declaration of Human Rights, the international human rights conventions, and the most important ILO conventions. The Declaration also points to the duty of business enterprises to create jobs and to improve standards. The Declaration therefore also addresses some key substantive issues concerning the responsibility of companies toward their employees, although it has no effective enforcement mechanisms. For the ILO the Declaration is above all an important input for the national and regional dialogues between governmental institutions, employees' organizations, and employers' organizations (ILO 2002).

For human rights organizations the Declaration is not an instrument adequate to the task of calling business enterprises to account for possible violations since it neither provides for specific references to companies nor contains a direct complaint mechanism. And as far as the victims of human rights violations committed by companies are concerned, the Declaration is not suited to publicizing their plight, to say nothing of enabling them to claim their rights. It contains no mechanism for this purpose.

The ILO does not “name and shame” business enterprises, and ILO staff members emphasize that, the practice would possibly disrupt the equilibrium between the institution's stakeholders and endanger its very existence. The ILO's strength is the setting of standards in social consensus and the support it provides governments and the social partners in implementing the standards. Against this background, it will be interesting to observe what decision the ILO will take on the case of the Coca Cola Company: Together with the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), Coca Cola has asked the ILO to evaluate the company and its bottling plants in Columbia. The ILO has never yet conducted an evaluation of an individual company. Here it would be breaking new ground. The ILO has not yet taken a decision.¹⁸

The Declaration on Multinational Enterprises itself serves more as the ILO's CSR instrument. “The point of reference for the ILO's work on CSR is the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.”¹⁹ Based on the Declaration, the InFocus Initiative has been designed to “generate new and valuable products” for good CSR policy and practice. There is, however, some disagreement within the ILO as to whether and to what extent CSR is an appropriate area of responsibility for the ILO.

At present there is also a discussion underway in the ILO over whether a so-called business case²⁰ could be developed for labor standards. If the ILO should decide to proceed, the Declaration on MNEs could well serve as a frame of reference, even though it is not an instrument designed to oblige companies to comply with labor and human rights standards.

¹⁸ Coca Cola, though, appears to be quite certain that the ILO will take up the request. On its website, www.cokefacts.org, the company has already welcomed the ILO's willingness to accept the request (11 May 2006). Interestingly, Coca Cola's Director of Global Labor Relations, Ed Potter, has, at the same time, represented US corporations at the ILO for years now.

¹⁹ ILO, InFocus Initiative on CSR, March 2006, GB.295/MNE/2/1.

²⁰ The term business case for labor standards refers to the task of deriving the justification for standards and their meaningfulness from the logic of business. The idea is to convince companies that it is in their own interest to comply with labor standards.

The initiative of the UN Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights

The structure of the UN human rights system

The UN human rights system has had two different institutions set up under the UN Charter. The Commission on Human Rights (now the new Human Rights Council), and the bodies in charge of monitoring the most important human rights conventions,²¹ the so-called Treaty Bodies. In connection with the project of UN reform, the Commission on Human Rights was reorganized in March of 2006. The present study will only briefly outline the Commission's structure and the important changes that have taken place, since the new human rights council is presently discussing its future mode of operation and procedures. Suggestions concerning a reform of the treaty bodies have been made but so far no decision has been taken. At the moment, the treaty bodies continue their work in the usual manner.

The UN Commission on Human Rights

The UN Commission on Human Rights (UNCHR) was a subordinate commission to the United Nations Economic and Social Council (ECOSOC), which, in 1946, at its first session, decided to set up two commissions: one on human rights and one on the situation of women. Both commissions were elected by ECOSOC from representatives of the UN

member states. The last UNCHR was made up of representatives from 53 member states; the Commission met once a year for six weeks in Geneva. Relatively soon after it was established, the UNCHR set up a "Sub-Commission on the Promotion and Protection of Human Rights"²² which is presently made up of 26 independent experts and serves as a kind of think tank in support of the UNCHR.

One of the UNCHR's first tasks was to work out a draft for the Universal Declaration of Human Rights and the first two human rights covenants.²³ The Commission was soon forced to face the problem of how to respond to human rights violations. ECOSOC had originally not authorized the UNCHR to respond on its own initiative to complaints on human rights violations.

The institution of special rapporteurs

Despite these limitations, however, the UNCHR was forced to respond to the human rights violations committed by the apartheid regime in South Africa and, later, by the Pinochet dictatorship in Chile. The Commission first set up working groups to deal with the events in question. In 1979 the working group on Chile was replaced by a special rapporteur and two experts, and in 1980 a working group on "enforced disappearances" was set up to deal with this problem throughout the world. Over the course of time more and more use was made of the instru-

21 These conventions are: the International Covenant on Economic, Social and Cultural Rights (1966); the International Covenant on Civil and Political Rights (1966); the International Convention on the Elimination of All Forms of Racial Discrimination (1966); the International Convention on the Elimination of All Forms of Discrimination against Women (1979); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child (1989).

22 This body was formerly known as the Sub-Commission on Prevention of Discrimination and Protection of Minorities. It was renamed in 1999.

23 The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which were adopted by the UN General Assembly in 1966. Implementation of the two conventions has been monitored by so-called treaty bodies. These consist of 18 independent experts who review the reports submitted by member states on their implementation of the human rights conventions. The Human Rights Committee, the treaty body of the Covenant on Civil and Political Rights, is authorized by an optional protocol to examine individual complaints.

ment of the special rapporteur. There are at present 14 mandates concerning the human rights situation in particular countries²⁴ and 22 issue-specific²⁵ rapporteurs. The rapporteurs are independent personalities who are not remunerated by the UN for their work and who receive only limited monetary support from the UN budget (e.g. for travel expenses, staff).

Reorganization in the framework of the UN reform

Starting in mid-2006 the Commission on Human Rights is set to be replaced by a Human Rights Council. The UNCHR's work had for years been criticized as ineffective. Many countries were accused of seeking seats on the Commission only to ward off criticism of their own human rights records or to misuse the Commission for their own political ends. Reorganization in the context of the UN reform process is now set to render human rights work in the UN more effective.

The new Human Rights Council is a subsidiary body of the UN General Assembly.²⁶ This implies an upgrading of human rights work in the UN. The Council has a membership of 47, as compared with the 53 members of the UNCHR. The members must be elected by an absolute majority of the UN General Assembly. The member states of the new Council were duly elected on May 9, 2006. The Council's constitutive session is set to take place on June 19, 2006; according to the resolutions establishing it, the Council is tasked, within one year, to "assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights

in order to maintain a system of special procedures, expert advice and a complaint procedure."²⁷ In this framework it will also hold deliberations on how best to deal further with this issue complex; these deliberations will be based on the report submitted by John Ruggie, the UN Secretary-General's Special Representative on Human Rights and Transnational Corporations and Other Business Enterprises.

The Treaty Bodies

To monitor compliance with the main UN human rights conventions, treaty bodies have been created to hear the reports of the states at regular intervals of 4 to 5 years. The treaty bodies consist of independent experts who issue recommendations to the states concerned. Increasingly, nongovernmental organizations submit so-called shadow reports to the treaty body commenting on a state's performance under the convention concerned. While the recommendations of the treaty body are of high moral value, they are not legally binding. Some treaty bodies, like those created by the Covenant on Civil and Political Rights or the Convention on the Elimination of Discrimination against Women, are able to accept individual complaints.²⁸

The UN Norms on business enterprises and human rights

In 1997 the UN Sub-Commission on the Promotion and Protection of Human Rights prepared a study on transnational corporations and human rights. Subsequently a working group was set up on methods and activities of transnational corporations;

24 Including e.g. Sudan, Haiti, Afghanistan, Iran, Iraq.

25 Including – to name only a few – the following issues: religious intolerance, racism and xenophobia, freedom of speech, violence against women, extreme poverty, children in armed conflict, the right to food, the situation of human rights defenders, the rights of migrants.

26 The UN's programs and funds are set up to conduct special activities. They have their own administrative systems, but they have no basis in international law, and they are not, like the UN itself, subjects under international law. There are at present a total of 22 funds and programs, including, in addition to UNICEF, the best known of them all, the UN Environment Programme (UNEP), the World Food Programme (WFP), the UN High Commissioner for Refugees (UNHCR), and the UN Development Programme (UNDP). Source: Wikipedia.

27 UN General Assembly Resolution A/60/L.48.

28 Altogether there are 7 Treaty Bodies, corresponding to the following Covenants and Conventions: International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Rights of the Child, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

in 1999 it set out to examine relevant conventions and declarations and to work out a proposal on norms for business enterprises.²⁹

Having concluded four years of work and a comprehensive process of consultations with business enterprises, labor unions, NGOs, and independent experts, the working group in 2003 presented its draft for the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (“UN Norms” in what follows). In August 2003 the UN Sub-Commission adopted the Norms by consensus and referred them to the UNCHR for further consideration.

Contents of the UN Norms

The UN Norms summarize over 30 current international agreements and declarations, bundling them in 23 articles that define the human rights responsibilities of business enterprises. Even though the Norms are addressed to business enterprises, they are predicated on the primary responsibility of states to respect, protect, and guarantee human rights. In other words, states are in no way released from their responsibility. In the Preamble, the Norms recall 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 ... to secure universal and effective recognition and observance...”

The Norms are based on a comprehensive view of human rights. Alongside the obligation of business enterprises “to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law...” (UN Norms A/1), they contain:

- *The right to equal opportunity and nondiscriminatory treatment*
- *The right to security of persons*
 “[B]usiness enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture ... forced or compulsory labour ... and other international crimes against

the human person as defined by international law.”

- *Rights of workers* as defined in the relevant conventions of the International Labour Organization (ILO), including the rights of children to be protected from economic exploitation, the right to a safe and healthy working environment, the right to remuneration that ensures an adequate standard of living, and freedom of association and effective recognition of the right to collective bargaining.
- *Respect for national sovereignty and human rights*
 Business enterprises are obliged to respect economic, social, and cultural rights as well as civil and political rights and to refrain from paying or taking bribes.
- *Consumer protection*
 “...business enterprises shall take all necessary steps to ensure the safety and quality of the goods and services they provide.”
- *Environmental protection*
 “...business enterprises ... 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...”

Target group

While the Norms are addressed to transnational corporations and other business enterprises, they emphasize that the responsibility to set the appropriate frameworks lies with national governments.

The Norms define the transnational corporation as “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,” while the term “other business enterprise” refers to “any business entity, regardless of the international or domestic nature of its activities...”

²⁹ Paragraph 4c: “Contribute to the drafting of relevant norms concerning human rights and transnational corporations and other economic units whose activities have an impact on human rights.” U.N.Doc.E/CN.4/SUB.2/RES/2001/3.

General provisions of implementation

The Norms list the following steps toward implementation:

1. Development of internal rules of operation in compliance with the Norms
2. Reports on implementation
3. Application and incorporation of the Norms in contracts or other arrangements and dealings with contractors, subcontractors, suppliers, licensees, and distributors
4. Transparent and independent monitoring of implementation using international and national mechanisms already in existence or yet to be created
5. Obligation to pay reparations to persons, entities, and communities that have been adversely affected by failures to comply with the Norms.

The three last-named provisions would serve to create relatively extensive, binding rules that apply at different levels. Application of the Norms to contracts with contractors, subcontractors, etc. would serve to extend the scope of the Norms to companies along the entire supplier chain, rendering the Norms claimable under national contract law. While some countries already provide for compensation at the national level, thus far provisions of this kind are found in investment and trade agreements and, in some limited cases, in environmental agreements, but not as far as human rights are concerned.

The state of the discussion on the human rights responsibility of business enterprises

In 2004 the UN Commission on Human Rights noted that in working out the proposal on the UN Norm, the Sub-Commission had exceeded its mandate³⁰; on the other hand, though, it noted that the concern is to point out possibilities to strengthen standards on the responsibility of transnational corporations for human rights as well as appropriate means and ways to implement these standards. The office of the UN High Commissioner on Human Rights was asked to prepare a study compiling the relevant standards for business enterprises and point to open questions. The report, presented in February 2005, refers to four central standards:

- The ILO Tripartite Declaration on Principles concerning Multinational Enterprises and Social Policy
- The OECD Guidelines for Multinational Enterprises
- The ten principles of the Global Compact
- The UN Norms.

At its 2005 session the Commission on Human Rights welcomed the report and, in its Resolution 2005/69, called on the UN Secretary-General to appoint a special representative for the field of “business enterprises and human rights” – for a initial period of two years. His/her tasks include:

- Identification and clarification of standards
- Clarification of the state’s role in regulating business enterprises; this refers not only to the individual state but extends, explicitly, to the international community as well
- In cases of human rights violations, clarification of the concepts “complicity” and “sphere of in-

³⁰ The Sub-Commission’s work was based on primarily on the right to development, and in this connection a concentration of economic and political power is seen as one of the obstacles to achieving the right to development. The Sub-Commission for this reason commissioned a group of experts:

(a) to identify and examine the effects of the working methods and activities of transnational corporations on the enjoyment of economic, social and cultural rights and the right to development, as well as civil and political rights;

(d) to make recommendations and proposals relating to the methods of work and activities of transnational corporations in order to ensure that such methods and activities are in keeping with the economic and social objectives of the countries in which they operate, and to promote the enjoyment of economic, social and cultural rights and the right to development, as well as of civil and political rights;

(f) to consider the scope of the obligation of States to regulate the activities of transnational corporations, where their activities have or are likely to have a significant impact on the enjoyment of economic, social and cultural rights and the right to development, as well as of civil and political rights of all persons within their jurisdiction; (Sub-Commission resolution 1998/8)

The UNCHR did not directly task the Sub-Commission to work out binding standards for (transnational) corporations.

fluence” as regards corporate responsibility for human rights

- Development of criteria for a Human Rights Impact Assessment
- Documentation of examples of good practice on the part of business enterprises and states.

The special representative is to work closely together with Kofi Annan’s advisor on the Global Compact and to consult, in the course of his/her work, representatives of various industries as well as other experts. A first consultation with the oil and mining industries was held in late 2005.

Kofi Annan appointed John Ruggie, a Harvard economist, as his special representative; Prof. Ruggie had until then served as the Secretary-General’s advisor on the Global Compact. While in his in-

terim report John Ruggie points out the need for binding rules for business enterprises, he at the same time distances himself, in very clear words, from the UN Norms.

John Ruggie’s radius of action will be limited – as in the case of many other UN special representatives, the financial resources he has to conduct his work are limited. His staff is also limited to two persons who work on a part-time basis. He will therefore be forced to rely on cooperation with and inputs from interested parties.

A consultation meeting with various stakeholder groups was conducted in Africa in 2006, others are planned in Asia and Latin America. These consultation meetings are dependent on funding by third parties.

The OECD Guidelines for Multinational Enterprises

Since reference is frequently made to the OECD Guidelines in the discussion on corporate responsibility, we will briefly examine whether they might qualify as an alternative to the proposal of anchoring the corporate responsibility for human rights in the UN human rights system.

While the OECD does not, like the ILO, have a tripartite structure, it does have institutionalized consultation structures in the form of the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC). NGOs are not integrated into the OECD’s structure, but they have gained recognition through their work on the OECD Guidelines and their international network of OECD Watch. The OECD Guidelines might therefore be seen as offering points of departure for a multistakeholder process.

The OECD Ministerial Declaration 1976 was conceived mainly as a means of promoting investment. The Guidelines were a byproduct of the Declaration on Investment and Multilateral Enterprises. It was therefore criticized by many as a soft alternative to the efforts underway at the UN level to come up with a binding instrument. The Guidelines have since been revised several times, and the most recent and most extensive version was adopted in 2000.

The OECD Guidelines set out a wide range of corporate standards. In ten chapters, the documents defines criteria for corporate conduct in the following areas: compliance with national legislation, consumer protection, fighting corruption, establishment of environmental management systems, disclosure of information, compliance with tax legislation. The breadth of this spectrum is an advantage over other instruments. As far as human rights are concerned, though, the Guidelines tend to be relatively unspecific. While the General Policies call for respect for human rights, they do not spell out what this means specifically.

The scope of the OECD Guideline goes beyond the 30 “adhering countries”: On the one hand, nine additional countries³¹ have adopted the Guidelines, on the other hand, the Guidelines also apply for

31 Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Romania, and Slovenia (as of 5 May 2006).

corporate activities in third countries throughout the world. The Guidelines are promoted and monitored via national contact points. This means that the Guidelines provide a decentral complaint procedure. This must be seen as an advantage over other complaint procedures, e.g. that used by the ILO.

The Guidelines are voluntary recommendations by the signatory countries to the corporations in adhering states, and they apply mainly for investment. Thus far the Guidelines have not addressed the issue of human rights responsibility in trade relations.

The Guidelines are an important instrument for gaining the commitment of corporations, but they do not constitute an internationally binding body of rules on the human rights responsibilities of corporations, and they can therefore not be seen as an alternative to ILO conventions or UN norms or standards.

Criticism of the UN Norms

The UN Norms have come in for criticism above all from large business associations and individual companies. This is not surprising in view of the fact that the International Chamber of Commerce or the German BDI have spoken out against any kind of internationally binding rules for corporate conduct. But labor unions too – and specifically the ICFTU – have also expressed open criticism of the Norms.³²

The ICFTU's central points of criticism

1 The Norms do not distinguish sufficiently between the role of the state and the role of other actors, specifically of business enterprises. The language used to distinguish between responsibilities (“sphere of influence,” “primary responsibility”) is not adequate to the task. Indeed, the very fact that the same terms are used to designate the responsibility of states and the responsibility of business enterprises makes it impossible to draw a clear-cut distinction. It is, however, dangerous to assign the same responsibilities to states and business enterprises, and the provisions set out by the Norms are too unspecific. The ICFTU and the business associations are in agreement on this point. Not only

the employers' organization IOE but also ILO staff members see here one of the major shortcomings of the UN Norms and a threat to the state's role in respecting, protecting, and guaranteeing human rights. Both the ICFTU and the IOE emphasize the need for a strong state and see a danger that the Norms could assign to business enterprises the obligation to take on state tasks – as has happened in the case of some CSR³³ activities, above all in the oil and mining and sectors.

2. The UN Norms do not provide adequately defined rules for corporate conduct based on the Universal Declaration of Human Rights and the two human rights covenants. It is simply not possible to have a number of “progressive” corporations determine what can in effect be derived from these conventions for corporate conduct – not even for the case that these corporations are willing to work together with NGOs. The ICFTU sees in the ILO the institution best equipped to clarify some of the provisions bearing on labor standards. A different procedure would have to be found for other standards.
3. Instead of grounding the UN Norms on the Universal Declaration of Human rights, the authors of the Norms in many cases fell back on CSR ideas and instruments. The Preamble to the Norms contains a list of binding human rights conventions, but it refers as well to nonbinding

³² The statements that follow are based for the most part on interviews with the ICFTU.

³³ There is no uniform definition of what corporate social responsibility in fact is. But there is a large measure of agreement that CSR is a voluntary corporate instrument used to integrate the social and environmental dimension into corporate management and to communicate actively with stakeholders.

recommendations and declarations.

However, the sources of standards and the degree to which they are acknowledged are an important matter. The ICFTU fears for this reason that a mix of standards might give rise to a highly unsatisfactory reinterpretation of existing standards. The ICFTU express great concern against the “let a thousand flowers bloom” approach of the CSR industry, emphasizing that the CSR industry should in no case have responsibility for interpreting human rights standards. This would be the wrong approach to developing international law.

ILO staff members too have noted critically that it is not possible simply to sum up all international human rights conventions and other agreements and then to declare them to be binding standards for business enterprises. This approach, they add, is “just wrong.” This criticism is backed by both labor unions and employers’ organizations. According to them, the Norms do not work out clearly enough what is expected of business enterprise in terms of human rights responsibilities and what corporate activities can be derived from this state of affairs.

4. The implementing mechanisms proposed in the Norms are too vague; and it is not possible to develop a set of norms without at the same time developing mechanisms for their implementation. The ICFTU will not back any implementing and monitoring mechanisms that either compete with the ILO’s existing mechanisms or are indeed even intended to replace them.
5. The article of the Norms concerned with implementation contains a relatively large number of CSR ideas, a fact reflected clearly in the use of terms like “monitoring,” “verification,” and “stakeholder.”

Positions of nongovernmental organizations

Basically, human rights organizations see in the Norms a possibility of creating, in the UN system, a comprehensive body of rules on corporate respons-

ibility as well as a means of overcoming the arbitrariness inherent to CSR instruments. With a view to existing national agreements and standards currently in force for states, human rights organizations are convinced that the UN Norms could serve to consolidate these instruments, laying the groundwork for a uniform body of rules.

NGOs see advantages over other instruments like the OECD Guidelines for Multilateral Enterprises, among other things, in the fact that the Norms are predicated on the responsibility of business enterprises for their suppliers chains and that the Norms propose concrete implementing mechanisms, independent monitoring, and a complaint procedure.

Even though NGOs no longer assume that the Norms will in fact be adopted by the UN Human Rights Council, they do regard them as a “starting point,” as Nicolas Howen of the International Commission of Jurists put it³⁴, for the discussion on binding rules for corporate responsibility in the UN system.

Impacts on the discussion conducted among NGOs and labor unions

In their work, human rights NGOs make positive reference to the UN Norms, even though they also share some of the criticisms leveled at the Norms and/or see a need for further clarification of the open questions addressed above. To cite an example, NGOs are actively involved in the task of coming up with an unambiguous definition of the terms “sphere of influence” and “complicity.” Amnesty international and the International Commission of Jurists e.g. are conducting projects that seek to define these concepts more precisely, and this is also part of the mandate of UN Special Representative John Ruggie. Since these two concepts are fundamental for any body of standards on corporate responsibility for human rights, it would appear to make good sense for labor unions and NGOs to hold joint discussions aimed at reaching a common understanding of the two concepts. The discussion could be conducted with reference to concrete examples: How large is

³⁴ Business, Human Rights and Accountability, Nicholas Howen, Secretary-General, International Commission of Jurists, Business and Human Rights Conference, Copenhagen, Sept. 2005.

the sphere of influence of business enterprises and where does their complicity begin in countries like China or in conflict situations like that in Columbia or Sudan? Organizations from such countries would then in any case have to be involved in the discussions.

The critical claim that the Norms fall back on CSR concepts points to a dilemma. As soon as we leave the field of formal industrial relations, we find (at present) that de facto the only terms available are “CSR concepts” like stakeholder, monitoring, or verification. This becomes very clear when we look at the example of the mining and oil industries: Local communities are immediately affected by corporate activities, they are “stakeholders.” Another example could be drawn from the beverage industry, which literally takes away the water villagers need to live. They too are stakeholders. When the concern is corporate human rights responsibility going beyond the sphere of formal industrial relations and labor standards, we are largely forced to make do with concepts that have already been ‘coopted’ by the CSR discussion. The criticism that the Norms fall back on CSR concepts contains an implicit charge that the Norms show a preference for the moral-ethical responsibility and the voluntary character of implementation, on which the CSR initiatives are based, to the detriment of the ability of those affected to claim their rights. As far as corporate responsibility for human rights is concerned, it is precisely human rights organizations like amnesty international or the International Commission of Jurists that underline the legal, claimable nature of such rights, not the moral-ethical approach on which the CSR initiatives are based. Here labor unions and many NGOs do in fact have a shared basic understanding and a parallel interest structure that could serve as a basis to formulate joint positions.

However, the introduction of the term “stakeholder” points to another problem. Labor unions are opposed to attempts to categorize them as one stakeholder among others. Labor unions are the elected representations of workers, and they also represent workers’ interests in institutions like the

ILO, whereas labor unions mainly see for NGOs a lobbying function that, while it may be based on expert knowledge and political commitment, does not confer on them the representative status enjoyed by elected representative of workers’ interests. In other words, the discussion over corporate responsibility and the issue of who is to be involved and how and where this involvement is to take shape translates out into the question of whether there is, in effect, a hierarchy of interests and the bodies that represent them. This is a point of central importance, because it in part fuels the distrust of labor unions toward any attempts to anchor corporate responsibility in the UN human rights system, in which labor unions do not have the role of a social force on their own right.

Synergies or competition between the ILO and the UN Norms

It seems unlikely that the ILO will be weakened by the UN Norms or by any comparable document. But one important precondition is that any new package of human rights standards or norms does not redefine labor standards that have been developed in the ILO system.

There are no efforts being made within the ILO to establish binding human rights rules for business enterprises. That would stand in contradiction to the ILO’s social-partnership approach, to which both the institution’s tripartite structure and social dialogue are essential. On the other hand, there are fears that a binding code for business enterprises, with the monitoring system it would call for, might very well endanger the ILO’s complex tripartite system.

Furthermore, any efforts on the part of the ILO to anchor corporate human rights obligations would go beyond the institution’s mandate, which is restricted primarily to regulating industrial relations and working conditions. While the ILO standards do contain one example that goes beyond the institution’s immediate mandate – ILO Convention 169 on Indigenous and Tribal Peoples, which is the only international convention³⁵ on the rights of

35 Attempts to work out a convention on indigenous peoples in the UN framework have failed, and efforts have been underway for years now to negotiate at least a declaration. This declaration has finally been adopted by the new Council on Human Rights in its first session and sent for consideration to the UN General Assembly.

indigenous peoples – the agreement is derived historically from the situation of indigenous peoples forced into slave labor, a state of affairs that the ILO challenged as early as in the 1920s. In the course of decades, during which time the rights of indigenous peoples were advanced, a convention was developed that sets out – alongside labor issues – the territorial and participatory rights of indigenous peoples. This, though, is, as mentioned above, a unique convention in the ILO system.

Viewed against this background, the ILO standards may well be seen as complementary to the work of the UN Human Rights Council on responsibility for human rights. A set of norms worked out by the Human Rights Council could make reference to the ILO's tried-and-tested set of labor standards, continuing to leave it up to the ILO to interpret such standards. Thanks to its institutional experience and credibility, the ILO is generally recognized as the one body responsible for setting standards for the world of work. De facto the ILO has something like a "definitional sovereignty" on labor standards. This function is very important as a means of avoiding any arbitrariness in interpreting labor standards – a development that has already been observed in some cases, e.g. when corporations arbitrarily, and driven by their own interests, either incorporate labor standards in their codes of conduct or wholly ignore such standards.

Conclusions

Can we say, now, that the glass is half full or half empty? NGOs and labor unions appear to base their assessment of the UN Norms on a multiplicity of views of the kind outlined above. Interestingly, there is little controversy among labor unions, ILO representatives, and NGOs when it comes to the substantive provisions of the UN Norms. The central points of contention and discussion tend more to be questions like the following:

- Are there prospects of reaching agreement on a common conception of the sphere of influence and complicity of business enterprises and their responsibility? For what can business enterprises be held accountable, and for what are they not responsible? When are certain events outside the sphere of influence of business enterprises? How should a business enterprise behave in Sudan, in China?
- Is there a hierarchy of stakeholders? Are workers a primary stakeholder group? Should there be specific verification criteria for workers' rights? Does the responsibility for verification lie with the ILO?
- Should labor unions and NGOs be involved in a verification mechanism, and if so, in what ways?
- How can an effective verification mechanism be established? What can be learned in this regard from the ILO – what from the OECD Guidelines?
- Is there a need for liability and compensation rules for business enterprises? If so, what shape should these rule have and where should they be located?

These are key issues on which labor unions and NGOs would need to define their positions. One promising approach would be for the discussion process to be conducted along concrete examples, and not in the form of an abstract legal debate.

But if common positions are to be reached at the international level, there will be a need for a longer-term, moderated discussion process. The issue does not yet seem to have the urgent position it deserves to have on the agenda of NGOs and labor unions. What we do find are more approaches like the project conducted by the International Commission of Jurists that includes labor unions and NGOs, seeking to integrate them into the discussion process. These projects are very important, and they constitute a good platform for clarifying concepts; but it is also necessary for both labor unions and NGOs to become actively involved in a joint discussion process.

Outlook

Within the United Nations, the discussion in the Human Rights Council on corporate responsibility for human rights is at present the only international process in which it would be possible to define binding rules for business enterprises. In 2007 John Ruggie is set to present his final report on business enterprises and human rights to the UN Secretary-General and the Human Rights Council. At present there is an open consultation and clarification process underway over the design that could be given to corporate rules as well as on the question of how high such rules should be ranked and how binding they should be. John Ruggie rightly points out in his interim report that standards do not simply exist somewhere, waiting to be picked up and implemented, noting that standards are instead formed in a social process. This process is taking place in

the framework of the Human Rights Council, and labor unions and NGOs should take the opportunity to work out **joint** positions on key issues like corporate complicity and sphere of influence and corporate responsibility, stating in clear terms what they expect of an international body of standards.

John Ruggie's final report, due in 2007, will be a milestone in the international discussion on the corporate human rights responsibility and how relevant standards might best be implemented. This discussion process will, however, not have reached its conclusion when John Ruggie's report appears. It therefore certainly makes sense for labor unions and NGOs to seek to define joint aims and develop strategies with a view to strengthening corporate human rights responsibility and accountability.

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Links

Comprehensive information can be found on the resource website
www.business-humanrights.org

ILO
www.ilo.org

The ILO Tripartite Declaration on Principles concerning Multinational Enterprises and Social Policy
www.ilo.org/public/english/employment/multi

Office of the UN High Commissioner for Human Rights
www.ohchr.ch

UN Norms
<http://www1.umn.edu/humanrts/links/norms-Aug2003.html>

Misereor
www.misereor.de

IG Metall
www.igmetall.de

Friedrich-Ebert-Stiftung
www.fes-geneva.org

IBFG
www.icftu.org

International Organisation of Employers
www.ioe-emp.org

Amnesty International
www.amnesty.de

International Commission of Jurists
www.icj.org

International Service for Human Rights
www.ishr.ch

Business Leaders Initiative on Human Rights
www.blihr.org

Annex

Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 83 ILO Official Bull., Series A, No. 3 (2000).

The Governing Body of the International Labour Office:

Recalling that the International Labour Organization for many years has been involved with certain social issues related to the activities of multinational enterprises;

Noting in particular that various Industrial Committees, Regional Conferences, and the International Labour Conference since the mid-1960s have requested appropriate action by the Governing Body in the field of multinational enterprises and social policy;

Having been informed of the activities of other international bodies, in particular the UN Commission on Transnational Corporations and the Organization for Economic Cooperation and Development (OECD); Considering that the ILO, with its unique tripartite structure, its competence, and its long-standing experience in the social field, has an essential role to play in evolving principles for the guidance of governments, workers' and employers' organizations, and multinational enterprises themselves;

Recalling that it convened a Tripartite Meeting of Experts on the Relationship between Multinational Enterprises and Social Policy in 1972, which recommended an ILO programme of research and study, and a Tripartite Advisory Meeting on the Relationship of Multinational Enterprises and Social Policy in 1976 for the purpose of reviewing the ILO programme of research and suggesting appropriate ILO action in the social and labour field; Bearing in mind the deliberations of the World Employment Conference;

Having thereafter decided to establish a tripartite group to prepare a Draft Tripartite Declaration of Principles covering all of the areas of ILO concern which relate to the social aspects of the activities of multinational enterprises, including employment creation in the developing countries, all the while bearing in mind the recommendations made by the Tripartite Advisory Meeting held in 1976;

Having also decided to reconvene the Tripartite Advisory Meeting to consider the Draft Declaration of Principles as prepared by the tripartite group; Having considered the Report and the Draft Declaration of Principles submitted to it by the reconvened Tripartite Advisory Meeting;

Hereby approves the following Declaration which may be cited as the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office, and invites governments of States Members of the ILO, the employers' and workers' organizations concerned and the multinational enterprises operating in their territories to observe the principles embodied therein.

1. Multinational enterprises play an important part in the economies of most countries and in international economic relations. This is of increasing interest to governments as well as to employers and workers and their respective organizations. Through international direct investment and other means such enterprises can bring substantial benefits to home and host countries by contributing to the more efficient utilization of capital, technology and labour. Within the framework of development policies established by governments, they can also make an important contribution to the promotion of economic and social welfare; to the improvement of living standards and the satisfaction of basic needs; to the creation of employment opportunities, both directly and indirectly; and to the enjoyment of basic human rights, including freedom of association, throughout the world. On the other hand, the advances made by multinational enterprises in organizing their operations beyond the national framework may lead to abuse of concentrations of economic power and to conflicts with national policy objectives and with the interest of the workers. In addition, the complexity of multinational enterprises and the difficulty of clearly perceiving their diverse structures, operations and policies sometimes give rise to concern either in the home or in the host countries, or in both.
2. The aim of this Tripartite Declaration of Principles is to encourage the positive contribution which multinational enterprises can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise, taking into account the United Nations resolutions advocating the establishment of a New International Economic Order.
3. This aim will be furthered by appropriate laws and policies, measures and actions adopted by the governments and by cooperation among the governments and the employers' and workers' organizations of all countries.
4. The principles set out in this Declaration are commended to the governments, the employers' and workers' organizations of home and host countries and to the multinational enterprises themselves.
5. These principles are intended to guide the governments, the employers' and workers' organizations and the multinational enterprises in taking such measures and actions and adopting such social policies, including those based on the principles laid down in the Constitution and the relevant Conventions and Recommendations of the ILO, as would further social progress.
6. To serve its purpose this Declaration does not require a precise legal definition of multinational enterprises; this paragraph is designed to facilitate the understanding of the Declaration and not to provide such a definition. Multinational enterprises include enterprises, whether they are of public, mixed or private ownership, which own or control production, distribution, services or other facilities outside the country in which they are based. The degree of autonomy of entities within multinational enterprises in relation to each other varies widely from one such enterprise to another, depending on the nature of the links between such entities and their fields of activity and having regard to the great diversity in the form of ownership, in the size, in the nature and location of the operations of the enterprises concerned. Unless otherwise specified, the term „multinational enterprise“ is used in this Declaration to designate the various entities (parent companies or local entities or both or the organization as a whole) according to the distribution of responsibilities among them, in the expectation that they will cooperate and provide assistance to one another as necessary to facilitate observance of the principles laid down in the Declaration.
7. This Declaration sets out principles in the fields of employment, training, conditions of work and life and industrial relations which governments, employers' and workers' organizations and multinational enterprises are recommended to observe on a voluntary basis; its provisions shall not limit or otherwise affect obligations arising out of ratification of any ILO Convention.

General policies

8. All the parties concerned by this Declaration should respect the sovereign rights of States, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards. They should respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations as well as the Constitution of the International Labour Organization and its principles according to which freedom of expression and association are essential to sustained progress. They should contribute to the realization of the ILO Declaration on Fundamental Principles and Rights and Work and its Follow-up, adopted in 1998. They should also honour commitments which they have freely entered into, in conformity with the national law and accepted international obligations.
9. Governments which have not yet ratified Conventions Nos. 87, 98, 111, 122, 138 and 182 are urged to do so and in any event to apply, to the greatest extent possible, through their national policies, the principles embodied therein and in Recommendations Nos. 111, 119, 122, 146 and 190.¹ Without prejudice to the obligation of governments to ensure compliance with Conventions they have ratified, in countries in which the Conventions and Recommendations cited in this paragraph are not complied with, all parties should refer to them for guidance in their social policy.
10. Multinational enterprises should take fully into account established general policy objectives of the countries in which they operate. Their activities should be in harmony with the development priorities and social aims and structure of the country in which they operate. To this effect, consultations should be held between multinational enterprises, the government and, wherever appropriate, the national employers' and workers' organizations concerned.
11. The principles laid down in this Declaration do not aim at introducing or maintaining inequalities of treatment between multinational and national enterprises. They reflect good practice for all. Multinational and national enterprises, wherever the principles of this Declaration are relevant to both, should be subject to the same expectations in respect of their conduct in general and their social practices in particular.
12. Governments of home countries should promote good social practice in accordance with this Declaration of Principles, having regard to the social and labour law, regulations and practices in host countries as well as to relevant international standards. Both host and home country governments should be prepared to have consultations with each other, whenever the need arises, on the initiative of either.

1 Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise; Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 122) concerning Employment Policy; Convention (No. 138) concerning Minimum Age for Admission to Employment; Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Recommendation (No. 119) concerning Termination of Employment at the Initiative of the Employer; Recommendation (No. 122) concerning Employment Policy; Recommendation (No. 146) concerning Minimum Age for Admission to Employment; Recommendation (No. 190) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

Employment

Employment promotion

13. With a view to stimulating economic growth and development, raising living standards, meeting manpower requirements and overcoming unemployment and underemployment, governments should declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.²
14. This is particularly important in the case of host country governments in developing areas of the world where the problems of unemployment and underemployment are at their most serious. In this connection, the general conclusions adopted by the Tripartite World Conference on Employment, Income Distribution and Social Progress and the International Division of Labour (Geneva, June 1976) should be kept in mind.³
15. Paragraphs 13 and 14 above establish the framework within which due attention should be paid, in both home and host countries, to the employment impact of multinational enterprises.
16. Multinational enterprises, particularly when operating in developing countries, should endeavour to increase employment opportunities and standards, taking into account the employment policies and objectives of the governments, as well as security of employment and the long-term development of the enterprise.
17. Before starting operations, multinational enterprises should, wherever appropriate, consult the competent authorities and the national employers' and workers' organizations in order to keep their manpower plans, as far as practicable, in harmony with national social development policies. Such consultation, as in the case of national enterprises, should continue between the multinational enterprises and all parties concerned, including the workers' organizations.
18. Multinational enterprises should give priority to the employment, occupational development, promotion and advancement of nationals of the host country at all levels in cooperation, as appropriate, with representatives of the workers employed by them or of the organizations of these workers and governmental authorities.
19. Multinational enterprises, when investing in developing countries, should have regard to the importance of using technologies which generate employment, both directly and indirectly. To the extent permitted by the nature of the process and the conditions prevailing in the economic sector concerned, they should adapt technologies to the needs and characteristics of the host countries. They should also, where possible, take part in the development of appropriate technology in host countries.
20. To promote employment in developing countries, in the context of an expanding world economy, multinational enterprises, wherever practicable, should give consideration to the conclusion of contracts with national enterprises for the manufacture of parts and equipment, to the use of local raw materials and to the progressive promotion of the local processing of raw materials. Such arrangements should not be used by multinational enterprises to avoid the responsibilities embodied in the principles of this Declaration.

2 Convention (No. 122) and Recommendation (No. 122) concerning Employment Policy.

3 ILO, World Employment Conference, Geneva, 4-17 June 1976.

Equality of opportunity and treatment

21. All governments should pursue policies designed to promote equality of opportunity and treatment in employment, with a view to eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin.⁴
22. Multinational enterprises should be guided by this general principle throughout their operations without prejudice to the measures envisaged in paragraph 18 or to government policies designed to correct historical patterns of discrimination and thereby to extend equality of opportunity and treatment in employment. Multinational enterprises should accordingly make qualifications, skill and experience the basis for the recruitment, placement, training and advancement of their staff at all levels.
23. Governments should never require or encourage multinational enterprises to discriminate on any of the grounds mentioned in paragraph 21, and continuing guidance from governments, where appropriate, on the avoidance of such discrimination in employment is encouraged.

Security of employment

24. Governments should carefully study the impact of multinational enterprises on employment in different industrial sectors. Governments, as well as multinational enterprises themselves, in all countries should take suitable measures to deal with the employment and labour market impacts of the operations of multinational enterprises.
25. Multinational enterprises equally with national enterprises, through active manpower planning, should endeavour to provide stable employment for their employees and should observe freely negotiated obligations concerning employment stability and social security. In view of the flexibility which multinational enterprises may have, they should strive to assume a leading role in promoting security of employment, particularly in countries where the discontinuation of operations is likely to accentuate long-term unemployment.
26. In considering changes in operations (including those resulting from mergers, take-overs or transfers of production) which would have major employment effects, multinational enterprises should provide reasonable notice of such changes to the appropriate government authorities and representatives of the workers in their employment and their organizations so that the implications may be examined jointly in order to mitigate adverse effects to the greatest possible extent. This is particularly important in the case of the closure of an entity involving collective lay-offs or dismissals.
27. Arbitrary dismissal procedures should be avoided.⁵
28. Governments, in cooperation with multinational as well as national enterprises, should provide some form of income protection for workers whose employment has been terminated.⁶

4 Convention (No. 111) and Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 100) and Recommendation (No. 90) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

5 Recommendation (No. 119) concerning Termination of Employment at the Initiative of the Employer.

6 *ibid.*

Training

29. Governments, in cooperation with all the parties concerned, should develop national policies for vocational training and guidance, closely linked with employment.⁷ This is the framework within which multinational enterprises should pursue their training policies.
30. In their operations, multinational enterprises should ensure that relevant training is provided for all levels of their employees in the host country, as appropriate, to meet the needs of the enterprise as well as the development policies of the country. Such training should, to the extent possible, develop generally useful skills and promote career opportunities. This responsibility should be carried out, where appropriate, in cooperation with the authorities of the country, employers' and workers' organizations and the competent local, national or international institutions.
31. Multinational enterprises operating in developing countries should participate, along with national enterprises, in programmes, including special funds, encouraged by host governments and supported by employers' and workers' organizations. These programmes should have the aim of encouraging skill formation and development as well as providing vocational guidance, and should be jointly administered by the parties which support them. Wherever practicable, multinational enterprises should make the services of skilled resource personnel available to help in training programmes organized by governments as part of a contribution to national development.
32. Multinational enterprises, with the cooperation of governments and to the extent consistent with the efficient operation of the enterprise, should afford opportunities within the enterprise as a whole to broaden the experience of local management in suitable fields such as industrial relations.

Conditions of work and life

Wages, benefits and conditions of work

33. Wages, benefits and conditions of work offered by multinational enterprises should be not less favourable to the workers than those offered by comparable employers in the country concerned.
34. When multinational enterprises operate in developing countries, where comparable employers may not exist, they should provide the best possible wages, benefits and conditions of work, within the framework of government policies.⁸ These should be related to the economic position of the enterprise, but should be at least adequate to satisfy basic needs of the workers and their families. Where they provide workers with basic amenities such as housing, medical care or food, these amenities should be of a good standard.⁹
35. Governments, especially in developing countries, should endeavour to adopt suitable measures to ensure that lower income groups and less developed areas benefit as much as possible from the activities of multinational enterprises.

Minimum age

36. Multinational enterprises, as well as national enterprises, should respect the minimum age for admission to employment or work in order to secure the effective abolition of child labour.¹⁰

⁷ Convention (No. 142) and Recommendation (No. 150) concerning Vocational Guidance and Vocational Training in the Development of Human Resources.

⁸ Recommendation (No. 116) concerning Reduction of Hours of Work.

⁹ Convention (No. 110) and Recommendation (No. 110) concerning Conditions of Employment of Plantation Workers; Recommendation (No. 115) concerning Workers' Housing; Recommendation (No. 69) concerning Medical Care; Convention (No. 130) and Recommendation (No. 134) concerning Medical Care and Sickness Benefits.

¹⁰ Convention No. 138, Article 1; Convention No. 182, Article 1.

Safety and health

37. Governments should ensure that both multinational and national enterprises provide adequate safety and health standards for their employees. Those governments which have not yet ratified the ILO Conventions on Guarding of Machinery (No. 119), Ionising Radiation (No. 115), Benzene (No. 136) and Occupational Cancer (No. 139) are urged nevertheless to apply to the greatest extent possible the principles embodied in these Conventions and in their related Recommendations (Nos. 118, 114, 144 and 147). The Codes of Practice and Guides in the current list of ILO publications on Occupational Safety and Health should also be taken into account.¹¹
38. Multinational enterprises should maintain the highest standards of safety and health, in conformity with national requirements, bearing in mind their relevant experience within the enterprise as a whole, including any knowledge of special hazards. They should also make available to the representatives of the workers in the enterprise, and upon request, to the competent authorities and the workers' and employers' organizations in all countries in which they operate, information on the safety and health standards relevant to their local operations, which they observe in other countries. In particular, they should make known to those concerned any special hazards and related protective measures associated with new products and processes. They, like comparable domestic enterprises, should be expected to play a leading role in the examination of causes of industrial safety and health hazards and in the application of resulting improvements within the enterprise as a whole.
39. Multinational enterprises should cooperate in the work of international organizations concerned with the preparation and adoption of international safety and health standards.
40. In accordance with national practice, multinational enterprises should cooperate fully with the competent safety and health authorities, the representatives of the workers and their organizations, and established safety and health organizations. Where appropriate, matters relating to safety and health should be incorporated in agreements with the representatives of the workers and their organizations.

Industrial relations

41. Multinational enterprises should observe standards of industrial relations not less favourable than those observed by comparable employers in the country concerned.

Freedom of association and the right to organize

42. Workers employed by multinational enterprises as well as those employed by national enterprises should, without distinction whatsoever, have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorisation.¹² They should also enjoy adequate protection against acts of anti-union discrimination in respect of their employment.¹³
43. Organizations representing multinational enterprises or the workers in their employment should enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.¹⁴

11 The ILO Conventions and Recommendations referred to are listed in the Catalogue of ILO Publications on Occupational Safety and Health, ed. 1999, ILO Geneva. See also <http://www.ilo.org/public/english/protection/safework/publicat/index.htm>.

12 Convention No. 87, Article 2.

13 Convention No. 98, Article 1(1).

14 Convention No. 98, Article 2(1).

44. Where appropriate, in the local circumstances, multinational enterprises should support representative employers' organizations.
45. Governments, where they do not already do so, are urged to apply the principles of Convention No. 87, Article 5, in view of the importance, in relation to multinational enterprises, of permitting organizations representing such enterprises or the workers in their employment to affiliate with international organizations of employers and workers of their own choosing.
46. Where governments of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers' freedom of association or the right to organize and bargain collectively.
47. Representatives of the workers in multinational enterprises should not be hindered from meeting for consultation and exchange of views among themselves, provided that the functioning of the operations of the enterprise and the normal procedures which govern relationships with representatives of the workers and their organizations are not thereby prejudiced.
48. Governments should not restrict the entry of representatives of employers' and workers' organizations who come from other countries at the invitation of the local or national organizations concerned for the purpose of consultation on matters of mutual concern, solely on the grounds that they seek entry in that capacity.

Collective bargaining

49. Workers employed by multinational enterprises should have the right, in accordance with national law and practice, to have representative organizations of their own choosing recognized for the purpose of collective bargaining.
50. Measures appropriate to national conditions should be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.¹⁵
51. Multinational enterprises, as well as national enterprises, should provide workers' representatives with such facilities as may be necessary to assist in the development of effective collective agreements.¹⁶
52. Multinational enterprises should enable duly authorized representatives of the workers in their employment in each of the countries in which they operate to conduct negotiations with representatives of management who are authorized to take decisions on the matters under negotiation.
53. Multinational enterprises, in the context of bona fide negotiations with the workers' representatives on conditions of employment, or while workers are exercising the right to organize, should not threaten to utilize a capacity to transfer the whole or part of an operating unit from the country concerned in order to influence unfairly those negotiations or to hinder the exercise of the right to organize; nor should they transfer workers from affiliates in foreign countries with a view to undermining bona fide negotiations with the workers' representatives or the workers' exercise of their right to organize.
54. Collective agreements should include provisions for the settlement of disputes arising over their interpretation and application and for ensuring mutually respected rights and responsibilities.

¹⁵ Convention No. 98, Article 4.

¹⁶ Convention (No. 135) concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking.

55. Multinational enterprises should provide workers' representatives with information required for meaningful negotiations with the entity involved and, where this accords with local law and practices, should also provide information to enable them to obtain a true and fair view of the performance of the entity or, where appropriate, of the enterprise as a whole.¹⁷
56. Governments should supply to the representatives of workers' organizations on request, where law and practice so permit, information on the industries in which the enterprise operates, which would help in laying down objective criteria in the collective bargaining process. In this context, multinational as well as national enterprises should respond constructively to requests by governments for relevant information on their operations.

Consultation

57. In multinational as well as in national enterprises, systems devised by mutual agreement between employers and workers and their representatives should provide, in accordance with national law and practice, for regular consultation on matters of mutual concern. Such consultation should not be a substitute for collective bargaining.¹⁸

Examination of grievances

58. Multinational as well as national enterprises should respect the right of the workers whom they employ to have all their grievances processed in a manner consistent with the following provision: any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result, and to have such grievance examined pursuant to an appropriate procedure.¹⁹ This is particularly important whenever the multinational enterprises operate in countries which do not abide by the principles of ILO Conventions pertaining to freedom of association, to the right to organize and bargain collectively and to forced labour.²⁰

Settlement of industrial disputes

59. Multinational as well as national enterprises jointly with the representatives and organizations of the workers whom they employ should seek to establish voluntary conciliation machinery, appropriate to national conditions, which may include provisions for voluntary arbitration, to assist in the prevention and settlement of industrial disputes between employers and workers. The voluntary conciliation machinery should include equal representation of employers and workers.²¹

Note: Paragraphs 1-7, 8, 10, 25, 26, and 52 (formerly paragraph 51) have been the subject of interpretation under the Procedure for the examination of disputes concerning the application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Copies of interpretations are available upon request to the Bureau of Multinational Enterprise Activities, International Labour Office, 4, route des Morillons, CH-1211 Geneva 22, Switzerland, or at <http://www.ilo.org>.

¹⁷ Recommendation (No. 129) concerning Communications between Management and Workers within the Undertaking.

¹⁸ Recommendation (No. 94) concerning Consultation and Co-operation between Employers and Workers at the Level of Undertaking; Recommendation (No. 129) concerning Communications within the Undertaking.

¹⁹ Recommendation (No. 130) concerning the Examination of Grievances within the Undertaking with a View to Their Settlement.

²⁰ Convention (No. 29) concerning Forced or Compulsory Labour; Convention (No. 105) concerning the Abolition of Forced Labour; Recommendation (No. 35) concerning Indirect Compulsion to Labour.

²¹ Recommendation (No. 92) concerning Voluntary Conciliation and Arbitration.

Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights¹

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

¹ Adopted at its 22nd meeting, on 13 August 2003. GE.03-16008 (E) 030903

for All in the Twenty-First Century” policy of the World Health Organization; the Convention against Discrimination in Education of the United Nations Educational, 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 Governing Body, the Committee of Experts on the Application of Standards, as well as the Committee on Freedom of Association of the International Labour Organization 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 business 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 business 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.

The ILO's structure

The International Labour Conference – meets as required, but at least once a year. The conference is made up of four representatives of each member country, two government delegates, and one employers' and one employees' representative from each member country.

The Governing Body

The Body consists of 56 persons (28 government representatives, 14 employers' representatives, 14 employees' representatives) and 66 deputies (28 governments, 19 employers, and 19 employees). Ten of the Governing Body's seats are held by the ten most important industrialized nations (Brazil, China, France, Germany, India, Italy, Japan, the Russian Federation, the UK, and the US). All other government members are elected by the Conference every three years. Employers' and employees' representatives have an election procedure of their own.

The following committees report to the Governing Body:

- Committee on Freedom of Association
- Programme, Financial and Administrative Committee
- Committee on Legal Issues and International Labour Standards (LILS)
- Subcommittee on Multinational Enterprises (MNE)
- Committee on Employment and Social Policy (ESP)
- Committee on Sectoral and Technical Meetings and Related Issues (STM)
- Committee on Technical Cooperation (TC)

Working Party on the Social Dimension of Globalization (WP/SDG)

The ILO's day-to-day business is conducted by the "International Labour Office" in Geneva, which is headed by the director-general.

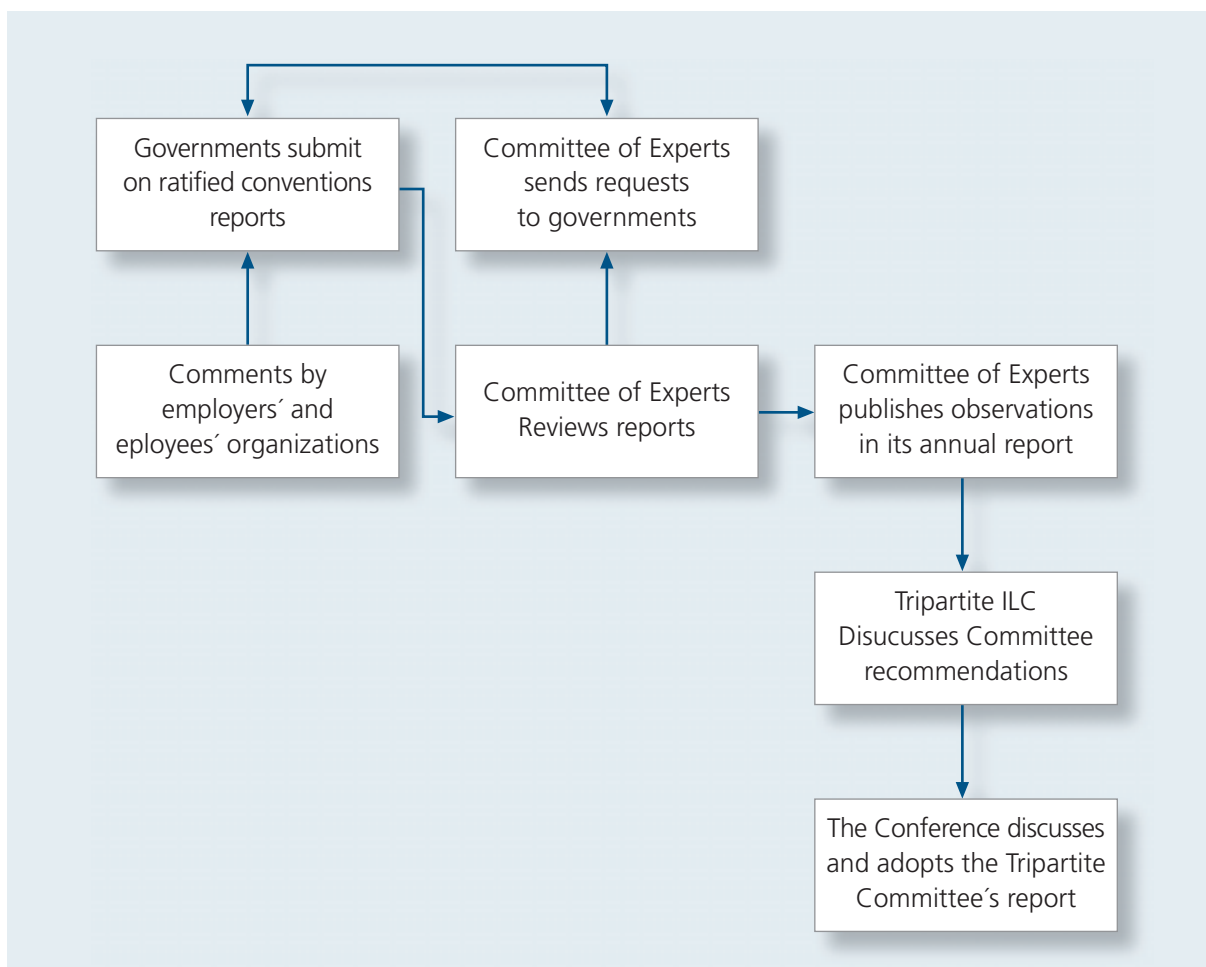
Regular supervisory system

The Committee of Experts

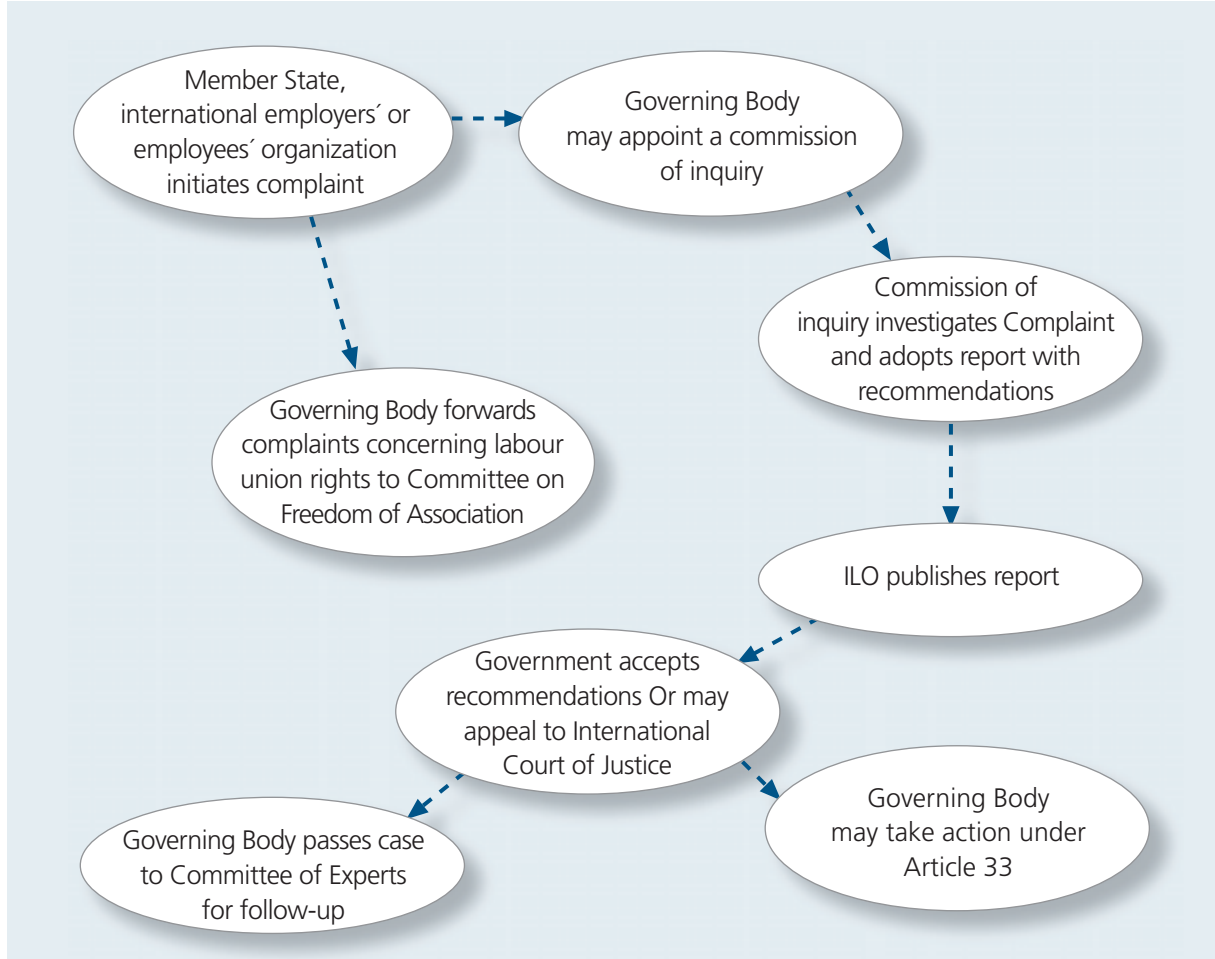
The Committee is made up of 20 independent jurists elected by the Governing Body for a term of three years. The experts come from various regions, legal systems, and cultures. Their task is to evaluate, on an independent technical basis, the implementation of the ILO's labor standards. The experts may publish observations (in their annual report) and submit direct requests to the governments concerned.

The Conference Committee on the Application of Standards

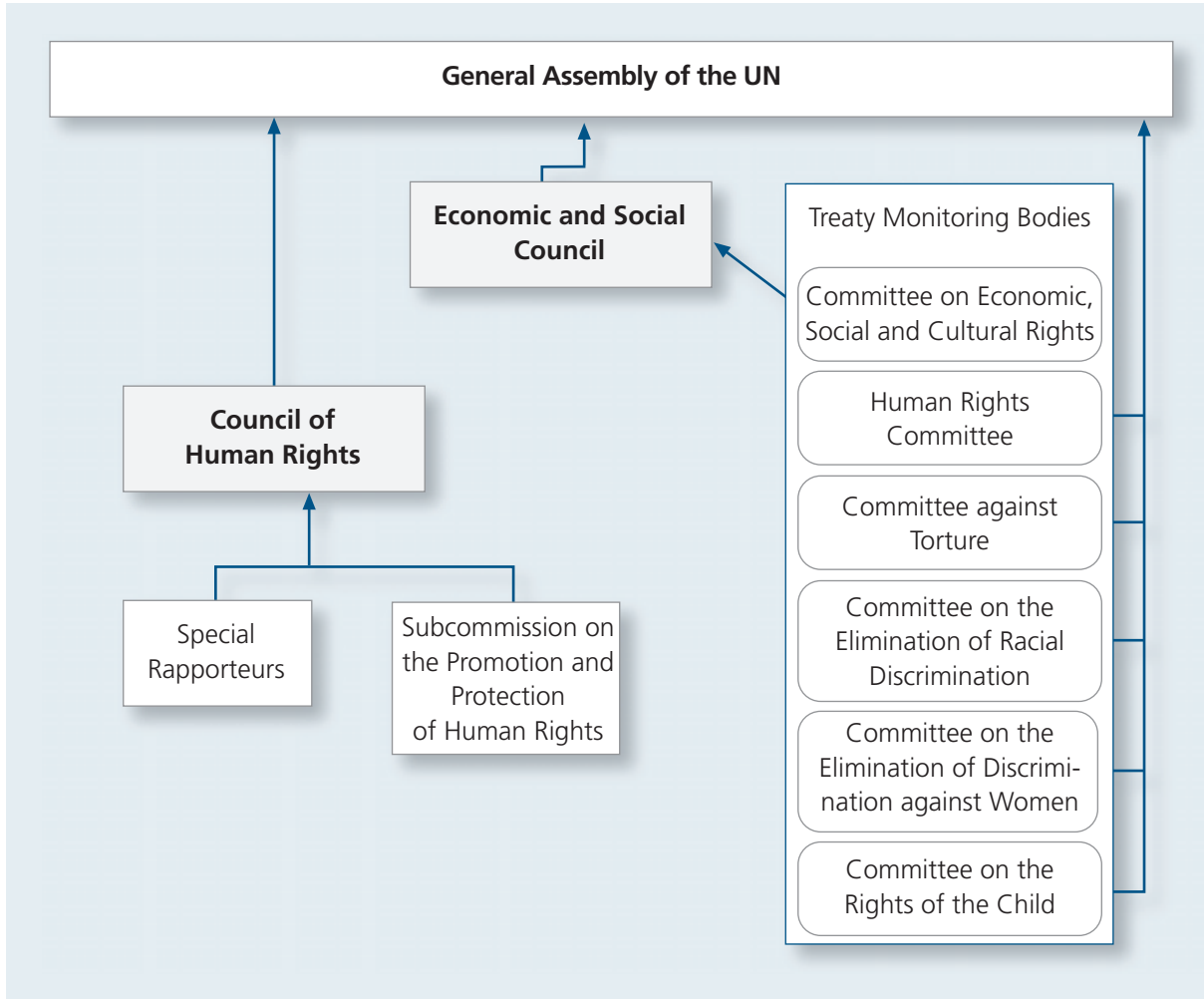
The report submitted by the Committee of Experts is reviewed by the Conference Committee. Governments asked in the reports for further comments are requested to appear before the Committee to provide further information. The Committee for the most part makes recommendations on how the problems concerned can best be resolved and offers the governments concerned the ILO's support. This too is made public.



The ILO’s complaints procedure



The UN Human Rights Council and the treaty bodies



In connection with UN reform, the Commission on Human rights has been disbanded and replaced with the Human Rights Council. To name the most important changes this has entailed:

- The Human Rights Council is a subsidiary body of the UN General Assembly (whereas the UNCHR was an organ of ECOSOC).
- The members of the Council are elected by the UN General Assembly in a direct and secret procedure (47 seats, distributed in keeping with geographic key: 13 from Africa, 13 from Asia, 6 from eastern Europe, 7 from western Europe and other countries, and 8 from Latin America and the Caribbean).
- The Human Rights Council is authorized to subject all countries to a regular scrutiny of how they live up to their responsibility for human rights.
- The Human Rights Council meets three times a year for a total of at least ten weeks.

Under UN General Assembly Resolution 60/251, the Human Rights Council's tasks extend to the following areas:

- Undertake a Universal Periodic Review (UPR), based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States;
- Address situations of violations of human rights, including gross and systematic violations, and make recommendations;
- Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies;
- Serve as a forum for dialogue on thematic issues on all human rights;
- Make recommendations with regard to the promotion and protection of human rights;
- Make recommendations to the General Assembly for the further development of international law in the field of human rights;
- Work in close cooperation in the field of human rights with governments, regional organisations, NHRIs, and civil society;
- Assume the role and responsibilities of the Commission relating to the work of the Office of the United Nations High Commissioner for Human Rights (OHCHR);
- Promote universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner;
- Promote the full implementation of human rights obligations undertaken by States and follow-up to the goals and commitments related to the promotion and protection of human rights emanating from United Nations conferences and summits;
- Promote human rights education and learning as well as advisory services, technical assistance, and capacity-building, to be provided in consultation with and with the consent of the States concerned;
- Promote the effective coordination and the mainstreaming of human rights within the UN system.

